

**ANNOTATED MINUTES**

Tuesday, January 26, 1993 - 9:00 AM  
Multnomah County Courthouse, Room 602

**BOARD BRIEFING**

- B-1 Annie E. Casey Foundation Detention Reform Initiative Briefing. Presented by Harold Ogburn and Bart Lubow.

PRESENTATION AND RESPONSE TO BOARD QUESTIONS  
BY HAL OGBURN, TERRY MARTIN, GARY NAKAO, BART  
LUBOW AND JUDGE LINDA BERGMAN.

---

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

**PLANNING ITEMS**

Chair Gladys McCoy convened the meeting at 9:37 a.m., with Vice-Chair Gary Hansen, Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman present.

CHAIR MCCOY ANNOUNCED THAT AGENDA REVIEW WOULD BE MOVED UP TO 10:00 AM TODAY.

PLANNING DIRECTOR SCOTT PEMBLE EXPLAINED THE PROCEDURE FOR PLANNING ITEMS P-1 THROUGH P-6, ADVISING HEARINGS OFFICER AND/OR PLANNING COMMISSION DECISIONS ARE REPORTED TO THE BOARD PURSUANT TO COUNTY CODE, WHICH THE BOARD MAY ACCEPT OR TAKE UP ON ITS OWN MOTION, AND IN THE CASE OF THE TIMELY FILING OF A NOTICE OF REVIEW APPEAL, THE BOARD MUST SET THE DATE, TIME AND SCOPE OF REVIEW FOR A PUBLIC HEARING ON THE MATTER.

- P-1 CU 4-93 The January 4, 1993 Planning and Zoning Hearings Officer Decision is Reported to the Board for Review: APPROVING, SUBJECT TO CONDITIONS, Development of Property with a Non-Resource Related Single Family Residence, for Property Located at 39077 SE HOWARD ROAD

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-2 CU 22-92 The January 14, 1993 Planning and Zoning Hearings Officer Decision is Reported to the Board for Review: DENYING a Conditional Use Permit for a Non-Resource Related Single Family Dwelling on a 4.34 Acre Lot of Record in the Multiple Use Forest-19 Zoning District, for Property Located at 22401 NW ST HELENS ROAD

DECISION READ. MR. PEMBLE ADVISED A NOTICE OF REVIEW APPEAL WAS FILED AND REITERATED THE BOARD'S SCOPE OF REVIEW OPTIONS, SUGGESTING A DATE AND TIME LIMIT FOR THE HEARING. UPON

MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, IT WAS UNANIMOUSLY APPROVED THAT A PUBLIC HEARING, ON THE RECORD, WITH ADDITIONAL EVIDENCE AND TESTIMONY LIMITED TO 10 MINUTES PER SIDE, BE SCHEDULED FOR 9:30 AM, TUESDAY, FEBRUARY 23, 1993.

- P-3 LD 43-92 The January 14, 1993 Planning and Zoning Hearings Officer Decision is Reported to the Board for Review: APPROVING, SUBJECT TO CONDITIONS, a Preliminary Plat for a 5 Lot Subdivision in the Multiple Use Forest-19 Zoning District, for Property Located at 15800-16320 NW SKYLINE BLVD

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-4 PRE 38-92 The January 11, 1993 Planning and Zoning Hearings Officer Decision is Reported to the Board for Review: Reversing an Administrative Decision for a Forest Resource Management Plan to Allow Development of the Subject Property with a Single Family Residence, FROM APPROVAL TO DENIAL, for Property Located at 21574 NW GILKISON ROAD

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-5 HDP 31-92 The January 13, 1993 Planning and Zoning Hearings Officer Decision is Reported to the Board for Review: DENYING Appellants Appeal and Affirming, as Modified, Administrative Decision, Subject to Conditions, for Property Located at 2700 SW BUCHREST COURT

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-6 Recommendation for Approval of Business Location in the Matter of the Auto Wrecker's License Renewal of Duane S. Shaw, dba 82ND AVENUE AUTO WRECKERS, INC., for Property Located at 8555 SE 82ND AVENUE

STAFF RESPONSE TO BOARD QUESTIONS. STAFF DIRECTED TO SEE IF PROVISIONS OF ORDINANCE 723 PERTAINING TO APPLICANTS' PAYMENT OF PERSONAL PROPERTY TAXES HAVE BEEN MET PRIOR TO BOARD APPROVAL.

- P-7 CU 14-92 PUBLIC HEARING - ON THE RECORD PLUS ADDITIONAL TESTIMONY AND EVIDENCE - 30 MINUTES ORAL ARGUMENT PER SIDE. Review the Planning Commission Decision of November 16, 1992, DENYING Conditional Use Request for a Ten-Year Permit to Mine, for Property Located at 14545 NW ST HELENS ROAD

STAFF SUBMITTED A PROPOSED DISMISSAL ORDER AND ADVISED THAT ATTORNEYS FOR APPLICANT ANGELL BROTHERS ROCK FILED A LETTER WITHDRAWING THE

**APPEAL. STAFF COMMENTS AND RESPONSE TO BOARD QUESTIONS. UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, ORDER 93-23 WAS UNANIMOUSLY APPROVED AS CORRECTED.**

At 9:59 a.m. the Board recessed the Planning Items portion of its meeting and reconvened at 10:35 a.m.

P-8 LR 2-92 PUBLIC HEARING - ON THE RECORD - 15 MINUTES ORAL ARGUMENT PER SIDE. Review the Hearings Officer Decision of December 16, 1992, DENYING the Appeal of Appellants and Affirming the Administrative Decision of September 17, 1992, Approving a Building Permit to Allow Construction of a Single Family Residence on a 10,000 Square Foot Lot Located at 01333 SW POMONA STREET

PLANNER MARK HESS PRESENTED THE STAFF REPORT, EXPLAINED THE HEARING PROCEDURE AND SUBMITTED COPIES OF THE CODE PERTAINING TO EXCEPTIONS AND LOTS. COUNTY COUNSEL JOHN DuBAY ADVISED THE BOARD IT MUST AFFIRM, REVERSE OR MODIFY THE HEARINGS OFFICER DECISION. OPPOSITION TESTIMONY AND RESPONSE TO BOARD QUESTIONS FROM PAUL DUDEN, ROBERT STOLL, BILL NAITO AND KEN UNDERDALE. SUPPORT TESTIMONY AND RESPONSE TO BOARD QUESTIONS FROM STEVE ABEL. DISCUSSION AND RESPONSE TO BOARD QUESTIONS WITH MR. DuBAY, MR. HESS AND MR. PEMBLE. COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, TO UPHOLD THE HEARINGS OFFICER DECISION. BOARD COMMENTS. MOTION APPROVED WITH COMMISSIONERS KELLEY, HANSEN AND MCCOY VOTING AYE AND COMMISSIONERS COLLIER AND SALTZMAN VOTING NO. AT THE SUGGESTION OF COUNTY COUNSEL, IT WAS DETERMINED THAT THE ATTORNEY FOR APPLICANT PREPARE AND SUBMIT A FIRST DRAFT OF THE FINAL ORDER TO COUNTY COUNSEL PRIOR TO BOARD CONSIDERATION ON TUESDAY, FEBRUARY 23, 1993.

There being no further business, the meeting was adjourned at 10:35 a.m.

OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON

By 

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

BOARD BRIEFING

B-2 Update on County Cultural Diversity Training. Presented by Curtis Smith, Sara Martin and June Schumann.

Tuesday, January 26, 1993 - 2:00 PM  
Multnomah County Courthouse, Room 602

AGENDA REVIEW

- B-3 Review of Agenda for Regular Meeting of January 28, 1993.

CHAIR McCOY DIRECTED HER STAFF TO FURNISH THE BOARD WITH ADVANCE NOTICE OF COMMITTEE VACANCIES.

---

Wednesday, January 27, 1993 - 9:30 AM  
Multnomah County Courthouse, Room 602

WORK SESSION

- W-1 Discussion and Request for Policy Direction Regarding the Citizen Convention Recommendations. Presented by Bill Farver.

BOARD DIRECTION GIVEN CONCERNING SPECIFIC CHANGES IN DRAFT RESPONSE TO CITIZEN CONVENTION RECOMMENDATIONS AND REQUESTS FOR STAFF RESEARCH. WORK SESSION CONTINUED TO 9:30 AM, WEDNESDAY, FEBRUARY 2, 1993. STAFF DIRECTED TO SCHEDULE PUBLIC SAFETY 2000 WORK SESSION FOR 10:30 AM, FEBRUARY 2, 1993 AND PARKS AND EXPO TRANSFER TO METRO WORK SESSION FOR 9:30 AM, FEBRUARY 10, 1993. BOARD DISCUSSION AND SUGGESTIONS FOR FUTURE WORK SESSION TOPICS.

---

Wednesday, January 27, 1993 - 11:00 AM  
Multnomah County Courthouse, Room 602

PUBLIC HEARING

- H-2 Pursuant to ORS 294.655 and ORS 310.186, the Tax Supervising and Conservation Commission Will Conduct a Public Hearing on Proposed Property Tax Measures. The Multnomah County Board of Commissioners Will be in Attendance to Discuss Proposed Serial Levies and General Obligation Bonds.

HEARING ON THE PROPOSED PROPERTY TAX MEASURES CONVENED BY TSCC CHAIR JOSEPH LaBADIE, COMMISSIONERS LIANNE THOMPSON AND THOMAS HATFIELD, WITH TSCC ADMINISTRATIVE OFFICER MARGARET BAUER. COUNTY PRESENTATION AND RESPONSE TO QUESTIONS BY CHAIR GLADYS McCOY, JEANNE GOODRICH, GARY WALKER AND DAVE WARREN. TESTIMONY AND RESPONSE TO QUESTIONS FROM DAVE EICHNER AND ROY WALL, CITY OF GRESHAM; ED GALLIGAN, PORT OF PORTLAND; BOB GAZEWOOD, CITY OF TROUTDALE; AND GORDON ZENK. HEARING ON PROPOSED GENERAL OBLIGATION BONDS CONTINUED TO 11:00 AM, TUESDAY, FEBRUARY 9, 1993.



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

REGULAR MEETING

Chair Gladys McCoy convened the meeting at 9:35 a.m., with Vice-Chair Gary Hansen, Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman present.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, THE CONSENT CALENDAR (C-1 THROUGH C-4) WAS UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

C-1 In the Matter of the Reappointments of Angel Olsen and Robin Bloomgarden to the MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE

C-2 In the Matter of the Appointment of Jacquelyn A. Ellis to the MULTNOMAH COUNTY MENTAL HEALTH ADVISORY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-3 ORDER in the Matter of Contract 15715 for the Sale of Certain Real Property to FANNIE HALE

ORDER 93-24.

C-4 ORDER in the Matter of Contract 15723 for the Sale of Certain Real Property to DANIAL J. BRAXMEYER & KARIN M. BRAXMEYER, Husband and Wife

ORDER 93-25.

REGULAR AGENDA

NON-DEPARTMENTAL

MANAGEMENT SUPPORT

R-1 RESOLUTION in the Matter of Authorizing an Expenditure from the Capital Improvement Fund in the Amount of \$160,000 to Acquire the Extended Purchasing System to be Integrated with the County's Local Government Financial System

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, RESOLUTION 93-26 WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF SOCIAL SERVICES

R-2 Budget Modification DSS #44 Requesting Authorization to Increase the Housing and Community Services Division Revenues by \$48,000 Meyer Memorial Trust Funds, for Cultural Diversity and Resident Empowerment Services Through the Columbia Villa/Tamarack Community Service

**Project**

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

- R-3 Budget Modification DSS #45 Requesting Authorization to Increase the Housing and Community Services Division, Community Development Budget by \$47,333 Robert Wood Johnson Grant Funds, for the "No Place Like Home: Providing Supportive Services in Senior Housing" Project**

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

**DEPARTMENT OF HEALTH**

- R-4 Ratification of Intergovernmental Agreement Contract #201403 Between the City of Portland and Multnomah County, Providing Bloodborne Pathogen Program Services, for the Period Upon Execution through December 31, 1993**

**UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, R-4 WAS UNANIMOUSLY APPROVED.**

**NON-DEPARTMENTAL**

- R-5 RESOLUTION in the Matter of Approval of the Fire Code Ordinance of Tualatin Valley Fire and Rescue, a Rural Fire Protection District**

**UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, RESOLUTION 93-27 WAS UNANIMOUSLY APPROVED.**

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

- R-6 Budget Modification DES #19 Requesting Authorization to Transfer Six Positions from the Non-Departmental Special Allocation, to Information Services Division's Base Budget, to Preserve the Bumping Rights of ISD Employees in the Event of Staff Reduction**

**UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, R-6 WAS 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 to Purchase the Automated Purchasing and Inventory/Materials Management System from AMS (American Management System)**

UPON MOTION OF COMMISSIONER KELLEY, SECONDED  
BY COMMISSIONER HANSEN, ORDER 93-28 WAS  
UNANIMOUSLY APPROVED.

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

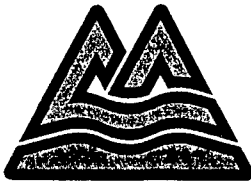
PUBLIC COMMENT

R-8 Opportunity for Public Comment on Non-Agenda Matters.  
Testimony Limited to Three Minutes Per Person.

There being no further business, the meeting was adjourned  
at 9:40 a.m.

OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON

By Rebecca C. Gustafson



# MULTNOMAH COUNTY OREGON

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

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

## AGENDA

### MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

#### FOR THE WEEK OF

JANUARY 25 - 29, 1993

Tuesday, January 26, 1993 - 9:00 AM - Board Briefing. . . .Page 2  
Tuesday, January 26, 1993 - 9:30 AM - Planning Items. . . .Page 2  
Tuesday, January 26, 1993 - 1:30 PM - Board Briefing. . . .Page 3  
Tuesday, January 26, 1993 - 2:00 PM - Agenda Review . . . .Page 3  
Wednesday, January 27, 1993 - 9:30 AM - Work Session. . . .Page 3  
Wednesday, January 27, 1993 - 11:00 AM - Public Hearing . . .Page 3  
Thursday, January 28, 1993 - 9:30 AM - Regular Meeting. . . .Page 4

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, January 26, 1993 - 9:00 AM  
Multnomah County Courthouse, Room 602

BOARD BRIEFING

- B-1 Annie E. Casey Foundation Detention Reform Initiative Briefing. Presented by Harold Ogburn and Bart Lubow. 9:00 AM TIME CERTAIN, 30 MINUTES REQUESTED.
- 

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

PLANNING ITEMS

- P-1 CU 4-93 The January 4, 1993 Planning and Zoning Hearings Officer Decision is Reported to the Board for Review and Affirmation: APPROVING, SUBJECT TO CONDITIONS, Development of Property with a Non-Resource Related Single Family Residence, for Property Located at 39077 SE HOWARD ROAD
- P-2 CU 22-92 The January 14, 1993 Planning and Zoning Hearings Officer Decision is Reported to the Board for Review and Affirmation: DENYING a Conditional Use Permit for a Non-Resource Related Single Family Dwelling on a 4.34 Acre Lot of Record in the Multiple Use Forest-19 Zoning District, for Property Located at 22401 NW ST HELENS ROAD
- P-3 LD 43-92 The January 14, 1993 Planning and Zoning Hearings Officer Decision is Reported to the Board for Review and Affirmation: APPROVING, SUBJECT TO CONDITIONS, a Preliminary Plat for a 5 Lot Subdivision in the Multiple Use Forest-19 Zoning District, for Property Located at 15800-16320 NW SKYLINE BLVD
- P-4 PRE 38-92 The January 11, 1993 Planning and Zoning Hearings Officer Decision is Reported to the Board for Review and Affirmation: Reversing an Administrative Decision for a Forest Resource Management Plan to Allow Development of the Subject Property with a Single Family Residence, FROM APPROVAL TO DENIAL, for Property Located at 21574 NW GILKISON ROAD
- P-5 HDP 31-92 The January 13, 1993 Planning and Zoning Hearings Officer Decision is Reported to the Board for Review and Affirmation: DENYING Appellants Appeal and Affirming, as Modified, Administrative Decision, Subject to Conditions, for Property Located at 2700 SW BUCHREST COURT
- P-6 Recommendation for Approval of Business Location in the Matter of the Auto Wrecker's License Renewal of Duane S. Shaw, dba 82ND AVENUE AUTO WRECKERS, INC., for Property Located at 8555 SE 82ND AVENUE
- P-7 CU 14-92 PUBLIC HEARING - ON THE RECORD PLUS ADDITIONAL TESTIMONY AND EVIDENCE - 30 MINUTES ORAL ARGUMENT PER SIDE. Review the Planning Commission Decision of November

16, 1992, DENYING Conditional Use Request for a Ten-Year Permit to Mine, for Property Located at 14545 NW ST HELENS ROAD. ONE HOUR REQUESTED

- P-8 LR 2-92 PUBLIC HEARING - ON THE RECORD - 15 MINUTES ORAL ARGUMENT PER SIDE. Review the Hearings Officer Decision of December 16, 1992, DENYING the Appeal of Appellants and Affirming the Administrative Decision of September 17, 1992, Approving a Building Permit to Allow Construction of a Single Family Residence on a 10,000 Square Foot Lot Located at 01333 SW POMONA STREET. 30 MINUTES REQUESTED
- 

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

BOARD BRIEFING

- B-2 Update on County Cultural Diversity Training. Presented by Curtis Smith, Sara Martin and June Schumann. 1:30 PM TIME CERTAIN, 30 MINUTES REQUESTED.
- 

Tuesday, January 26, 1993 - 2:00 PM  
Multnomah County Courthouse, Room 602

AGENDA REVIEW

- B-3 Review of Agenda for Regular Meeting of January 28, 1993.
- 

Wednesday, January 27, 1993 - 9:30 AM  
Multnomah County Courthouse, Room 602

WORK SESSION

- W-1 Discussion and Request for Policy Direction Regarding the Citizen Convention Recommendations. Presented by Bill Farver and Hank Miggins. 9:30 TIME CERTAIN, 90 MINUTES REQUESTED.
- 

Wednesday, January 27, 1993 - 11:00 AM  
Multnomah County Courthouse, Room 602

PUBLIC HEARING

- H-2 Pursuant to ORS 294.655 and ORS 310.186, the Tax Supervising and Conservation Commission Will Conduct a Public Hearing on Proposed Property Tax Measures. The Multnomah County Board of Commissioners Will be in Attendance to Discuss Proposed Serial Levies and General Obligation Bonds. 11:00 AM TIME CERTAIN, 90 MINUTES REQUESTED.
-

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

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

- C-1 In the Matter of the Reappointments of Angel Olsen and Robin Bloomgarden to the MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
- C-2 In the Matter of the Appointment of Jacquelyn A. Ellis to the MULTNOMAH COUNTY MENTAL HEALTH ADVISORY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-3 ORDER in the Matter of Contract 15715 for the Sale of Certain Real Property to FANNIE HALE
- C-4 ORDER in the Matter of Contract 15723 for the Sale of Certain Real Property to DANIAL J. BRAXMEYER & KARIN M. BRAXMEYER, Husband and Wife

REGULAR AGENDA

NON-DEPARTMENTAL

MANAGEMENT SUPPORT

- R-1 RESOLUTION in the Matter of Authorizing an Expenditure from the Capital Improvement Fund in the Amount of \$160,000 to Acquire the Extended Purchasing System to be Integrated with the County's Local Government Financial System

DEPARTMENT OF SOCIAL SERVICES

- R-2 Budget Modification DSS #44 Requesting Authorization to Increase the Housing and Community Services Division Revenues by \$48,000 Meyer Memorial Trust Funds, for Cultural Diversity and Resident Empowerment Services Through the Columbia Villa/Tamarack Community Service Project
- R-3 Budget Modification DSS #45 Requesting Authorization to Increase the Housing and Community Services Division, Community Development Budget by \$47,333 Robert Wood Johnson Grant Funds, for the "No Place Like Home: Providing Supportive Services in Senior Housing" Project

DEPARTMENT OF HEALTH

- R-4 Ratification of Intergovernmental Agreement Contract #201403 Between the City of Portland and Multnomah County, Providing Bloodborne Pathogen Program Services, for the Period Upon Execution through December 31, 1993

NON-DEPARTMENTAL

- R-5     RESOLUTION in the Matter of Approval of the Fire Code Ordinance of Tualatin Valley Fire and Rescue, a Rural Fire Protection District

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-6     Budget Modification DES #19 Requesting Authorization to Transfer Six Positions from the Non-Departmental Special Allocation, to Information Services Division's Base Budget, to Preserve the Bumping Rights of ISD Employees in the Event of Staff Reduction

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 to Purchase the Automated Purchasing and Inventory/Materials Management System from AMS (American Management System)

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

PUBLIC COMMENT

- R-8     Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.



Meeting Date: January 26, 1993

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CU 4-93 Decision

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

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 1 Minute

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

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

CU 4-93 Review the Hearings Officer Decision of January 4, 1993, approving, subject to conditions, development of this property with a non-resource related single family residence, for property located at 39077 SE Howard Road for P-1 - P-8 items

1/29/93 Annotate to Sharon Cowley & Scott Pemble & Mark Hess (P-8)

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER PC RSP for BW

(All accompanying documents must have required signatures)

BOARD OF  
COUNTY COMMISSIONERS  
1993 JAN 20 AM 9:25  
MULTIOMAH COUNTY  
OREGON



CASE NAME: Non-Resource Related Residence (Forest)

NUMBER: CU 4-93

1. Applicant Name/Address:

Kirby and Marci Edmunds  
P.O. Box 183  
Corbett, OR 97019

2. Action Requested by applicant:

Approval of a residence that is not in association with a forest management operation.

**ACTION REQUESTED OF BOARD**

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

3. Planning Staff Recommendation:

Approval.

4. Planning Commission or Hearings Officer Decision:

Approval.

5. If recommendation and decision are different, why?

**ISSUES**  
(who raised them?)

a. None.

b.

c.

d.

Do any of these issues have policy implications? Explain.

No.



**DEPARTMENT OF ENVIRONMENTAL SERVICES**  
**Division of Planning and Development**  
**2115 S.E. Morrison Street**  
**Portland, Oregon 97214 (503) 248-3043**

## **Decision**

**This Decision consists of Conditions, Findings of Fact and Conclusions.**  
**January 4, 1993**

**CU 4-93, #681**

**Conditional Use Request**  
**Non-Resource Related Single Family Residence**

**Line 6.**

Applicant requests conditional use approval of a non-resource related single family residence on this 8.11 acre Lot of Record in the MUF-38 zoning district.

**Location:** 39077 SE Howard Road

**Legal:** Tax Lot '51', Section 1, T. 1 S., R.4 E., 1992 Assessor's Map

**Site Size:** 8.11 Acres

**Size Requested:** Same

**Property Owner:** Ruth M. Smith  
P.O. Box 183, Corbett, 97019

**Contract Purchaser:** Kirby and Marci Edmunds  
P.O. Box 281, Corbett, 97019

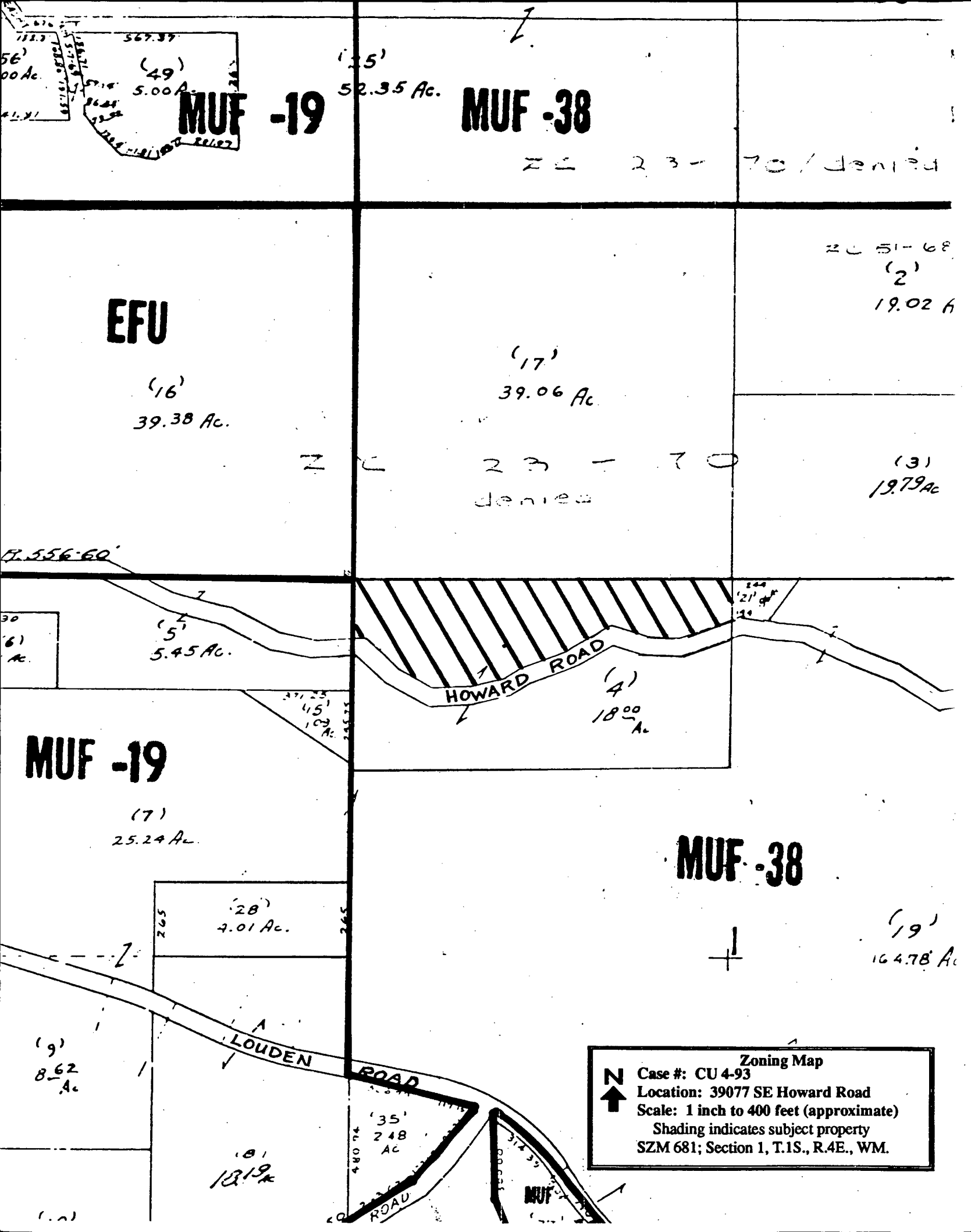
**Applicant:** Contract Purchaser

**Comprehensive Plan:** Multiple Use Forest (Commercial Forest Use on January 7, 1993)

**Present Zoning:** MUF-38 (CFU on January 7, 1993)

**Hearings Officer**  
**Decision:** APPROVE, subject to conditions, development of this property with a non-resource related single family residence, based on the following Findings and Conclusions.

**CU 4-93**



20.00 Ac.

**S**



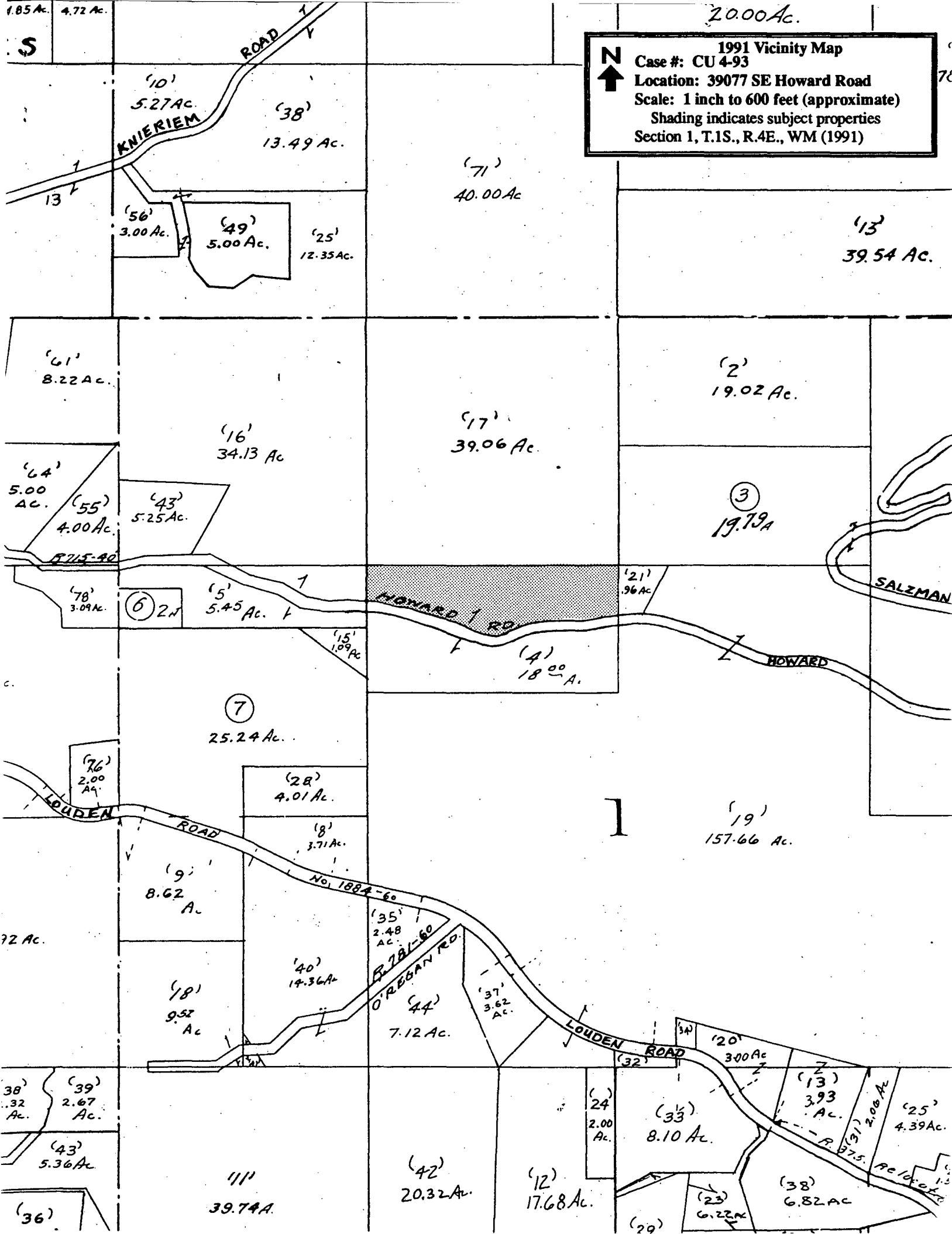
## 1991 Vicinity Map

**Case #: CU 4-93**

**Location: 39077 SE Howard Road**

**Scale: 1 inch to 600 feet (approximate)**


Shading indicates subject properties  
Section 1, T.1S., R.4E., WM (1991)



# Site Plan

Site Area: 8.11 acres  
Legal Description: (North)  
1/2 Tax lot 4 Section 1 IS-4  
Now Tax lot 51

CU 4-93

 Legend  
DENOTES STEEP  
Slope (20% or more)

T.L. 3  
19.79  
A.C.

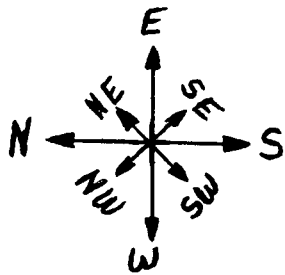
T.L. 21  
.96  
A.C.

T.L. 51  
8.11  
A.C.

T.L. 4  
9.89  
A.C.

T.L. 19  
157.66  
A.C.

T.L. 17  
39.06  
A.C.



Scale: 1" = 200'

Zoning: MUF38

Howard Road

Proposed  
S.F. Dwelling

140'

T.L. 16

T.L. 5  
5.45  
A.C.

T.L. 15  
1.09  
A.C.

T.L. 7  
25.24  
A.C.

# Site Detail

CU 4-93


Property Owners of T.L.51  
Kirby & Marci Edmunds  
P.O. Box 281  
Corbett, Ore.  
97019-0281

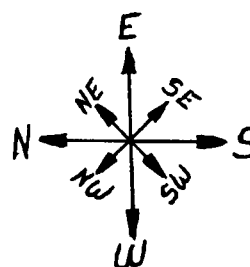
T.L. 51  
8.11  
A.C.

T.L. 4  
9.89  
A.C.

T.L. 19  
157.6  
A.

T.L. 17  
39.06  
A.C.

 Legend  
Denotes Steep  
Slope (20% or More)



Scale 1" = 100'

Proposed  
S.F. Dwelling

Howard Road

County  
Road  
20'  
Wide

T.L. 15  
1.09  
A.C.

T.L. 7  
25.24  
A.C.

T.L. 16

## **CONDITIONS OF APPROVAL:**

1. Satisfy the requirements of Multnomah County Fire District #14 regarding:
  - A. Additional improvements within the right-of-way of SE Howard Road (if needed), and
  - B. The on-site driveway improvements.
2. Site clearing or grading may require a *Hillside Development and Erosion Control Permit* pursuant to MCC .6700-6730. Contact the Division of Planning and Development for application materials.

## **FINDINGS OF FACT:**

### **1. Applicant's Proposal:**

The applicant requests Planning Commission approval to develop the above described 8.11 acre "Lot of Record" with a non-resource related single family dwelling.

### **2. Ordinance Considerations:**

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



- (4) The dwelling will not require public services beyond those existing or programmed for the area.
  - (5) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.
  - (6) The residential use development standards of MCC .2194 will be met (section B below).
- B. MCC 11.15.2194: A residential use located in the MUF district after August 14, 1980 shall comply with the following:**
- (1) The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:
    - (a) Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area;
  - (2) An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;
  - (3) The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2058(B). The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;
  - (4) The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subpart #3 above;
  - (5) Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:
    - (a) a setback of 30 feet or more may be provided for a public road, or
    - (b) the location of dwelling(s) of adjacent lots at a lesser distance which allows for clustering of dwellings or sharing of access;
  - (6) The dwelling shall comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200, relating to mobile homes;
  - (7) The dwelling shall be attached to a foundation for which a building permit has been obtained;
  - (8) The dwelling shall have a minimum floor area of 600 square feet; and

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

C. Comprehensive Framework Plan Policies requiring a Finding prior to a quasi-judicial decision:

- (1) **POLICY NO. 13, AIR, WATER AND NOISE QUALITY.** MULTNOMAH COUNTY, ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. ... FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS.

- (2) **POLICY NO. 22, ENERGY CONSERVATION.** THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. ... THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:

- A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;
- B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND RECREATIONAL CENTERS;
- C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN AND BICYCLE FACILITIES;
- D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC CONDITIONS TO ADVANTAGE.
- E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES.

- (3) **POLICY NO. 37, UTILITIES.** THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

**WATER AND DISPOSAL SYSTEM**

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

- APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR
- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

DRAINAGE

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

ENERGY AND COMMUNICATIONS

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

- (4) **POLICY NO. 38, FACILITIES.** THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

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

FIRE PROTECTION

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

POLICE PROTECTION

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

- (5) **POLICY NO. 40, DEVELOPMENT REQUIREMENTS.** THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

- A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.
- B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.
- C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE.

### 3. Site and Vicinity Characteristics:

- A. Abutting the property on the south is SE Howard Road which is 60 feet in right-of-way width. Within that right-of-way the asphalt pavement tapers from two way traffic width at the west property line to a one way width at the east side. Approximately 200 feet east of the property the asphalt road improvements end and a gated gravel road begins.
- B. The subject property is a Lot of Record of 8.11 acres. The dimensions of the site are not shown on the County Assessor's map. The property is drawn on the map to be as follows: a north line 1320 feet in length; a west line of 210 feet; and an east line of 150. The south property line is irregular in configuration as it follows SE Howard Road. The property is located about one-half mile east of the mouth of Howard Canyon.
- C. South of and parallel to SE Howard Road is Howard Canyon Creek that is a tributary of Big Creek. The Department of Forestry map which staff examined identifies the stream for preliminary planning purposes to be a Class 1 stream. A March 4, 1987 letter from Jay Massey with the State Department of Fish and Wildlife to Jim Ziobro of the Department of Forestry states that Howard Canyon Creek is a Class I stream and is stocked by the Department of Fish and Wildlife with juvenile coho salmon. A Significant Environmental Concern (SEC) Permit would be required for construction within 100 feet of a Class 1 stream. The applicant's site plan shows a proposed manufactured home placement location that measures on an aerial photo to be about 300 feet from the creek; the dwelling then would not require an SEC Permit.
- D. The U.S.G.S. map shows elevations on the property ranging from 540 feet above sea level on the south to 640 feet on the north. The property is not in a mapped "Slope Hazard" area. However, portions of tax lot '51' appear to exceed 25 percent in slope and building or grading within those areas would require a Hillside Development Permit. The proposed building site shown on the submitted site plan is on an area less than 25 percent in slope.
- E. The site was clear cut (applicant indicates seven years ago) and not replanted. A 1986 aerial photo shows the lot nearly barren of large trees with logging roads extending through most of the property. The proposed driveway and dwelling location is along one of the logging roads.
- F. Northwest of the site, the zoning designation is Exclusive Farm Use (EFU). The EFU zone extends westward on all the properties on the north side of the road. Between the subject property and the intersection of SE Howard Road with Littlepage Road there are at least nine existing dwellings using SE Howard Road for access. There are two existing dwellings to the immediate east of the subject lot.
- G. North and east of the property are larger tax lots zoned Multiple Use Forest - 38 which contain an uneven coverage of tree stands, none of which appears to be intensively managed for commercial forest production.

H. The northerly portion of Tax Lots '16,' '17,' and '2' (north of the subject lot) are the top of a ridge line which is an inventoried Goal 5, Mineral and Aggregate Resource Site (#8). In March, 1990 the Board of County Commissioners in Final Order #90-44 adopted an Economic, Social, Environmental, and Energy (ESEE) designation of "3B, Allow Conflicting Uses" for this resource. The "3B" designation results in the determination that although there is an "important" quantity and quality of aggregate material in that location, there are: (1) too many conflicting land uses (including existing houses) in the vicinity and (2) an inadequate road system to handle frequent gravel truck traffic, and therefore, the aggregate resource will not be protected from additional noise sensitive land uses such as dwellings. Some small scale quarry activity continues at the location under a "Limited Exemption Permit" from the State Department of Geology and Mineral Industries (limited to less than 5,000 cubic yards per year and over time affects less than five acres in area).

#### 4. Compliance With Ordinance Considerations:

A. The applicant provides the following responses (in *italic type style*) to the applicable Conditional Use approval criteria. Additional Findings not submitted by the applicant are in plain type.

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

*The lot is a lot of record under MCC.2182 (C) and is now Tax Lot 51—that part North of Howard Road (County maintained road) of Tax Lot 4, Section 1, 1S-4E.*

Finding. The Lot of Record provision of MCC .2182 (C) reads in part: "Separate Lots of Record shall be deemed created when a County maintained road ... intersects a parcel ... of land." Howard Road is County maintained and has been given the road maintenance number R 556-60'.

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

(c) The lot is a Lot of Record under MCC.2182 (A) through (C), and is ten acres or less in size:

*The parcel is a Lot of Record under MCC.2182(C) and is 8.11 acres in size.*

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

*The single-family dwelling we are proposing will be compatible with the existing neighborhood. Adjoining TL 51 on the East side is Tax Lot 21, a .96*

*acre lot with a single family dwelling. North-East of Tax Lot 21 is another single family dwelling on Tax Lot 3. South-West of Tax Lot 51, a 1.09 acre lot with a single family dwelling. At this time there is ten more single family dwellings on the first mile of Howard Road. The only large Tax Lot adjoining our lot (Tax Lot 51) is Tax Lot 17 (39.06 acres) which has roads going in and out of it and the North-East portion is being used for extraction of rocks for crushing into gravel.*

Finding. After January 6, 1993, all lands subject to the Statewide Planning Goal 4, Forest Lands will be regulated under an amended Commercial Forest Use zoning district. This proposal is not subject to those more restrictive regulations. However, the fact that this application meets the future "160 acre square test" for approval of a non-resource relate dwelling is a good indication that approval of this proposal should not materially alter the stability of the overall land use pattern of the area. The "160 acre square test" (12 lots and 5 existing dwellings within a 160 acre square centered on the subject site) is a method devised for determining when there is a sufficient number of small (less productive) parcels and sufficient existing dwellings in an area to conclude that an additional dwelling will not likely affect commercial forestry practices and also be in character with nearby properties.

Finding. The proposed dwelling will be located at least 200 feet from the side and rear property lines. This location and the deed restrictions acknowledging the rights of nearby property owners to conduct forest and farm practices will assure non-interference with resource activities in the vicinity. The "3B" designation of the aggregate site to the north does not require protection of that resource.

- (4) Not require public services beyond those existing or programmed for the area:

*Electricity on site (PGE). Telephone at site (United Telephone). School district (Corbett School District). Fire protection (RFD #14, Corbett).*

*Land has been approved for on-site septic tank and drainfield system. Water will be Corbett City Water or well-water.*

Finding. Verification of availability of public services is as follows:

- (a) Corbett School District No. 39 has no comment.
- (b) Multnomah County Sheriff's Office has indicated that the level of police service is adequate.
- (c) Multnomah County Fire District #14 has indicated that there is adequate water pressure and flow at the subject property. In addition, Dennis Bryson, Fire Chief, has written on the service verification form: "District's final approval is subject to approval of access road to home site. See attached documents for guidelines." Therefore, condition of approval number one is a requirement to satisfy the fire district's access standards. The standards can be met because the proposed driveway location is on the west side of the

property where SE Howard Road is wider and the driveway is using the area of a past logging road on the less steep portion of the site.

- (d) The Corbett Water District has written that they can provide service from a four inch line located on the north side of SE Howard Road. Some line extension improvements would be required.

- (e) "Land Feasibility Study 63-90" was conducted on the site. Philip Crawford, Environmental Soils Specialist, has confirmed that the study indicated that he could approve an on-site sewage disposal system in the form of a septic tank and drainfield.

- (5) Acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.

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

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

See "B" below.

- B. MCC 11.15.2194 A residential use located in the MUF district after August 14, 1980, shall comply with the following:

- (1) Fire lanes at least 30 foot wide shall be maintained between a residential structure and an adjacent forested area.

*Fire lanes will exceed 30 feet.*

- (2) Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas.

*Corbett's fire station has two fire trucks stationed in Corbett that are sufficient to prevent fire from spreading to adjacent forest land.*

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

*There is no perennial water supply.*

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

*The single family dwelling will be located 140 feet off of Howard Road.*

Finding. By entering the site near the west property line the driveway is able to follow parallel to the contour of the land, resulting in a more level access route that can accommodate fire fighting equipment. The drive must be 140 foot length to meet the 200 foot setback from the west property line.

- (5) The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval.

*Driveway is approximately 140 feet.*

- (6) The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use.

*The portion of land to be used is a clear cut area with blackberry bushes and Alder trees.*

Finding. The Soil Conservation Service maps show two types of soils on this property. Mershon silt loam covers most of the site except for a narrow band following SE Howard Road. The band also covers much of the east side of the lot. That band of soil is "Haplumbrepts, very steep." The Mershon silt loam has a cubic foot site index for Douglas Fir of 130. Staff was not able to find a forest productivity rating for the "Haplumbrepts, very steep" soils but it can be assumed that it is the lower of the two soil types. The dwelling is proposed to be located on the western portion of the property which has the Mershon soil. Although this location would not meet this criteria, the location should be approved in order to avoid the problems that would be encountered in building on the steeper portion of the site: (a) access would be too steep for fire fighting equipment, (b) soil stability questions are raised, (c) Comprehensive Framework Plan Policy #14, states that it is the County's policy to direct development away from areas with development limitations, (d) and due to the "chimney effect" of steep hillsides in wild fires, the Department of Forestry strongly discourages the siting of homes on steep slopes.

- (7) Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except from a public road.

*The single family dwelling will be located 140 feet off of Howard Road, and will have 200 foot set backs from property lines.*

*The location of the dwelling on adjacent lot will allow for the clustering of dwellings.*

*The rest of the land has steep slopes and escarpments that make it unfeasible for a home site with 200 foot set backs.*

- (8) Dwelling shall meet the standards of the building code, mobile homes shall be attached to a foundation, and the dwelling shall be at least 600 square feet in floor area.

*The home will meet all building codes and needed permits will be*



*obtained.*

*The dwelling will be attached to a foundation as indicated.*

*This dwelling will have approximately 1152 square feet.*

Finding. No building plans have been submitted. These standards are all closely verified during all building permit application reviews of dwellings in the forest zones.

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

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

Finding. The property is not within the mapped area designated as a big game habitat area, a part of the County's Statewide Planning Goal 5 inventory.

C. Comprehensive Framework Plan Policies requiring a Finding prior to a quasi-judicial decision:

- (1) Policy No. 13, Air, Water and Noise Quality.

Finding. The proposed single family dwelling will not violate air and noise quality standards; there is no agency that reviews those standards for a single dwelling proposal. Philip Crawford, Environmental Soils Specialist, has confirmed the site can accommodate an on-site sewage disposal system that will be in conformance with State environmental quality standards.

- (2) Policy No. 22, Energy Conservation.

Finding.

- (a) Energy efficient land uses: The driveway length is as short as feasible and still comply with access slope requirements and setbacks to property lines as needed to eliminate potential conflict with adjoining resource uses. Although the property is in a canyon, the property slope is south facing allowing some potential for passive and active solar heating if the owner wishes. The dwelling will comply with the applicable provisions of the Uniform Building Code for an on-site built home or Federal energy standards if a mobile home is placed on the lot.

- (b) Density in urban areas: Not applicable.

- (c) Efficient transportation system linking mass transit, pedestrian and bicycle facilities: The remote location of the site makes impracticable mass transit and pedestrian considerations. There is no plan to designate SE Howard Road as a Bikeway because of its present "dead end" improvements. The 60 foot right-of-way could accommodate traffic lanes and a shoulder bikeway at some time if the road were ever included in the County Bikeway system.

- (d) Street layouts, lotting patterns and designs: Not applicable; no new streets or lots are requested.
- (e) Flexibility in the development of renewable energy resources: No condition of approval or requirement of the applicant in this request will restrict the ability of the property owner to take advantage of available opportunities to utilize renewable energy resources.

(3) Policy No. 37, Utilities.

Finding.

- (a) Water and disposal: See subsection 4.A.(4)(d)&(e) above.
- (b) Drainage: As part of the building permit approval and inspection process, the builder is required to construct on-site water retention and/or control facilities adequate to ensure that surface runoff volume after development is no greater than before development. The relatively large acreage of the lot relative to the small amount of impervious area created from coverage of the dwelling should easily accommodate surface water drainage and not affect water quality or alter drainage on adjoining lands.
- (c) Energy and communications: See subsection 4.A.(4) above.

(4) Policy No. 38, Facilities.

Finding. School, fire protection, and police protection: See subsection 4.A.(4)(a)&(b)&(c) above.

(5) Policy No. 40, Development Requirements.


Finding.

- (a) Pedestrian and bicycle path connections to parks, recreation areas and community facilities where appropriate and where designated on the Bicycle Plan Map: SE Howard is not a designated Bikeway route, nor is it appropriate at this time to construct such a facility along this road with so little potential use.
- (b) Landscaping in commercial, industrial and multiple family developments: Not applicable.
- (c) Bicycle parking facilities where appropriate: Not applicable.

## CONCLUSIONS:

1. The property is a Lot of Record of less than ten acres in size; thereby, incapable of sustaining a farm or forest use.
2. Conditions are necessary to insure compliance with all Code provisions.
3. The applicant has carried the burden necessary for the approval of a non-resource related single family dwelling in the MUF-38 zoning District.

In the matter of CU 4-93, an application for a Conditional Use:

  
Larry Epstein  
Hearings Officer

Signed by the Hearings Officer: January 4, 1993  
Decision mailed to parties: January 14, 1993  
Submitted to Clerk of the Board: January 14, 1993

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

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

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

*Hearings Officer Decisions are typically reported to the Board for review on the first Tuesday following the ten day appeal period. The Board meets at 9:30 a.m. in room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Division of Planning and Development at 248-3043.*

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CU 22-92 Decision

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

ACTION REQUESTED:

☐ INFORMATIONAL ONLY

☐ POLICY DIRECTION

xx DENIAL

☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 1 Minute

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

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

CU 22-92 Review the Decision of the Hearings Officer of January 14, 1992, denying a conditonal use permit for a non-resource related single family dwelling on a 4.34-acre Lot of Record in the MUF-19 zoning district, for property located at 22401 NW St. Helens Road

1/26/93 HEARING, ON THE RECORD, WITH  
ADDITIONAL EVIDENCE, SET FOR 9:  
2/23/93 - 10 mins PER SIDE

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL

Or

DEPARTMENT MANAGER

(All accompanying documents must have required signatures)

CLARK COUNTY  
JAN 20 AM 9 25  
ASTORIA OREGON



BOARD HEARING OF JANUARY 26, 1993

TIME 9:30 am

NUMBER CU 22-92

CASE NAME: KAPTUR NON-RESOURCE SFR

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

2. Action Requested by applicant:

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

3. Planning Staff Recommendation:

Deny

4. Planning Commission or Hearings Officer Decision:

Denied

5. If recommendation and decision are different, why?

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

ISSUES

(who raised them?)

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

Do any of these issues have policy implications? Explain.

No.

BEFORE THE LAND USE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON

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

I. SUMMARY

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

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

APPLICANT AND OWNERS: Dwayne and Stephen Kaptur

SITE AREA: 4.34 acres

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

STAFF RECOMMENDATION: Deny

HEARINGS OFFICER DECISION: Denied

II. FINDINGS ABOUT SITE AND SURROUNDINGS

A. *Site size and shape :*

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

B. *Site location :*

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

C. *Existing uses and structures :*

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

D. *Proposed uses and structures :*

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

*E. Existing and proposed vegetation :*

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

*F. Geology and soils :*

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

*G. Plan designation and zoning :*

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

*H. Public services and utilities :*

1. The site is not served by public water and sewer systems. The applicant proposes to develop a well and subsurface sanitation system on the site. The applicant argues that a well can be developed, based on the existence of two wells on nearby properties and opinions of owners of those wells and of two well drilling companies. The applicant argues a sanitation system can be developed, based on soils on the site. The applicant did not provide substantial evidence to support these arguments.

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

*I. Streets and access :*

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

*J. Surrounding land uses :*

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

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

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

### III. APPLICABLE APPROVAL STANDARDS

#### A. Multnomah County Code (MCC) title 11.15 (Zoning).

1. MCC 11.15.2172(C) allows a non-resource related single family dwelling in the MUF zone if the applicant shows:

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

(1) For which a deed or other instrument creating the parcel was recorded with the Department of General Services or was in recordable form prior to February 20, 1990;

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

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

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

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

b. The land is incapable of sustaining a farm or forest use, because, among other reasons, it is a lot of record under MCC 11.15.2182(A) through (C) and is ten acres or less in size.

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

d. The dwelling will not require public services beyond those existing or programmed for the area.

e. The owner shall record with the Division of records and Elections a statement that the owner and successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.

f. The residential use development standards of MCC 11.15.2194 will be met.

2. The residential use development standards of MCC 11.15.2194 require the following:



a. The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas," published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:

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

(2) Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;

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

c. The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2178(B);

d. The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;

e. The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitation of subpart #3 above;

f. Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:

(1) A setback of 30 feet or more may be provided for a public road; or

(2) The location of dwelling(s) of adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access...

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

*B. Multnomah County Comprehensive Plan Policies.*

1. Policy 13 (Air and Water Quality and Noise) provides (in relevant part):

It is the county's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality and noise levels.

2. Policy 22 (Energy Conservation) provides (in relevant part):

The county shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:

a. The development of energy-efficient land uses and practices;

b. Increased density and intensity of development in urban areas...

c. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;

d. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage...

3. Policy 37 (Utilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

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

b. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or

c. There is an adequate private water system, and the Oregon DEQ will approve a subsurface sewage disposal system; or

d. There is an adequate private water system and a public sewer with adequate capacity.

e. There is adequate capacity in the storm water system to handle the run-off; or

f. The run-off can be handled on the site or adequate provisions can be made; and

g. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds or lakes or alter the drainage on adjoining lands.

h. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and

i. Communications facilities are available.

4. Policy 38 (Facilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

a. The appropriate school district has had an opportunity to review and comment on the proposal.

b. There is adequate water pressure and flow for fire fighting purposes; and

c. The appropriate fire district has had an opportunity to review and comment on the proposal.

d. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

5. Policy 40 (Development Requirements) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

a. Pedestrian and bicycle path connections to parks, recreation area and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.

- b. Landscaped areas benches will be provided in commercial, industrial and multiple family developments, where appropriate.
- c. Areas for bicycle parking facilities will be required in development proposals, where appropriate.

#### IV. HEARING AND RECORD

##### A. *Hearing.*

Hearings Officer Larry Epstein received testimony at the public hearing about this application on January 4, 1993. A record of that testimony is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services.

##### B. *Summary of selected relevant testimony.*

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

#### V. EVALUATION OF REQUEST

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

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

2. The land is incapable of sustaining a farm or forest use, because it is a lot of record smaller than 10 acres. (MCC 11.15.2172(C)(2))
3. The applicant did not bear the burden of proof that a dwelling on the subject site would be compatible with farm and forest uses on commercial timber land west of the site and would not materially alter the stability of the overall land use pattern of the area. (MCC 11.15.2172(C)(3))
  - a. The applicant did not describe accepted forest practices on that land and did not show how the proposed dwelling would be compatible with those practices.
  - b. The dwelling is not compatible with forest uses in the vicinity just because the applicant records a statement waiving rights to object to such practices. See *Champion International v. Polk County*, 16 Or LUBA 132 (1987). Hearsay testimony by the applicant and Mr. Allison that neighbors do not object to the proposed dwelling is not responsive to the applicable criterion, because the issue is not whether neighbors object. The issue is what uses occur in the area and whether a dwelling is compatible with them. Such hearsay also has little probative value.
  - c. The lack of substantial evidence in the record regarding this issue, particularly given the significant commercial timber operations west of the site, makes it impossible for the hearings officer to make the requisite finding about compatibility and non-interference. Such accepted forest practices as aerial and other chemical spraying, clear-cutting, and transportation of timber on land west of the site could conflict with residential use of the subject site, due to noise, odor, dust, visual and other impacts, and could be incompatible with a dwelling on the site.
  - d. The land use pattern of the area within a reasonable vicinity of the site is exclusively resource-oriented. The two dwellings within 1/2-mile of the site do not make the area primarily or significantly residential. One of those dwellings is resource-related; the other is related to a golf course, which is at least partially a resource-oriented use in that it is characterized by planting and maintenance of turf. The existence of additional dwellings more than 1/2-mile south of the site is not relevant, because of their distance from the site. Allowing the proposed dwelling would materially alter the land use pattern of the area from one which is exclusively resource-oriented. It would introduce a non-resource dwelling into the area. That could have a precedential effect contrary to the maintenance of the stability of the land use character of the area. See *Blosser v. Yamhill County*, 18 Or LUBA 253 (1989).
4. The applicant did not bear the burden of proof that the dwelling will not require public services beyond those existing or programmed for the area. Sanitation and water facilities are needed for the dwelling. Public facilities do not exist in the area and are not planned or programmed. The applicant proposes to use private systems, but failed to introduce substantial evidence from which the hearings officer could conclude that such systems will or are reasonably likely to be approved. (MCC 11.15.2172(C)(4))
5. The applicant has prepared the statement required by MCC 11.15.2172(C)(5), and it can be recorded if the permit is approved.
6. The proposed dwelling will comply with some of the residential use development standards of MCC 11.15.2194 as provided below:

- a. Fire lanes can be provided around the dwelling, consistent with MCC 11.15.2194(A)(1).
- b. A water supply for fire fighting purposes and fire fighting equipment can be provided by the Scappoose Rural Fire Protection District, based on the written statement from the District chief, consistent with MCC 11.15.2194(A)(2).
- c. There are no perennial water sources on the subject lot or adjacent property, based on the aerial photograph in the record. Therefore, the applicant is not required to provide access to such water.
- d. The dwelling is proposed to be as close to NW St. Helens Road as possible while providing a 200-foot setback from the east property line. However, given that MCC 11.15.2194(F) allows the dwelling to be 30 feet from the road, it could be closer. Therefore, the dwelling location violates MCC 11.15.2194(C).
- e. The driveway to the homesite is more than 500 feet long. The application does not describe physical limitations that warrant such an excessive driveway length. Therefore, the proposed dwelling violates MCC 11.15.2194(D).
- f. The application does not include information regarding the productivity characteristics of the site. Therefore, the hearings officer is unable to determine whether the dwelling is located on that portion of the lot having the lowest productivity characteristics, and the application fails to bear the requisite burden of proof under MCC 11.15.2194(E).
- g. The proposed building location is at least 200 feet from property lines. Therefore, the location complies with MCC 11.15.2194(F).
- h. The dwelling is located outside a big game winter wildlife habitat identified by the Oregon Department of Fish and Wildlife, based on the staff report. Therefore, the dwelling complies with MCC 11.15.2194(J).

*B. Compliance with the Comprehensive Plan.*

1. The proposal does not comply with Policy 13 (Air and Water Quality and Noise), because the application fails to include a statement from the applicable agency that all standards can be met with respect to water quality. The hearings officer assumes the proposed use will have negligible water quality impacts, because there are no perennial water sources on or adjoining the site. The proposed use will not generate significant noise and is not a noise sensitive use. Although traffic on NW St. Helens Road could cause high noise levels, there is not substantial evidence in the record from which to conclude that the site is in a noise impacted area.
2. The proposal does not comply with Policy 22 (Energy Conservation), because it does not increase the energy efficiency of land uses and practices and does not increase density in the urban area. There is not substantial evidence in the record to determine whether the site is served by mass transit. There are no pedestrian facilities in the area. Bicycles commonly travel on the shoulders of NW St. Helens Road. There is not substantial evidence in the record to determine whether the proposed dwelling is sited to use natural environmental and climatic conditions to its advantage.

3. The proposal does not comply with Policy 37 (Utilities), because there is not substantial evidence in the record that shows the proposed dwelling is reasonably likely to be served by public or private water and sanitation facilities. The hearings officer assumes storm water run-off can be accommodated on the site, because of the relatively small impervious area that will result from the proposed development and the applicability of county regulations regarding drainage and hillside erosion control. The hearings officer also assumes that adequate energy supplies and communications facilities exist or can be provided to serve the proposed dwelling, because such facilities exist along NW St. Helens Road.

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

5. The proposal complies with Policy 40 (Development Requirements), because that policy does not require any dedications or improvements to implement the bicycle corridor capital improvements program and map, the site is not a commercial, industrial and multiple family development, and bicycle parking can be provided on the site.

## VI. SITE VISIT

The hearings officer visited the site. His observations are reflected in Section II of the final order.

## VII. CONCLUSIONS AND DECISION


### A. *Conclusions.*

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

### B. *Decision.*

In recognition of the findings and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the hearings officer hereby denies CU 22-92 (Kaptur).

Dated this 14th day of January, 1993.

  
Larry Epstein, Hearings Officer

## IN THE MATTER OF CU 22-92

Signed by the Hearings Officer: January 14, 1993

Decision mailed to parties: January 14, 1993

Submitted to Clerk of the Board: January 14, 1993

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

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

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

**This Hearings Officer Decision will be reported to the Board of County Commissioners on Tuesday, January 26, 1993 at 9:30 a.m. in Room 602 of the Multnomah County Courthouse.**

**For further information call the Multnomah County Division of Planning and Development at 248-3043.**



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

B246711

387 52

11/26/93

## NOTICE OF REVIEW

Estate of Stephen N. Kaptur and

1. Name: Kaptur J. Dwayne  
Individually and as Personal Representative  
Last Middle First
2. Address: 4409 N. Willamette, Portland, Oregon 97203  
Street or Box City State and Zip Code
3. Telephone: ( 503 ) 289 - 7962
4. If serving as a representative of other persons, list their names and addresses:  
Estate of Stephen N. Kaptur  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?  
Conditional use of MUF-19 zoning  
\_\_\_\_\_
6. The decision was announced by the Planning Commission on 1-14, 19<sup>93</sup>
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
Owner and Personal Representative of Estate of Stephen N. Kaptur  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Jim  
Purcell

Please  
return  
original



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

Zoning on parcel is being changed by the county. I feel that we met the tests for the conditional use approval under existing zoning codes but feel the county staff took the new zoning code (CFU) requirements into consideration which they are not supposed to do, in denying this conditional use.

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*.

One of the points used to deny this conditional use was the negative impact this would have on the neighboring property.

We wish to counter this argument with a signed affidavit and possibly testimony.

Signed: Estate of Stephen N. Kaptur and Dwayne J. Kaptur, Individually Date: 1-25-93  
by: James C. Purcella  
Attorney at Law

**For Staff Use Only**

Fee:

Notice of Review = \$300.00

Transcription Fee:

Length of Hearing 25 min x \$3.50/minute = \$ 87.50

Total Fee = \$ 387.50

Received by: Sharon Cawley Date: 1-26-93 Case No. C2422-92

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

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

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

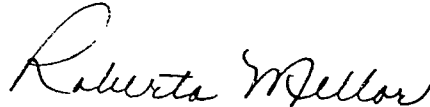
Dear Larry,

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

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

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

Sincerely,



Roberta Mellor

RECEIVED

JAN 26 1993

Multnomah County  
Zoning Division

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

RECEIVED

JAN 26 1993

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

Multnomah County  
Zoning Division

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

Dear Larry,

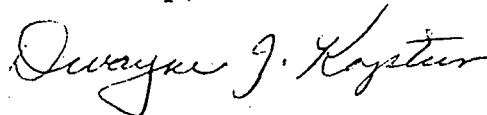
After careful examination of the staff report and their conclusions, we feel there are some points that need to be addressed.

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

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

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

Sincerely,



Dwayne J. Kaptur

required transcript fee.

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

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

#### 11.15.8265 Board Order for Review

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

#### 11.15.8270 Scope of Review

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

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

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

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

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

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

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

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

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

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

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

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

#### 11.15.8275. Notice of Board Hearing

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

Meeting Date: January 26, 1993

Agenda No.: P-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: LD 43-92 Decision

BCC Informal \_\_\_\_\_

(date)

BCC Formal \_\_\_\_\_

January 26, 1993  
(date)

DEPARTMENT \_\_\_\_\_

DES

DIVISION \_\_\_\_\_

Planning

CONTACT \_\_\_\_\_

Sharon Cowley

TELEPHONE \_\_\_\_\_

2610

PERSON(S) MAKING PRESENTATION \_\_\_\_\_

Planning Staff

ACTION REQUESTED:

☐

INFORMATIONAL ONLY

☐

POLICY DIRECTION

☒

APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 1 Minute

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

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

LD 43-92 Review the Decision of the Hearings Officer of January 14, 1993 conditionally approving a preliminary plat for a 5-lot subdivision in the MUF-19 zoning district, for property located at 15800-16320 NW Skyline Blvd.

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER pc BH Williams

(All accompanying documents must have required signatures)

BOARD OF  
COUNTY COMMISSIONERS  
1993 JAN 20 AM 9:25  
MULTNOMAH COUNTY  
OREGON



BOARD HEARING OF January 26, 1993

TIME 9:30 a.m.

CASE NAME Five-Lot Land Division

NUMBER LD 43-92

1. Applicant Name/Address

Peter and Brigitte Nortman  
16320 NW Skyline Blvd.  
Portland, OR 97231

2. Action Requested by applicant Five-Lot Land Division

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

3. Planning Staff Recommendation

Approval

4. Planning Commission or Hearings Officer Decision:

Approval

5. If recommendation and decision are different, why?

**ISSUES**  
(who raised them?)

a.

b.

c.

d.

Do any of these issues have policy implications? Explain.

BEFORE THE LAND USE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON

Regarding a request by Peter and Brigitte Nortman for approval of a preliminary plat for a 5-lot subdivision in the MUF-19 zone at 15800 to 16320 NE Skyline Blvd. in unincorporated Multnomah County, Oregon	)	FINAL ORDER
	)	
	)	LD 43-92
	)	(Nortman's Hilltop Estates)

I. SUMMARY

The applicant requests approval of a preliminary plat for a 5-lot subdivision from a combination of four parcels totalling 106 acres. Each proposed lot contains at least 19 acres and will abut NW Skyline Boulevard. Private water and septic systems are proposed. A home already exists near the Skyline Boulevard frontage on three of the proposed five lots. The applicant has applied for a "use under prescribed conditions" to allow resource-related single family detached dwellings near the Skyline Boulevard frontage on each of the two undeveloped proposed lots, pursuant to forest management plans for those lots. Those applications are being reviewed by the planning manager under a separate process.

Hearings officer Larry Epstein conducted a public hearing on January 4, 1993 to consider the land division application. County staff recommended conditional approval of the subdivision. The applicant accepted the recommended conditions of approval. A neighbor testified in favor. One member of the public testified against the application, arguing the proposal violates certain provisions of the land division ordinance, the zoning ordinance, and Comprehensive Plan policy 37.

LOCATION: 15800 to 16320 NE Skyline Boulevard; Tax lots '9', '14', '20'. and '16', Section 24, T2N-R2W, WM, Multnomah County

APPLICANT AND OWNERS: Peter and Brigitte Nortman

SITE AREA: About 106 acres

APPLICABLE LAW: Multnomah County Code (MCC) 11.45 (Land divisions): MCC 11.15.2162, *et seq.* (Multiple Use Forest); Comprehensive Plan policies 12 (Multiple Use Forest), 13 (Air and Water Quality and Noise), 14 (Development Limitations), 22 (Energy Conservation), 37 (Utilities), 38 (Facilities) and 40 (Development Requirements)

STAFF RECOMMENDATION: Conditionally approve

HEARINGS OFFICER DECISION: Conditionally approved

II. FINDINGS ABOUT SITE AND SURROUNDINGS

A. *Site size and shape :*

The size is a roughly rectangularly-shaped parcel about 2200 feet north-south and 1953 to 2022 feet east-west. It contains about 106 acres.

B. *Site location :*

The site is situated on the east side of NW Skyline Boulevard about 400 feet north of its intersection with Rock Creek Road.

*C. Existing uses and structures :*

The site is developed with three dwellings and associated outbuildings on three lots of record. Dwelling #1 is situated about 150 feet from Skyline Boulevard and about 400 feet from the north edge of the site; it was built about 1976. Dwelling #2 is situated about 220 feet from Skyline Boulevard and about 600 feet from the north edge of the site; it was built about 1936. Dwelling #3 is situated about 360 feet from Skyline Boulevard and about 700 feet from the south edge of the site; it was built in 1992. Each dwelling has a separate driveway to Skyline Boulevard. The east roughly 1600 feet and south roughly 700 feet of the site are undeveloped. The applicant conducts a commercial timber use on the site and nearby land.

*D. Proposed uses and structures :*

1. The applicant proposes to divide the site into five roughly similar lots. The subdivision is to be named "Nortman's Hilltop Estates". Each lot will contain 20 to 22 acres and will extend the full east-west depth of the site. The lots will have a width of 380 to 560 feet along Skyline Boulevard and of 320 to 501 feet along the east edge of the site. Each lot will have access to Skyline Boulevard by means of a separate private driveway, although the drives for lots 2 and 3 merge at their intersection with the street.
2. The applicant proposes to preserve the existing dwellings on proposed lots 1, 2 and 4 and to build resource-related homes on proposed lots 3 and 5. The applicant has applied for approval of the existing dwellings on lots 1, 2 and 4 as a "use under prescribed conditions" (PRE 51-92, 52-92, and 49-92, respectively) and for approval of the proposed dwellings on lots 3 and 5 (PRE 53-92 and 50-92, respectively). Those applications are subject to review and action by the planning manager. The following setbacks are proposed for the dwellings:

<i>Lot #</i>	<i>Front yard (west)</i>	<i>Side yard (north)</i>	<i>Side yard (south)</i>	<i>Rear yard (east)</i>
1*	148 feet	200 feet	103 feet	1925 feet
2*	220 feet	84 feet	265 feet	1925 feet
3	150 feet	200 feet	180 feet	2000 feet
4*	360 feet	125 feet	275 feet	1700 feet
5	120 feet	200 feet	210 feet	1800 feet
* Existing home				

*E. Existing and proposed vegetation :*

The site is forested predominantly with conifer trees. Portions of the site around existing dwellings and around the proposed dwelling locations have been cleared.

*F. Geology and soils :*

Based on the Geologic and Slope Hazard Maps (September, 1978) and the USDA SCS General Soil Map for Multnomah County (August, 1974), the site is underlain by siltstone and claystone of the Troutdale formation and contains Cascade-Gable soils with moderately steep to steep slopes (down) from west to east. The west roughly 500 feet of the site is not identified as having geologic or slope hazards; portions of the remainder of the site are identified as having a slope hazard. The west portion of the site is part of the ridge of the Tualatin Mountain chain.



*G. Plan designation and zoning :*

The Comprehensive Plan Map designates the site as Multiple Use Forest, and it is zoned MUF-19 (Multiple Use Forest-19). Land north, northeast, west and south of the site also is designated Multiple Use Forest and is zoned MUF-19 or MUF-38. Land east of the site is designated and zoned Rural Residential (RR). Also land about 400 feet west of Skyline Boulevard is designated and zoned Rural Residential (RR). A bicycle path along Skyline Boulevard is shown on the 1990 Bicycle Master Plan.

*H. Public services and utilities :*

1. The site is not served by public water and sewer systems. The applicant proposes to use wells and subsurface sanitation systems to serve dwellings on the site. The three existing dwellings are served by separate wells that provide flows of more than 10 gallons per minute or that have operated effectively for domestic and other purposes for many years. See the applicant's response to Policy 37. Each also has an approved subsurface sanitation system in place.

2. The applicant proposes to develop a new well and sanitation system for proposed lots 3 and 5 (where dwellings do not yet exist). Mike Ebeling, a registered sanitarian in the Portland Bureau of Buildings, inspected test holes on lots 3 and 5 and issued Land Feasibility Studies 136-92 and 255-92 (incorporated herein by reference) certifying that subsurface sanitation systems can be sited on those lots. The applicant has not drilled wells for those lots. Based on the performance of wells on lots 1, 2 and 4, the applicant asserts that a private water supply system can be developed on lots 3 and 5.

3. The site is in Multnomah County Rural Fire Protection District 20. The District Fire Chief advised the County in writing (see Exhibit C of the staff report) that there is adequate water pressure and flow at the site for fire fighting purposes. Water for fire fighting is provided by two 3000 gallon tank trucks that can pump 750 gallons per minute.

4. Police services to the site are provided by Multnomah County. The County sheriff advise the County in writing (see Exhibit D of the staff report) that police services are adequate to serve the site.

5. The site is in the Portland School District. The district property manager advised the County in writing (See Exhibit C of the staff report) that school services are adequate to serve the site.

6. Portland General Electric and US West Communications can provide power and telephone services to the site from existing above-ground lines suspended from poles identified on the preliminary plat.

*I. Streets and access :*

The site adjoins the east side of NW Skyline Boulevard, a major arterial with a roughly 20-foot paved section between varying width shoulders in a 60-foot right of way. Each proposed lot will have access to this street by means of separate driveways, except the driveways for lots 2 and 3 merge before intersecting the street. Based on the Institute of Traffic Engineers *Trip Generation Manual*, the site will generate about 50 vehicle trips per day and about 20 new vehicle trips per day.

*J. Surrounding land uses :*

1. North of the site are three long, narrow (east-west) lots, each of which contains about 19 acres. Single family homes are built or anticipated on those lots.
2. West of the site, across Skyline Boulevard, are resource- and non-resource-related single family homes on lots of 3 to 20 acres with access to Skyline Boulevard and/or Rock Creek Road.
3. East of the site is an antiquated subdivision known as Sheltered Nook that contains about 36 lots of 2 to 5 acres apiece. Most of the subdivision is zoned RR.
4. South of the site are lots of roughly 10 to 40 acres apiece. These lots are used for resource- and non-resource-related single family homes, pasture and forest purposes.

**III. APPLICABLE APPROVAL STANDARDS**

*A. Multnomah County Code (MCC) title 11.15 (Zoning).*

1. MCC 11.15.2178 provides that the minimum lot size in the MUF-19 zone is 19 acres. The minimum front lot line length is 50 feet. The minimum structure setbacks are as follows:

Front.....	30 feet
Side.....	10 feet
Rear.....	30 feet

2. MCC 11.15.2170 allows a resource-related single family dwelling as a "use under prescribed conditions" in the MUF zone subject to certain criteria. Those criteria are relevant to the application for the "use under prescribed conditions", but are not relevant to the application for the land division.

*B. Multnomah County Code (MCC) title 11.45 (Land divisions).*

1. The proposed subdivision is a Type I land division, because it is a subdivision (as defined by MCC 11.45.015(JJ)) and is in the rural area (MCC 11.45.080(A)).

2. MCC 11.45.230 contains the approval criteria for a Type I land division. It provides that the approval authority must find that:

*a. The Tentative Plan is in accordance with:*

*(1) The applicable elements of the Comprehensive Plan;*

*(2) The applicable Statewide Planning Goals adopted by the Land Conservation and Development Commission, until the Comprehensive Plan is acknowledged to be in compliance with said Goals under ORS Chapter 197; and*

*(3) The applicable elements of the Regional Plan adopted under ORS Chapter 197. (MCC 11.45.230(A))*

*b. Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances. (MCC 11.45.230(B))*

c. *The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent, of this Chapter. (MCC 11.45.230(C))*

d. *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal. (MCC 11.45.230(D))*

e. *If a subdivision, the proposed name has been approved by the Division of Assessment and Taxation and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County .... (MCC 11.45.230(E))*

f. *The streets are laid out so as to conform, within the limits of the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern. (MCC 11.45.230(F))*

g. *Streets held for private use are clearly identified on the Tentative Plan and all reservations or restrictions relating to such private streets are set forth thereon. (MCC 11.45.230(G))*

h. *Approval will permit development to be safe from flooding and known flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood water into the systems... (MCC 11.45.230(H))*

3. The purpose and intent of MCC 11.45 is as follows:

*This Chapter is adopted for the purposes of protecting property values, furthering the health, safety and general welfare of the people of Multnomah County, implementing the Statewide Planning Goals and the Comprehensive Plan adopted under Oregon Revised Statutes, Chapter 197 and 215, and providing classifications and uniform standards for the division of land and the installation of related improvements in the unincorporated area of Multnomah County. (MCC 11.45.015)*

*In the regulation of the division of land, it is intended that this Chapter shall minimize street congestion, secure safety from fire, flood, geologic hazards, pollution and other dangers, provide for adequate light and air, prevent the overcrowding of land and facilitate adequate provisions for transportation, water supply, sewage disposal, drainage, education, recreation and other public services and facilities, all in accord with Oregon Revised Statutes, Chapter 92. (MCC 11.45.020)*

4. MCC 11.45.240 provides:

*A tentative plan shall consist of maps, written information and supplementary materials adequate to provide the information required in MCC 11.45.250 through 11.45.280.*

5. MCC 11.45.250 through 11.45.260 describe what Type I tentative plan map should contain. MCC 11.45.260(B)(4) provides the map should contain:

*Ground elevations shown by contour lines at five foot intervals for ground slopes exceeding 10%...*

*C. Multnomah County Comprehensive Plan Policies.*

*1. Policy 12 (Multiple Use Forest Area) provides:*

*The County's policy is to designate and maintain as Multiple Use Forest, land areas which are:*

*a. Predominantly in forest site class I, II, III, for Douglas fir as classified by the U.S. Soil Conservation Service;*

*b. Suitable for forest use and small wood lot management, but not in predominantly commercial ownerships;*

*c. Provide (sic) with rural services sufficient to support the allowed uses, and are not impacted by urban-level services; or*

*d. Other areas which are:*

*(1) Necessary for watershed protection or are subject to landslide, erosion or slumping; or*

*(2) Potential reforestation areas, but not at the present used for commercial forestry; or*

*(3) Wildlife and fishery habitat areas, potential recreation areas, or of scenic significance.*

*The County's policy is to allow forest use along with non-forest use; such as agriculture, service uses, and cottage industries; provided that such uses are compatible with adjacent forest lands.*

*2. Policy 13 (Air and Water Quality and Noise) provides (in relevant part):*

*It is the county's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality and noise levels.*

*3. Policy 14 (Development Limitations) provides:*

*The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:*

*a. Slopes exceeding 20%;*

*b. Severe soil erosion potential;*

- c. *Land within the 100-year flood plain;*
- d. *A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;*
- e. *A fragipan less than 30 inches from the surface;*
- f. *Land subject to slumping, earth slides or movement.*

4. Policy 22 (Energy Conservation) provides (in relevant part):

*The county shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:*

- a. *The development of energy-efficient land uses and practices;*
- b. *Increased density and intensity of development in urban areas...*
- c. *An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;*
- d. *Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage...*

5. Policy 37 (Utilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

- a. *The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or*
- b. *The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or*
- c. *There is an adequate private water system, and the Oregon DEQ will approve a subsurface sewage disposal system; or*
- d. *There is an adequate private water system and a public sewer with adequate capacity.*
- e. *There is adequate capacity in the storm water system to handle the run-off; or*
- f. *The run-off can be handled on the site or adequate provisions can be made; and*
- g. *The run-off from the site will not adversely affect the water quality in adjacent streams, ponds or lakes or alter the drainage on adjoining lands.*
- h. *There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and*
- i. *Communications facilities are available.*

6. Policy 38 (Facilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

- a. The appropriate school district has had an opportunity to review and comment on the proposal.*
- b. There is adequate water pressure and flow for fire fighting purposes; and*
- c. The appropriate fire district has had an opportunity to review and comment on the proposal.*
- d. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.*

7. Policy 40 (Development Requirements) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

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

#### IV. HEARING AND RECORD

##### A. Hearing.

Hearings Officer Larry Epstein received testimony at the public hearing about this application on January 4, 1993. A record of that testimony is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services.

##### B. Summary of selected relevant testimony.

1. David Prescott testified for the County and summarized the staff report.
2. Frank Walker, Peter Nortman and John Nguyen testified in favor of the application. Mr. Walker summarized the application. He explained how the applicant proposed to site the homes to minimize disruption of wildlife habitat and protect forest land. He argued that the west portion of the site contains the least productive forest land on the site, because of wind throw, snow breaks and wind effects along the ridge of the Tualatin Mountain chain. He stated that Gene Herb of the Oregon Department of Fish and Wildlife advised him the site is not in a winter wildlife habitat area. He rebutted testimony by Mr. Rochlin (see below). Mr. Nortman summarized how he manages the site and noted the availability of an on-site tanker truck and other equipment to protect the site from fire danger. He argued the proposed lotting pattern minimizes the construction of new roads. Mr. Nguyen owns the lots north of the site. He argued the proposed land division would result in lots similar in size and shape to his lots, and that such a lotting pattern is convenient and meaningful to the public.

3. Arnold Rochlin testified against the land division and introduced a letter dated January 4 that contains his arguments (see Opponent's Exhibit A). In summary, he made the following arguments:

a. The land division violates MCC 11.45.230(A)(1), because it does not comply with Comprehensive Plan Policy 37 (Utilities) in that there is insufficient evidence that proposed lots 3 and 5 have an adequate private water system, and the County cannot defer finding that there is an adequate water system to some administrative review process, citing *Rhyne v. Multnomah County*, (LUBA No. 92-058 (July 10, 1992)) and the Board of Commissioners' decision in the matter of MC 2-92/LD 25-92 (September 29, 1992).

b. The application violates MCC 11.45.230(C) and 11.45.260(B)(4), because it does not include ground elevation contours at five foot vertical intervals; the tentative plan shows 20-foot vertical intervals.

c. The application violates 11.45.230(D), because the plan conflicts with provisions of MCC 11.15 (Zoning); more particularly, it violates the following:

(1) MCC 11.15.2170(A) allows a residential use in conjunction with a primary use. It is that provision pursuant to which the applicant intends to obtain approval of a "use under prescribed conditions" for a resource-related dwelling. Mr. Rochlin argues the record is insufficient to show that a resource-related dwelling is warranted in conjunction with each of the proposed lots. He believes the land division cannot be approved unless the hearings officer finds that a dwelling is permitted as a "use under prescribed conditions" on the proposed lots, and that the record is insufficient to warrant such a finding.

(2) MCC 11.15.2194(C) requires a dwelling to be as close to a public street as possible. The proposed homesites are not as close to the street as possible, because the homesites are 120 to 360 feet from the street, rather than only 30 feet as permitted by 11.15.2178(C).

(3) MCC 11.15.2194(D) requires justification for a driveway longer than 500 feet. Mr. Rochlin asserts the driveway for lot 4 equals or exceeds 500 feet, and the applicant did not justify such excessive length.

(4) MCC 11.15.2194(E) requires a home in the MUF zone to be situated on land that is least productive for the primary resource. Mr. Rochlin argued the applicant failed to do so.

(5) MCC 11.15.2194(F) requires setbacks of at least 200 feet wherever possible except to allow clustering of dwellings. Mr. Rochlin argued the proposed homesites are not at least 200 feet from north and south lot lines, and setbacks less than 200 feet are not warranted by the reasons advanced by the applicant (i.e., to reduce the potential for homes to be in the path of a fire and to maximize separation from slope hazards).

d. The application fails to provide sufficient evidence of compliance with MCC 11.45.230(H), i.e., how the septic systems are designed and located to minimize or prevent infiltration of flood water.

## V. EVALUATION OF REQUEST

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

1. The proposed lots comply with MCC 11.15.2178, because all lots contain at least 19 acres and a front lot line length of at least 50 feet, based on the tentative plan. Also, the existing structures on proposed lots comply with the minimum setbacks, in that they are all at least 30 feet from Skyline Boulevard, at least 10 feet from side lot lines, and at least 30 feet from rear lot lines. See finding II.D.
2. The hearings officer is not required to find that the proposed lots can be used for a resource or non-resource related dwelling or for any other particular use before approving the tentative plan. The decision about how the land can be used is separate from the decision about whether to allow the land to be divided. Each application must stand on its own unless the applicant chooses to merge them. In the case, the applicant chose to defer the issue of the permitted use of the proposed lots. The hearings officer cannot bootstrap the process to deny the land division based on the possible future uses of the lots being created.
3. However, the existing homes on lots 1, 2 and 4 were approved pursuant to MCC 11.15.2168(E). That section allows the homes provided they are situated on lots containing at least 38 acres. Because the proposed land division would reduce the size of the lots on which those homes are situated to less than 38 acres, the land division would render those homes in violation of MCC 11.15.2168(E). The existing homes can be allowed as a "use under prescribed conditions" on lots less than 38 acres. Therefore, the land division should be subject to a condition of approval that prohibits the County from approving the final plat until a "use under prescribed conditions" is approved for the existing homes on lots 1, 2 and 4, so that the land division does not create a zoning violation. Most of the arguments made by Mr. Rochlin regarding compliance with MCC 11.15.2178 and .2194 would be relevant to the applications for the "use under prescribed conditions". They are not relevant to the land division.
4. By approving the tentative plan and final plat, the County in no way assures that the lots created can be used for a particular purpose. To avoid creating the appearance that proposed lots 3 and 5 can be used for a dwelling *sua sponte*, a condition is warranted requiring the applicant to state on the face of the plat either: (a) that a dwelling is not permitted on those lots unless and until the County approves a conditional use permit or "use under prescribed conditions" for those lots; or (b) that a dwelling on those lots must comply with the final decision regarding an application for a conditional use or "use under prescribed conditions" for those lots if such a final decision has been made and the opportunity to appeal that decision has expired before the final plat is approved.
5. If, contrary to findings V.A.2 through 4, the Board of Commissioners or a court of competent jurisdiction concludes the tentative plan cannot be approved without also approving permits for use of the proposed lots, then the hearings officer adopts and incorporates by reference the relevant findings from pages 16 through 20 the Multnomah County staff report dated January 4, 1993.

### B. Compliance with MCC 11.45 (Land divisions).

1. The tentative plan is in accordance with the applicable elements of the Comprehensive Plan, based on finding V.C. below. (MCC 11.45.230(A)(1))



2. Because the Comprehensive Plan has been acknowledged to comply with the Statewide Planning Goals and with the Regional Plan adopted under ORS 197, facts of which the hearings officer takes official notice, the tentative plan is not required to comply with those Goals or Plan as such. (MCC 11.45.230(A)(2) and (3))

3. Because the proposed land division divides the site into lots that are incapable of being further divided into lots large enough to comply with MCC 11.15.2178(A), the remainder of the property under the same ownership cannot be further developed. The approval will not prevent development of the remainder of the property. (MCC 11.45.230(B))

4. The proposed land division complies with the purposes of the Land Division Ordinance, because the land division complies with the applicable requirements of the Zoning and Land Division Ordinances, which ensure that property values and the public health, safety and general welfare will be protected consistent with the Statewide Planning Goals and applicable statutes by means of a process that incorporates classifications and uniform standards for the division of land and the installation of related improvements. (MCC 11.45.230(C))

5. The proposed land division complies with the intent of the Land Division Ordinance, because:

a. The land division does not create new streets and creates relatively little traffic. Also new access points are subject to review and approval pursuant to the Road Standards. Therefore, the land division minimizes street congestion.

b. The land division per se does not increase hazards due to fire, floods, geologic conditions, pollution or other dangers, because it does not authorize specific uses of the property. Uses subsequently authorized are subject to standards in the Zoning Ordinance regarding fire safety, flood hazard, geologic and slope hazards, and other environmental conditions. Fire protection is provided by RFPD 20; see finding II.H.3. The property is not in a 100-year floodplain; therefore, there is negligible potential for flooding. Portions of the site subject to geologic and slope hazards are regulated pursuant to MCC 11.15.6700, et seq., which ensure subsequent development will not be subject to and will not exacerbate existing geologic and slope hazards. See finding II.F.

c. Given the relatively large size of proposed lots (compared to lot sizes in the urban area) and compliance with MCC 11.15.2178(A) and (C), the land division provides adequate light and air to existing and potential future uses of the land and does not result in overcrowding.

d. Adequate facilities are or can be made available for transportation, because each proposed lot abuts and has access to Skyline Boulevard. Adequate facilities are or can be made available for water supply and sewage disposal, based on findings II.H.1 and 2. Adequate provision can be made for drainage by compliance with MCC 11.45.600. Adequate provision for education has been assured by the Portland School District. See finding II.H.5. Due to the size of the proposed lots, recreational opportunities can be provided on each lot. Other public services and utilities can be provided. See findings II. H.3, 4 and 6. (MCC 11.45.230(C))

6. The tentative plan complies with the applicable provisions of the Zoning Ordinance, based on finding V.A.

7. The Division of Assessment and Taxation has approved the name of the proposed subdivision, and that name does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except the words "hilltop" and "estates". Those words are distinguished from their use in other subdivision names by the word "Nortman's" which precedes them in the name of the subdivision. (MCC 11.45.230(E))

8. The tentative plan does not propose to create new public or private streets, and there are no streets that stub to the site. (MCC 11.45.230(F) and (G))

9. Approval of the tentative plan will permit development to be safe from flooding and known flood hazards, because the site is not within or near a 100-year floodplain, and development is subject to standards that prohibit an increase in off-site storm water flows. (MCC 11.45.230(H))

10. The tentative plan includes contour lines at 20-foot vertical intervals rather than 10-foot vertical intervals. To that extent the tentative plan does not comply with MCC 11.45.260(B)(4). However, MCC 11.45.260(B)(4) does not constitute an approval criterion; it contains information requirements. Failure to provide required information may, in other circumstances, make it impossible for the County to make a necessary finding regarding slope and geologic hazards. However, in this case, the failure to provide 10-foot contour intervals is not fatal to the proposal. There is ample evidence in the record, including the tentative plan and the Geologic and Slope Hazards Maps, that the site contains steep slopes. Given the size of the site and the degree of slope that characterize it, use of 10-foot contour intervals would not improve the information available to the County to evaluate the application. On the contrary, the result would be a tentative plat substantially obscured by slope contour lines. That helps nothing. The hearings officer concludes the tentative plan substantially complies with MCC 11.15.250 through 11.45.260, and that such compliance is sufficient to warrant approval of the tentative plan.

*C. Compliance with the Comprehensive Plan.*

1. The proposal complies with Policy 12 (Multiple Use Forest Areas), because the County has designated and is maintaining the site in its Multiple Use Forest zone. Division of the site into five lots is not incompatible with adjacent forest lands, because it does not change the use of the site as such. Potential non-forest use of the lots is subject to review procedures and standards that address issues of compatibility.

2. The proposal complies with Policy 13 (Air and Water Quality and Noise), because the application includes a statement from the applicable agency that all standards can be met with respect to water quality to the extent sanitary sewage is related to water quality. The land division will have negligible water quality impacts, because there are no perennial water sources on or adjoining the site. The land division will not generate significant noise and is not a noise sensitive use. The land division will not generate significant air quality impacts. Therefore, no agency is required to find that the land division will comply with air quality or noise standards.

3. The proposal is subject to Policy 14 (Development Limitations), because it contains slopes in excess of 20 percent and land subject to earth movement. See finding II.F. The land division *per se* has no effect on these features, and does not result in any land form alteration. Therefore, the land division complies with Policy 14. Future development of the lots is proposed where slopes are less than 20 percent. That would fulfill the policy by directing development away from physical limitations on the site.

Also development of the site is subject to the Hillside Development regulations and/or UBC Chapter 70, pursuant to which design and construction techniques will be considered. Therefore, such development also would fulfill the policy.

4. The proposal complies with Policy 22 (Energy Conservation), because future structures on the site will be subject to UBC energy conservation standards. Other provisions of this policy are not relevant, because the site is not in an urban area, mass transit is not available to the area, no new streets are proposed, and the site does not contain renewable energy resources other than forest.

5. The proposal complies with Policy 37 (Utilities), because lots 1, 2 and 4 already have approved private septic and water systems in place, and because there is substantial evidence in the record that lots 3 and 5 are reasonably likely to be served by private water wells, based on the wells on lots 1, 2 and 4, and to be served by private sanitation facilities, based on the Land Feasibility Studies by Mr. Ebeling. To ensure that private water and sanitation systems are installed consistent with applicable ODEQ standards, conditions of approval are warranted requiring the applicant to submit appropriate information from which the planning director can determine that actual water and sanitation systems are adequate, subject to the requisite notice and review procedures, and to require a notice to this effect to be placed on the face of the plat. The hearings officer finds storm water run-off can be accommodated on the site, because of the relatively small impervious area that will result from the proposed development and the applicability of county regulations regarding drainage and hillside erosion control. The hearings officer also finds that adequate energy supplies and communications facilities exist or can be provided to serve the proposed dwelling, because such facilities exist along NW Skyline Boulevard. See finding II.H.6.

6. The proposal complies with Policy 38 (Facilities), because the applicable school district, fire district and law enforcement agency had an opportunity to review and comment on the proposal. The hearings officer finds there is adequate water pressure and flow for fire fighting purposes, based on the written comment from the fire district and on Mr. Nortman's testimony about on-site fire fighting equipment and vehicles. See also findings II.H.3 through 5.

7. The proposal complies with Policy 40 (Development Requirements), because that policy does not require any dedications or improvements to implement the bicycle corridor capital improvements program and map, the site is not a commercial, industrial and multiple family development, and bicycle parking can be provided on the site.

## VI. SITE VISIT

The hearings officer visited the site. His observations are reflected in Section II of the final order.

## VII. CONCLUSIONS AND DECISION

### A. *Conclusions.*

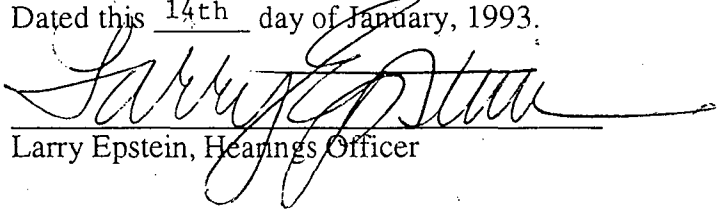
The hearings officer concludes that the proposed land division complies with applicable provisions of Multnomah County Code (MCC) 11.45 (Land divisions); MCC 11.15.2162, *et seq.* (Multiple Use Forest); and Comprehensive Plan policies 12 (Multiple Use Forest), 13 (Air and Water Quality and Noise), 14 (Development Limitations), 22 (Energy Conservation), 37 (Utilities), 38 (Facilities) and 40 (Development Requirements), subject to appropriate conditions of approval.

B. *Decision.*

In recognition of the findings and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the hearings officer hereby approves LD 43-92 (Nortman's Hilltop Estates), subject to the following conditions of approval:

1. Within one year of the effective date of this decision, or extensions permitted by law, deliver the final plat and other required attachments to the Planning and Development Division (the Division) of the Department of Environmental Services in accordance with MCC 11.45.710. To facilitate compliance, the applicant should obtain a copy of the applicant's and surveyor's *Instructions for Finishing a Type I Land Division*.
2. Before the Division approves the final plat, the applicant shall:
  - a. Execute and agreement or deed restriction in a form acceptable to the County committing the owners of the proposed lots to participate in future improvements to NW Skyline Boulevard. Contact Ike Azar at 248-5050 for additional information.
  - b. Submit applications to and receive approval of appropriate applications from the Division for a "use under prescribed conditions" on proposed lots 1, 2 and 4, subject to notice and review procedures provided in ORS 215.416(11) and conditions of approval.
  - c. Amend the face of the plat to include the substance of conditions of approval 3 through 5.
3. Before undertaking any site clearing or grading subject to a hillside development or grading and erosion control permit pursuant to MCC 11.15.6700 through .6730, the applicant shall subject an application for such development to and receive approval of appropriate plans from the Division, subject to notice and review procedures provided in ORS 215.416(11) and conditions of approval. Contact the Division at 248-3043 for information.
4. Before the Division issues a building permit for a home on lots 3 or 5, the applicant shall:
  - a. Submit an application to and receive approval of an appropriate application from the Division for a primary use, "use under prescribed conditions" or conditional use permit for the lot in question, subject to notice and review procedures provided in ORS 215.416(11) and conditions of approval.
  - b. Drill a well for domestic water supply for the lot in question and submit an application to and receive approval of an appropriate application from the Division that the well is adequate to serve the lot in question, subject to appropriate public notice and review procedures provided in ORS 215.416(11).
5. Approval of this land division neither guarantees the ability to build a dwelling on any of the proposed lots nor constitutes approval to build a dwelling on any of the proposed lots.

Dated this 14th day of January, 1993.

  
Larry Epstein, Hearings Officer

**IN THE MATTER OF LD 43-92**

Signed by the Hearings Officer: January 14, 1993

Decision mailed to parties: January 14, 1993

Submitted to Clerk of the Board: January 14, 1993

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

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

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

**This Hearings Officer Decision will be reported to the Board of County Commissioners on Tuesday, January 26, 1993 at 9:30 a.m. in Room 602 of the Multnomah County Court-house.**

**For further information call the Multnomah County Division of Planning and Development at 248-3043.**

Meeting Date: January 26, 1993

Agenda No.: P-4

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: PRE 38-92 Decision

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

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 1 Minute

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

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

PRE 38-92 Review the Hearings Officer Decision of January 11, 1993, reversing an administrative decision for a forest resource management plan to allow development of the subject property with a single family residence, from approval to denial, all for property located at 21574 NW Gilkison Road

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER DC RSP for BW

(All accompanying documents must have required signatures)

1993 JAN 20 41 9 29  
MULTNOMAH COUNTY  
OREGON



CASE NAME: Forest Related Residence

NUMBER PRE 38-92

1. Applicant Name/Address

Bedsaul Consulting/for Dave Gambee  
180 E. Main Street, Suite 215-A  
Hillsboro 97123

2. Action Requested by applicant

A single family residence in association with a proposed forest management operation.

**ACTION REQUESTED OF BOARD**

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

3. Planning Staff Recommendation

Approval

4. Planning Commission or Hearings Officer Decision:

Denial

5. If recommendation and decision are different, why?

Hearings Officer found that the proposed residence did not meet the new Goal 4 standard of being "necessary and accessory" to the proposed forest management operation.

**ISSUES**

(who raised them?)

- a. Interpretation of the "in conjunction with" standard of MCC 11.15 to be identical with new Goal 4 standard of "necessary and accessory" (Appellants)

Do any of these issues have policy implications? Explain.

No.



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

**Hearings Officer Decision**

**This Decision Consists of Findings of Fact and Conclusions**

**January 11,-1993**

**PRE 38-92, #2**

**Appeal of Administrative Decision  
(Residential Use in Conjunction with Farm Practices)**

Appellants have appealed a Planning Director's Decision, approving, subject to conditions, a forest resource management plan to allow development of the subject property with a single family residence

**Location:** 21574 NW Gilkison Road

**Legal:** Tax Lot '37', Section 26, T3N, R2W, 1991 Assessor's Map

**Site Size:** 17.80 Acres

**Size Requested:** Same

**Property Owner:** Western International Speciality Products Inc.  
P.O. Box 3070, Portland 97208

**Appellants:** Jeff and Laurie Mapes  
21550 NW Gilkison Road, Scappoose, 97056

**Comprehensive Plan:** Multiple Use Forest

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

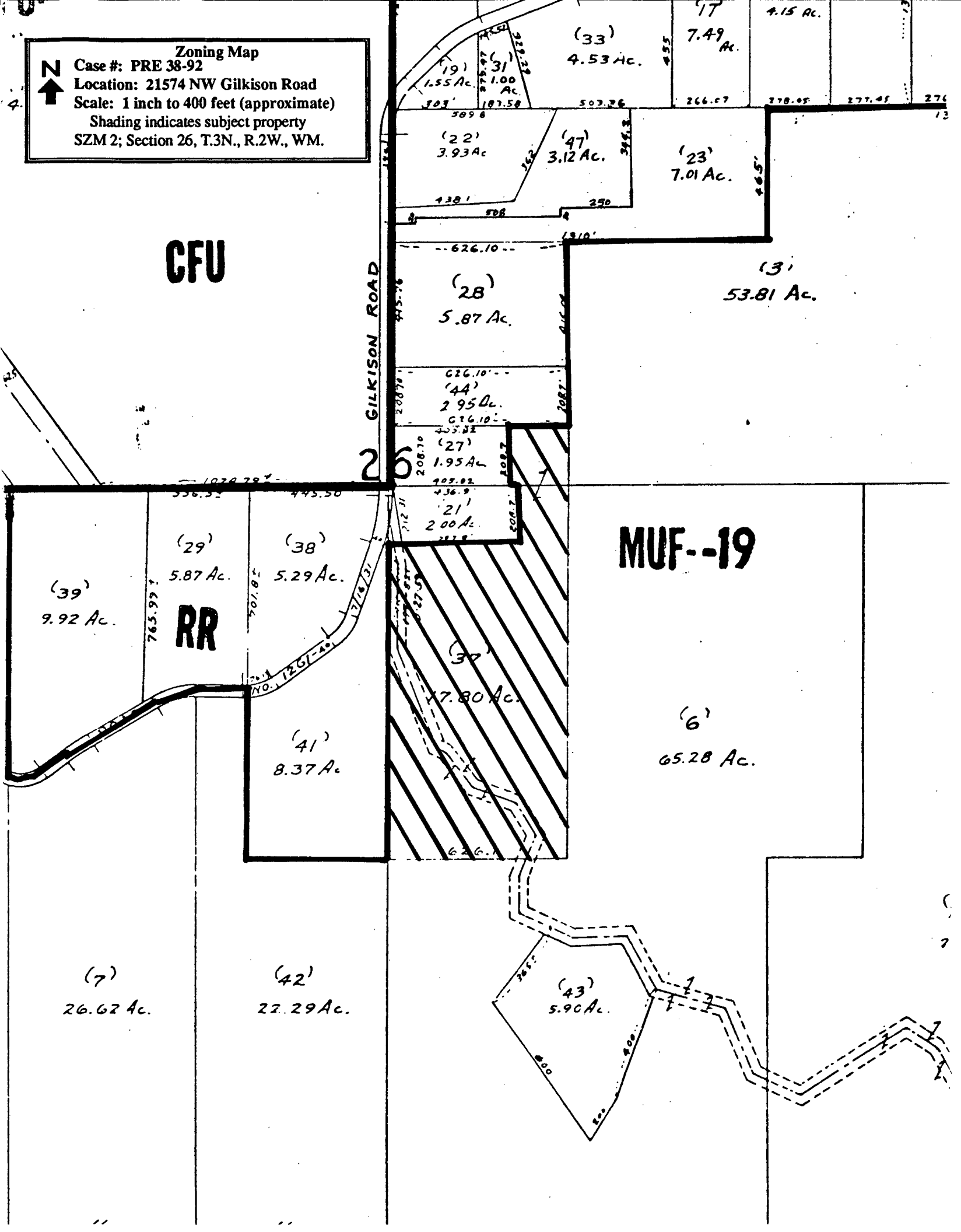
**Hearings Officer  
Decision:**

The Decision of the Planning Director is hereby reversed and the Appeal is granted. The request for a dwelling in conjunction with a forest use is hereby denied, based on the following Findings and Conclusions.

**PRE 38-92**



**Zoning Map**  
Case #: PRE 38-92  
Location: 21574 NW Gilkison Road  
Scale: 1 inch to 400 feet (approximate)  
Shading indicates subject property  
SZM 2; Section 26, T.3N., R.2W., WM.



**BACKGROUND:**

Applicant requests approval of a single-family residence in conjunction with proposed forest management operations on this 17.80 acre Lot of Record in the Multiple Use Forest District. The Planning Director issued an Administrative Decision on September 28, 1992, approving the request. The Appellants, Jeff and Laurie Mapes, appealed to the Hearings Officer, requesting reversal of the Director's Decision approving the residential use in conjunction with forest uses.

**PRELIMINARY ISSUE:**

**Interpretation of the phrase "in conjunction with".** The appellants have asserted that the County must interpret the phrase "in conjunction with", in MCC 11.15.2170, in a manner that is consistent with the "necessary and accessory" standard found in OAR 660-06-027.

The Hearings Officer regards the Appellants argument as two legally distinct questions:

A. Whether the phrase "in conjunction with", as that phrase is used in MCC 11.15.2170, requires the County to use the "necessary and accessory" standard found in OAR 660-06-027, and/or

B. Whether the "necessary and accessory" standard in OAR 660-06-027 independently applies as an approval criteria in this case.

With regard to the first question, the County indicates that it has historically interpreted the phrase "in conjunction with", as it is used in MCC 11.15.2170, to mean "together with". No documentation of this past practice has been submitted. However, this interpretation is supported by at least one dictionary definition of the word "conjunction", in Webster's "New Collegiate Dictionary" (1979) : "occurrence in time or space."

The County has wide discretion to interpret its own acknowledged Ordinances. The term "in conjunction with" is not defined anywhere in the County's Zoning Code. The interpretation that the County has offered, and on which the applicant relies, is less restrictive than the standard found in OAR 660-06-027, which requires:

"(1) Forest management dwellings may be allowed in forest zones provided the governing body makes findings based on substantial evidence that the requirements of this rule are met. For purpose of this rule, necessary for and accessory to are defined as:

(a) "Necessary for" means the dwelling will contribute substantially to effective and efficient management of the forest land to be managed by the resident(s) of the dwelling;

(b) "Accessory to" means that the dwelling is incidental and subordinate to the main forest use."

Despite the wide variation between the County's interpretation of the "in conjunction

with" standard in its Code, and the State law definition which relies on the "necessary and accessory" standard, the County is entitled to interpret its Code as it sees fit, so long as its interpretation is not inconsistent with the express language of the Ordinance or its apparent purpose or policy. See Clark v. Jackson County, 313 Or 508 (1992). Although the Hearings Officer is not directly bound by the Clark holding, the Hearing Officer does not have the authority to define policy. Rather, the Hearing Officer's role is to interpret the law and then to apply that law to the facts in the case. Here, the "in conjunction with" criteria in the ordinance is not defined, but the planning director has indicated that the county has historically interpreted this term to mean "together with". For purposes of the county's ordinance, the hearings officer is not willing to substitute his interpretation of this phrase, for the interpretation which the county has apparently relied upon historically, at least not as long as the county's past interpretation of this standard is consistent with the express language of the ordinance.

Because the county's comprehensive plan and land use regulations have been acknowledged as complying with the statewide planning goals, its local ordinances are applicable to most of its quasi-judicial land use decisions. See ORS 197.835. Therefore, in this case the county has the authority to apply and independently construe its own land use criteria. The state standard does not become part of the local ordinance.

However, the second question is not so easily answered. The "necessary and accessory" test in OAR 660-06-027 apparently was promulgated by LCDC in 1990 to further implement statewide Goal 4 (Forest Lands) requirements, in the wake of recent court decisions. See 1000 Friends of Oregon v. LCDC (Lane County), 305 Or 384 (1988). This administrative rule does not apparently implement a particular statute, but rather seems to implement Goal 4. If OAR 660-06-027 implements a statute, the county will be required to independently make findings as required by that rule. See Kengay v. Benton County, 115 Or App 131 (1992). This confusion is further muddled by LCDC, in Chapter 660 Division 6, Part 5, where its so-called "applicability matrix" seems to indicate that local decisions concerning the approval of dwellings in forest zones are not intended to be governed by these statewide administrative rules once the county's acknowledged comprehensive plan has undergone periodic review. (Note, in OAR 660-06-003 (5) LCDC acknowledges that the potential for confusion in these rules exists when it states that "Should confusion and conflicts arise over the meaning of the specific language of the rule, the rule shall take precedence over the matrix.")

It is not necessary for the hearings officer to resolve the applicability of OAR 660-06-027 in this case, because the application is being denied and the appeal is being granted on other grounds. Nonetheless, because this issue is likely to arise again, in applications that have been submitted prior to the county's new forest dwelling ordinance effective date, it may be prudent for the county to consider the possibility that the "necessary and accessory" standard may independently apply by virtue of the above mentioned administrative rules. In this case, the hearings officer expressly declines to resolve the issue, but notes the possibility that the more restrictive test may apply.

## **APPLICABLE CRITERIA:**

**Ordinance Considerations:** A single-family residence may be allowed in association with a primary use in the Multiple Use Forest District under MCC 11.15.2170, when it is found that:

1. The lot size shall meet the standards of MCC .2178(A) or MCC .2182(A) to (C), but shall not be less than ten acres.
2. A resource management program for at least 75% of the productive land of the lot, as described in MCC .2172(A)(2)(a) consisting of:
  - (A) A forest management plan certified by the Oregon State Department of Forestry, the Oregon State Extension Service, or by a person or group having similar forestry expertise, that the lot and the plan are physically and economically suited to the primary forest or wood processing use.
3. The dwelling will not require public services beyond those existing or programmed for the area.
4. The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.
5. The residential use development standards of MCC .2194.

## **Compliance With Ordinance Criteria:**

1. The site contains approximately 17.8 acres, which is less than the 19 acre minimum lot size in MCC .2178(A). However, the parcel qualifies as a lot of record under MCC .2182(A) to (C).
2. The applicant has submitted a ten year forest management plan, the objective of which is to intensively manage the property for timber production. That plan has been certified by Richard W. Courter of Genetechs Forest Consultants, as being comparable to existing forest operations in the surrounding area. The plan encompasses the entire site, except for the area around the proposed location for the dwelling. It should be noted that the location of the dwelling in the forest management plan is relatively close to the access point on Gilkison Road. At the hearing, the applicant's representative submitted a map prepared by Bedsaul Consulting Company, dated 8-22-92, showing a different location for the dwelling. The revised location is significantly farther from Gilkison Road, and is in the center of the area that was proposed for forest management, as indicated in the forest management plan. There is no evidence that the revised location for the dwelling was considered when the original resource management plan was certified. The original resource plan satisfies this criteria, but the applicant has not demonstrated that its proposed revision, which places the dwelling

in the resource management area, can still comply with this standard. The applicant has not met its burden with regard to the revised dwelling location because it amends a material aspect of the previously certified forest management plan.

3. The property is accessed by Gilkison Road. Public sewer and water do not exist in this area. Consequently, the site must be served by septic sewer and private wells. The applicant has not submitted evidence indicating whether private sewer and water systems are feasible in lieu of public sewer and water availability. In addition, testimony at the hearing indicated that the site is within the Scapoose Fire District, not Fire District #20 as indicated in the application. Since the applicant is proposing a driveway if approximately 1250 feet, through steep and heavily wood terrain, review by the proper fire district seems essential. Also, the site is within the Scapoose School District, not Portland School District #1. None of the appropriate agencies have responded with regard to this criteria. There is insufficient evidence in the record for the hearings officer to make a positive finding with regard to this criteria.

4. This criteria can be satisfied.

5. The proposed location of the dwelling violates the following development standards:

A. Subsection (E) requires that the dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the primary use, subject to the limitations of subsection (C). The applicant has provided no evidence to show that either of the proposed locations for the dwelling have the lowest forest productivity on the site. On the contrary, the air photo/site plan prepared by Bedsaul Consulting indicates that the revised location for the dwelling is in the heart of the resource area. This criteria has not been met.

B. Subsection (C) requires the dwelling to be located in as close a proximity to the public road as possible. Subsection (D) requires that the physical limitations of the site which require a driveway in excess of 500 feet be stated. At the hearing the applicant's representative asserted that the location of the dwelling needs to be moved from its originally described location closer to the road, to a spot farther from the road and more interior to the property, because the original location apparently had unacceptable slopes and poor drainage characteristics. Also, the original location apparently conflicted with one of the easements appurtenant to the property. Assuming that the physical limitations described by the applicant's representative are correct, such limitations would justify finding a new location for the dwelling. However, it does not necessarily follow that the alternative location should be some 1,250 feet away from the public road. Other locations for the dwelling exist that are significantly closer to the road and less centrally located in the resource area. The applicant has not adequately justified its need to construct a driveway that is two and one-half times the permitted distance from the public road. At best, the evidence suggests that the original location for the dwelling was not adequately considered. I am not certain whether the revised location is the only reasonable alternative, and whether the dwelling must be located so far back from the road. The primary

consideration for locating the dwelling in a productive forest zone is not the convenience of the occupant. The purpose of the dwelling is to support and protect the forest uses which it is being developed "in conjunction with". These criteria have not been satisfied.

C. Subsection (J) requires that the dwelling be located outside a big game habitat area as defined by ODF&W or that the impacts of the dwelling will be acceptable. It appears from the county's Wildlife Habitat map that the site is on the fringe of a Big Game Wintering Area associated with the West Hills. The applicant has not provided evidence from ODF&W that impacts from development of a dwelling on this parcel will be acceptable. This criteria has not been met.

## **CONCLUSIONS:**

MCC 11.15.2170 permits residential uses in the MUF zone only if the dwelling is "in conjunction with" a permitted primary use, such as the growing and harvesting of timber. The phrase "in conjunction with" is not defined in the county's acknowledged comprehensive plan or zoning code. The county has construed the phrase to mean "together with". Although this interpretation is significantly less restrictive than the "necessary and accessory" standard found in state law, the county is entitled to interpret its own acknowledged ordinance as it sees fit, subject to very limited exceptions. Nonetheless, the state law standard may independently apply, even though the county's plan and zoning code have been acknowledged. The answer to whether or not the state standard applies lies in divining LCDC's legislative intent. What is clear is that LCDC indented the "necessary and accessory" standard to create a relationship between the approval of a dwelling and the ongoing forest management of the land on which the dwelling is located. OAR Chapter 660 Division 6 indicates that the principal purpose for locating a dwelling on forest lands is to enable the resident to conduct more efficient and effective forest management. The purpose of the county's "in conjunction with" standard, as it has been historically interpreted, seems to encourage dwellings in the MUF zone, so long as the criteria in MCC 11.15.2170 are satisfied, irregardless of whether or not the principle purpose of the dwelling is to support the primary forest use. If the more rigorous state standard independently applies, this application would not pass muster. The dwelling is incidental to the primary forest use. The evidence suggests that the eventual resident of the proposed dwelling would have no role in the ongoing forest management of the parcel. Based upon the July 10, 1992, letter from Kent Gambee of Western International Specialty Products, the applicant intends to market the timber on the property. Once the property is logged WISP intends to sell the property to someone who would like to build a dwelling there. This is precisely the practice that OAR 660-06-027 intends to prevent; namely dwellings in forest zones that have no relationship to forest uses.

Apart from the legal confusion described above, this application does not satisfy the minimal requirements of the county's zoning ordinance which are indisputably applicable to this request. For this reason the application is denied and the appeal is granted.

Dated this 11th day of January, 1993.



By: Phillip E. Grillo,  
Hearings Officer

Decision mailed to parties: **January 14, 1993**

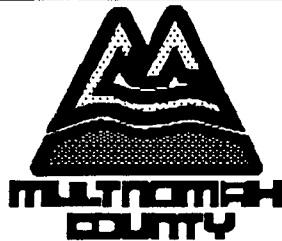
Submitted to Clerk of the Board: **January 14, 1993**

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

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony in accord with the requirements on the prior Notice. A "Notice of Appeal" form and fee must be submitted to the County Planning Director, within ten days after the Hearings Officer decision is submitted to the Clerk of the Board [REF. MCC 11.15.8260(A)(1)]. The appeal fee is **\$300.00 plus a \$3.50-per-minute** charge for a transcript of the initial hearing(s) [REF. MCC 11.15.9020(B)]. "Notice of Appeal" forms and instructions are available at the Planning and Development Office at 2115 SE Morrison Street, in Portland [hours: 12:30—4:30; M—F].

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 sufficient detail on an issue for the Board to respond, precludes appeal to LUBA on that issue.

*Hearings Officer decisions are usually reported to the Board for review on the first Tuesday following the ten day appeal period. The Board meets at 9:30 a.m. in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.*



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

September 28, 1992

## PLANNING DIRECTOR DECISION IN THE MATTER OF PRE 38-92

**PROPERTY LOCATION:** 21574 NWGilkison Road

**LEGAL DESCRIPTION:** Tax Lot '37', Section 26, T3N, R2W

**PROPERTY OWNER:** Western International Speciality Products Inc.  
P.O. Box 3070  
Portland 97208

**APPLICANT:** Bedsaul Consulting for Dave Gambee  
180 E. Main Street, Suite 215-A  
Hillsboro, OR 97123

**DECISION:** Approve a forest resource management plan to allow development of the above described Lot of Record with a single family residence.

### CONDITIONS:

1. The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.
2. The final site plan for the proposed residence shall meet the residential use locational standards of MCC .2194.
3. Satisfy the requirements of Engineering Services regarding any future improvements of NWGilkison Road.
4. Prior to any site clearing or grading, obtain a *Hillside Development and Erosion Control Permit* pursuant to MCC .6700-6730, if applicable. Contact Mark Hess at 248-3043 for application materials.



## **FINDINGS OF FACT:**

- 1. Applicant's Proposal:** Applicant requests approval of a single-family residence in conjunction with proposed forest management operations on this 17.80 acre Lot of Record in the Multiple Use Forest District.
- 2. Ordinance Considerations:** A single-family residence may be allowed in association with a primary use in the Multiple Use Forest District when it is found that:
  - A.** The lot size shall meet the standards of MCC .2178(A) or MCC .2182(A) to (C), but shall not be less than ten acres.
  - B.** A resource management program for at least 75% of the productive land of the lot, as described in MCC .2172(A)(2)(a) consisting of:
    - (1) A forest management plan certified by the Oregon State Department of Forestry, the Oregon State Extension Service, or by a person or group having similar forestry expertise, that the lot and the plan are physically and economically suited to the primary forest or wood processing use.
    - (2) A farm management plan certified by the Oregon State University Extension Service, or by a person or group having similar agricultural expertise, that the lot and the plan are physically and economically suited to the primary purpose of obtaining a profit in money, considering accepted farming practice.
    - (3) A resource management plan for a primary use listed in MCC .2168, based upon income, investment or similar records of the management of that resource on the property as a separate management unit for at least two of the preceding three years.
    - (4) A fish, wildlife or other natural resource conservation management plan certified by the Oregon State Fish and Wildlife Department or by a person or group having similar resource conservation expertise, to be suited to the lot and to nearby uses.
    - (5) A small tract timber option under ORS Chapter 321.705, a Western Oregon Forest Land designation under ORS Chapter 321.257, a Reforestation deferral under ORS Chapter 321.257, or participation in a current forestry improvement program of the U.S. Agricultural Stabilization and Conservation Service.
    - (6) A cooperative or lease agreement with a commercial timber company, or other person or group engaged in commercial timber operations, for the timber management of at least 75% of the productive timberland capable of growing 50 cubic feet/acre/year.
  - C.** The dwelling will not require public services beyond those existing or programmed for the area.

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

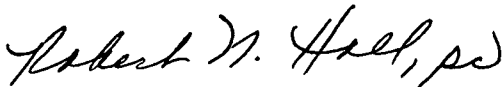
E. The residential use development standards of MCC .2194.

3. **Compliance With Ordinance Criteria:** The applicant has submitted a ten year forest management plan, the objective of which is to intensively manage the property for timber production. That plan has been certified by Richard W. Courter of Genetechs Forest Consultants, as being comparable to existing forest operations in the surrounding area.

### CONCLUSIONS:

1. This property is a Lot of Record in excess of ten acres for which a forest management plan has been prepared. That plan has been certified by Richard W. Courter of Genetechs Forest Consultants as being suited to the property and surrounding area.
2. Conditions are necessary to insure compliance with applicable ordinance criteria.
3. The applicant has carried the burden necessary for the granting of a resource-related residence in the Multiple Use Forest District.

For the Planning Director



By

Robert N. Hall, *Senior Planner*

*NOTICE: A Decision of the Planning Director on an application for a Use Under Prescribed Conditions may be appealed by the applicant to the Planning Commission in the manner provided in MCC .8290 & .8295.*

Meeting Date: January 26, 1993

Agenda No.: P-5

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: HDP 31-92 Decision

BCC Informal \_\_\_\_\_ BCC Formal January 26, 1993  
(date) (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 1 Minute

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

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

HDP 31-92 Review the Hearings Officer Decision of January 13, 1993, denying appellants appeal and affirming, as modified, Administrative Decision, subject to conditons, for property located at 2700 SW Buchrest Court

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER PC RSD for BW

(All accompanying documents must have required signatures)

BOARD OF  
COUNTY COMMISSIONERS  
1993 JAN 20 AM 9:29  
MULTNOMAH COUNTY  
OREGON

CASE NAME Flood Elevation VarianceNUMBER HDP 31-92

## 1. Applicant Name/Address

Double 'D' Development  
10725 SW Barbur Blvd. Suite 350  
Portland, Oregon 97219

## 2. Action Requested by applicant

The "Fans of Fanno Creek" (appellants) challenged a GRADING AND EROSION CONTROL PERMIT approved for Double D Development (applicant) for limited clearing of vegetation associated with survey work on the Canyon Creek ('Argent') subdivision site (Phases I and II). The Hearings Officer affirmed the Planning Director's decision and imposed additional conditions regarding erosion control measures and monitoring during the winter/spring months.

## ACTION REQUESTED OF BOARD

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

## 3. Planning Staff Recommendation

APPROVAL, WITH CONDITIONS

## 4. Hearings Officer Decision:

APPROVE, WITH MODIFIED CONDITIONS

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

## ISSUES

(who raised them?)

- a. This appeal turns on the Planning Division's interpretation of the prior Planned Development approval (PD 2-90) and its conditions, and the interpretation of the phrase, "site work."  
[issue raised by appellants]
- b. The County's obligations for enforcement of conditions and the "fans" agreement with the developer.  
[issue raised by appellants]

Do any of these issues have policy implications? Explain.

This case has implications relating to property rights for prior-approved planned development and erosion control implementation and enforcement in the unincorporated areas of the County.  
[Policy 14 (Development Limitations)]



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

# DECISION

This Decision Consists of Conditions of Approval, Findings of Fact and Conclusions  
JANUARY 13, 1993

HDP 31-92, #141      APPEAL OF ADMINISTRATIVE DECISION  
GRADING AND EROSION CONTROL PERMIT  
(Clearing Associated With Survey Work for the Argent Subdivision)

A public hearing will be held on December 7, 1992 to consider an appeal of an Administrative Decision by the Planning Director. The "Fans of Fanno Creek" (Appellant) challenge a Grading and Erosion Control Permit approved for vegetation clearing associated with survey work proposed on the Argent Subdivision site. The permit approval was subject to several conditions (e.g., vegetation removal restricted to "Hand Pruning Only"; temporary erosion control measures required; reseeding of disturbed areas by November 20, 1992, etc).

Location:                      2700 SW Bucharest Court

Legal:                         Lots 20, 21, 23, and 24, Argent Subdivision

Site Size:                    24.37 acres

Owner/Applicant:         Double D Development, Inc.

Comprehensive Plan: Single Family Residential

Present Zoning:            R-20, P-D, Single Family Residential  
Planned-Development District

Hearings Officer

Decision:                    Appeal Denied.

The Planning Director's Decision is Affirmed as modified,  
subject to additional conditions

R20

R-20  
CS



Zoning Map

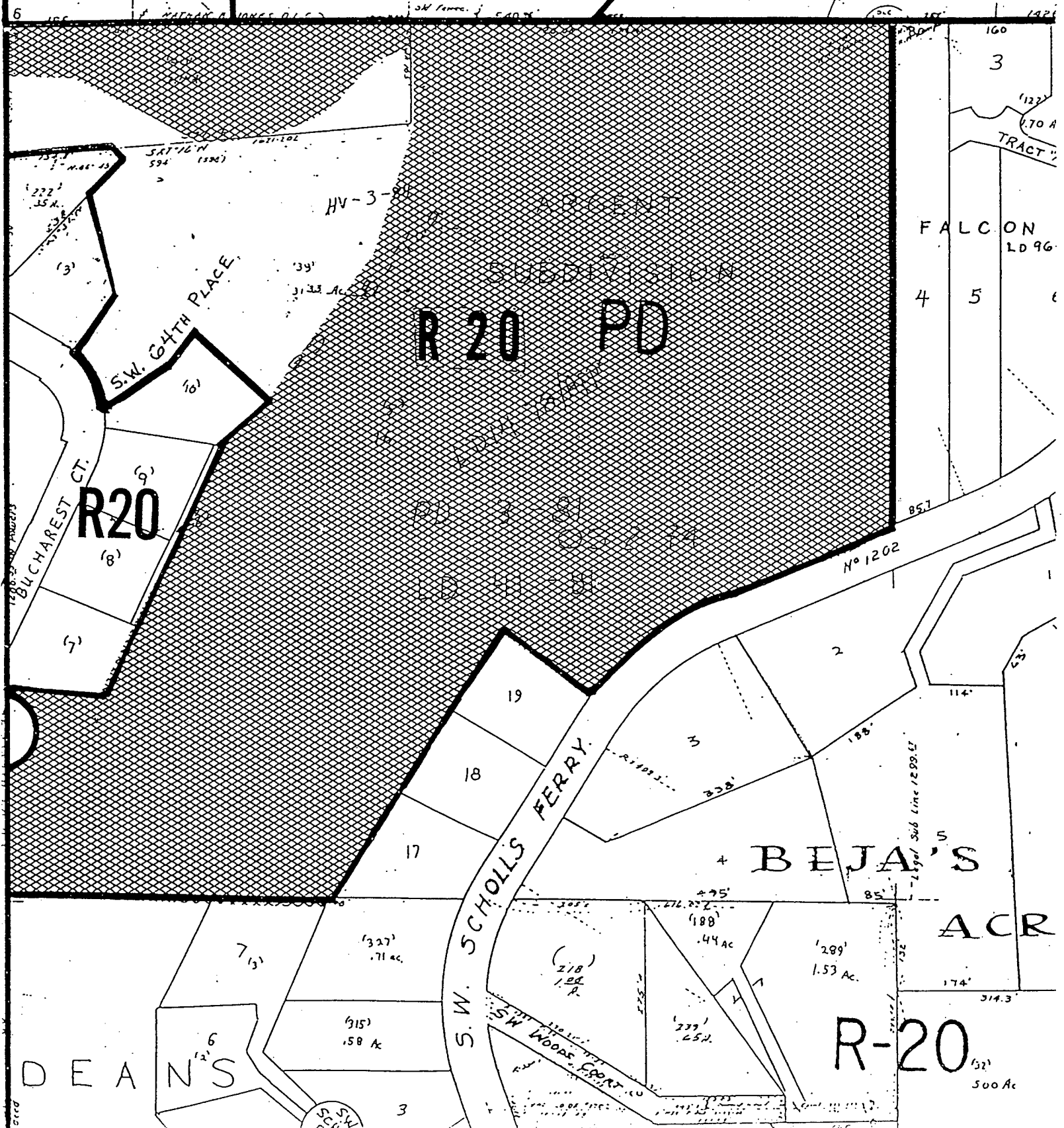
Case #: HDP 31-92

Location: 2700 SW Bucharest Court

Scale: 1 inch to 200 feet (approximate)

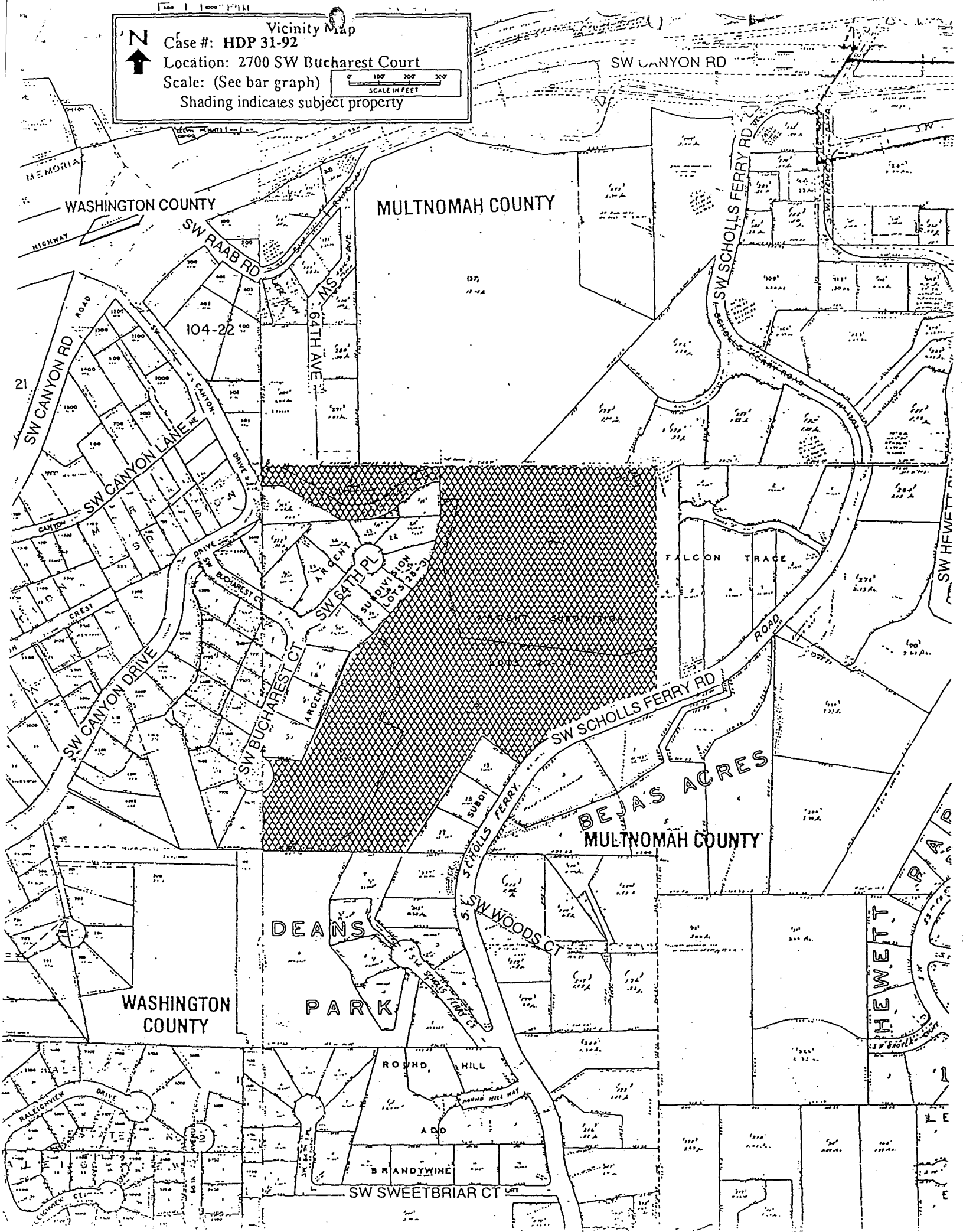
Shading indicates subject property

SZM 141; 1/4 Map 3323



N  
↑  
Case #: HDP 31-92  
Location: 2700 SW Bucharest Court  
Scale: (See bar graph)  
Shading indicates subject property

100' 200' 300'  
SCALE IN FEET



## CONDITIONS OF APPROVAL

1. The only clearing (to bare soil) of natural understory vegetation authorized is the existing cleared area in Phase II (cleared prior to application filing), and the blackberry brambles to be mowed on a portion of Phase I. All vegetation removal shall be conducted within the following limits:
  - vegetation removal for survey purposes shall be restricted to "HAND PRUNING ONLY", by use of a machete, chain-saw, or other hand held device, except for the blackberry growth to be "mowed" on a portion of Phase I;
  - clear only the minimum necessary to obtain survey data for preparation of the Final Development Plan and Program [ref. PD 2-90];
  - the use of heavy equipment is prohibited for clearing or grading, prior to approval of the Final Development Plan, except for the blackberry growth to be "mowed" on a portion of Phase I. The use of tractors, "cats", "hydra-axe", or similar heavy machinery is prohibited for survey purposes;
  - cutting or felling of trees over 6-inch diameter is prohibited prior to approval of the Final Development Plan;
  - except for the existing temporary access to Phase II on the Nazarene Church site, all grading or clearing which disturbs or exposes soil is prohibited within 50-feet of the streams or wetlands on the site prior to approval of the Final Development Plan; [note; reseeding and mulching of temp. access req'd. per condition #3]
  - clearing for survey work shall be limited as prescribed above and under no circumstances shall it extend beyond the "clearing limits" boundary shown on the application plan.
2. Implement temporary erosion control on-site for the duration of any soil disturbance, according to specifications in the *Erosion Control Technical Guidance Handbook* (January 1991). The applicant shall be required to implement its proposed September 9, 1992 mitigation plan, subject to review by the planning staff for compliance with the above mentioned specifications and all other requirements of this order. The applicant shall plainly identify and 'flag' all critical areas within 100-feet of the top of the bank of the stream.
3. Exposed soils shall be seeded, mulched or covered to avoid erosion or drainage effects onto neighboring sites or into any streams or drainage facilities. All exposed areas shall be protected with a winter cover crop and/or mulching immediately. Mulching or reseeding of exposed areas shall be sufficient to prevent sediments from entering the natural drainages on the site.
4. This permit does not authorize the use of pesticides or petrochemicals on the project site.
5. No cuts or fills are authorized under this permit.
6. Erosion control and slope stability techniques required herein may be supplemented if slope failure, slumping, or down-slope erosion results from the survey activity on this site.



7. The applicant shall be responsible for monitoring all erosion and sedimentation control measures undertaken as a result of this decision. Monitoring shall occur on a daily basis. The applicant shall submit a status report to the planning director concerning the viability of these mitigation and protective measures on a monthly basis beginning on February 1, 1993. These reports may be terminated once a final erosion control plan for the development is approved. The hearings officer shall retain jurisdiction over this case for a period of one year, or until a final erosion control plan is approved, whichever is less, in order to review any violations of this order identified by the planning director.

#### **BACKGROUND:**

- A. October 8, 1990 — The Planning Division reviewed and approved a Preliminary Development Plan for a Planned Development (Argent Subdivision).
- B. November 20, 1990 — The Board of County Commissioners (Board) reviewed and affirmed the Planned Development approval subject to conditions.

Condition #8 of PD 2-90 indicates:

"Prior to conducting any grading or clearing on the site, obtain a Hillside Development Permit under MCC 11.15.6710. ..."

Condition #9 of PD 2-90 indicates:

"Prior to doing any site work or issuance of building permits within 100-feet of any stream on the subject property, obtain a Significant Environmental Concern Permit under MCC 11.15.6904(C). ..."

Condition #15 of PD 2-90 adopts an agreement with Fans of Fanno Creek; it restricts:

"...any and all development and removal of vegetation within 50-feet of the centerline of Fanno Creek or its tributaries, except for the ... minimum required for construction of the private road (Sheridan Street); ... sanitary and storm sewers and water lines, permitted storm water drainage, water quality enhancement, ...streamside protection features; ...proposed playground ...setback at least 25 feet from the centerline of the creek; and ... [T]he minimum required for the pedestrian path from Meade Court across Fanno Creek...".

- C. September, 1992 — Double D Development began clearing a portion of the Phase II area, near the north boundary of the site. The work included a temporary access and creek crossing on the Church of the Nazarene property immediately north of Phase II. Land-disturbance and vegetation removal has occurred within the buffer areas along the creek.
- **CLEARING** — refers to removal of understory vegetation, and may include disturbance of the soil and use of heavy machinery for "mowing" blackberry brambles.

- **PRUNING** — refers to the trimming of limbs or foliage from trees, shrubs, or plants. Pruning does not leave dead or dying plants and does not disturb the land, or expose soil to elements of wind, water, or gravity. Pruning does not constitute a 'clearing' or 'land-disturbing' activity, and is therefore not subject to the permit requirements of 11.15.6710.
- D. September 4, 1992 — The Planning Division sent a Notice of Zoning Violation indicating permits were required for the clearing activity already initiated.
- E. September 9, 1992 — An application was filed by Dennis Derby (of Double D Development, Inc.) for clearing and erosion control plans on the subject site.
- F. October 16, 1992 — The Planning Director issued an Administrative Decision approving HDP 31-92.
- G. October 26, 1992— Fans of Fanno Creek filed a Notice of Appeal on HDP 31-92.
- H. December 7, 1992—First hearing with the Hearings Officer. Matter continued to date certain of January 4, 1993, to obtain further evidence concerning the scope of future clearing activities, mitigation and geotechnical analysis.
- I. January 4, 1993—Second hearing with the Hearings Officer. Record closed and preliminary oral decision announced.

## **FINDINGS**

### **Preliminary Issues:**

Part of the difficulty in this case involves sorting out precisely what issues are properly before the Hearings Officer at this time, and which issues are not relevant to this appeal. First, it is important to realize that this is an appeal of a particular administrative decision, namely the director's decision concerning HDP 31-92. This is not an appeal of an enforcement action, nor is it a determination as to whether or not enforcement action should or should not have occurred with reference to the applicant's past activities on the site. The hearings officer only has jurisdiction in this proceeding to determine whether or not the applicant has satisfied the relevant approval criteria for the requested HDP permit. The hearings officer does not have jurisdiction in this proceeding to determine whether or not the permittee has violated any of the conditions of PD 2-90/LD 29-90, or whether or not the planning director's decision concerning the need for an SEC permit is valid. The appellant's, Fans of Fanno Creek, may have other forums and other remedies available if they wish to pursue the issues mentioned above. To the extent the planning director

indicated that an SEC permit was not needed, the hearings officer finds that such a determination is irrelevant as to whether or not the approval criteria for the requested HDP permit are met. Even if the hearings officer had jurisdiction to determine whether or not an SEC permit was needed, the hearings officer has no standards or criteria for making such a decision. The term "site work", as it was used in PD 2-90/LD 29-90, is not defined either in the code or in the decision which used the term. The planning director's interpretation of this phrase is reasonable, although it is certainly not the only interpretation that could be used. Since there are no standards for determining which interpretation is correct, the choice between reasonable alternatives is for the county to make.

## **Application of the Relevant Approval Criteria**

### **11.15.6730 Grading and Erosion Control Permit Standards**

#### ***(1) Grading Standards***

- (a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require additional studies or information or work regarding fill materials and compaction;***

**Findings:** There is no fill or excavation proposed as part of the request. Condition #5 explicitly prohibits cut or fill work under this permit.

- (b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;***

**Findings:** No cut or fill is proposed as part of the request. Condition #5 explicitly prohibits cut or fill work under this permit. This criteria does not apply to the activities proposed under this permit.

- (c) Cuts and fills shall not endanger or disturb adjoining property;***

**Findings:** Condition #5 explicitly prohibits cut or fill work under this permit. As noted above, this criteria does not apply to the activities proposed under this permit.

- (d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;***

**Findings:** The proposed clearing for survey purposes does not include

alterations to the drainage system. There are no new impervious surfaces proposed or authorized. This criteria does not apply to the work proposed under this permit because no drainage system is proposed.

- (e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;***

**Findings:** No fills are proposed. This criteria doesn't apply.

***(2) Erosion Control Standards***

- (a) On sites within the Tualatin River Drainage Basin, erosion and stormwater control plans shall satisfy the requirements of OAR 340. Erosion and stormwater control plans shall be designed to perform as prescribed by the "Erosion Control Plans Technical Guidance Handbook" and the "Surface Water Quality Facilities Technical Guidance Handbook." Land-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340 is approved for alterations within the buffer area;***

**Findings:** Past activities have occurred within 100 feet of the top of the bank of the stream. The applicant should have obtained a permit and should have demonstrated compliance before undertaking activities that completely stripped the resource area of vegetation. Absolutely no additional work of any kind will be permitted within 100 feet of the top of the bank of any stream on the property unless or until the applicant submits a plan demonstrating compliance with the applicable standards in this subsection. A condition of approval requiring such future compliance has been included as part of this decision.

- (b) Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;***

**Findings:** This is the heart of the matter. This decision does not authorize any grading whatsoever. The only stripping of vegetation that is authorized by this decision is for future land surveying purposes. The problem that has existed up to this point is that the applicant has probably cleared more of the vegetation and disturbed more of the site than was necessary for land surveying purposes. The challenge now is to look forward and to devise a mitigation plan for the damage that has already occurred. This criteria will be met through the conditions of

approval. In particular, the applicant will be required to implement its proposed mitigation plan immediately. Daily inspection of the mitigation measures will be required. The applicant will submit a written report to the planning director every thirty days, beginning on February 1, 1993, describing the integrity, success and/or failures of the implemented mitigation measures. The hearings officer shall retain jurisdiction over this matter for a period of one year, in the event that the planning director determines that any of the applicable performance criteria for this mitigation plan are not being met. The intent of these conditions are to insure that the resource is protected and that legitimate survey activities be allowed to take place with adequate mitigation and protection in place.

- (c) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff;***

**Findings:** Cuts and fills are not proposed or authorized. No development is authorized by this permit. This criteria does not apply.

- (d) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;***

**Findings:** Conditions of approval address this criteria. Critical areas are those exposed areas within 100-feet of the top of the bank of streams or wetlands on the site. Reseeding and/or mulching of all exposed critical areas is required immediately. The applicant will be required as part of its mitigation plan to plainly identify and flag all critical areas so that protection of these areas can be monitored as development proceeds. This criteria will be met.

- (e) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;***

**Findings:** Conditions of approval require the retention of all trees over 6-inch trunk diameter. The only clearing of natural understory vegetation is the existing cleared area in Phase II (cleared prior to application filing), and the blackberry brambles to be mowed on a portion of Phase I. All other vegetation removal shall be hand pruning only, which will retain the natural vegetation over most of the site until a Final Development Plan approves specific improvements (roads, bridges, etc.). This criteria will be met.

- (f) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;***

**Findings:** Conditions of approval require replanting and/or mulching on exposed critical areas. Structural erosion control is not applicable to the clearing

for survey work authorized by this permit. This criteria will be met.

- (g) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;***

**Findings:** The proposed clearing for survey purposes does not include alterations to the drainage system. There are no new impervious surfaces proposed or authorized. Limited use of heavy equipment for clearing reduces new exposed areas and minimizes runoff increases from the clearing work. This criteria will be met, to the extent it applies.

- (h) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;***

**Findings:** Conditions of approval require that sediment in the runoff water to be trapped by placing bales of straw or silt fences at the base of any exposed soils until the disturbed areas are revegetated. The success of these erosion control measures will be carefully monitored.

- (i) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding;***

**Findings:** Cuts or fills are not proposed or authorized. This criteria does not apply.

- (j) All drainage provisions shall be designed to adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural watercourses, drainage swales, or an approved drywell system;***

**Findings:** The proposed clearing for survey purposes does not include alterations to the drainage system. There are no new impervious surfaces proposed or authorized. Limited use of heavy equipment for clearing reduces new exposed areas and minimizes runoff increases from the survey work. This criteria does not apply.

- (k) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;***

**Findings:** Drainage swales are not required for the survey work proposed. This criteria does not apply.

- (l) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:***

***(i) Energy absorbing devices to reduce runoff water velocity;***

***(ii) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;***

***(iii) Dispersal of water runoff from developed areas over large undisturbed areas.***

**Findings:** Conditions of approval require erosion and sediment control measures that satisfy these criteria, to the extent they apply.

- (m) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures;***

**Findings:** This permit does not authorize the disposal of spoil material or stockpiling of topsoil. This criteria does not apply.

- (n) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.***

**Findings:** Condition #4 prohibits the use of pesticides or petrochemicals for the proposed survey work. This criteria will be met.

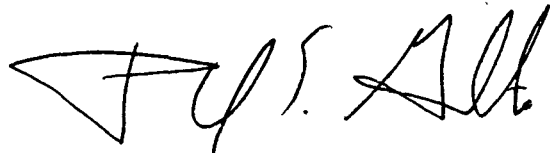
- (o) On sites within the Balch Creek Drainage Basin, erosion and stormwater control features shall be designed to perform as effectively as those prescribed in the Erosion Control Plans Technical Guidance Handbook (January 1991). All land disturbing activities within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.***

**Findings:** The subject property is not within the Balch Creek Drainage Basin. This criteria does not apply.

## CONCLUSIONS

The applicant in this case has undertaken land disturbances on the site. It makes very little difference to the resource whether or not the activities were undertaken simply for the purpose of surveying, or whether the activities amounted to site preparation work. The fact is that extensive clearing work took place on the site prior to protecting the resource. This decision attempts to move the matter forward and in doing so adds conditions of approval designed to mitigate, as much as is practicable, the damage to the resources that have already occurred. Future work authorized by this permit is limited to brush clearing for survey work only. In the event there is any question as to whether or not the clearing activities authorized by this permit are related to survey work, the applicant should be prepared to demonstrate the survey lines that required such clearing. It is understood that in order to survey certain areas, additional brush may need to be removed. However, the applicant will be expected to reasonably limit the amount of vegetation to be cleared at this stage of development. A new and more complete Clearing and Erosion Control mitigation plan will be submitted with construction drawings at a later date which will address these requirements as they relate to development activities.

Dated this 13th day of January, 1993.



By: Phillip E. Grillo,  
Hearings Officer

Decision mailed to parties: January 14, 1993

Submitted to Clerk of the Board: January 14, 1993

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

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony in accord with the requirements on the prior Notice. A "Notice of Appeal" form and fee must be submitted to the County Planning Director, within ten days after the Hearings Officer decision is submitted to the Clerk of the Board [REF. MCC 11.15.8260(A)(1)]. The appeal fee is \$300.00 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s) [REF. MCC 11.15.9020(B)]. "Notice of Appeal" forms and instructions are available at the Planning and Development Office at 2115 SE Morrison Street, in Portland [hours: 12:30—4:30; M—F].

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 sufficient detail on an issue for the Board to respond, precludes appeal to LUBA on that issue.

*Hearings Officer decisions are usually reported to the Board for review on the first Tuesday following the ten day appeal period. The Board meets at 9:30 a.m. in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.*



Meeting Date: January 26, 1993

Agenda No.: P-6

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: Auto Wrecker's License Renewal

BCC Informal \_\_\_\_\_ BCC Formal January 26, 1993  
(date) (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 1 Minute

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

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

82nd Avenue Auto Wreckers, Inc.  
8555 SE 82nd Avenue

Auto Wrecker's License Renewal - Staff Recommends approval

*1/26/93 continued to later date  
pending A&T tax check pursuant  
to Ordinance 723*

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER *PC* RSD for DW

(All accompanying documents must have required signatures)

CLERK OF  
COUNTY COMMISSIONERS  
1993 JAN 20 AM 9:28  
MULTIPLIPLY COUNTY  
OREGON



CASE NAME: Auto Wrecker

1. Applicant Name/Address

82<sup>nd</sup> Avenue Auto Wreckers.  
8555 SE 82<sup>nd</sup>  
Portland 97266

2. Action Requested by applicant

Renewal of auto wrecking license

3. Planning Staff Recommendation

Approval

4. Planning Commission or Hearings Officer Decision:

N/A

5. If recommendation and decision are different, why?

**ACTION REQUESTED OF BOARD**

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

**ISSUES**  
(who raised them?)

a. None

Do any of these issues have policy implications? Explain.

N/A



# MULTNOMAH COUNTY OREGON

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

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

January 26, 1993

Honorable Board of County Commissioners  
Room 605, Multnomah County Courthouse  
1021 SW Fourth Avenue  
Portland, Oregon 97204

RE: Auto Wrecker's License -Renewal

Duane S. Shaw  
dba 82nd Avenue Auto Wreckers, Inc.  
8555 SE 82nd Avenue

**Recommend: Approval of Business Location**

Dear Commissioners:

The staff of the Division of Planning and Development respectfully recommends that the above license be approved, based upon findings that they satisfy the location requirements for same as contained in ORS 822.10 and .135.

Sincerely,

MULTNOMAH COUNTY DIVISION OF PLANNING AND DEVELOPMENT

Sharon Cowley, Administrative Assistant

sec

Enclosure - Wrecker's Application

1993 JAN 20 AM 9:29  
MULTNOMAH COUNTY  
OREGON



# Multnomah County Sheriff's Office

ROBERT G. SKIPPER  
SHERIFF

12240 N.E. GLISAN ST., PORTLAND, OREGON 97230

(503) 255-3600

## MEMORANDUM

TO: SHARON COWLEY  
Administrative Assistant

FROM: SERGEANT KATHY FERRELL, Manager  
Intelligence Unit *KFJ*

DATE: December 24, 1992

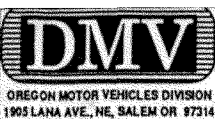
SUBJECT: WRECKER'S LICENSE RENEWAL

Attached is an Application for Business Certificate as a Wrecker of Motor Vehicles for 82nd Auto Wreckers, Inc., 8555 SE 82nd, Portland, Multnomah County. The Sheriff's Office recommends the license be approved as long as zoning requirements have been satisfied.

Thank you for your attention.

KF/jlz/998-AINT

Attachment



# APPLICATION FOR BUSINESS CERTIFICATE

AS A WRECKER OF MOTOR VEHICLES OR  
SALVAGE POOL OPERATOR

▼ CERTIFICATE NUMBER ▼

**NOTE:** FAILURE TO ACCURATELY COMPLETE THIS FORM WILL CAUSE UNAVOIDABLE DELAY.  
PLEASE TYPE OR PRINT LEGIBLY WITH INK.  
DO NOT SUBMIT THIS APPLICATION WITHOUT YOUR SURETY BOND AND THE REQUIRED FEE.

☐ ORIGINAL  
☐ RENEWAL

1	NAME (CORPORATION AND/OR ASSUMED BUSINESS NAME) 82012 Ave Auto Wreckers Inc			BUSINESS TELEPHONE 775-1582	
2	MAIN BUSINESS LOCATION (STREET AND NUMBER) 8555 SE 82012		CITY PORTLAND	ZIP CODE 97266	COUNTY MULT
3	MAILING ADDRESS 8705 SE KING RD		CITY PORTLAND	STATE OR	ZIP CODE 97266

A SEPARATE APPLICATION MUST BE COMPLETED FOR EACH ADDITIONAL LOCATION FROM WHICH YOU OPERATE YOUR BUSINESS.

4	CHECK ORGANIZATION TYPE: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION	IF CORPORATION, LIST THE STATE UNDER WHOSE LAW BUSINESS IS INCORPORATED:
---	---	--

LIST NAME AND RESIDENCE ADDRESS OF THIS OWNER, ALL PARTNERS OR PRINCIPAL CORPORATE OFFICERS:

5	NAME Dwaine S Shaw	TITLE Pres	DATE OF BIRTH 5/23/40	RESIDENCE TELEPHONE (503) 653-1111
6	RESIDENCE ADDRESS 8705 SE KING RD	CITY PORTLAND	STATE OR	ZIP CODE 97266
7	NAME Jim Moore	TITLE Vice Pres	DATE OF BIRTH 2/16/54	RESIDENCE TELEPHONE (503) 771-0082
8	RESIDENCE ADDRESS 7421 SE RURAL	CITY PORTLAND	STATE OR	ZIP CODE 97202
9	NAME	TITLE	DATE OF BIRTH	RESIDENCE TELEPHONE
10	RESIDENCE ADDRESS	CITY	STATE	ZIP CODE

THE DIMENSIONS OF THE PROPERTY ON WHICH THE BUSINESS IS LOCATED ARE \_\_\_\_\_ ft. X \_\_\_\_\_ ft.

I CERTIFY THAT I AM THE OWNER, A PARTNER OR A CORPORATE OFFICER OF THIS BUSINESS AND THAT ALL INFORMATION ON THIS APPLICATION IS ACCURATE AND TRUE. I CERTIFY THAT THE RIGHT OF WAY OF ANY HIGHWAY ADJACENT TO THE LOCATION LISTED ABOVE IS USED FOR ACCESS TO THE PREMISES AND PUBLIC PARKING.

12	NAME Dwaine S Shaw	TITLE Pres	RESIDENCE TELEPHONE (503) 653-1111
13	ADDRESS, CITY, STATE, ZIP CODE 8705 SE KING RD PORTLAND OR 97266		
14	SIGNATURE OF OWNER/PARTNER/CORPORATE OFFICER X [Signature]		DATE 1/14/93

15 **APPROVAL:** I CERTIFY THAT THE GOVERNING BODY OF THE ☐ CITY ☒ COUNTY OF \_\_\_\_\_ HAS:

- A) APPROVED THE APPLICANT AS BEING SUITABLE TO ESTABLISH, MAINTAIN OR OPERATE A WRECKING YARD OR BUSINESS (ORIGINAL APPLICATIONS ONLY).
- B) DETERMINED THAT THE LOCATION OR PROPOSED LOCATION MEETS THE REQUIREMENTS FOR LOCATION UNDER OREGON REVISED STATUTE 822.110.
- C) DETERMINED THAT THE LOCATION DOES NOT VIOLATE ANY PROHIBITION UNDER OREGON REVISED STATUTE 822.135.
- D) APPROVED THE LOCATION AND DETERMINED THAT THE LOCATION COMPLIES WITH ANY REGULATIONS ADOPTED BY THE JURISDICTION UNDER OREGON REVISED STATUTE 822.140.

I ALSO CERTIFY THAT I AM AUTHORIZED TO SIGN THIS APPLICATION AND AS EVIDENCE OF SUCH AUTHORITY DO AFFIX HEREON THE SEAL OR STAMP OF THE CITY OR COUNTY.

**FEE: \$54.00**

▼ PLACE STAMP OR SEAL HERE ▼

SUBMIT APPLICATION AND SURETY  
BOND, WITH ALL REQUIRED FEES  
AND SIGNATURES TO:

BUSINESS REGULATION SECTION  
1905 LANA AVE., NE  
SALEM, OR 97314-2350

16	NAME	TITLE	PHONE NUMBER
17	SIGNATURE X [Signature]		DATE

## SURETY BOND

804976

FAILURE TO COMPLETE THIS FORM WILL CAUSE UNAVOIDABLE DELAY.

## LET IT BE KNOWN:

THAT 82nd Ave Auto Wreckers, Inc.

(OWNER, PARTNERS, CORPORATION NAME)

DOING BUSINESS AS \_\_\_\_\_

(ASSUMED BUSINESS NAME, IF ANY)

HAVING PRINCIPAL PLACE OF BUSINESS AT 8555 SE 82nd Portland, OR. 97266

(ADDRESS, CITY, STATE, ZIP CODE)

WITH ADDITIONAL PLACES OF BUSINESS AT \_\_\_\_\_

(ADDRESS, CITY, STATE, ZIP CODE)

(ADDRESS, CITY, STATE, ZIP CODE)

STATE OF OREGON, AS PRINCIPAL(S), AND CONTRACTORS BONDING AND INSURANCE COMPANY

(SURETY NAME)

1827 NE 44th Ave, Suite 100 Portland, Or 97213 287-6000

(ADDRESS, CITY, STATE, ZIP CODE)

TELEPHONE NUMBER

A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF Washington, AND AUTHORIZED TO TRANSACT A SURETY BUSINESS IN THE STATE OF OREGON, AS SURETY, ARE HELD AND FIRMLY BOUND UNTO THE STATE OF OREGON IN THE PENAL SUM OF \$2,000 FOR THE PAYMENT OF WHICH WE HEREBY BIND OURSELVES, OUR RESPECTIVE SUCCESSORS AND ASSIGN, JOINTLY AND SEVERALLY, FIRMLY BY THESE PRESENTS.

A CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEN THE ABOVE NAMED PRINCIPAL HAS BEEN ISSUED A CERTIFICATE TO CONDUCT, IN THIS STATE, A BUSINESS WRECKING, DISMANTLING AND SUBSTANTIALLY ALTERING THE FORM OF VEHICLES, SAID PRINCIPAL SHALL CONDUCT SUCH BUSINESS WITHOUT FRAUD OR FRAUDULENT REPRESENTATION, AND WITHOUT VIOLATION OF ANY OF THE PROVISIONS OF THE OREGON VEHICLE CODE SPECIFIED IN ORS 822.120(2) THEN AND THAT EVENT THIS OBLIGATION TO BE VOID, OTHERWISE TO REMAIN IN FULL FORCE AND EFFECT UNLESS CANCELED PURSUANT TO ORS 743.755.

THIS BOND IS EFFECTIVE January 1 19 93 AND EXPIRES December 31 19 93

(BOND MUST EXPIRE ON THE LAST DAY OF THE MONTH.)

-- ANY ALTERATION VOIDS THIS BOND --

IN WITNESS WHEREOF, THE SAID PRINCIPAL AND SAID SURETY HAVE EACH CAUSED THESE PRESENTS TO BE EXECUTED BY ITS AUTHORIZED REPRESENTATIVE OR REPRESENTATIVES AND THE SURETY CORPORATE SEAL TO BE HEREUNTO AFFIXED THIS 9th DAY OF December 19 92.

SIGNATURE (OWNER/PARTNER/CORPORATE OFFICER)

X

TITLE

SIGNATURE OF SURETY (AUTHORIZED REPRESENTATIVE)

X

TITLE

Attorney-in-Fact

SURETY'S AGENT OR REPRESENTATIVE MUST COMPLETE THIS SECTION:

PLACE SURETY SEAL BELOW

IN THE EVENT A PROBLEM ARISES CONCERNING THIS BOND, CONTACT:

NAME

CBIC

TELEPHONE NUMBER

287-6000

ADDRESS

PO Box 12053

CITY, STATE, ZIP CODE

Portland, Or 97212

APPROVED BY ATTORNEY GENERAL'S OFFICE:

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CU 14-92 Public Hearing

BCC Informal \_\_\_\_\_ BCC Formal \_\_\_\_\_  
(date) (date)

DEPARTMENT	DES	DIVISION	Planning
------------	-----	----------	----------

CONTACT	Sharon Cowley	TELEPHONE	2610
---------	---------------	-----------	------

PERSON(S) MAKING PRESENTATION      Bob Hall

ACTION REQUESTED:

☐ INFORMATIONAL ONLY      ☐ POLICY DIRECTION      ☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 1 hour

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

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

CU 14-92 Public Hearing - On The Record Plus Additional Testimony and Evidence

Review the Planning Commission Decision of November 16, 1992, denying conditional use request for a ten-year permit to mine, for property located at 14545 NW St. Helens Road.

This item has been appealed by the applicant

Scope of Review is On the Record Plus Additional Testimony and Evidence.  
Oral Argument is set for 30 minutes per side  
(If space is inadequate, please use other side)

1/27/93 COPIES OF ORDER 93-23 SIGNATURES:  
to SHARON COWLEY  
ELECTED OFFICIAL

Or

DEPARTMENT MANAGER *DC ASD Lm BW*

(All accompanying documents must have required signatures.)

BOARD OF  
COUNTY COMMISSIONERS  
1993 JAN 20 AM 9:29  
MULTNOMAH COUNTY  
OREGON  
att: es



CASE NAME: Angell Brothers Quarry

NUMBER CU 14-92

1. Applicant Name/Address

Angell Brothers, Inc.

P.O. Box 8344

Portland 97283

2. Action Requested by applicant

A Conditional Use Permit on a 283 acre site to allow expansion  
of an existing mining operation

**ACTION REQUESTED OF BOARD**

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

3. Planning Staff Recommendation

Approval

4. Planning Commission or Hearings Officer Decision:

Denial

5. If recommendation and decision are different, why?

Planning Commission found that the site should have a 3-B ESEE designation. The Zoning Ordinance requires that approval can only be granted if the site is designated 2-A, 3-A or 3-C through an ESEE analysis.

**ISSUES**

(who raised them?)

- a. Wildlife habitat areas (Friends of Forest Park)
- b. Impact (e.g., noise, dust, vibration, etc.) on surrounding residences (surrounding residents and Friends of Forest Park)
- c. Impact on geologic stability and wetlands (Friends of Forest Park)
- d. Scenic impact (residents of Sauvie Island)

Do any of these issues have policy implications? Explain.

No.





## Notice of Public Hearing Board of County Commissioners

Multnomah County  
Board of County Commissioners

1021 SW 4th Avenue  
Portland, Oregon 97204

The Board of County Commissioners will hear the following item on the date and at the time and place indicated below. The exact time may be later depending on the agenda schedule. The hearing will be conducted pursuant to the Board of County Commissioners *Rules of Procedure* (enclosed). For further information, call the Planning Office at 248-3043

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

**Date:** 01/26/93

**Time:** 9:30 a.m.

**Place:** Room 602, Multnomah County Courthouse

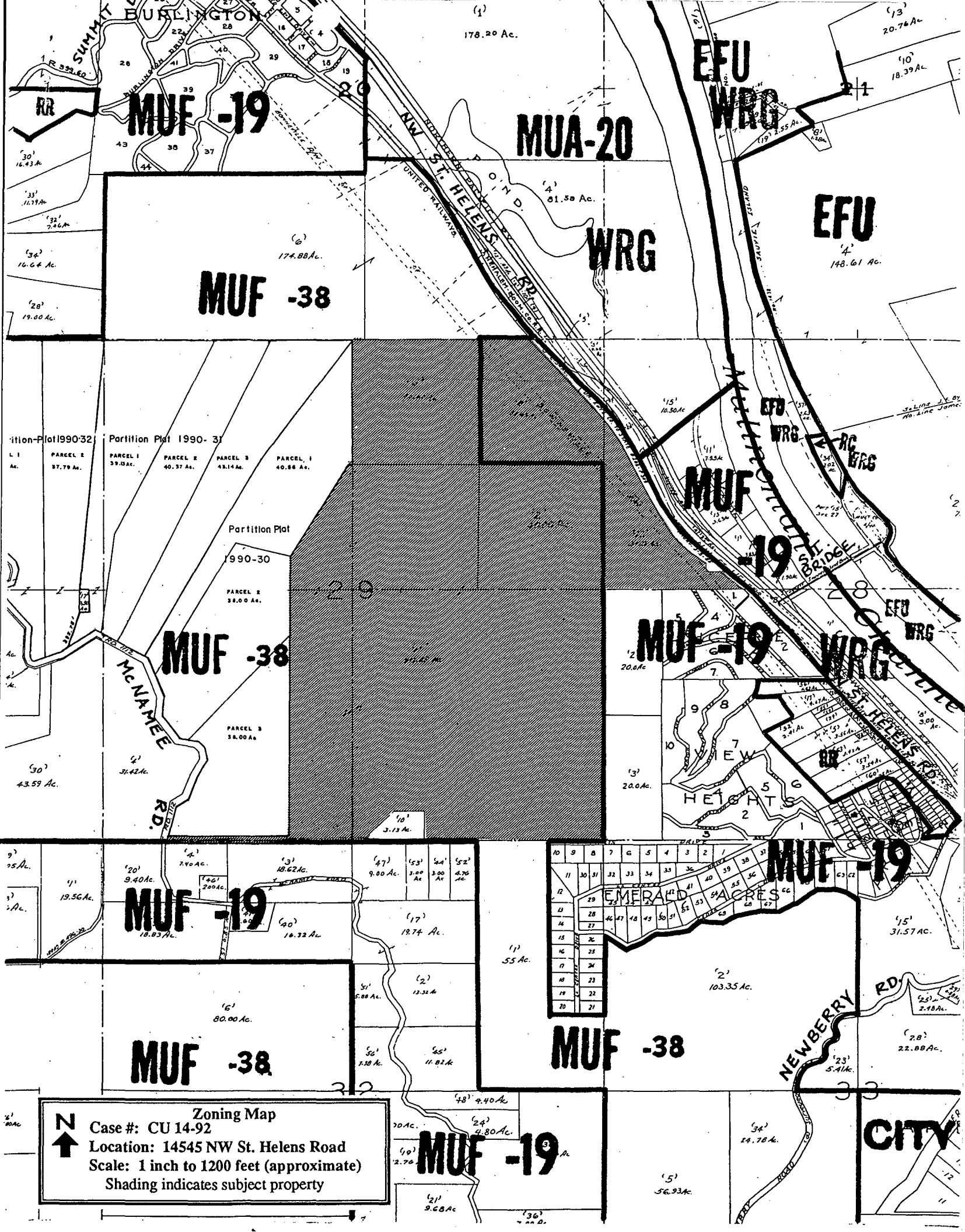
**CU 14-92      Public Hearing - On The Record Plus Additional Testimony and Evidence**

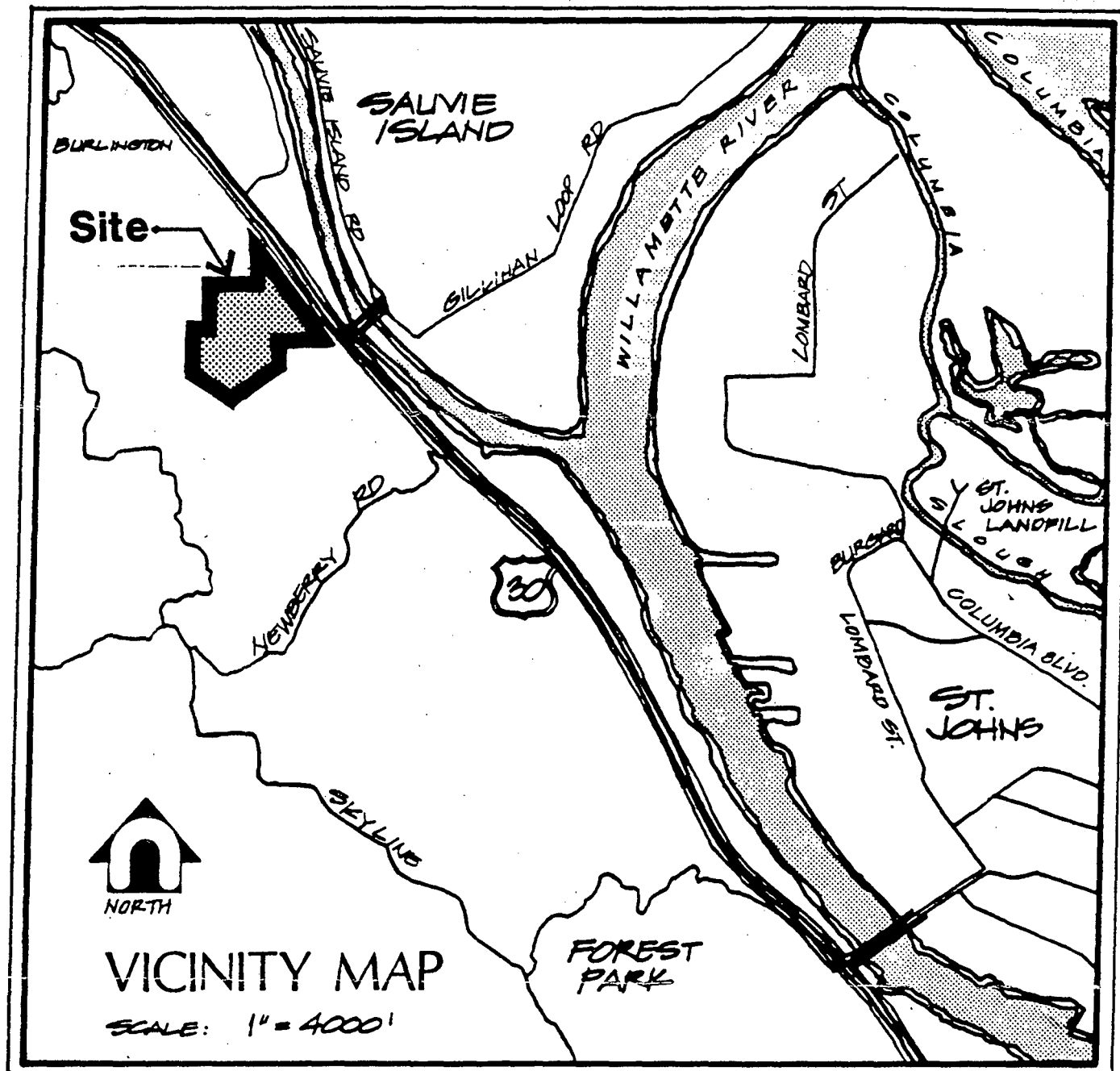
Review the Planning Commission Decision of November 16, 1992,  
denying conditional use request for a ten-year permit to mine, for  
property located at **14545 NW St. Helens Road**

**This item has been appealed by the applicant.**

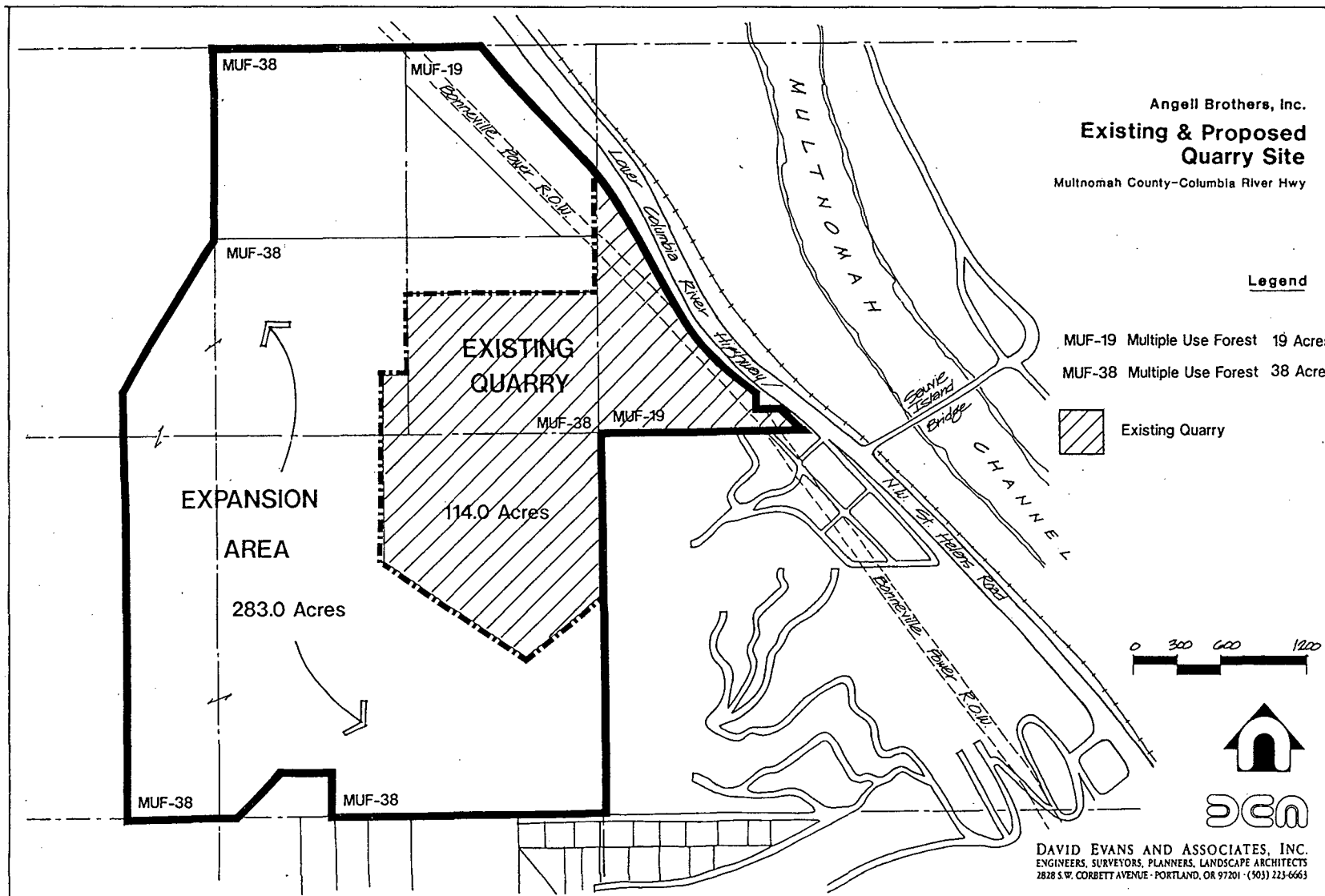
**Scope of Review - On the Record Plus Additional Testimony and Evidence**

**Oral Argument:** Each side will have 30 minutes to present oral argument  
to the Board.





DAVID EVANS AND ASSOCIATES, INC.  
 ENGINEERS, SURVEYORS, PLANNERS, LANDSCAPE ARCHITECTS  
 2828 S.W. CORBETT AVENUE · PORTLAND, OR 97201 · (503) 223-6663



## Transcript

CU 14-92

September 8, 1992 Meeting

Chairman: The first item is a combination of plan amendment and conditional use, its scheduled as PR7-92/CU 14-92 at 14545 NW St. Helens Rd. On this item I have a potential conflict of interest with this case and will not be participating in the hearing so this hearing item will be chaired by the vice-chair of the commission Leonard Yoon and at this time I'll turn it over to Leonard continue with this hearing item.

Chair Yoon: We'll start at 6:00 and we're gonna stop at 8:30. The applicant has asked for an hour and half for presentation and rebuttle. We also have a request from Friends of Forest Park for 45 minutes. So both sides will have an hour and half. The way we're gonna go through is the staff will give there presentation which will take about 30 minutes. At that time then the applicant will then given their presentation which they anticipate will be about 45 minutes reserving about 45 minutes for rebuttle. At that point LCDC will also give a presentation and going through the EZ process and then at that point the opposition will be allowed to give a 45 minutes presentation. I would suggest that if there are more that an opposition may want to organize themselves and how they want to do that. And that should take us up to about 8:30 and we're gonna stop right there at 8:30. Then we're gonna continue this hearing on the 21st of September for rebuttle, further examination, questions and so forth. I'd like to request from the commission that we limit our questions to basic clarification rather than to disagreements on basic presentation. At this particular hearing we can get through this pretty quickly and this is gonna be a very long intensive drawn out presentation as everybody will see by all the documents we all have. If everybody would be patient we should be able to get through these next two hours. So I'll turn it over to Bob.

Douglas: May I make a comment. Last week skip anderson called me and I returned his call and his only comment was he requested that I didn't disqualify myself. Now, I have bought gravel from them years ago and I have no financial interest and I told him I would leave it up to board if they wanted me to stay on I would do so. But under that circumstances strictly.

Hunt: I must confess I bought some rock from Angell Bros. property as well as other rock companies in the area and I don't see that as a conflict of interest. I just got it from what ever one could deliver it that day. So, if there's anybody that wants to...

Other Voice: Unless anybody else has any concern I think we can assume that both commissioners Hunt and Douglas don't have a conflict of interest. Turn it over to staff. Bob. Take a minute and half to breath and then start. OK, we'll wait until 6:00. Just to be absolutely accurate about this.

Other Voice: Just to further point we will start at 8:30 on the forest goal hearings. Anybody who's gonna be here for that can be assured that we're gonna start at 8:30 on that.

Other Voice: Further announcement, we don't have a sign in sheet but we do have cards at the back of the room for you to fill out and then you can put it back in the box. Then we'll have you on the mailing list and the notification list. Go to it Robert.

Bob Hall: You saying 6. I'm Bob Hall the land development staff. As indicated, this is an application for property addressed at 14545 NW St. Helens Rd. The applicant requests two things that will require two decisions be made by the planning commission. The first of which is an amendment of the comprehensive plan through adoption of an EZ analysis and a program which achieve state wide planning goal #5 for a 283 acre expansion area to an existing quarry operation. The second decision would be a conditional use permit application for a 10 year period. To mine a portion of that 283 acre expansion area in a sequence of 4 phases plus a request for continuation of the present hours of operation of 6:00 a.m. to 10 p.m. As I mentioned, this is an expansion of a current operation. The current operation is located on a 113 acres of the total site. If the 283 expansion area is approved they would result in the total site area of 396 acres. However, as a part of the application, the applicant is proposing that approximately 142 acres be set aside for buffer areas. One of those buffer areas would be on the southern portion of the site and would be for the purpose of providing a wild life habitat area and the second buffer area larger buffer areas would be on the north and east portions of the site which will be mainly as a visual buffer for the entire, for the operation. That would

result in approximately 254 acres being mined. However, you should keep in mind that this is a long term operation. The request is for a 10 year period. However that 254 acre area would not be mined during that 10 year period. As I mentioned, it is a 4 phase operation. First phase would be to establish a floor area in the center of the site and these are all shown on the map of page 3 of the staff report. Phase I would I say establish a floor area staging area that's identified on that site plan. Phase II would involve extending the operation southerly. Phase III would extend it even more southerly and at that point mining would begin from the top down with continual reclamation of benched areas and after phase III is accomplished, Phase IV which is on the east and north portions of the property would be mined. The approval criteria for these requests consist of for the plan amendment for achieving the goal 5 process, those criteria are contained in OAR 660-16-000 which describes how the inventory of goal 5 resources should be conducted. 660-16-005 describes the identification of conflicting uses and analysis of those conflicting uses verses the goal 5 resource and 660-16-010 describes how a program to achieve the goal must be accomplished. The second decision. The request for a conditional use for mining expansion. Approval criteria are found in Multnomah County code 11.15.7305 through 11.15.7335. I have some slides before I go further that hopefully will describe the application and the process. Now that you've seen the whole slide presentation we can go on, ha, ha. You'll have to excuse me I'm trying to get a cold or something. We're trying right now. As I said this is an existing operation is located a little northerly of the Savey Island bridge. It's immediately adjacent to US highway 30 access to and from the site currently is solely from highway 30 and throughout the expansion would be solely to highway 30. There is an easement from the property that does the access McDamy Road, however as a staff report indicates McDamy Road is incapable of accommodating the traffic and therefore specific condition would be that no traffic would be allowed on McDamy. Let me.....This view is taken inside the access road that we looked at in the previous slide looking down onto highway 30. It doesn't show very well but there is a left turn lane for traffic coming from the southerly direction onto this site so that there is ability to pull over and wait until the traffic is clear to come on to the site. This shows the operation....This is the que...this is

what I believe secondary pressure, primary pressure material is mined up above here. Transported down to here where it is loaded on to trucks and ....That crusher that I showed you some stock piles that are located on the floor. A scale area associated at the main office building of the operation. This is taken from the quarry lower looking easterly as a part of one of the previous applications a ... area that requires to be planted here with ...as you can see they have been established as they get taller they will continue to buffer more and more of the operation on the existing floor operation that is not visible. This is washerless quarter that is associated with the operation. There is a stream that runs through the site. This is the back face of the rock showing the stream coming down. You go to the next slide, there is a settling pond for material that's carried by that water. One settling pond immediately next ...that then travels down the edge of the cut face as the next slide will show. Along in this area. This is the crusher that we saw previously were now on behind it. Somewhere in this area and areas of culvert where it goes underneath the floor of the operation and comes out into a second settling pond is the next slide shows....Here coming out of the settling pond and from there it goes on to Multnomah channel. I should mention that the existing operation with respect to the crushing and the water and everything satisfies all applicable DEQ noise, air and water regulations and has not been found to be in violation of those regulations. This is what one of the territories would like immediately after my.... have...here with a bench area and starting in phase III these will then be established and ....then after they are established they will be immediately revegetated to a forced vegetation. ...these will be hydroseeded and other measures to make them blend in with the surrounding landscape. This is an area that was mined, this is near the south easterly portion of the site, an area that was mined recently as this spring. And hydroseeded as you can see, summer ... you've had it's established some vegetation and it doesn't look anything like the bear rock cut face that you saw in the previous slide. Staff report talks about a northerly nob area. This is a portion of that northerly nob that as you'll see from some other slides I have helps screen the view of the operation particularly the sovev island area. And this is an area where topsoil material is being stored which will be put back on to the terraces and prior to the reseeding to help establish the



vegetation. Here we're near the northerly edge of the existing operation. Here I'm starting a little trip around savey island seeing what you can see of the operation from various points. At this point I'm at the Bonaby how house. That area that I showed you that had recently been mined that was becoming revegetated here. The report also talks about a southerly nob. Northerly nob like I told you about is contained in this area. The operation itself is down below this area right here. The slide what a typical bed might look like is this area here and the area of the top soil being stored in that area.

Other Voice: Bob, after they mine it. What...that .....during the mining process. The new area.

Bob Hall: From another slide that show just about...well from them this will not be mined and this area will not be mined. Buffer will not continue around here. The southerly buffer wildlife area that they are talking...actually back over...This will be drawn down from this .....and that's about only...all that will be seen mining is these areas here being drawn.. The applicant might correct me. Next. This view is taken from Savey Island school....I believe that this is the area I said was recently mined, this is top soil area. The next slide I think will better show the whole operation.

Other Voice: That really seems to be out of focus. Is it?

Bob Hall: This is the top soil area. This is the area that has recently been mined. This is the southerly nob that I was talking about. Northerly nob.

Other Voice: Where are you taking that picture from?

Bob Hall: This picture is taken from about 4 miles away on Gilahan road which is on the east side of savey island. Phase I will bring the 4 level down, phase II will take out a portion behind this...Phase III will come and start up here and come down and .... that's being mined and then Phase IV this area over here will be mined. This is taken near the end of Gilahan Road here south nob, the north nob, the existing mining area that's shown. From this location until the fourth phase, this could well be a limit of what you see of the mining .....As other views better show it, the .... is gone..... operation. This I believe is taken at the savey island turn off. Shows the majority of existing

operation. From that same location the southern nob. This location with all the activity on the southern portion will be well hidden. This is taken of the highest portion of the site just of McNavy Road. Looking toward the southwest corner of the area. But the entirety of the area as you see in this slide would be what you set aside as a wildlife habitat area. This is taken from the same location looking out into the island. Only a small portion of this and that would be in Phase III. Would be removed as I say, re...in the mountain around the westerly ...That's it.

Chair Yoon: Make note commissioner Fry's ....nes.

Other Voice: As I said, the first decision you need to make is regarding the plan amendment in the goal 5 process according to the rules that I listed by number. There are a number of things that need to be determined, the first of which does quantity, quality and location. The applicant has submitted material that indicates that there is over 220 million cubic yards of aggrt material contained on this property. There's a report by HJ Slicker that indicates that the rock at this location is of excellent quality and was a respective location the quar is located just north of the metropolitan area which is the major consumer of the material from this pit. The second stage of that analysis. An impact area must be identified and existing or potential conflicting uses addressed within that area. The impact area that was identified with respect to this operation was 1,000 ft surrounding all sides of the property with the acception of the highway 30 frontage where highway 30 was the limit of the impact area. Within that area there are 4 existing houses and 3 potential houses that could be built. All of the property in the area is zoned multiple use forest and as you know the second ... of your hearing tonight involves the goal 4 process that potential for those 3 houses that might be developed becomes even greater than under existing MUF rules. The next stage of the goal 5 analysis requires evaluation of economic, social, environmental and energy consequences of the goal 5 resource. And in that process you must evaluate the consequences of protecting the metal resource from impacts of the conflicting use, verses the consequences of protecting the conflicting use from the impact of the goal 5 resource. The staff report on pages 36-42 makes these evaluations and from that we conclude in summary with respect to the economic

that protection of this resource would result in lower material costs in metropolitan area with respect to the social aspects who would provide a supply for both public and private projects that require the material and also create an employment base within the metropolitan area. Environmentally the operation will continue as it does today to comply with all applicable environmental operation requirements. And with respect to energy, it saves energy it saves energy by providing a material source near the major consuming area. Further, the protection of the goal 5 resource would satisfy state wide planning goals, 1, 2, 4, 5, 6, 9, and 11. And that is discussed on pages 39-42 of the staff report. From that evaluation, we've concluded the site should be designated 3C. And that means that the resource should be protected through conditions that limit the impact of conflicting uses on the goal 5 resource, in this case, the mineral aggregate resource on this side and the last stage of the goal 5 process is a program to achieve the goal and that is detailed on pages 43 & 44 of the report. The major elements of that program would be to establish the buffer areas that I referred to and along with those buffer areas would be provided conservation easements that would protect those areas from many times of development and another element, major element of the program would be to coordinate development of the reclamation plan with the department of geology and mineral industries with the multnomah county planning commission and with a wildlife biologist. And the last element would be to require deed restrictions of future conflicting uses so that they will not, excuse me, which would require that they not object to lawful mining activity being conducted on this site. The second decision that you need to make is the request for the conditional use permit for the 10 year period with the continuing existing hours of operation. The burden of proof on any applicant for an action is excuse me, the burden of proof is on the applicant for any action. This case, in this case, the applicant has provided extensive narrative describing, compliance with each and all of the applicable approval criteria for a conditional use permit. Those narratives are contained on pages 6-25 of the staff report. After each of the applicants narratives the staff has made a comment and several of those comments contain recommendations for conditions. So with that, the staff would conclude that the applicant has carried the burden for the requested conditional use permit

for the period requested and the hours of operation and recommends approval of that. I do have a couple things that I neglected to provide you, that I will do at this time.

Other Voice: Peter, just for your information, if they take off a half an hour and then the applicants can take about 45 minutes and then the states gonna take up about a half an hour.

Other Voice: The first thing that you're receiving is all of the correspondence that we've received to date, with respect to this application. The second thing that is being passed along and is mentioned a number of times throughout the staff report is the wildlife study, which I'm not sure you have a copy of. So I'm including that as part of the record in this case. And I have one additional. And the last thing I handed to you was a some material that we received on the third of this month from the Oregon Department of Transportation. As you can see, it recommends, well I can just read through it, recommends that from the access drive a half mile southeast of the Columbia River highway the owner, shall keep the roadway free of mud and gravel to be determined by the visibility of the painted what shoulder line and the yellow center line and maintain the ditch for this half of the section, and secondly that the installation, acceleration/merge area for trucks turning right to enter traffic on the highway. After I received this I conferred with a representative from ODOT. They indicated that these are things that they can require of anytime of the owner even tomorrow if they so requested. They would just like to have them be considered at this time and so in addition to the conditions that are attached to recommended approval for the conditional use permit as you see on the bottom of that memo. I would recommend the fifth one to be added that incorporates these comments with a stipulation that the timing of the acceleration merge lane be determined by ODOT. They indicated to me that this wasn't something that wasn't needed today but they wanted to reserve the right even though they have it to require installation of that at some future date.

Other Voice: Does the applicant have a copy of this?

Other Voice: He's shaking his head yes. So I've taken up my half hour so with that I'll turn it over to the applicant who will further describe the proposal.

Other Voice: I just have 2 questions, first one is, the way I understand this process is that we identify this site as an important site to the state and through the comprehensive plan amendment. Then isn't there suppose to be ESEE analysis.

Other Voice: And the staff report contains that.

Other Voice: And then after that, after we've completed A, B, then we go and review the conditional use request.

Other Voice: Yes, as I described at the start of the hearing the first decision would be the minimum of the plan and the second the condition use permit.

Other Voice: But do we make any decision on the analysis.

Other Voice: On ESEE analysis.

Other Voice: You'll need to recommend that it be incorporated in the comprehensive plan. Yes. Or modified or not incorporated.

Other Voice: What I'm getting at is, it seems to me that it being a state resource is one issue. And in fact it may be a state resource but then after you go through the analysis you may discover that other resources are more important than this resource and so I'm trying to figure out where we make a decision on that because that's not the same decision as agreeing that this is a state resource that should. I just see them as 2 separate decisions. I see the first decision isn't a state resource, yes or no? And that the comprehensive plan amendment. The second issue is should this be extracted which is what the purpose of that analysis is. So somehow I was wondering where that second decision gets made. It's not a staff decision.

Other Voice: But if you want to break that complan decision into 2 certainly that's your prerogative.

Other Voice: Well, I definitely see it as two separate issues.

Other Voice: Excuse me, you weren't here for the start of the hearing and I explained that there would be a representative from LCDC who could best describe the whole goal 5 process.

Other Voice: In the interest I'll be really fast. The other thing in the staff report. It mentioned that maybe we should save conditional use questions until

later.

Other Voice: Right, they have use after we go through complan decision process.

Other Voice: Great, thanks.

Chair Yoon: The applicant.

Frank Parisi: Thank you Mr. Chairman. My name is Frank Parisi and I'm the attorney for the applicant, Angell Bros. As you probably know mining is a transitional land use and if you do it poorly you create problems and if you do it well you have opportunities to reshape the land in ways that may even be better than when you've started. Tonight we're gonna deal with the public issues. But there's a lot of technical issues involved in mining and I think the state will bring up a couple of these from their department of geology representative and from the DLCD representatives. Rockpits are they are important to the economy and the largest single cost component is transportation. At Angell Bros. right now the cost of 3/4 minus is about 575 a yard, FOB Angell Bros. if you're buying it from a competitor who is traveling from the nearest source that's comparable out in Scappose and the market is the Portland Metropolitan area you add \$2 to the price so for that reason alone. You'll find rock pits near two things, they're near major urban markets and they're near major highways and that's why the Angell Bros. resources is so valuable. It's sited right. The products that it produces are specimen landscape rocks when you can find a good one. You know the Japanese Garden kind of rocks. Drain rock, very clean oil rock for asphalt. Railroad balast and lately, clay cover for landfills. The St. Johns landfill right now covered with clay from the Angell Bros. site. The challenge that we have when we're seeking a permanent is how we manage the traditional problem with dealing with a transitional use and how we end up maximizing the benefits for everyone and the tool that we have to follow that I think you're gonna become experts in is a law, regulation actually goal 5 and the goal 5 rule. I'm not gonna deal within detail with that because we have DLCD expert, but the basic idea of it is that you identify significant natural resources including consumptive natural resources like aggregate. You look to see if there's conflicts with these resources. If there are you analyze the consequences both pro and con and then you make a

decision. Are you gonna protect a natural resource or are you gonna protect the conflicting use or are you gonna protect them both. I've done a fair amount of work in this area and I tell you the key to making goal 5 work is mitigation. In other words, you try to keep the situation from developing into an entirely an either or situation where the resource can trample upon the conflicting use and you also try to prevent the situation from degenerating into the conflicting uses being all important and there is no room for any extraction of mineral aggregate resource. Before I get into some specifics and show you a few more graphics that depicted the site and the phasing and that sort of thing. Let me give you a summary of the voluntary benefits that we think have come out of the goal 5 mitigation process. The first one was, we agreed to delay the goal 5 process for a year to allow the potential conflicting use of wildlife habitat to be studied. And we didn't have to do that, we could have forced the decision 2 years ago, but since it seemed to be in everyone's interest to study it. We delay it for a year, then it took 2 years, we're finally done and now we can move on. But we have more information now and we have a better opportunity to mitigate. The second benefit was, we gave up almost a 100 acres in visual buffer areas to make the site as invisible as impossible to the Sovey's Island people. The third benefit was that Angell Bros. and the gentlemen who owns our property. We're simply a lessee with a 50 year lease have agreed to give up conservation easement areas in addition to the visual buffer areas that total half the site and we set the conservation easement areas exactly where the counties wildlife consultant said they would make the most sense. The fourth benefit was that we agreed not to put any security fences around the site so that if there were wildlife traveling through we wouldn't lock it. The next benefit was we agreed to a phased approach to reclamation so that we create a staging area in the middle of the site and then for the tops of the hills which are the only areas that you're going, the only new areas that you're going to be able to see from Sovey's Island. We can go into those areas

Side B Tp 1

We can estimate it with reasonable accuracy that it will be about 3 years. And I have a map I think I can demonstrate that on. The next benefit was, we went to some of the neighbors and obtained conservation easements from them. And we did this because of the friends of forest park thought we'd

have a better oppo..ability to do it and we obtained the one that was missing which was Mrs. Rubel who lives up in a notched area that you'll see on the map. We also agreed to incorporate into our reclamation plan as steady considerations. In other words, when you create benches in a hillside they can be as regular as an architect can draw them but they don't look right in nature. So what you want to do is step back and make an aesthetic judgement. Should I put a wrinkle here, should I put a cut there and we've agreed to do that and let the county in design review incorporate the comments of citizens. We've also agreed to let Doe Gammy, that's the department of Geology and our mining lingo. We've agreed to let them experiment with the artificial coloring of rock faces which will make the site blend into the background quicker than it would otherwise occur. And this is something that's been done successfully in Colorado, it hasn't been done in Oregon but they're starting it in the gorge and if it turns out to work, we can certainly try it on our side. The next benefit is something we're doing now and we're gonna continue and that's we vacuum highway 30 on friday night to make sure that it's free of rocks on the weekend for cyclist than it might be after we're hauling rocks on it. Now with all those benefits to the public, obviously there is benefits to us to. The main benefit is that we get to stay in business. Our payroll is about \$500,000 a year. We have at the peak. We have 17 employees, the average pay is about \$12 an hour. We have an indirect payroll of another half a million dollars and this is for people who buy rock from us and employ drivers and haulers and that sort of thing. I think that the other benefit and this will sound like boasting but I think but it's true is that we have never had a environmental violation, since 1976. And hopefully with all the mitigation and the careful planning that is going into this, that record will continue. We also hope our record of no disturbance of our immediate neighbors will continue. We have a neighbor, Mrs. English who lives within about 3,000 feet of the site and she has been there for 45 years and she's never had a complaint and I think she sent a letter to the county to that effect. Another benefit, and this is hard to measure but it's definitely there. But the expansion permit that we're seeking gives us a much longer life than we would have without it. The longer life enables us, it gives us a lot more flexibility, lets put it that way, then a small rock pit, someone on 40 or 80 acres that is gonna be in



business for 5 or 10 years. It gives us the ability to be very flexible when citizens come to us and say we're concerned about wildlife or scenic issues or whatever the issue is. And it enabled us to give away about half the site. Now we wouldn't be able to do that unless we had a very long life for this site and again we're not trying to open this site all at once, we're simply trying to exist for a longer period of time. As I'll explain when I, in just a second here. I think the useful life of the mine is probably on the order of 30 years if our current volumes and the current incremental increase that we're experiencing of about 8% a year continue. So we didn't...this is something we've looked at in the last few days but it looks like that's about what we can expect. Now let me get into some of my graphics here. I don't know if everyone can see, given the distance that you are, but this is an aerial photograph of the site. The reason I brought it is I wanted to show two things, one is I wanted to show the correct but I should say the nearly correct drawing of the conservation easement area. Now this has not been surveyed so it can't be entirely accurate, there's some historic from the angle of the photograph but the way that the staff has described the conservation easement is on page 4 of the staff report and basically it runs from this corner which is the southeast corner of the site through a line that is the radius of a circle working on this notch area, it runs on a line tangent to that circle up here. It's about 45 acres which we will not mine. And that's what OD...asked for and the wildlife... The other thing I wanted to show you in this picture is these are...the buffered area that is shown on the exhibit C which is a blow up of the USG... Depicts it way down there and it doesn't show that it includes a large forested area. This aerial photograph shows a large forested area I wanted to see how big that is and related to... And now this is a full size version of exhibit C which is well up the USDS half of the area. Well, it's approximately the same scale but these maps are not that accurate and you know its close. First thing I wanted to show you is we drew the wildlife corridor wrong the first time out. That was I must say pointed out to us more times than we care to hear. We finally got it drawn approximately right but it hasn't been surveyed so it will have to be laid. This is staging area 1, this is staging area 2, this is staging area 3 and this is staging area 4. This is the existing processing stockpile area and the two buffer areas are here and here. Staging

area 1 is about 62 acres. Staging area 2 is about 28 acres, staging area 3 is about 27, staging area 4 is about 77 acres. The buffer areas are about 600-620 feet in height. The mask shows the ground elevation is being anywhere from 40 to 500 feet but it doesn't take into account the.... We measured these areas from higher areas in the site here. To see that they were at least 600 feet high. What this means is anything at the 600 feet or below probably isn't gonna be visible unless you can see up through the keyhole opening in the mine. Now, the whole idea of the phasing was to take a middle area down and then work in these upper high areas relatively rapidly so that you could take them out of the new... The first bench that we planned to construct up in staging area 3 will be about 2,360 feet long and it will be consume about 1.6 acres of land. We think there will be about 33,000 yards of useable material in that and this is..all of this is trying to give you some idea how long will we be up here. We think we can be out of staging area 3 in 3 years from the time we start. We didn't know that until the last few days, but that's what it looks like. We in planning this, we estimated that the average bench would be about 30 feet wide. And that's because the wildlife consultant said 20 feet which is the normal department of geology recommendation might not be ...to wildlife ..want 40 feet wide so we average... Another question that came up when we met with the citizen groups and I never seemed to satisfy people was people seem to believe that the entire site should be open at one time and the fact, what we find is in looking at this is about only 93 acres will be open at one time and that's composed of the 28 acres in staging area 2, this area. 62 acres in staging area 1 and 3 acres at a time that will be open in staging area 3. So at the point where the maximum area is visible and in mining, there will be 93 acres and that will come down every year after that. The bulk of the material in this site is in staging area 1 which is pretty invisible in staging area 2 which is all... At present rate of production, like I said before, they'll probably, if we can sustain it. If the market wants our product and the northwest economy continues to avoid a lot of the recession. This is a valid 30 year rock bed which is about the same time to occupy the land as a clear cut... There's another scenic issue that I think I'd like to discover... This is a full size version of exhibit P in our application which I have to apologize for but we submitted it on the required size of 8-1/2 X

11 and that size I can't even tell... What I'd like to show you is pictures like the pictures that staff showed you they were taken with a 50 mm lense. And basically what they show you is what is presently visible and hopefully they show you what will be visible and the point that I'm trying to leave with you, actually there is two points. One is it's already pitiful, there's nothing we can do about that except to reclaim it. but the second point is it isn't gonna be that much more visible the way we figured it. The numbers on the map correspond to the locations in which the pictures were taken and each picture has a number. See, these dotted lines on Sovey's Island are areas where the site is not visible at all. And most of the island is that way, on most of the island you can't see hide for hair the Angell Bros. site. But in some areas you can. The present site is visible. The worst view of is right across the Sovey Island, because you can see into the key hole. And you can see...but there is two things to notice about this slope, one is, I don't think you can see it from here. In your deliberations when you look at this up close you can see it. And that is about 1/3 of the site has already been hydroseeded and it's already coming back green and the second thing is that we're going to reclaim by hydroseeding in 1992 and 1993 the upper dimensions. Another place where you actually can see the site is from the Sovey Island school you can barely make it out. I think that was the location of the far off slide when Bob couldn't see.. and you can see a little bit of this bald hill but what's far more visible is the clear cutting and that is something that is completely out of control. Those hills are gonna be clear cut as long loggers want to clear cut them. The counties can't do anything about that. Another place where you can see the site is from the Ivey Hollow house and that's picture #2. The script number picture confirms what I saw when I was out by the Hollow is that you can see it from the driveway but you can't see it from the house and you can't see it from the .... and that's a big distinction. I think that's about all the show and tell I have but I have just a few more remarks and I don't think I'm gonna take all 45 minutes in the interest of getting through all the major issues. I want to talk for a minute about wildlife. After the county got done studying the wildlife corridor they the consultants came to the conclusion that they couldn't say that there was a wildlife corridor with a 1 year and \$25,000. And maybe you could say that if you had many years, if

you had radio tracking studies, if you had genetic studies, what they could say is was that there was wildlife up there and they did some animal counts and they could say that it was a prudent thing to do to try to protect the wildlife's ability to circulate between forest park, through our property and beyond and the consultants also said that the real damaging thing to wildlife is residential development. That's what brings dogs, that are predators on some of the smaller animals, that's what brings human activity, pesticides, herbicides, that sort of thing. The next most damaging thing was clear cut although the consultants found that was only temporary and the quarry was said to be a minor problem. Now that didn't surprise us because the quarry has been there since 1958 and there are still animals and they are used to us by now. But in any event, the consultants thought a 200 foot wide corridor would be a protected measure and we discussed that with them and it became evident although 200 feet was recommended really you wanted a 200 foot corridor each of 200 foot corridors on the edges that make sure that the inner 200 feet was very well protected so you had 2 extra margins of safety. We agreed to that, in fact we agreed to an additional 25 foot wide corridor to make sure that we were we had a triple margin of safety. So the way we measured our easement was a 625 foot wide corridor. This proposal satisfied Joe Pasic of ODF&W and it also satisfied Ester Leb, but it's just the beginning. When we hopefully get the permit and hopefully enter the expansion area. The wildlife consultants are going to visit the site with the department of geology people and with the county to do continuous monitoring to see if we are having any beneficial effect on the wildlife or not. What this means is that they may help us reconfigure the benches, they may help us make different planting decision. They may tell us that benches should be back sloped so that they hold water if water is needed up there in a dry year. So the fine tuning can still take place and we've agreed to pay the fees, the professional consulting fees of Ester Lub during this period of time. We've also offered, although this hasn't really reached a level of agreement or even concrete proposal but in our view as we get done with mining. Virtually the whole site could be something that was available for wildlife if anyone cared to make the effort. No one has taken us up on that but that's something that certainly could be tried. The other thing that I think I mentioned this before, is that the entire

site isn't going to be disturbed all at one time. It's gonna be phased and that should be beneficial to wildlife. Now before I give up the floor to the agency people. There is a couple of questions that I think it was on the ESEE analysis that Mr. Hall was mentioning that I'd like to emphasize again. On the question of what are potential conflicting uses in this area. The only one anybody could really find was residences. And what we're relying on is that the material that we're going to be discussing at 8:30, this new very restrictive forestry zone, that is gonna make residences virtually impossible in this area, unless they're so well sited that they would never interfere with us. The other, I guess you could call it a potential conflicting use although we consider it more a supporting use is the wildlife in conservation issue. But really without out expansion you don't get the easements and the wildlife isn't benefitted and with our expansion there's gonna be additional studies, there's gonna be additional protection of habitat so that is not conflicting use. I guess the bottom line on the goal 5 ESEE analysis, it's funny, it doesn't come out right away, but the more you study this the more true this seems and that is where we are is we are in an area where you can't do almost anything because the land is so steep, it's so difficult to get into. There's no services, the zoning is so restricted and really, what you end up with is, this is resource land that is gonna be in resource use just about forever and as long as mining can be compatibly sited it ought to be sited. That's the end of my prepared remarks but I do have a couple of items that I wanted to add to the record. I'll just tell you really quickly what they are. There's a lease agreement that shows that the entire 397 acres is actually under lease. There is a letter from the owner of the property saying that he'll join in the easements if an approval is granted. There is a support letter from Don Joyce that I don't think is in the record yet. And I happen to have a copy and then the last thing is there is I have a couple of pages from an old ODOT manual that gives the ODOT estimation in 1984 of how much additional ODOT would pay for hauling aggregate material. And the estimate back in 1984 is 18¢ per ton mile. I couldn't find the 1992 version which I'm told is 25¢ a mile. But I thought I'd put this in for your information and like I say our estimate of the hauling cost to our nearest competitor is an additional \$2.00 a ton for the Scappose truck and that's the end of my prepared remarks although I think Skip has a statement.

Anderson: My name is Skip Anderson, and I am the president of Angell quarries. I'd just like to make a short statement and then I'll reserve the time to answer any questions I'm sure your gonna have later on. First of all I feel that Angell Bros. has been patient and more than willing to work with the various concerns that have been expressed to us regarding this expansion application. We have agreed to keep the opening to the quarry as narrow as possible for visual concerns. We have agreed to mine the quarry phases to keep expansion area that is visible to Savey's Island to a minimum for the longest time possible. We've applied for an additional 283 acres of which 2 plants protect over 140 and needed easements or buffer areas. The land owner has refrained for over 2 years while a wildlife study was being completed for logging the buffer area that we are now willing to protect pending the outcome of this application. We received a letter from him last and he's becoming more impatient, we originally told him that this application and wild life study would take about a year. This is the first response we've had from him since then wanting to know why it's taking two years. Thank you.

Other Voice: Just for the record, you have 6 to 2 minutes left.

Other Voice: I just have some clarification questions and you'll have to excuse us. We got almost a foot high pile of paper that's kind of tough as volunteers but my understanding is that the wildlife quarter minimum size would have to be half a mile and then you said 300 feet or 200 feet and I can understand what the difference is there.

Other Voice: The wildlife study said was that a reasonable guesstimate was .5 miles in a special area that is, doesn't encompass all of our site. In other words, if the area starts at the ridge line and goes eastward I think we're gonna have some difficulty determining exactly where that was but our portion of it was the 600 feet and then the other portion of it goes up towards McNamy Road and I don't know if it goes beyond McNamy Road or not. But that's where the .5 miles comes from.

Other Voice: So the .5 miles, is there an upper point or is it like a floating half a mile of which you're taking 600 feet instead of say a 1,000 feet of it. Is it like established at the upper end and then you're taking 600 feet of the toe of it or you just

floating it down.

Other Voice: I think it's...that's a difficult question to answer but I think it's a floating half a mile and it's also a temporary problem. The reason they came up with this particular size was that there was recently clear cutting of the area and there's houses near by. Now as that forest canopy grows over this entire area may not be a critical area anymore. It kind of depends what other people do on the land.

Other Voice: OK, so the 600 feet basically what you feel weighing the value of your resource verses the need to support this wildlife. You felt 600 feet is the proper balance.

Other Voice: We basically asked the consultants, what do you want. They said 625 and we drew it on the map and said fine. The other question I had is, I have to admit having sat through these hearing before but not having a very good memory. I can't remember if one, did you purpose this entire site. So we're talking about the exact same site. That you purposed before and I remember that we talked about condition of a buffer zone.

Other Voice: Yes.

Other Voice: Can you remind me whether you are purposing to extract out of what we recommended would be a buffer zone.

Other Voice: No.

Other Voice: OK, thank you.

Other Voice: I believe you said something about that you had a long projection that this business would go for 30 years. I believe you said something of that sort. But I noticed a conditional use permit is only for 10 years and I'm not clear on this discrepancy of 10 years and 30 year.

Other Voice: Neither are we. When the plan is amended, presumably the conditional use type of decisions will have to be consistent with the plan amendment to allow mineral extraction. We think the plan that your code shouldn't have a time limitation. If the plan says you're gonna mine the site but all we can apply for currently is 10 years. So we have to come back in some matter. At the end of 10 years.

Other Voice: Commissioner Engle I have a question for you. On the second board end you had made reference to possible visible impact from the expansion of the quarry. I didn't really clearly hear what you told us about that. I was wondering if perhaps you could go to the board and explain it one more time.

Other Voice: The area that will be the most visible as far as we can tell is an area that will be higher than 600 feet because that's the height of these nob's that I'm indicating with my hands here. The north nob and the south nob, so unfortunately these concur lines are not, what they are is a ground level. They're not the tree top level. But in any event. The area that is potential visible. You see up here the elevation is 800 feet, so that's gonna be visible and the task for us is to advise away so you didn't make it visible for a long period of time. If you made it visible for the shortest period of time and that's when someone asks a question, I mean when Bob Hall said that on the Sovey Island site you can see part of a hill that was going to be visible, actually that hill is going to be entirely removed so even though you could see it instead of mining it and then leaving an area before you can see the kind of orange colored .... top soil. Actually the whole hill disappears because of breakdown below the 600 foot buffer area. That's what I was trying to explain.

Other Voice: Would it be save to say maybe less we'll say 10% of the total site area might be visible about 600 feet, the one little corner.

Other Voice: It's gonna be more than 10%. It'll be all of this area, down to the 600 foot level and then where ever its above 600 feet I think will be visible although up here the material isn't that good and we may not want it at all.

Chair Yoon: Thanks, commissioner Hunt.

Hunt: On the existing permitted sites we currently have, how much rock is left. How many years worth?

Other Voice: I don't know, Skip knows.

Other Voice: We've done calculations for the entire area but we haven't had calculations for the 42 acreage expansion.

Hunt: Can you recall in 89 on the last permit process you



gave a figure at this point in time. And I'm just wondering.

Other Voice: Over the last two years since we've moved to the edge of the 43 acreage.

Hunt: You gave an estimate as to what you thought was gonna be there, I'm just trying to refresh my memory.

Other Voice: I gave my best estimate this time is that we're about a 1/3 of the way through the 43 acre expansion that we got permitted in 1990.

Hunt: OK, and the other site that you had prior is done.

Other Voice: The remainder of it, you mean before the 42 acres. For basic purposes its ....

Hunt: And then on the current sites, when would douglas fir trees be planted, when will that process start on the current site.

Other Voice: On the current site we won't be able to plant douglas fir trees until we restage area 3 because we'll be continuing to move it back.

Hunt: Can you give me an idea of when that would be?

Other Voice: I think our best projections right now are that we would be in staging area three in 8 to 10 years and we'll have staging area three done in 3 years or less.

Other Voice: Any other questions?

Other Voice: May I clarify one point to Ms. Hunt. I think I left this out in my presentation that in staging area one the plan is to bring it down from it's present height to about 450 feet. That puts it down below the buffer areas. Then you stop and the staging area 1 and then move to staging area 2 and 3. And then you progressively grate the areas down and then you ... staging area one as you come forward down through about 100 feet above sea level which is the present for it.

Chair Yoon: Thank you Mr. Paresi. Bob, the state representative here. Why don't you go ahead and introduce them. OK, we have Jim Sits who is the local LCDC representative of the Portland area.

Other Voice: Then after that it will be the geology department.

Other Voice: Yes, that's correct although I don't know if that gentlemen ....

Jim Sitsfen: Sorry that LCDC choked Bob up so..I am Jim Sitsfen and the Portland area field representative for the land conservation of the velamen commission with the department of land conservation and development. I've been asked to come to share with you a little bit of some of our view about the application basically we believe that your staff has put together a credible report to you and set a recommendations in support of the recommendations that they have made. We can say that in good measure because we have had considerable concern about aggregate operations throughout the state, knowing their significance in the economy and in the process of development that occurs within the state and knowing that the longer good resource sites are left unprotected and therefore available for their use. The more difficult it becomes. You've already heard testimony to the fact that the travel distance from the source to where that material is gonna be used is extremely important factor in the cost of the resource and therefore the cost of the development that it supports the process of the future of continuing to be able to protect new sites that are proximate to where development is occurring is gonna become more and more difficult as that development happens. And so we think it is important as a statewide policy that we act now and as expeditiously as possible to follow the requirements of the law and state wide goal 5 which is the goal that applies to this source in order to get these resources adequately protected. That is not to say that we're not concerned about some of the other values that are represented in this site and in the area that this site is a part of. And in particular the two that have been talked about extensively already namely the wildlife habitat and the visual or scenic values that are associated with this area. It's at this point then in part from my own planned presentation, but also in some respect in response to commissioner Fry's earlier questions. I would like to take a moment to retrace what I understand and according to goal 5 to be the situation regarding this site. Your information has already indicated that there was an action taken by the county in 1990 to expand the operating site of Angell Bros. It was at that time in the context of the counties periodic review process, which is again

a periodic occasion that the county is asked by the state to evaluate its plan and to bring it up to date with some of the new requirements that may have been enacted since the time of their previous review. In the middle of that process this site was identified for designation as a significant resource site. It was in 1990 that it was indicated in the answer back to Mr. Fry a moment ago the entirety of this site was brought forward to the county with evidence of the location, the quality and the quantity of the resource that's there. And the county made the determination that this was in fact a significant aggregate resource site and identified that as such within the county plan. This is important because as we understand and deal with goal 5. That is the first step that is required of inventorying resources in this case, the aggregate resource and specifying with information what is quantity and quality in location are and then determining based up that information in your evaluation of it, whether it a significant site, if it is found to be a significant site which the county did find in 1990. The goal says that it should be then placed in the plan on the inventory of significant aggregate sites and so we believe that this is the stage that the current application was brought, was there when that current application came in. That's the stage in which we're acting now if you will with regard to this significant site. The goal 5 rule further says, and this is where history and the rule depart this little bit. The rule says that when you have a significant site you are as a county to proceed on the basis of the best available information to make a economic, social and environmental energy evaluation. The conflicts that relate to that site and based upon that to determine either that you're gonna fully protect the resource, you're gonna fully protect the conflicting uses, or you're gonna somehow balance those separate values. Rather than in 1990 the county proceeding on the basis of the best available information. There was an agreement that was reached between a number of community parties within the area, ourselves, the county and the Angell Bros. people to get the designation you made in 1970 and reserve the planning process after you have better information on the habitat a year plus to come to Fruition and all that information is available. In the mean time, before the county has taken any actions regarding that significant information about the habitat area that we are talking about, the Angell Bros. came in with a new application for a

conditional use permit. We believe that where that brings you then in the process is that activates that job of doing the ESCE analysis on the balance of the site and preceding to make a decision on the basis of the plan policies that were in effect when that application was made. The plan policies in effect, wished me that you meant that you also then picked up the process that you left suspended in 1990 for the balance of the site conduct the ESCE analysis which is in your staff report and proceed to a decision. So we believe that the analysis here is correct. They have identified in the ESCE analysis a impact area. They have evaluated the types of uses that are in your plan that can go on within that impact area. They have looked at the relationship of those to this operation. The area in the knots that has one house and a couple locations on another side of the property where there is a lot where a dwelling could be permitted within that 1000 foot impact area has been evaluated and you have appropriate conditions that balance those impacts and the mining of this arrogate site in those locations. We believe that is accurate and that the recommendation in the plan amendment portion of the decisions before you to recognize this significant site with the set conditions are there based upon that confic's analysis is an accurate representation which would say that this site is subject to being able to be mined almost in its entirety. In the conditional use process, you have the further actions on behalf of the applicant to reduce the amount of the acreage that your planning process is shown to be significant and lienable to reduce them to the buffers and the easement areas that have been identified. We believe that this is a level of protection for the findings of that habitat that were made within the habitat study that not only complies with what the authors of that study have indicated to be useful, but in regards to the fact that the habitat's study itself showed this as a habitat and not necessarily a corridor. So that long range movement of wildlife is not the significant issue, it is a matter of reserving the habitat area and the fact that as we have seen this entire site will not ever be totally open to mining it will be systematically recleaned as the benches are opened and closed at the top. This together with the easements and the buffers provides in conjunction with the other habitat area surrounding this site, a level of appropriate protection for the wildlife values of the area. Our position is that the staff, working together with

the applicant has accurately picked up the process that you left in 1990, has given some careful consideration on the part of the applicant to the findings of that study and have provided you with a balance between the two that in the conditional use process will allow them to mine a significant resource close at hand within the Portland area at the same time to now and in the future protect the habitat area and mind you restore the area to a level of habitat liveability that will be there for years to come. As has been indicated, there is on the offer sheet, if you will, an opportunity for the county or some other private non-profit entity to benefit from that long term position of this area as a habitat and we encourage you to look at that opportunity sincerely and to take it up and to make it available to the people of the Portland area.

Questions: You had made a point that to bring to the attention of Multnomah County the subject property as being a significant, aggregate resource site, were you also able to identify other potential sites in Multnomah County that would fall into this kind of category as being a significant, aggregate resource site?

Jim Sitsfen: The county made that findings of significance on this site. There was one other that was brought to the county at the same time out in East Multnomah County, in Fersher Fives neck of the woods. Which I am sure you will hear about more again sometime as well.

Transcript  
CU 14-92

September 21, 1992 Meeting

- Chairman: This is a continuation of PR7-92/CU 14-92 applicant requesting amendment of comprehensive plan through ESEE analysis, a program achieving state planning goal 5 and also a conditional use permit application. Just to refresh everybody's mind because I do have it all blocked here. The opposition has 66 minutes remaining for their testimony and the application has 62 minutes remaining for their rebuttle. We'll continue with testimony from the opposition. I would advise anybody who would like questions to be asked on cross examination of the applicant, that they submit them in writing to the chair and we'll make sure they're asked. So, without further ado let us move on and the opposition may continue.
- Other Voice: Mr. Chairman, my recollection from our last meeting is didn't, weren't there three or four people in line when we cut it off and didn't they submit cards and I think...there were some folks in line.
- Other Voice: It was for the previous case not for this one, this one was cleared up.
- Chairman: Was it? Is that true? Go forth.
- Neil Kagen: Thank you. For the record again my name is Neil Kagen, I'm an attorney, I represent the Friends of Forest Park. My address is 1050 Yawn Building 522 SW Fifth Ave. here in Portland and there are other individuals who wish to testify in opposition and we have to the best of our ability coordinated our testimony and others will be testifying after I do. We're here once again to ask you to deny the application for a plan amendment and for a conditional use permit. This planning commission makes many decisions all the time about land use planning and the county. Some decisions are very important and far reaching decisions such as your consideration of amendment of your ordinance relating to goal 4. Some are relatively minor having to do with approval of a particular dwelling or something of that sort. The decision you're being asked to make here is one of the big ones. The decision you make is gonna be a defining moment for the Portland area. It's going to decide whether Portland is going to remain the liveable place that

it is or whether you're gonna sacrifice that for the questionable values that exist this site for aggregate resources. I wanted to address both the plan amendment and the conditional use application. Beginning first with the plan amendment.

Other Voice: Can I interrupt a minute? I just want to make a point there. Chairman Leonard is excused from this hearing.

Neil Kagen: First point I want to make about the request for amendment to the plan is county you are not compelled to make an amendment to the plan because the applicant has submitted an application. The county is within it's own rights to decide to amend the plan or to not amend the plan. It is within your discretion. The fact that they have made an application doesn't trigger anything. Either state law or the counties regulations require you to make an amendment to the plan for a goal 5 resource in response to an application. The county is compelled to complete the goal 5 process in order to complete periodic review but that's something different. You can wait if you so choose to make amendment to the plan. The fact that they came in and asked you to make one doesn't require you to make an amendment to the plan. So you can wait until you have adequate information, enough information to satisfy yourselves about the appropriate course to take. And that includes making a 3B decision, in other words, allowing the conflicting uses at this site. If you make a 3B decision, you're not saying that this area can't be quarried. You're not saying this area won't be available for mineral extraction in the future. All you're saying is for right now it's not gonna be allowed. It's still gonna be there if you allow this site to be used for open space for wildlife habitat. Those surface uses of the land aren't going to destroy the availability of the aggregate material at a later time if you want to make a decision at a later time to allow this quarrying to go on. So it's important for you to know that. First of all, you don't have to make a decision and respond to this application and secondly, you can make a 3B decision and that will preserve the use of this site later for aggregate material when you have more information. Another important thing to take into account considering the plan amendment is the impact area. Your staff has arbitrarily defined the impact area as being property within a 1,000 feet of this site to the west and to the south and highway 30 on the east and

the northeast. That definition of the impact area does not take into account the down stream impacts of development at this site. Its very important under goal 5 impact area means not only the goal 5 resource site itself and the area around it that impacts that resource site. The impact area also includes property affected by use of the site for aggregate quarry. And since your staff defined the impact area in the way it did, it did not take into the account the downstream impacts, the impacts of quarrying on the raft and burlington bottom wetlands which are across highway 30 to the northeast in an area that is drained by stream C which flows through the quarry site. According to the hydrologist who testified last time on our behalf, the quarrying is going to cause a high degree of sedimentation in stream C and that is going to drain into the wetlands, the rafton burlington bottom wetlands and that is going to fill the wetlands and its going to ruin it's values for wildlife and it's value as a wetland. And that is a wetland that the county itself has already deemed to be significant. It is a goal 15 resource. It is a resource found in the Willamette River greenway. The staff and the applicant have not addressed the impact of quarrying at this site on that important wetland. This is a wetland that was acquired by the Bonneville Power administration to fulfill his responsibilities for mitigation for wildlife. And EPA acquired it at the instigation of among others your own parks division and your own parks division right now is engaged in developing a comprehensive plan to manage the rafton burlington bottoms. So at the same time you're being asked to make a decision that is going to adversely impact the wetlands. The parks division is developing a plan to try and use that area for mitigation. So you'd be working across purposes if you were to prove the quarrying at this site given the adverse impacts that would occur down stream. The fact is the benefits of saying no to quarrying are outweighed by the costs. Feasibility of reclamation for instance is a linchpin of the applicants claims that quarrying at this site will not be adverse. That the cost will not be that great. In yet, there has been no prove offered, no prove whatsoever that this particular site can be reclaimed. You had testimony last time from Mr. Lynch who is representative of department of geology and mineral industries who said that he's seen sites where there's been successful reclamation and he's seen sites where there has been very poor reclamation. But he didn't say that this site could



be reclaimed. He didn't give any evidence that sites like this site can be reclaimed. So the applicant is asking you to make a decision on the basis of what's really just a pipe dream at this point. There hopes and desires cannot translate into any kind of assurance that this area can in fact be reclaimed and there insistence that it can be reclaimed is a basis for them saying there will be no adverse impacts to wildlife and that this area can be used in the future for forestry. Now, in order to make a decision about the appropriate designation of this property whether 3A, 3B or 3C. You have to go through the ESEE analysis, Economic, Social, Environment and Energy analysis and there's been an attempt to do an ESEE analysis by the applicant and by the staff but it was compromised at the outset because it failed to define the proper impact area as I've already described. But lets talk for instance about the economic values of this site and the competing uses and consequences of different uses at this site. The forest value at this site is extremely high. The soil productivity of the soils found at this site, this 283 acre site is very high. It's among the best that's found in the world. Not just Multnomah county, not just Oregon, not just the United States but the world. This is among the best soil in the world for growing trees. We have submitted or will be submitting exhibits from our expert forester to the effect that an acre of these soils can produce 40.2 thousand board feet in a current market prices that would translate to about \$16,000 per acre if this land was used for growing trees. Now if you consider that only 140 of these 283 acres was gonna be used to grow trees. That translates to over 2 million dollars of value if this area was devoted to forest use as opposed to quarrying use. On the other hand, if its used as a quarry, there's no certainty, there's no proof that this area can be used for forestry in the future, because there is no proof that they can reclaim this land. So if you approve quarrying, you're giving up the value, high value of this area for forestry. What about the investment value of this land. I have a statement here from Jim Thayer who was a chief international investment recruiter for the state of Oregon for five years. He says in a statement which I'm gonna be submitting, in my five years experience as a recruiter business executives considering the viability of Multnomah county and Portland as a business location almost always decided on a basis of whether the executives of the firm wish to live

in the community and whether they could attract talented personnel. In the final analysis our competitive edge in attracting new jobs rested largely on a our access to unspoiled parks and outdoor recreation. Business executives know that they can recruit specialized talent they need in their industries to work in Portland because this community has a reputation for not having compromised its livability for growth. Forest Park is one of the familiar icons through which outsiders see this community and through which our commitment to livability is judged. To preserve our attractiveness and growth potential, we must recognize the vital importance of our investment in preservation of unique wild forest like Forest Park. If we degrade our precious natural areas, we not only destroy an age old heritage for our children but we materially damage our reputation as one of the outstanding economic growth communities in the US. This is not delayed testimony of somebody who doesn't know what they're talking about. This is the testimony of somebody who served as the chief investment recruiter for the state of Oregon for five years. He knows where of he speaks. And what he's saying is that the investment value. The value of this area for attracting industry far out weighs it's value as a port. So on top of the forestry value of this area. If it's not developed for quarrying. We also know as the city of Portland has discovered in its goal 5 analysis of Forest Park area that Forest Park is very important to the psychological health of it's citizens, and again that goes back to the livability issue. Now what about the aggregate value of this site. Well first of all we heard from Mr. Beason, Professor Beason, our expert geologist that the aggregate found in this particular site is very common. It's found in a lot of places in the Tualatin Hills. There's nothing about this particular site that really makes it unique. The rock is found everywhere in the Tualatin Hills. Not only that but the estimates as to the quality and quantity of this rock is highly suspect. The determinations of quality and quantity are based entirely on surface observations of the area of this particular site and on a couple of bore holes that only go down 84 feet. Well, the applicant is proposing to quarry hundreds of feet deep and has Mr. Professor Beason said there's no way of knowing what the quality of the rock is that far down because there's been no data, there's been no investigation or research showing that in fact the rock goes down that far and is of a sufficient

quality down that far. Not only that but an exhibit that will be submitting shows that there are hazards associated with mining this particular area. In particular there's a very high over burden of soils through which the applicant is gonna have to mine before it even gets to the rock. And those that overburden is not stable and as a result the area within which mining can occur maybe constricted to prevent landslides. So, first we've got the information that this rock is very common, second we've got the information that we don't really know what's its quality and quantity are. Third, the total available area, 283 acres may not be available for mining because of geological hazards and finally the applicant has not established that there is any need to expand. When asked at the last hearing how much additional rock they have left, they couldn't tell you. Why should you make a decision allowing them to expand their quarry when they don't even know how much more they have right now to quarry. If they have a 3 or 4 or 5 year supply. What's the hurry, why make a decision. We submit that you should make a decision in favor of quarrying in view of the relative benefits and costs of committing this site to quarrying. So far I've just been talking about the economic impact. The economic consequences of devoting this site to quarrying or not devoting it to quarrying. Now in addition there are the environmental impacts. This area this quarry site proposed expansion is very important wildlife habitat. It is what makes Forest Park unique in the United States. It is what makes Forest Park as Ester Lev who did the study for the county said, a significant goal 5 resource. County hasn't yet inventoried it as a goal 5 resource but she said it is so significant based on it's quality and quantity that this site should be a goal 5 resource for wildlife value. This peninsula of habitat on which the quarry site would be developed is very important because it means species vitality and viability of large animals and small animals found in Forest Park provides an opportunity for interchange of species between the coast range and forest park. And to quote from the study that was commissioned by the county, the ecological integrity of Forest Park is dependent upon the maintenance of forest habitat along the entire peninsula of which Forest Park is the southern portion. This is what we're talking about, right here. This is the quarry site. These tracks to the on either side of this quarry site are the large acre tracks which are the most feasible areas for passage of wildlife in this

tract itself is very important as the left study showed for passage of wildlife. If this is developed for a quarry. It's gonna strangle the passage of wildlife through the area and into Forest Park which is about half a mile south of where the quarry site is.

Other Voice: I have a question, that is to clarify, that is the proposed site.

Neil Kagen: That's correct.

Other Voice: What is the present site?

Neil Kagen: Actually I believe that the present site is included but it's just a small portion of what you see here now. I can have somebody come up and speak to that more specifically than I can. So the impacts of poor expansion would be to eliminate that forest habitat. And to respond to a question that was asked several times at the last hearing. Clear cutting is far preferable to quarrying on this site and the reason is that trees have a remarkable capacity to grow back. The hills are not gonna grow back. So, even the Lev study indicates that clear cutting is a temporary disturbance that can be restored within 25 to 30 years because the trees will grow back. But these hills are not gonna grow back and the soil that the trees need to grow is not gonna appear magically and there's nothing in the record to show that this site can be reclaimed and can be used in the future for forest habitat or for wildlife passage. Now, there's another environmental value and that's the Rafton Burlington Bottom wetlands which I alluded to earlier. This is a significant wetland. The county has gone through the processing, called it significant, there's no question, we're not the one saying it's significant you said it was significant. And quarrying on this site is gonna cause sedimentation in that wetland. This is one the states largest remaining wetlands. It provides habitat for a large number of important wildlife species including bald eagles and a number of shore birds and song birds. And there's another wetland a smaller wetland which has already been filled to a large degree by existing activities at the quarry site and again this is testimony from our expert hydrologist who went out to the area himself, looked at it and made these determinations. There's another environmental impact here. Multnomah channel is going to be adversely affected in fact is already being adversely affected because stream A

which drains the foray is delivering turbid water into the multnomah channel. Multnomah channel is important habitat for fish for nagimus fish like salmon because it's used by them for spawning. It's used for fish passage, it's used for weering and turbidity and sedimentation has adverse impacts on those uses by nagimus fish. The quarry is already causing turbidity in the Multnomah channel and our hydrologist has testified that the expansion is going to increase that and he also testified that there was really no practical way for the quarry to mitigate for those impacts. So we have this whole raft of environmental consequences if you decide to make this site a 3C site. If you decide to allow quarrying. If you don't allow quarrying on the other hand, there are not gonna be any adverse environmental impacts on the quarrying. That quarrying is gonna be there. If at some future time you want to allow it to be used for a quarry. There aren't gonna be any houses on it, there aren't gonna be any uses that'll interfere with it's use as a quarry in the future. Finally, scenery. This area has been described as outstanding by the county itself on the counties goal 5 worksheets. It's been described as outstanding scenic backdrop for visitors the multnomah channel and residence and visitors on the Savvy Island. If the quarry is allowed to develop there will be extensive visible impacts, significant visual impacts decreasing the scenic values of this area and that's according to testimony of two landscape architects which we're gonna be submitting into the record tonight. So our conclusion is that on the basis of the adverse economic, social, environmental and energy impacts because of these adverse impacts. We will be far better for the county to make a 3B decision that is, allow the site to be continued to be used for forestry, wildlife passage rather than allow it to be used for aggregate mining. If you allow it to be used to aggregate mining now. You're making a irreversible decision because there is no evidence that this site could ever be used again for forestry or wildlife or that the impacts of sedimentation can be mitigated to the extent that the significant wetlands down stream aren't gonna be adversely affect. Well, I'm not gonna spend a lot more time talking about the conditional use. I just want to make a few points about that. First of all, there's been no evidence that the water quality standards required to be met at the Multnomah channel could be met. In fact, we have evidence to the contrary from our hydrologist Mr. Ruds. He's testified that the

quarry is already causing turbidity which is causing the violation of the DEQ permit and that expanded quarry operations are going to exacerbate those impacts. Secondly, according to your criteria for granting a conditional use permit. A maximum extent of significant fish and wildlife habitat has to be protected. What they are proposing to do, what the applicant is proposing to do is to protect a minimum amount of significant amount of wildlife habitat. They are proposing to protect only 625 foot buffer area and that's only on the southerly portion of the site. Not on the westerly portion or the northerly portion. So only on the southerly portion and only a 625 foot buffer area. That's contrary to the study prepared by Ester Lev for the county in which she said a minimum of a half mile was necessary and that half mile is where the quarry site is. Here's the quarry property, here is McNamy Road and here's highway 30. This area in here is the half mile corridor so if the quarry property is developed you are obliterating it. You're not protecting significant wildlife habitat to the maximum extent possible by providing a 600 foot buffer to the south. You're certainly not providing it to the maximum extent possible by not having anything over there. Ms. Lev said, need half a mile. In fact, Marcy Heul who testified last time. Testified that international known experts have said that you need a mile and a half so your standards say it has to be protected to the maximum extent possible. You're not even doing a half a mile. When experts known the world over say a mile and a half is what's needed. Finally although there are many other deficiencies in their conditional use permit application. I want to raise the issue of geological hazards. I luded earlier to the fact that there's a very high over burden before you get to the rock that they want to get to for mining. This 70 foot over burden in some areas is very unstable and according to a registered jew technical engineer whose affidavit or declaration we'll be submitting. That was not taken into account when the applicant experts looked at the geological safety of this area. So they have not proved that this area, that quarrying in this site is not going to cause geological hazards to surrounding properties. In conclusion, I just want to say again, the decision you are being asked to make here is incredibly important one. It's gonna define the character of this area for generations to come. We don't think the applicant has established that the consequences the EC consequences argue in favor of

quarrying to the contrary, the consequences are you not in favor of not allowing quarrying and whether you change the plan to allow quarrying or not they have not satisfied the conditions for creating a conditional use permit. That's all the time I'm gonna use right now. I'd be happy to answer any questions you might have and I also want to submit into the record my brief and various exhibits that are attached to it.

Chairman: Questions. Commissioner Hunt.

Hunt: When you were speaking on the ESEE analysis you stated that if we sited it as a specific type of like a 3B designation that we could change it down the road. Two weeks ago I got conflicting testimony that said we couldn't. Could you site a specific case where it has completed the classification system and then the sites has been changed. The designation has been changed.

Neil Kagen: I'm not aware of any luba case or court of appeals case which holds that principal which comes to that conclusion. I don't think the issue has been addressed by the courts or by luba. I know you heard that testimony. It was wrong. What I'm telling you is the law. There is nothing to prevent the county from changing its decision at a later time. The county has the discretion to amend its plan whenever it so chooses and in fact in the past the county has used this very argument itself. There was an aggregate site known as Howard's Inn, I can't remember the exact name. That's right, Howard's Inn was a movie. And a good one too. Howard Canyon, this same argument was used by the county when it chose to make a 3B designation. We can make a 3B designation and then that will preserve the site for use as aggregate later.

Hunt: Can Connie counsel give me any advise on this as to whether we can change a site designation later, yes we can.

Chairman: Questions from other commissioners. Next. By the way for the record, last time we were here an additional 10 minutes was asked for by the opposition so I so really when..give you the new math of this thing. So Angell Bros. now has 72 minutes and the oppositions still has 49 minutes and 45 seconds.

John Sherman: John Sherman, president of the Friends of the Forest

Park 1912 NW Aspen, Portland, 97210. I won't take a long time, our attorney Neil Kagen has really made our case. When we saw this issue facing us we looked to find somebody who really knew goal 5 who knew the issues and Neil really is a respected state wide expert on goal 5. He has specialized in this for a long time. I want to underline what he said about the importance of your decision. A lot of us, Friends of Forest Park and we have 4-500 members, I don't know where we're at right now. But over 4,000 people have participated individuals have participated in donating to the old growth acquisition. Care deeply about Forest Park, care deeply about and what it means to the city of Portland. I can't even begin to quantify the person hours that have gone into protecting this resource in the face of the burchening development of this city over the last 3 or 4 years. The time that's been spent lobbying and working with the city who has come up with a tremendous protection plan for the resource, the time and some of you know because some of us have been here and put in time and energy and raise money and one thing or another to work on the goal 4 which we saw as a temporary way of preserving the corridor until the county could come up with a comprehensive analysis of what needed to be done to protect it. It's just monumental. People care about this resource, it's an incredibly important resource to Portland. It's real simple. Permitting expansion of this quarry based on what we know right, based on our best available information. Will really destroy Forest Park. The heart of it will be there, you'll still have the 5,000 acres within the city of Portland but the soul will be gone. It will destroy the wildlife corridor. There's no question about it. Let me show you, just to get a sense of what's going on here. This is a photo we commissioned, I hope you can all see it. July 1992. You can see the existing site. This is what and you can see well McNamee Road is right here. It's approximately half mile from here to here. There is the expansion. The proposed expansion. That's gonna be as far as we can tell the biggest hole in Oregon. It's 2-1/2 times the size of grassy mountain over proposed gold mine for eastern Oregon that a lot of us are very concerned about. We have absolutely no faith and we've been asking this of Angell Bros. since 1989 when they first applied for a permit. Show us a quarry, show us a situation that has been successfully reclaimed that serves as forest and wildlife habitat. They have not done it. This is what it's gonna look



like. Let me show you one more view of it. This is a view I guess from the what is it, the north west side, it's not quite an overhead view but you can see the existing site. It doesn't show the whole site but it does show some very interesting features in terms of what's gonna happen to the quarry and remaining trees. This also, this stream back here is the one that..this drainage back here is the one that drains into Burlington Bottoms wetland. There are a number of other points that can be made with these overlays but I think one particularly one I want to make. I wasn't here, I was leading a sierra club trip the last two weeks. But I understand one of the concerns that was raised was if the quarry expansion is permitted, won't that be good for Forest Park. Won't that preserve trees. Unfortunately there are no trees left on the quarry site, they've all been logged. Angell Bros. except for the small existing site down here doesn't own the timber rights, Crown Pacific does for I don't know for how many years, 8 or 10 years, something like that. These trees will grow back, it's a temporary disturbance 25-30-40 years. We're gonna have forest that habitat again. But to the best of our knowledge the disturbance, the land forms, the disturbance to the soil productivity. The disturbance to the potential forest habitat that would be caused by this quarry are irreversible. It's monumental to the best of our knowledge, to the best of our biologist knowledge it will destroy the soul of Forest Park. Thank you.

Chairman: Questions of John. Next speaker.

Rochlin: Arnold Rochlin appearing for myself and the Forest Park Neighborhood Assoc. Development committee. Two weeks ago the owner of Angell Bros. Mr. Anderson said he doesn't know how much rock is left under the existing site. That's hard to believe and if it were true one would wonder why he's working so hard for an expansion. We have to know how much is there. Goal 5 requires that in order to identify a resource that's necessary to be protected that you know how much is there, not only on the particular expansion site that's requested but relative to other areas within at least the county. You'll find that in OAR 66016.000. Mr. Sitzman in his enthusiasm to promote the quarry two weeks ago did not tell you that just as he did not tell you that you could change your designation by a legislative action whenever it was appropriate. I have an alternative analysis that I'm going to submit and if

this decision is not made tonight I hope that you will compare this ESEE analysis with that submitted by the applicant and that submitted by staff. Much was made of the location of this site and I think that we all know that most of the construction activity that requires aggregate is not in the northwest corner of the county. It's spread throughout the region mostly in other counties and in the eastern part of this county. The applicant last week, two weeks ago told us that Ester Lev, one of the authors of the wildlife study. Backed off of the recommendation that a half a mile wide forest must be preserved. He also told us at the same time that Ester Lev has been engaged as a consultant by Angell Bros. It was wrong even to discuss a contract while this matter was pending. Changes in testimony under these circumstances cannot be taken at face value. Mr. Parisi through some dust about a 200 foot figure. The wildlife study recognized that some harvesting will occur within the half mile forest corridor that's necessary. Connecting strips between the forest stands should be at least 200 feet wide. It did not say that the corridor in its entirety would function adequately if it were only 200 feet wide. Staff has said that they find the Angell Bros. application to be credible. Angell Bros. says that there will be no increase in rock crushing capacity or traffic. But the crusher capacity is 400,000 yards a year. It would take 550 years to process the 220 million yards that they say is there. The application said that 10 years was a reasonable time to mine it. But 2 weeks ago Mr. Parisi changed that and said 30 years. Even if 30 years they would have to increase crushing 18 times and it would take over 1,600 round trips by round trips every single day of the year, sundays included, christmas included if they intend to take all of that stuff out in 30 years. What is it that staff found credible. That there will no increase in crushing and that Angell Bros. intends to take over 500 years or that they'll do it in 30 years with an 18 fold increase in crushing and traffic. Both of these things can't be credible. Staff repeated the applicants argument that the mine is goal 5 open space. Goal 5 defines open spaces agricultural or forest land and lists other uses that would conserve natural, recreational or historic values an open pit mine is not on the list. Staff creates compliance with the zoning code as an elective. There is a wholesale violation of approval criteria in the application, 7325B requires that reclaimed land be useable as expected by the

comprehensive plan and MUF zone. That means forest. The plan is to cover 100 foot rock benches with a foot or two of soil and that will not restore the forest. 7325C8 requires "Reclaimed surfaces shall blend into the natural forms of the immediately surrounding terrain". Hundred foot rock walls rise a half mile from highway 30 cannot conceivably be believed to blend in with the natural surroundings. 7325C11 requires that each phase must be reclaimed before beginning the next phase. But Angell Bros. won't start reclamation until phase 3 is mined. 7325C12 requires that reclamation plans include a time table. Where is it? It's not there. Gary Lynch of Dogomie testified in this hearing that the county regulations on reclamation do apply. Staff cannot as they have tried to do declare them to null simply because a state permit is also required. Regarding traffic and roads. 73251D requires that the county engineers certify that the road is adequate to accommodate the quarry traffic. The applicant says and staff has repeated that the county engineer has no authority over a state highway. He had authority to do exactly what the ordinance requires him to do. To certify that it's adequate for the quarry traffic or that it isn't. This application is swiss cheese as are the staff report and the sistimen testimony which embraced it. An application that does not comply with every single one of the approval criteria must be denied and this one misses many. The burden of proof is on the applicant and a mere uncertainty about even one of the criteria requires denial. Thank you.

Chairman: Is there any other questions?

Other Voice: I want to clear a...I think the point was made that it was a 10 year permit but they're required to put out a 30 year plan as far as..

Other Voice: The testimony as it stands of the applicant is that it will take 30 years to mine the expansion area.

Chairman: Questions by the commission. Thank you. Next speaker.

DonnaMatrazzo I'm Donna Matrazzo with the Sovey Island conservency. I live at 19300 NW Sovey Island Road. The scenic beauty of Sovey Island has made it one of the counties most popular places. Wildlife watchers, beach goers, bicyclists, picnickers, people coming to u-pick places, hikers. Last year nearly 800,000 people visited the wildlife areas

alone. That's more people then visit some of our countries national park. I happen to think that on a day like today when you can see clear to Mt. Raineer that Sovey Island is one of the most beautiful places in the world. But the scar from the Angell Bros. quarry is already an ugly gouge that can be seen by every visitor that comes to the island. Skip Anderson of Angell Bros. came to a conservancy board meeting and spoke to our board members about their plans and the following Sunday a number of use went and drove around the island to see what this expansion would need to island views. We were appalled at the extend that you could see the scar that already exists and all felt that the expansion would be defistating. I was gonna show some slides had brought a video and I decided instead of showing slides I went again today by myself and drove around to see again so I could make this made for you so I'd like to sort of take you on this little ride starting from over at the corner of Gilahan and Reader Road. This is clear over on the Columbia River, clear over on the other side of the island and yet at .6 miles from that junction, you can already see where that expansion would gouge out the hillside. You come a half mile further and with your bare eyes you can already see dust and dirt from the quarry. You come a little bit further on that stretch of road and you see that quarry right there as it comes into view as you're driving around one of the most scenic places in our entire county. As you turn the bend and go along the stretch of road on the Willamette river where the pumpkin patch is, certainly one of the most popular places. The quarry is in the center of your view as you're driving down this road, this big ugly gouge and as you come closer and closer to the bridge it just lunes and lunes over your view and until you come to the bridge where it completely dominates your exit from the island. Someone asked last time what's worse, the clear cut or a quarry cut. Visually I would compare it this way, if clear cut is like shaving the mountain, a quarry is like axing it open and letting its guts spill out. Looking at the greenest brown hillside of a clear cut compared to the garish orange sharp edge gouge of a quarry. There's no question which is uglier. The Angell Bros. quarry is already an enormous visual blight that can be seen by the hundreds of thousands of visitors of one of Multnomah counties most beautiful places. We see no evidence of any reclamation in the past and no proof of any reclamation would work. We ask that you not allow the quarry to expand the

quarry to expand any further. And I brought with me a video prepared by Jack Sanders who flew over the site and I'd like to play that and hope you could all see it.

Chairman: If you can't see the video I suggest you stand up...

Movie: ...wonderful system of parks, ..forest park nearly 10 miles north giving refuge to wildlife and providing recreation for the areas human population. It is a marvelous site for residence and guests alike. Any season of the year, this great green forest and mantle connecting our urban forest to the coast grange. The scenic beauty of this entire area is threatened however by the proposed expansion of the Angell Bros. quarrying operations. This activity is incompatible in so many ways with sensible land use and vital scenic resource so close to Portland. This site is less than 1 mile from the northern end of Forest Park. No shallow edge of trees can shield this view from air travelers flying in and out of Portland. The southwest portion of the ridge is populated with barns and growing urban sprawl. Only the northeast side is left in a somewhat natural state with minimal human encroachment to disturb the habitation and migration of wildlife. No reclamation process can truly restore the habitat and land force their original unspoiled appearance. After an operation like this has finished it's work. Nearly two thirds of the clear cut area will be carved away by Angell Bros. if there application is approved. Can we afford to throw away a vital scenic resource which we cannot truly replace. One which impacts adjoining scenic resources we have worked so hard as a community to preserve. The wetlands you see may well fill the silt from the site and cease to be wetland if this proposal is approved. Can we afford to do this in the interest of mere economic convenience. Is it the communities obligation to sacrifice scenic resources for the economic advantage of the local construction industry. It makes little sense to allow an already available scar on our scenic landscape to spread even further. Wouldn't it be wiser to maintain this area in it's natural state and make a decision when the current permit for quarry operations expires in 8 or 10 years. These are the ridges and canyons which will disappear as we know them forever. An area nearly the size of downtown Portland. There are certainly other locations further from the city where this activity could be permitted with less impact on our scenic and wildlife resources.

Chairman: Questions by commissioners. Thank you. Next speaker

Jerry Fugate: My name is Jerry Fugate and I reside at 2704 SE Tibbit St., Portland 97202. I'm a wildlife biologist and I am also a co-author of the port that was done by Multnomah county along with Ester Leven Lynn Sharp. The reason I'm here tonight is not so much to oppose or support the permit application but to offer some clarification on the findings and recommendations of the west hills wildlife habitat study and to present some certain facts that I feel the commission should be aware of them considering the applicants request. I first wish to address the point made by counsel for the applicant regarding the reference to typical habitat two weeks ago. The study does state that this is indeed typical western hemlock zone habitat. What makes this area unique is that there is very little of this habitat left in the area. The fact that what remains out along the ridge there has the potential to come to something close to a natural successional forest for this area is indeed quite significant. Additionally, this habitat is already been highly fragmented and the main concern in maintaining this habitat is that future fragmentation be minimized and that land use planning allow for the recovery of habitat that has been temporarily affected by things such as logging. In my opinion it is not so much a concern with the larger species such as the Black Barron elk that Ms. Hule stated in her testimony. But with maintaining enough habitat to support resident species. Species which cannot move over long distances but rely on high quality existing habitat to maintain viable populations. The second point which I wish to make is that that counsel for the applicant stated that they had been patient in allowing time of this study to be conducted and I applaud their patience and cooperation. However, the amount of funding and time allotted for research was actually minuscule for answering the type of questions that are to be addressed in the study of this kind. We are actually doing work here that this on the leading edge of environmental science, a new field of landscape ecology and urban environmental sciences being developed right now. There is very little in the way of good hard data to go with in this type of a study. This should be considered as a testing ground. The commission needs to be aware that there is no magic formula for arriving at the conclusions requested here. The recommendations of the study are based on the best information available. The

preservation of a strip or buffer zone at the top of the quarry does not guarantee that wildlife will survive in the area, what is certain that if habitat is reduced it will put stress on the remaining habitat and on the remaining populations of species that are affected by habitat reduction in the area. Also the applicant may be able to promise certain activities to restore the affected area but it is meaningless if the surrounding habitat is lost to residential or other types of development and activities that the applicant has no control over. This brings me to my final point, which is that any proposed restoration plan must be considered an experiment. There is no significant body of evidence that shows that a proposed restoration plan for such a site has ever been successful, as a matter of fact, the gentlemen from Dogamie could not answer the questions regarding this point and neither can I because I have completed a review of the literature available to me in the time that I've had to work on it and there is nothing that I could find in the scientific literature that substantiates the success or failure of this type of restoration. There are however, many many reasons to consider that it would in deed not be adequate for instance, replacement of any topsoil from the site would have to be stockpiled during the time of the mineral extraction at which time depending on conditions, that soil would have to sit basically in a pile and would become sterile losing all of the microorganisms that make this soil viable for plants that would have to be there to such as the trees and the other obvious and woody shrubs that would prepare the soils for the trees to grow back on the area. Essentially you'd be putting sterile dirt back in place instead of actual living soil, soil is a living system. There is no evidence that any of this is has ever worked, there is very little work ever been done on this type of reclamation. Most of the reclamation sites in the country and in deed in the world have been done to either restore a level site, to grassland and grazing for cattle or have been done to restore a turned basically a level site into a lake or a wetland. That is not the case at the site we are looking at here. In conclusion it is the community that decides which uses are appropriate. If the community has decided to preserve wildlife habitat, there is one way to do that, and that is to save it. If the quarry is allowed to expand. Habitat will be lost. If this will be permanent I cannot say. Will this destroy the nature of the area, maybe, probably, but I'm not

sure. Science cannot answer these questions. What is certain though is that the commission must recognize that granting this permit is in deed an experiment and the only way to find the success or failure of this experiment is to run the experiment. It's up to you to decide whether you're willing to do that. I'm open for questions.

Hunt: Do you have the staff report handy?

Jerry Fugate: No, not in front of me.

Hunt: There's a copy, can you turn to page 18 please. In it staff speaks of the wildlife corridor and Ester Lev's suggestion of the 625 foot wide area we preserved. Did staff talk to you at all about your opinion since you were one on the co-authors on this study.

Jerry Fugate: We discussed this. And in deed I agreed that if you were going to put a corridor in that area that dimensions had to be and this was discussing it as an isolated incident. We weren't discussing the over all system of the area that it had to have a certain minimal dimensions. And Angell Bros. did agree to that adequate dimensions but again this is considering simply as an isolated incident simply if the in my opinion regarding that the rest of the area would remain or could be guaranteed to be managed in a way that would sustain enough forested habitat adjacent on all sides of the quarry to sustain populations.

Hunt: I'm not sure if you've read this page 18. I'd like to get your opinion as to whether you concur with the conclusions of staff as to their responses to whether the wildlife corridor would be protected etc. If you want some minutes to read it you could come back and answer later.

Jerry Fugate: No, I can address that. My concern is not so much with the corridor, corridor is quite a popular buzz word in landscape ecology these days. There is a lot of definitions and a lot of work being done on corridors. My concern particularly since I focus on migratory songbirds and small mammals is that enough habitat be maintained in the area enough contiguous be maintained in the area to support viable populations of these animals in a home range setting. It is my opinion that if you can maintain enough contiguous habitat with connections to other sizable areas of continual habitat that there will be



movement between those habitat area and that the animals will be able to sustain themselves, larger animals will be able to move through given some of the other perimeters such as connections.

Hunt: If we sited this as a 3B designation where we found it was in conflict with other goal 5 resources and this area or this site of the expansion was developed for logging how sites ect. What do you think would be, do you think that would protect the corridor more than the existing applicants request.

Jerry Fugate: I feel that timber extraction is..

Hunt: You got timber, houses and whatever.

Jerry Fugate: OK, OK, housing, housing, any kind of permanent disturbance, and in my opinion the quarry would be a permanent disturbance given that there is no real evidence that a reclamation or restoration project would be successful. Any expansion of housing, residential development, road building or the quarry would significantly reduce habitat in the area and put Forest Park in danger of becoming an insular or an island basically a habitat island. Timber is a different story. Logging can be done in such a way as to preserve enough habitat at any given time to where you can take the trees out of one area leaving other areas to grow, long rotations are necessary, small areas of extraction, of timber, of logging need to be specified so I wouldn't be willing to put logging in the same package as development, residential development, road building or quarrying.

Hunt: OK. But so if you added 8 houses and cut down the trees, which would you rather have. Which do you think would be less significant towards damaging the corridor. 38 acre zoning you could have about 8 houses.

Jerry Fugate: It depends on where the houses were placed it would also depend on restrictions as to what kind of activity that was incidental to those residences activities such as application of fertilizer to the lawns, application to pesticides to any landscaping the way that pets and livestock are allowed to range and are treated, all of those things would have to be taken into consideration. Right now as it stands, if the houses were restricted to an area right along the existing road with allowances made for distances between the houses so that there would be enough space along the road where animals could

in deed across roads, animals don't like to cross roadways. But and keeping the traffic levels down, I would prefer to see a limited residential development along an existing roadway as opposed to taking out a huge chunk of the area for the quarrying activity.

Hunt: No, only because if you put one house on each 38 acres parcel, in other words, the houses aren't going to be clustered and those properties can clear cut and do whatever they want within the jurisdiction of the current zoning. I'm asking you to weigh the two, do you think the quarry would be more of a detriment to the wildlife corridor verses what else the land could be utilized for. In other words, property owner has the right to do something with that land.

Jerry Fugate: Certainly, but also the citizens in the community surrounding that property owner have a right to state what types of uses they can put that land to. If it's gonna affect something that they in deed feel is important.

Hunt: But I'm just asking you to weigh those two choice, I'm not saying that would end up being a choice, but if those were the two choices.

Jerry Fugate: Those were the two choices?

Hunt: What, in your opinion would least affect the wildlife corridor?

Jerry Fugate: Eight houses or one 200 acre plus hole in the ground. I know that you put this question to Ms. Heul last time and I'm not sure that I'm willing to say one or the other. I think to reiterate what I've already said I think that there's one way to preserve habitat if in deed that is the goal that we are pursuing here and that is to make certain allowances for the maintenance of that habitat and that's gonna be your goal.

Chairman: Let me ask a question, how many other people plan or wish to speak in opposition. 1,2,3,4,5,6. OK the opposition has approximately 25 minutes left we're sitting here at 25 and 10. I would like for the rebuttle to be preserved as one testimony rather than broken up. Frank how long are you..you're gonna need an hour at least. So what we're gonna do is we're gonna conclude with the opposition until about 10 because that will use up the allotted time and

then we'll continue this until October 5 at 6:00 to hear both rebuttle, opposition would like to have questions and re-examination they can submit it to the chair and we'll begin deliberations after the rebuttle....

Neil Kagen: Chair, this is Neil Kagen again for Friends of Forest Park. We don't intend to use all 25 minutes, we want to save some of our time for rebuttle.

Chairman: According to the procedures I went and checked that out and actually you're not allocated any rebuttle time according to the...

Neil Kagen: I read the rules differently.

Chairman: I have it right here, that's why we have counsel here.

Neil Kagen: I guess I'm gonna protest that if you're not gonna allow us rebuttle because I read the rules to allow them, in any event, on behalf of Friends of Forest Park I want to ask, well you're saying that the hearing is going to be continued, OK. We're gonna ask to keep the record open after the final hearing. I want to make that request now.

Regna Merritt My name is Regna Merritt, I'm at 522 SW Fifth Suite 1050, in Portland 97204. I'm here tonight representing the Oregon Natural Resources Counsel, a state wide conservation organization with 6,000 members. We believe that Forest Park and it's wildlife corridor, we believe those lands to be lands of state wide significance and we oppose the comprehensive plan amendment and the conditional use request to mine the expansion site. Given the testimony we have heard that quarrying has been inadequate to support the claim that the quarry's life could be expanded another 30 years, that the adverse impacts of expansion on wetlands and water quality have been greatly underestimated that experimental dyes may be sprayed on rock faces to mitigate the effects of severe scenic degradation and that there is great controversy over the width of a corridor required by big game and it is prudent to protect the ability of these large species to circulate, given that testimony Oregon Natural Resources Counsel is convinced that the conservative and prudent action would be to deny the request for the plan amendment and for the conditional use to do otherwise to jeopardize the viability of a historic wildlife corridor for an operation that has been

estimated to last 30 years at most would be most short sighted. Lets protect the continued life and flexibility of wildlife species of Forest Park intrigal parts of a significant echo system valued by Oregonians state wide. Thank you.

Chairman: Questions? Next speaker please.

Dar Wruble: My name is Darlene Wruble and I live at 13162 NW McNamee, Portland, 97231. My main concern is that I live on that 3.12 acres that's the little glitch that you'll see on the map. My main concern is regarding the expansion of Angell Bros. quarry have to do with the noise level. As the present time who lives at my home and he works evenings and they do hear the noise during the day time of what the existing quarry and so if it comes within 625 feet of my property line it basically is going to be much louder as well as the dust level. One of the things that I would like to also clarify while I'm here, there was a statement by Angell Bros.'s attorney last time regarding an easement that I had agreed to an easement for the Friends of Forest Park or for whatever. I have agreed to no easement whatsoever on my property. Anybody have a map, on the big one. I'm in that little notch. My home is about 150 feet from the back property line and so of course I am very concerned. I'm also concerned regarding the water. I have a well that is 730 feet deep and so what is this rock quarry going to do to the existing wells that are up there. Everyone of these people on these new proposed 38 acres will have a well that will be approximately that deep, probably in the 600 feet maybe 500 feet and so will there be contamination to our water. This is something that no one has brought up at all before. Being here and listening to the people regarding the having the places for them to have the guns and so forth basically I am concerned because of all the noise level.

Hunt: Can you clarify one thing for me? You live on McNamey Road.

Dar Wruble: Yes I do.

Hunt: Is there a lot of houses being built currently on that road.

Dar Wruble: There have been a few, yes I've been there since 1985.

Hunt: So in your opinion is there more houses affected currently then. Is there more houses going to be affected by the quarry then there was a couple years ago?

Dar Wruble: Of course, yes.

Hunt: Thank you.

Chairman: Commissioner Douglas.

Douglas: You were there when the well was drilled for your homesite.

Dar Wruble: Yes I was.

Douglas: Do you have knowledge of what it went through, whether it was rock all the way down, what was it.

Dar Wruble: I don't know but I do have what they hit, how many feet down, yes. I really couldn't tell you that.

Douglas: How exten...in that, what the formation was underneath it.

Other Voice: Just by answering the dialogue between the opponent and the chair the rules do provide an opportunity to the opposition to respond to the rebuttle and the extend of that respond and to the rebuttle was determined by the board but by the planning commission and that's stated in these rules for conducted hearings section 6 subsection N and the sub one is the provision for allowing you to determine the extent of the rebuttle.

Other Voice: I have a question, says allowing any part of ..... application about testimony and evidence.

Other Voice: And provide opportunity for the opposition to respond.

Chairman: The rules are a little...because felt that it states that the opposition is entitled to submit...you the commission must consider those findings...whether in fact .....we can determine that at the next meeting.

Other Voice: There is an opportunity for the opposition to provide you questions and that you're for you to ask those of the...

Neil Kagen: Excuse me, Mr. Chair if you make that decision next

time we won't know if we've got to use up all our time now or whether we should preserve some of our time now.

Chairman: I understand your point but you're not the only person speaking in opposition.

Neil Kagen: I realize that.

Chairman: Wait, will you let me finish. You need to allow the other people to speak also. Now if they end up using the time, the total time I've given you an extra 10 minutes, it not a problem I can deal with, so you've got to let these other people speak.

Neil Kagen: I'm not stopping anyone from speaking, we have agreed that we're gonna try to preserve 15 minutes if we're gonna be allowed to use it for rebuttle.

Chairman: Well if you have 15 minutes, we'll give you 15 minutes you're now down to 22.

Hunt: I have a question to county counsel. If Friends of Forest Park or the opposition had questions that they submitted to us at the next hearing and we wanted to open up some rebuttle time to hear their concerns on those questions. Do we as a commission have the opportunity to do that? In other words, cause Scott was talking about they could ask what written questions maybe we should interpret it to mean then we have the opportunity to ask questions or have..give them rebuttle time if we think it's appropriate, that's what I'm wondering.

Other Voice: You question is whether you can add it, you can provide additional time for the opponents to respond to the rebuttle time.

Hunt: They have written rebuttle and we are open to hearing about it do we as the commission, are we allowed to give them some time to verbally respond.

Chairman: Cross examination is more of a matter questions they would like you to ask of the opponents. They must have that in writing to you.

Other Voice: I think that might be made clear just by reading the rules it's pretty straight forward. It says, the planning commission may allow parties opposing the application to cross examine parties or witnesses who presented testimony or evidence in favor of the application. A question of cross examination of a

part shall be directed in writing to the chairperson who shall rule on the relevance of the question and if appropriate provide an opportunity for the question party to respond. So when the questions were received the chair and the group generally will decide which ones they want the applicant to address and respond.

Chairman: Other...speak....??

Other Voice: Mr. Chairman, I think counsel and I need to talk about because I interpret a little differently. It says allow any court ob...application and rebut testimony the evidence offered by the opposition and provide opportunity for the opposition to respond to that particular rebuttle.

Other Voice: Right within the scope of the rebuttle, that's right so that the press is narrowing the issue. That's right.

Other Voice: Mr. Chairman I think the main spokes person for the opposition had a point in terms of making a decision about how much time should be reserved and for a respond directly to the applicants rebuttle. Could we do that right now and give them a clear indication, how much time they have.

Chairman: I told them 22 minutes. The other people who are in opposition did not use it up.

Other Voice: What it might be appropriate to do then is to move that we allow at our next meeting to the opposition the balance of the time for responding directly to the rebuttle and the chair certainly can rule things out of order if they are not response to the rebuttle. Do you recognize that as an appropriate motion?

Other Voice: I don't think... We don't even have to do a motion on that one that's precision, that's exactly...

Hunt: Is there a response limited to that time.

Other Voice: Yes, to that particular point that is made by the applicant too.

Other Voice: So are you gonna allow these two people to speak and not use up the rest of the time.

Chairman: Well, no they've told me they've have three people.

Other Voice: I don't want to prolong this but you're talking about an organized group, OK, then you're talking about people that may not want to be part of the organized group but exercise their rights as citizens to oppose this application individually and I want to continue to respect the individuals right cause I think over and over again individuals are trampled by organizations. And I thought you said that ..

Other Voice: That's exactly what I said, I said these people that speak on their own and if it uses up the total opposition time that's not my problem.

Chairman: Next speaker please. We apologize.

Anderson: My name is Marcia Anderson and I'm speaking for the columbia group club which has over 6,000 members in the northwest region of the state. Our members and many other people in the region, use Forest Park and the surrounding area for a variety of recreational purposes such as hiking, running, biking or just taking the kids and the dog out for a walk. Hikes are regularly scheduled by a number of groups through out the metropolitan area including the Portland Parks and Recreation Department, the Autobahn Society and the Sierra Club. People enjoy Forest Park because of it's scenic beauty and because of the diversity of the native plants and the animals found within the park. However, Forest park is part of the large ecosystem that extends along the Columbia River and the health of the park depends on the biological diversity of the area. The expansion of the quarry has the potential to severely damage that ecosystem by gouging large chunks of forest out of the hillside. The damage to the ecosystem will cause a decline in the rich variety of plants and animal life in Forest Park and in the wildlife corridor area. The Sierra Club urges the planning commission to maintain the quality of this resource for the people of the county and the region by refusing to allow the quarry to expand. Thank you.

Chairman: Questions.

Hank McCurdy: My name is Hank McCurdy, I live at 14250 NW McNamee Road, and this is one of the proponents exhibits. I want to show you where I live, I've got the only existing well, there's two houses, but this is my house here right at the time. Of all these exits that the proponent has I think that possibly only



two sites won't be built on. I'm definitely in the impact area. They have it listed as a 1,000 feet, I think that they refer to my house as 1,700 feet. I don't think that I'm any further than 1,400 feet. Now I can hear noise from Kelly Point, there's some sort of a steel mill there. From time to time I can hear that noise. The wind I think prevails up the hill cause the trees lean slightly that way. In the submission by the September 8th submission there's something about a noise test that was done. Doesn't take into account moisture, wind, time of the year, anything like that. They talk about their well, they describe it as an ongoing blasting situation when they talk about the well, when they talk about noise, it's intermittent blasting, but in any event, their well is right down on the Columbia River, my well is 650 feet and in answer to your question. I was there and I think they went quite a ways down before they hit some rock so I think that there is as Mr. Kagen has mentioned quite a substantial amount of non-rocking material. My view might be a little myopic cause I'm really affected but I think that this doesn't make sense economically at all. I think that the development in the Portland Metropolitan area is now gonna be on the perimeters. OK, you're not gonna have that much development by downtown Portland 5 miles out of Portland, you're gonna have it in the outlying areas. So it makes sense to me that you can have a quarry that is located much further outside in the urban growth boundaries. You don't need something that is centrally locating as they're contending. The other thing is that there's so many things, there's so many if you read this closely the report, the September 8th report reads like a brief for the proponent. I don't think it's unbiased or neutral in any sense of the word and please read it carefully. Thank you.

Chairman: Any questions of the speaker.

Other Voice: Mr. McCurdy, you submitted some questions for cross examination last week and you still wish to have those.

Hank McCurdy: I can't remember what they are, but think they are important points.

Other Voice: We won't ask them at this time, I just wanted to know whether you're speaking you had.

Chairman: We've just got a limited amount of time, I'm gonna

ask you to limit those questions.

Other Voice: OK, Alright.

Lightcap: Hello, my name is Christine Lightcap I'm the current president of Westhill and Island neighbors. I have a brief comment on reference to page 14 asking you to please get very very real about the hours of operation that you would be permitting. OK, in section I the first paragraph, "Because of few conflicting or sensitive uses near by". That's in reference to the current quarry not to what would be in reference to the expansion. The current operating hours do not entail as one gentlemen pointed out what would be necessary to handle the expansion and further more it says at the very bottom of the first staff comment blasting is infrequent and well monitored that is again in reference only to the current use and not to the expansion. Just how many blasts is it gonna take to get that stuff out of there. I live on Newberry Road, we are aware when they do blasting. Thank you.

Chairman: Question, Commissioner Hunt.

Hunt: On the two types, the blasting and on the regular operation hours. What do you request as a member of the local community?

Lightcap: Certainly 6 days a week, from 6-10 is a lot more than people want to live with. Think about where you want to have, you're talking about a lot more light, a lot more activity. I don't have recommended hours, that's too much, I'd cut it off a day and a little earlier.

Hunt: And on the blasting.

Lightcap: I don't know what to say about blasting, I think we need to have more real facts about that. What does it, kind of blasting are you talking about.

Hunt: Well, right now they're requesting hours of 9-5 Monday-Saturdays.

Lightcap: Right, can they do that, there's nothing in here that says they can accomplish what they want to accomplish in that time, so how can they address that.

Hunt: I'm just wondering what you'd like it limited to.

Lightcap: I'm speaking for a neighborhood association, OK. I can give you my person opinion. I don't like blasting. OK, as the neighborhood association we didn't address how much blasting we wanted. We wanted the question addressed as to how much would it be, what are we looking at? And that's not in here.

Hunt: OK, thank you.

Chairman: Thanks, next speaker.

Carlson: I'm Michael Carlson speaking on behalf of the Portland Autobahn Society with it's 7,000 local members and 90 years of community service. My address is do you want me to give you my address? OK, we strongly urge that you deny this application and designate this site as 3B. There's a planning process in place that will answer many of these questions about conflicting uses, wildlife values, habitat, housing placement, road access. This spring the county commissioners approved a 3 year \$100,000 study that's called the comprehensive review of rural areas in Multnomah County. It was to begin in January and I'm sorry it was to begin in July and it has been postponed because of budget restrictions. This study, this review will address both all of the values of the air. The wildlife habitat, the wildlife corridor, house placements, roads, and this designation, the application should not be approved because this will give us some of the answers that we're all looking for at this hearing. I also would like to say that Forest Park is a very important very valuable, Forest Park the lands to the north adjacent to Forest Park are very valuable and should be considered for the conflicting uses that they provide to aggregate resource. Any questions?

Chairman: OK, we're gonna continue this to October 5th, the opposition has 15 minutes and 21 seconds. The applicant has approximately 72 minutes for rebuttle, we will open these hearings again at 6:00.

**Transcript of**  
**October 5, 1992**

**Item 2 - CU 14-92**  
**Angell Brothers Rock Quarry**

Leonard: Okay, we are going to call the meeting back to order. We are all roaring to go. We are going to stick pretty strictly to the schedule tonight. Item Three which will be the Bridal Veil Road and Crown Point Highway that will start 9-92 that will start at 8:00 p.m. Given the length of the staff reports and the consultant's reports, we don't expect to take public testimony tonight on that. They will be well over an hour 1/2. Then 9:15 is when we will reconvene the C4-92 on a second hearing. So, now we are item 2 PR7-92 CU14-92, Angell Brothers Rock Quarry. Before we get into the rebuttal, I had a letter from Mr. Kagen which I have shared with the members of the board giving his interpretation of the scope of the rebuttal and I thought I would ask County counsel to respond to that.

Peter L.: I have discussed Mr. Kagen's letter with him.

Leonard: Okay.

Peter L.: I told him that I am not able to find any case which would restrict or would apply the rules of your procedure so closely that it would be problematic if Mr. Parises slipped in a few extra bits of evidence or testimony on subjects he didn't raise in the first place however if you want to be very careful and dot every i you can suspend that rule pursuant to your Section 10 of your procedures and that way there would be no question that you could hear whatever Mr. Parises want's to put in. It's up to you. That could be done by a motion of the vote.

Leonard: My point is that as ???? up I think some members of this commission are going to ask Mr. Parises ??? in previous conversation so I think it's somewhat a little ?????.

Other Voice: It may be well be.

Kagen: Thank you. Mr. Chairman, this is Neil Kagen for the Friends of Forest Park. While there is no luba

case directly directing this issue that is simply because it has never brought to luba before. You have rules which you have adopted which are very specific about the scope of rebuttal evidence that may be presented and we suspend the rule to allow the applicant to introduce new evidence at this time; evidence that could have been presented before. It really would be unfair to us because would not have the opportunity to respond to that in the way we would have if they had started out that way. If they had started out with a full presentation of evidence we would have been ready to counter it. Since they didn't, they shouldn't be able to get a second chance at this point. So, are position is that you shouldn't suspend your rules in this way. It is not something that you should do lightly, especially where it poses a danger in this case of being prejudicial to our presentation of our case. Thank you.

Leonard: My view on this is we as commissioners have to get as much of the information on the table before we can make a decision and although I empathize where Mr. Kagen is coming from on that, he brings a couple subjects in his letter that I have heard commissioners talk if they wanted to have more application about it anyway. So, I would think that maybe we wouldn't suspend the rules .....

Atwill: I agree with Mr. Kagen as understanding the rules... and would support limiting the scope of what is admitted to issues to prevent new evidence and if some of choose to ask questions that raise new issues then --- that, but for now ---- what .....

Other Voice: (Female) A agree with Commissioner Atwill.

Leonard: I generally agree. I don't think it needs a suspension of the rules. It is going to go back and forth over the line, but if it goes to far over the line any one of us can ask, you know object through you.

Other Voice: So we won't suspend the rules. Okay? Do you understand that Mr. Parises?

Parises: I do and I don't think I have any new evidence. I usually, a person waits to object to the other person's evidence until they know what it is. Maybe I have someone in my office that is working for two masters but, I think all of my evidence is

rebuttal evidence. In fact my presentation tonight is designed to simply tell you what evidence I am rebutting so I don't think that is problem.

Leonard: Okay. Why don't we start so that we don't eat up too much. We have seventy-two minutes remaining and Mr. Kagen you fifteen minutes and twenty-one seconds after that. Okay? Some of our commissioners are shorter than others and I have a difficult... is it going to create a problem if you go to the podium and speak.

Other Voice: No it doesn't. Except it will when I get to use any of the drawings.

Other Voice: (Female) Then you will be standing then.

Mr. Parises: Good evening. I am Frank Parises, representing Angell Bros. Before I commence my rebuttal evidence, I wanted to make sure that there is a couple of items that are in the record that probably are but just for the record, is the Forest Trails Estate conversation easements and development envelope map in the record? If it isn't it should be because it has been referred to and then the county zoning maps numbers 50, 51, 52, 63, 64, 65, 66, 67, 68, 69, and 70 are all the maps that deal with the areas that we have been discussing and they ought to be put in the record so that the commissioners will have something to refer to. Umm, now before I start in on my point-by-point rebuttal, I think we have to remind ourselves, what are we here for, what are we doing? We are trying to make a land use decision. We are trying to figure out does this application comply with certain legal requirements? I don't think we are here to pre-judge or to second guess DEQ or the Department of Geology or the Department of Fish and Wildlife or Forestry or LCDC, or any of that sort of thing. I think we also have to remember when we are thinking about the land use decisions, what kind of land use animal is mining? It is a transitional land use. It doesn't displace anything permanently but it might displace some things temporarily. So when we here someone say, "Gosh what about the lost forestry", I have to remind them that forestry is not lost it just displace for a time being. Forests are a renewable resource and I have some rebuttal evidence that I would like to share with you on that. So when we get to the land use question precisely, should this

application be allowed, we are talking about goal five and the conditional use permit. Two weeks ago when we were sitting here, I got lost in the emotions that were generating a little more heat than light in my perspective. What I was hearing was the Abraham Lincoln's that kind of, when you see the smoke of your neighbor's cabin, it is time to pull up stakes and move on. That is what I was hearing about Forest Park, and my wife said to me afterwards, what has happened here? Forest Park is not a wilderness area. It is an urban natural area. It has marked trails. It has botanical names tacked on some of the trees, there are houses in it. It is not a wilderness. Remember again, Angell Brothers is not in Forest Park. It is not even close to it. It is a mile away. I think if we recall these things, it is a lot easier to deal with the evidence that you have heard from the objectors and the evidence you are about to here from me on rebuttal. Now I heard a number of issues raised two weeks ago; traffic, reclamation, the need and the relative value of this quarry. Storm water runoff, wetlands, quality and quantity of the rock, wildlife, the value of forestry, scenic values and potential noise from machinery and blasting. Let me deal with each of those issues in turn.

The traffic issue, what you got was a summary of some accidents that occurred on Highway 30 on the Sophies Island Bridge. We looked into this. None of them involved our trucks. One of them involved one of our customers trucks. The driver of that truck was cited and the case was dismissed. That is the end of that issue.

On the reclamation issue. Remember what we heard from Gary Lynch, the head of the state program. He said almost anything can be accomplished if you have enough lead time and the operator is not too greedy. It was Dogami that requested that we do a life of the mine reclamation plan - not just twenty acres at a time, or six acres or forty acres. The hidden benefit for us even though you had to drag us to the table to do that was that it gave us added flexibility. It permitted us to accommodate wildlife concerns and visual concerns and plant concerns which we don't have if we just have a little teeny mine. But the first step in getting the reclamation permit for the life of the mine is to get the land use permit is to go to Dogami and say that this is the potential area, now how can we

reclaim it? The other things that Gary Lynch talked about were that stability of the final land contours was the most important thing. And the way to accomplish that was first to apply the rules of thumb: the 1 1/2 to 1 benching standard for rock and the 2 to 1 benching standard for soil. But that these rules of thumb were only rules of thumb. If the area wasn't stable, you had to change it. And I know we got one objection stating that they thought the top soil wouldn't be stable at 1 1/2 to 1. Well, that is the wrong rule of thumb. It is 2 to 1. The objections we heard were I think there is really three objections on the reclamation issue. The first one was how can you guarantee you are actually going to do this and the second objection was really the same type of objection but a little more specific it was how can you guarantee that the forestry will be effective and how can you guarantee that the habitat will be effective? But, they were all designed to put the onus on us to prove that we would be effective on the reclamation effort.

Leonard: I just want to note that Commissioner Douglas has joined us and that Commissioner Fry joined us at the start of the proceeding.

Parises: The evidence that I recall most vividly was Mr. Rockland's picture of Cougar Damn. It was a picture taken in 1965 and it showed some very rigid benching with some fir trees at the bottom, but basically a pretty ugly picture. In my response to that was that was done in 1965, there was no reclamation law today, you could never get away with that today. Just like you could never get away with the rivergate sites near the St. Johns Bridge. Those sites were abandoned. Today, there is a guarantee, and this is about the only area in land use where there is a guarantee. We have to put up a bond which is cash in the bank that says we will complete the reclamation or we forfeit the cash. Now the second two parts of the reclamation objection were on the question of forestry and on the question of habitat and in your packet the first item you will see is a letter from a forester that talks about his estimation of how easy it is going to be to fully reclaim this site with two feet of top soil. These sites is experience in other areas of the country and he sites talking to a national expert in the West Virginia area who



says they were able to achieve reclamation with no top soil. They just put top soil in the hole in the planting holes.

Other Voice: I object to that.

Other Voice: Well, I was just discussing that. Well, I think I am going to have to rule that with the commission's consent that we are getting into that area that we were talking about. Commissioner Atwill.

Atwill: I am confused because didn't we get a request to leave the record open? I thought there was a request made.

Leonard: Mr. Kagen did request that:

Atwill: So, -----.

Parises: Mr. Chairman, are you tempting to rule that this is not rebuttal to the

Leonard: Well, yea, this is the gray area that Mr. Kagen specifically has a grey in his mind. This was the exact type of thing that he was concerned about.

Parises: But, Mr. Chairman, if somebody says, I don't think you can prove it that forestry will occur and I talked to a forester and he said that the forestry value based on the soil was thus and such, am I not entitled to respond to that.

Other Voice: I mean I recall specifically in testimony in opposition to the application just this topic being brought up. I understand the depth of the evidence makes it appear to be significant, but it appears to be rebuttal.

Other Voice: Well, Commissioner Al-Sofi also brought up a good point that someone did request that the record be kept open and I believe that was Mr. Kagen that requested that. Was that not.

Parises: Maybe there is a solution to this and that is the record has to contain whatever I offer, whether you accept it or not. I mean whether you rule it inadmissible or admissible or whatever it is going to be in the record. Isn't that the easiest way around it. That way you get the information to make your decision if you decide or counsel decides that he doesn't want to admit it because it is too broad he can strike out the portions that he

doesn't want to admit.

Lots of voices:

Female Voice: My feeling is that it was submitted in writing and  
----- part of rebuttal.

Other Voice: Would you please talk into the microphone.

Other Voice: Counsel, we need a little help here. He did submit  
this as part of the record. The record was kept  
open. He did submit what he is quoting right now.  
It is not strictly rebuttal but he did submit it to  
the record.

Other Voice: Can I offer a suggestion. I think the applicant's  
representative can just go ahead and use the time  
and here are eight of us here who can give this  
rebuttal or new testimony, whatever it is the wait  
is it deserves, and if we feel that it isn't  
rebuttal then we will discount it..

Other Voice: They can use the time basically the way they wish  
and....

Other Voice: I am not sure why the objection is being made.  
What is the objection? Is it inappropriate to  
admit any more evidence to the record, or that this  
is not rebuttal?

Kagen: My objection, Mr. Chairman, this is Neil Kagen is  
that this is not rebuttal evidence. The request  
was made to keep the record open after the close of  
the evidentiary hearing which one is occurring  
tonight. We said, and our forester said that there  
is evidence produced that reclamation could occur  
and this is going beyond that trying to prove that  
it can when they didn't do that the first time. I  
am simply pointing out what your rules say and I am  
just going to make an objection to this evidence  
and leave it at that and leave it to you to decide  
what to do.

Fry: May I ask you a question, this is Peter Fry. Not  
being a lawyer, I am having a really hard time  
distinguishing between rebuttal and the facts that  
you need to rebut something because you can't just  
...(tape 1, side A ends)

Kagen?: But what I am trying to show is that it is a silly  
thing to say reclamation cannot be done where one  
of the greatest botanical gardens in the world has

been placed not just in a quarry, but in an abandoned quarry. The next three photographs are a little more to the point. The first one is of an arboretum in Ontario and as you can see the conifers are doing quite well. The second one is of an ampatheatre in Vienna, Austria where, I think this is limestone, which was left in very dramatic land form. I have seen similar sites in Italy although I haven't actually seen one in Austria. The third one is a wildlife area in Passot, Germany that is the most similar to what we plan to do. In this one they created a lake, they left the cliffs rough and they, the conifer forest is thriving. Now, all I am trying to do is illustrate Gary Lynch's point that reclamation can achieve anything you want if you plan well enough ahead; and I am trying to show you that although I can't guarantee that this site will be as beautiful as these sites, I can guarantee the job will be completed and I can show you that the job is doable - it has been done in other places.

Other Voice: A long way away.

Kagen: That's right. The third point on my list to rebut is the storm water issue. I don't want to say too much here except to remind you of the regulatory context. Angell Bros. had to apply for a storm water permit whether or not they expand; everybody has to get the permits. DEQ has 750 of them on file. DEQ will either approve this permit or modify it or turn it down. The way we look upon this, it is an engineering problem. There are two gentlemen here that are going to enlighten you on this subject. We have Tori, sitting on Skip's right. He is at the David Newton firm and we will get to them at the end of my presentation. But, from my perspective, there are a number of solutions to storm water run off. One engineer might do it one way, another engineer might do it another way and CH2M Hill would do it their way. But, I think that is immaterial. Your not granting the permit, DEQ is. All you have to know is there are accepted solutions to these problems. The fourth issue that I want to rebut is the issue of quality and quantity of the rock and the potential for landslide. I heard Mr. Douglas ask repeatedly for the well water logs and I finally brought them. It only took a couple of weeks but we have well water logs from the Rubles, Mr. McHerty, and I think the Adams. What these well water logs show is 400 to 700 feet of solid rock. I think that was

the point that people were arguing - there is not really rock in this pit. Well, what do they think we are selling? There is nothing but rock there. The other point, to get more specific about what exactly is the geology like and is the area stable? The objector's evidence was from a Dr. Beeson and I believe there was another individual that testified. We asked Doug Gless with Herb Shlicker and Associates who is an engineering geologist to read those reports and respond to them and he has given you a letter in which he thanks Dr. Beeson for his commentary but reminds Dr. Beeson that this is an engineering geology question that he is not really qualified to answer. The letter also sets forth Doug Gless's familiarity of the site, all the different times he has been there; how there are 100 foot high walls on it right now and they are stable; and in particular he says that when Dr. Beeson attempted to draw an analogy between the slide that occurred on I-205 and the Angell Bros. site that he is wrong because there was a prior slide at the very same spot out on I-205 and Odot missed it. If they had been a little more careful in looking at the site as they progressively moved the earth, they would have seen it. There is some other information in the letter that I won't go through about the quantity of rock - I think that is pretty self-explanatory.

The next issue is the favorite issue for all of us; that is the wildlife issue. Notice I don't say "wildlife corridor" and I don't say that for a very good reason and that is because nobody knows if there is a corridor there or not. I asked Larry Devroy of David Evans and Associates to look at the Ester Lev Report and to tell us what it is doing and what it is not doing and how good of a job it did. In other words do a peer review for us. So, he sent me a letter on September 21, 1992 that is in your packet. The first point he makes is that the study was never intended to determine if a wildlife corridor really exists out there or not. The reason it wasn't was primarily one of cost and time. To prove that sort of thing you have got to do a comparison between one area and another area. You have to track animals; you have to have photo stations. The county didn't want to pay for that. So, what they got instead was a study that said basically here is what to do assuming there is a wildlife corridor and assuming that there is something there to be protected. The second point that I would like to make I have to step over to

the easel to do because I have to use an aerial photograph.

This is an aerial photograph that was taken I believe in July of 1991. This is Multnomah Channel, this is Highway 30, this the Angell Bros. site, this is Cornelius Pass Road, this is McNamee Road and this is Skyline Road. What the study said was there is probably a lot of land area right in here between McNamee Road and the expansion.

Female Voice: Where is Newberry Road?

Kagen: Newberry Road is right here.

In the second point that Larry Devroy makes is that if you are thinking about wildlife corridor as an area that has no disturbance, none of this qualifies. Look at Newberry Road, passes right through the middle of it. Look at Cornelius Pass Road, that is right through the middle of it. The same with McNamee, Skyline. The point he makes is let's look at what area was actually studied. I don't know do you have copies of the wildlife study with you? If you do, it is Figure 4. Let me get it. If you look at Figure 4 in your study, you see a little piece left out, a little corner right here. That is the area between Skyline and McNamee and that is very significant because look at this: see this whole ---- area in here. It isn't even studied. Now the contention is the animals can't from Forest Park over here to the coast range and the area that is studied is the area right near the mine. They never even look at this huge forested area here. The excuse for not looking at it was - well there is a lot of houses down on McNamee Road so the animals probably won't cross. But if that is true, that the animals don't cross Newberry. They never even get here. They don't cross Skyline. They don't cross Cornelius Pass Road, they don't cross the railroad tracks. Now my point is not to criticize the study, but to simply point out to you no reliable case has been made. That there is the one and only bottle neck right here. Now, we will do our part to take care of wildlife but our area is not essential. There is a lot of other area where animals could travel.

I think another thing that is gradually emerging through this very case that I don't think any of us realized when we started this and that is the days

of preserving wildlife habitat by just saying to everyone, you are not going to do anything in this area and there will be no uses are over, at least with respect to urban natural areas. We are beyond that. There aren't enough areas like that left. What we are going to have to do is that we are going to have to rebuild habitat.

Other Voice: I don't quite understand what you just said. Would you say that again?

Kagen: Well, there is two ways to create habitat. You can prohibit all uses. At least you can if you control all uses - that is one method. That is the method we have used in the past. That is the old growth forest method. But there is another method that is the only method that works when you are in an urban and that is to try to shape the uses that are unavoidable so that they create habitat and that is why Jerry Fugate was saying this is state of the art, this is emerging. We don't know precisely how things are going to turn out, but this is an opportunity. Do you follow me.

Other Voice: Yes.

Kagen: The other point about habitat reclamation is that we are doing this on a voluntary basis. I don't know is the area is significant or not. Ester Leve doesn't know Jerry Fugate doesn't know but we know we would be happy to reclaim it if we could. When people say well, can you prove that you will be successful, well I don't know. In the sand and gravel type of pits, the wetland sites, we know they have been very successful. We know that there are golf courses, we know that there are lakes, we know that there are subdivisions and we know that there are wetlands that have been successfully created. But in the upland area we simply don't know. Now, the next point that came up was, and I think it was from Mr. McKirby and I think from Mrs. Ruble we heard complaints about noise and the complaints took two forms, 1 - I can hear or I think I can hear it and the second one was you are probably violating some sort of noise standard. I have two response to that. One of them is a letter from the Daily Standley firm in which they run DEQ tests on all of our machinery and equipment and basically what they find is no problem with compliance with no mitigation measures at all until we get to stage 4, and then they say what you should do to be in compliance is to get a

better muffler for your excavator and your cats, a hospital grade muffler because then you are getting close enough to I think it is Mr. McKirby that you are want to do some mitigation. Actually I only have one of these, or I have two letters from the Austin Powder Company, but I lost one on the way here. They are dated May 8, 1992 and May 24, 1992. The representative from the Austin Powder Company, Steve Harris explains to you how easy it is to comply with the blasting requirements because with the sequential delays in blasting and with the knowledge we now have from sisemic testing and the rest were able to fine tune the way we move rock so that we never have a violation. We can change the amount of fertilizer and explosives we put in the hole. We can drill the hole deep or shallow, we can put the holes close together or far apart. We can change the millisecond delay from 8 milliseconds on up. We can put a lot of crushed rock on top of the hole or a little bit and we can be in compliance even within 100 feet of residence. Well, in this case we are nothing like that. We are over 500 away from that.

Al-Sofi: I have a question. I don't see where the blasting is addressed as far as the noise level. I didn't notice that either in this one dealing with blasting doesn't seem to deal with sound and the one with sound doesn't appear to deal with blasting.

Kagen: It may be in the May 8th letter, like I said I had it this morning but I don't have it now. What he gives in the May 8th letter is the formula. If it doesn't deal with that I assume the record will be left open and I can ask him to write another letter that explains how it deals with the DVC scale, which is the DEQ standard that applies.

Other Voice: Okay, I have a question about that letter. They said that calculations the W and they explain what this means.

Kagen: Oh, do you have it?

Other Voice: Yes, pounds of explosive per delay. And the way this works is if you have a shot at 10,000 pounds and you load 100 holes and you delay each shot by 17 milliseconds, then you don't calculate it according to the 10,000 pounds, you calculate it according to 100 pounds and not being an expert in this area clearly I don't see how 17 milliseconds

is going to allow you to distinguish and cut up 10,000 pounds into 100 pound increments. So, I think that they need to clarify that or take it out of the record because it didn't make a lot of sense to me.

Kagen: I can explain it but not with, probably not with the persuasion that the expert himself could and I would be happy to bring him. But basically is what he will explain is how when you delay, you can tear the rock easier rather than making a big boom and it reduces the percussive effect and dissipates the pressure levels. But, I am not a physicist.

Other Voice: But, still the idea of the 100 pound calculation verses 10,000 pound because you can separate it by milliseconds is questionable. It was in my packet I am sure....

Kagen: Well, you are the only one that has gotten it because even my packet doesn't have it.

Other Voice: Well, I have a pile here a foot high so I guess...

Kagen: Laugh...well, the other point about blasting is I asked Skip because I had never, you know someone in the last hearing said I think I could feel or hear blasting and I asked Skip did we blast this year? And he said no. Well did we blast last year? Well, maybe, but not that often. The fact is that this is one of those very good quarry where the rock is both hard and it is already fractured. What you use blasting for is to loosen the material. If you have very large machinery, and we have larger machinery now than we use to, you can minimize the amount of blasting. And, we expect to blast probably no more than 10% if current conditions hold up. So, I think this is one of those issues that you have to address for compliance but we don't blast much anymore.

Kagen: The next issue I had on my list was the issue of Views.

Other Voice: I have a question. You don't expect to blast more than 10%....of the

Kagen: The time.

Other Voice: ...days of operation.



Kagen: Right, just like a crushing. We don't crush all the time. The crusher is operating sometimes, it feeds into a stock pile. When the stock pile is large and you are not selling a lot, you are not crushing. When the rock does not need to be loosened for the excavator to move it, we don't blast. Blasting is very expensive. We don't want to do it if we don't have to.

Female Voice: So, out of a ten day period you would be planning on blasting for a full day. That would be 10%?

Kagen: Is that a good way to measure it Skip?

Skip: 10% of your total production for the year. It is not one of ten days.

Female Voice: Oh, so he is talking about 10% of production.

Skip: can't understand.

Female Voice: How does that translate to days and hours?

Skip: That goes into 40,000 ---- each class (far away from mich).

Female Voice: Two hours total for the whole year?

Skip: It takes about 1/2 a day to six hours to load the explosive takes about 30 seconds for it to go off. We have put sizemographs on each one of our blasts that we do and a train going down a railroad track caused more of a vibration in the testing machines than the blast does.

Kagen: I was about to address the issue of views. Now I think the objection that we heard last time were people from Sophie's Island said the current site is unsightly. We don't like looking at it. And our point was always because we have asked for a large area it gives us additional flexibility to leave visual buffers between you and the expansion area so that the supposed unsightliness will not get that much worse. I was out at the wintering as probably half the city last weekend and when you look at the Tualatin Ridge what do you see? You see the clear cuts and you see the existing mine. You don't see the expansion area behind where we are going to be mining. And I think that is about....when you get further out to the wildlife areas you can't even see the Tualatin Ridge.

Now, let me take a pot shot at our loyal opposition here. We had some photos, and I think they are over there against the wall, designed to show how visually unattractive we are. But, let's look at those. They were taken from the air for one thing which exaggerates the way the rock pit is perceived by anyone except an airline pilot or an airline passenger. And the other problem with them is they don't have any margin around them. Look at the aerial photograph and see how big this rockpit really is and then look at the photograph on the bottom and I think you know, we have different points we are trying to make but I look upon those as not making a valid point. I think on the scenic issue the other point we heard is on the Tualatin Ridge and Sophie's Island were listed as outstanding scenic views by the county and they are not listed that way in the comprehensive plan.

Now that is about the end of my factual rebuttal. I have a few legal points I would like to make, but before I use up all the time, Tori Walker is our engineer and he has some words to say and then are you ready for this?

Other Voice: Yes.

Kagen: I then Ron Rathburn would like to speak.

Walker: My name is Tori Walker. I am with David J. Newton Associates, Civil Engineers and Geo-Technical Engineers. I myself am a registered civil engineer and a hydrologist. My home address - 1201 S.W. 12th Portland, Oregon 97205. I have extensive experience in surface water hydrology and hydraulics including analysis design research and technical writing for journals. Specifically, to the subject at hand I've analyzed hydrological impacts of proposed rock quarry expansions. I have helped design reclamation plans for rock quarry with the water quality end. I have analyzed river hydraulics including sedimentation analysis. I have designed erosion control facilities. I have been asked to analyze a document known as the Declaration of John Rhodes. In this document Mr. Rhodes states the purpose of his review was to "evaluate 1) the effect of the proposed expansion on downstream water quality, water quantity and downstream wetlands. 2) Whether water quality control measures proposed in the application are adequate to protect water quality in the public interest and 3) whether the quarry expansion will

cause violations of Permit #1000 or OAR 340 41 445. He concluded that the increases in annual erosion, downstream sedimentation and turbidity that will be caused by the core expansion will probably be extremely significant. He concluded that the pond currently used to collect quarry runoff is completely ineffective in preventing discharge of quarry runoff into the Multnomah channel. He concluded therefore Permit #1000 is already being violated on a regular basis and that the core expansion there were some violations of Permit #1000. He concluded that quarry expansion will also reduce downstream water quality and probably violate water quality standards for turbidity in the Multnomah Channel. Lastly, he concluded the core expansion will also increase sedimentation in the Burlington bottoms, a highly significant wetland. I read this far on his analysis and I thought My goodness what are they doing? But as I studied and analyzed Mr. Rhodes assumptions, findings, and conclusions, I reached quite different conclusions which were confirmed by my onsite and offsite visits. I prepared a memo which, do they have a copy?

Other Voice: Yes.

Kagen: Okay, I am going to summarize some of the points on that. Mr. Rhodes sought to analyze potential impacts by using a crude hydraulic method to estimate annual and monthly increases in runoff. He states that estimated average annual streamflows will be increased by about 190% in stream A. And, then extrapolates at the seam could be expected for peak flows. This is completely inappropriate. He should have analyzed short duration storm events which are the events that will tell what impact what the expansion could have without mitigation. I have estimated about a 50% increase in the peak discharge for 25 year storm event. In Mr. Rhodes analysis of potential sedimentation impacts, he utilized the modified universal soil loss equation which is widely used. However, its application is for single storm events not annual yields. I am not sure how he was able to come up with certain parameters which you need from a single storm event and then extrapolate it to an annual event. Nevertheless, this accounts for in part, the massive amount of sedimentation that he predicts. The other part of the reason he concluded there would be a highly significant impact from sedimentation is that assumed that there would be

successful reclamation for only 50% of the proposed expansion area. This reveals a certain ignorance on his part regarding mining procedures. Topsoil or overburden is removed and stockpiled right after the removal of vegetation. It is not left bare like that. What that leaves then is for the most part, bare rock. There is only a fraction of the soil susceptible to the erosion that he is talking about. Beyond that there are many ways of preventing and controlling erosion. Overburden stockpiles which will contain the small coital materials he discusses and which are a concern. These overburden stockpiles can be vegetated or covered over by other means, thus controlling the erosion at the source preventing from even being carried. There are many methods, structural and nonstructural. I have listed in that document approximately 40 standard methods of dealing with erosion. There are ways to intercept sediment and control erosion near the source if it leaves a site or if it leaves an immediate area. There are also ways to intercept sediment before leaving the site, which is a requirement. Mr. Rhodes has not obviously not been on site as he believed he was being conservative in his estimate of the sedementation impacts. He mentioned channel erosion being not analyzed and adding an additional impact. I went onsite. I saw a lot of rocklike channels, I didn't see any channels that were being eroded onsite. Mr. Rhodes talks about the quarry being in violation of Permit #1000. He states that to be in compliance they would have to construct a 700 acre foot detention pond which properly should have been called retention pond and even this would not be adequate since seepage would not occur and participation exceeds of apparition. Mr. Rhodes should have --- more carefully however. Permit #1000 states that process water, not storm water, cannot be directly discharged into Multnomah channel. This is a drawing mining operation, there isn't any process water involved here. The quarry is not required to retain storm runoff and Angell Bros. is not in violation of Permit #1000.

I would like to discuss NPDS - general permit #1200. That is national pollutant discharge elimination system. The clean water act requires that storm water which is covered under non point source pollution be dealt with. Oregon DEQ is the agency that is dealing with this and issuing permits as Frank mentioned. I don't know why, but Mr. Rhodes completely ignored this all important

permit. This permit is restrictive and enforceable. Conditions of the permit include monitoring, frequent monitoring, visual, and also laboratory tested samples of storm water. Results from these tests have to be submitted to the DEQ to assure compliance. The permit will also place limitations on the impacts that can be seen by quarry operation; no greater than 10% increase in turbidity, removal of settleable solids. The bottom line is that the quarry will not be allowed to operate if it is in violation of this permit. This is the same process that most industries are undergoing including all quarry. It provides a safety net as it were to prevent what we are all concerned about; the pollution of our environment which leads me to my last point -the impact of Burlington Bottoms. I need to go over to a diagram over there to a diagram over there to illustrate my point. This yellow here you see is a buffer area. This has not been brought out by the opposition but stream C which drains the Burlington Bottoms come right to this buffer area and right to the edge of the property. All of this area, the buffer area, will either be improved or left alone. Secondly, the areas that will be, that are now tributary to extremes are not directly, those will be mined in such a way that the mining operation will continue in this way northwest as it proceeds first of all the vegetation will be stripped. Secondly the soil will be removed very shortly after. The drainage pattern will be changed. The runoff will no longer come down into ---- to impact with seven. It will be coming down into drainage area A, stream A. I have analyzed the impact of the worst case situation and found that it is not a problem.

In summary, I just want to state that we are not looking at something that is unusual. We are looking at something that happens all the time. The reclamation of the quarry. There are ways of dealing with this and it is not an instrumental problem. It is not even a problem. It is standard method to deal with this.

Other Voice: I would like to ask a question. Do you a, I saw this material said to given to us regarding reclamation in the Canada and Austria, is that from your firm. Then I can ask someone else. Based on your expertise, you said you have experience in reclamation?

Walker: Yes.

Other Voice: Okay. In the U.S. my understanding is that states have a jurisdiction for licensing and enforcement of reclamation right? Is that pretty go true for all the states.

Walker: I have been involved in the technical aspect and I haven't been involved in that aspect so I can't answer the question.

Other Voice: Okay, well let me tell you what my concern is and if you can't respond to it, I will let ---. My understanding of the way Canada works it works much different in the U.S. both in the decision making processes and the jurisdiction and the enforcement. So, I was curious as to whether these have any relevancy at all to us as being in completely different systems as we are. So, I guess I was dismissing this evidence in my mind as not being relevant and I wanted to give you an opportunity of explaining to me of why it is relevant.

Walker: I have no idea. I have never done reclamation in Canada.

Other Voice: That is fine. I didn't mean...

Other Voice: I have a couple questions for you. You stated that Permit #1000 is only concerned with processed water correct?

Walker: No, I said that the statement that processed water cannot directly discharge into the Multnomah was taken and he assumed that storm water, I believe, because that is directly where statements came from

Other Voice: Okay, so what does Permit #1000 do besides being concerned with runoff of processed water. What else does it address?

Walker: It deals with pollution in the Multnomah Channel...

Other Voice: And according to you, runoff can be allowed into the Multnomah Channel if it is not processed water?

Walker: Of course, sure.

Other Voice: And you are meeting the standards for turbidity and sedimentation in the channel currently?

Walker: That cannot be answered without further data collection either by Mr. Rhodes or myself.

Other Voice: When you were on the site, Mr. Rhodes said that he noticed an area that appeared there was quite a bit of runoff into the channel from the sediment pond or detention pond or whatever you would like to call it. What is your opinion on how much runoff or when that runoff would be occurring and how much sediment would be going into the channels through that overflow?

Walker: The runoff will occur whenever there is a sizeable storm. That runoff, the quality of the runoff would have to be monitored. It has never been monitored.

Other Voice: How do you prove that the permit, how do you stipulate that you are following the permit if it is not being monitored?

Walker: No, I said that the permit states the processed water cannot be directly be put into the Multnomah Channel. Storm water runoff can be. That is not the stipulation of the permit.

Other Voice: Okay. But, the stipulation is that through that permit you can also not allow too much turbidity into the channel. Is that correct? Is that part of that permit too?

Walker: That will be Permit #1200.

Other Voice: Okay. Who does the monitoring on that?

Walker: I believe they will be responsible for their own monitoring with a licensed...

Other Voice: So, the applicant does their own monitoring?

Walker: Visual, but there will also be environmental consultants that will be most likely doing the storm water collection and laboratories which are bonded and licensed which will do the analysis of the storm water.

Other Voice: Mr. Rhodes felt that a retention or detention pond needs to be a lot larger than what exists. In your opinion what size do you think is adequate for the new expansion area?

Walker: I have estimated at the very worst it would be about 19 acre feet. The reason for this big difference he says 700 feet is because of his misunderstanding of that. Where it says that

processed water needs to be retained on site. He took that and said well if a years storm runoff was retained on site, it would take about 700 acre feet to hold it. And then, worse than that, there wouldn't be enough seepage and evaporation so that wouldn't even be adequate. That is completely ridiculous. Nobody that I know of requires retention of storm water runoff for a very simple reason. There would be a lot of very very large retention ponds.

Other Voice: Okay. Are you going to be here for awhile?

Walker: Yes.

Other Voice: Because I might have another question for you later.

Walker: Yes.

Other Voice: Thank you.

Rathburn: My name is Ron Rathburn. I am a Senior Ecologist working for an environmental consulting firm called EnviroScience. We specialize in natural resource assessment and we are located at 1201 S.W. 12th Avenue in Portland. For the record I have in terms of my own educational background, I have a Bachelors in Zoology, a Masters in Ecology, I have a Doctorial certification and 3 1/2 years of post graduate work. Looking at the effects of water quality and the impacts on the distribution of plants and animals. Subsequent to this work I spent the last eighteen years as an Environmental Consultant, working in the evaluation of wetlands from the standpoint of delineation and mitigation, evaluating water quality impacts on the Columbia River and estuaries of Oregon and translating those impacts to their effects on the fisheries, both on the Columbia River as well as in the estuaries. From the umm, based on my professional experience, I have been requested by the applicant to evaluate a submittal by John Rhodes regarding the effects or should I say the impacts of the post project on the biological water quality and wetland conditions. A good deal of the comments which have been presented previous to me have addressed the issues of hydrology and have touched upon the considerations of water quality. I would like to kind of pick up from water quality and then translate that to the issues which I think in terms of the fishery impacts and then the filling of the wetlands if I



may.

I think from the standpoint of water quality and particularly the sedimentation which has been described by Mr. Rhodes as resulting from the proposed operation. I think it is particularly important to clarify that the sedimentation which we have in the lowland areas are a result of existing mining, historical mining, and most importantly within the last two years, the removal of the trees within the proposed mining area - all of which have resulted in sedimentation which has moved and transferred down to the low bottomland areas. The movement of this sedimentation into the Multnomah Channel has been presented and discussed by Mr. Rhodes. I think it is particularly important that I spend a little bit of time doing an evaluation of what types of data was presently available. Primarily to get a handle on what types of conditions presently exist in Multnomah Channel so that I could assess the impacts. The earliest or the latest data which we presently have in Multnomah Channel was collected in the latter part of 1970, both in Multnomah Channel as well as in the Willamette and in the Columbia. I think it is particularly important the standpoint of water quality to stress that what we are dealing with as far as water quality in this particular mine are the issues of sedimentation. Sedimentation is naturally occurring in all three of those river systems and undergo considerable fluctuations seasonally. We have values ranging in the Columbia River from as low as two to three parts to 140 parts over an annual period. We have within the Willamette and within the Multnomah Channel we have values ranging from about 7 to 14. Basically, the relationship of Multnomah Channel to the Willamette is pretty similar. The extrapolation that Mr. Rhodes is the existing conditions, if effected by or adversely effected by a post operation would likewise adversely effect the fisheries. I think this is a misnomer from the standpoint of existing data is that there is no information at the site in Multnomah Channel which indicates and which you can deduce that there is a significant impact on the water quality conditions. Likewise, to be able to say that these conditions then adversely effect the fishery, particularly the cold water fishery, I think this also an adequate and accurate statement. There is not enough information available in terms of the habitat conditions which are effected by this project. But likewise, Mr. Rhodes had made

the extrapolation that there was significant impacts would occur. It is my general understanding over the years, I have been underwater, I have looked at sediment water quality conditions where the sediments have been impacted ten to ..... (tape ends) a hundred times what ambient conditions are and I have had an opportunity to dive on it and observe it. It takes a considerable amount of sedimentation to impact but for you to be able to say that this particular operation would adversely effect the fishery requires a considerable amount of information be collected.

Al-Sofi: Well is there enough information for you to say that it will not adversely effect it?

Rathburn: No, I do not. I am just saying that based on the information that Mr. Rhodes has indicated, there is not enough information to support that statement.

Al-Sofi: Either way, you can't say it will and you can't say it won't.

Rathburn: Yes, can't say it won't.

I think from the standpoint of the let's deal with in terms of the fisheries, the Multnomah Channel is used as a nursery and a passage for some audits, and I think from the standpoint of their movement in and out of this particular area has not been demonstrated that existing conditions are presently adversely effecting their survival. I think from the standpoint of the wetlands, and I think that is probably the remaining issue that I would like to address if I may, and that we have had an opportunity to be in the field a couple times looking at the wetlands in this particular lowland area. In general, we are dealing with a reasonably undulating area which consists of shrubs and forested wetlands which collect the water historically and result in both detention and retention capacity. Mr. Walker has described its function and in our general estimation we have walked through it. We have found some areas where there is a sedimentation and in other areas where they are not. These basins are interconnected and there is very little, if any, data to support that these wetlands are not functioning and we disagree with that statement. Likewise, I think from the standpoint of what we also ended up walking through, in a criss-cross pattern among the

different basins and did not support the existing sedimentation which had accumulated. We did not feel that that occurred throughout the area. There were a couple of areas where we did notice sedimentation occurring and likewise I don't think it substantiated the very strong statements that the wetlands were no longer functioning as a result of the proposed operation. That concludes my comments.

Other Voice: Questions.

Hunt: Ummm....how do you feel with the increasing the ummm rock quarry, how do you think that will effect Burlington Bottoms?

Rathburn: It is my general understanding that the Stream C, which is probably the most sensitive from the standpoint of the Burlington Bottoms, that that area is not going to be mined and as a result there will not be sedimentation going into that channel or into that area. And, that that is the more sensitive ones. Do you understand?

Al-Sofi: Well, according to the picture, part of it would be mined, Stream C. Isn't that the upper umm isn't that the....

Rathburn: The A & B streams will result in sedimentation. I guess if you describe the entire Burlington Bottoms as that whole wetland down in the lowland area, that is the case which you are talking about, the proposed mitigation and/or settling basins will result in collecting sedimentation which are the major issues I think of concern as far as water quality and there will be some finer sediments that will be moving out into the lower bottom area. I think I kind of need to, I am looking at in terms of what is classically referred to as the Bottoms is that area which is further down channel and effected by the stream course identified as C.

Al-Sofi: When soil is disturbed to the degree that they will be disturbing the topsoil, generally what is the increase in sedimentation over nondisturbed areas? What would be the percentage of increased sedimentation? You are saying that it is not going to be, that we don't need to worry about the wetlands, that you didn't see that much sediment occurring. But, I know from experience that when you disturb land sediment runs off. What is going to happen with that sediment?

Rathburn: First of all my comments was not that you do not need to be concerned about the wetlands. I think wetlands are a very sensitive resource that you should be concerned about. I am saying to you that the evidence which was presented by Mr. Rhodes does not substantiate his statement; that the function of that wetlands has been significantly impaired. That was my statement.

Rathburn: In terms of the mining operation and in terms of the design of that mining operation, both in terms of how the overburden will be managed as well as how the ponds on the property will be designed. The purpose of that is to eliminate and/or reduce the amount of sedimentation to a level that is acceptable by the State of Oregon.

Al-Sofi: And....that should eliminate it to what degree? I am not concerned about State of Oregon standards, I am concerned about the wetlands. How much sedimentation would go past those ponds?

Rathburn: I can't give you a specific number whatsoever in terms of what is going..the design.

Al-Sofi: Can they design it so it would be 10%, 0%, 20%?

Rathburn: The design parameters...

Al-Sofi: Yea.

Rathburn: would be to manage the sediment, the condition of sediment that is eroding that will be flowing offsite and the, my general understanding and Mr. Walker I think presented was that it will be designed in such a way as to retain most of the sediment on-site and that is the purpose of the design and I have to go with the assumption that that would be accomplished and if that is accomplished there definitely will be suspended sediments moving out into the wetland itself and definitely from there into Multnomah Channel. It is also my understanding that regardless of what flows offsite that the applicant is required to meet requirements regarding both turbidity plume as well as BDS regulations.

Leonard: Any other questions.

Thank you.

Parises: Just a couple of legal points by way of rebuttal,

and this is Frank Parises again. There were some issues raised in the criticizing the staff's ESEE analysis that I wanted to respond to. The first one was: Can't the commission consider need or lack of need for the resources a way to deny a application and let me say that there is someone here that is more qualified than me on this subject. It is Greg Wolfe from the Department of Land Conservation and Development. But, I will give you my understanding. Need can't be considered to deny the significance of a goalfide resource site. Although it is something you may factor in, like if there is a market for your end product or if there is a market for your end product or there is not a market. But, I think that can be factored in in the ESEE analysis but it can't be used to say this is not a significant site or this is a significant site.

The second issue in the ESEE analysis, and I think Mr. Frye raised this. What about the relative value of this site to other goalfide mineral and aggregate sites. And, my response is: There aren't any. Civilization has driven them all away. There used to be some up on Skyline, in fact there is a county owned pit I think up on Skyline and Rivergate was a great site until they shut it down for citing the Bocker Syltronic Plant. And, if you look around the county, where have all the good sites gone? Well there used to be a real good quarry out on Rocky Butte. Well, obviously you are not going to open up a site like that with houses all around it. There is a site that is seeking a permit in Howard Canyon but that is miles from the market and doesn't really make sense. The only real alternative sites that make sense are the Scappoose sites. The trouble with them is they are so far away, that like we said the first time, you have to add \$2.00 a yard to the price to take care of transportation and the other thing that you forget is where does the \$2.00 go? It goes for diesel fuel so the way we tried to calculate this out. I don't know how good these numbers are but it is something like .236 gallons for every additional cubic yard if you have to hall it from Scappoose. So, if we are going to talk about alternative sites, we have got to factor in the high environmental costs as well as the high monetary costs.

Fry:

Can I ask you a question? Are you assuming transportation by truck?

Parises: Yes.

Fry: So, what about barges? Because my understanding is that a lot of products brought into this metropolitan area by water.

Parises: I have never seen it done upriver. But, I think in the next fifty years both rail and barge may come back but right now they are not competitive.

Fry: Gee, I guess I am not...my understanding is quite a lot of product is barged into this region right now. Maybe I am wrong.

Parises: Well, it is barged the other way. I know that jetty rock has been barged from Camas to Alaska.

Fry: I mean barged into the Portland market.

Parises: The only shipments that I am aware of are specialty products, not the kind of material that I am talking about.

Fry: Okay.

Parises: For example some of the light weight, very high strength sands I know have come in on barges. You are right about that.

Fry: I guess I find that very surprising and maybe I am ignorant, but my understanding is that there is quite a significant amount of material barged in to the Portland Metro area.

Parises: I think it is barged around the Portland Metropolitan area. In other words Ross Island Sand and Gravel moves material on the Willamette and on the Columbia, but it is all local material.

Fry: Were there one of the firms that barged in. At any rate I am not an expert in that I don't want to bring evidence on to the record, but I guess I wanted to raise that question because it is a question in my mind.

Other Voice: Yes, Karin.

Hunt: How many miles is it from Angell Brothers to Scappoose? Is it five miles, six, seven?

How many miles is it from Scappoose to Angell Brothers site?

Other Voice: I think about twelve miles.

Hunt: No, I it is at least, it is not that many.

Other Voice: To the nearest quarry on the north side of Scappoose.

Hunt: Okay, 12 miles.

Other Voice: Yea, and I think it is a little bit further to the next one. Commissioner Fry was right about imported rock into Portland. But, I think about 90% of the import, because of that concrete aggregate that we don't make.

Fry: Well, I was sure about the concrete and cement, but I knew you didn't quarry that so I didn't want to get into areas I am not sure about.

Other Voice: Wait. Let me ask a question you said .236 gallons per cubic yard in diesel fuel. That is what you just said right?

Parises: Yes.

Leonard:? Which comes to about .30 cents per cubic yard. I am assuming \$1.20 diesel gallon. I am being generous.

Parises: You mean in additional fuel?

Other Voice: Yes.

Parises: Then you got the truck and you've got the man and you have got the...

Other Voice: At the present site too.

Parises: But, you don't have them spending an extra half-hour or whatever it is.

Other Voice: So, what is the actual cost if we were going to ...? Because I suppose that would be part of the ESEE analysis.

Parises: That's right. Comparing the actual cost of the one with the actual cost of the other.

Other Voice: You don't have that?

Parises: No, but our estimate was an additional \$2.00 if you had to buy the same material coming from Scappoose

where the truck had to make round trip that was that much distance further.

Other Voice: Per cubic yard.

Parises: No, yea that is right, \$2.00 per cubic yard. And, I was trying to give you this time the fuel, the additional fuel as a component of the \$2.00.

Fry: I have one last question.

Parises: You don't even have to make it the last.

Fry: Okay. Through this whole process, there has got to be already said and I just want to say it - what is the economic value of this quarry today in 1992 dollars?

Parises: I don't know exactly. But, let me take a stab at it though. If you want to know what the value of the final product is, the state seems to be paying about .50 cents is it a yard or a ton, Skip royalty?

Skip: I believe it would they receive .50 cents per yard royalty.

Parises: So, .50 cents per yard for your finished material. That doesn't count overburden or anything. That is your crushed rock. Is that the kind of figure you are looking for? I mean you can figure out the total rock and then subtract the overburden, subtract the non --- stuff and come up with a net figure and multiply that times your average royalty to come up with a value.

Fry: Well, what I am getting at is that in Phase II of this ESEE analysis, if in fact it is true that there are conflicting uses and that this is a use that should conflict with other uses and we have to weigh that. What am weighing is the economic value and it seems to me that if we don't know the economic value of this resource it is scientifically impossible to weigh it against the other resources and then this becomes basically political process with not scientific basis.

Parises: Alas, it is political. And, we can't make it scientific and we don't have to. All we have to do it.

Fry: Can I just finish?



Parises: Yes.

Fry: It seems to me that you know how much rock is in the quarry. You should know that and you know how much the rock is worth in today's dollar. You should know that. So, it seems to me a relatively easy mathematical exercise to say this rock in this quarry is worth \$2,000,000.00 or \$100,000,000.00 or what. And, it seems to me that we need to know that.

Parises: All you are ever going to get are a range of values. You could take .50 cents and multiply it times the total cubic yardage of all the material that is in there and if you use that figure you would have over a billion dollars because you take .50 cents x 220,000,000. But, that is not going to be right because you don't know how much overburden you have. You don't know how much offspec material you have. You don't know how much of the material the Department of Geology is going to allow you to remove because they are going to deal with stability. You don't know the final land contours. So, really all you can give is a broad range.

Fry: Right. You can calculate all those assumptions out and if this quarry, the rock in this quarry is worth a billion dollars after you have calculated all those things out which are easy to calculate out, then it seems to me that is a significant piece of fact that really is to be weighed against in terms of the values of all of the other things raised. And, I guess I was frustrated that wasn't really brought out clearly as to what is the economic value of this rock.

Parises: Well, I hear what you are saying commissioner but that number is no good. I would have no confidence in using a number like that. We may find half of the area is not good rock. And, all we are trying to do is deal with numbers and values that we can get our hands around. So, look at forestry as a competing value. We don't prevent forestry from occurring. It is a renewable resource. When we are done with mining we can bring forestry back. So, that is why I wouldn't try to assign a dollar value to the rock versus a dollar value to a tree and try to weigh the two against each other.

Leonard: Let me, without intruding a proprietary formulas of Angell Brothers and how they figure out it is

financially worthwhile to continue going on, someone, some place, must figure we expect we can gross X amount of dollars, or it wouldn't be worthwhile for them to do it.

Parises: Right, that's right.

Leonard: Right? And so, I don't think Commissioner Fry nor myself is looking for that specific number but, we are trotting in our arms around that because in fact if there has to be a comprehensive plan amendment through an ESEE analysis, then we have got to be able to measure some type of apples versus apples.

Parises: That's right.

Leonard: And, you are not giving us any apples.

Parises: Well, I don't, I can't give you a high enough level of confidence in a number to make it worthwhile. Supposing we were doing this with the great scenic resource, the Columbia Gorge. How much is it worth?

Leonard: Well, no, I would like to use your analogy of timber because, which is probably a simpler one and I think you have boxed yourself in on that. Someone is going to make some type of estimate of what the timber is worth on that particular land before they move forth and whether it is economically feasible to move forth given the process they are going to have to go through and the cost of reclamation and the cost of protection and the cost of replanning before they are going to make a decision of whether to cut now or just to wait thirty years from now. So, what the commission is grappling with is that regardless of any scenic values or whatever, we are trying to deal with hard numbers first.

Parises: What would like by way of a presentation? Let me try to put something together. I don't think I can come up with a quarry business plan right here on the spot. And, I think you have to measuring apples and oranges. Like someone said, the timber is worth \$2,000,000.00. Well, was that net or gross? Was that present value or nominal dollars? Was it over a sixty year cycle? If it was then when you work out the numbers it comes out to \$238.00 per acre per year.

Leonard: But, what they can come up with is an estimated board fee to work from. Then they can decide whether there is value there. What we are being asked to do is saying that this is a very very key economic site for rock quarries and I am saying that ecology has a cost but what we are trying to say is, Okay, if it has that value, what are we dealing with? At what magnitude of numbers are we dealing with?

Parises: So, you are looking for order of magnitude numbers.

Leonard: We are looking for something.

Parises: Well, I will have to think about it.

Leonard: Well, I mean I just I am trying to express to you the frustration we are having.

Parises: I understand what you are doing. It has been easier where we had quarries with no overburden. For instance, where you could do computations and they were right on. In a site like this you have so many competing costs, so many other values you are trying to take care of. This is, it is going to be awfully rough whatever you do.

Fry: Let me just...It seems like this whole thing is in, cause the state when the state went through this process, looked at different resources and I watched this process -----. It said that gravel pits are a resource of value to the State of Oregon. And, this process is: Is there a resource there? That is the first question we have to decide. And, we have decided that for part of the site by defect, you know by the past. But, now we have to say, is there gravel here, is there value here? That is the first decision. The second decision is is this value, and we have to go through a, b, or c. You know how does this value relate to the other values around it. And, then the third thing is we have, if there is in fact this value is something that needs to be protected or in fact we have to deal with conflicting values. And, if we do have to deal with conflicting values, we go through a conditional use process to deal with that conflicting situation. And, it is unbelievable to me that the state was so ignorant that they did not put into the system some way to determine the value of the resource we are protecting in a way that can be measured because if it is not measurable it is basically ludicrous. It

becomes a political process, which is fine. I don't have a problem with the political process but, it shouldn't be sold as a quasi-judicial scientific process is in fact a political process. So, it seem to me that I would like to know what is the value of this quarry and I would like to know that in economic terms because that is the only way that I could measure it against other values. I could theoretically measure it with other measurements but we all know those are very hard to measure econom.....

Parises: But, aren't you still measuring apples and oranges? Or are you going to measure it against non-economic things or are you going to measure it against economic. Like what is I've seen a lot that the is on a Crown Pacific logged parcel that sold for \$395,000.00 just for the view. Is that what we are going to measuring the quarry against? I mean you know, it is going to be rough no matter how we do it.

Fry: Your opponents have already raised the economic values. They have already established financial values to resources and it is difficult for me to measure that against something that to me has no value since I don't have the value established in the record as to what is this worth. It is a problem I guess we all have to face.

Other Voice: Let me just express and you can continue with your presentation.

Parises: No, I was actually saying to myself, why am I arguing? I agree with you.

Leonard: You have nothing Mr. Parises?

Parises: No.

Leonard: Mr. Kagen, you have the floor.

Kagen: Thank you Mr. Chairman. I just have a few things to say. Given the short amount of time we have, I am going to allocate most of our time to our experts. Mr. Rhodes is going to testify first. While he is coming up here, I am going to say a few things. He is going to testify for about four or five minutes. Then we are going to have Mr. Beeson two or three and the same with Ms. Houble. A first thing I want to say is to remind you that there is a burden on this case. And, the burden is on the

applicant to prove its case. It is their burden to show that this particular site can be reclaimed despite their protestations that they don't have to show that. And, in fact, they say they don't know if they can show that. Mr. Parises himself said that. It is their responsibility to show that this site can be used in the future for wildlife passage. They don't know if they can do that. They have no proof that they can do that. And, the same goes for the wetlands issue. Mr. Debrow testified on behalf of the ---- that he didn't know what the current impact of this development would be on the wetlands. He didn't have the proof. He didn't have the facts. That is the applicant speaking. They don't have the proof - it is their burden to show to you that this site can be reclaimed; that it can be used in the future for forestry; that it can be used in the future for wildlife and that it isn't going to adversely impact the wetlands. They haven't carried that burden.

Second, Mr. Parises has said that you shouldn't worry about things like reclamation and water quality. That is the responsibility of Dogami and DEQ. Wrong. It is your responsibility under the code to make these decisions - to make a decision about weighing the consequences and benefits and costs of allowing the site to be used for quarry or making it off limits to quarrying at the present time. Which leads me to a final point. Namely, Mr. Parises said the day is gone when we address these issues by saying we are going to preserve it. That day is not gone. It is right now. If you have under Goal 5 three options. One of those options, 3-B, is not to allow the quarry. That is a very viable option. It is one the county has used before in situations like this where there isn't a demonstrated need and that is the case of Howard Canyon which I referred to at the last hearing. I may have something else to say if I have time later, but unless there is a question I would like to ....

Leonard: Commissioner Hunt has a question.

Hunt: We received a letter from somebody from Friends of Forest Park. I don't recall who wrote it.

Leonard: John....

Hunt: Okay. And, it was about the county is going to be

doing a natural inventory and there might be recommending that there is going to be a Goal 5 resource for the area. Can you go into further detail on this or explain this more as to what is occurring and what the process is.

Kagen:

I would like to ask Mr. Sherman to answer that because I am not fully aware of what that study involves. But, before he gets here I do want to add one other thing - the value of this particular corridor. Mr. Parises said that the study done by Ester Leve did not call this area essential. That is completely at odds with the report itself which says that the ecological integrity of Forest Park is dependent upon the maintenance of forest habitat along the entire peninsula, the peninsula studied by Ester Leve which includes the Angell Brothers property. So, that is directly contradicted by the report that the commission.

Other Voice:

Can I ask the panel to please talk louder. I know I am getting old, but I can hardly hear anything you say. Thank you.

Sherman:

This spring Friends of Forest Park and a number of conservation groups working with Gladys McCoy's office was Sharon Tempco with her aid who is in charge of planning and Sharon is here tonight. Sharon can talk about it more detail - lobbied, talked with the county, worked with the county to pass a planning budget ad package to do a comprehensive review of all the rural areas of Multnomah County. East County, West County, the island, because it was recognized by the commissioners, the Board of Commissioners that our inventory of Goal 5 resources our approach to rural planning is wilfully out of date. The commissioners voted a \$300,000 ad package, over a three year period \$100,000 to begin this July. The comprehensive review was to begin with Northwest Multnomah County because they recognized the urgency. They also recognized the pressing urgency of the Angell Brothers application. This would have been a comprehensive broad rush approach to what the issues are in the area. And, it would have taken a comprehensive planning approach to dealing with those issues. We don't know what the outcome would have been. Unfortunately a budget freeze went into effect and I, once again, not being part of the county staff, Sharon could talk to you about that in more detail or Scott Pemble if he is still here. My understanding is that we are

ready to go with the planner to begin this work July 1 on June 30th Commissioner McCoy had to freeze the budget because of Goal 5. It is put on hold. But, it is only on hold. It is in the docket. It is coming. There is a profound commitment to do this. It will address these issues in a broad and comprehensive way. Not the ad hoc, site specific, very frustrating position that we all find ourselves in today.

Any other questions?

Al-Sofi: I think that will be fine.

Leonard: Continue.

Other Voice: Thank you. One other point before Mr. Rhodes starts and that is unless the other side for the record to kept open after this hearing, unless they ask it be kept open, I am going to withdraw my request that it be kept open.

Leonard: Okay.

Rhodes: John Rhodes. I am at 336 SE 30th Avenue, Portland, Oregon.

Leonard: Hold on a minute Mr. Rhodes.

Other Voice: I wondered if the applicant received a copy of Forest Park's letter. I just wanted to make sure.

Parises: No, I usually get stuff from Neil, but I saw you had a big packet. Some of the stuff I received, but not all of it.

Leonard: This is just a single two page letter.

Parises: What was the large...

Leonard: That was your stuff. ha ha ha.

Other Voice: Much of what we did not get a copy of.

Other Voice: This is a letter I received about a week ago in the mail.

Leonard: It is from John.

December 25 addressed to Leonard.

Parises: There was another packet that came in with that and

a number of other things that we had gotten before.

Other Voice: That is all your stuff.

Parises: No, no, not that.

Leonard: This came to us.

Many voices: Yes, that came along. Right. You didn't get...'

Leonard: He is talking about the letter from Neil Kagen dated October 2nd.  
It was sent to Mr. Hall and basically it is a iteration of all the information that has been previously sent which I am sure you have most of it.

Parises: I am sure I got most of it but there was...

Leonard: You can feel free to look through my packet.

Other Voice: I didn't get a copy.

Other Voice: We didn't get a copy.

Leonard: Basically what this is is Neil recapitulate everything previously sent into one package. Okay, and you have all of these in one form or the other.

Other Voice: They are just all compiled.

Leonard: Yes, exactly.

Other Voice: You think you have everything.

Other Voice: And, I think too that it is important in the future just that the applicant gets copies of everything that is sent to us.

Other Voice: Yes, and we didn't get the letter from their forester, the letter from the various other people that they mentioned tonight. We haven't seen any of that.

Other Voice: It was a packet over here. We got it tonight too.  
  
You are not alone. We just received it this evening.

Leonard: Neil, you can have mine by the way if you want. Heaven knows I have enough stuff here.



Go ahead Mr. Rhodes.

Rhodes:

First off I wanted to mention I thought that the two consultants did a very good job of underscoring what is a very important issue. And, that to date there has not been an adequate analysis of the impacts of the quarry that is less than approximate. There needs to be a good analysis done on some of things that they mentioned, which were things like discharge, sedimentation of the wetlands, changes in turbidity. Those were not things that were done as part of the application. They were not things that were considered. Plainly they agreed that more or less the directions of my calculations were right i.e. that stream flow will increase, that sedimentation will increase. They were a little hesitant to put numbers on it. I think when I spoke to you people before and also in the affidavit I was very clear about those numbers were put together given the best information I could and they were very approximate. They can vary a couple different ways. Same thing with the wetland and filling. I did not take several samples throughout the whole wetland to look at how much sedimentation had already occurred. I tried to just take a quick look and also take a look at the channels. The same thing goes with fish not being documented as being existing in the area. I relied on Oregon's legislative designated beneficial uses for Multnomah Channel which they designated those were beneficial uses, I assumed that those were beneficial uses that they wanted to continue to support. I also relied on DEQ's assessment. The Multnomah Channel is already moderately impaired for fish use by sedimentation and turbidity. I did not do an independent study. I have made the assumption that if it is already impaired by that then more turbidity would probably impair it further. If we look at the nature of the permit, which is certainly an interesting issue - the Permit #1000. My reading of it, and I will read to you from the first page of Schedule A in that permit is no waste water, processed water or turbid rain water from the exposed pit area or working area is permitted to be discharged directly in the public waters. That is the first sentence in the permit.

Female Voice: Can you pass that around?

Rhodes:

I assumed it was in the record but this is DEQ's permit signed by Fred Hanson. I had assumed, it

was in my files.

Female Voice: I just want to look at it.

Leonard: That will be part of the record.

Rhodes: That is fine. But anyway my reading of it is that turbid rain water is not allowed and at that being rain water that that would mean that they could not discharge turbid rain water from the storm detention basins. If you want to make the assumption that you can continually pulse the Multnomah Channel with turbid rain water, indeed you can look at smaller detention pond. But, those are two different issues. Also, if you look at the applicant's application, on page 11 it also says, and I am just quoting out of the application: "According to Richard Wicksom of the DEQ the major criteria in with which the applicant must comply is a requirement not to increase the turbidity of water of Multnomah Channel. That is page 11 on the first paragraph on the page. So, I just took a look at what was in the application and the permits and based my calculations that. Where he talked a little bit of the nature of the data available as far as the impacts to the wetland for fish. There are some very confusing assumptions and as far as the reclamation goes it seems to me that whether we have been talking to folks about Dogami or even the applicants themselves, nobody seems to know what number on the roulette wheel the reclamation or mining plan ball is going to fall in. I certainly was not aware that water shed sea would not have drainage, the impacts or the mining in water shed sea would not drain into the Burlington Bottoms. Now what I would be concerned about that that is going to alter stream flow into Burlington Bottoms and water is an important component of wetlands. I think that certainly bears some very important analysis, every bit as important as sedimentation issues. Far from that, I think that the general conclusions still hold. You are looking at strong and large increases in sedimentation and again, besides just using some very crude message that I tried to be very clear about, I also took a look at case histories from other areas similar activities and found that they are within the ball park. Sedimentation is going to increase wetland sedimentation. Deposition is going to increase. Discharges are going to increase except in the case of stream sea. That is certainly draining the Burlington Bottoms. That certainly merits some

more analysis and turbidity into the channel will increase. And, as mentioned, nobody refused the fact that, and I didn't say that the wetland is no longer functioning, I am saying it is no longer functioning as a detention pond; that it is obvious to me that turbid water is regularly shunted in to the Multnomah Channel. And, I am through - unless you have questions.

Fry: Can I ask a quick question?

Leonard: Go ahead.

Fry: Just in terms of getting more clear on this. Wetland is composed of sedimentations so I would assume that sedimentation is an important part of the wetland because if there wasn't for sedimentation it would just be a free flowing stream. So, what I guess you're saying that your concern that there will be more sedimentation because of this operation than existed when this site was in a natural state and the rainwater would wash the dirt down the hill into the wetland creating the wetland. Is that your point?

Rhodes: Oh yes. Absolutely. And, there is no doubt that sedimentation is a natural occurrence. But, the thing is there is a lot of things that occur naturally. Flooding is a natural occurrence but when we pave a water shed say and we increase the frequency of flooding, we realize that is something that is significant. It is the same thing with sedimentation. That has always been a component of these ecosystem but too much of what they are use to completely changes the way they function. And, as far as me assuming that all of the quarry operation caused the sedimentation that I had observed that has already occurred, I didn't. It is very clear in my affidavit. I used a ball park that even if only 50% was due to the quarry.

Fry: So, what I am getting at though is just to crystalize your concern - it is at this slope, this location, their operation is going to increase the sedimentation that would normally occur from normal rain water washing down...

Rhodes: Oh, absolutely. I would expect it to....

Fry: ....and that is your concern is that won't create more wetland. That will blotch it up somehow?

Rhodes: Well, the ...

Fry: Is there just no room for this wetland to grow basically.

Rhodes: Well, it is going to over time alter the physical features in that area of the....the sedimentation that is already gone we probably already lost open water character in that area. And, those changes, as long as there is turbid water discharging into the area, some of which settles, we will see a topographic shift. Over time we may have a bench there or a terrace there.

Fry: Well, didn't we ---- that prior to the Multnomah Canal going? Multnomah Canal is a man dredged canal isn't it?

Other Voices: Channel.

Fry: Channel, excuse me.

Other Voice: It is dredged but not created.

Fry: I am just trying to get a clarity as to what is happening down stream from this. Do they ever dredge it?

Female Voice: I don't think it is dredged at all because it is real shallow in some, down by Ross Island.

Fry: Thank you.

Female Voice: Wait, wait.

Rhodes: Certainly.

Female Voice: They collect this detention from....is this a natural wetland that they are talking about or is this a manmade detention pond?

Rhodes: The one that's currently been used. If it is manmade, it has been manmade a long time ago. It certainly shows what I would call very wet signature in terms of soils and botany and trees that are excess of 50, 60 years old. So, my guess would be if it is not natural it has certainly been there for a long time.

Other Voice: Okay, thank you.

Beeson: Okay. Marvin Beeson. 7264 Wilshire Ct. Milwaukie,

Oregon 97267. Very quickly I would like to address three points. One on the quantity and quality, one on the stability and one on the ground water question.

First of all with respect to quality and quantity. Mr. Parises pointed out that these water well logs indicated it was all solid rock. I would like to read just a couple lines from some of these. Mr. Rupel's well. Let us go through a few of these. It says soft, decomposed brown basalt, firm gray brown basalt, firm gray brown basalt, soft brown basalt and so on on the way down the hole. It is not all uniform quality and characteristics. Here is another one from Tony Well and is in the vicinity also. This is down at three hundred fifty something feet. Conglomerate broken brown rock, conglomerate brown soft rock and clay, weather basalt, wood soft cole basalt mix. Not exactly all solid rock all the way. I don't know exactly the nature of this. I don't think they do either since there has been no drill holes for that purpose. And, I might say after having used these is that most geologists or engineers do not put much reliance in these. They are done by drillers. They are not either engineers nor geologists and I have a lot of experience with them. They should be used with great great caution in any case.

The other thing on stability. Mr. Gless responded to my questions earlier by not answering the questions essentially. Saying that since I am not a qualified engineering geologist, which I am not. I am not a registered engineering geologist. He is. I am a registered geologist. Therefore, I could not make any statements on a stability. And, I pointed out in my letter earlier and my testimony that I was not an engineering geologist but that I have a lot of experience with these basalts and I know when red flags are raised. Even my general geology textbook shows that when you cut into a weak zone that is dipping towards the exposure, you are asking for problems. They have stated a 14 degrees dip. We know that there are approximately every 70 feet we enter inner flow zone which is a potential weakness. And, they do not even raise, address the question in there question of, in their discussion of stability. I real disappointed that Doug resorted to that sense. He was one of my students in a way. I was on his examinee committee, masters exam. He is a good man though.

What else here. Generally engineers differ from geologists in that they would do an analysis in these weak zones. They would know what kind of a slope this thing could maintain because they would look at the characteristics of these rocks. No calculations such as that were made. They simply said it was hard rock, strong and therefore stable.

One last point was actually in the ground water and I surprised that there was no rebuttal on that. We were looking at the potential for ground water contamination migrating down between flows down the quarry floor. That was not addressed, rebutted.

Leonard: Thanks. Mr. Kagen, more:

Marcie Houle: 1616 S.W. Spring, 97201. I just wanted to talk about quickly three points. One was the point that was made about examples of reclamation at Bochart Gardens and in Germany. First of all we all know a garden is not a forest. What worries me is that there has been no demonstration locally of reclamation working. We do know a scientist that a natural system such as wildlife is a working assemblage of species that is evolved together for thousands of years. We also know that because of fragmentation of habitat, animals such as elk and bobcat and black bear have been wiped out in the east coast since the early 1900's and in Europe much much earlier. So, even if the area is "rebuilt" there is no insurance that this whole system will work as it has evolved historically.

Secondly, the point that the area what was studied did it not state the whole area of the peninsula coming into Forest Park. I think it is has to be remembered that elk and black bear and bobcat need thousands of acres of habitat for home ranges and to move. Black bear can move 25 miles in a single night. Just to box them into a few hundred feet is just not going to do it.

Thirdly, the point is always brought up - nobody knows if this is a corridor or not. I think this is a problem in terminology. We know that animals are getting through from the coast range to Forest Park. It is a connection and also we know that it is functioning. We see elk, we see black bear, we see bobcat in Forest Park today. And, first of all that is extremely, reiterating that it is extremely, it is precious because there are so few places in the United States or in the world that a

major metropolitan area such as Portland would have wildlife such as these wide ranging species anywhere observed close to the city. I go back one last point to say three internationally renowned scientists say we need a corridor of a mile and a half wide that may be conservative. It could be paired down later. But, if we aren't conservative we can lose it all on the outset. Lastly, I just want to say we need a thoughtful proactive framework of land use planning.

Tape ends.

Other Voice: How much time do we have?

Leonard: At least five minutes.

Other Voice: Five minutes, okay. Well, I am going to allocate the remaining time to Mr. Sherman to give you a final argument.

Leonard: Thank you.

Sherman: In yesterday's Oregonian I hope some of you happened to see, this is John Sherman, Friends of Forest Park, Jonathan Nichols column, Sunday's Oregonian, October 4th. I would like to read just a section of it. They are talking about the well known Hampton Old Growth Grove that Friends of Forest Park is coordinating the purchase of. Midway through the article Jonathan Nichols went on a tour of the Old Growth Grove which is adjacent to the Angell Brothers site. It says, "A cougar where he careful, could walk from Forest Park to the ocean. The availability of this content tiguous raven of wild country has folks around town these days dreaming about a plan they call the Greenway to the Pacific. The notion is that one day a wildlife corridor and hiking trail might actually stretch from Mt. Hood clear through to Astoria. There is, however, one place where this corridor gets very narrow." Guess what? This bottle neck is the very parcel of ancient forest just northwest of Forest Park. In other words they are talking about the wildlife corridor, they are talking about northwest Multnomah County. He is talking about the Angell Brothers site. Sever this link and suddenly Forest Park is nation's only wild urban park. Home to beaver, bobcat, bear becomes Portland's version of Central Park a home to squirrels and pigeons. I am sure you are like everybody else who, you are special, but I am sure

your instincts are like a lot of folks who have to make difficult decisions. You want to compromise. You want something that is a win/win situation for both parties. I think everybody does. I think that is what we want. You have a win/win situation here. It is real clear; 3-B designation. A 3-B designation allows Angell Brothers to continue quarrying their already permitted site. It preserves the remainder of this site, the expansion site until Multnomah County can finish their comprehensive review of the rural area, to see if in fact the corridor can be protected. To see if in fact the corridor can be protected, if in fact there is a designated area that deserves certain kinds of overlay zones and at that point, after that is done, and it will be done in the foreseeable future, Angell Brothers is free to reapply, to resubmit for the site under the new situation. It compromises there. It is a step you can take. It preserves options for all of the resources until they can be dealt thoughtfully. Thank you.

Leonard: Thank you. Unless anybody has anything to say, I would like to close the public testimony.

Other Voice: I would like to submit our answers to some of these new items and questions, but only on the record. How long is it, seven days?

Leonard: Yes, as a matter of fact you have seven days, which would be the 12th of October, 4:30 p.m. After that there will be four days of rebuttal which would be the 16th of October 4:30 p.m. We will reconvene this for a decision on the 19th of October. Does everybody have those dates? So we are going to close public testimony at this time. You guys are very good.



## **Transcript**

### **Multnomah County Planning Commission**

CU 14-92

#### **Meeting of October 19, 1992**

Leonard - This is the October 19th meeting of the Multnomah County Planning Commission. My name is Leonard Richard. I am the acting Chairperson of the Commission. Other members of the commission present include Commissioner Fritz, Al-Sofi, Ingle and Atwill. Our hearings are quasijudicial in nature; that is parties are entitled to some of the constitutional rights to due process including the right to appear in person or be represented by other individuals or by counsel for the purpose of presenting or rebutting testimony. Our decisions are based on demonstration of compliance with the approved criteria which apply to the actions being requested. Those criteria will be described at the start of each individual case. We will accept only testimony or evidence directed to those approved criteria. You should be warned that failure to raise an issue with sufficient specificity to afford the commission and the parties an opportunity to respond to the issue per ----- appeal -----. That means that any issue of fact procedural law not clearly directed at this meeting is not available as grounds for appeal to a higher authority. Our hearings are conducted according to adopted rules of procedure which were set forth in the notices of this hearing and are available on the table near the door. Any portion of those rules not required by law or ordinance of the county charter may be amended or suspended by majority vote of the commission. We will begin each case with presentation of the staff report followed by testimony of the applicant or the applicant's representative, unless they wish to waive their right to testify, then by anyone else in favor of the proposal. Opposing parties will then be given an opportunity to testify. Each side will be allowed a total of 10 minutes to present their evidence unless, a written request for additional time was presented to me. That request must describe the evidence testimony to be introduced and an explanation why it wanted additional time. I'll then ask the commission if they wish to grant the additional time and know that when we accept testimony that is repetitious, relevant and material. Parties may cross-examine opposing parties and their witnesses if the question is presented to me in writing and I wrote they're relevant. When you testify, please come to the podium and speak directly into the microphone, state your name and address. Uh, after testimonies have been heard, we will close the public portion of the hearing for our deliberation. You may ask questions of the staff, but no further public testimony will be allowed. If you are presented either written or oral testimony and you disagree with the decision we make, you have the right to appeal our decision to the board of County Commissioners. The form is in a brochure explaining the appeal process is also available at the back table. Staff will be happy to assist you. We will begin with managers report.

Other voice: Thank you, this evening you will receive some material here for C6-92 on

Columbia River Gorge Proposed Revisions to the County zoning ordinance. We had tentatively scheduled that hearing for this evening, but due to the length of the other agenda items, we have rescheduled that discussion for November 2, which is your next planning commission meeting. However, I would like to remind you that you have a draft copy of the ordinance that was distributed at the last planning commission meeting and also I'm distributing to this evening a copy of the report prepared by Sharon Tempco, our Multnomah County Gorge Coordinator to discuss several recommendations concerning the recreation intensity classification for four sites in the Gorge. I will distribute those, this report to you this evening and ask that you read these reports or this report prior to next planning commission meeting scheduled for November 2nd. It's hopeful that this evening we will be able to conclude the business of C4 PR7-92 CU14-92 take all the hearing testimony on C-9-92 which is the Bridal Veil historic site designation and also then conclude with our business on C4-92 which is a four-scowl recommendation. You may want to see a final version of that on your November 2nd, the third item on your November 2nd meeting. So, with that, that concludes the manager's report unless you have any questions and I will distribute the proposed changes for the recreation intensity classification for four sites in the Gorge that we promised to do some time ago. Any questions?

Leonard: Let's all not get excited at the same time now. Thanks. Okay we are going to hear, actually we have closed the testimony on item one which was PR7-92 and CU14-92, 1455 NW St. Helens Rd., Angel Brothers Rock Quarry, they are asking for a comprehensive plan change to adoption of an easy analysis and then also the 10-year conditional permit. Commissioners, we would first go through the comprehensive plan process and make a decision. Based on that, then, we will then go to the conditional use and review that assuming whatever our judgement was on the first one that had been approved what we would do. No too dissimilar from the Gorge. Okay, what I would like to do is get through, we have some cross-examination questions we want to get through, I'd like to limit just to the cross-examination first, we'll get into further discussion after we get the cross-examination now. Okay? So, we'll start with Commissioner Al-Sofi and then other commissioners who may have some cross-examination questions by their staff, the applicant or the opponents.

Al-Sofi: We received this request for cross-examinations from Hank McCurdy back on the first hearing and I have reviewed them and it seems that some are more appropriate for staff, some for appellants or applicants, excuse me. So, I will consider they are certain and not suquest so to speak. I'm going to just read the ones for the applicant first and then we'll do the ones for the staff separately instead of back and forth, if that's okay. This is, and I'm going to read the question so that the terminology is not mine. Why has there been no analysis of the impact on views from Mactamy Road and Skyline Ridge?

Other voice: You can't see the pit from Mactamy Road or Skyline Ridge.

- Al-Sofi: I'm gonna make notes for this. Okay, what are the annual needs of the metropolitan area for rocks and how much of that need can be supplied by other quarries in the area such as Ross Island, Sand and Gravel, The Pocker Jet Quarry, The quarries in Washington County, Clackamas County and elsewhere?
- Other voice: We don't know what the annual needs of the county or the metropolitan area are. We do know that Multnomah County is a net importer of aggregate and crushed rock, and lastly, goal five does not permit need to be a limiting factor, such that you could deny an application to list a significant goal five mineral and aggregate resource because you thought there was not sufficient need.
- Al-Sofi: Okay, I've ruled one of the questions to of already been addressed, so I'm not going to read that. That's question number six, having to do with the blasting. Number seven, on page forty-three of the staff report, he quotes, "No hauling shall occur directly from the site onto Mactamy Road." His question is, will indirect hauling being allowed, that is or contemplate such as by third-parties or from Highway 30 onto Mactamy.
- Other Voice: No hauling will occur from the site onto Mactamy Road, all of the hauling out of the site and into the site will go on Highway 30. Where the truck goes after it leaves Highway 30, we don't know.
- Al-Sofi: Okay, I think there's one more question that would go to the appellant, I mean, excuse me applicant. Presently, the composition of the basil is such it can be mined without blasting, is there any way to establish how much blasting and how often it will be needed is expansionary and I think that also, you addressed last time. So that's all for the applicant and there's a couple questions that I thought probably belonged for staff, Bob. Won't the new commercial for zoning because of it's limitations on clear-cutting created back to wildlife easement and won't it balance of the expansion of the quarry more negatively impact the wet land, the wildlife values? I don't know.
- Other Voice: I think that's a question that requires professional testimony, I can only at this point address you in terms of procedural matter, excuse me, I believe you have a very large volume of testimony, of facts on both sides of all issues.
- Al-Sofi: I think the other questions are somewhat on the same, uh, because he talks about what limiting expansion to a five year term meant, a permit for further study of the wildlife values, which have not been thoroughly studied. Wouldn't that be keeping with Goal Five requirements, a balancing of conflicting values?
- Other Voice: There again you have to decide whether the information that's been given you to date is inadequate or adequate.

Al-Sofi: Okay, than I think that we won't have anymore...

Other voice: If you want to make sure all of those questions are on the record, you might want Edna to at least read them out.

Al-Sofi: Okay, I'll read the other two questions I believe, although the land involved may not be unique when compared to land in Douglas County, isn't the land unique because of it's proximity, 10-12 miles from Portland, and for instance in proximity to the old growth area being preserved in the next forest park. Okay, and another question, which is his number six, evaluation of the noise impact in July 1990 didn't apparently occur when there was blasting going on. Wouldn't a more durable assessment include, excuse me, a more accurate assessment include blasting, wind, humidity, and location. The 6-20-90 test were run at present course site and done accurately to assess the noise impact on Mactamy Road. I believe that's, I believe that's all the questions, and we can submit the written document into the record.

Leonard: Thank you, do you have any other cross-exam questions Commissioner Al-Sofi?

Al-Sofi: No, I don't.

Leonard: Other Commissioners?

Al-Sofi: These are not my questions, these are Mr. McCurdy's questions.

Leonard: I'd like to move to them, since we're dealing with comprehensive plan, do I hear a motion to approve amendment of the comprehensive plan and stop recommendations? Okay do I hear a motion disapproving amendment of the comprehensive plan?

Other Voice: Mr. Chairman, I think what we have to do in order to find that perhaps there isn't justification for many comprehensive plan is to go through, is to determine whether or not we agree with the ESEE and that's where I have, I have a disagreement. I guess it really comes down in my mind,

Leonard: Can I, Can I interrupt for a minute?

Other voice: Certainly.

Leonard: The reason I was asking for a either a motion to either approve or disapprove then we could stick right to it and we can get a second and can get right into a discussion .... I'm just trying to keep it structured so that we deal with it, I mean it's fine with me.

Other Voice: Whoa, Mr. Chairman but if, if there is a majority of the commission that reaches a different conclusion under the ESSE, than that would lead us to position where we would reject the application for an amendment to the comprehensive plan...

Leonard: No, I agree but...

Other Voice: Because there is a designation for example, let me just throw something up, if there was 3-B designation saying that the conflicting uses really have to be protected then that would automatically then lead us to a position where we could not really entertain the proposal to amend the comprehensive plan.

Leonard: Oh, I agree, but that's why I kind of was asking for somebody who was going, thought staff recommendation would go forth and approve the amendment, since no one made that motion, I would assume that someone would be able to make a motion...

Other Voice: To reject, the staff...

Leonard: ...to reject it based upon their particular reason and then we could move forward.

Other Voice: Do you think that's the proper way to go? I'm willing to do that, it's just, well but under discussion we'd have to then, I would want to say, why I would take that position...

Leonard: Right, absolutely.

Other Voice: Than I move rejection of the staff report.

Leonard: Do I have a second?

Other Voice: I'll second.

Leonard: Discussion.

Voice C: Thank you, Thank you, Mr. Chairman. I really did appreciate all the information on both sides I was overwhelmed and I really came down to just a couple different points and I guess where I disagree with the staff report was the ESCE Analysis. Basically that there was just a, excuse me, conclusion that the resource at the site should be given a free seat designation. What came up over and over again in this process is that the, for lack of a better word, the threat and made perhaps irreversible harm to the conflicting uses, really weighed very heavily on me. I'm, I recognize the resource there, I recognize the value of the resource, I've also recognized the resource that is available at this site is available at other sites and I don't mean just the existing quarries but other potential quarries. The

potential, I guess, the potential harm on the wildlife habitat and whether it has been firmly established completely thrown out, the potential for the existence of the wildlife corridor between forest park and the Tualitan Mountains is too big for me too risk. I just can't lock that up and I guess what I see in all the reports here, I'm not even convinced because there's some real dispute whether a half mile buffer zone is going to be adequate, you know, it was a hope, it was might be adequate, a might be sufficient for a quarter on a temporary basis, I don't want to roll those dice. I think that once that corridor is blocked off, there will be no travel by wildlife, whether it's the large animals or the small between the forest park and the Tualitan Mountains and I'm very concerned about the animals that are caught inside the city limits without a way to escape because they're going to multiply, there going to consume the resources of forest park, there gonna, because of what we've done or what, intentionally or unintentionally, we're going to lose that resource forever. I guess I can't say that definitely, but I can say the risk is too high for me, to in fact agree that this site should receive a 3C designation.

Leonard: Commissioner Douglas.

Douglas: I disagree with that being in an area where wildlife, you might say a balance. I see no reason for and a very wide restriction. A narrow area is always needed for that, if you see that trail for deer and such as that, or elk or whatever happens to be seldom do they go more than just a narrow alley way. We're talking about a run way or what you want to call it, a corridor or whatever, I've seen time and time again that they follow a certain path and they will stick to that path to a main degree. So, I disagree with your theory there, I think that this would not be enough to offset any wildlife, I really don't believe it would have that damage at all.

Voice C: Just in response George, I don't want to put this forward as my theory even though there are conflicts between the two study reports, I think it was general agreement that a corridor if in fact a wildlife corridor exists and that is still and if, I grant it. That it needs to be fairly wide. There's some dispute about how wide and it's more than just deer trail, I mean I know, I've seen animals travel, elk and deer. But I think both the studies concluded that it needed to be substantial and whether it was 200 meters or half a mile, both of those are fairly wide, wider than a deer trail.

Douglas: So without even getting to the point of the economic trade house, you weren't persuaded that the wildlife there is adequately protected under either st--.

Other Voice: I think it is just too big of a risk for me. I think there is just too much of a threat to lose it entirely, if it is there.

Al-Sofi: Well, I had a couple of problems with the applicants' response to certain, the mandates that are required and at certain times when the... the example that I am looking at on page 17 of the application NC11157325D, it says the proposed operations will not result in the creation of geological hazards, etc. but the response from the applicant is that they are not likely to result and I find that substance of difference between will not and its not likely to. I don't think that is adequately barring the burden. And then the next one on the same page, MCC11.15.7325E Impacts on Ground Water. It says that the proposed activities will not adversely effect the quality or quantity of ground water within wells within the vicinity of the operation. The burden is on the applicant, but the applicant but the applicant response by that there is no evidence that continued blasting will adversely effect the quality; that is shifting the burden to the other side to show that it will cause a problem in that I don't believe this is meeting their burden. I have found a couple others similar that I would call burden shifting, which would cause me to not be able to favor the staff report if we didn't even get to any other issues which I do think are important - the wildlife considerations, the wetlands, possible degradations. I think those are very important questions. The fact that there has been no studies done on the wetlands and the runoff tells me that the applicant has not met its burden in showing that the adverse will not happen. So that it is my position.

Ingle: Well I guess I owe it to the applicant to voice my concerns too over the staff report having sat here for several meetings and listened to a great volume of material which I thought was very good from both sides. For me I think it boils down to three major points. I don't think that the applicant has fully convinced me that we can successfully reclaim the site, let alone kind of show me in the region examples of the sites that have been successfully reclaimed. That was a real problem for me. The other thing was that I thought that there was some inadequate evidence that mineral extraction would not degrade the scenic value and/or even enhance the enjoyment of wildlife near the site of Forest Park. In fact, if I can paraphrase Mr. Priese's logic, he said something to the effect that it is already visible, but the new expansion won't make it any worse off. Well, that to me was a hard one to swallow.

The last point I wanted to make that there was some uncertainty both upon the applicant's part as well as the folks opposing this whether to bid a day run off and sedimentation had ever been monitored on site, so I guess it is difficult for me to assume that you can make the logical argument that additional impacts are likely from the expansion when you really don't know what the current situation is like. I think those three points are probably the primary reason why I would have to disagree with the staff report.

Other Voice: Commissioner Atwill do you have anything to add to that?

Atwill: Yes, I would like to agree with the commissioners that have already spoken thus far and you know reject the staff report under the goal 5 analysis. I also prop that the wildlife and wetland values needed more protection than it looked like they were going to be getting and that they outweighed the site's mineral values and also had other concerns under the conditional use as far as reclamation. I was not satisfied that that could adequately done to protect these values and also had concerns with water quality under that. So, I agree.

Other Voice: I do have one more point regarding how much quantity of rock in the ch-- was going to be available and how long the process it would take Angel Brothers to be able to fully utilize the current site. I don't think we have the right information to make that determination. They actually need this expansion and how many years it would take them to fully use what they already have.

Other Voice: So you don't feel there was enough information on the economics.

Other Voice: I absolutely do not.

Other Voice: Other points to be made?

Other Voice: I am sure there are but I won't .....

Other Voice: I think maybe I better speak up because probably if anybody would be adversely effected, it would be me. My house is directly in line with the pit. From my forum you can visualize it all the time. If a well was to be involved it would be mine. I have no worries as far that is concerned. They have been very careful in there blasting. We had some problems once or twice and that was all ironed out. But, to me, it is service mining if you are going for looks then you better forget all mining. If you are going for water quality, being on some water conservation board for a number years, they have done an adequate job as far as I am concerned to keep the maximum amount of silt there. That doesn't mean they are going to get it all. They are going to get the majority of it and that is what you can expect. If we are going for perfection, forget it. It just isn't in the cards. As I say I don't worry about my well and as far as this division is concerned that the sere will be more visual to me than what they are going to do for me in the future. So, from my perspectives they have filled their commitment there as far as the wildlife is concerned. I know wildlife, I have been out there all the time and I have no concern with this far quarter???, it hasn't been proved that there is a quarter there yet to start with and I really don't think it would be effected by the mine. It is not like really like putting a fence up and stopping everything from going through. It doesn't mean it can't go through. There would be some adverse effects from it, but not totally in the entire project. Especially once that was reclaimed and trees and stuff put on that, I think it would enhance rather than detract from the wildlife. So, my vote would be for



the staff report. I don't see this other, I really don't.

Ingle: Mr. Chairman, just a couple of things. I don't want this to come across as completely negative. I have a great admiration for the work that has been put into this application by the applicant and the consultants. My concern isn't really for visual because I think they have adequately answered that and they have designed it very well to mitigate the impact of the visual.

Other Voice: Well, visual does not have to be considered.

Other Voice: But, it was a concerned express by people came before us. I am actually not that concerned with the blasting. I understand. They were very clear when the blasting would occur, how often; I think it's minimal. So, I think the design is very well done and the efforts by the applicant to in fact try to meet the recommendations of the court or study, both studies, I think are admirable. I guess, more than I guess, George I am just not willing to risk and at some point in the future with more evidence, I could be convinced because I recognize the potential economic impact and I come from labor George - and I understand construction jobs and the need for the products going to be needed in construction and in roads and streets. I am convinced that the product is available in the area and the risk to the wildlife and the potential corridor?? there is just a little too high in my mind.

Other Voice: Can I say something?

Other Voice: Go ahead.

Other Voice: That is where you and I differ. Once this is reclaimed it may be a temporary but I think it would be reversed. In other words I think it would be better.

Other Voice: I am probably going to vote against this also for a couple of reasons. Number one on the economic. I didn't get anything come to me that convinced me that they should be able to expand from the present permit, or on the economic side of t--- easy thing.

The second thing you know, there is a big question about the wildlife. I am not an expert on it. I think there has been some great studying done on both sides but it was so wide apart that that created concern for me.

Number three - the reclamation was addressed. I think that is a concern. It is not something that for reasons I would turn it down because of that but what I am concerned about is that the Oregonian? deck of DEQ oversight and plans for this I didn't think were going to be adequate to meet the concerns what was essentially expanded. I mean they are suppose to be regulatory, they are suppose

to be oversight and they are not doing it. I don't trust that process happening. I do make a point is that visual impairment is not grounds for dealing with goal 5. And, I guess that is basically where I am coming from on that.

Other Voice: Commissioner Ingle, Commissioner Atwill do have anything more to say?

Ingle: I was just going to add for the record and out of fairness that at one point I had considered approving the staff report, and in particular there was a statute MCC11.15.7325 - Prove authority may establish a program for periodic monitoring of reporting. And I thought Geez, wouldn't this be interesting to perhaps have the county appoint a Friends of Forest Park to oversee you know, but you know, the points I made earlier, I still stand by it and those are the primary reasons for my denying the applicant.

Other Voice: I would like to reiterate what Commissioner Fritz and Ingle have said about ----. It was extraordinarily well prepared application and opposition. I think there were just enough things in the proposal that didn't convince ----. I think that in fact, at the start, was sympathetic through this but I could never get through the economic part of it making sense to me.

Counsel: There has been some talk about it.

Other Voice: What, do you want us to officially.....

Other Voice: I don't know if that is necessary to find out if it is necessary for us to.... that is what I would be more inclined to find. But, just by rejecting the application for amendment.

Other Voice: We are doing two things on each one of these - number one is we were rejecting the staff recommendation there has been a first and second, are there any other discussions.

Okay, all in favor of rejecting the staff recommendations, say I.

Voices: I, I, I.

Other Voice: All in opposition, say ney.

Voice: Ney.

Other Voice: Now can I have a motion disapproving the amendment of comprehensive plan.

Other Voice: Is that necessary. I mean I am going to ask...

Voices: Many talking at same time.

Other Voice: But there won't be a conditional use if we can't amend the comprehensive plan.

Other Voice: Well the first finding of the second decision, the first required finding is that it would be 2-A. Anyway, you have disapproved the required staff designation. The three c.

Other Voice: I do wish county council was here....

Other Voice: I would like a motion basically and that disapproves the amendment of the comprehensive plan.

Other Voice: So move it.

Other Voice: Okay, all in favor.

Other Voice: Ney.

Other Voice: Let us move on to decision 2, which is adopting a staff recommendation to approve a ten year conditional use permit.

Other Voice: I would move disapproval of the conditional use permit.

Al-Sofi: I second it.

Other Voice: Second by Commissioner Al-Sofi. Discussion.

Al-Sofi: Well the economic issues are.....

Other Voice: Can I jump in here?  
On page eight of the staff report, you've by your previous action found that it does not satisfy the first approval criteria - on the bottom of the page, Item 1. If we did not agree with a three seat designation then it didn't make the criteria. So, .....

Other Voice: Did we make a motion here?

Al-Sofi: I think that the issue was if what went down appeal, says that we have it reversed on the first grounds, then we have a record. The only basis for denying the second one is the first one and that should be able to turn.

Other Voice: Okay, but by our first action, we disagreed with as 3-C finding and once we get to that point and we don't find it as a 3-C, the site is 3-C...

Other Voice: Then we can't either amend or grant a conditional use permit.

Other Voice: Could we require a 3-B designation?

Other Voice: No, we just reject... it has to be a 3-C. Final

Other Voice: That is the only reason you are doing that. The question on that is if the first decision is overturned.

Al-Sofi: Do we have independent?

Other Voice: There has independent -----.

Other Voice: I don't understand it. Okay, your right. Thank you. Isn't it nice, I annotate you.

Other Voice: Laughter...I have to be right one night a week.

Other Voice: Well just under discussion of the motion in front of us, because we did not find that it was a ... because we disagreed and reject the staff report, we did not agree that it was a site that should be designated 3-C. Therefore, we cannot issue a conditional use permit for mining here and that is the motion to disapprove...

Other Voice: To object the staff recommendation.

Other Voice: Well, that was our first thing.

Other Voice: Now there is a staff recommendation on either one of them and there is a disapproval of the condition also. There is two decisions.

Other Voice: The motion was to disapprove.

Other Voice: What I am looking for is a motion to reject staff recommendations to approve.

Other Voice: Then I will amend my motion, which was already seconded this commission reject the staff recommendation and disapprove a ten year conditional permit to mine on the site.

Other Voice: Other discussion.

Al-Sofi: I think some of the same points do apply over and the reclamation issue is certainly one of them in that we had some problems with the proposed reclamation and the proposed ground liner etc. and I would like to have those issues..my concern about those issues carried over to the conditional use permit

as well as the .....

Other Voice: Right. I was going to say out of the condition here, my major concerns would be as far as reclamation enforcement by ----- and DEQ and basically those key areas.

Other Voice: Further discussion.

Other Voice: I, I, I.

Other Voice: All against.

Other Voice: Ney.

Other Voice: Passed by one.

Other Voice: Okay, the Planning Commission has denied request for the amendments of the comprehensive plan also and also to a ten year conditional use. This recommendation will be reported to the Board of Commissioners at their next available hearing of planning manners. Any appeal of our decision must be filed at the Land Development offices no later than 4:30 p.m. 21 days from this date.

Other Voice: Mr. Chair, there perhaps needs to be one additional action taken. You have recognized that there is a significant resource at this site. What do you wish to direct the staff to do now.

Leonard: The commission would like the staff to look at -----application.

Other Voice: I believe that should be in the form of a motion.

Other Voice: Okay, into the mich.

Other Voice: I move that the chair direct the staff to prepare a, how do we want to call it, the staff report for finding the site, of giving it a feasibility of giving a 3-B designation.

Leonard: Discussion.

Other Voice: Under discussion, and I do not fault staff for the report here, but I think there was a great deal more information brought in under testimony that ought to be referenced in the staff report because that is in fact what brought me to the conclusion of a 3-B.

Other Voice: I would agree that the documents that presided that were developed and put together by both sides are key to staff moving forward.

Other Voice: Isn't there a question 2 under a 3-B report that some data needs to be obtained?

Other Voice: I think in the record right now, to look at that.

Al-Sofi: There is more .....(side a ends)

Other Voice: Go forth on it. It is neither staff or ourselves or the county that is basically going to oversee all this, it is going to be the state. And that is a major problem, because the county can't tell the state what to do.

Other Voice: Well, county commission may choose to go a different way with this issue too.

Leonard: Further discussion. All in favor?

Other Voice: I, I.

Leonard: George or against galso.--?????

Other Voice: Thank you.

We are not scheduled till 7:15 on our next issue.

Okay, take a break.

**Transcript**  
**PR7 - 92/CU 14-92**

**Planning Commission Meeting of**  
**November 16, 1992**

Yoon: The meeting will come to order. Item 1 on the agenda PR7-92/CU14-92. Adoption of proposed findings and conclusions supporting the planning commission actions of October 19, 1992 for the property of 14545 NW St. Helens Rd. Bob do you want to step us through... decision.

Hall: Before I start, each of you should have a memo dated today that indicates on finding #10 there was a sentence that was inadvertently omitted that we would recommend that you make part of that finding and part of your overall set of findings.

Yoon: Do you want us to vote on these step by step?

Hall: No. I would say the entire packet.

Yoon: No, that's fine.

Hall: I'll just briefly run you through this and if you have any questions. On pages 2 and 3.

Other Voice: I'm just gonna ask the commission, you guys can jump in at anytime.

Yoon: Oh, we're always so reluctant to do that.

Other Voice: Ya, I know. Your memory is so much better than mine.

Other Voice: Go.

Other Voice: Did you say go? OK. On pages 2 and 3 are the Oregon Administrative rule criteria pertaining to an EC analysis and program. The rest of the proposed findings then follows in attempts to reflect and we feel reflects the various items that the planning commission addressed in their discussion of yes.

Other Voice: I have to stop and say commissioner Fritz and Commissioner Douglas has joined us and commissioner Hunt is sitting out on this.

Other Voice: That you addressed in your discussion of the proposed plan amendment and conditional use request specifically it goes on to identify an impact area that was

different to that contained in the original staff report. Original staff report as you'll remember identified the impact area as highway 30 on the northeast 1000 feet in every other direction from the property in 1000 feet in all other directions from the property. In your discussion you brought up additional areas which are contained in this expanded discussion of an impact area. Then on page 4 it goes on to identify conflicting uses within that impact area, within that expanded impact area I should say. So it contains discussion of the wetland area across highway 30 from the site and goes on to talk about expanded wildlife corridor area. With the identification of those conflicting uses, then on pages 5-8 it goes through the analysis of the economic, the social, the environmental and the energy consequences of.. excuse me I just got a terrible pain in my neck.

Other Voice: Are you OK?

Other Voice: Ya, that's weird. I've got a pinched nerve and sometimes it really bugs me. OK, it talks about those various consequences of allowing the use verses allowing the conflicting uses and comes up with the conclusion that you requested that we come up with. That the site be designated a 3D. Then on page 9 through the remainder of the report it addresses the conditional use criteria that you discussed that the application did not meet. The application for the conditional use request. And failure to meet any one of the applicable approved criteria would result in failure of the application, so we feel that the proposed findings that were as my memo to you indicated drafted in most part by the attorney for friends of forest park with only minor modifications by the staff does reflect the decision you made in both the proposed comprehensive plan amendment or the continuation of the ESEE analysis for this side I should say and the conditional request for additional use permit.

Other Voice: Does anyone have any questions? So do I have a motion to adopt a finding and conclusions?

Other Voice: I'll make a motion to adopt the findings conclusions and submit it.

Other Voice: Second.

Other Voice: Second from Commissioner Fritz. Discussion. All in favor, I.

Other Voice: I.

Other Voice: Approved. Just one final thing on that. The planning commission has recommended that...has recommended denial of the application for changing the comprehensive plan and the condition of use. The recommendation will be reported at the board of planning commissioners at their next available hearing for planning managers. Any appeal of our decision must be filed at the land



development offices no later than 4:30 p.m. 21 days from this date. 5/1.  
Anything else to be added.

Other Voice: Just a correction. That's 10 days after the decision filed the appeal...persons may appeal the decision within a 10 day period after it's been filed with clerk.

Meeting Date: December 29, 1992

Agenda No.: P-10

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CU 14-92

BCC Informal (date) BCC Formal December 29, 1992  
(date) (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Bob Hall

ACTION REQUESTED:

☐ INFORMATIONAL ONLY

☐ POLICY DIRECTION

☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 hours

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

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

CU 14-92 Review the Planning Commission Decision of November 16, 1992,  
denying conditional use request for a ten-year permit to mine,  
for property located at 14545 NW St. Helens Road

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER SC Paul Yarbrough

(All accompanying documents must have required signatures)

RECEIVED  
CLERK'S OFFICE  
1992 DEC 22 PM 4:59  
MULTIPLER COUNTY  
OREGON



BOARD HEARING OF December 29, 1992

TIME 1:30pm

CASE NAME: Angell Brothers Quarry

NUMBER CU 14-92

1. Applicant Name/Address

Angell Brothers, Inc.  
P.O. Box 8344  
Portland 97283

2. Action Requested by applicant

A Conditional Use Permit on a 283 acre site to allow expansion  
of an existing mining operation

**ACTION REQUESTED OF BOARD**

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

3. Planning Staff Recommendation

Approval

4. Planning Commission or Hearings Officer Decision:

Denial

5. If recommendation and decision are different, why?

Planning Commission found that the site should have a 3-B ESEE designation. The Zoning Ordinance requires that approval can only be granted if the site is designated 2-A, 3-A or 3-C through an ESEE analysis.

**ISSUES**  
(who raised them?)

- a. Wildlife habitat areas (Friends of Forest Park)
- b. Impact (e.g., noise, dust, vibration, etc.) on surrounding residences (surrounding residents and Friends of Forest Park)
- c. Impact on geologic stability and wetlands (Friends of Forest Park)
- d. Scenic impact (residents of Sauvie Island)

Do any of these issues have policy implications? Explain.

No.



## Notice of Public Hearing Board of County Commissioners

Multnomah County  
Board of County Commissioners

1021 SW 4th Avenue  
Portland, Oregon 97204

The Board of County Commissioners will hear an appeal of the following item on the date and at the time and place indicated below. The exact time may be later depending on the agenda schedule. The hearing will be conducted pursuant to the Board of County Commissioners *Rules of Procedure* (enclosed). Argument will be limited to parties who participated in the Planning Commission hearing or their authorized representatives. Failure to raise an issue in person, or by letter, or failure to provide sufficient specificity to allow the Board an opportunity to respond to the issue precludes appeal to LUBA on that issue. For further information, call 248-3043

Board of County Commissioners Members: Gladys McCoy, Chair - Pauline Anderson - Gary Hansen - Rick Bauman - Sharron Kelly

---

**Date:** 12/29/92      **Time:** 1:30 p.m.      **Place:** Room 602, Multnomah County Courthouse

---

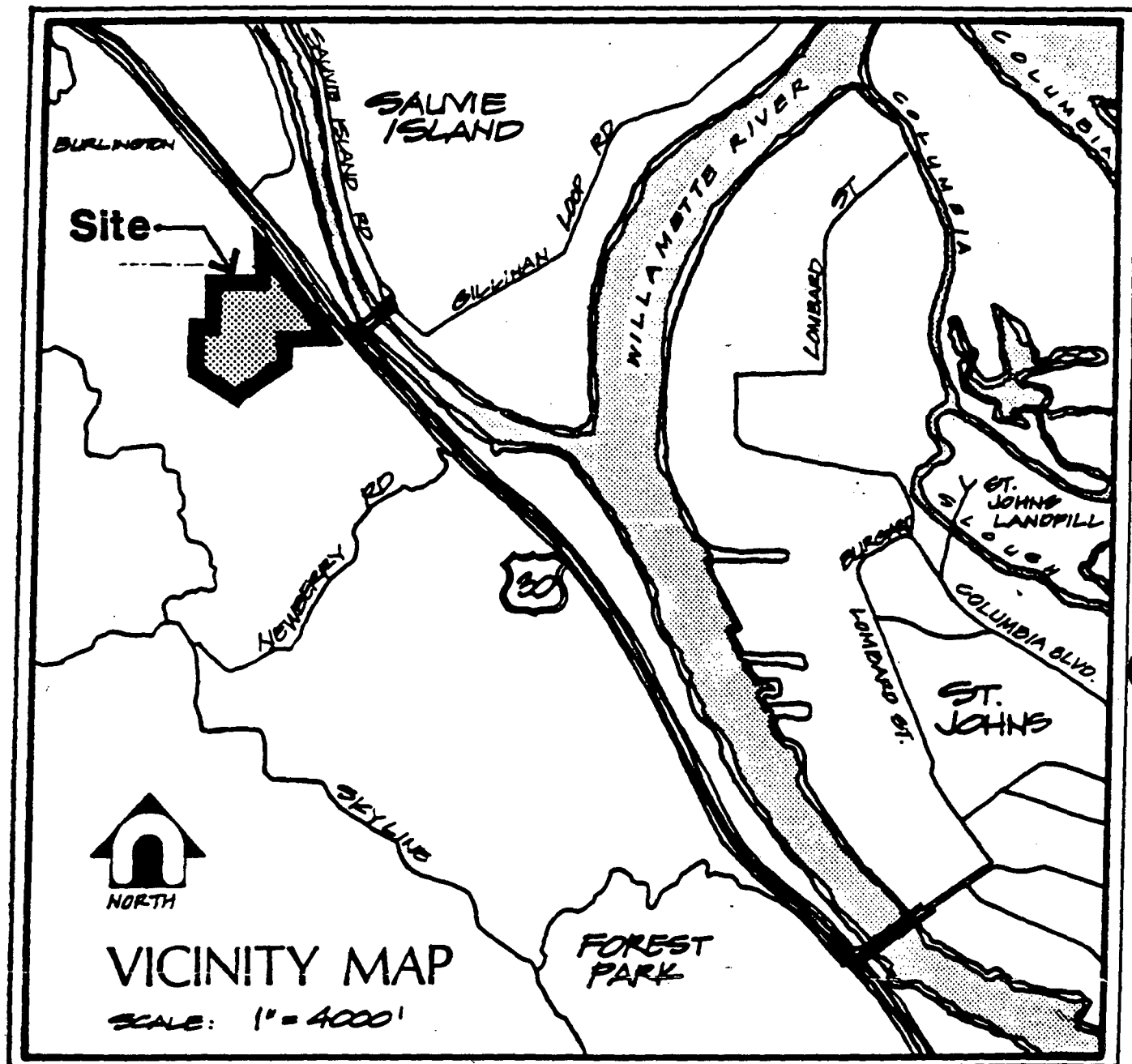
### **CU 14-92      Public Hearing - On The Record Plus Additional Testimony and Evidence**

Review the Planning Commission Decision of November 16, 1992, denying conditional use request for a ten-year permit to mind, for property located at 14545 NW St. Helens Road.

**This item has been appealed by Applicant.**

**Scope of Review - On the Record Plus Additional Testimony and Evidence**

**Oral Argument:** Each side will have 30 minutes to present oral argument to the Board



**DAVID EVANS AND ASSOCIATES, INC.**  
 ENGINEERS, SURVEYORS, PLANNERS, LANDSCAPE ARCHITECTS  
 2828 S.W. CORBETT AVENUE · PORTLAND, OR 97201 · (503) 223-6663

BOARD OF  
COUNTY COMMISSIONERS

1992 DEC 22 PM 3:36

MULTNOMAH COUNTY

Multnomah County Board of Commissioners

Arnold Rochlin  
P.O. Box 83645  
Portland, Or 97283-0645  
289-2657

**ANGELL BROS QUARRY TESTIMONY FOR HEARINGS ON 12/29/92**

PR 7-92 Hearing to Decide Action on Proposed Amendment

CU 14-92 Appeal From Decision of the Planning Commission Denying the Application

**PR 7-92 Proposed Plan Revision:**

The Board did not act on the Planning Commission's recommendations at its meeting of December 8, 1992, as required by MCC 11.05.320. Since Mr. Kagan's letter to the Chair of December 16th, the matter was placed on the Agenda for December 29, 1992. The Code prevents any action other than adoption of the Commission's recommendations:

**"11.05.340. Board order for review**

A board order for review of a recommendation by the commission on a proposed quasijudicial plan revision shall be made at the meeting at which the commission's recommendation is on the board's agenda under subsection (C) of MCC 11.05.310, unless specifically continued." (underlining added)

Adoption of the Planning Commission recommendations is the only way the Board can belatedly comply with 11.05.320 without violating 11.05.340.

**CU 14-92 Reply to the Notice of Review:**

**PC Finding No. 2:** The Commission decision was to deny the applicant's requested 3C designation and to recommend a 3B designation. The applicant claims error in the finding: "The site is not designated 2A, 3A, or 3C.", but he places no fact or conclusion in dispute!

**PC Finding No. 3:** The Commission found that there was no complete reclamation plan. The applicant contends "The County has no jurisdiction over such plans." The relevant code sections are acknowledged land use regulations in which the County asserts its requirement that County reclamation standards (aside from any DOGAMI requirements) must be met. Applicable code sections are 11.15.7315(D), .7325(B), .7325(C)(8), .7325(C)(11) and 7325(C)(12). The applicant argues that he could not complete a reclamation plan until the County approved his application, because, until then, he could not know the exact boundaries of the area to be mined. The regulation is in the present tense and requires a reclamation plan to suit the application: "There is a proposed reclamation plan which will allow the property to be utilized as envisioned by the Comprehensive Plan and the underlying district." (11.15.7325(B), emphasis added) The applicant describes the circumstances of rejection of a plan considered by DOGAMI in 1989. But, the Planning Commission's finding that DOGAMI found the plan incomplete refers to the plan submitted on September 27, 1991. The applicant doesn't allege error in the findings regarding the current plan.

**PC Finding No. 4 (and 5):** The Commission divided its findings about sedimentation and erosion (11.15.7325(C)(5)(b)) into two findings, 4 and 5. Regarding #4, the applicant wrongly interprets the finding as requiring that he prove he will get a DEQ permit. The finding concerns compliance with DEQ standards, whether or not the applicant has a

permit. Finding #5 clearly indicates that failure of the applicant to meet the terms of his existing permit indicates likely failure to meet the the more demanding requirements of an expanded quarry.

PC Finding No. 5 (discussed in part under No. 4): The applicant claims the County has no jurisdiction. While enforcement of the terms of a DOGAMI permit is not within the province of the County, nothing prevents the County from concluding that evidence of past discharge of turbid water indicates unlikely future compliance. Neighbors have observed that turbid water is frequently discharged from the existing quarry and there is expert testimony that the applicant's proposal will result in a manifold increase of turbid discharge.

PC Finding No. 6: The applicant contends that the Planning Commission misstated approval criterion 11.15.7325(C)(6)(a), concerning protection of wildlife habitat, by omitting a reference to mitigation. The applicant believes that a call for mitigation implicitly undermines the first sentence of the regulation which requires that wildlife habitat "be protected to the maximum possible." The clear intent is to allow the approval authority to not merely limit harm, but to require enhancement as a condition of approval. The Planning Commission correctly applied the standard of maximum possible protection.

PC Finding No. 6a: The applicant erroneously supposes that "significant habitat" and "typical habitat" cannot be the same thing. But, the critical problem of protecting wildlife is destruction of typical habitat. The applicant further claims that the value of the habitat is diminished because the existence of a "corridor" between Forest Park and other areas was neither proven nor disproven "by the Wildlife Study." There was substantial expert testimony to support a conclusion that Forest Park benefits from the natural corridor.

PC Finding No. 6b: The applicant wrongly says: "The buffer area that was requested by the Friends of Forest Park...was voluntarily agreed to by the applicant." The applicant distorts part of the Wildlife Study (attributed by the applicant to only one of its three authors, Esther Lev). In the Study, there is a reference to limiting timber harvesting to assure that forested buffers, at least 200 feet wide, connect the substantial remaining forest groves. This refers to short run disturbances within the half mile wide corridor. Since publication of the Study, Ms. Lev issued a statement suggesting that a 625 foot buffer might be an acceptable minimum. The Planning Commission interpreted this as meaning that, under existing circumstances, where existing structures and uses were mistakenly believed to be far from the property boundary, a 625 foot buffer within the site would be the minimum acceptable. The Commission found that there are conflicting uses significantly closer than the applicant thought, and that Ms. Lev's new minimum was based on wrong assumptions. (Between the time of the publication of the Wildlife Study and the issuance of her opinion more favorable to the applicant, Ms. Lev was engaged to be a paid consultant of the applicant.)

PC Finding No. 6c: Regarding the need for a buffer wider than 625 feet, the applicant doesn't approve of the evidence that was found credible, but he presents no argument that, as a matter of law, the Commission's conclusions are wrong. The applicant again characterizes a failure to explicitly consider mitigation as being a misstatement of the requirement. Mitigation is discussed above under No. 6.

PC Finding No. 6d: The Commission's references to the Rafton-Burlington Bottoms Wetland in both findings and the ESEE analysis imply significance. The applicant himself says "The Rafton-Burlington Bottoms was identified as a significant wetland." The applicant makes a peculiar argument that, because the Angell Bros. site was not listed in the

Comprehensive Plan as a conflicting activity, such a finding now is precluded. But, the purpose of these proceedings is to make such determinations!

PC Finding No. 7: The applicant's proposal is to leave huge rock terraces running a half mile up the hills from Highway 30. They do not resemble the surrounding land, as required by 11.15.7325(C)(8). There is substantial evidence of low probability of successfully recreating a forest that would resemble the natural forests nearby, or that the forest would even grow enough to conceal the unnatural contours.

PC Finding No. 8: The reclamation timetable required by 11.15.7325(C)(12) was not provided by the applicant. The Planning Commission finds no plan presented that meets County standards. The applicant says that he "will exceed the County's standard in MCC 11.15.7325(C)(12) by engaging in sequential reclamation before mining activity ceases." He has proposed to mine in 4 phases, but to begin reclamation only after the first three phases are mined. But, .7325(C)(11) says: "All phases of an extraction operation shall be reclaimed before beginning the next, except where the approval authority finds that the different phases cannot be operated and reclaimed separately." The applicant's reclamation proposal falls short of the requirement. The Commission findings should be amended only by adding a finding of non-compliance with .7325(C)(11).

PC Finding No. 9: The applicant is dissatisfied with the Planning Commission's choice of evidence to believe regarding potential geologic hazards. There is substantial evidence in the whole record to support the Commission's finding.

Conclusion:

If the applicant fails to prove compliance with even one of the approval criteria, the application must be denied. As indicated above and in the record, he has failed with many.

*Arnold Rocklin 12/22/92*

cc: Scott Pemble, Director  
Division of Planning & Development

Peter Livingston,  
County Counsel

Frank M. Parisi, Attorney  
Angell Bros.

Neil S. Kagan, Attorney  
Friends of Forest Park





# MULTNOMAH COUNTY OREGON

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

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

Date: December 23, 1992

**To:** Gladys McCoy, Chair  
Members of the Board

**From:** R. Scott Pemble, *Planning Director*

**Subject:** PR 7-93 & CU 14-92 (Angell Bros) December 29, 1992 Hearing

On December 8, 1992 I reported to the Board the Planning Commission's recommendations on the two Angell Bothers quarry site applications, a Plan Revision application (PR 7-93) and a Conditional Use application (CU 14-92). I want to emphasize that there were two decisions reported to the Board (granted it may not have been apparent). The significance of this point as it relates to December 29, 1992 procedural issues will be made clear with the following discussion.

The plan revision application was initiated by the County in response to the Department of Land Conservation and Development Commission's Periodic Review Order. This Order required the County to conclude the ESEE process started in 1988/89. The process was curtailed for approximately two years to allow time for the completion of a west hills wildlife study. Again, the County, not Angell Brothers, was the Plan Revision applicant because of periodic review requirements.

A quick overview of the ESEE process may help to further sort out issues for the December 29, 1992 scheduled hearing. The ESEE process, required by state land use law, is intended to accomplish two objectives. The first objective is to determine the significance of a Goal 5 resource (e.g., wildlife, habitat, historical, mineral & aggregate). A resource is deemed significant if a sufficient quality and quantity of the resource exist at a given location. The second objective is to determine if all, some, or none of the resource should be protected given conflicts (Environmental, Social, Energy, and Economic) with other allowed uses.

In May 1990, the County concluded the Angell Brothers site had significant mineral/aggregate resource but delayed decisions on the protection question until wildlife habitat issues could be studied. A west hills wildlife study was completed in March 1992. Shortly after the wildlife

study was completed, staff began work to complete the ESEE analysis .

The second application, a companion Conditional Use application (CU 14-92) was initiated by Angell Brothers at the same time the county staff began work on the ESEE analysis. The Conditional Use process is used to establish development, operational and restoration standards for the mineral/aggregate extraction activity. One of the mineral/aggregate conditional use approval criteria requires the subject site be designated either 2A, 3A or 3C via the ESEE process. Consequently, the plan revision (the completion of the ESEE analysis) required by the Department of Land Conservation and Development Commission and initiated by Multnomah County is linked to the Conditional Use application initiated by Angell Brothers.

As stated in the beginning, we reported two decisions to the Board on December 8, 1992. The Board acted on the appeal of the Conditional Use filed by Angell Brothers. A hearing has been set for December 29, 1992, 1:40 p.m., 30 minutes per side, on the record plus additional testimony (*i.e.*, implications of recently adopted Forest Goal amendments). The Board took no action on the Plan Revision application. Staff will accept full responsibility for this oversight, which County Counsel and I agree is not fatal to the decision making process. This is contrary to correspondence you may have received from Neil Kagan, an attorney representing the opponents to the Angell Brothers application.

Procedurally, the County Code requires the Board to make one of two decisions when a Planning Commission recommends a Quasi-Judicial Comprehensive Plan amendment to the Board. The Board may either choose to accept the Planning Commission recommendation or order a review of the case on their own motion. On December 8, 1992 neither was done.

Also, to further complicate this matter, the applicant and the DLDC staff were under the impression that the Plan Revision would be considered a legislative process because of Periodic Review, not a quasi-judicial procedure. Both parties believed the Board was required to hold a hearing, irrespective of an appeal. Ergo, Angell Brothers did not appeal the Planning Commission's recommendation on the Plan Revision.

In an attempt to sort out this matter, and in the spirit of fair play, I recommend the Board take the following actions prior to beginning the Angell Brothers hearing on December 29, 1992:

1. Make a decision to either accept the Planning Commissions recommendation or take the matter up by Board motion. I recommend the latter. If the Board decides to take up the matter, I recommend the hearing be set for 1:40 p.m., December 29, 1992, on the record, add an additional 15 minutes per side for a combined hearing (PR and CU appeal) of 45 minutes per side. (Notice has been given to cover this eventuality.)
2. Conduct the hearing following the Board rules and procedures (staff report, proponent, opponent). If the Board decides under step 1 above to accept the Planning Commission recommendation, then the Conditional Use hearing will be moot given the approval criteria which requires either a 2A, 3A, or 3c designation.

If you have any questions or would like to discuss this memo prior to the December 29, 1992 conditional use hearing, please contact me at your earliest convenience.

12/29/92 P-9 &  
P-10 Submittal  
By Frank Parisi

**BACKGROUND MATERIAL**  
**for**  
**LEGISLATIVE PLAN AMENDMENT**

**for**  
**GOAL 5 SITES**

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

**ORDINANCE NO. \_\_\_\_**

An ordinance amending Multnomah County Comprehensive Framework Plan to comply with the Periodic Review requirements of the Oregon Department of Land Conservation and Development.

---

**SECTION 1. FINDINGS**

The Board of County Commissioners finds that certain amendments of the Multnomah County Comprehensive Framework Plan are necessary to comply with the Periodic Review requirements of the Oregon Department of Land Conservation and Development.

**SECTION 2. AMENDMENT**

The Comprehensive Framework Plan is amended as follows:

*Note:* Deleted language is bolded and struck thru (~~temporary daytime~~), and new language bolded and enlarged(**is distinguished**).

**A. Policy 1- Plan Relationships**

**INTRODUCTION**

The purpose of this policy is to establish and maintain the relationships between this Comprehensive Framework Plan ("Framework Plan") and its implementation measures.

1. The Statewide planning goals adopted by the Land Conservation and Development Commission;
2. The Urban Growth Boundary adopted by METRO;
3. The Comprehensive Plan in effect prior to September, 1977, ("Pre-existing Plan"); and
4. The Wilkes and Hayden Island Community Plans adopted prior to September 1977, and all other community plans adopted after September 1977.

This policy also establishes the relationship between this Framework Plan and County zoning regulations.

**POLICY 1.**

**IT IS THE COUNTY'S POLICY THAT:**

- A. THIS FRAMEWORK PLAN WITH ITS COMPONENT INDIVIDUAL COMMUNITY PLANS AND ALL FUTURE COUNTY PLANS AND PLAN REVISIONS SHALL BE DESIGNED TO BE CONSISTENT WITH THE STATEWIDE PLANNING GOALS ADOPTED BY THE LAND CONSERVATION AND DEVELOPMENT COMMISSION AND THE URBAN GROWTH BOUNDARY AND ITS IMPLEMENTING POLICY ADOPTED BY THE METRO**

resource production, but to limit the adverse impacts of future development of them on nearby agricultural areas and on other lands of a more fragile nature (e.g., areas subject to flooding, but used for agricultural related uses).

#### POLICY 10

THE COUNTY'S POLICY IS TO DESIGNATE AND MAINTAIN AS MULTIPLE USE AGRICULTURE, LAND AREAS WHICH ARE:

- A. GENERALLY AGRICULTURAL IN NATURE, WITH SOILS, SLOPE AND OTHER PHYSICAL FACTORS INDICATIVE OF PAST OR PRESENT SMALL SCALE FARM USE;
- B. PARCELIZED TO A DEGREE WHERE THE AVERAGE LOT SIZE, SEPARATE OWNERSHIPS, AND NON-FARM USES ARE NOT CONDUCTIVE TO COMMERCIAL AGRICULTURAL USE;
- C. PROVIDED WITH A HIGHER LEVEL OF SERVICES THAN A COMMERCIAL AGRICULTURAL AREA HAS: OR,
- D. IN AGRICULTURAL OR MICRO-CLIMATES WHICH REDUCE THE GROWING SEASON OR AFFECT PLANT GROWTH IN A DETRIMENTAL MANNER (FLOODING, FROST ETC.).

THE COUNTY'S POLICY, IN RECOGNITION OF THE NECESSITY TO PROTECT ADJACENT EXCLUSIVE FARM USE AREA'S, IS TO RESTRICT MULTIPLE USE AGRICULTURAL USES TO THOSE COMPATIBLE WITH EXCLUSIVE FARM USE AREAS.

#### STRATEGIES

- A. The following strategies should be addressed as part of the Community

Development Ordinance:

- 1. The Zoning Code should include a Multiple Use Farm Zone with:
  - a. a base minimum lot size; consistent with the character of the areas and the adjacent exclusive farm uses.
  - b. the following examples of uses:
    - (1) permitted as primary uses; agriculture and forestry practices and single family dwellings on legal lots;
    - (2) the sale of agricultural products on the premises, dwellings for farm help, and mobile homes, should be allowed under prescribed conditions;
    - (3) on lands which are not predominantly Agricultural Capability Class I, II, or III, ~~rural~~ planned developments, cottage industries, limited rural service commercial, and tourist commercial may be allowed as conditional uses; and
    - (4) the following uses should be allowed as conditional uses anywhere in the zone upon the showing that the conditional use standards can be met: commercial processing of

## POLICY 12

THE COUNTY'S POLICY IS TO DESIGNATE AND MAINTAIN AS MULTIPLE USE FOREST, LAND AREAS WHICH ARE:

- A. PREDOMINANTLY IN FOREST SITE CLASS I, II, III, FOR DOUGLAS FIR AS CLASSIFIED BY THE U.S. SOIL CONSERVATION SERVICE;
- B. SUITABLE FOR FOREST USE AND SMALL WOOD LOT MANAGEMENT, BUT NOT IN PREDOMINANTLY COMMERCIAL OWNERSHIPS; AND
- C. PROVIDE WITH RURAL SERVICES SUFFICIENT TO SUPPORT THE ALLOWED USES, AND ARE NOT IMPACTED BY URBAN—LEVEL SERVICES; OR
- D. OTHER AREAS WHICH ARE:
  - 1. NECESSARY FOR WATERSHED PROTECTION OR ARE SUBJECT TO LANDSLIDE, EROSION OR SLUMPING; OR
  - 2. POTENTIAL REFORESTATION AREAS, BUT NOT AT THE PRESENT USED FOR COMMERCIAL FORESTRY; OR
  - 3. WILDLIFE AND FISHERY HABITAT AREAS, POTENTIAL RECREATION AREAS, OR OF SCENIC SIGNIFICANCE.

THE COUNTY'S POLICY IS TO ALLOW FOREST USES ALONG WITH NON-FOREST USES; SUCH AS AGRICULTURE, SERVICE USES, AND COTTAGE INDUSTRIES; PROVIDED THAT SUCH USES ARE COMPATIBLE WITH ADJACENT FOREST LANDS.

### STRATEGIES

- A. The following strategies should be addressed in the preparation of the Community Development Ordinance:
  - 1. The Zoning Code should include a Multiple Use Forest Zone with:
    - a. The minimum lot sizes for sub-areas of the district based on: the adjacent aggregated acreage tract size existing in each general sub-area, the forest use, and the productivity of the land. Small parcels in single ownership shall be aggregated.
    - b. The following examples of uses:
      - (1) Forestry practices, farm uses, resource conservation, and limited wood processing. Resource-related dwellings under prescribed conditions and non-resource-related dwellings under conditional uses. Such dwellings are to be allowed as approval criteria and siting standards designed to assure conservation of the natural resource base, protection from hazards, and protection of big game winter habitat.
      - (2) The sale of agricultural products on the premises should be allowed under prescribed conditions.
      - (3) Rural planned developments, commercial processing of agricultural or forestry prod-

~~by design or landscaping techniques.~~

The Willamette River Greenway is a cooperative management effort between the state and local jurisdictions for the development and maintenance of a natural, scenic, historical, and recreational "greenway" along the Willamette River. The General Plan has been formulated by the Oregon Department of Transportation, pursuant to ORS 390.318. The Land Conservation and Development Commission has determined that a statewide planning goal (Goal 15) is necessary not only to implement the legislative directive, but to provide the parameters within which the Department of Transportation Greenway Plan may be carried out. Within those parameters local governments can implement Greenway portions of their Comprehensive Plans.

#### POLICY 15

THE COUNTY'S POLICY IS TO ~~DESIGNATE AS AREAS OF SIGNIFICANT ENVIRONMENTAL CONCERN, AREAS HAVING SPECIAL PUBLIC VALUE IN TERMS OF ONE OR MORE OF THE FOLLOWING:~~ PROTECT, CONSERVE, ENHANCE, AND MAINTAIN THE NATURAL, SCENIC, HISTORICAL, AGRICULTURAL, ECONOMIC, AND RECREATIONAL QUALITIES OF LANDS ALONG THE WILLAMETTE RIVER.

FURTHER, IT IS THE COUNTY'S POLICY TO PROTECT IDENTIFIED WILLAMETTE RIVER GREENWAY AREAS BY REQUIRING SPECIAL PROCEDURES FOR THE REVIEW OF CERTAIN TYPES OF DEVELOPMENT ALLOWED IN THE BASE ZONE THAT WILL ENSURE THE MINIMUM IMPACT ON THE VALUES IDENTIFIED WITHIN THE VARIOUS AREAS. THE PROCEDURES SHALL BE DESIGNED TO MITIGATE ANY LOST VALUES TO THE GREATEST EXTENT POSSIBLE.

- ~~A. ECONOMIC VALUE, E.G., A TOURIST ATTRACTION;~~
- ~~B. RECREATION VALUE, E.G., RIVERS, LAKES, WETLANDS;~~
- ~~C. HISTORIC VALUE, E.G., HISTORIC MONUMENTS, BUILDINGS, SITES OR LANDMARKS;~~
- ~~D. EDUCATIONAL RESEARCH VALUE, E.G., ECOLOGICALLY AND SCIENTIFICALLY SIGNIFICANT LANDS;~~
- ~~E. PUBLIC SAFETY, E.G., MUNICIPAL WATER SUPPLY WATERSHEDS, FLOOD WATER STORAGE AREAS, VEGETATION NECESSARY TO STABILIZE RIVER BANKS AND SLOPES;~~
- ~~F. SCENIC VALUE, E.G., AREAS VALUED FOR THEIR AESTHETIC APPEARANCE;~~
- ~~G. NATURAL AREA VALUE, E.G., AREAS VALUED FOR THEIR FRAGILE CHARACTER AS HABITATS FOR PLANT, ANIMAL OR AQUATIC LIFE, OR HAVING ENDANGERED PLANT OR ANIMAL SPECIES, OR FOR SPECIFIC NATURAL FEATURES, OR VALUED FOR THE NEED TO PROTECT NATURAL AREAS; OR~~
- ~~H. ARCHEOLOGICAL VALUE, E.G., AREAS VALUED FOR THEIR HISTORICAL, SCIENTIFIC AND CULTURAL VALUE.~~

~~FURTHER, IT IS THE COUNTY'S POLICY TO PROTECT THE ABOVE IDENTIFIED~~

of the State of Oregon, Greenway Goal. The overlay zone should contain provisions related to:

1. ~~establish a review process for the approval of proposals and uses~~ setback lines for non-water dependent uses;
  2. ~~define special criteria within each area for the approval of proposals and uses which affect various features including, but not limited to, the following:~~
    - ~~(a) Natural shoreline vegetation systems;~~
    - ~~(b) Critical and unique wildlife habitats;~~
    - ~~(c) Historical features and archeological sites;~~
    - ~~(d) Significant vegetation;~~
    - ~~(e) Views and vistas;~~
    - ~~(f) Municipal water supplies;~~
    - ~~(g) Natural hazard lands;~~
    - ~~(h) Rare or valuable ecosystems and geological formations; and~~
    - ~~(i) endangered plant and animal systems.~~
  3. the review procedures;
  4. specific findings required.
- b. ~~A historic preservation overlay district which should be applied to areas or specific sites not otherwise designated for protection under CS, SEC or other zoning;~~ Those wetlands and water areas listed on Policy 16, Natural Resources, that are located within the Willamette River Greenway should receive a development review procedure comparable to the review process established for the Significant Environmental Concern zone.
- e. ~~An overlay zone entitled "Willamette River Greenway" which will establish an administrative review procedure to implement the requirements of the State of Oregon, Greenway Goal. The overlay zone should contain provisions related to:~~
- ~~1. setback lines for non-water dependent uses;~~
  - ~~2. a design plan;~~
  - ~~3. the review procedures;~~
  - ~~4. specific findings required.~~
- C. ~~The "Willamette River Greenway" zone should be generally based upon the attached map entitled "Willamette River Greenway." Other policies of this Framework Plan are applicable to the Greenway as follows:~~ Other policies of this Framework Plan applicable to the Greenway are as follows:

#### ~~POLICIES APPLICABLE TO WILLAMETTE RIVER GREENWAY LANDS~~

~~In addition to Policy 15, the following Framework Plan Policies are applicable to the use and management of lands within the Willamette River Greenway:~~

1. Agricultural lands: Policies 9 - Agriculture, and 10 - Multiple Use Agriculture.



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

#### STRATEGIES

- A. ~~As a part of the ongoing planning program, the County should:~~ The county will maintain an inventory of the location, quality, and quantity of each of these resources. Sites with minimal information will be designated "1B", but when sufficient information is available, the County will conduct the necessary ESEE analysis.
  - ~~1. Engage in a survey of mineral and aggregate sources within the County and utilize data, criteria and standards from the most recent study of rock material resources compiled by the State Department of Geology and Mineral Industries.~~
  - ~~2. Utilize information provided by the Oregon Department of Fish and Wildlife on big game winter habitat areas, the Nature Conservancy or ecologically significant areas when surveyed and identified as to location, the U.S. Department of Fish and Wildlife in their Wetlands Inventory for the Columbia River, and any other documental information on the listed natural resources in the decision process and for plan revisions.~~
- B. ~~The following strategies should be addressed in the preparation of the Community Development Title:~~ Certain areas identified as having one or more significant resource values will be protected by the designation Significant Environmental Concern (SEC). This overlay zone will require special procedures for the review of certain types of development allowed in the base zones. This review process will ensure the minimum impact on the values identified within the various areas, and shall be designed to mitigate any lost values to the greatest extent possible. Areas designated SEC are generally depicted on the following map.
  - ~~1. The Zoning Code should include provisions for:~~
    - ~~a. Mineral and aggregate extraction, and energy generation facilities as conditional uses;~~
    - ~~b. Protecting natural resources when uses are contemplated through the conditional use provisions;~~
    - ~~c. The transfer of densities from lands which should be protected for natural resource uses from lands held in the same ownership and adjacent within the Planned Development provisions;~~
    - ~~d. The establishment of extraction and rehabilitation standards for mineral and aggregate resources.~~
- C. The following areas shall be designated as "Areas of Significant Environmental Concern":
  - 1. The Columbia River Gorge National Scenic Area, as defined in federal legisla-

tion PL 99-663,

2. The Sandy River State Scenic Waterway,
  3. Portions of the Mount Hood National Forest,
  4. Smith and Bybee Lakes,
  5. The Undeveloped Columbia River Islands and Hayden Island west of the Burlington Northern Railroad tracks,
  6. Sturgeon Lake,
  7. Blue Lake and Columbia River shore area and islands,
  8. Johnson Creek,
  9. Beggar's Tick Marsh,
  10. Virginia Lakes,
  11. Rafton/Burlington Bottoms,
  12. Multnomah Channel,
  13. Sand Lake,
  14. Howell Lake,
  15. Wagonwheel Hole Lake and nearby unnamed slough/lake to the west,
  16. All Class 1 Streams (Oregon State Forestry Department designation) and the adjacent area within 100 feet of the normal high water line, except those within an ESEE designated "2A", "3A" or "3C" mineral and aggregate resource site,
- and such other areas as may be determined under established procedures to be suitable for this "area" designation.
- D. Those wetlands and water areas listed in C. above that are located within the Willamette River Greenway (Policy 15) will be protected by development review procedures within the WRG overlay zone instead of the SEC zone.

#### **POLICY 16-A OPEN SPACE**

**IT IS THE COUNTY'S POLICY TO CONSERVE OPEN SPACE RESOURCES AND PROTECT OPEN SPACES FROM INCOMPATIBLE AND CONFLICTING LAND USES.**

#### **STRATEGIES**

1. Designate agricultural and forest lands with large lot zones to conserve the open character of such areas.
2. Apply SEC, WRG, FW and FF overlays along rivers and other water features, as appropriate, to restrict and control the character of development in these areas to enhance open spaces.

- (a). The location of proposed extraction activities should be setback from existing "noise-sensitive" uses.
- (b). The location of "noise-sensitive" land uses should be setback from both existing mining activities and designated ESEE "2A", "3A", and "3C" resource site boundaries.
- (c). Some reduction in the setback buffers may be appropriate if the "noise-sensitive" land use property owner agrees to record a non-remonstrance deed restriction agreeing to the reduced distance.

#### **POLICY 16-C ENERGY SOURCES**

**IT IS THE COUNTY'S POLICY TO PROTECT SITES REQUIRED FOR GENERATION OF ENERGY.**

##### **STRATEGIES**

- A. Maintain an inventory of energy sources within the county.
- B. Coordinate with appropriate regulatory or licensing authorities in the protection of sites required for energy generation.
- C. The Zoning Code should include provisions for energy generation facilities as a conditional use.

#### **POLICY 16-D FISH AND WILDLIFE HABITAT**

**IT IS THE COUNTY'S POLICY TO PROTECT SIGNIFICANT FISH AND WILDLIFE HABITAT, AND TO SPECIFICALLY LIMIT CONFLICTING USES WITHIN SENSITIVE BIG GAME WINTER HABITAT AREAS.**

##### **STRATEGIES**

- A. Utilize information provided by the Oregon Department of Fish and Wildlife to identify significant habitat areas, and to delineate sensitive big game winter habitat areas.
- B. Apply the SEC overlay zone to all significant habitat areas not already zoned Willamette River Greenway.
- C. Include provisions within the Zoning Ordinance to review development proposals which may affect sensitive big game winter habitat areas.

#### **POLICY 16-E NATURAL AREAS**

**IT IS THE COUNTY'S POLICY TO PROTECT NATURAL AREAS FROM INCOMPATIBLE DEVELOPMENT AND TO SPECIFICALLY LIMIT THOSE USES WHICH WOULD IRREPARABLY DAMAGE THE NATURAL AREA VALUES OF THE SITE.**

##### **STRATEGIES**

- A. Utilize information from the Oregon Natural Heritage Program to maintain a current inventory of all ecologically and scientifically significant natural areas.

**"Wildlife Habitat Assessment" (WHA) rating form will be designated "Significant". Sites with ratings of 35 or more may be determined "Significant" if they function in providing connections between and enhancement of higher rated adjacent habitat areas.**

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

- B. Significant water and wetland areas identified as a "2A", "3A", or "3C" site using the Statewide Planning Goal 5 "Economic, Social, Environmental, and Energy analysis" procedure as outlined in OAR 660-16-000 through 660-16-025 shall be designated as "Areas of Significant Environmental Concern" and protected by either the SEC or WRG overlay zone.**
- C. Wetlands information gathered by and made available to the County shall be utilized as follows:**
  - 1. The U.S. Fish and Wildlife National Wetland Inventory (NWI) maps should be consulted at the beginning stages of any development proposal in order to alert the property owner/developer of the U.S. Corps of Engineers and Division of State Lands permit requirements.**
  - 2. Wetlands shown on the NWI maps which are determined to not be important by the county after field study should be indicated as such on 1"-200' aerial photographs made part of the State Goal 5 supporting documents.**
  - 3. Boundaries of "Significant" wetlands located within the SEC and WRG overlay zones should be depicted on 1"-200' aerial photographs.**
  - 4. Additional information on wetland sites should be added to the plan and supporting documents as part of a scheduled plan update or by the standard plan amendment process initiated at the discretion of the county.**
- D. Although a wetland area may not meet the County criteria for the designation "Significant", the resource may still be of sufficient importance to be protected by State and Federal agencies.**
- E. The zoning code should include provisions requiring a finding prior to approval of a legislative or quasi-judicial action that the long-range availability and use of domestic water supply watersheds will not be limited or impaired.**

#### **POLICY 16-H WILDERNESS AREAS**

**IT IS THE COUNTY'S POLICY TO RECOGNIZE THE VALUE OF WILDERNESS AMONG THE MANY RESOURCES DERIVED FROM PUBLIC LANDS.**

#### **STRATEGIES**

- A. The Columbia Wilderness shall be designated as a Goal 5 Resource Site.**
- B. The SEC overlay zone shall be applied to the Columbia Wilderness.**

features.

### **HISTORICAL SITE CRITERIA**

- A. **Historical Significance** - Property is associated with significant past events, person-ages, trends or values and has the capacity to evoke one or more of the dominant themes of national or local history.
- B. **Architectural Significance** - (Rarity of Type and/or Style). Property is a prime example of a stylistic or structural type, or is representative of a type once common and is among the last examples surviving in the county. Property is a prototype or significant work of an architect, builder or engineer noted in the history of architecture and construction in Multnomah County.
- C. **Environmental Considerations** - Current land use surrounding the property contributes to an aura of the historic period, or property defines important space.
- D. **Physical Integrity** - Property is essentially as constructed on original site. Sufficient original workmanship and material remain to serve as instruction in period fabrication.
- E. **Symbolic Value** - Through public interest, sentiment, uniqueness or other factors, property has come to connote an ideal, institution, political entity or period.
- F. **Chronology** - Property was developed early in the relative scale of local history or was an early expression of type/style.

### **POLICY 16-J CULTURAL AREAS**

**IT IS THE COUNTY'S POLICY TO PROTECT CULTURAL AREAS AND ARCHEOLOGICAL RESOURCES, AND TO PREVENT CONFLICTING USES FROM DISRUPTING THE SCIENTIFIC VALUE OF KNOWN SITES.**

### **STRATEGIES**

- A. Maintain information on file regarding the location of known archeological sites. Although not made available to the general public, this information will be used to insure the sites are not degraded through incompatible land use actions.
- B. Coordinate with the State Archaeologist in the State Historic Preservation Office regarding the identification and recognition of significant archeological resources.
- C. Encourage landowners to notify state authorities upon discovering artifacts or other evidence of past cultures on their property.
- D. Work with the LCDC Archeological Committee in devising equitable and effective methods of identifying and protecting archeological resources.

### **POLICY 16-K RECREATION TRAILS**

**IT IS THE COUNTY'S POLICY TO RECOGNIZE THE FOLLOWING TRAILS AS POTENTIAL STATE RECREATION TRAILS:**

**COLUMBIA GORGE TRAIL  
SANDY RIVER TRAIL**

a community, as well as to provide a sense of identity.

3. The location scale and functional design of community services such as roads, parks, hospitals, schools, and fire stations. These community elements provide community focal points, paths, places and boundaries in a manner which support community pride and long term stability. Streets can be designed, located, and landscaped to be functional as well as being an integral part of the community. Community service buildings also become a focal point for cultural or educational activities and serve to reinforce identity.
4. ~~The preservation of historic landmarks and scenic areas. Historic features are also important to a historical perspective and promote a sense of pride. Significant historic landmarks and scenic areas in unincorporated Multnomah County can be preserved and protected if landowners, investors, community groups and the County work in concert.~~

~~Today, identification of historic sites has been accomplished through several efforts. The Division of Planning conducted a limited survey in 1978 and identified several sites and structures throughout the County. Other surveys and site identification has occurred in the Columbia River Gorge and on Sauvie Island. Three sites have been placed on the National Register of Historic Places: the Bybee Howell House on Sauvie Island, the Vista House at Crown Point and Multnomah Falls Lodge. In addition, historic markers have been placed at Fort William, Sauvie Island Pioneer Cemetery, Sandy River Bridge, Broughton's Expedition, and many other sites that were identified by the County's Historic Sites Advisory Committee.~~

~~No comprehensive archeological survey of the County exists, and further inventorying is needed to identify other potential historic areas. Standards have been established by Federal and State law, and there are Federal and State funding programs for acquisition and maintenance of these areas.~~

#### POLICY 18

THE COUNTY'S POLICY IS TO CREATE, MAINTAIN OR ENHANCE COMMUNITY IDENTITY BY:

- A. IDENTIFYING AND REINFORCING COMMUNITY BOUNDARIES;
- B. IDENTIFYING SIGNIFICANT NATURAL FEATURES AND REQUIRING THESE TO BE PRESERVED;
- C. REQUIRING IDENTIFIED SIGNIFICANT NATURAL FEATURES BE PRESERVED AS PART OF THE DEVELOPMENT PROCESS;
- ~~D. REQUIRING THE PRESERVATION OF SIGNIFICANT HISTORICAL LANDMARKS AND DISTRICTS, AND ARCHEOLOGICAL AND ARCHITECTURAL SITES WHICH HAVE BEEN SO DESIGNATED BY A FEDERAL OR STATE AGENCY OR MEET THE HISTORIC SITE DESIGNATION CRITERIA CONTAINED IN THIS PLAN.~~

#### HISTORICAL SITE CRITERIA

- ~~A. Historical Significance Property is associated with significant past events, personages, trends or values and has the capacity to evoke one or more of the dominant themes of national or local history.~~

- ~~b. include conditional use provisions to allow new uses to be established to preserve historic structures and sites;~~
- ~~c. provide for a 120-day delay period for the issuance of a demolition permit or a building permit that substantially alters the historic nature of the site or building. During this period, a review of the permit application, including the impacts and possible means to offset these impacts should be undertaken;~~
- ~~d. on-site density transfer in order to protect historic areas and protect unique features;~~
- e 1. design review approval for all community facilities.
- 3 2. The Street Standards Chapter should provide for special street tree programs for streets which serve as community boundaries.

## G. POLICY 39: ~~OPEN SPACE~~ PARKS AND RECREATION PLANNING

### INTRODUCTION

~~Open space is defined in broadest terms as all land that supports vegetation rather than structures. It can range from forest or agricultural lands to landscaped areas in parking lots. Recreation refers to spaces and facilities developed for people to use during their leisure time.~~

A basic need of people is to pursue activities in non-work hours which recreate one's mental and physical condition. From children learning to socialize through play, to elderly people being outdoors for a walk or to sit in the sun, recreation plays an important part in the life cycle. The major requisite for outdoor recreation is space within which activities take place. These spaces can be intensively developed parks, natural areas along waterways, vacant lots, or even streets and roads.

The need for providing easily accessible areas for outdoor recreation is increasingly important in metropolitan jurisdictions such as Multnomah County; outdoor recreation can offer an escape from crime, pollution, crowding, a sedentary work life, and other problems associated with urban living. Providing nearby recreational space for leisure time activity is important also in the conservation of non-renewable energy resources and addressing problems related to the currently depressed economy, such as decreased household income. Recreational opportunities provided near residential areas would mean less costs to participants in terms of travel time, gas, etc.

Parks systems are generally developed in a hierarchical system composed of neighborhood, community and regional parks. Within this system are specialized recreation areas ranging from wilderness hiking trails to swimming areas, golf courses, play fields, and tot lots. Multnomah County's park system includes: one historical site, three boat ramps, one campground, two islands in the Columbia River, three regional parks, two community parks, 34 neighborhood parks and four playlots. In addition, three proposed Statewide Oregon Recreation Trails: Portland to the coast, the Columbia River Gorge, and the Sandy River Trails will provide hiking opportunities and scenic and recreational access.

A component of the County's recreation system is the 40-Mile Loop, a network of connecting jogging, hiking, and bicycle paths that encircle Multnomah County.

3. COORDINATING AND ASSISTING OTHER JURISDICTIONS IN STUDIES OF ROUTE ALIGNMENT OF THE 40 MILE LOOP.
4. COORDINATING THE 40 MILE LOOP LAND TRUST STUDIES OF ROUTE ALIGNMENT OF THE 40 MILE LOOP AND DIRECT ASSISTANCE IN ACQUIRING EASEMENTS AND/OR RIGHTS—OF-WAY.
5. ADOPTING TRAIL AND BIKEWAY STANDARDS FOR SEGMENTS OF THE 40 MILE LOOP.

#### STRATEGIES

- A. As part of the continuing planning program for parks and open space, the County has appointed a County Parks Commission to work in concert with the County to:
  1. Address objectives necessary for the County to meet eligibility criteria for receipt of public and private resources.
  2. ~~Develop a long range master park plan for Multnomah County to be recommended to the Board for adoption~~ Follow the guidelines and directives of the 1984 Multnomah County Neighborhood Park Master Plan in the future maintenance and development of the neighborhood park system.
  3. Raise funds for park purposes as best serves the goals of the Parks Commission, the Parks Master Plan, and the County.
- B. The County should consider the rights and privileges of recreational boaters when evaluating land development proposals.
- C. The continuing planning program should include, in the update of Community Plans, identification of:
  1. specific recreation needs;
  2. plans for developing and maintaining specific park sites; and
  3. implementation strategies.
- D. The County should continue to:
  1. Review all tax foreclosure lands for potential open space or recreational uses.
  2. Coordinate with other agencies and assist in the location of public recreation facilities, including Oregon Recreation Trails in the County.
- E. The Zoning Ordinance should include provisions for privately owned and operated recreational facilities as conditional uses in zones viewed as appropriate by the individual communities.



**SECTION 3. ADOPTION**

ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_ 1989, being the date of its second reading before the Board of County Commissioners of Multnomah County.

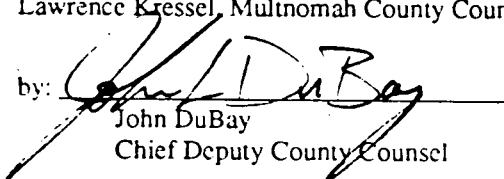
**BOARD OF COUNTY COMMISSIONERS  
OF MULTNOMAH COUNTY, OREGON**

(SEAL)

By \_\_\_\_\_  
Gladys McCoy, County Chair

Reviewed:  
Lawrence Kressel, Multnomah County Counsel

by:

  
John DuBay  
Chief Deputy County Counsel

AB1004



## Department of Land Conservation and Development

1175 COURT STREET NE, SALEM, OREGON 97310-0590 PHONE (503) 373-0050

June 9, 1989

RECEIVED  
JUN 15 1989

360

Lorna Stickel, Planning Director  
Multnomah County Department of Environmental Services  
Division of Planning and Development  
2115 SE Morrison Street  
Portland, Oregon 97214

Dear Lorna:

We have reviewed Multnomah County's submittal for periodic review. I wish to compliment you and the county on the quality of your submittal. The county's proposed periodic review order is detailed and well organized.

The proposed periodic review order finds that the entire area within the Metro UGB is "exempted" from the county's periodic review. Since acknowledgment, the county has negotiated new planning agreements with the cities of Portland, Gresham, Fairview, Wood Village, and Troutdale. The new agreements provide that the entire area within the Metro UGB is within the planning area of these cities. Therefore, each city is now responsible for completing periodic review for the unincorporated area covered by their planning area agreement.

Since the unincorporated areas remain under county land use designations and zoning, however, there will be some planning requirements which are applicable to you. These will be addressed as part of each city's periodic review. We request that the county coordinate with each city as needed. If you have any questions or comments regarding periodic review for areas inside UGB's, please contact Jim Sitzman at 229-6068 or Jim Hinman at 373-0088.

Under the provisions of ORS 197.640(9), Multnomah County has postponed periodic review of that portion of the county within the Columbia River Gorge National Scenic Area (Proposed Local Review Order, p. 8). The submittal for the "rural" portion of Multnomah County outside of the Columbia River Gorge National Scenic Area satisfactorily responds to most of the requirements of periodic review. We are confident that by working together, we can resolve the remaining issues.

The attached report contains our comments and suggestions regarding changes for the "rural" plan, its data base and implementing ordinances. If you find that we have misunderstood

Lorna Stickel

-2-

June 9, 1989

the county's position on any of the issues raised in our report, we will be happy to amend our letter prior to the proposed date of adoption by the Multnomah County Commissioners. To be sure that we have clearly understood the county's intent, I will be contacting you to arrange a meeting to discuss this in more detail. I am especially interested in your perceptions of the periodic review process and any suggestions you have on ways of improving it.

The major issues which need to be addressed by the county involve: (1) amendments to the forest zones to comply with Goal 4; (2) the recognition of the process for locating the Mt. Hood Parkway; (3) amendments to the SEC and other zones to comply with Goal 5; (4) specific amendments to the proposed order addressing the Goal 5 rule for mineral and aggregate resources, natural areas, wetlands and historic resources. These and other issues which need to be addressed are described in detail in the attached review.

Please contact Jim Sitzman at 229-6068 if you have any questions regarding our review. Michael Rupp is the reviewer for the rural areas and can be reached at 373-0095. Lorna, I look forward to meeting with you to discuss these and other issues in the near future.

Sincerely,

  
Susan Brody  
Director

SB:CG/sp  
<pr>

cc: Planning Directors, Cities of: Portland, Gresham, Fairview,  
Wood Village, and Troutdale  
Rich Carson, METRO  
Jim Sitzman, Field Representative  
Greg Wolf, Operations Division Manager  
Paul Norris, ODOT  
Michael Rupp, Reviewer  
Jim Hinman, Reviewer  
Periodic Review Files (Lib, Ptld, RC)

October 23, 1989

Multnomah County Planning Commission  
2115 SE Morrison St  
Portland OR 97214

Re: Zoning Ordinance Amendments Regarding Mineral and  
Aggregate Resources

Dear Planning Commission Members:

This office represents Angell Brothers, Inc., owner and operator of the Angell Brothers aggregate mining and processing facility on St. Helens Road. It is the purpose of this letter to express to the Commission our concerns with respect to the proposed amendments to the zoning ordinance relating to mineral and aggregate resources and to suggest alterations to those amendments to more clearly and accurately address the siting and operational requirements of such facilities in Multnomah County. This response is addressed specifically to the proposed amendments attached to the memorandum of September 25, 1989 regarding the periodic review workshop.

1. Zoning Ordinance Section 11.15.7325(B)(2)(a)

The staff proposes that all existing vegetation and topographic features within 50 feet of the exterior of an extraction site must be preserved. This requirement conflicts with the proposal to amend Section 11.15.7325(B)(7)(a) and (b) in that the proposed setbacks in those two sections are 100 feet and 500 feet. We recommend that the 50-foot screening requirement is appropriate, but that the setback requirements of Subsection (7) should be the same as the screening distance. There is no reason to require a 100-foot setback, as opposed to a 50-foot setback, unless there is an existing noise- or dust-sensitive use abutting the property. Therefore, the screening requirement of Subsection (2) should remain at

ATTORNEYS  
JOHN H. BAKER, AIA  
RALPH BOLLIGER†  
ANDREW E. GOLDSTEIN\*\*  
LEWIS B. HAMPTON  
HARLAN EDWARD JONES\*  
E. ANDREW JORDAN  
BRUCE H. ORR  
ARTHUR L. TARLOW

\*Admitted Oregon and Washington  
\*\*Admitted New York  
†Of Counsel

LEGAL ASSISTANTS  
KAREN L. HAYS  
BARBARA S. KELLY  
VIVIAN T. LENTZ  
MARLENE L. MIYASATO  
PATRICIA L. MORGAN  
MARY CAROL SCHNELL  
SUZANNE TINKER

1600 S.W. CEDAR HILLS BLVD.  
SUITE 102  
PORTLAND, OREGON 97225  
(503) 641-7171  
FAX (503) 641-2991

101 EAST EIGHTH  
SUITE 325  
VANCOUVER, WASHINGTON 98660  
(206) 694-9633  
FAX (206) 693-4534

909 THIRD AVENUE  
17TH FLOOR  
NEW YORK, NEW YORK 10022  
(212) 826-2000  
FAX (212) 644-7485

50 feet as proposed, but the setbacks in Subsection (7) should be amended to be 50 feet except where a noise- or dust-sensitive land use exists.

We also suggest that Subsection (7)(a) be deleted, and that Subsection (7)(b) be amended by deleting the word "other" and amending "100 feet" to "50 feet". It is not necessary to require 100-foot property line setbacks or 500-foot noise setbacks in natural resource zones. Therefore, we also propose that Subsection (7)(b) be amended to provide that only 50-foot setbacks are required in natural resource zones and the larger setbacks are only required in commercial and residential areas.

2. Zoning Ordinance Section 11.15.7330

This section is being amended to require a 15-year time limit on conditional use permits, rather than the existing 5-year time limit. The proposal has little effect, however, because the existing language calls for a "maximum of five years" while the proposed language calls for a "maximum of 15 years". Although the outer limit is altered by this proposal, there is no lower limit. For example, under the proposed language, the county could still limit conditional use permits to five years or less.

We propose that the language "a maximum of" be deleted so that the conditional use permit will be for 15-year periods. This long-term guarantee is necessary so that operators will be able to amortize the cost of equipment purchases and installation over the term of a normal commercial loan.

Alternatively, we would suggest that the time limit on conditional use permits be flexible based upon the number of years of operation proposed in the applicant's operations plan. This would eliminate the necessity for a series of conditional use permit applications on the same site. If the county wishes to review operations during a long-term conditional use permit, the

county could require periodic reviews of compliance with conditions during the term of the permit.

3. Zoning Ordinance Section 11.15.7325(B)(9)

The proposed amendments seek to permit or restrict blasting to the hours of 9 a.m. to 5 p.m., Monday through Friday, and to prohibit blasting on Saturdays, Sundays, and holidays.

The ordinance amendments should reflect that any blasting requirements or restrictions apply only in residential and commercial areas. The restrictions against blasting are premised upon the notion that people are at home on Saturday, Sunday, and holidays, and will therefore be inconvenienced by the effects of the blasting. If an aggregate site is in a natural resource area, this premise does not apply. In such areas, even if dwellings exist, they are not primary uses and should not be allowed to dictate the operations of a protected natural resource. The county's duty in such areas is to protect the resource, not dwellings which may be allowed in resource areas. The same arguments apply to the 9 a.m. to 5 p.m. restrictions.

4. Zoning Ordinance Section 11.15.7325(B)(2)(c)

Subsection (2) requires screening and landscaping in the form of existing vegetation or additional hedges, trees, walls, fences, or similar features. In fact, where an aggregate site is located on a hillside, such screening devices will likely be ineffective. Unless it is the county's intent to prohibit aggregate extraction from hillside locations, Subsection (2)(c) should be amended by the addition of a third exception criteria to read as follows:

"Subsection (iii) - Screening will be ineffective because of the topography or slope of the site."

5. Zoning Ordinance Section 11.15.7325(B)(4)

Pursuant to this proposed section, the hours of operation would be 7 a.m. to 6 p.m., Monday through Saturday, for "sites" located within 1/2 mile of any noise- or dust-sensitive use, and 6 a.m. to 10 p.m. on all other "sites". The word "sites" should be changed to "extraction areas". This change is necessitated by the fact that on a large site, the actual extraction area may be a substantially greater distance from the noise- or dust-sensitive use than is the boundary of the site. Since it is the extraction area which produces the noise and dust, not the site in general, the limits should only apply based upon the actual location of the work.

In addition, the 1/2-mile restriction should be reduced to 500 feet to be consistent with the setback requirements in Subsection (7) and the restrictions of Zoning Ordinance Section 11.15.7335(D).

Finally, Subsection 4(C) prohibits operations on Sundays and holidays. In natural resource areas, or in areas where no dust- or noise-sensitive uses are prevalent, there is no justification for prohibiting aggregate operations on Sundays and holidays. Therefore, this section should be amended to apply only in residential and commercial areas or in areas where noise- or dust-sensitive uses exist.

6. Zoning Ordinance Section 11.15.7325(B)(10)

This section requires a safety and security plan addressing fencing and other security measures. It is unclear whether this section requires fencing on any aggregate resource site. Although fencing is a legitimate requirement where hazards exist, fencing should not necessarily be required in natural resource areas. The section should be amended to eliminate any implication that fencing is necessarily required regardless of the location of the site.

7. Zoning Ordinance Section 11.15.7325(B) (12)

This section requires that a reclamation plan shall include a timetable for "continually protecting the land" during the extraction activity. The above-quoted language is unclear. It does not state what sort of protection is contemplated, which land is to be protected, and what the protection is to be against.

8. Zoning Ordinance Section 11.15.7325(E)

This section requires that potential adverse impacts be resolved or minimized. This section should only apply to resource sites designated "3C", and should not include sites designated "2A" or "3B". The "A" designation indicates that no conflicting uses exist or that the resource should be permitted notwithstanding the conflicting uses. Therefore, the potential adverse impacts analysis in Subsection (E) conflicts with the ESEE process.

We will appear at your hearing and further explain our suggested alterations to the staff proposal.

Thank you for your consideration of our suggestions.

Very truly yours,

BOLLIGER, HAMPTON & TARLOW

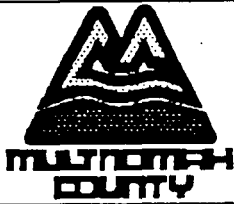


E. ANDREW JORDAN

EAJ/ACF/1814G-2

cc: Angell Brothers, Inc.





## Notice of Public Hearing Planning Commission

Department of Environmental Services  
Division of Planning and Development

2115 SE Morrison Street  
Portland, Oregon 97214

You are invited to attend or send written comment regarding a public hearing to be held on the following item on the date and at the time and place indicated below. The hearing will be conducted pursuant to the Planning Commission's *Rules of Procedure* (enclosed). All interested parties may appear and testify.

A recommendation on the item will be announced at the close of the hearing, or upon continuance to a time certain. A written recommendation will be filed with the Clerk of the Board of County Commissioners within ten days of the announcement.

A Staff Report will be available at no cost seven days prior to the hearing. For further information, call Gary Clifford at 248-3043.

Planning Commission Members: Alterman - Chiedu - Douglas - Fry - Fritz - Hunt - Leonard - Spetter

---

Date: 10/23/89      Time: 6:00 pm      Place: Room 602, Multnomah County Courthouse

---

### C 1-88      Periodic Review Order

This will be the first of two hearings on the adoption of a Periodic Review Order. The second hearing will be held on Monday, November 13, 1989.

The topic of the hearings are changes to the Proposed Periodic Review Order adopted in February, 1989, as required by the Director of the Department of Land Conservation and Development. The major changes to the Order include:

- (1) Proposed amendments to the Significant Environmental Concern Comprehensive Plan Policies and Maps and corresponding Zoning Code Section regarding wetland preservation; and
- (2) Amendment of the Comprehensive Plan Policies and Conditional Use of the Zoning Code on Mineral Extraction.

There are also some modifications to the proposed Hillside Development and Erosion Control Ordinance and other minor Order changes.

Review of the "Economic, Social, Environmental and Energy Analysis" worksheets for mineral extraction sites will be heard on November 13, 1989.

Portland Office

VIA HAND DELIVERY

December 18, 1989

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

Re: Periodic Review

Dear Commissioners:

This office represents Angell Brothers, Inc. with respect to periodic review of the Multnomah County Comprehensive Plan and zoning ordinance.

The Angell Brothers, Inc. aggregate resources site on St. Helens Road has been operating pursuant to conditional use permits since 1976. The aggregate mined from the site has proven to be of high quality and is one of the County's most significant aggregate resources. The site is approximately 394 acres in size, 72 of which are currently being mined pursuant to a conditional use permit. The permit expires in April 1991 at which time Angell Brothers intended to submit an application for a permit to mine on the remainder (expansion area) of the site.

Though the existing permit expires in early 1991, the 72-acre area is large enough to provide aggregate through 1990 only if Angell Brothers mines a ridge on the western edge of the 72-acre parcel. That ridge presently provides screening and buffering between the mining operations and surrounding properties. Though we are presently able to mine that ridge, the company's preference is to avoid the ridge for the time being and mine in portions of the expansion area. If Angell Brothers decides to avoid mining the ridge, the remainder of the 72-acre site has sufficient aggregate only for one more year of operations. A new conditional use permit will be necessary before the existing permit expires.

ATTORNEYS

JOHN H. BAKER, AIA  
RALPH BOLLIGER\*  
ANDREW E. GOLDSTEIN\*\*\*  
LEWIS B. HAMPTON  
DARIN D. HONN  
HARLAN EDWARD JONES\*  
E. ANDREW JORDAN  
BRUCE H. ORR\*  
ARTHUR L. TARLOW

\*Admitted Oregon and Washington  
\*\*Admitted New York  
\*\*\*Of Counsel

LEGAL ASSISTANTS

KAREN L. HAYS  
BARBARA S. KELLY  
VIVIAN T. LENTZ  
MARLENE L. MIYASATO  
PATRICIA L. MORGAN  
MARY CAROL SCHNELL  
VALERIE L. TADDA  
SUZANNE TINKER

1600 S.W. CEDAR HILLS BLVD.  
SUITE 102  
PORTLAND, OREGON 97225  
(503) 641-7171  
FAX (503) 641-2991

101 EAST EIGHTH  
SUITE 325  
P.O. BOX 891  
VANCOUVER, WASHINGTON 98666-0891  
(206) 694-9633  
FAX (206) 693-4534

909 THIRD AVENUE  
17TH FLOOR  
NEW YORK, NEW YORK 10022  
(212) 826-2000  
FAX (212) 644-7485

In the periodic review process, however, the staff has determined that the existing 72-acre site should be designated "3C" and that the expansion area should be designated "1B". The effect of this proposal, which was accepted by the Planning Commission, is to allow mining operations only on the existing 72 acres but to prevent any permit for mining in the expansion area. This proposal is based on the premise that Angell Brothers has failed to provide sufficient mapping of the expansion area. In addition, the staff has also designated a suspected wildlife corridor in the West Hills area, which it believes may conflict with mining operations. The staff has evidently begun a one-year study to determine the existence of that corridor. In the meantime, the staff designates the Angell Brothers expansion area as "1B", which prevents a conditional use permit for the expansion area during the term of the study.

With respect to mapping of the site, the staff is incorrect and has failed to review the documentation of the location of the resource which has been submitted. Attached to this letter is a copy of the site map submitted by H.G. Schlicker & Co. pertaining to the expansion area. The map indicates a series of test holes locating the aggregate, and the staff has claimed that this testing is insufficient. The staff ignores the fact that the Schlicker report indicates that test holes are only one means of testing for the resource and that, in fact, three other tests were performed on the expansion area. The conclusion, also attached to this letter, is that the entire site contains significant aggregate resources.

Therefore, Angell Brothers has sufficiently demonstrated the location of the resource as required by Goal 5, and additional mapping is unnecessary.

Since the proposed zoning ordinance revisions with respect to mineral and aggregate resources state that only sites with "2A", "3A" or "3C" Goal 5 designations are eligible for conditional use permits, and since the expansion area has been designated "1B" because of insufficient mapping and because the staff wishes to perform a one-year wildlife corridor study, Angell Brothers would be unable to request a conditional use permit for expansion of the present site. Either

Board of County Commissioners  
December 18, 1989  
Page 3

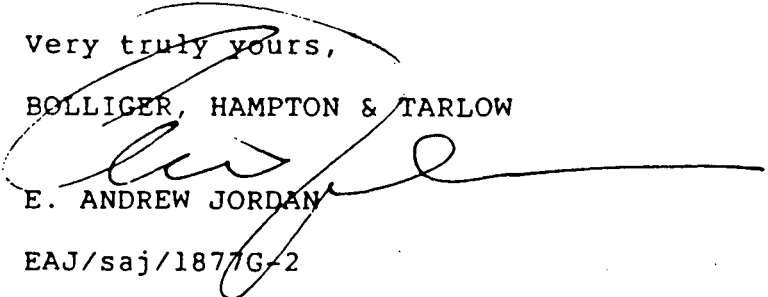
Angell Brothers will have to mine the western ridge to stay in business during the corridor study period, resulting in loss of screening and buffering, or it will have to file a conditional use permit for the expansion area prior to adoption of the proposed ordinance amendments. In either case, public interest will not be served, and the process will be substantially more cumbersome.

In an attempt to accommodate the interests of the County and Angell Brothers, we propose that a 94-acre portion of the expansion area be designated "3A" or "3C" immediately and that the remainder of the expansion area be designated "1B" to permit the staff to complete its corridor study and, if necessary, to permit additional mapping of the peripheral areas. This proposal would allow Angell Brothers to save the western ridge and to begin mining in those portions of the expansion area upon which significant test holes have proven the existence of the resource. Enclosed is a map designating the portion of the expansion area which should be designated "3A" or "3C".

This compromise proposal should satisfy the concerns of the staff and will allow Angell Brothers, Inc. to continue mining a necessary resource which has proven to be of substantial benefit to the County. We will appear at your hearing to discuss these matters further, and we appreciate your consideration of our proposal.

Very truly yours,

BOLLIGER, HAMPTON & TARLOW

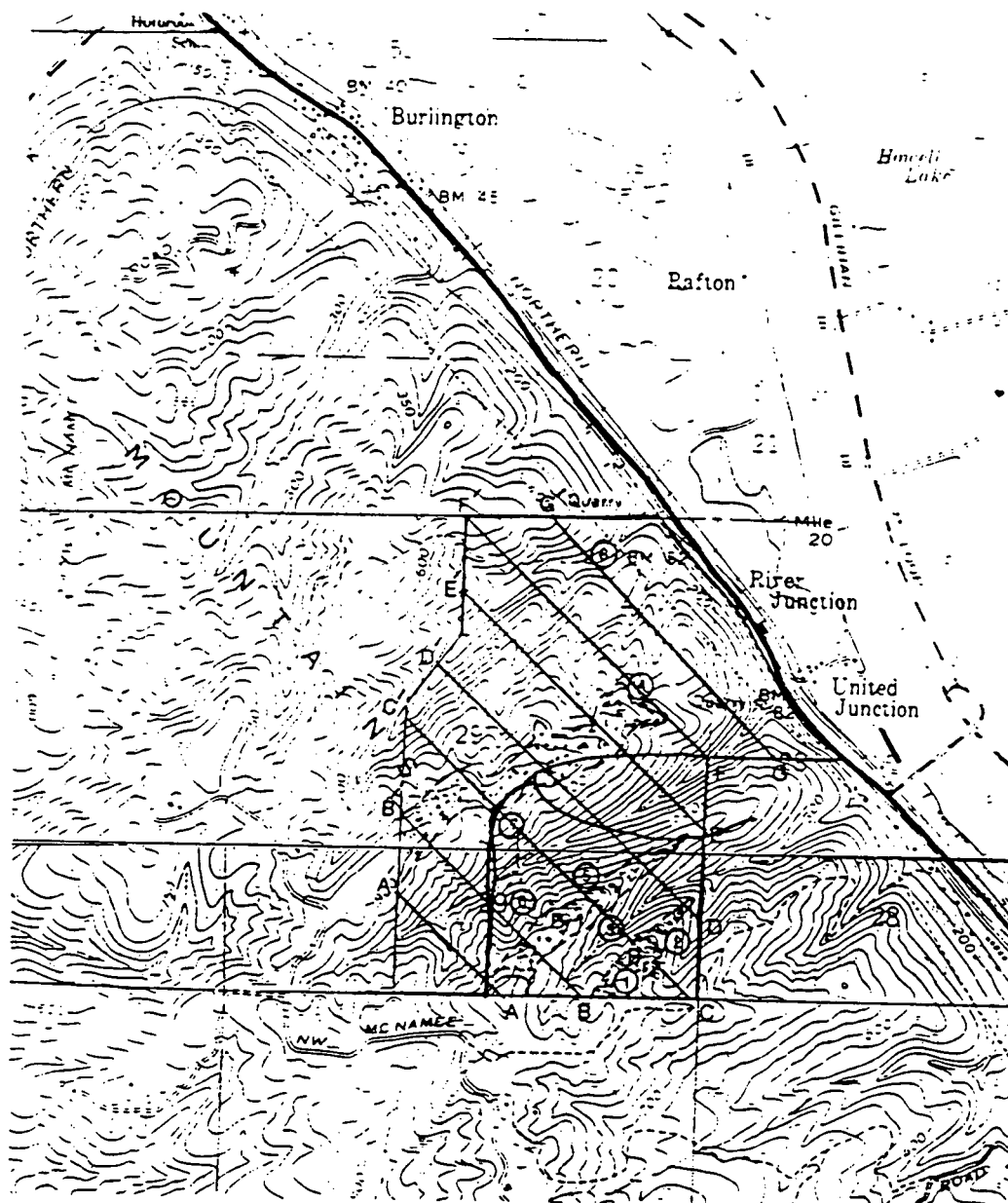


E. ANDREW JORDAN

EAJ/saj/1877G-2

Enclosure

cc: Gladys McCoy  
Pauline Anderson  
Gretchen Kafoury  
Rick Bauman  
Sharron Kelly  
Angell Brothers, Inc.



Scale 1" = 2000'

# EXPLANATION

B-1 Boring Location

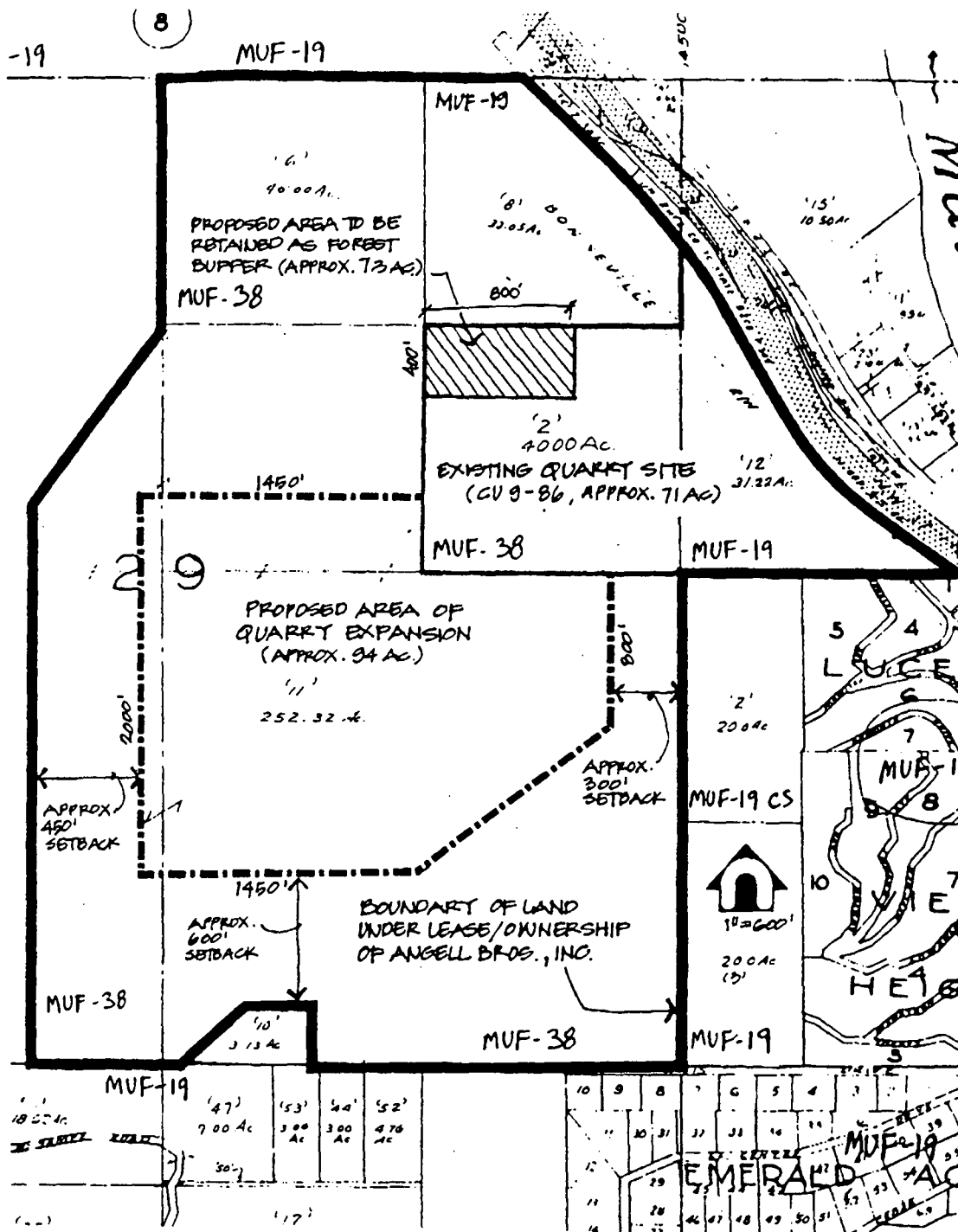
A'-A Topographic Profile Location

① Seismic Refraction Survey Location

⊙ Silty Loess Material Capping Ridge Tops

Remainder of area is basalt

Figure 2. Map showing geology, topographic profiles, seismic refraction survey lines, and borings.



# **Angell Brothers, Inc.** **Existing & Proposed Quarry Operations**

Multnomah County-Columbia River Highway

**DAVID EVANS AND ASSOCIATES, INC.**  
 ENGINEERS, SURVEYORS, PLANNERS, LANDSCAPE ARCHITECTS  
 2825 S.W. CORSETT AVENUE - PORTLAND, OR 97201 - (503) 223-6663



## MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS  
GLADYS MCCOY • CHAIR OF THE BOARD  
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER  
GRETCHEN KAFOURY • DISTRICT 2 COMMISSIONER  
RICK BAUMAN • DISTRICT 3 COMMISSIONER  
SHARON KELLEY • DISTRICT 4 COMMISSIONER

February 28, 1990

### MEMORANDUM

TO: Board of County Commissioners

FROM: Lorna Stickel and Planning Staff *LS*

RE: Board Hearing on Aggregate Site Designations, March 6, 1990

Attached are five items for the March 6, 1990 Hearing regarding the Economic, Social, Environmental, and Energy (ESEE) analysis designations for mineral and aggregate inventoried sites number 4, (Angell Brothers Quarry) and number 8, (Howard Canyon). A brief description of each item is as follows:

1. The ESEE flowchart.

This flowchart is a page from the Oregon Administrative Rules for the protection of Statewide Planning Goal 5, "Open Spaces, Scenic and Historic Areas, and Natural Resources". The key portions of the chart which are of importance to the subject sites are in the center of the page which reads "2 Identify Conflicting Uses" and at the bottom center of the page where are found the two designations "3B Allow Conflicting Use" and "3C Specifically Limit Conflicting Use". More explanation will follow in the site discussions.

2. Example Goal 5 ESEE worksheet by the State Department of Land Conservation and Development (DLCD).

No exact format for an ESEE analysis is specified in the Administrative Rules. The only written guidance from the State is this worksheet which shows an example of how a fictional Goal 5 resource, an historic building,

could be evaluated following the ESEE analysis procedure. Note that the portion describing conflicting uses only takes one-half a page and the whole worksheet is only two pages. From what the County staff can determine this ESEE process was not envisioned to be a complete "Environmental Impact Statement" type of document. Instead, the rule states that "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" (OAR 660-16-005(2)). For that reason the planning commission did not determine it necessary to go into great depth on each point of the analysis.

3. The inventory and ESEE analysis for Aggregate Site #4, Angell Brothers Quarry.

This is the same report which was presented to the Board on January 9th. It has only been put into a different type face to make it easier to read.

The key question to be answered is the appropriate ESEE designation of the 325.37 acres adjoining the 71.22 acre existing aggregate mining operation. The attached analysis makes a finding that for the next year the designation for the 325.37 acres is at "Step 2 Identify Conflicting Uses" in the ESEE process. It is during this time period that the wildlife corridor studies will be completed, giving time to more fully identify the potential conflicting uses. This is an unusual designation. However, a representative of the State Attorney General's Office has assured County staff that it is an appropriate one if based upon a definite time table of completion.

4. The inventory and "3B Conclusion" ESEE analysis for Aggregate Site #8, Howard Canyon.

This is the "alternative" analysis presented to the Board at the February 6th Work Session. The "3B" designation results in the site not being eligible for application to mine more than 5,000 cubic yards of material per year as a conditional use under the County's newly adopted ordinance amendments. The conclusion is that the site "not be protected due to overriding benefits from allowing conflicting uses". Planning staffs opinion is that this designation will be more difficult to defend at the state

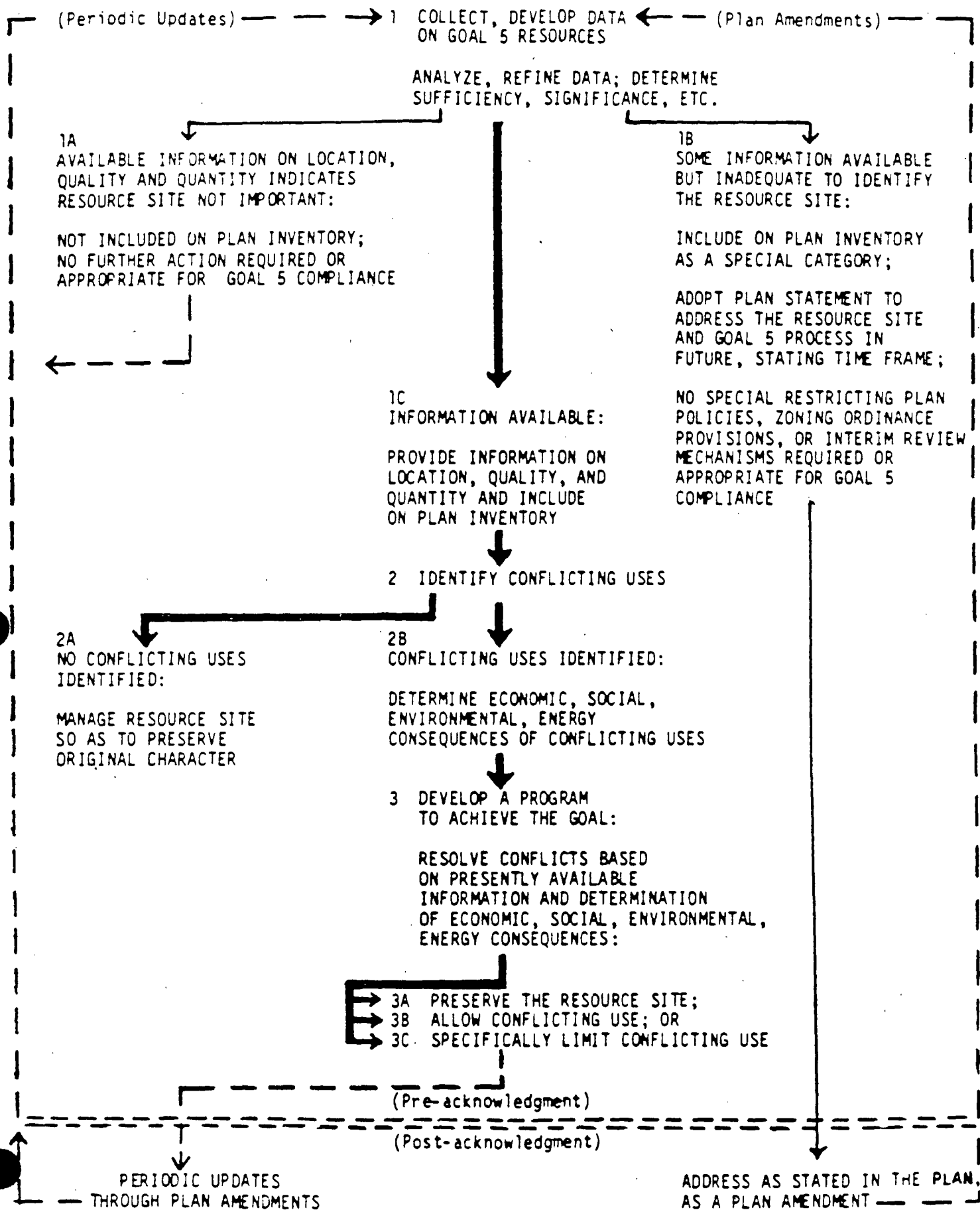


level and the valid concerns raised by the "3B" analysis can still be addressed at the conditional use application stage.

5. The inventory and "3C Conclusion" ESEE analysis for Aggregate Site #8, Howard Canyon.

This ESEE analysis wording and conclusion is unchanged from the time that the Planning Commission approved it on November 27, 1989. Only the type style has been modified to match the other "ESEE's" to be discussed at the March 6th Hearing.

The conclusion of this analysis is that the site "Be partially protected by conditions which minimize the impact of conflicting uses". The impact of conflicting uses, such as homes, on the resource site would be lessened by the required setback of 200 feet to the property line. At the same time, the performance type standards contained in the ordinance require that any large scale operation proposal address and meet the transportation, proximity of homes, other State Goal 5 resources, and slope stability concerns raised in the ESEE analysis.



ATTACHMENT  
GOAL 5 WORKSHEET

Type of Resource: Historic Building

Description: Saloon built in 1880

---

1. Inventory Requirement

1-A: Available information indicates resource site not important: YES or NO.

If YES, designate site 1-A; action required: none.

If NO, proceed.

1-B: Available information is insufficient to determine importance of resource site: YES or NO.

If YES, designate site 1-B; action required: adopt policy to follow Goal 5 Rule requirements when information becomes available.

If NO, proceed.

1-C: Available information is adequate to indicate that the resource site is significant: YES or NO.

If YES, designate site 1-C; action required: Inventory

Location 450 Main Street

Quality Only example of pre-1900 architecture in county,  
building in fair condition

Quantity This is the oldest building in Beaver County

Proceed to 2

2. Conflicting Use Determination and Analysis

2-A: There are existing or potential conflicting uses at the site: YES or NO.

If NO, designate site 2-A; action required: adopt a policy to preserve resource site.

If YES, proceed.

2-B Describe the existing or potential conflicting uses at the site:

Demolition or alteration of building

Complete ESEE Analysis of Conflicting Uses:

Economic: Building could be restored for less than the cost of a new building. Restored building would attract tourists.

Social: Building is part of the history and culture of Salmonville

Environmental: No environmental consequences

Energy: No energy consequences

Conclusion of ESEE Analysis: Building should be protected, consistent with the economic use of the property for commercial purposes.

Proceed to 3

3. Program for Resource Protection

3-A Based on the ESEE analysis, the benefits from preserving the site outweigh those from allowing full conflicts: YES or NO.

If yes, designate site 3-A; action required: adopt policy and implementing measures to preserve site from conflicts.

If NO, proceed.

3-B: Based on the ESEE analysis, the benefits from allowing full conflicts outweigh those from preserving the site: YES or NO.

If YES, designate site 3-B; action required: none.

If NO, proceed.

3-C: Based on the ESEE analysis, the benefits from allowing limited conflicts and protecting the site to some degree are comparable: YES or NO.

If YES, designate site 3-C; action required: adopt policy and clear and objective implementing measures to protect site by limiting conflicts.

(See development ordinance, section, 8.0 )

**Multnomah County**  
**GOAL 5 INVENTORY**  
(1/09/90)

**Type of Resource:** Mineral and Aggregate  
Mult. Co. Inv. Site #4  
**Angell Brothers**

**Location:**

Tax Lot '12 in the Northwest 1/4 of Sec. 28, T. 2 N., R. 1 W.; Tax Lots '2', '6', '8', and '11' in the eastern one-half of Sec. 29, T. 2 N., R. 1 W.

**Description:**

DOGAMI I.D. #26-0019

This operating rock quarry is located on the west side of State Highway 30, just north of the Sauvie Island Bridge. The present size of the approved extraction activities cover the majority of two tax lots totalling 71.22 acres in area. The easternmost parcel of 31.22 acres (TL '12', Sec. 28, T. 2 N. R. 1 W.) contains the processing equipment and stockpiles. The existing general mining and operations master plan calls for retaining the north and south knob type hills at the entrance for screening of the operation to viewing from the east.

A 1978 DOGAMI publication estimated that reserves of the mineral and aggregate resource were 7 million cubic yards of material. A study by H. G. Schlicker and associates was submitted in August, 1989 which covered an adjoining 325.37 acres. That report concluded that based upon their materials tests, borings, and seismic studies, the potential expansion area most likely contains approximately 220 million cubic yards of very good aggregate material.

**A. Available information indicates site is important (ability to yield more than 25,000 cubic yards of material in less than 5 years):**

NO-Designate 1A: Do not include in plan inventory.

☒ YES - Go to B.

**B. Is available information sufficient to determine the location, quality and quantity of resource at the site ?**

NO - Designate 1B : Address the site in future when information becomes available.

☒ YES - Include in plan inventory and go to C.

**C. Zoning:**

Multiple Use Forest - 19 and Multiple Use Forest - 38

**OAR 660-16-005: *'It is the responsibility of local government to indentify conflicts with inventoried Goal 5 Resource Sites.'***

**Are there conflicting uses ?**

NO - Designate 2A : Preserve resource.

☒ YES - Go to D.

**D. Describe existing or potential conflicting uses:**

Single family residences: In the MUF-19 zone as a primary use on a lot of 38 acres, as a use under prescribed conditions on a new lot of between 19 and 38 acres with a forest or farm management plan, as a use under prescribed conditions on a lot of record of between 10 and 38 acres with a forest or farm management plan, or as a conditional use on a lot of record of less than 10 acres. The MUF-38 zone requirements are identical to the MUF-19 zone except that new lots must be at least 38 acres in area.

A range of potential conditional uses and community service uses are listed in the MUF zoning districts but to be approved the approval authority shall find that the proposed use "Will not adversely affect natural resources" (MCC 11.15.7120(B)). In the MUF zone such uses include churches, schools, cottage industries, service commercial, and tourist commercial establishments.

There is the possibility of a "Wildlife Corridor" in the West Hills that provides migrating routes and intermingling of species between Forest Park and the Coast Range. If such a corridor exists, the impact on this corridor by an expansion of the subject mineral and aggregate operation would need to be answered. There are studies in progress that are investigating this potential conflict and until that research and field studies are completed during calendar year 1990, the County cannot adequately identify conflicting uses as required by OAR 660-16-005.

Although OAR 660-16-000 (5) (c) states that when a site is included on the inventory then it "...must proceed through the remainder of the Goal 5 process", it is the County's position that the gathering of information on potential conflicting uses based upon a committed expenditure of funds and a published timetable is "proceeding" through the process and is at step designation "2" on the OAR flow chart at this time. Also see 3.A.(1).(b).in the Environmental section below and the Wildlife Habitat Goal 5 Inventory.

Another potential conflict which is under study are the scenic views of the Tualatin Mountains from the Multnomah Channel and the wildlife areas on Sauvie Island. See Scenic Views Goal 5 Inventory.

#### **Describe consequences of allowing conflicting uses:**

***OAR 660-16-005 (2): "...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."***

#### **ECONOMIC:**

##### **1. Impacts on resource:**

Potential loss of site which is the largest in operation in the County which also contains significant remaining reserves of the resource. The location, less than one mile outside the Urban Growth Boundary and with direct access to a State Highway, has many advantages in supplying this resource to the metropolitan area.

**2. Impacts on conflicting uses:**

Homes and tourist commercial uses too near the noise or dust of an extraction operation will have reduced value.

**3. Requirements of other applicable State Goals:**

**A. Transportation Goal 12:**

Direct access is onto State Highway 30 which is capable of handling all anticipated traffic.

**B. Areas Subject to Natural Disasters and Hazards, Goal 7:**

The majority of the entire site is located in a slope hazard area. This should not present a problem due to the requirement in MCC 11.15.7325 (D) that all proposed operations be certified by competent professionals (such as a registered mining engineer) to not result in the creation of a geologic hazard to surrounding properties.

**SOCIAL:**

**1. Impacts on resource: N/A**

**2. Impacts on conflicting uses:**

- A. The nearest conflicting uses are two homes which are 700 feet away from the subject property. At 1000 feet away to the northeast are 29 houseboats.
- B. Residences near Multnomah Channel, houseboats on the channel, and residences on the southerly 2 miles of Sauvie Island which are east and northeast of the gap in the ridge at the entrance to the mining operation are able to view the slopes under excavation.

**3. Requirements of other applicable State Goals: N/A**

**ENVIRONMENTAL:**

**1. Impacts on resource: N/A**



## 2. Impacts on conflicting uses:

Noise, dust particulates, and blasting are potential impacts on such sensitive land uses as homes, schools, and public parks.

## 3. Requirements of other applicable State Goals:

### A. Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources:

#### (1).Fish and wildlife areas and habitat:

*collection 22-23*

(a).Existing 71.22 acre approved extraction operation: An intermittent stream flows northeasterly through the center of tax lot '12' (the 32 acre parcel fronting on the highway). In conjunction with the present operation most of the length of the stream near the mining has been enclosed in a culvert. Although the stream is classified Class 2 by the State Department of Forestry, the decision to allow piping through the site was made because "the stream is not considered a 'fishing' creek because it dries up in late summer" and the State Department of Environmental Quality approved the water discharge system. The value of the mineral and aggregate resource in this location outweighs the value the stream may have for fish and wildlife habitat at this time, considering that at some time in the future the fish and wildlife potential can be restored. No significant wildlife area exists on the area currently approved for extraction activities.

#### (b).Adjoining 325.37 acres:

Recent studies suggest that the wide variety of wildlife found in Forest Park may be directly attributable to the opportunity for species interaction with the Coast Range ecosystem. Such interaction is possible due to the rural, relatively undeveloped character of the Tualatin Range (West Hills), which enables this area to function as a "corridor" for animal movement. Thus, the wildlife diversity of Forest Park may result from either migratory patterns or general long-term recruitment from more rural reservoirs. If this is the situation, the location of the "corridor" should be located and recognized for its role in maintaining the species diversity of Forest Park.

The County has budgeted and expects to spend \$7,500 during fiscal year 1989-90 on a study of this issue. Phase 1 which is the initial research is currently underway. Phase II which is

the field survey phase and the application of research and field evaluation results, will be completed by Fall of 1990. Staff will complete the ESEE process by the end of 1990 and propose Plan amendments to the Board to complete the Goal 5 process for this factor in the first part of 1991.

**(2). Outstanding scenic views and sites:**

Testimony from several citizens at public hearings points to some concern over the potential adverse impacts on scenic views of the Tualatin Mountains at the subject property if the mining is extended into the adjoining lands. Considering that the Sauvie Island Wildlife areas have the most public use of any other wildlife area in the Northwest, a great many people are exposed to those views. Therefore, a study of this potential conflicting Goal 5 resource has been started and the timetable should closely follow that of the Wildlife Corridor studies.

**ENERGY:**

**1. Impacts on resource:**

Allowing noise and dust sensitive uses too close to the resource could alter the manner, location and extent of extraction activities, resulting in greater use of energy to the operator. This close-in site is energy efficient for transporting the materials to the largest market.

**2. Impacts on conflicting uses: N/A**

**3. Requirements of other applicable State Goals: N/A**

**CONCLUSION:**

**The resource at this site should:**

Be fully protected – Designate 3A.

Not be protected due to overriding benefits from allowing conflicting uses – Designate 3B.

**X** FOR THE APPROVED 71.22 ACRE OPERATION: Be partially protected by conditions which minimize the impact of conflicting uses – designate 3C.

- X** FOR THE ADJOINING 325.37 ACRES: No ESEE designation assigned until more information is available from ongoing studies of potential conflicting uses. At this time the ESEE analysis is at step "2" on the OAR flow chart.

**PROGRAM:**

The existing approved and operating 71.22 acre site is designated "3C" and when the current approval of Conditional Use 9-86 expires in 1991 (or sooner, at the operators discretion), the extraction activity could be continued with approval under a revised Mineral Extraction conditional use section of the zoning code that has clearer and more objective standards.

Designation of the adjoining 325.37 acres will be done when the needed information is obtained on potentially conflicting uses. Multnomah County expects to spend \$7,500 during fiscal year 1989-1990 in the contracting of a consultant in an attempt to verify the existence of a "Wildlife Corridor" in the area of the potential aggregate extraction expansion. The Goal 5 ESEE process for this area is expected to be completed by early 1991.

**Multnomah County  
GOAL 5 INVENTORY**

(2/06/90)

("3B" Designation)

**Type of Resource:** Mineral and Aggregate  
Multnomah County Inventory Site #8  
Howard Canyon

**Location:**

Along the section line between Section 36, T. 1 N, R. 4 E. and Section 1, T. 1 S., R. 4 E.  
See map with resource boundaries overlaid on Assessment and Taxation property line base map in inventory file.

**Description:** DOGAMI I.D. #26-0065

This aggregate resource site is a cleared ridge top which runs in an east-west orientation just north of Howard Canyon. As confirmed in a study by H.G. Schlicker & Associates in which 31 testpits were dug, the basalt lava resource occupies the upper 50 feet or more of the ridgecrest and is more than 4200 feet long and more than 350 feet wide for most of its length. The amount of aggregate material ranges from 150,000 to 2.7 million cubic yards. The ground surface of the resource area ranges in elevation from 780 feet to 860 feet.

The side slopes on the site vary from 50 to 90% (Schnitzer, DOGAMI, 1986). The ridge is bordered by forested ravines to the north with a small creek and to the south by Howard Canyon and Big Creek. Big Creek and its local tributaries have been mapped as Class I Streams by ODF.

**A. Available information indicates that the site is important (site has the ability to yield more than 25,000 cubic yards of mineral and aggregate material in less than 5 years):**

No - Designate 1A: Do not include in plan inventory

☒ Yes - Go to B.

**B. Is available information sufficient to determine the location, quantity, and quality of resource at the site?**

No - Designate 1B: Address the site in future when information becomes available

☒ Yes - Include in plan inventory and go to C.

**C. Zoning:**

Multiple Use Forest-38; Multiple Use Forest-19; and Exclusive Farm Use

**Based on zoning, are there conflicting uses?**

No - Designated 2A: Preserve the resource

☒ Yes - Go to D.

**D. Describe existing and potential conflicting uses:**

Single family residences: In the MUF-19 zone, single family residences are permitted as a primary use on a lot of 38 acres, as a use under prescribed conditions on a new lot between 19 and 38 acres with a forest or farm management plan, as a use under prescribed conditions on a lot of record of between 10 and 38 acres with a forest or farm management plan, or as a conditional use on a lot of record of less than 10 acres. The MUF-38 zone requirements are identical to the MUF-19 zone except that new lots must be at least 38 acres in area. Comparable standards are in the EFU zone for new dwellings. Single family residences constitute a significant conflicting use.

A range of potential conditional uses and community service uses are listed in the MUF zoning districts but to be approved the approval authority shall find that the proposed use "[w]ill not adversely affect natural resources" (MCC 11.15.7120 (B)). In the MUF zone such uses include churches, schools, cottage industries, service commercial, and tourist commercial establishments.

**Describe the consequences of allowing conflicting uses:**

OAR 660-16-005 (2) provides:

*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.*

## **ECONOMIC:**

### **1. Impacts on Resource:**

The consequence could be the delay of development of a quarry site in the county east of the Sandy River and outside the Mt. Hood National Forest and Columbia River Gorge NSA available at the present time for commercial use. However, the County finds that, although not currently being considered for development, there are eight other sites within a 25 mile range of the subject site. (See February, 1989 ESEE worksheet at 13 and report of Lewis Scott, P.E., dated January 9, 1990). The County believes these reports and data.

In addition, the land may be used for other economically viable uses which are permitted outright in the zone, i.e. farming or forestry.

If designated 3B, the Howard Canyon site will not be available for commercial use; however, East Multnomah County is currently and adequately supplied by at least five different operations. (See January 9, 1990 Geologist Report at 3):

1. Smith Bros. Quarry
2. Brightwood Quarry
3. Gresham Sand and Gravel
4. Cascade Sand and Gravel
5. Pacific Rock Products

The Howard Canyon resource would not be available for immediate exploitation if designated 3B, but may increase in value if preserved for future use, given the relative scarcity of the resource and possible demand in this portion of the County. Such portion is not anticipated to grow rapidly before the next periodic review of the County's plan.

The existence of other resource sites in the area is relevant to the question of economic consequences. The site is not now necessary to meet the demand for the resource. Transportation is considered to be economically viable up to 25 miles for a one way trip. (Gray, DOGAMI, 1988). There are at least eight other aggregate sites in operation within a 25 mile range of this site which can serve the local area:

1. Damascus Quarry is located one mile south of Damascus in Clackamas County. This site is located about 14 miles from Springdale and 18 miles from Howard Canyon.
2. Construction Aggregates is located one mile south of Barton in Clackamas County. This site covers 200 acres and is located 9 miles from Orient, 17 miles from Springdale, and 19 miles from Howard Canyon.

3. Deep Creek is located 1/2 mile from Barton in Clackamas County. It is 15 miles from Springdale and 19 miles from Howard Canyon.

4. American Sand and Gravel is located 2 miles from Barton in Clackamas County and is a large operation with considerable reserves. The site is 7 miles from Orient, 14 miles from Springdale, and 16 miles from Corbett.

5. Mt. Hood Rock is located in Brightwood in Clackamas County and East of the Sandy River. The site is about 18 miles from Orient and 24 miles from Howard Canyon.

6. Gresham Sand and Gravel is located within the city limits of Gresham and is 7 miles from Springdale and 13 miles from Latourelle.

7. Rogers Construction is located within the city limits of Gresham and is about 7 miles from Springdale and 11 miles from Howard Canyon.

8. Oregon Asphaltic Paving is located in Gresham and is 8 miles from Springdale and 12 miles from Howard Canyon.

Sites 6, 7, and 8 (the Gresham sites) may become depleted over the next 15 years. However, the Clackamas County sites are expected to remain available for at least another 25 years. The existing sites within a 25-mile radius are sufficient to meet the needs of the county for the duration of the planning period. Such economic consequences may be analyzed once again during the next periodic review.

Additionally, there are two potential sites on forest service lands which may be made available to the local residents as a common-use area, community pits or under contract, according to Mt. Hood District Geologist. Sites located on USFS lands in the Mt. Hood National Forest can be operated in a variety of ways with prices starting as low as \$1 per cubic yard. Economically, Howard Canyon would be unable to compete with the extremely low costs associated with a community pit or common-use area. Community pits are considered by the county to be an economically viable option for the County at this location. In addition, the community pit or common-use area would lessen the demand on existing sites and prolong the productivity of those sites.

The Howard Canyon site is on the inventory. The site has economic value and is significant. However, it does not necessarily follow that all significant resources must be available for immediate exploitation. Once inventoried, the county must determine whether to 1) fully protect the resource; 2) allow conflicting uses fully; or 3) limit conflicting uses. See OAR 660-16-010. Howard Canyon should be placed in the second category which allows conflicting uses fully and a 3B designation should be placed on the site.

## **2. Impacts on Conflicting Uses:**

Homes too near the noise and dust of extraction activities will have lessened resale value. Proportionally, there is a greater economic impact on the value of the nearby homes and other uses than there is on the resource. The value of the resource may indeed increase over time if left in place.

## **3. Requirements of other applicable Statewide Planning Goals:**

### **A. Transportation, Goal 12 - To provide and encourage a safe, convenient and economic transportation system:**

In testimony from the County Engineer and Opponents' traffic engineer during the Conditional Use 7-87 public hearings on the subject site, it was stated that neither SE Howard nor SE Knieriem Roads, the only two options for travel to and from the property, are of sufficient construction to withstand the extra load of gravel trucks on a constant basis without breaking up. In addition, the Scott Report of January 9, 1990 also finds these roads inadequate for commercial hauling of rock. The County believes this testimony and evidence.

The estimated number of truck trips per day for full operation is 10 round trips. In test cores done on SE Howard Road, it was found that the road consists of two inches of oil matte over nine inches of rock, construction very similar to a residential street standard, and therefore, cannot withstand frequent heavy truck traffic. These determinations, made during the 1987 conditional use permit proceedings, were not contested during the periodic review proceedings. The County believes these facts.

Also, for the one mile of SE Howard Road that gravel trucks would use, there are several areas of narrow road widths and difficult sight distances that would need modifications in order to safely accommodate large truck traffic. The Multnomah County Engineer found that due to road width limitations, Howard Road would be very difficult to improve to sufficiently safe conditions. The sight distance is marginal on both Howard and Knieriem Roads due to steep grades and sharp curves and the quarry use will create hazardous traffic conditions on local roads and intersections. These determinations, also made during the 1987 conditional use permit proceedings, were not contested during the periodic review proceedings. The County believes these facts.

On the northward travel route option using SE Knieriem, the road width and sight distances are better than SE Howard, but there is still the need for road bed and surface improvements similar to those for SE Howard for a length of one-half mile. The County Construction Engineer estimated a cost between \$500,000 and \$1,000,000 to upgrade these roads to safely carry the proposed commercial traffic. (See January 9, 1990 Geologist Report at 4). The economic consequences of quarry development at this site support a designation of 3B.



## **SOCIAL:**

### **1. Impacts on Resource:**

An extraction operation would be subject to limitations on hours and days of operation (as proposed in the amended Mineral Extraction Code section). Because of the wind and funnel effect of the canyon topography, buffering will have to be extensive to protect nearby noise sensitive uses, if effective at all. The Scott Report at pp. 3-4, indicates that violations of DEQ noise rules is likely and there is no evidence that operation of the site would be able to comply with such regulations. The County finds that such violations are likely and chooses to avoid such negative environmental consequences by permitting other uses fully.

### **2. Impacts on Conflicting Uses:**

The approximate distances from the closest existing residences to the mapped resource area are: one at 400 feet, one at 500 feet, and two at 700 feet. Between 1980 and 1988 a total of 5 new dwellings have been issued permits in Township 1 South, Range 4 East, Section 1. The total number of dwellings predating 1980 was 21 in this section. One section to the west has a much higher density and supports 55 homes, to the north are 40 homes, to the east are 11, and only 2 are located to the south. The local rural area growth rate is 1.1%. There are 96 dwellings within a 1 mile radius of the site.

Operation of the quarry will interfere with the use and enjoyment of property by nearby residents. The noise generated by blasting, machinery, and rock crushing is considerable. In the opinion of a certified engineering geologist, on-site crushing will constantly challenge DEQ and County noise and dust limits. (See January 9, 1990 Geologist Report at 4). Neighbors have complained about the blasting done in connection with the owner's personal use. The amount of necessary blasting will increase if commercial use is allowed. Proposed use of this site, based upon information provided by the owner, is expected for a period up to 35 years.

The impact of the noise is increased by the topography of the site. The noise is amplified through the wind and funnel effect of the canyon topography.

### **3. Requirements of other applicable Statewide Planning Goals:**

#### **A. Transportation, Goal 12 - To provide and encourage a safe, convenient and economic transportation system:**

The transportation impacts discussed under the economic portion of this analysis are equally applicable to consideration of the social consequences. Local residents will be subjected to the traffic and road problems discussed in the prior section.

The social consequences of the proposed operation justify a 3B designation at this time.

## **ENVIRONMENTAL:**

### **1. Impacts on Resource:**

The mineral and aggregate resource may be preserved for future use by a 3B designation. The 3B designation simply means that conflicting uses will be allowed and the resource will not be available for immediate exploitation.

A deer and elk wintering area (ODF&W, 1988) is located within one mile of the resource site to the southwest and poses a conflict in terms of proximity to weakened wintering herds. In addition, past operations at the site have resulted in violations of the Oregon Forest Practices Act due to disturbance of a Class I Stream. These constitute direct conflicts with other Goal 5 Resources.

Removal of between 6 to 7 feet of overburden would be required for development. Soils for this site have been identified as Mershon Silt Loam series by SCS in 1983 which have a classification of III to IV, depending upon slope. The Forest Site Index for this resource site is 120-135 for Douglas Fir (SCS, 1983), this is the reason the area has been zoned MUF. Mershon soils on slopes over 15% are highly erodible and subject to severe potential slumping (SCS, 1983). Side slopes associated with this resource vary from 50 to 90% (Schnitzer, DOGAMI, 1986). Blasting vibration and increased trucking locally would create increased dust and noise conflicts with adjacent farm and forest land use.

### **2. Impacts on Conflicting Uses:**

Noise, dust particulates, and blasting are impacts on such sensitive land uses as homes, schools, and public parks if they are too close to the extraction operation. As indicated above, there are several homes located in close proximity to the site that would suffer negative environmental consequences from a quarry operation. Conditional uses such as schools, can be prohibited through the conditional use process due to conflict with an inventoried resource. A 3B designation does not remove the site from the inventory, the designation merely prohibits immediate exploitation.

### **3. Requirements of other applicable Statewide Planning Goals:**

A. Goal 4 provides for the following forest uses:

1. the production and processing of trees;
2. open space, buffers from noise and visual separation from conflicting uses;
3. watershed protection along with fisheries and wildlife habitat;
4. soil protection;

5. maintenance of clean air and water;
6. outdoor recreation; and
7. grazing land for livestock.

The site has been used for grazing (livestock habitat) which is a designated forest land use. Previously proposed reclamation plans have included replanting with Christmas trees. Use of the mineral aggregate resource with proper reclamation is not considered to be a permanent conflict. However, in the short term use of this site for mineral extraction has already conflicted with Goal 4 Resources (watershed protection) and may create more conflicts.

**B. Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources:**

Fish and wildlife areas and habitat: There is a Class I stream immediately north of the resource ridge. The mapped resource area does not include the stream and it appears that actual extraction can occur without disturbance of the stream, however, road construction at the site has already resulted in disturbance of a Class I Stream.

Wetlands: The Class 1 stream noted above also is identified as a wetland on the U.S. Fish and Wildlife "National Wetland Inventory." Development of the site, including extraction and road construction may adversely affect the wetland area.

**C. Goal 6 is to maintain and improve the quality of the air, water, and land resources of the state.**

Use of a rock crusher at this site requires a DEQ permit due to potential pollution. Resource development has already conflicted with water quality (See 1987, Forest Practices Act violation above). Development of the site will create dust and off-site water quality impacts. Therefore, the site should retain its 3B designation.

**D. Goal 7, Areas subject to Natural Disasters and Hazards:**

Conflicting testimony was submitted in the CU 7-87 hearings regarding slope hazards at the site. The County believes testimony presented by the opponents during those proceedings and concludes that the consequences of slope hazards at this site outweighs beneficial consequences of the use of the site for mineral extraction and processing.

A letter was submitted from a soil scientist who conducted a preliminary investigation of the site in 1986. The letter stated that "due to the combination of site drainage, landscape position, and apparent stability, it does not appear that adverse geologic or natural effects to surrounding properties will occur as a result of the proposed operation." In that same year an Oregon DOGAMI reclamationist found no problem with the drainage, stability, or reclamation potential of the site.

A study submitted into the record by an engineering geologist indicated a slope hazard at the site due to the following:

1. Evidence of numerous landslides along the contact of the Boring Lava and Troutdale Formation;
2. The presence of numerous springs and seeps which occur along the contact of the Boring Lava and Troutdale Formation; and
3. The Troutdale Formation at this site is subject to failure when overburden is removed.

Through an on-site inspection, a certified engineering geologist found steep slopes and indications of instability in the area below the rock bluff to be quarried. The area is underlain by the Troutdale Formation which can become unstable when exposed. At the very least, additional study is necessary to determine the geologic hazard potential. (See Lewis Scott January 9, 1990 Geologist Report at 4). Given the determination made above with respect to Goal 7, the County believes the engineering geologist's testimony and concludes that the consequences of slope hazards at this site outweighs beneficial consequences of the use of the site for mineral extraction and processing.

The resource site is associated with a known mapped hazard area (ODF, 1987 Geologist site review and Shannon and Wilson Study, 1978). A slump area, active in the last 20 to 30 years was identified. Erosion and subsequent sedimentation of the Class I Stream was documented during the development of an access road near the site by ODF in 1987. (See 1987 Forest Practices Act violation above). The use of this resource may create slope hazard conditions below the site and presents erosion and sedimentation problems off-site. Heavy truck use increases these risks. Conflict with Goal 7 has occurred in the past and is likely to occur again if the site is developed.

Due to the environmental consequences of development, the site should be designated 3B

## **ENERGY:**

### **1. Impacts on Resource:**

Allowing noise and dust sensitive uses too close to the resource will alter the manner, location and extent of extraction activities, resulting in greater use of energy to the operator.

### **2. Impact on Conflicting Uses: N/A**

### **3. Requirements of other applicable Statewide Planning Goals: N/A**

## **CONCLUSION:**

### **The Resource at this site should:**

Be fully protected - Designate 3A

**X** Not be protected due to overriding benefits from allowing conflicting uses - Designate 3B

Be partially protected by conditions which minimize the impact of conflicting uses - Designate 3C

Although there are few developable mineral resource sites available in Multnomah County east of the Sandy River, this site, as indicated above, is not the only site available for local use. A 3B classification would not result in the loss of a scarce resource to the immediate area, since other resources within 7 miles do exist and have been identified. Denial would not, therefore, locally create a hardship to future users of rock in the private and governmental sectors. Use of available resources in Mt. Hood National Forest, southwest of Larch Mountain (Mt. Hood National Forest, 1988) provides residents an economically viable and efficient alternative that has fewer impacts.

The overriding benefits of allowing conflicting uses fully include the prevention of the above-stated adverse consequences of fully protecting the resource for immediate exploitation. Due to the numerous existing conflicts and the potential for additional conflicts with statewide planning goals and the existence of other viable options, the County determines that Howard Canyon site should be classified 3B.

## **PROGRAM:**

The site is designated 3B and is not appropriate for mineral and aggregate extraction at this time. The resource will be protected for future use by the large lot forest zoning districts until a subsequent ESEE analysis might support exploitation of the resource. Only on lands owned by the same property owner as the aggregate resource could there be more homes or similar conflicting uses added that are closer to the resource than those already existing in the vicinity.

**Multnomah County  
GOAL 5 INVENTORY**

(11/3/89)

("3C" Designation)

**Type of Resource:** Mineral and Aggregate  
Mult. Co. Inv. Site #8  
**Howard Canyon**

**Location:**

Along the section line between Section 36, T. 1 N., R. 4 E. and Section 1, T. 1 S. R. 4 E. See map with resource boundaries overlayed on Assessment and Taxation property line base map in inventory file.

**Description:**

DOGAMI I.D. #26-0065

This aggregate resource site is a cleared ridge top which runs in an east-west orientation just north of Howard Canyon. As confirmed in a study by H. G. Schlicker & Associates in which 31 testpits were dug, the basalt lava resource occupies the upper 50 feet or more of the ridgecrest and is more than 4200 feet long and more than 350 feet wide for most of its length. The amount of aggregate material exceeds 2.7 million cubic yards. The ground surface of the resource area ranges in elevation from 780 feet to 860 feet.

**A. Available information indicates site is important (ability to yield more than 25,000 cubic yards of mineral and aggregate material in less than 5 years):**

NO—Designate 1A: Do not include in plan inventory.

**X** YES – Go to B

**B. Is available information sufficient to determine the location, quantity and quality of resource at the site ?**

NO – Designate 1B : Address the site in future when information becomes available.

**X** YES – Include in plan inventory and go to C.

**C. Zoning:**

Multiple Use Forest -38, Multiple Use Forest - 19, and Exclusive Farm Use

**Based on zoning, are there conflicting uses ?**

NO – Designate 2A: Preserve resource.

**X** YES – Go to D.

**D. Describe existing or potential conflicting uses:**

Single family residences: In the MUF-19 zone as a primary use on a lot of 38 acres, as a use under prescribed conditions on a new lot of between 19 and 38 acres with a forest or farm management plan, as a use under prescribed conditions on a lot of record of between 10 and 38 acres with a forest or farm management plan, or as a conditional use on a lot of record of less than 10 acres. The MUF-38 zone requirements are identical to the MUF-19 zone except that new lots must be at least 38 acres in area. Comparable standards are in the EFU zone for new dwellings.

A range of potential conditional uses and community service uses are listed in the MUF zoning districts but to be approved the approval authority shall find that the proposed use "Will not adversely affect natural resources" (MCC 11.15.7120(B)). In the MUF zone such uses include churches, schools, cottage industries, service commercial, and tourist commercial establishments.

**Describe consequences of allowing conflicting uses:**

*OAR 660-16-005 (2): "...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."*

**ECONOMIC:**

**1. Impacts on resource:**

The consequence could be the loss of the only quarry site in the County east of the Sandy River available at the present time for commercial use.

**2. Impacts on conflicting uses:**

Homes too near the noise and dust of extraction activities will have lessened resale value.

**3. Requirements of other applicable State Goals:**

- A. Transportation Goal 12, To provide and encourage a safe, convenient and economic transportation system:

In testimony from the County Engineer during the Conditional Use 7-87 public hearings on the subject site it was stated that neither SE Howard or SE Knieriem Roads, the only two options for travel to and from the property, are of sufficient construction to withstand the extra load of gravel trucks on a constant basis without breaking up.

In test cores done on SE Howard Road it was found that the road consists of two inches of oil matte over nine inches of rock, construction very similar to a residential street standard, and therefore cannot withstand frequent heavy truck traffic. Also, for the one mile of SE Howard Road that gravel trucks would use, there are several areas of narrow road widths and difficult sight distances that would need modifications in order to safely accommodate large truck traffic.

On the northward travel route option using SE Knieriem, the road width and sight distances are better than SE Howard but there is still the need for road bed and surface improvements similar to those for SE Howard for a length of one-half mile.

#### **SOCIAL:**

##### **1. Impacts on resource:**

No portion of the resource site is more than one-half mile from a noise sensitive use. Therefore, an extraction operation would be subject to limitations on hours of operation and days of blasting (as proposed in the amended Mineral Extraction Code section).

##### **2. Impacts on conflicting uses:**

The approximate distances from the closest existing residences to the mapped resource area are: one at 400 feet, one at 500 feet, two at 700 feet.

##### **3. Requirements of other applicable State Goals: N/A**

#### **ENVIRONMENTAL:**

##### **1. Impacts on resource: N/A**

##### **2. Impacts on conflicting uses:**

Noise, dust particulates, and blasting are potential impacts on such sensitive land uses as homes, schools, and public parks if they are too close to the extraction operation.

##### **3. Requirements of other applicable State Goals:**

A. Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources:



(1).Fish and wildlife areas and habitat:

There is a Class 1 stream immediately north of the resource ridge. The mapped resource area does not include the stream and it appears that extraction can occur without disturbance of the stream.

(2).Wetlands:

The Class 1 stream noted in (1) above also is identified as a wetland on the U.S. Fish and Wildlife "National Wetland Inventory".

**B. Goal 7, Areas Subject to Natural Disasters and Hazards:**

Conflicting testimony was submitted in the CU 7-87 hearings regarding potential slope hazards at the site.

(1).A letter was submitted from a soil scientist who conducted a preliminary investigation of the site in 1986. The letter stated that "... due to the combination of site drainage, landscape position, and apparent stability, it does not appear that adverse geologic or natural effects to surrounding properties will occur as a result of the proposed operation". In that same year an Oregon Department of Geology and Mineral Industries reclamationist made a site visit and found no problem with either the drainage, stability or reclamation potential of the site.

(2).A study submitted into the record by an engineering geologist indicated a slope hazard at the site due to the following:

(a).Evidence of numerous landslides along the contact of the Boring Lava and the Troutdale Formation,

(b).The presence of numerous springs and seeps which occur along the contact of the Boring Lava and the Troutdale Formation, and

(c).The Troutdale Formation at this site is subject to failure when overburden is removed.

**ENERGY:**

**1. Impacts on resource:**

Allowing noise and dust sensitive uses too close to the resource could alter the manner, location and extent of extraction activities, resulting in greater use of energy to the operator.

**2. Impacts on conflicting uses: N/A**

**3. Requirements of other applicable State Goals: N/A**

## **CONCLUSION:**

### **The resource at this site should:**

Be fully protected – designate 3A.

Not be protected due to overriding benefits from allowing conflicting uses – designate 3B.

- X** Be partially protected by conditions which minimize the impact of conflicting uses – designate 3C.

## **PROGRAM:**

The site is designated "3 C" and under the proposed Comprehensive Plan and Zoning Code amendments would be appropriate for mineral and aggregate extraction when in compliance with the standards of MCC 11.15.7325 through .7332.

The transportation, the proximity of existing residences, the Class 1 stream, and the slope stability issues noted in this ESEE worksheet will be addressed and resolved when an applicant meets the respective standards of the Mineral Extraction Code subsections (MCC 11.15.7325 (C) (1), (2), (4), (5), (6), (7), and (D)).

The aggregate resource will be protected from new noise and dust sensitive conflicting uses by the proposed increased setback requirements for such uses in each of the zoning districts near the mapped resource area.

PLEASE REPLY TO:  
Portland Office

March 22, 1990

VIA FREE LANCE



Gary Clifford  
Multnomah County  
Department of Environmental Services  
211 SW Morrison St  
Portland OR 97214

Re: Angell Brothers, Inc.  
Our File No. 42469/21392

Dear Mr. Clifford:

Enclosed is our proposed Findings with respect to the ESEE designation on the Angell Brothers site. The proposal constitutes a revision of the staff proposal dated March 27, 1990.

Also enclosed is a copy of the biologist's report from David Evans and Associates pertaining to the 55-acre expansion area which supports the revisions.

In addition, I also enclose a letter dated March 22, 1990 from Mrs. Dorothy English, a resident of the area. The letter is testimony to the lack of wildlife on the quarry side of the Skyline ridge.

I trust that you will assure that these materials are transmitted to Lorna Stickle for her review as soon as possible.

If you or Lorna have questions, please call me as soon as you can.

Very truly yours,

BOLLIGER, HAMPTON & TARLOW

E. ANDREW JORDAN

EAJ/JJE/1970G-2

cc: Angell Brothers, Inc.  
David Evans and Associates, Inc.  
Department of Land Conservation and Development

ATTORNEYS  
JOHN H. BAKER, AIA  
RALPH BOLLIGER\*  
ANDREW E. GOLDSTEIN\*\*\*  
LEWIS B. HAMPTON  
DARIN D. HONN  
HARLAN EDWARD JONES\*  
E. ANDREW JORDAN  
BRUCE H. ORR\*  
ARTHUR L. TARLOW

\*Admitted Oregon and Washington  
\*\*Admitted New York  
\*Of Counsel

LEGAL ASSISTANTS  
BARBARA S. KELLY  
VIVIAN T. LENTZ  
MARLENE L. MIYASATO  
PATRICIA L. MORGAN  
MARY CAROL SCHNELL  
VALERIE L. TADDA  
SUZANNE TINKER  
ANNETTE I. WARREN

1600 S.W. CEDAR HILLS BLVD.  
SUITE 102  
PORTLAND, OREGON 97225  
(503) 641-7171  
FAX (503) 641-2991

101 EAST EIGHTH  
SUITE 325  
P.O. BOX 891  
SEANCOLVER, WASHINGTON 98666-0891  
(206) 694-9633  
FAX (206) 693-4534

909 THIRD AVENUE  
17TH FLOOR  
NEW YORK, NEW YORK 10022  
(212) 826-2000  
FAX (212) 644-7485

MULTNOMAH COUNTY  
GOAL 5 INVENTORY  
(MARCH 27, 1990)

TYPE OF RESOURCE: Mineral and Aggregate  
Multnomah County Inventory Site #4  
Angell Brothers, Inc.

LOCATION: Tax Lot '12 in the Northwest 1/4 of Sec. 28, T. 2 N.,  
R. 1 W.; Tax Lots '2', '6', '8', and '11' in the  
eastern one-half of Sec. 29, T. 2 N., R. 1 W.

DESCRIPTION: DOGAMI I.D. #26-0019

This operating rock quarry is located on the west side of State Highway 30, just north of the Sauvie Island Bridge. The present site of the approved extraction activities cover the majority of two tax lots totalling 71.22 acres in area. The easternmost parcel of 31.22 acres (TL '12', Sec. 28, T. 2 N. R. 1 W.) contains the processing equipment and stockpiles. The existing general mining and operations master plan calls for retaining the north and south knob type hills at the entrance for screening of the operation to viewing from the east.

A 1978 DOGAMI publication estimated that reserves of the mineral and aggregate resources were 7 million cubic yards of material. A study by H. G. Schlicker and associates was submitted in August 1989 which covered an adjoining 325.37 acres. That report concluded that based upon their materials tests, borings, and seismic studies, the potential expansion area most likely contains approximately 220 million cubic yards of very good aggregate material.

- A. Available information indicates site is important (ability to yield more than 25,000 cubic yards of material in less than 5 years):

NO - Designate 1A: Do not include in plan inventory.

X YES - Go to Item B.

- B. Is available information sufficient to determine the location, quality and quantity of resource at the site?

NO - Designate 1B: Address the site in future when information becomes available.

X YES - Include in plan inventory and go to Item C.

C. Zoning:

Multiple Use Forest - 19 and Multiple Use Forest - 38

OAR 660-16-005: "It is the responsibility of local government to identify conflicts with inventoried Goal 5 Resource Sites."

Are there conflicting uses?

NO - Designate 2A: Preserve resource.

X YES - Go to Item D.

D. Describe existing or potential conflicting uses:

Single-family residences: In the MUF-19 zone as a primary use on a lot of 38 acres, as a use under prescribed conditions on a new lot of between 19 and 38 acres with a forest or farm management plan, as a use under prescribed conditions on a lot of record of between 10 and 38 acres with a forest or farm management plan, or as a conditional use on a lot of record of less than 10 acres. The MUF-38 zone requirements are identical to the MUF-19 zone except that new lots must be at least 38 acres in area.

A range of potential conditional uses and community service uses are listed in the MUF zoning districts, but to be approved the approval authority must find that the proposed use "will not adversely affect natural resources" (MCC 11.15.7120(B)). In the MUF zone such uses include churches, schools, cottage industries, service commercial, and tourist commercial establishments.

There is the possibility of a "Wildlife Corridor" in the West Hills that provides migrating routes and intermingling of species between Forest Park and the Coast Range. If such a corridor exists, the impact on this corridor by an expansion of the subject mineral and aggregate operation would be relevant. There are studies in progress that are investigating this potential conflict and until that research and field studies are completed during calendar year 1991, the County cannot adequately identify this conflicting use.

Although OAR 660-16-000(5)(c) states that when a site is included on the inventory then it ". . . must proceed through the remainder of the Goal 5 process", it is the County's position that the gathering of information on potential conflicting uses based upon a committed expenditure of funds and a published timetable is

"proceeding" through the process. The County is at step designation "2" on the OAR flow chart at this time. Also see 3.A(1)(b) in the Environmental section below and the Wildlife Habitat Goal 5 Inventory.

Another potential conflict which is under study are the scenic views of the Tualatin Mountains from the Multnomah Channel and the State-owned wildlife areas on Sauvie Island. See Scenic Views Goal 5 Inventory.

Describe consequences of allowing conflicting uses:

OAR 660-16-005(2): ". . . 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."

ECONOMIC:

1. Impacts on resource:

Potential loss of site which is the largest in operation in the County which also contains significant remaining reserves of the resource. The location, less than 1 mile outside the Urban Growth Boundary and with direct access to a State Highway, has many advantages in supplying this resource to the metropolitan area.

2. Impacts on conflicting uses:

Homes and tourist commercial uses too near the noise or dust of an extraction operation may have reduced value. This quarry has operated for many years, so any reduction may have already occurred.

3. Requirements of other applicable State Goals:

a. Transportation Goal 12:

Direct access is onto State Highway 30 which is capable of handling all anticipated traffic.

b. Areas Subject to Natural Disasters and Hazards,  
Goal 7:

The majority of the entire site is located in a slope hazard area. This should not present a problem due to the requirement in MCC 11.15.7325(D) that all proposed operations be certified by competent professionals (such as a registered mining engineer) to not result in the creation of a geologic hazard to surrounding properties.

SOCIAL:

1. Impacts on resource: N/A.
2. Impacts on conflicting uses:
  - a. The nearest conflicting uses are two homes which are 700 feet away from the subject property. At 1,000 feet away to the northeast are 29 houseboats. The impact on houseboats will decrease as the excavation area moves to the west or south.
  - b. Residences near Multnomah Channel, houseboats on the channel, and residences on the southerly 2 miles of Sauvie Island which are east and northeast of the gap in the ridge at the entrance to the mining operation are able to view the slopes under excavation. Screening can mitigate part but not all of this potential impact.
3. Requirements of other applicable State Goals: N/A.

ENVIRONMENTAL:

1. Impacts on resource: N/A.
2. Impacts on conflicting uses:
  - a. Noise, dust particulates, and blasting are potential impacts on such sensitive land uses as homes, schools, and public parks. However, the site is in compliance with DEQ noise and particulate regulations.

3. Requirements of other applicable State Goals:

a. Spaces, Scenic and Historic Areas, and Natural Resources Open, Goal 5:

(1) Fish and wildlife areas and habitat:

- (a) Existing 71.22-acre approved extraction operation: An intermittent stream flows northeasterly through the center of tax lot '12' (the 32-acre parcel fronting on the highway). In conjunction with the present operation most of the length of the stream near the mining has been enclosed in a culvert. The stream is classified Class II by the State Department of Forestry and the decision to allow piping through the site was made because "the stream is not considered a 'fishing' creek" and it dries up in late summer. The State Department of Environmental Quality has approved the water discharge system. The value of the mineral and aggregate resource in this location outweighs the value the stream may have for fish and wildlife habitat at this time, considering that at some time in the future the fish and wildlife potential may be restored. No significant wildlife exists on the area currently approved for extraction activities.
- (b) Adjoining 325.37 acres (expansion area): Recent studies suggest that the wide variety of wildlife found in Forest Park may be directly attributable to the opportunity for species interaction with the Coast Range ecosystem. Such interaction may be possible due to the rural, relatively undeveloped character of the Tualatin Range (West Hills), which may enable this area to function as a "corridor" for animal movement. Thus, the wildlife diversity of Forest Park may result from either migratory patterns or general long-term recruitment from more rural reservoirs. If this is the situation, the "wildlife corridor" should be located and recognized for its role in maintaining the species diversity of Forest Park.



The County has budgeted and expects to spend up to \$25,000 on studies of this issue. Phase 1 which is the initial research is currently underway. Phase 2, which is the field survey phase and the application of research and field evaluation results, will be completed by early 1991. Staff will then complete the ESEE process and propose Plan amendments to the Board to complete the Goal 5 process for this factor by the end of 1991.

The owner has requested a 3C designation on the entire expansion area, but has agreed to an immediate 3C designation of approximately 55 acres of the expansion area to permit operation during and after the corridor study. Following the study, the designation of the remaining expansion area would be determined. The owner submitted a memorandum from Lawrence L. Devroy, Natural Resources Manager at David Evans & Associates, regarding a wildlife inspection on the proposed 55-acre expansion area performed on March 21, 1990. The report concludes that "... no well-defined wildlife corridor appears to exist in the (55-acre) area of the proposed expansion since no areas of heavy use were observed." In addition, the 55-acre area is located far to the eastern edge of the potential corridor area to minimize any impacts which the expansion may cause in the corridor.

(2) Outstanding scenic views and sites:

Testimony from several citizens at public hearings points to some concern over the potential adverse impacts on scenic views of the Tualatin Mountains at the subject property if the mining is extended into the adjoining lands. Considering the Sauvie Island Wildlife areas have the most public use of any other wildlife area in the Northwest, a great many people are exposed to those views. Therefore, a study of this potential conflicting Goal 5 resource has been started and the timetable should closely follow that of the Wildlife Corridor studies. A 3C designation of the 55-acre expansion area will minimize view

impacts until such time as a view study is prepared relating to the entire area.

ENERGY:

1. Impacts on resource:

Allowing noise and dust-sensitive uses too close to the resource could alter the manner, location and extent of extraction activities, resulting in greater use of energy to the operator. This close-in site is energy efficient for transporting the materials to the largest market.

2. Impacts on conflicting uses: N/A.

3. Requirements of other applicable State Goals: N/A.

CONCLUSION:

The resource at this site should:

Be fully protected - Designate 3A.

Not be protected due to overriding benefits from allowing conflicting uses - Designate 3B.

X FOR THE APPROXIMATELY 127 ACRES CONTAINING THE EXISTING MINING OPERATION AND A 55-ACRE EXPANSION AREA: Be partially protected by conditions which minimize the impact of conflicting uses - Designate 3C.

X FOR THE ADJOINING REMAINDER OF THE SITE: No ESEE designation assigned until more information is available from ongoing studies of potential conflicting uses. At this time the ESEE analysis is at Step "2" of the OAR flowchart.

PROGRAM:

The existing approved mining operation of 71.22 acres and an expansion area of 55 acres are designated "3C". This designation will allow the mining operator to apply for renewal of the Conditional Use approval for the existing mining operation area and apply for an expansion area that would meet their aggregate needs for at least the study period. Depending upon the quantity of rock in the 55-acre area, the owner may apply for a conditional use permit for up to 10 years pursuant to the code. The expansion area is due south of the area to be worked next in the existing operation. This expansion direction appears to be at least intrusive into where a wildlife corridor would most likely be located. It is also in the direction of

least visibility from Sauvie Island due to the ridge line on the property to the east. This program will allow uninterrupted operation of the mine at least during the time needed to complete the wildlife studies and, if warranted, put appropriate protection measures in place.

Designation of the adjoining acreage will be completed when the needed information is obtained on potentially conflicting uses. Multnomah County expects to spend up to \$25,000 during the time period 1989-1991 in the contracting of studies in an attempt to verify the existence of a "Wildlife Corridor" in the area of further potential aggregate extraction expansion. The Goal 5 ESEE process for this remainder area is expected to be completed during 1991.

MEMORANDUM

TO: ANGELL BROTHERS FILE-OUR #ABI004  
FROM: LAWRENCE L. DEVROY, NATURAL RESOURCES MANAGER  
DATE: MARCH 21, 1990  
RE: FIELD REVIEW OF PROPOSED EXPANSION AREA

---

DCN

On the above date I hiked the area of the proposed quarry expansion. My objective was to specifically examine the 53 acre parcel for signs of wildlife activity which would indicate the presence of a wildlife corridor. For the purposes of this inspection, the following signs were sought:

1. An apparent disturbance to vegetation such as trampling or clearing of underbrush caused by repeated use of a pathway or resting area;
2. Tracks such as paw prints or hoof marks;
3. Feces or other remains such as undigested bones, feathers, and insect or crayfish exoskeletons;
4. Evidence of nesting activity including nests or amalgamations of debris.

The area inspected included the ridge and intermittent stream east of the site expansion, the ridges east and west of the on-site intermittent stream, and the intermittent stream course itself. Most of the area can be characterized as upland second growth forest with Douglas fir, Western redcedar, Hemlock, and Oregon white oak in the canopy and Swordfern in the understory as dominants. Riparian areas possess Currant, Willow, and Ash as dominants. The areas between the ridgetops and the riparian areas are very steeply sloped.

My findings are that no well-defined wildlife corridor appears to exist in the area of the proposed expansion since no areas of heavy use were observed. The area is used by birds such as Black-capped Chickadees and Pileated Woodpeckers, and by deer since the birds mentioned were observed and deer tracks were widespread. The only feces observed were apparently from deer and rabbit or other small mammals. No areas of heavy browse were found, in fact cropping of vegetation by foraging animals was rare. No other signs such as nests or undigested remains were found.

LLD:kpn

DAVID EVANS AND ASSOCIATES, INC.  
ENGINEERS, SURVEYORS, PLANNERS, LANDSCAPE ARCHITECTS, SCIENTISTS  
OFFICES IN OREGON, WASHINGTON AND CALIFORNIA  
2828 S.W. CORBETT AVENUE  
PORTLAND, OREGON 97201-4830  
(503) 223-6663 FAX (503) 223-2701

MUF-38

MUF-19

(6)  
40.00 Ac.

(8) DONNEVILLE  
33.05 Ac.

(15)  
10.50 Ac.

MUF-38

(12)  
40.00 Ac.  
Existing Quarry Site  
(Approx. 7.1 Ac.)

MUF-38

(11)  
252.32 Ac.

(2)  
20.0 Ac.

(13)  
20.0 Ac.

Proposed Expanded '3C'  
Aggregate Resource Area  
(Approx. 55 Ac.)

(10)  
3.13 Ac.

MAR 22 '90 10:02

10 9 8 7 6 5 4 3 2 1  
503 223 2701 PAGE.003

Multnomah

LUCERNE

HEIGHTS

AB1004

March 22, 1990

To Whom It May Concern:

We have owned property very close to Angell Bros. rock quarry since 1953.

In regard to this proposed "Wildlife Corridor", what mass amount of animals are supposed to use this.

We have seen 2 Elk on our place and that was 15-18 yrs ago, the same we see. It has been 25 years since we've seen a Bobcat.

We have never seen a bear, however people on Skyline near the County Shop & Legion Hall saw a bear & cub 8 or 9 yrs ago.

We have seen deer from time to time, but since people on top of the hill on the East side of Mamee road, have fenced their property, we see one a year if we are looking at the night time.

I think if a survey of people on the West side of skyline was take, you would find they see far more animals than we on the East side see.

I would suggest you check with the Game Commission, to see

how many permits have  
been granted to people  
on this hill to kill  
deer that were eating  
nursery trees, straw-  
berries etc.

They killed them at  
night as well as in  
the day.

If you wanted a wild  
life safari, it should  
have been started 50  
years ago.

Thank you

Mrs. N. C. Dorothy English  
13100 N. W. W. W. W. W.  
Portland, Ore, 97231



MINUTES  
MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
APRIL 24, 1990 MEETING

Chair Gladys McCoy convened the meeting at 9:40 a.m. with Vice-Chair Gretchen Kafoury, Commissioners Pauline Anderson, Rick Bauman and Sharron Kelley present.

1. C 1-88 PERIODIC REVIEW DECISION

The Board to adopt an ESEE Analysis Designation for Site #4, Angell Brothers, Inc. Quarry which will become part of the Local Review Order to be submitted to the Department of Land Conservation and Development, to fulfill Periodic Review Requirements (Continued from April 17, 1990)

Planning and Development Director Lorna Stickel presented the staff report on the Angell Brothers site, advising that last week a position was reached on the solution and that today they have the Final Order document with the Goal 5 Economic, Social, Environmental, and Energy Analysis language and map which puts that understanding into effect and changes the 3-C designation to apply to the 42 acre expansion area, less the 7 acre leave area. Ms. Stickel advised of an addition to 3B, of the Final Order, adding to last sentence: "Where possible, existing trees and vegetation will be preserved on the 111 acres." In response to a question of Commissioner Anderson, Ms. Stickel explained that for the area approved for clay mining earlier, every attempt will be made to preserve and protect the vegetation. Ms. Stickel requested an addition to page 5, 2B of the ESEE Analysis stating: "Angell Brothers has been permitted to operate during the hours of 6:00 a.m. to 10:00 p.m. since 1980, which operating hours were confirmed by its 1986 permit. Because of few conflicting or sensitive uses nearby, this facility should be allowed to continue current operating hours." In response to a question of Commissioner Anderson, Ms. Stickel advised that the operating hours can only be changed if the ESEE Analysis indicates that some longer operating period is possible. In response to a question of Commissioner Kelley, Ms. Stickel advised that blasting is restricted to the hours of 9:00 a.m. to 5:00 p.m., Monday through Saturday, with no variation allowed under the County code. In response to a question of Commissioner Kafoury, Ms. Stickel reported that staff has not received many trucking movement complaints.

Carol Canning of NW Riverview Drive, reported that at the ESEE hearings there was quite a bit of testimony and a petition from the approximately 20 households of the Bridgeview Moorage concerning the noise and dust.

In response to a question of Commissioner Kafoury, Ms. Stickel advised the new code states that the hours of operation allowed are from 7:00 a.m. to 6:00 p.m.; that no operation shall be allowed during specific holidays; and that the approval authority may allow alternate hours on sites for which the ESEE Analysis has identified other potential operating time periods.

Ms. Stickel advised that the operating hours issue could be discussed at the hearing held when applicants apply for a conditional use under the new code, and that shorter hours could be set; but that if the ESEE Analysis is silent on the operational hours issue, there is no option to discuss longer operating hours. In response to a question of Commissioner Anderson, Ms. Stickel stated that longer operating hours could be granted if there were no conflicts. In response to a question of Chair McCoy, Ms. Stickel reported that staff identified no substantive evidence of significant conflicts at the Angell Brothers site.

Commissioner Kafoury moved and Commissioner Kelley seconded, for approval of the Final Order with the discussed amendments.

Commissioner Anderson advised that she would want to restrict the hours to much less than 6:00 a.m. to 10:00 p.m. when the conditional use comes up, but that she would be willing to support the Final Order.

Ms. Stickel advised that staff could ask for more substantive evidence regarding noise impact on the other side of U.S. Highway 30 or for those people who live to the south and east of the operation during the application process for the conditional use. In response to Commissioner Anderson's concern regarding noises magnified by water, Ms. Stickel stated that on Sauvie Island, the closest residences are thousands of feet away from the site and noise impact that distance seems unlikely. Ms. Stickel reported that both parties have suggested and staff concurs with adding the following language to 4B of the Final Order: "Where possible, 6 feet of topsoil around streams."

Robert Price of David Evans and Associates, testified that his clients have said all that needed to be said over the last six months; that they agree with Carol Canning on the last wording changes; and that Angell Brothers is perfectly willing to go with the amended Final Order and proposed ESEE.

Carol Canning thanked the Board for its patience and time and for providing the parties with a negotiation process. Ms. Canning advised that her group is satisfied with the wording in the amended Final Order, except for the hours, but that they will be happy to address that issue during the conditional use permit process.

Final Order 90-59 with recommended amendments  
UNANIMOUSLY APPROVED.

2. RPD 1-90 PUBLIC HEARING - De Novo  
LD 1-90

Review the decision of the Planning Commission of February 26, 1990, approving change in zone designation from MUF-19, multiple use forest district to MUF-19, RPD, rural planned-development, and approving, subject to conditions, tentative plan for Type I land division, resulting in a 12-lot land division, all for property located at 11000 NW Saltzman Road  
Scope of Review: De Novo

Planner Mark Hess presented the staff report, advising the Board was given a supplemental staff report packet April 24, 1990, in addition to other pertinent materials. Mr. Hess outlined the background and chronology of the Planning process, advising that the proposal is to take a 120 acre site off NW Skyline and apply an RPD designation to the site, which would allow it to be divided into 12 lots rather than the current designation allowing 6. Mr. Hess advised that criteria to approve the proposed request must demonstrate that it is consistent with the character of the area, which staff advises it is not; and that the site is a resource zone immediately adjacent to the UGB which should be preserved for possible future urbanization; that criteria must demonstrate it is consistent with the Comprehensive Framework Plan, which staff advises it is not; and that the designation would be in variance with Policy 4 of the Plan regarding intergovernmental coordination, as evidenced by testimony received from the City of Portland and the Metropolitan Service District; and that criteria must demonstrate it is unsuitable for forest use. Mr. Hess advised that staff feels they have substantial evidence to show that the site is suitable for forest use and recommends denial of the request. Mr. Hess assured the Board it has broad discretionary powers of interpretation in this matter, and advised that the hearing today is a standard, quasi-judicial proceeding.

Commissioner Kafoury reported that she has had no direct contact with any of the parties, but that she has received political contributions from both sides, but does not believe that it has in any way impacted her ability to be objective on this matter.

Commissioner Bauman advised he is dealing with Ball, Janik and Novack in a pro bono relationship on the development of Articles of Incorporation and Bylaws of the Urban Youth Corps.

Steven Janik, attorney representing applicant Forest Park Estate Joint Venture, introduced representatives of the applicant, Ms. Anne Thompson and Mr. Bob Hartford; Mr. Janik's associate, Mr. Richard Whitman; Lisa Hahn from David Evans and Associates; and John Davis of Timber Net. Mr. Janik reported that the supplemental staff report was delivered less than 7 days prior to the hearing and that pursuant to ORS 197.763(4)(b), does not comply with statutory requirements and should be disregarded and excluded from the Record.

At the request of Commissioner Bauman, Assistant County Counsel John DuBay advised that Mr. Janik is correct, but the Board cannot erase having read the Report and that the issue now is whether it is part of Record, which could be decided at another time. Mr. DuBay concurred in response to Commissioner Bauman's suggestion that another option would be to postpone the hearing.

Planning and Development Director Lorna Stickel asked that the Board give County Counsel an opportunity to give a legal opinion on the issue, as it was staff's assumption that the 7 day requirement applied to submission of a staff report at the initial Planning Commission hearing, which was met, and that this is a supplement to that report which met the 7 day standard.

Mr. DuBay suggested that the Board reserve its judgment on whether the supplemental staff report be considered part of the Record until he has researched the matter.

Mr. Janik reported that pursuant to ORS 215.428, the County is required to render a final decision within 120 days of the filing of the application. Mr. Janik read the specific statute and stated that the 120 day period expired March 30th; that a decision was rendered by the Planning Commission and findings of fact were adopted, which but for the action of this Board in calling a de novo hearing, is otherwise final; and that pursuant to statute, the Board of Commissioners does not have authority to proceed with a de novo hearing.

In response to Chair McCoy's request for a ruling on the matter, Mr. DuBay advised that the question now is when the application became complete.

Mr. Janik responded that the application was submitted December 1, 1989 with no indication thereafter that it was incomplete.

Mr. DuBay advised that if the 120 days has expired, the matter is subject to a writ of review and applicant may apply to Circuit Court for an order requiring the permit to be issued. In response to Commissioner Bauman's request as to whether the Court order would require approval of the permit or approval of the Planning Commission decision, Mr. DuBay advised that the Court would grant approval of whatever was applied for.

Mr. Janik stated that the County's RPD code authorizes final action by the Planning Commission and does not require final action by this Board. In response to Chair McCoy's statement that Planning Commission matters come before the Board when there is an appeal, Mr. Janik advised there had been no appeal in this case.

Chair McCoy directed Mr. DuBay to establish his recommendation as to how the Board should proceed.

The Board recessed at 10:10 a.m. and reconvened at 10:30 a.m.

Mr. DuBay reported that the statute referred to by Mr. Janik has only been cited in two Oregon Appeals cases, stating that Simon vs. Marion County, advises that once a decision is made, this statute no longer applies and that after action by the local governing body, the issue becomes a land use decision appealable by the Land Use Board of Appeals and the Court no longer has jurisdiction to require approval. Mr. DuBay recommended that the Board take action today, allowing the matter to become a land use decision appealable only to LUBA, advising that in a Circuit Court action applicants are entitled to get the approval granted unless the governing body can prove that approval would violate a substantive provision of the County Comprehensive Plan or land use regulations. Mr. DuBay recommended that the Board retain its jurisdiction in this case by proceeding to a decision.

In response to Chair McCoy's request for clarification as to why in this instance Planning staff is rejecting the Planning Commission's decision, Mr. DuBay advised that staff recommended that the Board call up this decision for review, and the matter is before the Board on the Board's own motion.

In response to Chair McCoy's directive, Ms. Stickel related that staff asked the Board to consider calling this case up on its own motion, and that staff did not provide any substantive arguments but simply made documents from the Record available to the Board.

Mr. Janik advised that the decision to hear the matter was made prior to the 120 day period in response to a question of Chair McCoy.

Commissioner Bauman suggested that the Board decide whether to proceed with a hearing.

Mr. Janik requested that the County acknowledge that his clients are not waiving any of their arguments; expressed concern about whether the Board had adequate time to review all the materials in this case; suggested that the Board had not received copies of his January 20, 1990 letter to the Planning Commission, the application, Timber Net's response to the first staff report, a Timber Net summary report, and a report from GeoTechnical Resources; and expressed concern that the Board may not have had sufficient time to review applicants response to the supplemental staff report.

In response to Commissioner Kafoury's question of County Counsel regarding the risk with continuing the hearing, Mr. DuBay advised that applicants could go to Circuit Court with a Writ of Review and ask that the application be granted. Mr. DuBay advised he has no problem with the County stipulating that it would not waive any objections to the arguments presented by Mr. Janik, and that if Mr. Janik would stipulate that he would waive any objections to the 120 day period, he sees no objection to a continuance.

In response to Commissioner Bauman's question as to whether there were any procedural advantages if the case were appealed to Circuit Court or LUBA, Mr. DuBay stated that it would be in the County's best interest that the case be appealed to LUBA as the issues would be on the merits of the case.

Mr. Janik clarified that any continuance would not affect whether his clients go to Circuit Court under a Writ or to LUBA. Mr. Janik advised that in addition to those legal approaches, his clients could file an action either in Circuit Court or LUBA seeking a declaration that the Board should not be holding this hearing and that any decision that results from that is an invalid decision because it is outside the 120 days.

UPON MOTION of Commissioner Kafoury, seconded by Commissioner Anderson, it was APPROVED that the matter proceed to hearing, with Commissioner Bauman voting nay.

In response to Mr. Janik's request, Chair McCoy stated that the County acknowledges that Mr. Janik's clients are not waiving any of their arguments regarding whether or not the County has authority to conduct a hearing and whether the County has acted within 120 days.

Mr. Janik asked to have the entire Planning Commission Record, including transcripts, and all documents submitted to the Planning Commission, as well as his letter of April 23, 1990 incorporated into the Record. Mr. Janik testified that his clients propose a development of 1 unit per every 10 acres as allowed under the County's RPD zoning, stating that at issue is whether they meet the RPD approval standards. Mr. advised that an extensive application with expert reports was submitted; Planning staff issued a negative staff report; there was a 7 hour hearing before the Planning Commission; Planning staff issued a staff report recommending approval of both the RPD and the lot division and then subsequently issued a supplemental staff report recommending denial. Mr. Janik stated that despite Planning staff assertions that it is suitable for use as forest land, there are no merchantable trees presently on the property and it would not be practical for his clients to clear cut the hardwood vegetation, plant it with Douglas Fir, burn the slash, spray, and wait 40 or 50 years for a commercial return on the timber. Mr. Janik advised that Planning staff assert the property should not be used for rural development because it is needed for future urban development and that if the County allows 12 houses, it will somehow preclude this property being developed at urban density levels at some time in the future, but that applicants site plan allows for future urban development if that becomes appropriate. Mr. Janik stated there are no County policies which speak to saving land outside the UGB for urban development. Mr. Janik showed the Board an aerial photo, giving a general overview of the property and zoning of the neighboring areas, advising the average lot size in the vicinity is 6.85 acres, and that 67% of the land is currently zoned or planned for rural development. Mr. Janik showed the Board another aerial photo, giving a general overview of the vegetation and open meadow areas, stating that there is a 60 acre parcel on the north half of the property; characterized by an existing vegetative cover of non-commercially usable hardwood trees, with very steep ravines, intermittent creeks and slopes between 30% and 70%; a 21 acre meadowland area where they propose to site the houses to be built on the 12 lots; and a 40 acre area which contains non-commercial trees with slopes ranging between 15% to 30%. Mr. Janik showed the Board a slope map and advised that the slopes are a severe limiting factor for any kind of commercial forest use or urban development, and reiterated that the property is not suitable for farm use, forest use, or urban development. Mr. Janik showed the Board the site plan and pointed out the proposed siting, fire break, fire access road and main access off Saltzman Road, advising that the plan tries to develop the rural residential character on the most suitable portions of the property, leaving approximately 100 acres in its present condition.

Mr. John Davis, Vice-President of Timber Net, Inc. at Timberland Marketing Company, outlined his educational and

employment history and testified that he inspected the Skyline Meadows property 3 times to determine its suitability to be managed as commercial forest land. Mr. Davis advised it is his opinion that the site is average in soil productivity for forest soils in Oregon and could grow Douglas Fir trees at commercial levels, but would be a poor site for hardwood growth as even after 30 years, the hardwood trees covering most of the forested portion of Skyline Meadows are not near a merchantable size. Mr. Davis stated that the property is non-productive as timberland in its current conditions as it was harvested 30 to 40 years ago and now consists of a forest of small hardwood trees. Mr. Davis submitted copies of photos taken from the meadow and northern forest areas; advising that the practices necessary to convert the site to a productive forest represent a substantial investment, with minimum financial return to justify the large upfront expenses; and that the property is unsuitable for commercial forestry use due to its steep topography, hardwood thickets, close proximity to downtown Portland and the number of surrounding rural homesites. Mr. Davis commented that Oregonians are discovering ways to use the political process to control what others may do on their own land and there are no guarantees of landowner freedom to conduct forest practices. Mr. Davis responded to Planning staff fire hazard concerns by stating the property has virtually no build up of flammable woody debris on the forest floor due to the fact that hardwood limbs decay rapidly; and that the proposed improvements will eliminate most of the current hazard.

In response to Commissioner Anderson's request for clarification regarding the statement that 100 acres would be left undeveloped, Mr. Janik advised that the 12 home sites would be developed on 20 acres and that the 100 acre balance would be left undeveloped by means of placing restrictions on the sale of each lot and specifying that each property owner obtain an approved County resource management plan before any building is done on each lot.

In discussing the County's RPD standards and criteria at issue in this case, Mr. Janik advised that if the area is used as forest there will be serious problems in terms of cutting, burning and the attendant soil erosion on the steep slopes; that the 2 adjacent parcels are very steep, do not contain commercial trees, and are not presently used for agricultural or forestry activities; but that to the extent anyone chooses in the future to conduct farming or forestry activities, the proposed 100 acre buffer is more than sufficient to protect them. Mr. Janik reported that water would be provided by 63 on-site wells producing an average of 26.2 gallons per minute; there is a City of Portland line which the City has approved for use in fire protection; they have City of Portland approved access off Saltzman Road; and that there is room for 12 septic tanks in the proposed development area. Mr. Janik suggested that it would be appropriate for the Board to approve his client's proposed RPD.

In response to Commissioner Anderson's question as to who would pay for the City line for fire protection, Mr. Janik advised that his clients would pay for any extension of the existing line at the edge of the site.

Mr. DuBay advised that he has researched the supplemental staff report issue and it appears to him that the 7 day limit is a procedural requirement and that LUBA would probably be concerned as to what prejudice it has caused the other side. Mr. DuBay stated that inasmuch as applicants filed its response yesterday afternoon, it would be appropriate to ask Mr. Janik to advise as to what extent the 1 or 2 day delay prejudiced his clients rights; and that the Board should then vote on whether or not to allow the supplemental staff report as part of the Record.

Mr. Janik advised that his clients were adversely affected because they had to make a very hurried response and that he is concerned whether the Board has had an adequate opportunity to review it before today's hearing.

In response to Chair McCoy's question as to the pleasure of the Board, Commissioner Kafoury advised she wished to hear testimony from the opposing side.

Chair McCoy related that it is her sense the delay has not prejudiced applicant's case.

In response to Chair McCoy's question regarding whether there was sufficient time to review applicants response, Commissioner Bauman suggested that the Board proceed with the testimony and resolve that issue at a later time.

Ethan Seltzer of the Metro Planning and Development, testified against the proposed development, advising that policy issues are at stake as referred to in a January 22, 1990 letter sent to the Planning Commission by Richard Carson, Director of Metro's Planning and Development. Mr. Seltzer advised the issue is not necessarily the character of the rural area, but the question of suitability for forest use inasmuch as the County Comprehensive Plan made a conscious decision to designate the site MUF-19 which allows a 38 acre minimum for a single family dwelling, or 19 acres if there is a resource management plan; and that under the RPD category, it is not necessarily the case that for each specific lot you would have a resource management plan. Mr. Seltzer noted that it is not the cost of forest activities and forest practices, but its suitability at issue; and that the argument that the current vegetative cover on the property is not merchantable timber so the property is not suitable for resource could be applied to virtually any piece of rural land that has been logged and then not managed for a period of time, which would be like rewarding bad management. Mr. Seltzer stated that while adjacency to the UGB or other rural residential lands may be relevant to aspects of character of the rural area, whether or not the property is suitable for forest use is not a relevant argument in this case. Mr. Seltzer commented that contrary to Mr. Janik's observation, the findings note that the proposed homesite area is least suited for open space, wildlife and small woodlots; and that the fact there is a resource management plan requirement to the conditions of approval suggests there is a resource value to the property. Mr. Seltzer advised that parcelization of a large contiguous piece of property on the edge of the UGB is a policy issue in terms of suitability of the property for resource use as



well as how it may fit into a future pattern of urbanization; and that if the property is not suitable for resource use as applicant contends, then perhaps applicant should apply for some kind of comprehensive plan change which recognizes its lack of value for resource use and therefore puts it into what could be determined as an exception land status.

In response to Commissioner Kelley's request that he expand on the resource management plan, Mr. Seltzer advised that the requirement was added by the Planning Commission because of its concern about the use of the bulk of the property for potential resource purposes.

In response to Commissioner Kelley's question as to who would approve a resource management plan, Mr. Hess explained it would be approved administratively through the County Planning Department and would require a certification or review by the Department of Forestry or other recognized expert.

Carol Canning of NW Riverview Drive, advised her testimony is in collaboration with Nora Rich from the Skyline Neighborhood Association who was not able to attend today's hearing. Ms. Canning read a statement in opposition to the proposed development, advising that if the designation were approved, the County would be sacrificing its natural areas and livability.

Nancy Rosenlund of NW Cornell Road and the Forest Park Neighborhood Association, testified against the proposed development, advising that land outside the UGB should not be used for urban purposes and that the burden of proof should be exceedingly high for a development project which would divide potentially productive farm or forest land into housing estates. Ms. Rosenlund urged the Board to deny the proposed development, advising that because a property is not commercially viable today is no reason to put houses on it.

Bob Clay, City of Portland, Bureau of Planning, testified that the City recommends denial of the proposed development, advising that this case raises important urban growth management public policy issues of concern to the City because the site is large and immediately adjacent to the Portland city limits and UGB. Mr. Clay advised that the City's 1985 Northwest Hills Study estimated a demand for over 2,200 residential units in the next 20 years and that while there is plenty of capacity and development potential to accommodate that demand, the City is concerned that if the UGB is expanded in the future, this proposed development would preclude the City's ability to efficiently provide urban services, by creating lots that are not suitable for future division. Based on the City's review of the proposed development, Mr. Clay stated that if it were annexed to the City in the future, the City would probably zone it R-10, or approximately 4 units per acre on the 120 acre site, which would result in as many as 480 units to the City.

Karin Hunt, Multnomah County Planning Commission member, testified she was one of the Commissioners who voted against approval of the proposed development; and reported that some of

the information referred to by Mr. Janik was hand delivered to the Planning Commission the day of the hearing; and that Planning staff did not have a chance to review applicants hand delivered response to the staff report. Ms. Hunt submitted copies of an April 23, 1990 letter from Ted Lawrence at the Oregon State Department of Forestry in response to applicants economic analysis; a cost share assistance pamphlet; and an April 20, 1990 letter from the Clackamas-Multnomah County Agricultural Stabilization and Conservation Committee relative to eligible Reforestation Projects. Ms. Hunt stated she does not believe the evidence before Board justifies allowing the proposed development.

Ivy Frances of NW 112th Avenue, representing the West Multnomah Soil and Water Conservation District, submitted a copy of a December 28, 1989 joint memorandum from the District and the Portland Field Office of the USDA, Soil Conservation Service in opposition to the proposed development; and refuted applicants assertions that the property on the proposed development is unsuitable for agriculture or forest use. Ms. Frances cited data which estimated that Douglas Fir trees planted on the property could be expected to be 115 feet high in 50 years and stated that the District sees no factual evidence to support applicants assertions that once a land is logged, it is not economically feasible to replant and continue forestry as a renewable resource. Ms. Frances advised the District urges the Board to sustain the future by to assuring economic diversity where possible by restricting development of forest productive land.

George Sowder of NW Skyline Boulevard, President of the Skyline Neighborhood Association, discussed the commercial sale of trees other than Douglas Fir located in the area of the proposed development and advised he feels the Timber Net expert overstated the case of potential conflicts with surrounding land residents and the cost of producing merchantable timber on the property. Mr. Sowder stated he feels the area is of singular importance due to its proximity to Portland, the West Hills, Forest Park and the Wildlife Corridor, and that the critical nature of the area is underscored by future forest products, which is in the public's interest. Mr. Sowder urged the Board to maintain the current resource zoning for the area.

Brian Lightcap of NW Newberry Road, testified in opposition to the proposed development, advising that he and his wife currently own 54 contiguous acres adjacent to Forest Park on which they raise, produce and manage for profit sheep, hides, manure, Douglas Fir, black walnut, hybrid American chestnut, natural maple railings and banisters, specialty timber trees and maple lumber. Mr. Lightcap stated he is against the proposed RPD designation and does not believe it will comply with the County's Goal 3 and rules adopted February, 1990; and that he feels the 120 acre parcel is more suited to division into 4 or 5 MUF zoned parcels, provided the landowners have responsible forestland management plans.

Anthony Boutard, staff forester for 1,000 Friends of Oregon, testified against the proposed development, stating the site productivity is well suited for forestry uses, with an annual increment average or slightly above average for western Oregon.

Mr. Boutard concluded by stating that the property has the potential for conducting an economically viable forestry operation which would be good for individual owners.

Mr. Janik observed that the Board has had an opportunity to see two conflicting viewpoints in today's opposing testimony, with some arguing the site should be designated for urban and others for forestry use. Mr. Janik advised that he has rarely heard the argument in Multnomah County that houses on 10 acres or 12 houses on 120 acres would adversely affect livability, and pointed out that no one other than Mr. Davis of Timber Net testified they had performed an on-site evaluation of the property. Mr. Janik reiterated the legal conditions for determining suitability for forestry use, advising applicants purchased the property 10 years ago and were not in anyway responsible for its prior history or cutting. Mr. Janik's response to the testimony suggesting that applicants apply to amend the County's Comprehensive Plan was that it would not be appropriate; and stated that the City argued without facts when inferring the property could not be subdivided for future urban uses. Mr. Janik addressed other concerns raised today and stated applicants have expert evidence that the property is not usable for commercial forestry production; and that protection of the scenic open space, soil erosion and wildlife habitat resource values are being addressed with a resource management plan.

In response to Commissioner Kafoury's question as to how this stands in the long-term land use planning review process, Ms. Stickel reported that the County's Plan does not address the issue very clearly; that the County is working with Metro in devising a process to determine potential urban growth areas existing outside the current UGB; hope within the next couple of years to address the issue of potential future urban reserves which will establish the need to protect some of these areas for future urban and natural resource purposes; and advised that the the RPD designation has been removed from the current County code to alleviate future arguments. In response to Commissioner Kafoury's comments, Ms. Stickel advised that there is no need in the immediate future to reserve this particular piece of property for potential urban land needs.

In response to Chair McCoy's question as to the County's options, Mr. DuBay advised that the Board could continue the matter, affirm the Planning Commission decision approving the development, or deny the Planning Commission decision and deny the proposed development.

Commissioner Bauman moved and Commissioner Kafoury seconded, for a one week continuance of the matter.

In response to a question of Commissioner Kelly, Commissioner Bauman advised he wants a continuance so he may visit the site; more clearly understand County's options under the rural and forest designations; and more clearly understand the procedural dilemma the County may be entering.

MOTION FAILED with Commissioners Anderson, Kelley and McCoy voting nay.

In response to Commissioner Bauman's comments, Commissioner Kelley stated she felt the Board had heard sufficient testimony to make a decision today.

UPON MOTION of Commissioner Anderson, seconded by Commissioner Kelley, to DENY the Planning Commission decision allowing the proposed development, it was APPROVED, with Commissioner McCoy voting nay.

Commissioner Bauman advised that having voted on the side of the majority, he moves for reconsideration next week, and serves notice of possible reconsideration of the matter on Tuesday, May 1, 1990.

There being no further business, the meeting was adjourned at 12:14 p.m.

OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON

By DEBORAH L. GARRIS

0775C/6-17/dr

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

In the Matter of Adopting an Economic,       )  
Social, Environmental, and Energy (ESEE)    )  
Analysis for Mineral and Aggregate        )  
Inventory Site #4, Angell Brothers, Inc.     )

**FINAL ORDER     #90-59**

Oregon Revised Statute 197.640 requires counties to review their comprehensive plans and land use regulations periodically and make changes necessary to keep plans and regulations up to date and in compliance with the statewide planning goals. A Proposed Local Review Order intended to bring the County into compliance was presented to the Department of Land Conservation and Development (DLCD) on February 28, 1989. DLCD recommended changes to selected items in the Proposed Local Order which included revising the Statewide Planning Goal 5 Economic, Social, Environmental, and Energy Analysis of the mineral and aggregate sites. The Oregon Administrative Rule guiding this analysis is found in Chapter 660, Division 16.

During the process of revising the subject mineral and aggregate ESEE Analysis public hearings were held before the Board of County Commissioners on December 19, 1989, January 9, 1990, February 20, 1990, March 6, 1990, March 27, April 17, and April 24. On each of those dates written and oral testimony was taken and heard regarding this site.

Based upon that testimony the Board adopts the following ESEE Analysis for Site #4, Angell Brothers, Inc. Quarry, which concludes the following:

1. The appropriate classification of the 113.22 acres in the easterly center of the site, as depicted on the attached map as existing quarry site (cross hatching) and area for expansion (large dot pattern), is "3C, Specifically Limit Conflicting Use".
2. The ESEE Analysis for the remainder of the site, 283.37 acres, is at "Step 2, Identify Conflicting Uses" until on-going wildlife studies described in the analysis are completed at the time schedule specified.

The Board further finds that, with the encouragement of the Board, an agreement regarding mine operation expansion during the wildlife corridor study has been reached at the conclusion of three informal meetings of the quarry operator and neighborhood groups representatives. The Board is in agreement with the following results of those discussions which were confirmed at the Board Hearing of April 17, 1990:

1. An additional 42 acres of aggregate and clay material should also be included with the present operation area in an ESEE analysis designation of "3C" in order to ensure a continued amount of aggregate and clay material needed for operation of the mine during the wildlife study period.
2. This expansion area should be toward the south as shown on the attached map. The southerly boundary line is at two angles drawn as to have the least protrusion.

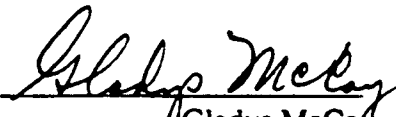
sion into a potential wildlife corridor area to the southwest and also provide a 100 foot buffer to a stream to the southeast.

3. The attached map also shows two areas which Angell Bros. Inc. has agreed not to mine during the study time period. The areas are:
  - A. A 400 foot by 800 foot area in the northwest corner of tax lot "2" which may be important for scenic view considerations; and
  - B. An 111 acre area which was the subject of a conditional use approval for clay mining in 1989. The southerly 42 acre expansion area will provide the clay material that would have been mined from the 111 acres to the north and west of the present operation. Where possible, existing trees and vegetation will be preserved on the 111 acre area.
4. The reclamation plan for a site will have a very important influence on wildlife and views. The neighborhood groups and wildlife organizations with an interest in the reclamation plan are to participate in an informal review of any proposed reclamation plans before the plans are submitted with a conditional use application. There are five guidelines which should be part of the reclamation plan which are in addition to those required by State regulations:
  - A. Twenty four inches of top soil for adequate reforestation;
  - B. Where possible, six feet of top soil around streams to insure reforestation and wildlife habitat;
  - C. Landscaping for wildlife access and ease of moving across restored area;
  - D. Streams restored to the land surface (not confined to drain pipes); and
  - E. A bond to insure that the above reclamation is achieved.

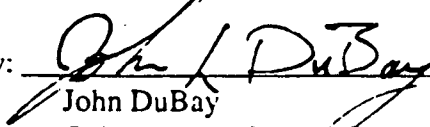
This order and the foregoing are to become attachments to the Local Review Order to be submitted to the Department of Land Conservation and Development.

Approved the 24th day of April, 1990.

(Seal)

  
Gladys McCoy  
Multnomah County Chair

Reviewed:  
Lawrence Kressel, Multnomah County Counsel


By:   
John DuBay  
Chief Deputy County Counsel


Angell Brothers, Inc.  
**Existing & Proposed  
 Quarry Site**  
 Multnomah County-Columbia River Hwy

**Legend**

MUF-19 MULTIPLE USE FOREST  
 19 ACRES

MUF-38 MULTIPLE USE FOREST  
 30 ACRES

 NEW AREA FOR  
 QUARRY EXPANSION  
 (APPROX. 42 ACRES)

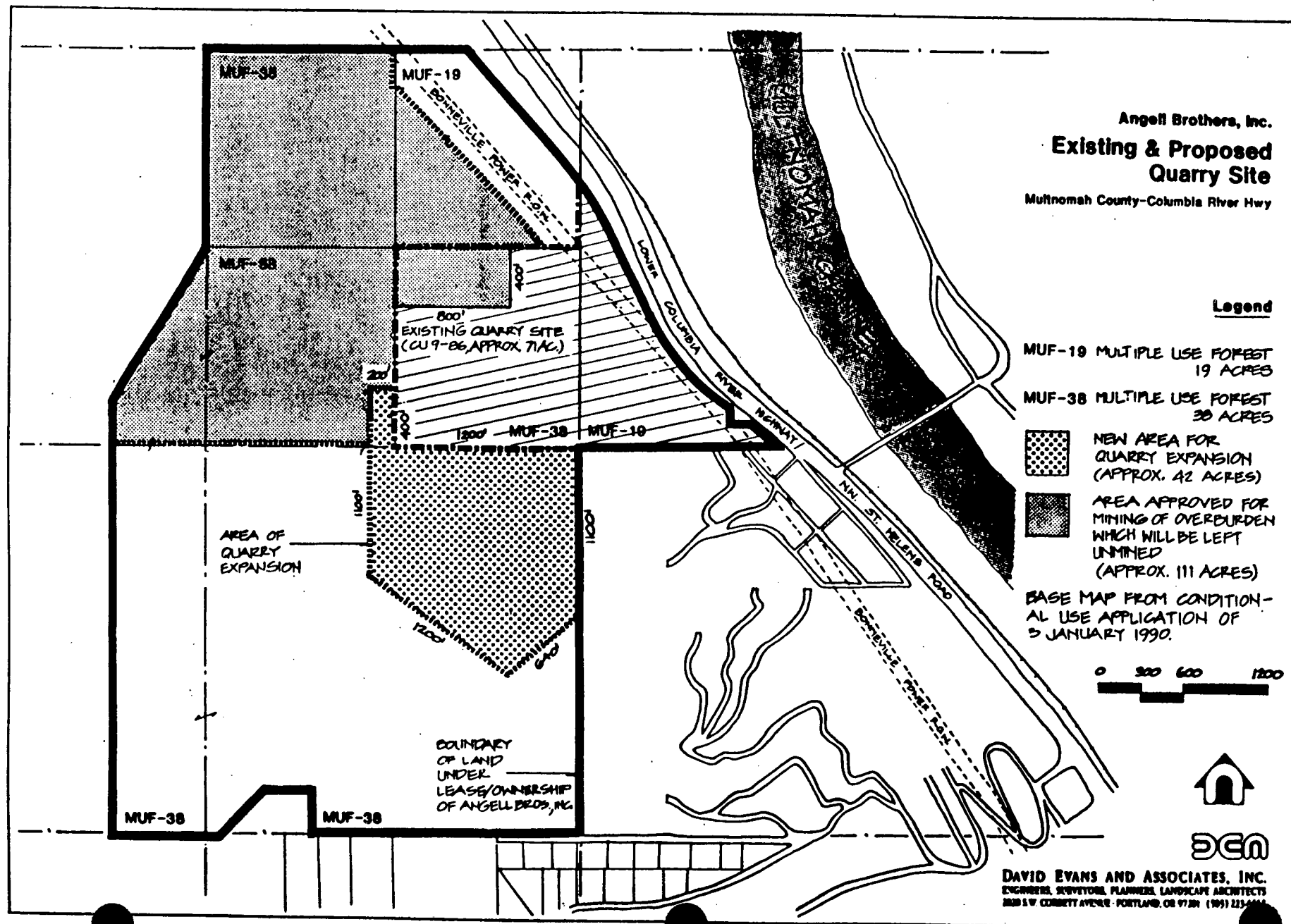
 AREA APPROVED FOR  
 MINING OF OVERBURDEN  
 WHICH WILL BE LEFT  
 UNMINED  
 (APPROX. 111 ACRES)

BASE MAP FROM CONDITIONAL  
 USE APPLICATION OF  
 5 JANUARY 1990.



**DEA**

DAVID EVANS AND ASSOCIATES, INC.  
 ENGINEERS, SURVEYORS, PLANNERS, LANDSCAPE ARCHITECTS  
 2215 S.W. CORBETT AVENUE - PORTLAND, OR 97201 (503) 223-1111



**Multnomah County**  
**GOAL 5 INVENTORY**  
**(4/24/90)**

**Type of Resource:** Mineral and Aggregate  
Mult. Co. Inv. Site #4  
**Angell Brothers, Inc.**

**Location:**

Tax Lot '12 in the Northwest 1/4 of Sec. 28, T. 2 N., R. 1 W.; Tax Lots '2', '6', '8', and '11' in the eastern one-half of Sec. 29, T. 2 N., R. 1 W.

**Description:**

DOGAMI I.D. #26-0019

This operating rock quarry is located on the west side of State Highway 30, just north of the Sauvie Island Bridge. The present size of the approved extraction activities cover the majority of two tax lots totalling 71.22 acres in area. The easternmost parcel of 31.22 acres (TL '12', Sec. 28, T. 2 N. R. 1 W.) contains the processing equipment and stockpiles. The existing general mining and operations master plan calls for retaining the north and south knob type hills at the entrance for screening of the operation to viewing from the east.

A 1978 DOGAMI publication estimated that reserves of the mineral and aggregate resource were 7 million cubic yards of material. A study by H. G. Schlicker and associates was submitted in August, 1989 which covered an adjoining 325.37 acres. That report concluded that based upon their materials tests, borings, and seismic studies, the potential expansion area most likely contains approximately 220 million cubic yards of very good aggregate material.

**A. Available information indicates site is important (ability to yield more than 25,000 cubic yards of material in less than 5 years):**

NO-Designate 1A: Do not include in plan inventory.



**X** YES – Go to B.

**B. Is available information sufficient to determine the location, quality and quantity of resource at the site ?**

NO – Designate 1B : Address the site in future when information becomes available.

**X** YES – Include in plan inventory and go to C.

**C. Zoning:**

Multiple Use Forest - 19 and Multiple Use Forest - 38

**OAR 660-16-005: *'It is the responsibility of local government to identify conflicts with inventoried Goal 5 Resource Sites.'***

**Are there conflicting uses ?**

NO – Designate 2A : Preserve resource.

**X** YES – Go to D.

**D. Describe existing or potential conflicting uses:**

Single family residences: In the MUF-19 zone as a primary use on a lot of 38 acres, as a use under prescribed conditions on a new lot of between 19 and 38 acres with a forest or farm management plan, as a use under prescribed conditions on a lot of record of between 10 and 38 acres with a forest or farm management plan, or as a conditional use on a lot of record of less than 10 acres. The MUF-38 zone requirements are identical to the MUF-19 zone except that new lots must be at least 38 acres in area.

A range of potential conditional uses and community service uses are listed in the MUF zoning districts but to be approved the approval authority shall find that the proposed use "Will not adversely affect natural resources" (MCC 11.15.7120(B)). In the MUF zone such uses include churches, schools, cottage industries, service commercial, and tourist commercial establishments.

There is the possibility of a "Wildlife Corridor" in the West Hills that provides migrating routes and intermingling of species between Forest Park and the Coast Range. If such a corridor exists, the impact on this corridor by an expansion of the subject mineral and aggregate operation would be relevant. There are studies in progress that are investigating this potential conflict and until that research and field studies are completed during calendar year 1991, the County cannot adequately identify conflicting uses as required by OAR 660-16-005.

Although OAR 660-16-000 (5) (c) states that when a site is included on the inventory then it "...must proceed through the remainder of the Goal 5 process", it is the County's position that the gathering of information on potential conflicting uses based upon a committed expenditure of funds and a published timetable is "proceeding" through the process. The County is at step designation "2" on the OAR flow chart at this time. Also see 3.A.(1).(b).in the Environmental section below and the Wildlife Habitat Goal 5 Inventory.

Another potential conflict which is under study are the scenic views of the Tualatin Mountains from the Multnomah Channel and the State owned wildlife areas on Sauvie Island. See Scenic Views Goal 5 Inventory.

#### **Describe consequences of allowing conflicting uses:**

***OAR 660-16-005 (2): "...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."***

#### **ECONOMIC:**

##### **1. Impacts on resource:**

Potential loss of site which is the largest in operation in the County which also contains significant remaining reserves of the resource. The location, less than one mile outside the Urban Growth Boundary and with direct access to a State Highway, has many advantages in supplying this resource to the metropolitan area.

## **2. Impacts on conflicting uses:**

Homes and tourist commercial uses too near the noise or dust of an extraction operation will have reduced value. This quarry has operated for many years, so reductions in value, if any, may have already occurred.

## **3. Requirements of other applicable State Goals:**

### **A. Transportation Goal 12:**

Direct access is onto State Highway 30 which is capable of handling all anticipated traffic.

### **B. Areas Subject to Natural Disasters and Hazards, Goal 7:**

The majority of the entire site is located in a slope hazard area. This should not present a problem due to the requirement in MCC 11.15.7325 (D) that all proposed operations be certified by competent professionals (such as a registered mining engineer) to not result in the creation of a geologic hazard to surrounding properties.

## **SOCIAL:**

### **1. Impacts on resource: N/A**

### **2. Impacts on conflicting uses:**

- A. The nearest conflicting uses are two homes which are 700 feet away from the subject property. At 1000 feet away to the northeast are 29 houseboats. The impact on houseboats will decrease as the excavation area moves to the west or south. The closest house to the mapped 55 acre potential expansion area is approximately 1200 feet away to the south.
- B. Residences near Multnomah Channel, houseboats on the channel, and residences on the southerly 2 miles of Sauvie Island which are east and northeast of the gap in the ridge at the entrance to the mining operation are able to view the slopes under excavation. Screening can mitigate part but not all of this potential impact.

### **3. Requirements of other applicable State Goals: N/A**

## **ENVIRONMENTAL:**

### **1. Impacts on resource: N/A**

### **2. Impacts on conflicting uses:**

A. Noise, dust particulates, and blasting are potential impacts on such sensitive land uses as homes, schools, and public parks. However, the site is in compliance with DEQ noise and particulate regulations.

B. Angell Bros. Inc. has been permitted to operate during the hours of 6:00 A.M. to 10:00 P.M. since 1980, which operating hours were confirmed in its 1986 permit. Because of few conflicting or sensitive uses nearby, this facility should be allowed to continue current operating hours.

### **3. Requirements of other applicable State Goals:**

#### **A. Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources:**

##### **(1).Fish and wildlife areas and habitat:**

##### **(a).Existing 71.22 acre approved extraction operation:**

An intermittent stream flows northeasterly through the center of tax lot '12' (the 32 acre parcel fronting on the highway). In conjunction with the present operation most of the length of the stream near the mining has been enclosed in a culvert. The stream is classified Class II by the State Department of Forestry and the decision to allow piping through the site was made because "the stream is not considered a 'fishing' creek" and it dries up in late summer. The State Department of Environmental Quality has approved the water discharge system. The value of the mineral and aggregate resource in this location outweighs the value the stream may have for fish and wildlife habitat at this time, considering that at some time in the future the fish and wildlife potential may be restored. No significant wildlife area exists on the area currently approved for extraction activities.

##### **(b).Adjoining 325.37 acres (potential expansion area):**

Recent studies suggest that the wide variety of wildlife found in Forest Park may be directly attributable to the opportunity for species interaction with the Coast Range ecosystem. Such interaction may be possible due to the rural, relatively undeveloped

character of the Tualatin Range (West Hills), which enables this area to function as a "corridor" for animal movement. Thus, the wildlife diversity of Forest Park may result from either migratory patterns or general long-term recruitment from more rural reservoirs. If this is the situation, the "wildlife corridor" should be located and recognized for its role in maintaining the species diversity of Forest Park.

The County and City of Portland have budgeted and expect to spend up to \$25,000 on studies of this issue. Phase 1, the initial research, is currently underway. Phase 2, the field survey work and the application of research and field evaluation results to specific land use recommendations, will be completed by early 1991. Staff will then complete the ESEE Analysis and propose Plan amendments to complete the Goal 5 process for this factor by the end of 1991.

The property owner has requested a "3C" designation on the entire potential expansion area of 325.37 acres, but has agreed to an immediate "3C" designation of approximately 42 acres of the expansion area to permit operation during and after the corridor study. Following the study, the designation of the remaining expansion area of 283.37 acres would be determined.

The owner submitted a memorandum from Lawrence L. Devroy, Natural Resources Manager at David Evans & Associates, regarding a wildlife inspection on the proposed 42 acre expansion area performed on March 21, 1990. The report concludes that "... no well-defined wildlife corridor appears to exist in the (42 acre) area of the proposed expansion since no areas of heavy use were observed." In addition, the 42 acre area is located far to the eastern edge of the potential corridor area to minimize any impacts which the expansion may cause in the corridor.

(2). Outstanding scenic views and sites:

Testimony from several citizens at public hearings points to some concern over the potential adverse impacts on scenic views of the Tualatin Mountains at the subject property if the mining is extended into the adjoining lands. Considering the Sauvie Island Wildlife areas have the most public use of any other wildlife area in the Northwest, a great many people are exposed to those views. Therefore, a study of this potential conflicting Goal 5 resource has been started and the

timetable should closely follow that of the Wildlife Corridor studies. A "3C" designation of the 42 acre expansion area will minimize view impacts until such time as a view study is prepared relating to the entire area.

## **ENERGY:**

### **1. Impacts on resource:**

Allowing noise and dust sensitive uses too close to the resource could alter the manner, location and extent of extraction activities, resulting in greater use of energy to the operator. This close-in site is energy efficient for transporting the materials to the largest market.

### **2. Impacts on conflicting uses: N/A**

### **3. Requirements of other applicable State Goals: N/A**

## **CONCLUSION:**

### **The resource at this site should:**

Be fully protected – Designate 3A.

Not be protected due to overriding benefits from allowing conflicting uses – Designate 3B.

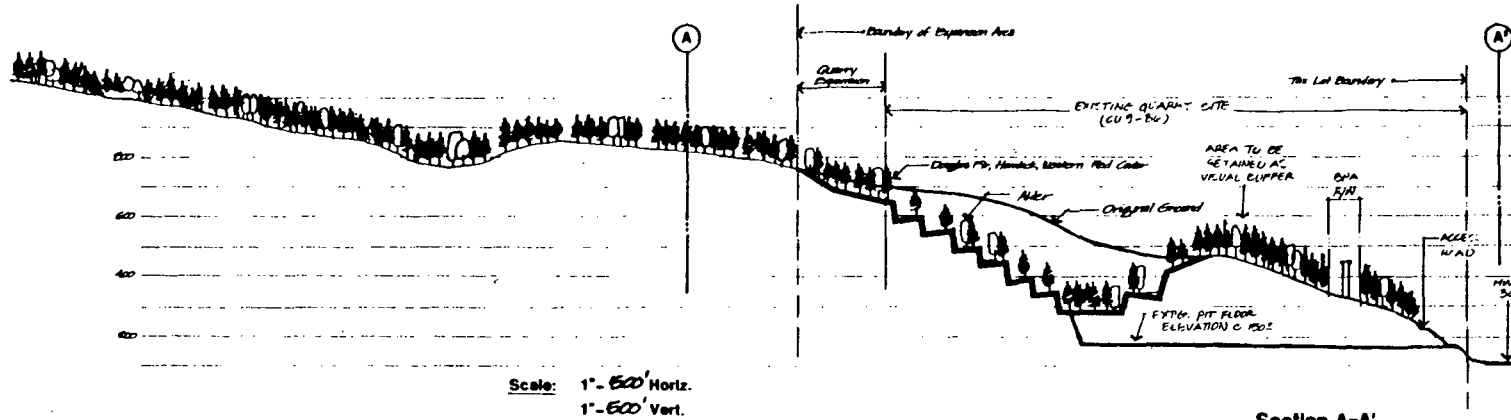
- X FOR THE MAPPED EASTERLY CENTER 113.22 ACRES CONTAINING THE EXISTING MINING OPERATION AND AN EXPANSION AREA: Be partially protected by conditions which minimize the impact of conflicting uses - Designate 3C.**
- X FOR THE ADJOINING REMAINDER OF THE SITE, 283.37 ACRES: No ESEE designation assigned until more information is available from on-going studies of potential conflicting uses. At this time the ESEE analysis is at step "2" on the OAR flow chart.**

## **PROGRAM:**

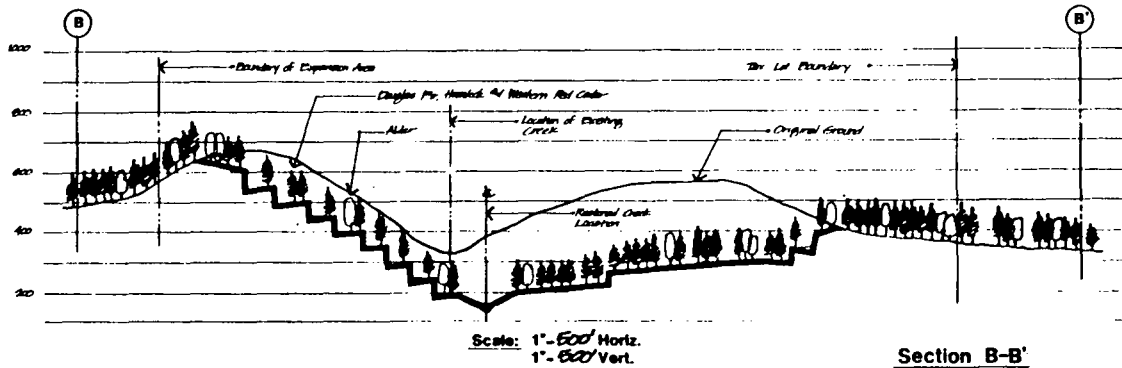
The existing approved mining operation of 71.22 acres and an expansion area of 42 acres are designated "3C". This designation will allow the mining operator to apply for renewal of the Conditional Use approval for the existing mining operation area and apply for an expansion area that would meet their aggregate needs for at least the wildlife and scenic views study period.

The expansion area is due south of the area to be worked next in the existing operation. This expansion direction appears to be the least intrusive into where a wildlife corridor would most likely be located. It is also in the direction of least visibility from Sauvie Island due to the ridgeline on the property to the east. This program will allow uninterrupted operation of the mine during the time needed to complete the wildlife studies and, if warranted, put appropriate protection measures in place.

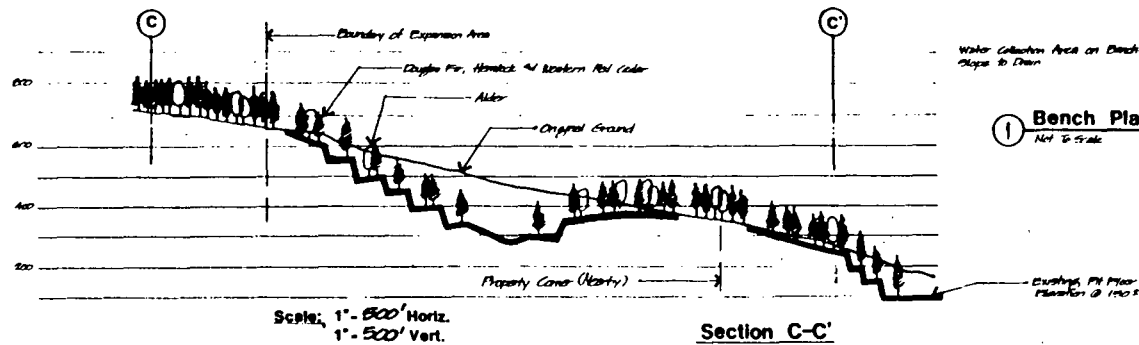
Designation of the adjoining acreage of 283.37 acres will be completed when the needed information is obtained on potential conflicting uses. Multnomah County and the City of Portland expect to spend up to \$25,000 during the time period 1989-1991 in the contracting of studies in an attempt to verify the existence of a "Wildlife Corridor" in the area of further potential aggregate extraction expansion. The Goal 5 ESEE process for this remainder area is expected to be completed during 1991.



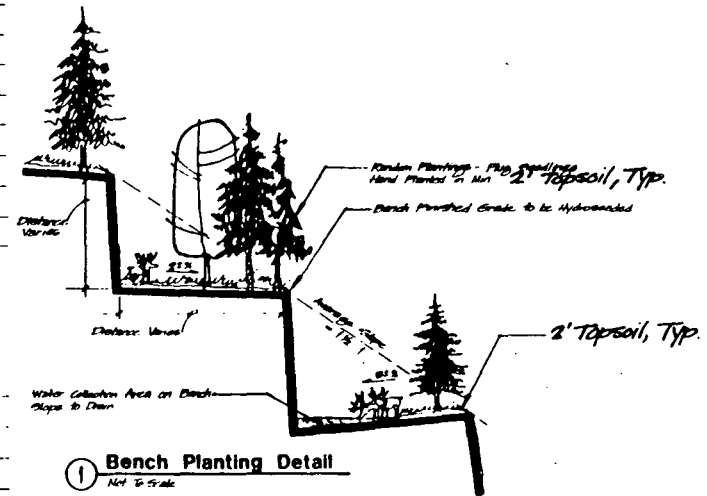
Section A-A'



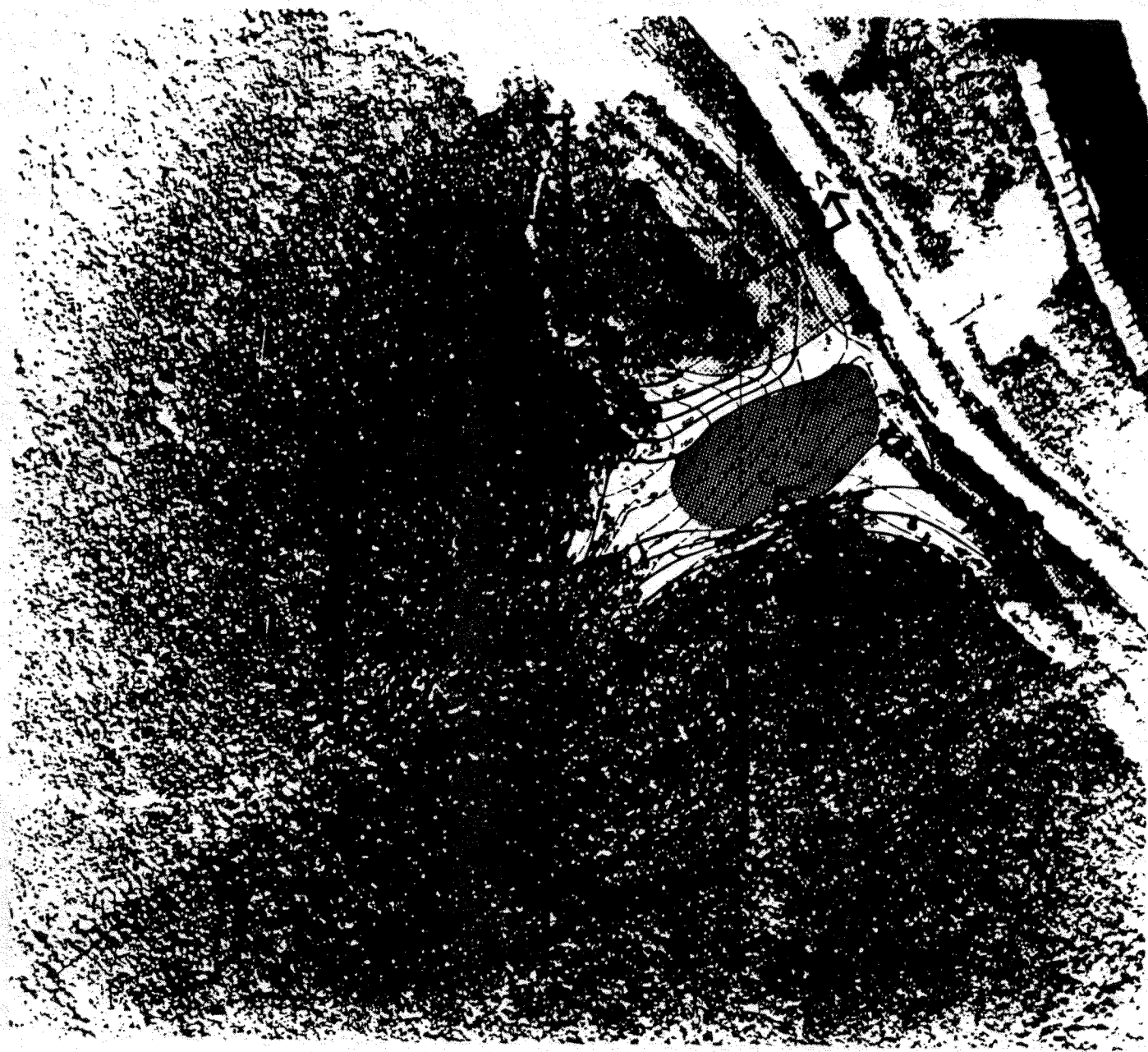
Section B-B'



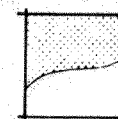
Section C-C'



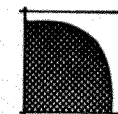




**Legend:**



Buffer to Remain



Existing Quarry  
Staging Pad



Creek

Existing Contour

Proposed Contour

Note: Contour Interval is 50 Feet



Scale 1" = 500' ±

Exhibit #3

Reclamation / Grading Plan  
**ANGELL BROTHERS QUARRY -  
PROPOSED EXPANSION**  
Multnomah County, Oregon



LANE  
POWELL  
SPEARS  
LUBERSKY

April 30, 1992

Scott Pemble  
Multnomah County  
Planning Department  
2115 S.E. Morrison  
Portland, OR 97214

Richard Benner  
Department of Land Conservation  
and Development  
1175 Court St., NE  
Salem, OR 97310

*Law Offices*

520 S.W.  
Yamhill Street  
Suite 800  
Portland, OR  
97204-1383

(503) 226-6151

*Telex:*

269029-SPRS-UR

*Facsimile:*

(503) 224-0388

*Partnership*

*Including  
Professional  
Corporations*

Re: Amendments to Multnomah County Zoning Code to Comply with  
Statewide Planning Goal 5  
Our File No. 701062-1

Dear Scott and Dick:

On behalf of Angell Bros., I have reviewed Elaine Smith's August 1, 1991 comment letter to the County regarding amendments to the Multnomah County Code that are necessary to enable the Code to comply with Statewide Planning Goal 5 and the Goal 5 rule. I agree with all of Elaine's comments, and I have a number of additional changes to suggest to you. I deal with each of the sections of the Zoning Ordinance in turn.

1. Section 11.15.7105 is an outdated provision from the days when all conditional uses had to satisfy the rubric of "public need" or "public convenience and necessity". If the County wishes to retain Goal 5 mineral and aggregate uses as one of the conditional uses, instead of adopting a Surface Mining Zone that permits mineral and aggregate uses outright, it should delete all the language which permits subjective judgments on these issues. This can be accomplished as follows:

"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.~~"

Anchorage, AK  
Los Angeles, CA  
Mount Vernon, WA  
Olympia, WA  
Portland, OR  
Seattle, WA  
London, England  
Tokyo, Japan

Scott Pemble  
April 30, 1992  
Page 2

Richard Benner

2. Section 11.15.7115 needs to be amended as stated in paragraph 1 of Elaine Smith's letter.
3. Section 11.15.7120 needs to be amended as stated in Elaine Smith's letter, which could be accomplished as follows:

"(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 (except as provided in Section 11.15.7120(B)). ~~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 11.15.7120 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."

4. Section 11.15.7122 should be amended as stated in paragraph 2 of Elaine Smith's letter. This could be accomplished as follows:

"(D) This Section 11.15.7122 shall not apply to mineral extraction and related processing activities approved under MCC .7305-.7325 and .7332 and .7335."

5. Section 11.15.7125 should be amended to state that design review does not apply to mineral and aggregate uses. My reason for this is that the standards in the design review ordinance are not clear and objective, but are aesthetic and subjective. There may be room to negotiate on this issue, however, if it can be made clear that conditions imposed as a function of design review would not result in prohibiting the operation of a Goal 5 mineral and aggregate resource site.
6. Section 11.15.7130 should be amended to delete the second sentence. The second sentence contains implicit authority for the imposition of open-ended or subjective conditions and restrictions, which are contrary to the Goal 5 rule.
7. Section 11.15.7135 should be amended to require that the Planning Director's claim that a condition or restriction has not been satisfied must be adjudicated in a contested case hearing that will produce findings of fact, conclusions of law and a decision that is no less rigorous than the decision to grant the permit in the first place.
8. Section 11.15.7305(C) should be amended to include other types of materials, as follows:

"(C) Aggregate material includes crushed or uncrushed gravel, crushed or uncrushed stone, ~~or~~ sand or any other material, from natural deposits."

9. Section 11.15.7305(G) should be amended to require site specific ESEE analyses for each site as follows:

"(G) ESEE is an abbreviation for the 'Economic, Social, Environmental, and Energy' analysis procedure for Goal 5 resources described in OAR 660-16-000 through 660-16-025, and which shall be completed for each site. ~~and which is adopted as a part of the Comprehensive Plan.~~"

10. Section 11.15.7315 should be amended to delete the reference to geothermal resources, as Elaine Smith suggests in paragraph 3 of her letter. Also, Section 11.15.7315(C) should be amended to encompass the full breadth of the ESEE analysis and the other sections of the Multnomah County Code as follows:

"(C) Recognize mineral and aggregate resource sites which receive an ESEE designation of '2A', '3A', or '3C' as being appropriate for extraction and other operations specified in the ESEE analysis operations when in compliance with MCC 7105-.7140 and the MCC sections governing the underlying zone; and"

11. Section 11.15.7320(B) should be amended to include the statutory definition of "processing" as follows:

"(B) Installation and operation of plants or apparatus for processing, which includes, but is not limited to crushing, washing, milling and screening as well as the batching and blending of mineral aggregate into asphalt concrete or portland cement concrete ~~rock crushing and cement treatment of minerals excavated~~ at the site for which the Conditional Use is being requested, including screening, blending, washing, loading, and conveying of materials."

12. Section 11.15.7322 should be amended to include the word "aggregate" and to delete the more stringent standard for the EFU Zone as follows:

Scott Pemble  
April 30, 1992  
Page 5

Richard Benner

~~"(A) If zoned EFU, produce less than  
1,000 cubic yards of material and affect less  
than one acre, or"~~

The reason for the latter change is that EFU Zones are resource zones, which are supposed to be dedicated to resource use. Accordingly, it does not make sense to have a more stringent standard for aggregate production in these zones than in forestry zones or in industrial zones.

13. Section 11.15.7325 should be amended to include the conflict resolution statement proposed by Elaine Smith in paragraph 4 of her letter. In addition, Section 11.15.7325(C)(1)(d)(i) and (ii) relating to traffic should be amended to be clear and objective and to comply with the requirements of Nollan v. California Coastal Commission, 483 US 925 (1987) as follows:

"(i) Are reasonably adequate to safely accommodate any additional traffic created by the extraction operation for the duration of the activity, or

"(ii) Are inadequate to safely accommodate any additional traffic created by the extraction operation for the duration of the activity, but the applicant has committed to finance the applicant's pro rata share of the cost of installing installation of the necessary improvements under the provisions of 02.200(a) or (b) of the Multnomah County Rules for Street Standards.

In addition, Section 11.15.7325(C)(1)(D) should be amended as suggested in paragraph 5 of Elaine Smith's letter.

In addition, Section 11.15.7325(C)(6) regarding protection of fish and wildlife habitat should be deleted. The trouble with these Sections is that they state a policy preference for protection of fish and wildlife habitat, regardless of the facts relating to these Goal 5 resources, and regardless of the facts related to competing Goal 5 resources or other resources. I agree with Elaine Smith's statement that a better way to approach this issue would be for the County to rely on

clear and objective standards for protection of fish and wildlife habitat that are based on facts developed as part of a site specific ESEE analysis.

14. Section 11.15.7325(C)(8) should be eliminated, since it is pre-empted by the Mined Land Reclamation Act, ORS 517.750-517.990.
15. Section 11.15.7325(C)(12) should be revised to state its intent more accurately and to avoid any question of pre-empting DOGAMI's statutory authority as follows:

"(12) The reclamation plan shall include a timetable for sequential reclamation of continually reclaiming the land consistent with DOGAMI's reclamation permit. The timetable shall provide for beginning reclamation within twelve (12) months after extraction activity ceases on any the segment of the mined area and for completing reclamation within three (3) years after all mining ceases."

16. Section 11.15.7325(E) should be amended to apply only to the impact area as follows:

"(E) Proposed blasting activities will not adversely affect the quality or quantity of groundwater within wells in the impact area vicinity of the operation."

17. Section 11.15.7325(F) should be deleted because in its present form it will create a "chicken and egg" problem for operators. Not the least of these problems will be the reclamation plan required to be approved by the Department of Geology and Mineral Industries. Under 1991 Senate Bill 97, the Department of Geology does not have to issue this permit until land use approvals have been obtained. An alternative provision that would accomplish the County's objective that "no sales of extracted materials can be commenced until all applicable permits have been obtained". Such a provision would allow the operator to do necessary site preparation work in a cost effective manner.

18. Section 11.15.7328 should be deleted. It is not clear and objective, as stated in paragraph 9 of Elaine Smith's letter.
19. Section 11.15.7330 should be deleted and replaced with the modified language suggested in paragraph 10 of Elaine Smith's letter.
20. Section 11.15.7335(D) is ambiguous. I do not know what a "district boundary" means.
21. Section 11.15.7845 should be amended to require clear and objective standards as follows:

"(A) The Planning Director may approve a final design review plan, disapprove it, or approve it with such modifications and conditions as are may be consistent with the ~~Comprehensive Plan or the criteria and standards listed in MCC .7850, .7855, and .7860.~~ and, in the case of a mineral and aggregate use, the site specific ESEE analysis."

The same type of changes should be made to Section 11.15.7845(D) as follows:

"(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 and, in the case of a mineral and aggregate use, the site specific ESEE analysis."

22. Section 11.15.7870 should be amended to delete the automatic expiration provision with respect to mineral and aggregate uses as follows:

"(A) ~~Except for mineral and aggregate uses,~~ design review approval shall expire in 18 months from the date of final design review approval, however upon application a six month extension may be granted by the Planning Director upon a written findings that the applicable provisions of this ordinance are



satisfied. The Director's decision may be appealed as provided by MCC 11.15.8290. Failure to apply for an extension shall result in expiration of the approval.

23. Section 11.15.8230(D) should have an exception to eliminate the "public need" factor and the ambiguous "compliance with the Comprehensive Plan" factor as follows:

"(D) Except for uses subject to MCC 11.15.7305-.7332, the burden of proof is upon the person initiating an action. Unless otherwise provided in this Ordinance, that burden shall be to persuade that:"

A similar change should be made to Section 11.15.8240(A) and (D) as follows:

"(A) Except for uses subject to MCC 11.15.7305-.7332, the Planning Commission or Hearings Officer may approve an application as submitted, deny it, or approve it with such modifications or conditions as may be necessary to carry out the Comprehensive Plan or to obtain the objectives of subsection (D) (2) below."

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

\* \* \* \* \*

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

~~"(a) Protection of the public from the potentially deleterious effects of the proposed use; or~~

~~"(b) Fulfillment of the need for public services created by the proposed use."~~

Scott Pemble  
April 30, 1992  
Page 9

Richard Benner

24. Section 11.15.8270 is unclear to me at this time. Perhaps we can discuss it. Perhaps further discussions with the County Planning Director or County Counsel will assist me.
25. Section 11.15.8280 should be amended to contain an exception for mineral and aggregate uses, as follows:
- "(A) Except for uses subject to MCC 11.15.7305-.7332, the Board may affirm, reverse or modify the decision of the Planning Commission or Hearings Officer and may grant approval subject to such modifications or conditions as may be necessary to carry out the Comprehensive Plan or to achieve the objectives of MCC .8240(D)."
26. The wildlife study for the expansion area is now finished, but it is a far cry from the definitive study I expected. At this point, I believe Angell Bros. can accommodate on a voluntary basis all of the concerns raised in the study.

Thank you for the opportunity to comment.

Very truly yours,

Frank M. Parisi

cc: Bob Hall, Multnomah County  
Jim Sitzman, DLCD  
Elaine Smith, DLCD  
Steve Oulman, DLCD  
Dick Angstrom, OCAPA  
Skip Anderson, Angell Bros.

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

In the Matter CU 14-92 Appeal )

ORDER 93-23

**W**HEREAS, the Planning Commission held hearings on September 8, 1992, September 21, 1992, October 5, 1992, and October 19, 1992 to consider the Conditional Use application CU 14-92; and

**W**HEREAS, the Planning Commission on October 19, 1992 denied the request; and

**W**HEREAS, the applicant, Angell Brothers Rock, filed a Notice of Review application pursuant to MCC § 11.15.8260; and

**W**HEREAS, pursuant to MCC § 11.15.8270 the Notice of Review was reported to the Multnomah County Board of Commissioners on December 8, 1992; and

**W**HEREAS, the Multnomah County Board of Commissioners set the hearing date for December 29, 1992; and

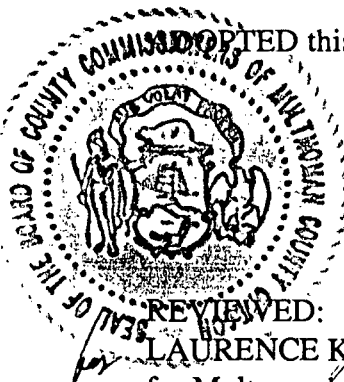
**W**HEREAS, on December 29, 1992 the Multnomah County Board of Commissioners continued the hearing until January 26, 1993 because a complete set of transcripts of the Planning Commission hearings were not available; and

**W**HEREAS, on January 21, 1993 Frank Parisi, a representative of Angell Brothers Rock, filed with the Multnomah County Planning and Development Division a letter withdrawing the appeal; and

**W**HEREAS, Continuing the appeal would serve no further purpose.

**N**OW, THEREFORE, IT IS ORDERED AS FOLLOWS:

The appeal is dismissed.



ADOPTED this 26th day January, 1993

MULTNOMAH COUNTY, OREGON

By: Gladys McCoy

Gladys McCoy

REVIEWED: John L. DuBay  
LAURENCE KRESSEL, COUNTY COUNSEL  
for Multnomah County, Oregon  
by John L. DuBay

(Above space for Clerk's Office Use)



CASE NAME Dunthorpe Lot of Record

NUMBER LR 2-92

## 1. Applicant Name/Address

James Haldors Builder  
PO Box 56  
Lake Oswego, Oregon 97034

## APPELLANTS:

Paul Duden (Representing Stoll, Campbell and Naito)  
333 SW Taylor Street  
Portland, OR 97204-2496

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

## 2. Action Requested by applicant

The applicant (James Haldors) requested approval of a Building Permit to construct a Single Family Residence on a 10,000 square foot property located within the Palatine Hill Addition No. 3, an area zoned single family residential (R-20; 20,000 sq. ft. min. lot size). Appellants claim that Haldors' property violates MCC 11.15.2854(i), and challenge the applicability of the **Exceptions** in MCC 11.15.2856(B), which the Director relied on to approve a new house on a site with less than 20,000 square feet in area.

## 3. Planning Staff Recommendation

APPROVED by the Planning Director on September 17, 1992

## 4. Hearings Officer Decision:

AFFIRM Planning Director; DENY the Appeal

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

## ISSUES

(who raised them?)

- The decision in this appeal turns on the interpretation of the **Exceptions** subsection in the '**R**' zones, and the interpretation of a single word, "lot." [issue raised by appellants]
- The Hearings Officer decision in this appeal affirms the Planning Division's 30-plus year interpretation of the **Exceptions** provisions in the '**R**' zones. These zones apply to urban-unincorporated areas west of the Willamette River (essentially the Dunthorpe and Sylvan areas). [issue raised by appellants]

Do any of these issues have policy implications? Explain.

This case has implications relating to property rights for pre-existing lots, urban residential densities, and infill-potential in certain urban-unincorporated areas in the County.

[Policy 6 (Urban Land Area); Policy 20 (Arrangement of Land Uses); Policy 22 (Energy Conservation)]

If the exception continues to operate as it has in the past, then the exception to the minimum lot size will control the pattern of development in those '**R**' zoned areas with pre-1955 subdivision plats (typically 5,000 square foot lots). The larger minimum lot sizes in the '**R**' zones (*i.e.*, lower densities) would only apply in older platted areas if the land is re-platted (under the Land Division Code). The historic interpretation leaves some potential for infill houses in certain neighborhoods in the Dunthorpe and Sylvan areas. Appellants interpretation would limit infill-potential in these urban-unincorporated areas.



## Notice of Public Hearing Board of County Commissioners

Multnomah County  
Board of County Commissioners

1021 SW 4th Avenue  
Portland, Oregon 97204

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

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

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

---

**Date:** 01/26/93      **Time:** 10:30 a.m.      **Place:** Room 602, Multnomah County Courthouse

---

### **LR 2-92      Public Hearing - On The Record**

Review the Hearings Officer Decision of December 16, 1992, denying the appeal of LR 2-92 and affirming the Administrative Decision of September 17, 1992, approving a building permit to allow construction of a single family residence on a 10,000 square foot property, located at 01333 SW Pomona Street

**This item has been appealed by the appellants.**

**Scope of Review - On the Record**

**Oral Argument:** Each side will have 15 minutes to present oral argument to the Board.

S.W. COMUS

ST.

AVE.

S.W. MOAPA

LARCH ST.

AVE.

S.W. TRYON

POPLAR ST.

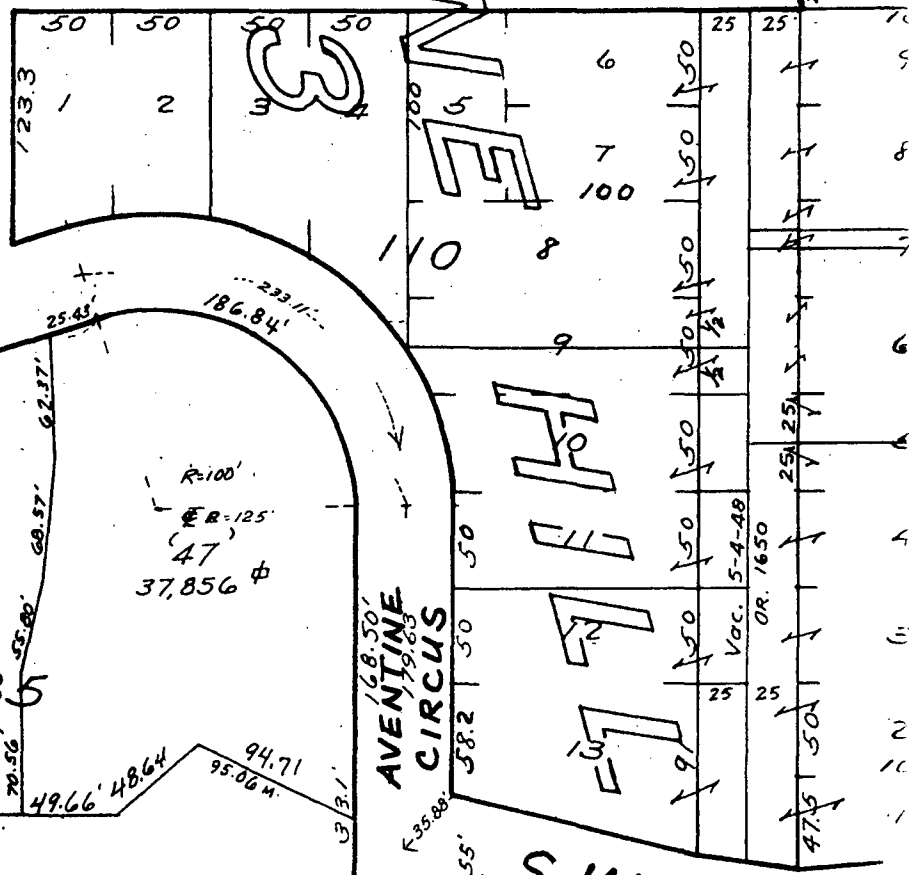
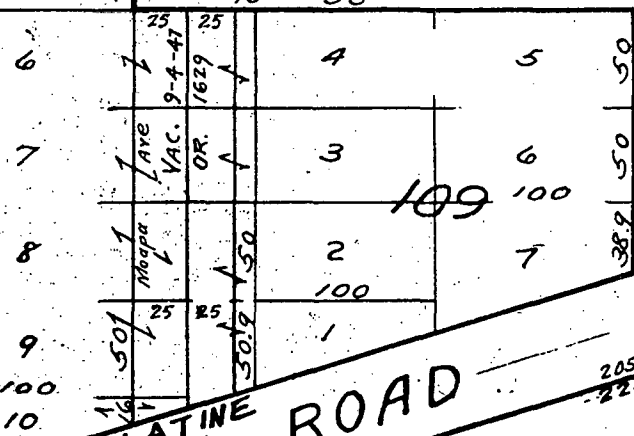
AVE.

S.W. AVENTINE

LAUREL ST.

S.W. POMONA

ST.



PALATINE ROAD  
E HILL

AVENTINE CIRCUS

HILL

S.W.

**Vicinity Map**

Case #: LR 2-92

Location: 01333 SW Pomona Street

Scale: 1 inch to 100 feet (approximate)

Shading indicates subject property

SZM 184; 1/4 Map 4130 (1990)

R=100'  
R=125'  
(47)  
37,856  $\phi$

205.30  
228.6

233.11  
186.84

104.76'  
153.54'

49.66'  
48.64'

94.71'  
95.06'

35.88'

168.50'

582'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

50'

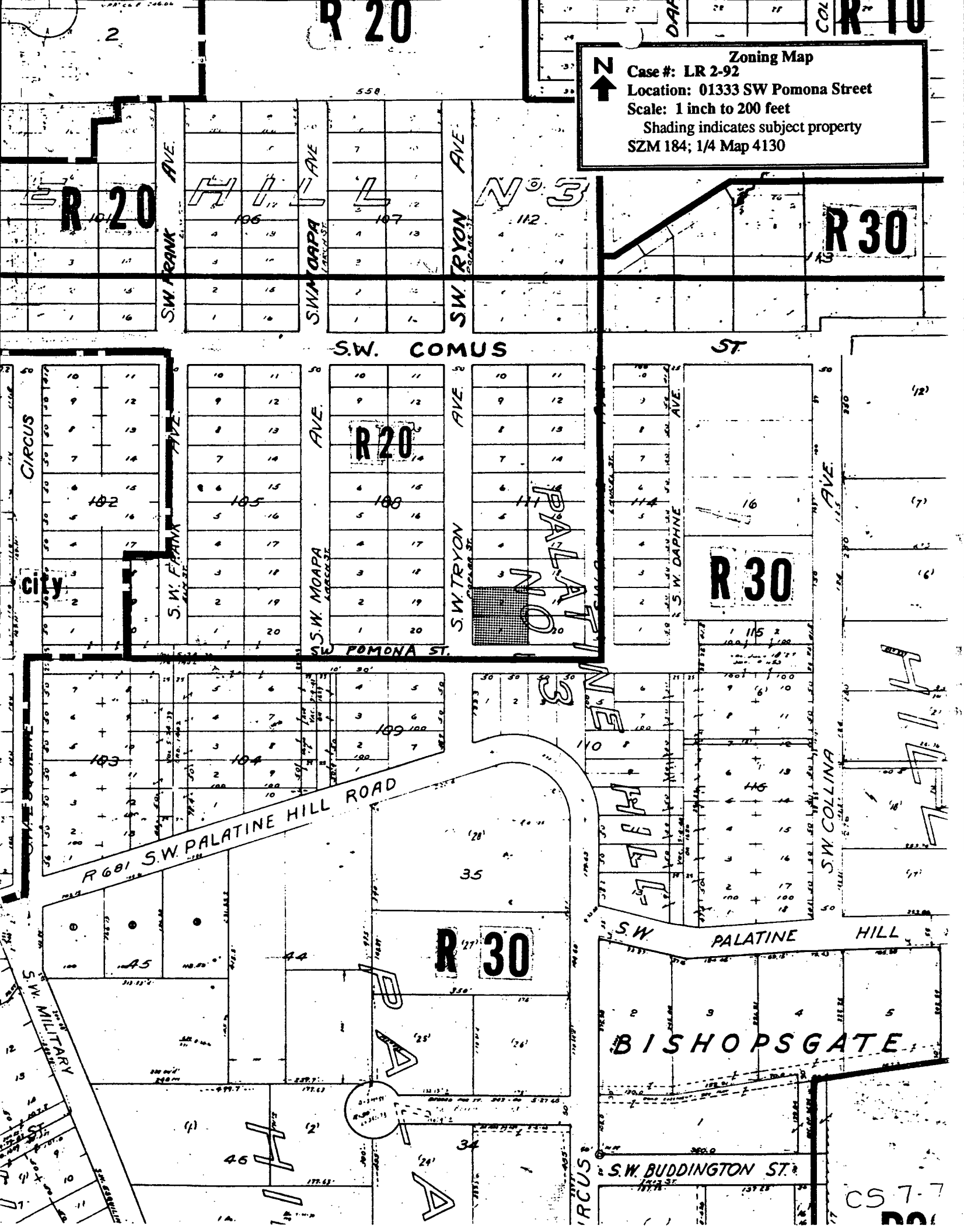
50'

50'

50'

50'

50'



**Zoning Map**  
Case #: LR 2-92  
Location: 01333 SW Pomona Street  
Scale: 1 inch to 200 feet  
Shading indicates subject property  
SZM 184; 1/4 Map 4130



R 20

R 20

R 30

R 20

R 30

R 27 30

BISHOPSGATE

CS 7-7



Transcript LR2-92  
HO Meeting 11/2/92

Hearing Off: Thank you, if anyone here has knowledge of any potential financial interest or family relationship, attractional relationship, past, present or future that you think would effect my impressionality. I'd like you to state it now. Does everyone understand the question? If you don't understand shake your head no. That's OK, you also have a chance to challenge my impartiality on the basis of bias or prejudgment. Is there anyone here who'd like to challenge my impartiality on the basis of bias. I see not. I will also ask you to identify during your testimony any procedural errors that may have been committed by the county or by me during or in advance of this hearing. Describe ways in which that error can be corrected. I'd also like you to identify the authority defining the procedure for argument if the procedure is in error. Now we have as I recall three people on each side who are willing, who were interested in testify. Can I see again the hands of people who are testifying if they would appellant. So there's four. Alright, do you have an attorney? And your name sir. Alright. Mr. Duden why don't you come forward. I'm gonna ask how much time do you think would be required for you to make your presentation for witnesses to present their argument.

Duden: I don't know....I would think....

Hearings Off: I will set a tentative time that we'll adjust as necessary. Twenty minutes for the appellant. You can reserve time for rebuttle as representative without other parties and 20 minutes then for the opponent, for the appeal. Mr. Able you're hear on behalf of the opponents, the applicants. And how much time do you think you'll need.

Able: .....10 minutes.

Hearings Off: Can I see the hands of other people that will be testifying on behalf of the applicant that is against the appeal. Is there anyone here to testify? I realize it's complicated. The applicant is in the position to ....an appeals. Is there anyone who will be testifying on behalf of the applicant? It's 11:25 now, we'll try and

stick to 20 minutes each side, if I ask a series of questions I'd appreciate if Mark or Sharon or the party will keep track, I don't want to cut into their presentation time. I don't think time is going to be questioned to the terms of ...argument. Some materials arrived Friday but were not ....took with me which I looked at last night. So I'm not familiar with any of these documents here. I'd appreciate it if you would reference them and we will mark them at the time you will make your argument. Some of them are the appellants supplemental hearing memorandum and the ....means hearing memorandum. Hearing applicants hearing memorandum as well submitted this morning. You'll not hear from me complaints about materials coming at the last minute. I do this kind of work and that happens. I may have to ask you for extension. That is a waive of 120 day time limit and I think this case is gonna take longer than time allowed me by the county. That time will probably not a week but 4 weeks. The reason is that the county commissioner has a cycle for handling appeals. And if I get beyond about a week, I can't get my decision done, so we'll make determination at the end or make that appressed at the end as necessary. We're beginning with Mr. Duden and who will...excuse me, we're gonna begin with the staff report and I'd like either Sharon or Mark then to keep track when we get into the time. Thank you.

Hence:

My name is Mark Hence with the planning staff. This appellation comes before you with a bit of history it evolved from some protest in circuit court and then the state appeals court. Circuit court decision was December 28, 1989 and appeals court decision from June, 1991 with both of the purchases regard is because proposal to .... on 10,000 square foot property located within the paletime hill edition. And the county ... have interpreted it's our 20 zoning designation which applies to this property as allowing the exception to lot area requirements when the lots are on public record prior to the enactment of our zoning code. What the appeals court found is that that interpretation by the county. They believe to be land use decision requiring the exercising discretion. We still contend that we don't believe it is a land use decision just for the record. Despite the appeals court ruling because we believe there's no discretion involved in examining the facts here. What our 20 zoning says

in section 11 15 2656B is that .... has been a deed of record of less than 80 feet in depth or an area of less than 20,000 square feet and was held under separate ownership or was on public record at the time this chapter came affective. Such lot may be occupied by any use permitted in districts. In no case, however, shall a dwelling have a lot area of less than 3,000 square feet. Under this exception language here that the county has consistently interpreted prior platted lots to be lots of record so as long as they have more than 3,000 square feet and the use proposed was allowed in the district, in this case, a single family dwelling isn't allowed use. And the other requirements such as setbacks, heights and so forth were dissatisfied. In this instance, we found that there were two lots of record here when put together created a 10,000 square foot parcel and the single family house met all of the other requirements of the zoning therefore was approved under this method. We are practice for determining if a property is or isn't a lot of record is by examining the assessors maps which we maintain on file and any adjustments to property lines on this map to be received and make note of whether or not they have either a land division approval or lot line adjustment approval and in the absence of either one of those we've marked that new property line with a whole permit stamped and that's our indication to us as to whether a property line is or isn't legally created and therefore, one of the lots that that line defines is or isn't a lot of record. And we don't believe there is any judgement call or discretion involved in making that determination it's very plain to the planners administrating that at the counter a lot has been flagged as an improper land division or not. In this instance there was no such indication on the lot of record, our records fully obtuse that the palletine hill edition #3, block 70-118 and again this property here is on block 111. That's right. Palletine Hill edition #3 which recorded on March 27, 1890 by the zoning chapter county code adopted November 15, 1962, therefore we reach a conclusion that lots 1 and 2 to point 111 Palletine edition of the tree were on public record at the time the zoning chapter became affective and so it's through that analysis that we conclude that the exception to ... deferments that 2856B allows for does apply here. That's the basis upon which we approved the building permit application.

Other Voice: I have a question for you when you're finished? I have a question for then. Judge Jones, in his opinion, and you now said that you're consistently divided this way. What is the evidence of the file regarding consistent application?

Other Voice: I have not put the evidence into the file regarding that however, if you would like I believe that the record search can be made of building permit applications and that's all that I believe we'll be able to find in our practice not before this court of appeals judgement. We have not treated this as a land use decision. It is simply been a manisterial action as a part of a building permit review. And so it would entail the records search which are now maintained by the city of Portland document control for this part of the county to show the number of homes that have been authorized in R20 zone on lots less then that size where there was lots of record.

Other Voice: I'm not saying that consistency is a requirement or a basis for the decision and I'm sure we'll hear argument on that and I also want to assure you that statements from planning staff are treated as non-evidence but sometimes they're..the degree that they support a position has to be backed up by some kind of documentation. So we have evidence that formed your statement but it consists of .... cooberation for that. And it may or not be legally relevant whether the counties been consistent.

Other Voice: So, I believe the evidence could be generated but it has not been compiled at this time. I would make a comment here. I think the jurisdictional question is moved but the statute of finding what is an appealable anus decision and that's the jurisdiction of .....of appeals does say that disclosure applies to matters not requiring the exercise of legal judgement and there may not be any taxable disputes relevant to this but I believe there currently is a legal dispute and some discretion is going to be exercised. Therefore, I have no question that this falls between the scope of Laney's court of appeals jurisdiction. Now, alright anything else to add.

Other Voice: No, not at this time.

Other Voice: Alright Mr. Duden why don't you begin and I'd like you to begin by in addition telling me your name

and address and who you're representing and also ask whether you want to set a certain amount of time for rebuttle. And I'm going to hold you to approximately 10 minutes total there. You are, I didn't know I was making a firm commitment when I said that but I think it'll take me almost 10 minutes to present what I want to present to you. And I would like you know, five minutes of rebuttle if I could have that. So..

Other Voice:

What we're gonna do is try to keep things even so if we run over in yours we'll let them run over, that's fine. Let's see if we can do 10 minutes for your opening statement and 5 minutes for rebuttle. I just want to make sure you get the whole picture so I really didn't want to shorten myself. I'm representing the appellants in this action. It's Douglas Campbell and Robert Stole and Williams Nato. This was final on the last day because we didn't receive notice of the decision until the last day in the afternoon of the 10th day of the time to run so I didn't call all of the people that we had represented in the court of appeals and ask them if they'd like to join in this. I made a couple of frantic phone calls and was asked, I knew we were interested in filing that bill, so it was filed with a short and blessed people. But anyway that's who I'm representing in this proceeding. And I did not receive notice of this decision even though we've been involved in dispute with the county and I wrote county counsel about that but I don't think that's a procedural error that you're concerned about.

Other Voice:

Let me ask you right there though. Do you feel that you were prejudiced ... notice.

Other Voice:

No. I would have been if it had been the next day. But that was a.... This property is located in the Verbadile district and I set forth in our hearing memorandum this and a fair degree of specithisity but I'll just sort of run through this quickly. Most of the Riverdale dump or district is zoned R30. There's an area in the district which is largely comprised of these 5,000 square foot lots that were divided in the 1890. That is zoned R20. And the R20 zone to almost exclusively but not completely exclusively but not completely exclusively. Comprises lots that are 5,000 square foot lot, previously planted lots. Now, the zoning ordinance, and I think this is the

key issue in this case, the zoning ordinance defines a lot as a parcel or area of land under the lawful control and in the lawful possession of one distinct ownership. The zoning ordinance does not describe a lot as a previously platted parcel of ground. It describes a lot as a previously planted parcel of ground. It describes a lot as an are of land and one distinct ownership. I sited in my supplemental memorandum I'm not gonna read from the opinion but you have it. The west goshion case which is a Pennsylvania case. And it's pretty hard to find decisions that talk about the specific language in these zoning cases but the case that I've sited from Pennsylvania describes that when that type of a description is used and a definition of a lot, the distinct ownership has to comprise the entire parcel of property that's held by somebody. Now, in this situation prior to the time. I'd like to offer the 5 exhibits that I have attached in my memorandum. I assume those were in this hearing.

Hearings Off: Would you please describe them and if they were...or memorandum ....supplemental agreement or whatever. This one is stamped in so and there attached this letter. Ya, there already marked.

Other Voice: I'll just discuss them.

Hearings Off: There are 5 that follow the memorandum, with cover letter dated October 29, 1992. They've already been marked as exhibits 1,2..this is 4.

Other Voice: In 1947 some people named Johnson brought a parcel of property which comprising lots 1,2,19 and 20 of block 111. This 4 square piece down here that, according to Multnomah counties records and all you can get this off of there the tax roles and but the house was built on that property in 1943 and I have I think that the parties would all stipulate to this but I have Mr. Campbell here to testify that up until 1989 this was a house and a yard. The house was sited on lots 19 and 20, physically sited and lots 1 and 2 consisted of the back yard of this property. In 1984 the Magids bought these four pieces of property and in 1989 they sold off lots 19 and 20 and subsequently sold lots 1 and 2 to Mr. Haldors. Lots 19 and 20, that's one of the exhibits and we sold it to another party. Now the Multnomah county zoning ordinance says that no one shall sell a portion of

a lot, I'm going back to the previous description of a lot. A parcel property in the lawful possession of one distinct ownership. Leaving the structure on the remainder was less than the minimum lot size. That is section 11.15.2854i. That's on page 3 of our memorandum. Now in 1948 a zoning district was established for the entire Riverdale area by vote of the people. I think it was the 47th legislature that allowed zoning districts to be formed as long as there was a vote of the people and that's one of the exhibits here and in 1947 or 48 there was an election in this portion of unincorporated Multnomah county to form a zoning district and that passed with like 152-2. So a zoning district was formed and these zones were basically established by the zoning district in 1948 and that was filed with Multnomah county. Multnomah county has since lost that platt which came out in the transcript of the hearing and you have the transcript of the hearing as attached to the applicants papers so I'm not gonna go through that but before judge Jones but what the county planning director at that time, Mr. Baldwin testified was that in 1955 when the county took over zoning. What the county did is they retained these same zones in this area and so they assumed the zones and in fact Multnomah county adopted these R30 and R20 zones because they were the only places Multnomah county that they had lots this size. So the R20 and R30 zones were enacted by Multnomah county as Mr. Baldwin testified because of these size properties and this neighborhood. There wasn't any point in adopting the R20 zone in Multnomah county which is largely on these 5,000 square foot parcels if it didn't mean something. And if all of these parcels were platted in 1890, this entire subdivision and so if these, if this meant nothing there was no point in putting the zone over it because the zone meant nothing. If somebody owns one of these or owns four of these and has a conforming lot like we find the Olsens had on this property. They could have ignored the zone and built four houses there.

Other Voice: So what you're saying is that the counties assumption of the zoning was a ratification of zoning that was inconsistent with the lots that were originally created ...

Other Voice: Absolutely.

Other Voice: Thats...for how to interpret lots and current building zones.

Duden: That's correct. So in other words, when this zone went into effect, even when our zoning district was created because there's a state statute that gives you, there's a grandfather clause in the state statute which I've also sited in our brief, right and so when this zoning went into effect. If the Olson's had only owned two pieces of property, in other words, two of these little platted lots and they had their house sitting on it. There's no question, they can continue to own that property, live on it and use it as it was. But otherwise you can have up zoning if you take the counties position on this. Now, the planning staff, and I'd say something else to your earlier question. The county did present or attempt to present evidence at the hearing before Judge Jones to show that they had consistently applied this and that's an exhibit to the applicants memorandum also and on that they found an area in west Portland where in the 50's the county had allowed in the R7 zone. They'd allowed somebody to build a whole bunch of houses on platts. 3500 foot platts in the R7 zone and they got pages of those that were all done in the 50's and actually then should have moratorium on building permits because the roads and the sewers and everything were that it was like Moriset or somebody was a big scale developer who did this. And they sited four instances in this neighborhood where they claim they had consistently applied this. Now, and those are on that exhibit and I want to clarify that right now because in our, I suppose I could do this in rebuttle but in each of those instances, it was either an instance where the county had made an error for instance one of them they claimed was Roberts Dole whose one of the appellants here. Who had applied for a building permit and he had 16 lots but his house was physically sited on 1 lot so the county put it down as a house going on a 5,000 square foot platt. I have an affidavit from him and also the deeds that he has where he purchased and sold it and he had 16 of these parcels of property. Another one is a barrel, that they have in there and the barrel own....

Hearings Off: Mr. Duden, is this material contained in the what you're referring to as the evidence submitted by the county that's in the applicants materials.



Duden: Right.

Hearings Off: Something that would help me and when 10 minutes is up I'm gonna ask you some questions and if you need more time then we'll give it to you and we'll give more time to the other side. What is the legal relevance with consistent application.

Duden: I don't think it's relevant at all. I think that the job of the hearing officer and the job of the courts is to interpret this in accordance with what the purpose of zoning is and what the general law, the state of Oregon and the United States is on zoning. If the counties been wrong they say it's consistently applied that way which I do dispute. But especially in this neighborhood maybe they did in west Portland but if they've been applying it wrong I don't care if they've been doing it for the last 30 years, it's wrong. And what the..I think what your job is to make the legal determination that the court of appeals said you've got to make and that's what it is. So, I agree with that. Now if I can go on with a couple more points because I want to talk about the grandfather clause for a minute. Now, the county and the applicant both rely on the grandfather clause, that's an exception, we sited the park case in our memorandum which points out that an exception has got to be strictly construed even when it relates to substandard lots. But again, you get back the grandfather clause describes a lot. It doesn't say where a parcel has been previously platted. It's where a lot is substandard.

Hearings Off: ...still take about 2856B or are you talking about another section.

Duden: I'm talking about the grandfather section which is 2856B is that what..

Hearings Off: I picked up the parallel of zone section for R487.

Duden: Ok, it probably reads the same.

Hearings Off: Ya, it does.

Duden: This exception again goes back to where a lot and so you have to say, "what is a lot?" And that goes back to my argument before, what's a lot? What the county wants to say is a lot is any little platt, it doesn't matter if you have a conforming group

of platts each one of them is a lot according to the county. Well, that isn't what their own definition of a lot says. and I think I've said this enough but what the clear definition of a lot under the statute is all four of these parcels were a lot at the time that zoning went into affect. And that's what the lot is and this lot, the time zoning went into affect, was a parcel of property of 20,000 square feet and what ever, this is an area that I will conceive this somewhat ambiguous whatever it means or was on public record but it was also on public record as a deeded floor parcel for platt parcel of property at the time zoning ordinance went into affect so I don't know.. they appear to me to be redundant sections, I'm trying to think about what could be one and what could be the other. In other words, under separate ownership or on public record but this was a deeded, the public record at the time was a deeded for platt parcel at the time zoning went into affect. I suppose I should stop since I've run out of time but we've sited the case as an authority from Oregon and from other jurisdictions to the affect that and Anderson on the log zoning that when somebody's in the position that this piece of property was, you can't then down zone it in affect on your own.

Hearings Off: I have here the time at 15 minutes including some questions from me but I'm gonna ask you some more right now. Then I'll also ask that the applicant.. What is the relevance to the definition of ... parcel chapter.....

Duden: Well at that, the reason.. let me explain that reason for question. If we go to RS chapter 215 the definitional section which is subsection 010. It says, "as used in ORS Chapter 215 returns to ... RS 92010 should have the meanings given there and accept it parcel so this definition of parcel etc. etc. etc. has a definition there that's fairly detailed and I have some familiarity with it. Let me go back to chapter 92. I'm looking for there's a reference to a lot of parcel, lot or parcel. Lot means a unit land that is created by a subdivision of land, parcel is defined as means of unit land that is created by a partition of land. So that the difference is you know subdivision is 3 or more a year and partitioning is less but other than the mechanism it doesn't seem to be any difference and I note I believe different places in 215 they referred to lot or

parcel. Again, the only distinction at the time by looking at this is the road of creation. Do those interpretations and quarries under those sections have relevance toward interpretation .... section?

Hearings Off: I don't think they do. I didn't address it in there but that came up in the court of appeals because the county wanted to rely upon that for some say they said that because 92017 defines a lot as something that came out of a that's created in a subdivision that therefore that's what a lot means. If for the purposes of defining what a, using the word in a particular statute which is all that it has to do with 92 is define what's a lot and what's a parcel for the purpose of this statute. That doesn't have anything to do with whether a lot under a zoning ordinance consists of all the property you own under single ownership or whether it consists of little pieces of the lot, lot is a word that has been used loosely like lots of other things. But when you get to a zoning ordinance as opposed to describing how you are dividing up property which is 92 is how you divide up property. The zoning ordinance says, how you control the use of that property and when you look at the law relating to zoning ordinances and when you look at what a lot defined as a single separate ownership means. That is required by general zoning law to include all the property, all the continuous property that you own.

Duden: I certainly understand the argument that you can't assume it's the same.

Hearings Off: Right. But their using in a 92 4 describe simply what they're saying in that chapter is a lie. You could divide a platted parcel into two lots.

Duden: Well they use a two...cross reference these definitions except for parcel which is also connected with lots. Into 15 now which relates to county planning. I don't know the age of this section, I do know that this definitional section or county planning and I don't know what the amendments were, says amended by 1955 chapter 756 so this definition part of the county planning commission goes back sometime my question is whether that was in the counties mind when it was adopting it's own definitions. And when it assumes the zoning for this area.

Hearings Off: Our point is if the county established this R20 zone to go over these 5,000 square foot platts it was a meaningless act unless a lot means 20,000 foot piece.

Other Voice: Isn't R20 zone applied to areas, this is, what is the date on this.

Hearings Off: That's from 55 it's dated 66 but it's the same.

Other Voice: Was the R20 zoning applied to at least in this clear section it's only been applied to the ...R30 zoning over hear for lots that look the same size.

Other Voice: That' correct, the fives go outside of the R20 zone but the R20 zone especially in the that there's an upper and a lower part of the neighborhood and the upper part of the neighborhood which is that where that consists of the R20 is only those previous platted lots and the lower part of the neighborhood there is some bigger parcels in that R20 zone.

Other Voice: In the materials that are... appended to either your exhibits pending your materials that applicants is a discussion recorded at the time and county assumed the zoning about why they applied zoning that was inconsistent with the what ever these things are.

Other Voice: I asked Mr. Baldwin the question and it was objected to his argumentative that why would you adopt, why would you put a zone over these platts if the platts are in effect a zone. Which is the position that the counties taking now.

Hearings Off: I may have some questions and rebuttle time ....the counties custom has been as far as I know, that they hearings officers take a site review, I have not inspected the site that's in my opinion evidence coming in to the hearings officer require the presence of the parties if they wish to be there. My opinion is that this is a purely legal decision and there would be no need for me to visit the site. Do you agree or not?

Duden: I think that's right.

Hearings Off: Is this an exhibit that's already in the county...

Duden: That is the counties map. I don't know. Ya.

Hearings Off: Are you submitting this?

Duden: I'll give that one to you if you want, if you would like. I marked it because I didn't know whether if you used...

Hearings Off: Copy somewhere else that's fine. Mark this exhibit 6.

Duden: It is marked exhibit 6.

Hearings Off: No, because his material is already submitted. Alright, thank you Mr. Duden.

Duden: I had Mr. Campbell who I'd like to have testify that it was unless....

Hearings Off: The interchange between attorneys representing the parties was that the close of the sale of these two pieces was the 19 20 was the backyard. Now, are there other persons testify on behalf of the appellant. Alright, would you come forward sir. ..have 15 minutes.

Underdall: Yes, I'll be very brief. My name is Ken Underdall. I've lived in the district since the neighborhood since 1959. I live at 01100 SW Palatine Hill Road which is a block and half from the site in question today. I'm an elected member of the Riverdale school board. And I've served as chairman of Multnomah county services #1 which provides sewer service in the Riverdale community for about 25 years since it was created. My apprehension here is not in the details of the things Mr. Duden is talking about but the impact on the community of inadequate infrastructure to deal with this kind of a subdivision. Whatever is the appropriate word. If you chop up the community in bits and pieces our infrastructure isn't gonna make it. I'm sitting at the top of Palatine Hill about the same level as Lewis and Clark College. My water pressure in the summer is 41 pounds. Apprehensive not for the water but for the fire protection in our community. And we know that a continued expansion of lots through some kind of backdoor loop hole will severely impact that infrastructure fire protection water supply. Our sewers are adequate for some considerable expansion within the available legal lots in the community but other things are damaging to the public policies you hear. It's not just nitty gritty determining the meaning of the lot. It's

a broad policy issue and I would call it to your attention as an appropriate consideration for assuming.

Hearings Off: Mr. Underdall, Mr. Duden asked this question, is there a criteria or zoning ordinance with plan policies that we can identify that apply to this decision where your testimony would relate to that criteria and therefore have a bearing on my decision.

Other Voice: I'm not sure that I completely understand the question but I think there is a marriage of public policy and zoning in terms of the ability of the community supported so it doesn't become so developed as to have a collapse. I think there is ample precedences in government where some decisions are made and probably you're very well aware of it. I think urban growth boundaries is a clear here lies to do something. I think of applications in various parts communities to provide infrastructure front end cost by developer is another kind of thing. I'm not sure that's responsive.

Hearings Off: I certainly understand the policy. The question is I have to make a decision based on identifying authorities and if I would have to find an authority which would indicate that ...the fact or this single additional house would tax existent infrastructures is the basis for making a decision. I haven't reviewed the zoning ordinance and the ... of plan for such a criteria. You must have known such criteria would make your testimony relevant.

Other Voice: Well, let me do it this way and then we can respond. This is a map, it's probably the same map you have it's I'm sorry. It shows the plat for 1966 as R20 and I think that the fact is published that way means that the public and the community has relied on that on that as a standard event against which to make developmental decisions in terms of how much is necessary to support the community. This document, Multnomah county built in 1966. Indicated previously that is a contract to the community that we can develop our community as a whole based on our 20 provisions that are here. I think that's documented evidence that the public document published by the county it's the kind of thing that the community is entitled to rely on in terms

of the credibility and integrity of the government body to maintain without some external vehicle to changes and that has not happened. There's no reason for community this officer or this department to violate that trust. And that doesn't answer your question either but I still wanted.

Other Voice: I understand the argument. But by the way I think in my ears that my attorney knows that any issue that is not raised here either in writing or in the course the proceeding is waived. Mr. Duden would you like to respond to that.

Duden: I would say...county zoning ordinance we ...public policy considerations but I think public policy as Mr. Underdall said underlay the position to have the zone in the first place. #1 and #2 if you look at the ...which is exhibit 5 to our memorandum where Mr. Hick wanted to downgrade from 30 to 20 and the county denied it. They signed....the neighborhood, the services available were such that they weren't gonna allow to do that. Now that's a fellow that's was very adhere who had 16 of these lots and he wanted to build 4 houses on them zoning from R30 to R20...were here and the county denied that. Where he could have built 16 lots at 30, 16 houses.. saying they were consistent all these years.

Other Voice: Is that my copy?

Other Voice: That's a utilities and facilities policy. The position has been it. The policies that say... acting on a presidential or legislative matter that adequate facilities be provided or finding speed. To show that adequate facilities, water, sewage, fire.

Other Voice: Specifically about water pressure again for fire fighting purposes again. And also reveal by districts now I'm gonna now I'm gonna st... from what you said earlier that you don't regard this as ... proceeding therefore policy.

Other Voice: That's correct. In this instance in the interpreting whether something is or isn't a lot of record that those palaces have never been applied. The land division some division cases they are applied, we have confirmation from leu I told you the past case to find that we can defer decision on some water and sewage type things so

long as we allow for others in appeal of that subsequent decision if it's not done at the initial hearing stage. But a lot of record determination we've never applied it.

Other Voice: My concern is that unlike some of the other policies ...policy is to require planning prior to approval a legislative court was a potential action, the same inspected policy but I know ....

Other Voice: Action is defined by our code.

Other Voice: This specifically I'm not sure that this falls under that definition or not.

Other Voice: I have one further comment, and I would suggest and it's only a suggestion because I have no expertise. The divisions of lots 1 and 20 and 2 and 19 may be defective in that they have reduced a legal lot into an illegal lot and I don't know the jurisdiction and whether that's civil and who would be the plaintiffs or defendants but I suggest that breaking those lots in half violated the pre-existing standard and holders in due course got a nightmare as well as the sellers and this kind of thing. I think that they could make a decision that allows for authenticating that kind of a policy ...you could take a thing in R20, you could start with 10 houses on 10,000 foot lots and build a 19 by eventually shipping pieces off to create that ... illusion of the legal lot and that may not be in appropriate legal terms but I'm sure you understand what I'm saying.

Other Voice: No, it was very clear and it was actually in the correct terms and I understand that argument generally.

Other Voice: I wanted to just respond to your question before, it does appear that what you're doing here is an action based upon your initial jurisdictional call since this is a 3205 defines an action as request for zone changes, community services uses and then finally it says other requests for permits and other contestant cases determining permissible uses of specific property and I would read that to mean that this is likely to be an action.

Other Voice: You had someone whose, this is my first day as hearings officer and I continue to practice as an attorney and I'm very thorough. I don't regard as my obligation my attorney's work but I do have an



obligation to county to make sure all the standards were addressed so if I identify something that I think is an issue I'm going to do it. And that will be considered then in making a decision. But obviously I'm trying to raise it now so that parties have a chance to argue about it. Rather than reading about it in the decision subsequently. (side B tape 3 of 4)...introduce this then as alright..

Able: Let me turn it over so you can read it from your side. My residence is right here and the lots involved are these 4 lots involved 1 and 2 I believe are the whole site in question today. These previously were all one piece and then they were split and then they were resplit.

Hearings Off: I understand.....

Able: Split is a real nice word.

Hearings Off: Mr. Abel do you want to challenge party status.

Able: No, all I wanted to do is state...

Hearings Off: Anyone else who wants to testify on behalf of the appellant. Sir why don't you come on up and we'll take you in order.

Leach: My name is Austin Leach, I moved into this area.

Hearings Off: Can you give me your address please?

Leach: 11740 SW Breyman, 97219. I moved into this area by choice 30 years ago. We like the area, the school, we like the community. Over a period of time we have certainly seen changes. We have our own water district. The Palatine Hill Water District, we have established reservoir near Lewis and Clark and essentially in the central part of the area very adequate for the present number of residence and we can handle it. We saw during this last summer certain periods because of the drought situation that water was a very precious commodity and pressure dropped low. If additional houses come in by whatever the decisions are here in the future, this reduces the pressure. It creates additional hazards for the community, fire particularly. We are fairly concerned about it. So I'm speaking for actions then that we took some time again in being prepared if certain things were to happen. Previous to some decisions and

changes that we've made that required a \$700.00 deposit to hook-up to the Palatine Hills Water District. When we were acquainted with the facts that perhaps over a period of time the number of hook-ups would double, we increased the to a total of \$10,000 per hook-up. So we went from \$700, we had it \$9,300 and we rounded it off at \$10,000 to hook-up. That was based on the possible costs obviously with inflation and things having come in current costs now, future costs would even be higher but we have to address the inflation factors on.

Hearings Off: Is this for storage?

Leach: Storage, pumping capacity, the lines that are used to pick up the water from where we receive it from Portland and distribute it throughout the appropriate parts of the community. Install additional fire hydrants, all of these things. So we hook on to this \$10,000 hook up fee because of a situation of expecting, we are not in the position of saying that it is going to happen, not going to happen but we have to be prepared therefore we took the steps of going from \$700 to \$10,000.

Hearings Off: If everyone paid the \$10,000, lets say that if everyone with 5,000 square foot lots was developed and they paid the \$10,000 would you have enough storage and lines and hydrants capacity to serve.

Leach: With the present system?

Hearings Off: Assuming that all these new people that came in paid \$10,000.

Leach: We'd have to double the size of the area. We could have double the number of hookups.

Hearings Off: I'm sorry, I didn't understand that for some.

Leach: Well, that's how many meters we have to have. If we have to put in twice as many meters it would take doubly of the system that we have now.

Hearings Off: But would that..lets say that all the new people being served by the system, lets assume that everyone is 5,000 square foot lots and I realize some of that may not be realistic because where the houses are placed. But all those were treated as separate local lots and everyone built houses

on all those 5,000 if all those people paid the \$10,000 hook-up, would that cover the water districts needs for additional storage.

Leach: How many would that be?

Hearings Off: I don't have any idea.

Leach: I think what the water district did is divided by the projected cost....

Hearings Off: You understand why I'm asking the question. So the \$10,000 represents the cost of a new system. Thank you Mr. Leach. Next person to testify.

Bill Abel: My name is Bill Abel I reside at 12203 SW Tryon Hill Road. I live in the neighborhood and in part of the original areas included in part of the original zoning district that was established and also coordinator of the Riverdale ...park neighborhood association. I just have a general statement.

Hearings Off: Are you here on your own behalf?

Bill Abel: In here on my own behalf, yes.

Hearings Off: Mr. Leach, are you appearing on your behalf or on behalf of the water district. Let the record show you appeared on behalf of the water district in the interest of the water district and this is the, right, but the nature of the interest I assume is ability to serve the customers and potential customers. And Mr. Abel you are interested in proceeding.

Bill Abel: Personal and also as coordinator of the Riverdale park neighborhood association.

Hearings Off: And what is the nature of that interest.

Bill Abel: The general interest of the residence of the area that are within this zoning district that would be affected by this. We have our various service districts, our school districts in the area all encompass about the same area and they are part of the infrastructure that's been established or since 1947 with the understanding that this existing zoning would prevail. As are many people who have purchased homes and so forth and making substantial property investments in the area also based done that based on understanding that this only would prevail.

Hearings Off: Can you identify where you...?

Bill Abel: I've talked to many people in the neighborhood about this issue and the general consensus, in fact the overwhelming consensus seems to be that they would be opposed to a reduction in zoning and would be strongly in support of this appeal.

Hearings Off: The other Mr. Abel, were you able to hear that. Would you like him to summarize. We, I don't know if you noticed we marked Mr. Abel's approximate house location on the map. Well we better make it 6B, it's the same thing as 6. Thank you. Anyone else to testify on behalf of appellants. Alright thank you very much. We'll be coming back for rebuttle. Mr. Able. Mr. Able I mentioned these policies have you seen them?

Steve Abel: No, I will with the consent of Mr. Duden.

Hearings Off: Do you mind if I give Steve Abel here a minute or two to look at the plan policies I cited? I have the time, the total amount of time including my questions was 45 minutes and Mr. Duden took 15.

Steve Abel: OK, for the record, my name is Steve Abel I'm an attorney with Swabe, Williamson and Wyatt 1211 SW Fifth Ave. Suite 800 in Portland, 97204. Today I represent the applicant Mr. Haldors and as usual as the respondent in these matters I've been wanting to talk about a number of things I didn't intend to talk about so I think I'll jump right to those real quick. I think it's important to put in perspective how we got here and I know it may be a little bit repetitive but let me do that and try not to use too much time. We got here because there's already been one time a building permit issued with respect to this property. That building permit subsequently was challenged in a circuit court proceeding so there was a circuit court proceeding and then that matter was then taking up on appeal to the court of appeals and although the circuit court said that the permit was properly issued. The court of appeals said, well we don't know we don't have jurisdiction here. That's a land use decision. So that building permit was valid and affective at that point, there was no affective appeal. Subsequently, my client purchased these parcels of land and sought a second building permit and that's why we're here today is on the second building permit that's been issued.

Hearings Off: I thought I knew this story, now I'm concerned. I understand the sequence of events and the determination of lack of jurisdiction but the first permit you regard is still valid.

Steve Abel: It may still be valid. I'm not aware of it. The new building permit is the one that we're seeking right now, which a different design of building then the previous building permit. That's the issue.

Hearings Off: But it's still the two same pieces.

Steve Abel: Same parcels of land that are an issue.

Hearings Off: Why are you seeking a new permit then?

Steve Abel: Essentially because it was sought before my time and it was sought because of the new design on these particular lots. That's correct. That's the proceeding right now. The county has issued that building permit and that building permit issue is up on appeal to you through the question of what it means to be a live record and that's how the issue gets here. Now, what's important about that, is that building permits have been issued by the county. In the process of a building permit issuance. Services were checked and fees were paid. For example, fees were paid to obtain service availability for water, the sewer hookup has been approved and the various services that are identified in policy 47 prior to receipt of a building permit have been obtained. Now that's a new issue in this proceeding that I was unaware was gonna come up.

Other Voice: So was I.

Steve Abel: So I think what I need to do and that respect is request that the record be held open for seven days as I believe I'm obligated to receive under state statute in order to respond to the service availability. I don't think it'll be too difficult to do, I think though I should submit those matters into record.

Hearings Off: You'll receive your seven days and my understanding of statute, correct me if otherwise is that the record remains open for both parties then.

Steve Abel: That's my understanding.

Hearings Off: So, Mr. Duden wishes to submit evidence in argument

Steve Abel: That's how we get here. Now the merits. It seems to me as if we have essentially two arguments being stated by the appellant. The first argument seems to be that the sale of the property to my client Mr. Haldors was some sort of a partition in violation of Multnomah county code 11152854i and that's what Mr. Duden had been talking about, that particular provision. I have submitted into the record and I don't want to bore you with a lot of this at this point but in the record that I've submitted a memorandum of law which we've entitled the applicant's hearing memorandum as well as the counties brief from the court of appeals action. Respondents 1 would be the court of appeals briefs admitted by Multnomah county to the court of appeals.

Hearings Off: Actually that's gonna be, that's inside that packet. I'm not gonna treat the argument as an exhibit.

Steve Abel: To knowledge of the whereabouts the health of the wood products industry. OK, I have 3 exhibits, the first one is the court of appeals brief. Second exhibit which is just several pages leaving 4 or 5 pages which you have in your hand is a synopsis from building permits issued on undersized lots in Multnomah county from 1967 through 1978 showing a variety of building permits that have been issued on substandard lots if you will and was exhibit 101 in the trial proceeding in circuit court. I believe it may be the same document or synopsis that Mr. Duden identified as being from the 50s. That's incorrect it's from general the late 60s and early 70s. Finally that exhibit 101 from the trial court is identified in what is exhibit 3 for this proceeding which is the large transcript which is the transcript from the circuit court and lets identify that as exhibit 3. OK. Do me a copy. That's it. As to exhibit 3, one of the things that you don't need to look at right now but what you'll find in exhibit 3 is testimony for Mr. Bob Baldwin, a former planning director for the county on pages 39-62 which describes what Mr. Hess has already testified to the counties process in these particular lots with respect to issuing building permits. IN the consistent treatment of allowing building permits and apply Multnomah code 11.15.2856[b] as the exception or grandfathering

provision to the ... fact is the testimony of Erving Ewing of pages 63-80 of the same transcript. And I would direct your attention when you're studying this matter to those particular pieces of testimony, I think those are relevant to the question of how the code should be interpreted and I believe that the counties practice is important and does have a bearing upon that particular question. Jumping away from the exhibits then, as I said there are two different arguments being raised, one is that the, I'll put this in quotes, the partition that occurred was a violation of the partition provision in 2854[[i]] and even if that were not the case that grandfather provision does not apply to these particular two lots in the Dunthorp area.

Other Voice: Mr. Abel, at this point, what is the relevant, I realize that we're contributing to the other side of argument of rebuttle ... bring this up. They may, but the subsection i challenging the locality of this transfer. Why is that relevant to my decision, isn't relevant to my decision.

Steve Abel: My understanding is that,

Other Voice: You don't have to repeat, what do you think?

Steve Abel: Their argument seems to be that the partition, and I'll use that in quotes, I'll keep using that in quotes because it's not a partition. Carving away lots 1 and 2 violates sub part I because it leaves a minimum lot size is less than 20,000 square feet. And that's the argument that's raised within the briefing materials of the appellants. Sub part I though doesn't apply in this particular circumstance and I want to go through the reason why and there are about 3 or 4. The first one is, ORI section.

Other Voice: I'm sorry, my point is that if you answer the question about lot it answers the question for I as well as 2856[b] as well. You could have arrived at a different conclusion with respect to 2854[i] and a different conclusion for 2856[b].

Steve Abel: I think that's right I think ultimately.

Other Voice: And this is a challenge that I'm not sure we're the jurisdiction be the challenge this as an illegal advance. My understanding is that according to the appellant it's a challenge with

respect to application 2856[b], my not just sure it's relevant.

Other Voice: I'm sorry to interject. The appellant does specifically call out I as what they believed should have been applied but wasn't but that's on the front PO page which is including in the packet.

Other Voice: I understand the argument, but it all seems to turn to the same thing.

Steve Abel: I think that's right, let me explain a couple of things and I think that it'll solve I I think it was solve media as well. There is a couple of issues that just have not been brought up yet, one of which is the statutory provision that I that I believe you're aware of ORS 92.017 which states that a lot or parcel and remember our definition of lot and ORS are those lots that are created by the subdivision of land so a lot or parcels lawfully created in this instance that's what we have from the late 1800s ... straight line or parcel unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided as provided by law. That's what we don't have here, what we have here is the conveyance of land that are already discrete lots and those lots are allowed to be conveyed. They were allowed to be conveyed in 1890 and they are allowed to be conveyed in 1890 and they're allowed to be conveyed as long as they are discrete lots of parcels under 017.

Other Voice: I am somewhat familiar with the legislative history of ORS92.017. Could you address that? In your materials.

Steve Abel: We do.

Other Voice: ...Mr. Duden heard that but that will be something they may ask, may talk about during his rebuttle.

Steve Abel: Second of all, the county in it's briefing materials has testified that [i] is for partition, is a mechanism to be used when there is a partition of a particular lot, therefore the remainder doesn't.. the remainder isn't left in a position where the structure on the parcel violates a setback requirement. Violates a minimum lot coverage requirement. The partition that is important, the Multnomah county code



11.45.010t provides that the conveyance of individual lots and platts are not partitions.

Other Voice: This is I'm sure in your ...citation

Steve Abel: I'm sorry, its 11.45.010[t].

Other Voice: He's referring to the land use division section.

Other Voice: I know, I just stuck it in here yesterday because it new, originally adopted.

Other Voice: So state statute 017 drives the county code in essence and basically says that county code responds by saying yes we agree, those are discrete lots or parcels as the state law provides and yes we need to convey a discrete latter parcel. It's not a partition of land. This section, of course, and today's date action.

Steve Abel: That's correct. Finally and this is more articulately stated in the briefing materials at the county at the court of appeals level and maybe is misplaced in raising it right here. Where the county code requires aggregation of ownerships which seems to be an argument that the appellants are making. The code specifically states aggregation of ownerships and you can see that in the ... left sections and it essentially says. We will aggregate ownerships for purposes of calculation of lot sizes in the em... If the code had intended to aggregate ownerships in the R20 zone it too would have had similar language of aggregation. Sub part B, language is particular, it's language that needs to be focused on and I think the most important part of the language is that the exception applies in two different circumstances. One when you have a deed of record which is not this particular case.

Other Voice: Excuse me, I know what a deed is, I know what record keeping is. What's a deed of record?

Steve Abel: As best I can understand it is a parcel of property that was created by deed and I'm assuming that it might have been created by deed in that particular circumstance before there may have been a partitioning requirements within the county deed of record.

Other Voice: I guess the first subdivision .....these uses of property....that's right.

Steve Abel: That's the deed of record which I believe these are not the best card of record, whatever it may be but I think these are the second identified grandfathered exception which states or was on public record at the time the chapter became affected, now those words have meaning and the meaning is, were they on public record at the time the chapter became effective and the plats of 1898 were on public record at that time. That means that the exception applies and that means that the exception means that provided you have lot sizes in excess of 3,000 square feet and they are platted, they are buildable lots. Now that particular requirement that they're buildable lots has been a long standing interpretation of the code and the materials that I've given you and Mr. Hess's testimony are, yes, that is how we've interpreted the code, that's how we continue to apply the code and that's what we believe the code means.

Hearings Off: I have another question for you.

Steve Abel: Sure.

Hearings Off: Does qualification under the second clause in subsection B respect on public record whether it was on public record doesn't really help either persons argument in this setting ..lines showed up on the map so really, am I missing something?.... independent definition of lot contained .... of

Steve Abel: I think that's accurate, I think it adds I think it's consistent with that definition and I think it provides further support to the idea that those are distinct lots as provided in the definition of section.

Other Voice: And I think that the public record describes what is the area that referenced at the beginning of that.

Steve Abel: Right, and sometimes what we see is in codes we see provisions that they're really in order to allow the planning staff a mechanism by which to measure whether those were lots of record. For example, it makes it easier to apply if you know that what you're looking for is on public record. Question, was the plat on public record, the answer is yes, therefore the lots are discrete therefore interpreted through the lot definition and also ORS 92.017, we have discrete lots of

parcels. They are buildable. It seems that the argument anticipated for Mr. Duden is that sure it shows lines but area described in the public record would be these four pieces of under what ownership. And therefore the state .... public record...ownership records either necessarily, we still go back to the definition of the law. I'm stating a point. The public defines an area I think the response is, public record show that that... pieces of ownership was a lot.

Hearings Off: That may be I will tell you that as I .. part B one of things that's interesting about it is that the deed of record exception is qualified by the held under separate ownership provision while public record is not qualified by an aggregation standard.

Mark Heskin: If I could add a comment under this discussion, Mark Heskin with the planning staff. If you imagine, if you construed the definition of lot to mean all of the aggregated ownerships, property under one ownership the owner of a subdivision would then have one lot until they can break those lots and our interpretation has been that that could not have been the intent.

Steve Abel: That's actually why Mark, I asked about the legislative history of 92.017 cause it touches on that issue. I think Mark's point it well taken is that it does read if you do aggregate individual lots on a particular subdivision by ownership right from the get go there's gonna be a difficulty with ownership and application of particular provisions of the code and it needs to a ridiculous result. I think also it's important to know a case I'm frankly a little surprised has not folded itself into this discussion too much and it's a case called Apperson vs. Multnomah County, it's a 27 Oregon appellant 279 and if applied.

Hearings Off: Can you give me the citation again?

Steve Abel: 27 Oregon appellant court of appeals 279.

Hearings Off: And the case name.

Steve Abel: Apperson vs. Multnomah County which is a case 1976, which is a case that involves lots in this particular platt. It involves lots that have had their lot lines adjusted and it involves a

particular set of code provisions although they are identified differently from by number then the current provisions, they are identical to those provision, grandfather provision and the subpart I provision.

Other Voice: The numbering system was different at that time.

Steve Abel: That's right. And it's about a 3 or 4 page case and it falls again on different facts and that the lot lines had been adjusted but it's got some interesting language in it. And it first says that section 3.329 which is now, I'm sorry 3.332 which is now subpart B I can identify it that way. I won't mix her up. What you'll find within there is that the case rises and falls on the fact that there were lot lines adjusted on a particular lot and therefore those lots lost their grandfathering or discrete status. That targets back to 92.017 a little bit. But within the opinion is this provision, prior to 1971 blocks 91 and 92, Palatine Hill #3 were held on account of ownership. It is undisputed that the time each of the lots within 91 and 92, Paletine #3 at that time were nonconforming and within the exception of 3.332 of the above ordinance so it said if you hadn't adjusted the lot lines and you hadn't made both sorts of masinations with the map, you were within the exception of 3.332 which is subpart B. And I think....I think it's important to read that case in light of the existing stretch or ordinance provisions and in light of the discussion we had here today.

Other Voice: I have interrupted with questions with your time running.

Steve Abel: I'll finish up. Although it may no be relevant to this proceeding and I went to law school because I wasn't a very good math matician, as best I can figure out, one of the witnesses lots, Mr. Underdall's lot has about, if this correct, 113 X 213 which I calculate or had someone calculate for me in the neighborhood of 26,000 square in R30 zone. So I think you'll find any number of lots that may have these sorts of problems in this general vicinity including one of the witnesses for the opposition. I think it's important for you to take a look at the case, the Apperson case, the materials I've delivered to you, the memorandum supplements, the counties materials that have been previously submitted to the circuit

court and the court of appeals and I think under the circumstances what you have in order to retain these lots, are lots of records discrete lots of record. Each one of which is buildable.

Hearings Off: Mr. Abel the county is scrupulous ... 120 day deadline. I received materials that were approximately now 3 or 4 inches thick this morning. If I'm gonna do justice that arguments the evidence, I'm gonna have to review those materials and that's why they make it very difficult to do anything else in the next few days. Unfortunately I do have some other things I do need to do. Is your client willing to bring out an extension.

Steve Abel: We'll waive the 120 day limitation.

Hearings Off: Would you be willing to wait up to 30 days.

Steve Abel: Yes.

Hearings Off: Mr. Hess, I've done this now on 3 of the 4, we've had time for. I know that my rotation, I don't come up for a lot of these cases next month so I'm not gonna be the same position but I'm more concerned about piling up things for the county and that's why I.... Would that be helpful?

Other Voice: I don't know what work would be involved in our case but I suspect that we're gonna be writing a lengthy decision for you or in concert with you.

Hearings Off: I'm just concerned about getting these extensions in the applicants and hope they don't see them as trying to distract them from decision. But I think it's appropriate for the county towards the process ... trying to

Other Voice: I don't believe so. I hope not.

Hearings Off: It's better than trying to do it in the next week.

Other Voice: Certainly. Did we ask the appellant about the waiver.

Hearings Off: No. I'm going to ask him.

Steve Abel: Let me just say that I did request earlier on a 7 day record extension as well, leaving the record open for 7 days. Calculate that in as terms of time frames.

Hearings Off: Do you want that within or in...

Steve Abel: It's a matter for you, what ever you choose.

Hearings Off: I don't think I'll have any any problem if I have 30 days. I doesn't make any difference we'll calculate 30 days from today, but that includes a 7 day period for submission of additional argument and rebuttle. If you don't think that's adequate tell me.

Steve Abel: I think that's fine.

Hearings Off: OK, thank you. Mr. Duden. I'm sorry. Don't say anything yet, we have to get all of this on tape. This will be important. This will be I'm sure given the record keeping obligations of the public records act after we're dust they'll be tape recording of this one here.

Fred Ruby: Thank you. I have a very brief statement to support Mr. Haldors application simply for the record. My name is Fred Ruby, I'm an attorney for the Fir and Scott firm in Tigard, our address is 9185 SW Burnon, Tigard, Oregon 97223 and our law firm represents an individual named Gordon Hobbs. Mr. Hobbs is not directly involved in this permit application. However prior to the September 17th issuance of the administrative decision approving Mr. Haldor's building application. Mr. Hobb's was named and served as a defendant in a separate civil action in which the plaintiff is Mr. Haldors. That separate civil action being one for recision of the sale of the subject lots based upon allegations that the sellers had issued warranties that building permits would be available and also allegations made in that separate civil action that in fact permits were not available. Now that September 17th decision approving the issuance of the permits may, may render that law suit mood and I think the law suit mood probably be characterized as a precautionary measure on Mr. Haldor's part. In any event, for the record. Mr. Hobb wishes to indicate the he supports the application of Mr. Haldor's and believe that the county acted appropriately under the exception set forth in the code for the reason stated by Mr. Abel.

Hearings Off: Mr. Ruby, it seems like there's some names that has slipped from my memory on this changed title. Mr. Haldor is .... from your clients.

Fred Ruby: That is a good question Mr. Liberty and I believe the evidence will show that my client Gordon Hobbs was never in the change of title to this property.

Hearings Off: Is he a real estate agent?

Fred Ruby: No, I believe that he would appropriately be characterized as a facilitator or a middle man involved in this transaction. But for reasons that I'm not prepared to comment on because we haven't had the chance to examine the closing file I can simply report at this time that I do not believe a title report would indicate that he was in the chain of title to the transaction.

Hearings Off: I certainly don't want to broaden this proceeding with something that is going to be before the circuit court. You see interesting facial expressions sweeping through the audience here but I will for the purpose of my determination I'm probably gonna find Mr. Hobbs as parties as his liability may or may not .. into the outcome of the proceeding regardless of what his status is.

Fred Ruby: It would be fair to characterize Mr. Hobb's interested party who would like to voice his opinions according to the application.

Hearings Off: OK, thank you Mr. Ruby

Paul Duden: Paul Duden again speaking on behalf of the applicant, when I got to the back of the room I was asked to clarify that the water district has not collected any of these \$10,000 fees so that there is no money to increase the system. It depends upon.. Well maybe one.

Hearings Off: From you. Can we have Mr. Leach....

Paul Duden: He had to leave.

Hearings Off: Did they collect \$10,000 from Mr. Haldors.

Paul Duden: They might have. No. Mr. Mcget did not, he only paid \$700.

Other Voice: Hold on.

Other Voice: Mr. Mcget paid \$700 before the change went into affect and did get water for this property from...

Other Voice: (side A, tape 4 of 4) do you think that this is central on the way I'm handling this outrageous or be glad to take five minutes to do it now, otherwise we'll do it that way. Alright the tapes rolling.....

Other Voice: The water district, my understanding and I am under the water .. but my understand was that Mr. Mcget along with several other developer have projects pending at the time we've changed the requirement for the cost of hooking up the system paid the full price of \$700 for hookup fee and \$700 for the meter connection fee. For the \$700 service buying the cost of the service district has increased to \$9,300. This property that we're talking about here has a meter, but the question that Mr. Leach was attempting to address was an impact of a decision of this type on the district. The anticipated impact.

Other Voice: Presidential affect...

Other Voice: Now secondly, on Mr. McGet's permit, it was my understanding that, in fact I know that the previous matter that was before the circuit court was filed before the City of Portland actually issued a building permit. That was filed based upon the county OKing. The permit is actually issued by the City of Portland, the county just rubber stamps it to say everything is complied to it.

Other Voice: The building permit.

Other Voice: The building permit. So we objected before the City of Portland issued the permit. Now if they ever issue.. we kept trying to find out from the City of Portland if they actually issued a permit and the last thing I was told that the application had expired. I don't know if, my understanding was a permit was never actually issued by the City of Portland because this law suit had been filed and they were awaiting as result and then it expired and because we were going to ... The permit was actually issued.

Other Voice: This is relevant.

Other Voice: I'm just clarifying the history. That has nothing to do. I think they're trying to make some argument that because a building permit had been issued before that was somehow raised, on the



count of this building permit.

Other Voice: Actually my understanding consists.. the other party policies is it perhaps argument is going to be made and services were available ... permit was issued perhaps its an indication .....

Paul Duden Secondly, we haven't claimed that, I missed part of.. we haven't claimed that they didn't comply with some partitions. I think this doesn't partition provision with the zoning ordinance. That's been my understanding because.... didn't seem to be a minor or major partition within a definition of the zoning.

Hearing Off: Paul, I will ask the question and again that I asked Mr. Abel.... It looks to me that .2854[i] .... site of materials. I have question about relevance aside from the fact that I canceled the questions that 2856[b] and also answered the question 2854[i].

Paul Duden: Absolutely correct. The only thing.

Hearing Off: Separate ground.

Paul Duden: The only reason I think that it's relevant is that it fills the intent of the drafters that you can't cut down a lot to make a substandard lot and if you're going to go out and replatt the ground. You're going to have to do something more than just sell a previous platted lot. You're right.

Hearing Off: But I think Mr. Abel finally twisted around so it would read ..... 2854[i] isn't a result .....

Paul Duden: That's probably right, a lot is a lot is a lot but then you made this argument. And the counties made this argument before which they say relates to a ridiculous result. I don't mean to slandering anybody here but I think it's a ridiculous argument. Of course a subdeveloper means one lot under the code, but the code allow him to sell. In other words, if you read what a lot is, it's a parcel of land in one distinct .... But it allows him to sell that piece allowed by his subdivision to break it down into lots that conform to his own... So the county makes the argument that a subdivider could never under our interpretation could never sell any of his small parcels. But he can, he can sell them down to the lot size, in other words, if a subdivider bought

this whole area. What the zoning ordinance says that the only thing he can't sell is a piece smaller than 20,000 square feet in the zone. But if he owns all of these lots here. He, of course, could sell discrete parcels so that he came up with a 20,000 square foot lot size.

Other Voice: What it is that he is selling? Because if it was all one parcel he would have ... partition across.

Paul Duden: Oh sure, but that doesn't mean he can't do it. First thing, our interpretation would be he couldn't do it. Actually, he wouldn't have to go through a partitioning process if he, I'd have to look at that, whether that would be a measured partition if he is selling off pre-existing private parcels that are already applied .... because it's not redividing the platt. That's where Apperson went astray. He redivided the land.

Other Voice: Did he redivide the land or just the lot?

Paul Duden: I'm saying he changed the lot line. But the other important thing about Apperson, that what they sited to you is not a holding. It is simply an undisputed fact that was agreed upon by the developer in Multnomah County that they said is undisputed that these lots are nonconforming and that's simply in all the court did there is simply stated what the counties position was that platts are lots. It didn't, the court didn't fold in that case that a platt is a lot within the Multnomah County zoning ordinance. Now you ask me, you said you wanted me to answer some question about this statute and I am not familiar with the legislative history so you are a step ahead of me there and I didn't see anything in the applicant's brief about the applicant's history but what the.

Hearing Off: Let's put it this way, if I reach a conclusion that the statute is relevant to the counties definition. I'm fairly confident that that's legislative history is going to be important. I mean, there's a couple steps, one is that's a partition definition in that lot. But .... are connected but I am confident....relevant because one of the issues was rather or not lots that weren't sold within a year.....

Mr. Duden: And all that that statute says as I read the statute when we were in the court of appeals is

that says a lot is a lot. But it still doesn't get down to defining what is a lot .... zoning which I think I said before. And I also think you have to temper all of this with the county planning and zoning provisions of 215, which talk about lawful uses of land at the time the zoning ordinance goes into affect and whether those uses can continue.

Hearing Off: Some of the 19 5 .... wanted to build houses on each of those 5,000 square foot pieces we would have been able.

Mr. Duden: Absolutely, and they would still be good today. But once the county, once the people in 1946 and the county in 1955 decided that we're gonna have to impose a zone on this area, then if you've got 4 of those lots and that conforms to zone. You can't come back later and then build those four houses.

Hearing Off: Wasn't there some discussion of controversy again about, or wasn't the situation.....

Mr. Duden: It is not, and it was imposed upon this area and our position has been followed ever since in that. I have 4 exhibits.

Hearing Off: These are already submitted.

Mr. Duden: No, these are not submitted.

Hearing Off: Have they seen a copy?

Mr. Duden: Well, they were all exhibits in the underlying case but they're to rebutt. I said I would have those exhibits to rebutt that.

Hearing Off: What, can you show it to them first? These were exhibits in the circuit court decision.

Mr. Duden: Ya, I simply renumbered them for here. One is an affidavit of Robert Stole. I'll explain how this comes up. I said that earlier but the county claims that in the uniform application of their historical interpretation of .... Stole's property was one of those properties. His affidavit sets forth that he had 16 lots on which he built his house. Not one lot as the county has in that exhibit that is attached to applicants memorandum. Another property that they site is called Paul Barrow and Louise Barrow. They... The first one

is exhibit 7, this is exhibit 8, this shows that they had and only purchased and their predecessor only had two of these lots at the time zoning went into affect and the last one is exhibit 9 which is the Koenig's deed which is another one of the properties where a house was built and they only had two lots. And I ask, and we'll see that in the transcript but I asked Mr. Ewing of the planning department if he found any instance where they had allowed somebody in this district to build on a substandard lot which had not existed at the time zoning went into affect. In other words, a created substandard lot and he could not find any.

Hearing Off: Do you have anything else? Do you have any comments on 637 and 38 or probability?

Dr. Duden: I apologize for this, when we were in the circuit court and I guess I was sort of lead of stray. We were prepared to offer that evidence as you'll see in the transcript and the county took the position that it wasn't relevant and the court ruled that way and I frankly did not get the drift that and then when the court of appeals then sent us back on this sort of small legal issue, I didn't bring those same people here except for the water district person. But I will within 7 days submit, we have the school district there prepared there to testify and well actually the sewer district, who has testified.

Hearing Off: The counties position was that that would be relevant because it wasn't ..... to a judicial action. Therefore, the policy is going to fly. If it is a .... conditional action then you seem to apply.

Mr. Duden: They seem to. You know I suppose they have some marginal relevance in making a judicial relevance in making a judicial determination as to what the meaning of a lot is.

Hearing Off: I'll let you decide what affect the policies are. It was not raised in your appeal.

Mr. Duden: Right:

Hearing Off: On the other hand, I'm suppose to determine if the clients.....any other authorities. I had a question for Mark. Mr. Underdall want to make a statement. I'm reluctant to. Mr. Underdall would

you be able to Mr. Duden and he can put it in his material when he comes in rather than. Do you object?

Underdall: For the record, Ken Underdall again. My house was built in 1942. An architect named Walter Church who was better known as the architect for the state capital building. I think that answers the cheap shot .....

Hearing Off: With attorney's involves no shots are cheap. OK, thank you Mr. Duden. Mark, does the county take the position that consists and application as relevant to interpretation as made.

Other Voice: Certainly, they like to be consistent in the application of our code and where there has been any variable or ambiguous language. I was instructed when I came on board in 1987 about the lot of record provisions and where these apply and was instructed but this is the consistent method by which we will administer this section of our code. So, in that respect yes,

Hearing Off: I'm not sure it makes any difference but my view will be if I accept that the ordinance necessary to side that's important interpretation and that means another proceedings the counties gonna be bound by earlier decisions. And I think that's a sound policy but I certainly have experienced with counties in the same proceeding to interpret the same thing .....

Other Voice: Yes, and I do know that this planning director and the prior one attempted to communicate among staffs but that doesn't occur.

Other Voice: I would just say this, there aren't any decisions that do that. I mean I realize that they say at the county.

Other Voice: I understand that there's a dispute about what it was .... whether there is such a precedence. And Mark has also made clear that since they treated them as administrative decisions, they don't keep the same kind of records which just makes since. Again, I'm not deciding whether it's relevant or not. Whether the counties been consistent. Are there any closing questions, comments or anything about procedure, about time line. Mr. Duden agrees to the extension that is suspension or totally of 120 day limit for 30 days. Mr. Abel are you aware of any cases which the has been

argued that the appellant in this case is entitled to the last word. I'm not speaking about metaphorically but there's gonna be evidence coming in apparently on some issues. Are you entitled, other law to rebuttle of evidence coming in against this 7 day period.

Steve Abel: I'm aware of no cases, but I think in order to properly address this issue for me in this particular setting. It's been raised as an issue. Apparently this opponents are going to deliver some kind of information about lack of services and thinking about services. If I am not given a chance to rebutt whatever they submit, I won't have any opportunity at any point to rebutt that information.

Other Voice: May I interject here, I just wanted to interject our practice on a couple of contested cases this last year where this open record period came up. An opportunity for adequate rebuttle and the way we treated these cases is there was a 7 day open record period for written evidence to come in from either party and then following that there was a 4 day period after that for written rebuttle only of the evidence during that first open...

Other Voice: Each get to introduce and each get to rebutt.

Other Voice: That's correct.

Other Voice: Thank you. Actually Mr. Pendle did mention that to me..is that agreeable...that's a Monday Friday deal. In addition if you have and want to make any argument upon this point I think that it's a little different in that this issue was raised by the hearing office not by one of the parties who want to make an argument about whether that was appropriate or whether that entitled you to additional rebuttle whatever you may. I think about rebuttle evidence not argument I don't think that's the issue, it the rebuttle evidence. But both of you know what the issue is, whether to ... whether it's been satisfied, how it's interpreted, so I think we're gonna have plenty of shots at it. So, this hearing is terminated, the record will remain open for 7 days for the submission of additional argument and evidence by both parties and then 11 days and then within those 7 days there will be rebuttle argument and evidence but the following 4 days will be rebuttle argument but no new evidence. Written rebuttle only. Thank you very much for your patience.

Meeting Date: December 29, 1992

Agenda No.: P-5

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: LR 2-92 Decision

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

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minutes

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

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

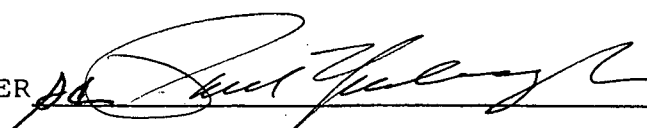
LR 2-92 Review the Hearings Officer Decision of December 16, 1992, denying appellants appeal of an Administrative Decision, approving a building permit to construct a single family residence on a 10,000 square foot lot located at 01333 SW Pomona Street

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER 

(All accompanying documents must have required signatures)

CASE NAME Dunthorpe Lot of RecordNUMBER LR 2-92

## 1. Applicant Name/Address

James Haldors Builder  
PO Box 56  
Lake Oswego, Oregon 97034

## APPELLANTS:

Paul Duden (Representing Stoll, Campbell and Naito)  
333 SW Taylor Street  
Portland, OR 97204-2496

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

## 2. Action Requested by applicant

The applicant (James Haldors) requested approval of a Building Permit to construct a Single Family Residence on a 10,000 square foot property located within the Palatine Hill Addition No. 3, an area zoned single family residential (R-20; 20,000 sq. ft. min. lot size). Appellants claim that Haldors' property violates MCC 11.15.2854(i), and challenge the applicability of the **Exceptions** in MCC 11.15.2856(B), which the Director relied on to approve a new house on a site with less than 20,000 square feet in area.

## 3. Planning Staff Recommendation

APPROVED by the Planning Director on September 17, 1992

## 4. Hearings Officer Decision:

AFFIRM Planning Director; DENY the Appeal

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

## ISSUES

(who raised them?)

- The decision in this appeal turns on the interpretation of the **Exceptions** subsection in the '**R**' zones, and the interpretation of a single word, "lot." [issue raised by appellants]
- The Hearings Officer decision in this appeal affirms the Planning Division's 30-plus year interpretation of the **Exceptions** provisions in the '**R**' zones. These zones apply to urban-unincorporated areas west of the Willamette River (essentially the Dunthorpe and Sylvan areas). [issue raised by appellants]

Do any of these issues have policy implications? Explain.

This case has implications relating to property rights for pre-existing urban lots, residential densities, and infill-potential in certain urban-unincorporated areas in the County.

[Policy 6 (Urban Land Area); Policy 20 (Arrangement of Land Uses); Policy 22 (Energy Conservation)]

If the exception continues to operate as it has in the past, then the exception to the minimum lot size will effect the residential density in those '**R**' zoned areas with pre-1955 subdivision plats (typically 5,000 square foot lots). The larger minimum lot sizes in the '**R**' zones (i.e., lower densities) would only apply in older platted areas if the land is re-platted (under the Land Division Code). The historic interpretation leaves some potential for infill houses in certain neighborhoods in the Dunthorpe and Sylvan areas. Appellants interpretation would limit infill-potential in these urban-unincorporated areas.





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

**HEARINGS OFFICER DECISION**  
This Decision consists of Findings of Fact and Conclusions

**December 16, 1992**

**LR 2--92, #184**

**Appeal of an Administrative Decision**

(Determine if Lot Area Exception Applies to a Proposed House)

**I. INTRODUCTION; NATURE OF THE DECISION**

This matter concerns an appeal of an Administrative Decision dated September 17, 1992. The appeal was presented at a public hearing on November 2, 1992, before Robert Liberty, Hearings Officer. The applicant (James Haldors) requested approval of a Building Permit to construct a Single Family Residence on a 10,000 square foot property located within the Palatine Hill Addition No. 3, an area zoned single family residential (R-20 on the County Zoning Map). Appellants challenge the applicability of the Exceptions to lot area in MCC 11.15.2856(B), and claim that Haldors' property violates MCC 11.15.2854(i).

**Location:** 01333 SW Pomona Street

**Property Description:** Lots 1 & 2, Block 111, Palatine Hill Addition No. 3

**Site Size:** 10,000 square feet

**Owner/Applicant:** James Haldors  
PO Box 56,  
Lake Oswego, OR 97034

**Appellants:** Paul Duden (Representing Stoll, Campbell and Naito)  
333 SW Taylor Street  
Portland, OR 97204-2496

**Comprehensive  
Plan Designation:** Single Family Residential

**Zoning:** R-20, Single Family Residential District  
Minimum lot size of 20,000 square feet

**HEARINGS OFFICER  
DECISIONS:**

**AFFIRM** the Administrative Decision of September 17, 1992; and  
**DENY** the appeal of LR 2-92, based on the following Findings  
and Conclusions.

N

↑

Zoning Map

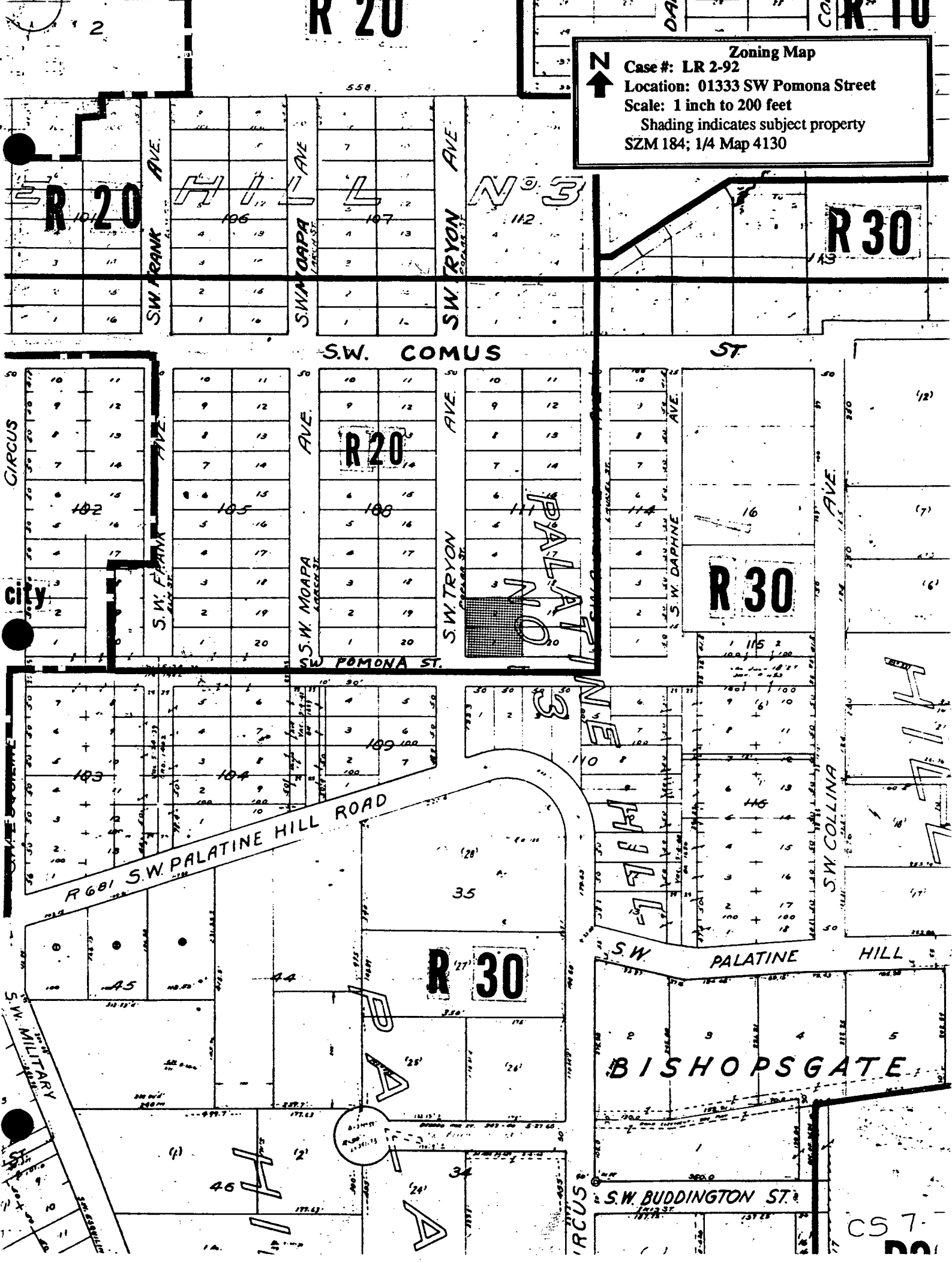
Case #: LR 2-92

Location: 01333 SW Pomona Street

Scale: 1 inch to 200 feet

Shading indicates subject property

SZM 184; 1/4 Map 4130



ST.



**SZM 184; 1/4 Map 4130 (1990)**

**ADVENTINE**  
**CIRCUS**

## FINDINGS AND CONCLUSIONS

### 1. SUMMARY OF RELEVANT FACTS

This appeal concerns a September 17, 1992 Planning Director decision which approved a Building Permit to construct a Single Family Residence on a 10,000 square foot property located on Lots 1&2, Block 111, Palatine Hill Addition No. 3.

The property which is the subject of this appeal is made up of four, contiguous 5,000 square-foot units of land. These "lots<sup>1</sup>" are numbers 1, 2, 19 and 20 of Block 111 of the Palatine Hill Subdivision No. 3, platted in 1890. These lots are part of a block bounded by SW Pomona Street on the south, SW Aventine on the east, SW Tryon to the west and SW Comus to the north. The block is part of a larger area within the Dunthorpe neighborhood (formerly called Riverdale) which is zoned R-20, a residential zone with a 20,000 square foot minimum lot size.

In 1942 a house was built across Lots 19 and 20.

In 1948, the residents of the area incorporated a zoning district. The residential zones adopted by the district established minimum lot sizes of 20,000 and 30,000 square feet.

In 1949, the Johnsons purchased Lots 1, 2, 19, and 20 of Block 11, including the house. Together the four lots were 20,000 square feet in area.

In 1955 Multnomah County assumed zoning authority over the Riverdale-Dunthorpe area. The County applied two zones which incorporated the 20,000 square foot (today's "R-20" District) and 30,000 square foot (R-30 District) minimum lot sizes.

At some date before 1979<sup>2</sup>, possibly proximate to the time at which the County assumed zoning authority, an "exception" to the minimum lot size was adopted for specified preexisting lots. (This provision is quoted below.)

In 1984 the Magids purchased the four lots and the house. On March 8, 1989 the Magids sold Lots 19 and 20 (containing the house) with a combined area of 10,000 square feet to a third party. The Magids sold Lots 1 and 2, (also 10,000 square feet in combined area) which had formed the backyard to the house, to James Haldors.

In 1989 Mr. Haldors applied for a building permit for a residence to be sited on the two lots. The County issued the permit without notice or an opportunity for a hearing.<sup>3</sup> Nearby residents, including some of the appellants here, challenged the decision through a petition for a Writ of Mandamus in Multnomah Circuit Court. The Circuit Court found for the applicant:

*The Court concludes that while the Ordinance could be interpreted as asserted by Plaintiffs, Defendant County's application of the Ordinance to the contrary has been substantially consistent. In the absence of proof that*

*County's interpretation is contrary to the express language and intent of the Ordinance, this Court should not substitute its views to those of the County.*

*Campbell et al v. Board of County Commissioners of Multnomah County et al*, (Mult. Co. Cir. Ct. No. A8910-06371) (Final Judgment, December 28, 1989, Judge R. P. Jones.)

On appeal, the Court of Appeals found the County's action was not within the "ministerial" action exemption to the definition of "land use decision." Thus the Land Use Board of Appeals (LUBA), not the Circuit Court, had jurisdiction. The Court of Appeals dismissed the appeal for lack of jurisdiction, expressly declining to address the merits. *Campbell et al v. Multnomah County*, 107 Or App 611, 617, 813 P2d 1074 (1991).

On June 2, 1992 the County issued a building permit to the applicant, without notice or an opportunity for a hearing. The appellants appealed this decision to LUBA. *Campbell et al v. Multnomah County*, LUBA No. 92-199. The appeal was dismissed by stipulation of the parties on September 3, 1992, in order to provide the appellants with the opportunity for a hearing (on appeal.)

On September 17, 1992 the Planning Director issued a written land use decision granting the permit. On or before September 28, 1992 (when it was received by one or more of the appellants) the County provided notice of its administrative decision and an opportunity for an hearing on appeal before me, as Hearings Officer. The appellants filed their appeal on September 28, 1992.

## **B. Preliminary Procedural Matters**

### **(1) Status Of This Determination As An "Application For A Permit" And A "Land Use Decision."**

In order to eliminate any remaining doubts about the status of this determination, I find that both the interpretation of the exceptions clause in Multnomah County Code (MCC) 11.15.2856 and the interpretation of the word "lot," necessitate the exercise of legal judgment, as evidenced by the following analysis. Consequently, the decision on these matters constitutes action on an application for a "permit" under ORS 215.402(4) for purposes of the provision of procedural protections guaranteed to parties under ORS 215.416 through 215.428. *Doughton v. Douglas County*, 88 Or App 198, 202, 744 P2d 1299 (1987); *Flowers v. Klamath County*, *supra*, 98 Or App at 391, 392; *Doughton v. Douglas County*, 15 Or LUBA 576 (1987); *Kunkel v. Washington County*, *supra*, 16 Or LUBA 407, 418 (1988)

The same exercise of legal discretion brings this action within the definition of "land use decision" in ORS 197.015(10)(a)(A) and thus within LUBA's jurisdiction under ORS 197.825(1). *Campbell et al v. Multnomah County*, 107 Or App 611, 617, 813 P2d 1074 (1991); *Doughton v. Douglas County*, 82 Or App 444, 449, 744 P2d 1299 (1987); *Doughton v. Douglas County*, 90 Or App 49, 750 P2d 1174 (1988). Because the action is a "land use decision" the procedural protections in ORS 197.763(1) through (8) also apply. ORS 197.763.

## (2) New Issues Raised At The Hearing

At the hearing I raised the question of whether County Plan Policies 37<sup>4</sup> and 38<sup>5</sup> applied to the decision to approve the dwelling.

MCC 11.15.8295, "Procedure on Appeal," provides in relevant part:

- (A) *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.*

Whether or not these policies applied to the Director's decision is now moot, since appellants failed to raise this issue in their September 28, 1992 Notice of Appeal.

### C. Review Of The Arguments On The Merits

The decision in this appeal turns on the interpretation of one sentence of this subsection of the County Code and the interpretation of a single word, "lot."

In its present form<sup>6</sup> the exception to the minimum lot size requirement provides:

- (B) *Where a lot has been a deed of record of less than 80 feet in width, or an area of less than 20,000 square feet, and was held under separate ownership, or was on public record at the time this Chapter became effective, such lot may be occupied by any use permitted in this district. In no case, however, shall a dwelling unit have a lot area of less than 3,000 square feet.*

MCC 11.15.2856(B) "Exceptions."

The appellants contend that MCC 11.15.2856 is properly interpreted as authorizing the continuation of pre-existing non-conforming uses. As applied here, the exception would authorize the continuation of a previously established residential use on a lot less than the 20,000 square foot minimum lot size; it would not permit construction of a new house on a subminimum lot.

Appellants find corroboration for their point of view in the definition of "lot" contained in the County Code:

*A plot, parcel or area of land owned by or under the lawful control and in the lawful possession of one distinct ownership.*

MCC 11.15.0010 at page 1-7. "Parcel" is undefined. Appellants argue that because Lots 1, 2, 19 and 20 were "owned \* \* \* and in the lawful possession of one distinct ownership", the Johnsons, after the effective date of the 20,000 square foot minimum lot size, the four subdivision lots became a single "lot" as defined by the Code, i.e. a single 20,000 square foot "plot" or "area."

Since the Magids only acquired a single "lot" from the Johnsons, (under appellants' interpretation) their sale of two of the old subdivision lots to Mr. Haldors violated MCC 11.15.2854(I):

- (I) *No sales or conveyance of any portion of a lot, for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot, yard or setback requirements of the district.*

The appellants contend that Mr. Haldors is not entitled to a permit for a new house because it violates the 20,000 square foot minimum lot size, MCC 11.15.2854(A) and because he doesn't own a legal lot on which to site the dwelling.

In support of their interpretation of the Code, appellants quote from *Anderson*, American Law of Zoning 3d, §9.67:

*The common exception of lots which were recorded prior to the effective date of a restrictive ordinance is limited to lots which were in single and separate ownership on that date. Under such a provision, an owner is entitled to an exception only if his lot is isolated. If the owner of such a lot owns another lot adjacent to it, he is not entitled to an exception. Rather he must combine the two lots to form one, which will meet, or more closely approximate, the frontage and area requirements of the ordinance. \* \* \* \**

Appellants cite cases from Minnesota, *Dedering v. Johnson*, 239 NW2d 913 (1976), New York, *Fina Homes, Inc. v. Young*, 14 Misc 2d 576, 177 NYS2d 535 (1958) aff'd 164 NE2d 860, 196 NYS2d 985 (1959), and Pennsylvania, *West Goshen Township v. Crater*, 538 A2d 952 (Pa. Cmwlth. 1988) which concerned the application of grandfather clauses of the type described in *Anderson*.

However, all of these cases turn on the particular language of the local ordinance. *Dedering v. Johnson*, *supra*, 239 NW2d at 916; *Fina Homes, Inc. v. Young*, *supra*, 14 Misc 2d at 536; *West Goshen Township v. Crater*, *supra*, 538 A2d at 953. The language in these ordinances differs from the language in MCC 11.15.2856(B). The cited cases demonstrate how local governments have regulated non-conforming lots in the fashion described in *Anderson*, but are not authority concerning the proper interpretation of the Multnomah County Code.

The appellants also cite *Parks v. Tillamook County-SPLIID*, 11 Or App 177, 501 P2d 85 (1972). Tillamook County adopted new zoning with a 7,500 square foot minimum lot size, which rendered the 4,000 and 5,000 square foot lots in the applicant's undeveloped subdivision non-conforming. The applicant argued that approval of the subdivision gave him a "vested right" to develop all the lots in the subdivision, regardless of the new minimum lot size. The applicant also claimed the lots qualified under a County ordinance provision which allowed development on certain pre-existing lots, subject to certain, ambiguous, aggregation requirements.

In connection with its interpretation of the ordinance, the Court of Appeals noted that "petitioners urge that we adopt the single separate ownership rule as judge-made law regardless of whether we find it to be expressed in the Tillamook County Zoning Ordinance." *Parks v. Tillamook County-SPLIID, supra*, 11 Or App at 193. But the Court did not reach that issue because it decided that the applicants development ignored the original lot lines and thus did not qualify under a proper reading of the ordinance. Like the cases from other states, the Court's decision depended on the particular wording of the local ordinance and the facts of the case, rather than any general common-law planning principles.<sup>7</sup>

What gives the appellants' arguments their force is not the decision in *Parks* or the outside authorities but rather the circumstances of the case. If the exception operates in the way in which applicant contends, then the exception to the minimum lot size, rather than the minimum lot size itself, will control the pattern of development in the R-20 zoned portions of Dunthorpe. The 20,000 square foot minimum lot size adopted by the citizens in 1948 and reflected in the County's zoning, will have little or no meaning if each and every one of the 5,000 square foot lots created by the 1890 subdivision is entitled to a dwelling under the exception.<sup>8</sup>

The applicant's hearing memorandum contends that "The Oregon Court of Appeals has Already Examined the issues Involved in this Hearing and has Determined that the Subject Property Qualifies for the Grandfather Exception," citing *Apperson v. Multnomah County*, 27 Or App 279, 555 P2d 929 (1979). That appeal concerned former MCC Sec. 3.332, which had the same wording as 11.15.2846 and the term "lot," which had the same definition it has today. *Id.* at 281. Furthermore, those provisions were applied to lots in the same subdivision in Dunthorpe as the present case. *Id.* at 282.

I conclude that Mr. Haldors property falls within the scope of the exception in MCC 11.15.2856(B), but not because of the decision in *Apperson*. My reading of *Apperson* does not allow me to regard it as conclusive authority.

Unlike the situation here, in *Apperson*, the subminimum lots in question were not the original 1890 subdivision lots, but lots which had been reconfigured and transferred. Prior to addressing the question of whether the grandfather exception applied to these new lots, the Court said: "It is undisputed that at that time each of the lots within Blocks 91 and 92, Palatine Hill No. 3 were non-conforming and within the exception of Sec. 3.332 of the above Ordinance." This statement describes the common understanding of the parties; it is not an *ex cathedra* pronouncement of law by the Court. As such it does not even qualify for the status of *dicta*.

Furthermore, in the final paragraph of the opinion the Court chose to apply alternate definitions of "lot," including a definition of lot as "any parcel in common ownership." The Court did not uphold or reject either definition. It found that under either definition, the plaintiff was not entitled to a building permit under the exceptions clause.



My conclusion concerning the applicability of the exceptions clause (B) to Mr. Haldors's land derives from four lines of analysis.

First, I rely on the wording of the exception itself. There are two qualification clauses, only one of which references ownership:

(B) *Where a lot has been a deed of record of less than 80 feet in width, or an area of less than 20,000 square feet, and was held under separate ownership, or was on public record at the time this Chapter became effective, such lot may be occupied by any use permitted in this district. In no case, however, shall a dwelling unit have a lot area of less than 3,000 square feet.*

MCC 11.15.2856(B) (emphasis added.)

Mr. Haldors's property is a "deed of record of less than \* \* \* 20,000 square feet" and "was on public record at the time this Chapter became effective \* \* \* ." I recognize that from the appellants' perspective, emphasis on the second qualification clause does not resolve the matter, because the County's definition of "lot" itself uses the phrase "distinct ownership." However, I believe the distinction between the two clauses indicates the intent behind the second clause in the exception was to authorize a house on a pre-existing lot, regardless of whether this lot is in common ownership with other, contiguous, lots.

The second line of analysis, concerns the local and statutory definitions of "lot."

"Lot" has been defined in statute as "a unit of land that is created by a subdivision of land." ORS 92.010. The statutory definition of "lot" is cross-referenced and applied to county zoning and planning provisions in ORS Chapter 215. ORS 215.010. If this definition applies, Haldors owns two "lots."

The legislative history of another provision in ORS Chapter 92, answers the question about whether the statutory definition trumps or clarifies the County's own definition. ORS 92.017 provides:

*A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided, as provided by law.*

After its passage by the House, Rep. Al Young testified to the Senate committee about the intent of the drafters:

*The intent of HB 2381 is twofold: First, it clarifies that units of land created under current subdivision and partition regulations remain recognized units of land until their description is lawfully changed, by vacation, replatting or other means; and recognizes units of land that were lawfully created prior to the enactment of current subdivision and partition statutes.*

*On the first point — during the interim, a generally accepted interpretation of current subdivision and partition statutes was judged incorrect in a legal opinion written by the Washington County Counsel — an opinion that was later endorsed by Legislative Counsel.*

*These legal opinions said that lots or parcels created under local subdivision and partition ordinances should go back through the local government review process if (1) they were contiguous and [sic] under single ownership past the end of the calendar year in which they were created, or (2) if contiguous lots or parcels owned by different parties came under single ownership — in other words, if one party bought out, foreclosed, or inherited from another, the line separating the two units essentially disappeared.*

*Most counties are using a "Common Sense" interpretation of the statutes and do not require already approved lots and parcels to be "Re-Reviewed" simply for reasons of ownership. HB 2381 makes that "Common Sense" interpretation law, which I can't help but believe was the intent of the Legislature [sic] in the first place.*

Testimony of Representative Al Young before the Senate Committee on Energy and Natural Resources on House Bill 2381, June 10, 1985 at pages 1-2. This testimony demonstrates that ORS 92.017 was intended to preempt local ordinances which purported to reconsolidate contiguous lots and parcels in common ownership.

Rep. Young also testified that ORS 92.017 "in no way gives new development rights to anyone." *Id.* at 2. If the R-20 District did not contain the exception clause, ORS 92.017 would not in itself confer any right to a house on each parcel. But given that the County's exception clause turns on the term "lot," ORS 92.017 controls by either clarifying the County's own definition or preempting a contrary interpretation.

The third line of analysis addresses the appellant's alternative interpretation of MCC 11.15.2856(B), as authorizing the continuation of preexisting non-conforming uses, rather than authorizing new residences on substandard lots.

In several other zoning districts, the County has adopted sections specifically grandfathering in pre-existing uses, separate and distinct from other sections recognizing "lots of record" exceptions comparable to MCC 11.15.2856(B). For example, MCC 11.15.2472 to .2498 contains provisions applicable to all seven low-density residential districts. MCC 11.15.2472. MCC 11.15.2476 provides that a "Lot of Record which has less than the area minimum required may be occupied by a single family detached dwelling \* \* \* ." A separate section, MCC 11.15.2488, provides that certain uses "shall be deemed conforming and not subject to the provisions of MCC .8805 \* \* \* " subject to certain qualifications. MCC 11.15.8805 to .8810 establish the standards for the replacement, repair, abandonment and alteration of non-conforming uses.

Other Districts also make separate provision for grandfathering in pre-existing uses and for permitting uses on lots or parcels smaller than the minimum lot size. See e.g. MCC 11.15.2222 and .2230 in the Rural Residential District and MCC 11.15.2262 and .2270 in the Rural Center District.

When the County Code addresses the subject of the continuation of pre-existing uses that would be non-conforming, it does so under headings such as "Provisions for Pre-Existing Uses" and using phrases like "legally established prior" uses. The treatment of substandard lots are treated in separate sections using different terminology, terminology like that used in MCC 11.15.2856(B). This common structure<sup>9</sup> suggests that the subject matter of MCC 11.15.2856 is not prior non-conforming uses," but the similar but distinct subject of "lots of record."<sup>10</sup>

Fourth, affidavits and transcripts from the trial court proceeding show that the County has consistently applied parallel provisions in other Districts in the same fashion that it has applied it here. This was the finding of the trial court. While the appellants' interpretation is reasonable, it is not the interpretation followed by the County. If local governments' reasonable interpretations of their ordinances are to deserve the respect the Supreme Court has bestowed upon them, see *Clark v. Jackson County*, 313 Or 508, \_\_\_ P2d \_\_\_ (1992); *Smith v. Clackamas County*, 313 Or 519, \_\_\_ P2d \_\_\_ (1992), then local governments must be obliged to honor their interpretive precedents.

Footnotes:

<sup>1</sup> In the plat and in subsequent title documents, these units are called "lots."

<sup>2</sup> The same exceptions clause was in effect in the Dunthorpe area at time of the Court of Appeals' decision in *Apperson v. Multnomah County*, 27 Or App 279, 281, 555 P2d 929 (1979). See discussion of this case below.

<sup>3</sup> The County made its decision administratively, without notice or opportunity for a hearing, on the grounds its decision was not a discretionary action on a "permit." See ORS 215.402(4).

<sup>4</sup> Multnomah County Plan Policy 37, "Utilities" requires findings "prior to approval of a legislative or quasi-judicial action" (emphasis added) demonstrating the availability of adequate public or private water supply and sewage disposal facilities. *Multnomah County Comprehensive Framework Plan; Volume 2: Policies* (September 1983) at 167.

<sup>5</sup> Multnomah County Plan Policy 38, "Facilities" requires findings "prior to approval of a legislative or quasi-judicial action that" concerning schools, fire protection and police protection. *Multnomah County Comprehensive Framework Plan; Volume 2: Policies* (September 1983) at 169-170.

<sup>6</sup> The absence of detailed minutes or audiotapes for the County's zoning proceedings in the 1950's has prevented me from determining when this clause was adopted.

<sup>7</sup> The Court in *Spliid* did enunciate some rules of construction based on a parallel between grandfathering provisions for lots of record and the continuation of non-conforming uses:

*[A] non-conforming use permitted to continue albeit in violation of zoning requirements and a substandard lot permitted to be developed in a manner that violates zoning requirements are quite similar and, in general, the same policies should, therefore, apply to both.*

\*\*\*\*

*As far as the harmful impact they can have on a comprehensive zoning plan, there is no material difference between non-conforming uses and substandard lots. The same long-recognized policy considerations used to restrict non-conforming uses as much as possible mandate an equally restrictive approach to the substandard lot question.*

*Parks v. Tillamook Co. Comm./Spliid, supra, 11 Or App at 196, 197.*

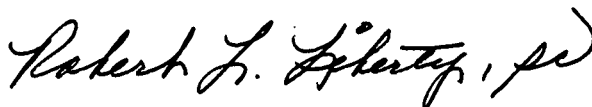
<sup>8</sup> Adjoining lots which each contain a portion of a house presumably would not qualify for a residence.

<sup>9</sup> This argument assumes that the R-20 and R-30 Districts have been reconsidered, amended and adopted in concert with other parts of the Code. If the text of these two Districts has remained virtually unchanged since the County assumed zoning responsibility for Riverdale/Dunthorpe, then the structure and content of the other parts of the Code may imply nothing about the proper interpretation of MCC 11.15.2856.

<sup>10</sup> In *Apperson*, the Court of Appeals treated Tillamook County's grandfather clause as an expression of the non-conforming use statute, ORS 215.130, but it analyzed its function in exactly the way applicant here claims, *i.e.* as an avenue for securing permits for new dwellings on substandard lots, not merely as authorizing the continuation of a prior residence on a subminimum lot. *Apperson v. Multnomah County*, 27 Or App 279, 555 P2d 929 (1979), discussed above.

For the foregoing reasons I affirm the Decision of the Planning Director.

December 15, 1992



Robert L. Liberty, Hearings Officer

**FILED WITH THE CLERK OF THE BOARD ON DECEMBER 17, 1992**

**APPEAL TO THE BOARD OF COUNTY COMMISSIONERS**

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners by any person (or group) who submitted written comment or evidence into the record, or by any person who appeared and testified at the November 2, 1992 hearing. Any appeal of the Hearings Officer decision must be filed with the Planning Director **ON OR BEFORE 4:30 P.M. ON MONDAY, DECEMBER 28, 1992** on a "Notice of Appeal" form. Forms and instructions are available at the Planning and Development Office at 2115 SE Morrison Street.

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

fulfill the front, side, and rear yard requirements of the district.

(D) Off-Street Parking

Two automobile spaces on the lot shall be provided for each dwelling unit.

(E) Height Restrictions

Maximum height of any structure shall be 35 feet. *[Amended 1984, Ord. 428 § 2]*

(F) Lot Coverage

The maximum area that may be covered by the dwelling unit and accessory buildings shall not exceed 30% of the total area of the lot.

(G) All lots in this district shall abut a street, or shall have such other access held suitable by the Hearings Officer.

(H) Half Streets

The minimum front or side yards or other setbacks as stated herein, shall be increased where such yard or setback abuts a street having insufficient right-of-way width to serve the area. The Planning Director shall determine the necessary right-of-way widths and the additional yard or setback requirements in such cases.

(I) No sales or conveyance of any portion of a lot, for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot, yard or setback requirements of this district.

(J) The minimum yard or setback requirement shall be increased to 200 feet from the property line of a lot or parcel on which there is an existing or approved mineral and/or aggregate extraction use listed in MCC .7320, or on which there is a mineral and/or aggregate resource that is designated "2A", "3A", or "3C" in the ESEE analysis made part of the supporting documentation of the comprehensive plan. This yard or setback requirement may be reduced as follows:

- (1) To 50 feet if the property owner records with the Department of General Services a statement that the owner and

the successors in interest acknowledge the rights of owners of nearby mineral and/or aggregate resources to conduct legally operating extraction uses.

- (2) To the yard specified in the zoning district if the Planning Director determines that potential mineral and/or aggregate extraction uses would not occur closer than 250 feet to the proposed noise sensitive location taking into consideration the resource information available.

*[Added 1990, Ord. 643 § 2]*

## 11.15.2856 Exceptions

### (A) Housing Project

When a developer of four or more acres of land submits plans for an entire development program, with the objective of providing suitable view, ample yard area, and other aesthetic conditions in harmony with the neighborhood, the Hearings Officer may waive the front, side, or rear yard requirements on a finding that the proposed design is in the best interest of the public and adequate to provide desirable places in which to live. In this case the lot area, width, and depth requirements shall remain the same as for this residential district.

- (B) Where a lot has been a deed of record of less than 80 feet in width, or an area of less than 20,000 square feet, and was held under separate ownership, or was on public record at the time this Chapter became effective, such lot may be occupied by any use permitted in this district. In no case, however, shall a dwelling unit have a lot area of less than 3,000 square feet.

- (C) If topographical or other conditions exist which make these requirements unreasonable, the Hearings Officer may waive the front, side, or rear yard requirements.



## Single Family Residential R-20

## 11.15.2852 Use

No building, structure, or land shall be used and no building or structure shall be hereafter erected, altered, or enlarged in this district except for the following uses:

- (A) Single-family dwellings.
- (B) Accessory buildings such as garages, carports, studios, pergolas, private workshops, play-houses, private greenhouses, or other similar structures related to the dwelling in design, whether attached or detached.
- (C) Farming, truck gardening, orchards and nurseries, provided that no retail or wholesale business sales office is maintained on the premises, and provided that no poultry or livestock, other than normal household pets, shall be housed within 100 feet of any residence other than the dwelling on the same lot.
- (D) Special uses, such as parks, playgrounds, or community centers, churches, schools, golf courses and uses of similar nature, as provided in MCC .7005 through .7041, when approved by the Hearings Officer. *[Amended 1982, Ord. 330 § 2]*
- (E) Temporary structures may be allowed in this district if these structures relate to the building or sale of land or homes, provided, however, that a Temporary Permit shall be issued for these structures as provided under MCC .8705 through .8725. This permit shall expire at the end of one year, but may be renewed at the end of that period.
- (F) Where the side of a lot abuts a commercial or industrial district, the following transitional uses are permitted provided they do not extend more than 100 feet into the more restricted (residential) district:

- (1) Two-family dwellings.
- (2) Medical offices, dental offices, and clinics.
- (3) Parking, as required in MCC .6100

through .6148.

- (4) Other uses of a transitional nature as determined by the Planning Commission. These transitional uses shall conform to all other requirements of this Chapter which apply.
- (G) Signs, pursuant to the provisions of MCC 11.15.7902-.7982. *[Amended 1986, Ord. 543 § 2]*
- (H) Uses customarily incident to any of the above uses, including home occupations.

## 11.15.2854 Restrictions

## (A) Lot Size

The minimum lot size shall be 20,000 square feet. The minimum average lot width shall be 80 feet. The minimum average lot depth shall be 120 feet.

## (B) Yard Requirements

- (1) Front Yard. There shall be a front yard having a minimum depth of 30 feet, unless a previous building line less than this has been established, in which case the minimum front yard for interior lots shall be the average of the setbacks of the main structures on abutting lots on either side if both lots are occupied; if one lot is occupied and the other vacant, the setback shall be the setback of the occupied lot, plus one-half of the remaining distance to the required 30 foot setback. If neither of the abutting side lots or tracts are occupied by a structure, the setback shall be 30 feet.
- (2) Side Yard. Side yards shall be a minimum of 10 feet.
- (3) Rear Yard. There shall be a rear yard with a minimum depth of 30 feet to any permanent structure.

## (C) Accessory Buildings

Accessory buildings may be allowed if they

midnight to 7:00 AM, and from 10:00 PM to midnight (0000 to 0700, and 2200 to 2400 hours), and then averaged day to day over a 12 month period. [Added 1984, Ord. 415 §3]

**Loading Space** – An off-street space or berth on the same lot or parcel with a building or use, or contiguous to a group of buildings or uses, for the temporary parking of a vehicle while loading or unloading persons, merchandise or materials and which space or berth abuts upon a street, alley or other appropriate means of access and egress.

**Lodging House** – See *House (Boarding, Lodging or Rooming)*.

**Lot** – A plot, parcel or area of land owned by or under the lawful control and in the lawful possession of one distinct ownership.

**Lot Area** – The total horizontal area within the lot lines of a lot, but not including the private driveway area of a flag lot.

**Lot (Corner)** – A lot which occupies an interior angle of less than 135 degrees, formed by the intersection of two streets or a street and an accessway.

**Lot Coverage** – The area of a lot covered by a building or buildings, expressed as a percentage of the total lot area.

**Lot Lines** – The lines bounding a lot, but not the lines bounding the private driveway portion of a flag lot.

**Lot Line (Front)** – In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot.

**Lot Line (Rear)** – The line dividing one lot from another and on the opposite side of the lot from the front lot line; and in the case of an irregular or triangular shaped lot, a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.

**Lot Line (Side)** – Any lot line not a front or rear

lot line.

**Lot Width** – The horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

**Manufactured Homes** – For purposes of MCC .6301 through .6324, a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term *manufactured home* also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. [Added 1987, Ord. 549 §2]

**Manufactured Home Park or Subdivision** – For purposes of MCC .6301 through .6324, a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. [Added 1987, Ord. 549 §2]

**May** – *May* is permissive.

**Measures or Ballot Measures** –

[Deleted 1983, Ord. 365 § 3]

**Mobile Home** – A structure transportable in one or more sections, each built on a permanent chassis, and which is designed to be used for permanent occupancy as a dwelling, including a *Manufactured Home* as defined in ORS 446.003(17)(c). [Amended 1990, Ord. 643 § 2]

**Mobile Home Park** – Any place where two or more mobile homes are located within 500 feet of one another on a lot, tract or parcel of land where space is rented or kept for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person.

**Mortgage Lot** – A lot having less than the minimum area required under this Chapter, created out of a tract which itself conforms to lot area requirements, to enable the contract purchaser of the tract to finance construction of a single family residence thereon. A mortgage lot may be created only in the EFU, CFU and MFU districts.

**Motel** – Same as *Hotel*.



multnomah county  
planning commission

Dec. 1969  
scale 1" = 200'

✓ N.E. 1/4 SEC. 34-1S-1E