

# ANNOTATED MINUTES

Tuesday, September 24, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

## BOARD BRIEFING

*Chair Beverly Stein convened the meeting at 9:33 a.m., with Vice-Chair Dan Saltzman, Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present.*

- B-1      The Board of Commissioners Will Participate in a Discussion and Consensus Selection of Multnomah County Issues of Joint Interest Between the Cities and County.

**BOARD DISCUSSED HOUSING AND HOMELESSNESS; WORKFORCE; TRANSPORTATION AND BRIDGES; DOMESTIC VIOLENCE; DISPARITY STUDY IMPLEMENTATION; SHARED USE OF SCHOOL AND COUNTY FACILITIES; IMPLEMENTATION OF ZERO UGB EXPANSION URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN; STORM/EMERGENCY MANAGEMENT DEBRIEFING; COLLABORATIVE PLANNING AROUND A JOINT VISION; PUBLIC SAFETY EQUATION; JOINT SITING PROCESS AND PUBLIC SAFETY COUNCIL. BOARD CONSENSUS THAT COMMISSIONER COLLIER CONTINUE WORKING WITH JPACT ON BRIDGE FUNDING ISSUE; SCOTT PEMBLE BRIEF BOARD ON VARIOUS OPTIONS, COSTS AND RECOMMENDATIONS OF ZERO URBAN GROWTH BOUNDARY EXPANSION IN UNINCORPORATED COUNTY AND WHETHER TO WORK WITH THE CITIES, METRO, OR DO SEPARATELY; MIKE GILSDORF SCHEDULE A STORM/EMERGENCY MANAGEMENT BOARD DEBRIEFING TO DISCUSS FEMA LONG TERM MITIGATION GRANTS, FUTURE CONTINGENCY PLANNING, AND FLOOD IMPACT ON 2040 PLANNING EFFORTS IN LIGHT OF NEW FLOOD PLAN DESIGNATIONS; BOARD CONSENSUS THAT EACH CITY DESCRIBE ITS VISION AT THE BEGINNING OF THE NEXT JOINT MEETING. BOARD CONSENSUS THAT COUNTY**

**TOPICS INCLUDE HOUSING AND HOMELESSNESS ISSUES; WORKFORCE; PUBLIC SAFETY AND COLLABORATIVE PLANNING AROUND A JOINT VISION. CAROL FORD DIRECTED TO PREPARE MEMO.**

*There being no further business, the briefing was adjourned at 10:30 a.m. and the land use planning meeting convened at 10:35 a.m.*

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Tuesday, September 24, 1996 - 10:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

### **LAND USE PLANNING MEETING**

P-1      **CU 7-95/HV 17-95 DECISION FROM AUGUST 27, 1996 DE NOVO HEARING** in the Matter of an Appeal of the Hearings Officer Decision Regarding a Conditional Use Approval for a Dwelling Not Related to Forest Management in the Commercial Forest Use Zoning District for Property Located at 13913 NW SKYLINE BLVD., PORTLAND.

**PLANNER SUSAN MUIR SUBMITTED AND READ A SEPTEMBER 24, 1996 STAFF SUMMARY INTO THE RECORD OUTLINING THE DIFFERENCES BETWEEN STAFF RECOMMENDATIONS AND HEARINGS OFFICER RULING. COUNTY COUNSEL SANDRA DUFFY ADDRESSED LEGAL ISSUES RAISED IN DE NOVO HEARING. BOARD DISCUSSION WITH MS. DUFFY REGARDING WHETHER DOCUMENTS SUBMITTED BY WILLIAM COX SHOULD BE ENTERED INTO RECORD. IN RESPONSE TO BOARD QUESTIONS, MS. DUFFY AND MS. MUIR EXPLANATION AND DISCUSSION OF TEMPLATE ISSUE AND 45 DAY RULE. MR. COX COMMENTS IN OPPOSITION TO MS. DUFFY'S OPINION REGARDING SUBMITTAL OF ADDITIONAL MATERIAL INTO RECORD AND STAFF RECOMMENDATIONS. ARNOLD ROCHLIN COMMENTS IN SUPPORT OF STAFF RECOMMENDATIONS REGARDING TEMPLATE ISSUE, THE RECORD, AND THE STATUTE WHICH ALLOWS THE ACCEPTANCE OF STAFF ADVICE AT**

ANY TIME. MR. COX ADVISED THE ITEMS HE SUBMITTED WERE IN THE RECORD AT THE HEARINGS OFFICER LEVEL. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER HANSEN, IT WAS UNANIMOUSLY APPROVED THAT ITEMS SUBMITTED BY MR. COX BE INCORPORATED INTO THE RECORD. COMMISSIONER COLLIER'S MOTION TO ACCEPT STAFF RECOMMENDATIONS FAILED FOR LACK OF A SECOND. COMMISSIONER SALTZMAN MOVED, SECONDED BY COMMISSIONER COLLIER, APPROVAL TO OVERTURN THE HEARINGS OFFICER FINDINGS REGARDING THE TEMPLATE TEST. UPON CLARIFICATION OF MS. DUFFY, COMMISSIONERS SALTZMAN AND COLLIER CORRECTED THEIR MOTION AND SECOND FOR APPROVAL TO AFFIRM THE JUNE 26, 1996 HEARINGS OFFICER DECISIONS WHICH WERE APPEALED BY APPLICANT REGARDING THE TEMPLATE TEST ISSUE #1; DWELLING LOCATION ISSUE #3; LENGTH OF ROAD ISSUE #6; AND ZONING REQUIREMENT ISSUE #10. MOTION UNANIMOUSLY APPROVED. MS. MUIR AND MS. DUFFY EXPLANATION AND RESPONSE TO BOARD DISCUSSION. COMMISSIONER COLLIER'S MOTION TO OVERTURN HEARINGS OFFICER FINDING ON THE WEST HILLS RECONCILIATION REPORT FAILED FOR LACK OF A SECOND. FOLLOWING DISCUSSION, COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER HANSEN, APPROVAL TO APPLY THE WEST HILLS RECONCILIATION REPORT AS APPLICABLE LAW (#13). MS. MUIR RESPONSE TO BOARD QUESTIONS. MOTION UNANIMOUSLY APPROVED. MS. MUIR AND MS. DUFFY RESPONSE TO BOARD QUESTIONS AND DISCUSSION. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER SALTZMAN, HEARINGS OFFICER DECISIONS REGARDING PRIMARY AND SECONDARY FIRE SAFETY ZONES #7 AND CRITERIA DEALING WITH FIRE ACCESS STANDARDS ISSUE #8 WERE UNANIMOUSLY OVERTURNED AND MODIFIED TO CONFORM WITH STAFF RECOMMENDATIONS.

**UPON MOTION OF COMMISSIONER COLLIER,  
SECONDED BY COMMISSIONER SALTZMAN, THE  
HEARINGS OFFICER DECISION WAS  
UNANIMOUSLY APPROVED, AS MODIFIED.  
STAFF DIRECTO PREPARE FINAL ORDER WITH  
APPROPRIATE FINDINGS AND CONCLUSIONS.**

*There being no further business, the meeting was adjourned at 11:30  
a.m.*

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Tuesday, September 24, 1996 - 6:00 PM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

*Chair Beverly Stein convened the meeting at 6:02 p.m., with Vice-Chair  
Dan Saltzman, Commissioners Sharron Kelley and Gary Hansen present, and  
Commissioner Tanya Collier excused.*

### **LAND USE PLANNING MEETING**

P-2 First Reading of an ORDINANCE Adopting the West Hills Rural Area  
Plan, a Portion of the Multnomah County Comprehensive Framework  
Plan

**ORDINANCE READ BY TITLE ONLY. COPIES  
AVAILABLE. PLANNER GORDON HOWARD  
EXPLANATION AND RESPONSE TO BOARD  
QUESTIONS. JAY KRAVITZ TESTIMONY  
EXPRESSING CONCERN WITH DEVELOPMENT IN  
AREA OF FOREST PARK. SETH TANE TESTIMONY  
CONCERNING TRAFFIC, NOISE, WATER AND  
SEISMIC IMPACT IN WEST HILLS. JAMEY  
HAMPTON TESTIMONY CONCERNING  
RESPONSIBLE DEVELOPMENT. PHILIP  
THOMPSON TESTIMONY IN SUPPORT OF  
ORDINANCE. CHRIS FOSTER TESTIMONY  
REGARDING PLANNING COMMISSION VOTE,  
ADVISING THEY WILL BE ADDRESSING THE 200  
FOOT SETBACK ISSUE AT A FUTURE MEETING.  
DONIS McARDLE TESTIMONY CONCERNING  
RIGHTS OF WEST HILLS RESIDENTS. BRIAN  
LIGHTCAP TESTIMONY CONCERNING TRAFFIC  
ISSUES AND FARMING AND FORESTRY DESIG-**

**NATIONS. MR. HOWARD EXPLANATION TO ISSUES RAISED AND RESPONSE TO BOARD QUESTIONS. FOLLOWING DISCUSSION AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, THE FIRST READING WAS UNANIMOUSLY APPROVED. SECOND READING THURSDAY, OCTOBER 17, 1996.**

*There being no further business, the meeting was adjourned at 6:50 p.m.*

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Thursday, September 26, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

### **REGULAR MEETING**

*Chair Beverly Stein convened the meeting at 9:34 a.m., with Vice-Chair Dan Saltzman, Commissioners Sharron Kelley and Gary Hansen present, and Commissioner Tanya Collier excused.*

### **CONSENT CALENDAR**

**UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-12) WAS UNANIMOUSLY APPROVED.**

### **NON-DEPARTMENTAL**

- C-1 Appointment of Dawn Del Rio to the NON-DEPARTMENTAL CITIZEN BUDGET ADVISORY COMMITTEE
- C-2 Appointment of Charlsie Sprague to the DEPARTMENT OF ENVIRONMENTAL SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
- C-3 Re-Appointments of Joy Al Sofi and Kay Durtschi to the CITIZEN INVOLVEMENT COMMITTEE
- C-4 Re-Appointments of Leon Fox and Anita Ball to the METROPOLITAN HUMAN RIGHTS COMMISSION

## **DISTRICT ATTORNEY'S OFFICE**

- C-5        Budget Modification DA 1 Moving Funding for Two Positions to the Correct LGFS Organizations
- C-6        Budget Modification DA 2 Authorizing Renewal of the Organized Crime Narcotics (OCN) Gang Grant Funding for the Period October 1, 1996 through September 30, 1997

## **SHERIFF'S OFFICE**

- C-7        Package Store Liquor License Change of Ownership Application for GILL'S JACKPOT FOOD MART, 28210 SE ORIENT DRIVE, GRESHAM

## **DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- C-8        Intergovernmental Agreement 102707 with Portland Public Schools, for Contract Development and Implementation of Two Resource Team Models to Assist Families of Children with Developmental Disabilities or Developmental Delays, Ages Birth to Five, to Access Services within the Multnomah County Social Services Arena
- C-9        Intergovernmental Agreement 102827 with Burlington Water District to Replace Approximately 6,500 Lineal Feet of Substandard 4 Inch Cast Iron Pipe with Ten Inch Ductile Iron Pipe
- C-10       Intergovernmental Agreement 102967 with Portland Development Commission, Providing Funds to Pay for Weatherization Services at the Royal Palm Hotel and the Grand Oakes Apartments
- C-11       Amendment 2 to Intergovernmental Revenue Agreement 103535 with the City of Gresham, Adding Partial Funding for Emergency Basic Need Services for Homeless and Low Income People in East County

## **DEPARTMENT OF SUPPORT SERVICES**

- C-12       Intergovernmental Agreement 500207 with the Oregon State Police and Oregon Emergency Management Division for Participation in the Federal Emergency Management Agency State and Local Assistance Program through September 30, 1997

## **REGULAR AGENDA**

## **PUBLIC COMMENT**

- R-1            Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

***DIANNA ROBERTS COMMENTS AND HANDOUT REGARDING ADULT CARE HOME ISSUE.***

## **NON-DEPARTMENTAL**

- R-2            PROCLAMATION Proclaiming the Month of October, 1996 as BREAST CANCER AWARENESS MONTH in Multnomah County, Oregon

***COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-2. APRIL LEWIS AND BETTY GRAHAM PRESENTATION AND EXPLANATION. PROCLAMATION READ. PROCLAMATION 96-167 UNANIMOUSLY APPROVED.***

## **DISTRICT ATTORNEY'S OFFICE**

- R-3            Approval of Multnomah County Multidisciplinary Team Application and Plan for 1997 Child Abuse Multidisciplinary Intervention Funding

***COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-3. MICHAEL SCHRUNK EXPLANATION AND RESPONSE TO BOARD QUESTIONS. APPLICATION AND PLAN UNANIMOUSLY APPROVED.***

## **DEPARTMENT OF SUPPORT SERVICES**

- R-4            Certificate of Achievement for Excellence in Financial Reporting for Fiscal Year Ended June 30, 1995 Awarded to Multnomah County Finance Division

***CHAIR STEIN COMMENTS IN SUPPORT AND PRESENTATION OF AWARD. DAVE BOYER ACCEPTANCE AND AKNOWLEDGEMENT OF STAFF CONTRIBUTIONS.***

- R-5            RESOLUTION Levying Ad Valorem Property Taxes for Multnomah County, Oregon for Fiscal Year 1996-97

**COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-5 DAVE WARREN EXPLANATION AND REQUEST FOR BOARD APPROVAL OF A SUBSTITUTE RESOLUTION CONTAINING APPROPRIATE LEVY AMOUNT AND DATE. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, RESOLUTION 96-168 WAS UNANIMOUSLY APPROVED, AS AMENDED.**

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

- R-6            Intergovernmental Agreement 300407 with the City of Gresham for a Traffic Signal Coordination and Optimization Project

**COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-6. JOHN DORST EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AGREEMENT UNANIMOUSLY APPROVED.**

- R-7            PUBLIC HEARING and ORDER Transferring Nine Tax Foreclosed Properties to the City of Portland, Bureau of Parks and Recreation, for Public Purposes

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-7. KATHY TUNEBERG EXPLANATION. COMMISSIONER SALTZMAN EXPLANATION OF PROPOSED AMENDMENTS AND COMMENTS IN SUPPORT. DAVID YAMASHITA RESPONSE TO BOARD QUESTIONS. UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, ORDER 96-169 TRANSFERRING FOUR TAX FORECLOSED PROPERTIES TO THE CITY OF PORTLAND, BUREAU OF PARKS AND RECREATION, FOR PUBLIC PURPOSES; AND ORDER 96-170 TRANSFERRING FIVE TAX FORECLOSED PROPERTIES TO THE CITY OF PORTLAND, BUREAU OF PARKS AND RECREATION, FOR**



**NATURAL AREAS WERE UNANIMOUSLY  
APPROVED.**

- R-8 PUBLIC HEARING and ORDER Transferring One Tax Foreclosed Property to the City of Portland, Bureau of Water Works, for Public Purposes

**COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-8. TERI LIBERATOR EXPLANATION AND COMMENTS IN SUPPORT. ORDER 96-171 UNANIMOUSLY APPROVED.**

- R-9 PUBLIC HEARING and ORDER Transferring Two Tax Foreclosed Properties to the City of Portland, Office of Transportation, for Public Purposes

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-9. KATHRYN HALL EXPLANATION AND COMMENTS IN SUPPORT. ORDER 96-172 UNANIMOUSLY APPROVED.**

- R-10 PUBLIC HEARING and ORDER Transferring Nine Tax Foreclosed Properties to the Northeast Community Development Corporation for Low Income Housing Development

**COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-10. DENISE ROY EXPLANATION, COMMENTS IN SUPPORT AND RESPONSE TO BOARD QUESTIONS. ORDER 96-173 UNANIMOUSLY APPROVED.**

- R-11 PUBLIC HEARING and ORDER Transferring Two Tax Foreclosed Properties to the State of Oregon, Parks and Recreation Department, for Public Purposes

**COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-11. DAVE WRIGHT EXPLANATION AND COMMENTS IN SUPPORT. ORDER 96-174 UNANIMOUSLY APPROVED.**

R-12 PUBLIC HEARING and ORDER Transferring One Tax Foreclosed Property to the United States of America, U.S. Forest Service, for Public Purposes

**COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-12. CHARLOTTE CAMPBELL EXPLANATION AND COMMENTS IN SUPPORT. ORDER 96-175 UNANIMOUSLY APPROVED. BOARD ACKNOWLEDGED CONTRIBUTIONS OF KATHY TUNEBERG, STEPHEN KELLY AND STAFF OF THE TAX TITLE OFFICE. MS. TUNEBERG RESPONSE TO BOARD QUESTIONS AND COMMENTS.**

*The regular meeting was adjourned at 10:20 a.m. and the briefing convened at 10:23 a.m.*

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Thursday, September 26, 1996 - 10:15 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

### **BOARD BRIEFING**

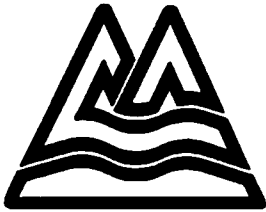
B-2 Presentation of New State Air Quality Requirements of Employers, Including Multnomah County, to Reduce Use of Single Occupant Vehicles through Employer-Sponsored Commuter Options. Presented by Susan Lee and Nina DeConcini.

**LANG MARSH, NINA DeCONCINI AND SUSAN LEE PRESENTATIONS AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION.**

*There being no further business, the meeting was adjourned at 10:53 a.m.*

OFFICE OF THE BOARD CLERK  
FOR MULTNOMAH COUNTY, OREGON

**Deborah L. Bogstad**  
Deborah L. Bogstad



## MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK  
SUITE 1510, PORTLAND BUILDING  
1120 SW FIFTH AVENUE  
PORTLAND, OREGON 97204  
CLERK'S OFFICE • 248-3277 • 248-5222  
FAX • (503) 248-5262

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

# AGENDA

## MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

**SEPTEMBER 23, 1996 - SEPTEMBER 27, 1996**

*Tuesday, September 24, 1996 - 9:30 AM - Board Briefing..... Page 2*

*Tuesday, September 24, 1996 - 10:30 AM - Land Use Decision.... Page 2*

*Tuesday, September 24, 1996 - 6:00 PM - Land Use Planning ..... Page 2*

*Thursday, September 26, 1996 - 9:30 AM - Regular Meeting..... Page 3*

*Thursday, September 26, 1996 - 10:15 AM - Board Briefing..... Page 5*

*Thursday Meetings of the Multnomah County Board of Commissioners are \*cablecast\* live and taped and can be seen by Cable subscribers in Multnomah County at the following times:*

*Thursday, 9:30 AM, (LIVE) Channel 30*

*Friday, 10:00 PM, Channel 30*

*Sunday, 1:00 PM, Channel 30*

*\*Produced through Multnomah Community Television\**

AN EQUAL OPPORTUNITY EMPLOYER

*Tuesday, September 24, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**BOARD BRIEFING**

- B-1      The Board of Commissioners Will Participate in a Discussion and Consensus Selection of Multnomah County Issues of Joint Interest Between the Cities and County. 1 HOUR REQUESTED.*
- 

*Tuesday, September 24, 1996 - 10:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**LAND USE PLANNING MEETING**

- P-1      CU 7-95/HV 17-95 DECISION FROM AUGUST 27, 1996 DE NOVO HEARING in the Matter of an Appeal of the Hearings Officer Decision Regarding a Conditional Use Approval for a Dwelling Not Related to Forest Management in the Commercial Forest Use Zoning District for Property Located at 13913 NW SKYLINE BLVD., PORTLAND.*
- 

*Tuesday, September 24, 1996 - 6:00 PM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**LAND USE PLANNING MEETING**

- P-2      First Reading of an ORDINANCE Adopting the West Hills Rural Area Plan, a Portion of the Multnomah County Comprehensive Framework Plan*

Thursday, September 26, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

**REGULAR MEETING**

**CONSENT CALENDAR**

**NON-DEPARTMENTAL**

- C-1      *Appointment of Dawn Del Rio to the NON-DEPARTMENTAL CITIZEN BUDGET ADVISORY COMMITTEE*
- C-2      *Appointment of Charlsie Sprague to the DEPARTMENT OF ENVIRONMENTAL SERVICES CITIZEN BUDGET ADVISORY COMMITTEE*
- C-3      *Re-Appointments of Joy Al Sofi and Kay Durtschi to the CITIZEN INVOLVEMENT COMMITTEE*
- C-4      *Re-Appointments of Leon Fox and Anita Ball to the METROPOLITAN HUMAN RIGHTS COMMISSION*

**DISTRICT ATTORNEY'S OFFICE**

- C-5      *Budget Modification DA 1 Moving Funding for Two Positions to the Correct LGFS Organizations*
- C-6      *Budget Modification DA 2 Authorizing Renewal of the Organized Crime Narcotics (OCN) Gang Grant Funding for the Period October 1, 1996 through September 30, 1997*

**SHERIFF'S OFFICE**

- C-7      *Package Store Liquor License Change of Ownership Application for GILL'S JACKPOT FOOD MART, 28210 SE ORIENT DRIVE, GRESHAM*

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- C-8      *Intergovernmental Agreement 102707 with Portland Public Schools, for Contract Development and Implementation of Two Resource Team Models to Assist Families of Children with Developmental Disabilities or*

*Developmental Delays, Ages Birth to Five, to Access Services within the Multnomah County Social Services Arena*

- C-9      *Intergovernmental Agreement 102827 with Burlington Water District to Replace Approximately 6,500 Lineal Feet of Substandard 4 Inch Cast Iron Pipe with Ten Inch Ductile Iron Pipe*
- C-10     *Intergovernmental Agreement 102967 with Portland Development Commission, Providing Funds to Pay for Weatherization Services at the Royal Palm Hotel and the Grand Oaks Apartments*
- C-11     *Amendment 2 to Intergovernmental Revenue Agreement 103535 with the City of Gresham, Adding Partial Funding for Emergency Basic Need Services for Homeless and Low Income People in East County*

**DEPARTMENT OF SUPPORT SERVICES**

- C-12     *Intergovernmental Agreement 500207 with the Oregon State Police and Oregon Emergency Management Division for Participation in the Federal Emergency Management Agency State and Local Assistance Program through September 30, 1997*

**REGULAR AGENDA**

**PUBLIC COMMENT**

- R-1      *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

**NON-DEPARTMENTAL**

- R-2      *PROCLAMATION Proclaiming the Month of October, 1996 as BREAST CANCER AWARENESS MONTH in Multnomah County, Oregon*

**DISTRICT ATTORNEY'S OFFICE**

- R-3      *Approval of Multnomah County Multidisciplinary Team Application and Plan for 1997 Child Abuse Multidisciplinary Intervention Funding*

**DEPARTMENT OF SUPPORT SERVICES**

- R-4      *Certificate of Achievement for Excellence in Financial Reporting for Fiscal Year Ended June 30, 1995 Awarded to Multnomah County Finance Division*

- R-5        *RESOLUTION Levying Ad Valorem Property Taxes for Multnomah County, Oregon for Fiscal Year 1996-97*

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

- R-6        *Intergovernmental Agreement 300407 with the City of Gresham for a Traffic Signal Coordination and Optimization Project*
- R-7        *PUBLIC HEARING and ORDER Transferring Nine Tax Foreclosed Properties to the City of Portland, Bureau of Parks and Recreation, for Public Purposes*
- R-8        *PUBLIC HEARING and ORDER Transferring One Tax Foreclosed Property to the City of Portland, Bureau of Water Works, for Public Purposes*
- R-9        *PUBLIC HEARING and ORDER Transferring Two Tax Foreclosed Properties to the City of Portland, Office of Transportation, for Public Purposes*
- R-10       *PUBLIC HEARING and ORDER Transferring Nine Tax Foreclosed Properties to the Northeast Community Development Corporation for Low Income Housing Development*
- R-11       *PUBLIC HEARING and ORDER Transferring Two Tax Foreclosed Properties to the State of Oregon, Parks and Recreation Department, for Public Purposes*
- R-12       *PUBLIC HEARING and ORDER Transferring One Tax Foreclosed Property to the United States of America, U.S. Forest Service, for Public Purposes*

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*Thursday, September 26, 1996 - 10:15 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**BOARD BRIEFING**

- B-2        *Presentation of New State Air Quality Requirements of Employers, Including Multnomah County, to Reduce Use of Single Occupant Vehicles through Employer-Sponsored Commuter Options. Presented by Susan Lee and Nina DeConcini. 25 MINUTES REQUESTED.*

TANYA COLLIER  
Multnomah County Commissioner  
District 3



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

## MEMORANDUM

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TO: Office of the Board Clerk  
Board of County Commissioners

FROM: Michele Fuchs

DATE: August 30, 1996

SUBJECT: Commissioner Collier's absence from Board meeting

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Please excuse Commissioner Collier from the September 24th planning meeting at 6pm as she has a previously scheduled speaking engagement.

BOARD OF  
COUNTY COMMISSIONERS  
96 SEP -4 AM 8:40  
MULTNOMAH COUNTY  
OREGON



Meeting Date: ~~AUG 27 1996~~ SEP 24 1996  
Agenda No: ~~P-1~~ P-1  
Est. Start Time: ~~9:30~~ 10:30

(Above Space for Board Clerk's Use ONLY)

### AGENDA PLACEMENT FORM

**SUBJECT:** DeNovo Hearing in the Matter of an Appeal of Hearings Officer's decision on CU 7-95 & HV 17-95.

**BOARD BRIEFING** Date Requested:  
Amt. of Time Needed:  
Requested By:

**REGULAR MEETING** Date Requested: August 27, 1996  
Amt. of Time Needed: 1 hour

**DEPARTMENT:** DES **DIVISION:** Transportation & Land Use Planning  
**CONTACT:** Susan Muir **TELEPHONE:** 248-3043  
**BLDG/ROOM:** 412 / 109

**PERSON(S) MAKING PRESENTATION:** Susan Muir

### ACTION REQUESTED

☐ Informational Only ☐ Policy Direction ☐ Approval ☒ Other

### SUGGESTED AGENDA TITLE

DeNovo Hearing in the Matter of an Appeal of Hearings Officer's regarding a Conditional Use approval for a dwelling not related to forest management in the Commercial Forest Use zoning district.

### SIGNATURES REQUIRED

**Elected Official:** \_\_\_\_\_

or

**Department Manager:** *KB* Larry F. Nicholas *mo*

CLERK OF  
COUNTY COMMISSIONERS  
96 AUG 22 AM 11:45  
MULTNOMAH COUNTY  
OREGON

**GRAHAM Aimee L**

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**From:** BOGSTAD Deborah L  
**To:** GRAHAM Aimee L; JILOVEC Andrea M; MOONEY Andrew T; STEIN Beverly E; TYLER Cameron V; FARRELL Delma D; CARLSON Darlene M; SALTZMAN Dan S; HANSEN Gary D; BALL Jan G; ARREDONDO Juana M; FUCHS Michele A; DELMAN Mike H; ROJO Maria D; TRACHTENBERG Robert J; MARTIN Lyne L; KELLEY Sharron E; DUFFY Sandra N; COLLIER Tanya D  
**Cc:** MUIR Susan L  
**Subject:** Decision on Evans Land Use Case  
**Date:** Thursday, September 19, 1996 12:02PM

Just behind the agenda placement form of the Board P-1 packet for the 10:30 am, Tuesday, 9/24 land use decision continued from the 8/27 de novo hearing are the following new submittals: William Cox 9/13 memorandum of law in support of conditional use approval; William Cox 9/13 memorandum of law regarding template standards with exhibits; Kim Evans 9/13 FAX regarding Susan Muir on site meeting; Arnold Rochlin 9/13 post hearing testimony; Chris Foster 9/16 response to William Cox 9/13 memoranda; Arnold Rochlin 9/17 response to William Cox 9/13 memoranda; William Cox 9/18 memorandum of law in response to Arnold Rochlin 9/13 post hearing testimony; and Sandra Duffy 9/18 legal opinion on scope of review, the record and the SEC criteria.

It is my understanding that as Commissioner Kelley was not present during the de novo hearing she will not be participating in the decision process.

**William C. Cox** attorney at law

*Land Use and Development Consultation  
Project Management*

RECEIVED  
SEP 13 1996  
Multnomah County  
Zoning Division

September 13, 1996

Board of County Commissioners  
Multnomah County  
c/o Multnomah County Division of Planning and Development  
2115 S.E. Morrison Street  
Portland, Oregon 97214

RECEIVED  
SEP 31 1996  
Multnomah County  
Zoning Division  
8:40 a.m.

**Re:** Applicant's Record submittal, Board of County Commissioners  
Review

Kim Evans, Applicant  
Case File: CU 7-95; HV 17-95

The following memorandum of law is offered in support of  
applicant, Kim Evans' request for conditional use approval of a  
dwelling not related to forest management.

**Review of the Board is limited to the issues appealed by  
applicant:**

The Board Order Review of the Hearings Officer decision in  
this matter was not timely made. Therefore, the scope of review  
is limited to those issues raised in applicant's Notice of  
Review. Applicant's notice was timely filed with the Board.

Multnomah County Code (MCC) § 11.15.8260(A) regulates the  
period in which an appeal or notice of review must be filed with  
the County. That section states:

Decisions of the Planning Commission or the Hearings Officer shall be *final at the close of business on the tenth day* following submittal of the written decision to the Clerk of the Board under MCC .8255, unless

(1) A Notice of Review from a party is received by the Planning Director... or

(2) The Board, on its own motion, orders review under MCC .8265. (emphasis added).

In this matter, the decision of the Hearings Officer was submitted to the Board Clerk on July 3, 1996. The last day to appeal the decision would have then been July 13, 1996. Because of an error by the County planning staff in delivering notice, the last day to appeal was extended to July 22, 1996. Applicant filed a Notice of Review on July 12, 1996. The Board of Commissioners did not Order a review of the Hearings Officer decision until July 25, 1996, after the extended ten day period for appeal had expired. Neither the County Planning Department, nor any opponents filed a Notice of Review to appeal the Hearings Officer decision. Because the Board was not timely in Ordering review of the Hearings Officer decision and the County Planning Department did not appeal the Hearings Officer decision, the only timely and effective appeal was the Notice of Review submitted by applicant. MCC .8270(G) provides that:

Review of 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).

Therefore, in accordance with MCC .8620(A) and MCC .8270(G), the only issues reviewable are those issues timely raised on appeal by the applicant. Specifically this review should be limited to the Hearings Officer conclusion related to MCC .2074(A)(1) which

are located under item number 9, page 13 of the decision; MCC .2074(A)(4) also located under item number 9 pages 14/15 of the decision; and, MCC 11.15.8505(A)(2) located on pages 20/21 of the decision, as well as the Hearings Officer decision to allow a letter from DLCD into the record.

**Determination by the Board that the Scope of Review is de novo deprives applicant of Constitutionally protected due process rights:**

The determination of the Board that this review hearing will be de novo deprives applicant of due process rights provided for in Multnomah County Code. MCC 11.15.8270 governs the Scope of Review in a hearing before the Board of County Commissioners. MCC .8270 provides:

(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.

...

(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 ...

(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 decisions, 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.

The Board is relying on Resolution 95-55 for its authority to hear this review *de novo*. Resolution 95-55 neither wipes out the due process protections afforded by MCC .8270, nor replaces the required findings of MCC .8270. Only through the passage of an ordinance can the board alter the due process protection afforded to applicant in the Multnomah County Code.

Resolutions are not the equivalent of legislation. They do not have the full force and effect of law.

The power of the legislature to effectively legislate by resolution is confined within very narrow limits. ... it can not go outside and legislate generally on matters involving property or other rights. As to such matters, its resolutions have only the effect of an expression of opinion and no more. 'A resolution is not a law, but merely the form in which the legislative body expresses an opinion.' *Rowley v. City of Medford*, 132 Or 405, 414, 285 P 1111 (1930).

Multnomah County Home Rule Charter provides that all legislative action by the County shall be by ordinance, not by resolution. The procedures surrounding the adoption of a resolution do not equate with the procedural protection required for the adoption of an ordinance. Even Resolution 95-55 stated that it shall be implemented only on a trial basis and then be evaluated. After the evaluation period expired, if the Board wanted to continue the effect of the resolution, the Board should have taken legislative action to officially adopt the resolution's terms as an ordinance. The procedural protection afforded to an applicant in MCC .8270 cannot be taken away at the

whim of the Board through the adoption of a resolution. The Board's failure to adhere to the Code review provisions and procedures has substantially prejudiced the applicant.

Because of the lack of procedural protections afforded in the resolution process, by declaring all review to be de novo, the Board has redefined its procedural obligations to the applicant. Contrary to the requirements in MCC .8270, the Board has failed to make the required findings or considerations ordered in MCC .8270 (E). Such action has denied the applicant procedural due process protections.

If the Board adhered to Code requirements it would have been extremely difficult to justify de novo review in this matter. First, the applicant, the only party to timely file Notice of Review, requested review be limited to facts in the record. Second, the granting of a de novo hearing has resulted in more prejudice to the applicant than any other party who participated before the hearings officer or staff. Third, all the evidence being presented to the Board on its de novo review is evidence that was available and could have been presented at the time of the initial hearing.

The lack of due process afforded applicant throughout this appeal continues to occur. Applicant was only recently presented with a copy of an undated, unsigned form document requesting action of the Multnomah County Board. Applicant did not receive a copy of this document until after the August 27, 1996 Board hearing. Applicant was not made aware of the several issues the County Planning Staff intended to challenge, let alone of the County's staff intention to appeal, nor was she made aware of the scope of the Board ordered review. For applicant's Notice of Review, she was required to plead with specificity the issues

being appealed to enable the Board to respond. The same notice and issue clarification was not provided to the applicant. This system of justice does not create an even playing field. It was not until the hearing began did applicant learn that the County Planning Staff had requested the Board to review each and every decision of the Hearings Officer. These surprise tactics have no place in a quasi-judicial process and have resulted in a substantial prejudice and deprivation of applicant's due process rights.

Declaring this review *de novo* has opened up the review to a degree that was not necessary, nor needed for its proper and effective resolution. The failure to consider the requisite factors in ordering *de novo* review has resulted in a substantial prejudice, financial burden, and denial of due process to the applicant. The action of the County is exactly what was being criticized when former Chief Justice Peterson stated:

"under our monstrous system, the most intelligent lawyer rarely can advise the client with any measure of confidence. The wealthy client risks his fortune by venturing into the morass of review of a public bodies action. The middle class and the poor can't afford the risk." *Forman v. Clatsop County*, 297 Or 129 (1984).

**Written and Oral Testimony of individuals not properly before the Board should be stricken from the record:**

The admission of additional testimony by individuals who did not appear or submit evidence prior to the record of the Hearings Officer closing should be stricken from the record before the Board. MCC 11.15.8270 governs the scope of review. This section is designed to protect a party's due process rights. MCC .8270(E) provides that the Board may listen to additional testimony or new evidence "if it is established that the

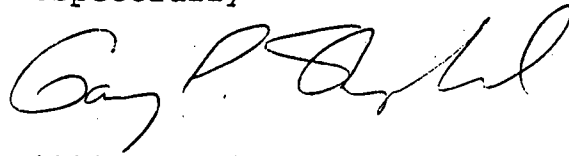


additional testimony or other evidence could not reasonably have been presented at the prior hearing." This section requires "new" participants to present evidence and the Board to find a good reason why they failed to appear and participate earlier in the process. There is no evidence directed towards this standard nor any finding made by the Board that would justify the participation of either Arnold Rochlin or Christopher Foster at this stage in the proceeding

If these and other similarly situated individuals wanted to participate in this decision and voice their concerns, they were provided with ample notice and opportunity to do so at the hearing officer level. Neither Mr. Rochlin nor Mr. Foster chose to do so.

The standards and procedural protections in MCC .8270 are designed with the due process interests of applicants in mind. Participation at an earlier stage by interested individuals would place applicants on notice of arguments intended to be made and provide applicant with ample time to prepare. For the Board to allow individuals to participate who are appearing for the first time at the review hearing before the Board, allows individuals to literally lay in wait and spring upon an applicant at the last moment. Allowing individuals who have not appeared or submitted testimony prior to the Board hearings without establishing the foundation that the additional testimony or other evidence could not reasonably have been presented at the prior hearing is contrary to the Code and amounts to a deprivation of applicant's due process rights. The review process has been altered by the Board to favor opponents and substantially prejudiced the applicant.

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "Gary P. Shepherd".

William C. Cox

Gary P. Shepherd

Of Attorneys for Applicant

**William C. Cox** attorney at law

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*Land Use and Development Consultation  
Project Management*

September 13, 1996

Board of County Commissioners  
Multnomah County  
c/o Multnomah County Division of Planning and Development  
2115 S.E. Morrison Street  
Portland, Oregon 97214

Re: Applicant's Record submittal, Board of County Commissioners  
Review  
Template test  
ORS 197.646's effect on County regulations not incorporated  
after state amendments  
Compliance with Statewide Goal 5

Kim Evans, Applicant  
Case File: CU 7-95; HV 17-95

The following memorandum of law addresses the issues of: (1) which template standards, the state's or the county's, applies in review of this application, (2) whether ORS 197.646 prevents County regulations from applying after the state has amended its administrative rules but the County has failed to incorporate the amended rules into its land use regulations, and (3) whether applicant has demonstrated compliance with Statewide Planning Goal 5 and effectively implementing regulations. This submission should be read in conjunction with memorandums of law that are part of the record and relied in part by the Hearings Officer in reaching his decision on these three issues. (See Exhibits DD, II, and PP).

**Template Test:**

Applicant is in agreement with the Hearings Officer ruling on the issue of the applicable template test standard. "Since the County has not yet amended its land use regulations implementing the 1994 amendments to Goal 4 and its administrative rules, ORS 197.646(3) requires that the amended goal and administrative rules 'shall be directly applicable to the local government's land use decision.' Therefore, the applicable template test is found in OAR 660-06-027." This result is demanded by the plain language of the statute.

Prior to acknowledgment of local comprehensive plans and implementing regulations, land use decisions must be made in compliance with statewide goals. ORS 197.175(2)(c). Local government's have long relied on the proposition stated in *Byrd v. Stringer*, 295 Or 311 (1983), that statewide goals do not apply directly to land use decisions by local governments with acknowledged land use legislation. To some extent, this proposition has been legislatively abrogated with the adoption of ORS 197.646.

ORS 197.646 was enacted as Oregon Laws 1991, chapter 612, section 7. The statute's effective date was after the *Byrd* decision, as well as being **after** *Foland v. Jackson County*, 311 Or 167 (1991), where the court most recently confirmed the principals in *Byrd*. ORS 197.646 was an attempt by the legislature to promote uniformity in the regulation of land use activities. While it is recognized that local governments play an important role in the administration of land use regulations, the state legislature, within its power, enacted ORS 197.646 to

prevent inconsistencies from municipality to municipality from interfering with the states attempt to regulate land use activities.

ORS 197.646 provides in part:

(1) A local government **shall** amend the comprehensive plan and land use regulations to implement new or amended statewide planning goals, commission **administrative rules** and land use statutes *when such goals, rules, or statutes become applicable to the jurisdiction.*

(3) When a local government does not adopt comprehensive plan or land use regulation amendments as required by subsection (1) of this section, the new or **amended goal**, rule or statute shall be **directly applicable to the local government's land use decision.** (emphasis added).

ORS 197.646 unequivocally and unambiguously states that when a local government does not adopt land use regulations to implement amended state administrative rules when such rules become applicable, the amended rule **shall** be directly applicable to the local governments land use decision. The opposition argues that this rule does not apply when the local governments have unacknowledged but more restrictive implementing regulations. Such an interpretation cannot be found in the plain terms and meaning of the statute.

When called upon to interpret a statute, Courts must first examine the statutes actual words. *Dept. of Human Resources, Mental Health and Development Disability Services Div. V. AFSCME Council 75*, 125 Or App 625, 866 P2d 498 (1994). If the intent of the legislature is clear from the plain language of the statutory provision, further inquiry is unnecessary. *Portland General Electric Company v. Bureau of Labor and Industries*, 317 Or 606,

857 P2d 1143 (1993). The plain language of a statute must be construed to mean what it says. *Myrick v. Freuhauf Corp.*, 13 F. 3d 1516 (1994). Here, the legislature has spoken directly and unambiguously to the precise questions at issue.

If the legislature wanted the statute to read as the opposition and staff argue, they would have included the terms "more restrictive" or "less restrictive" in ORS 197.646(1). Rather than ending with "when such goals, rules, or statutes become applicable to the jurisdiction," the statute would need to read when such rules are more restrictive than local regulations. But the legislature did not include the language the opposition and staff would now have the Board read into the statute. No where in the law does it say that the "more restrictive" provisions are not subject to acknowledgment procedures or the requirements of ORS 197.646. ORS 174.010 is the general rule for construction of statutes and contains a statutory enjoinder "not to insert what has been omitted, or to omit what had been inserted." Thus, the Board is prohibited by ORS 174.010 from reading a more restrictive or less restrictive requirement or standard into the statute.

ORS 197.646 is a statute that on its face requires certain state legislative statutes and regulations will apply directly to local government decisions **before** post acknowledgment amendments have been incorporated in to the local government's comprehensive plan and land use regulations. The statute cannot be read any other way. Such a result will not lead to absurd results as argued by the opposition.

As discussed before, ORS 197.646 was an attempt by the legislature to promote uniformity in the regulation of land use activities. The state legislature enacted ORS 197.646 to prevent

inconsistencies from municipality to municipality from interfering with the states attempt to regulate land use activities. It ensures that until a local government has its implementing regulations pursuant to an amended state goal acknowledged, state law will control a land use decision. It is not a question of more restrictive or less restrictive. The result legislature intended is clear from on the face of the statute.

The need for uniformity in land use regulations is never more prevalent than in the regulation of forest zones. The state adopted OAR 660-06-027 as a means to ensure the balance of competing interests within forest zones. It is often the case that tracts of land overlap from one county to another, resulting in different and conflicting regulation affecting a single tract of land. ORS 197.646 removes conflicts over the applicable law until a local government has its implementing regulations acknowledged by making the state law supreme.

Prior to July 1996 amendments, Multnomah County's 1995 zoning regulations were last amended in 1992. Multnomah County Ordinance No. 743 amended the Commercial Forest Use Zoning District to conform with 1990 amendments made by LCDC regarding OAR 660, Division 6 and Goal 4 lands. The County's attempt to regulate dwellings not related to forest management is found in MCC 11.15.2052. MCC 11.15.2052 sought to conform with and carry out the purposes of OAR 660-06-028. OAR 660-06-028 was repealed by the state in the 1994 amendments to the Oregon Administrative Rules, found in OAR 660-06-027. Thus, the Multnomah County regulations in effect when applicant submitted her application were based on a state rule that is no longer in effect. The significance of this fact cannot be overlooked. Multnomah County

has just recently amended it's land use regulations to implement 1994 amended statewide goals and rules as required by 197.646 and OAR 660-06-000(2)(c). The law that was effective at the time the application was submitted controls. ORS 197.646 (1) and (3) demand that state law apply to this land use decision.

For the Board to Read the statute as the opposition and staff argue, would be to rewrite a State administrative rule that is clear and unambiguous in its directive. The Board cannot alter the meaning and effect of a state administrative regulation just because it may impact a County's desired policy. ORS 197.646 is beyond a matter of merely County concern. Separation of powers principals establish it is the job of the Legislature to legislate and establish policy. It is not the job of the Board or even Article III Courts to determine whether a piece of legislation is good policy or bad. This would involve the Board exceeding its authority, and violating separation of powers principals.

Applicant agrees with the Hearings Officer that the statute is unambiguous and leaves no room for interpretation. As demanded by 197.646 (1) & (3), because the County has not yet obtained acknowledgment for its implementing regulations pursuant to the amended Goal 4 administrative rule, the states test found in OAR 660-06-027 shall be directly applicable to the local government's land use decision.

**ORS 197.646 is mandatory:**

Applicant does not, in this case, need to argue the authority of local governments to adopt more restrictive regulations. The staff, DLCD, and the opposition would have the



Board believe that ORS 197.646 does not prevent the County's template standards from applying solely because the County may, in some circumstances unique to the local governments, adopt regulations more restrictive than state law provides for. The County and DLCD claim that before post-acknowledgment Goal amendments are incorporated into local land use regulations, local governments are free to follow more restrictive local ordinances, rather than the amended state goals and regulations. There is no statutory authority for this argument. The County and DLCD site to *Dilworth* and other similar cases for such authority. The Hearings Officer has found, and the applicant agrees, that the hold in *Dilworth v. Clackamas County* does not apply in this case.

Although the *Dilworth* case is factually similar, in *Dilworth*, LUBA was not called upon to consider the effect of 197.646 (1) & (3). In the case before the Board, Multnomah County failed to amended its land use regulations to implement the 1994 Oregon Administrative Rule amendments until nearly two and a half years after the state amended its Goal 4 administrative rules, and well after the applicant's application was submitted.

*Dilworth* is of no value here because application of ORS 197.646 is the central issue. Furthermore, neither of the cases relied upon by Sandra Duffy, Multnomah County Counsel (*Kola Teppe v. Marion County*, *Spathas v. Portland*, *Brewster v. Keizer*, nor *Zorn v. Marion County*) deal directly with the impact and meaning of ORS 197.646 (1) and (3). These cases deal with the application of statewide gals and administrative rules after acknowledgment of local implementing regulations has occurred. They do not deal with the situation presented here where a local

government has failed to amend its land use regulations to implement amended state administrative rules, when such rules become applicable to the jurisdiction. In such situations, ORS 197.646 controls. Thus the cases cited by the County and DLCD are of no use.

ORS 197.646 simply says if the County does not follow the procedures available to and required of it, state law will govern. These procedural protections ensure applicant's due process rights are protected and cannot be ignored by the Board. Because the County took nearly two and a half years to go through the acknowledgment procedures after state law was amended, they are subject to the provisions of ORS 197.646. The state template test controls this review.

In addition, applicant would like to reassert her position that DLCD is not properly before the Board, as testimony submitted by DLCD was improperly allowed to become part of the record. In support of her position, applicant urges the Board to review applicant's motion to strike the DLCD letter from the record, entered as Exhibit PP.

**Goal 5 and its administrative rules apply directly to this application:**

Applicant agrees with the Hearings Officer determination that Goal 5 and its administrative rules apply directly to this application. In making this determination the Hearings Officer relied in part upon a submission by applicant, entered as Exhibit II. Applicant hereby incorporates Exhibit II by reference.

Only the laws that are in effect at the time an application is submitted are applicable in review of a land use application. MCC 11.15.6426, establishing the SEC overlay district and SEC-h

(wildlife habitat), was unacknowledged and not effective when the applicant submitted her application. It is improper for the County to apply MCC 11.15.6426 to this application.

Ordinance No. 832 amended the Significant Environmental Concern (SEC) section of the Multnomah County Code and adopted the ordinance as part of the Multnomah County Comprehensive Framework Plan. When the application was submitted, these amendments to the County Comprehensive Plan had yet to be acknowledged by the Land Conservation and Development Commission. ORS 197.625(3) provides:

- (a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation is effective at the time specified by local government charter or ordinance ...
- (b) Any approval of a land use decision ... subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment.

The "home rule charter" of Multnomah County, Chapter V. Ordinances, § 5.50 states that non-emergency ordinances shall be effective on the 30<sup>th</sup> day after it is signed by the Board of Commissioner Chair, unless a later date is provided for, or it is voted on by the county. Ordinance No. 832 was signed by the Multnomah County Chair on September 7, 1995. Thus, the Comprehensive Plan amendments in Ordinance No. 832 involving MCC 11.15.6426 did not become effective until October 7, 1995.

Only those laws that are legally effective according to local ordinance, whether acknowledged or unacknowledged, can be applied to a land use application. As of July 12, 1995, when this application was submitted, the County had neither acknowledge, nor effective SEC overlay implementing regulations.

Because the County neither had acknowledged nor effective SEC overlay implementing regulations, Goal 5 and its implementing regulations must apply. ORS 197.625 (3)(b). Applicant reached this conclusion based on the following timeline of events.

According to Ordinance No. 832, the County adopted Ordinance No. 801, which included MCC 11.15.6426, establishing Significant Environmental Concern overlay districts, and SEC-h(wildlife habitat). Ordinance No. 801 implemented the previously adopted Ordinance No. 797 (the "West Hills Reconciliation Report"). In February of 1995, LCDC issued reports declaring County Ordinances Nos. 797 and 801 among others, deficient as not meeting the requirements of Goal 5. In response to this, Multnomah County passed Ordinance No. 832 amending Section 11.15.6400 et. Seq. Of the Multnomah County Zoning Code. These standards, which include SEC-h (wildlife habitat) standards, remain unacknowledged, and, as stated above, did not become effective until after the application was submitted. It was thus improper for Multnomah County Staff to apply unacknowledged and ineffectual standards in reviewing applicant's request.

Applicant agrees with the Hearings Officer determination that the applicant can comply with the requirements of Goal 5. Biological studies and information prepared by A.G. Crook establish this fact. Applicant hereby incorporates the SEC-h report, entered as Exhibit B6, by reference.

At the August 27, 1996 hearing, opponent Arnold Rocklin, brought to the Boards' attention MCC .6420. Even though applicant argues in an attached memo that Mr. Rochlin was not properly before the Board, applicant, without waiving her other arguments, will address Mr. Rochlin's concerns. The decisions of the Hearings Officer regarding compliance with MCC .6420 was not

properly appealed in accordance with MCC .6416. Neither during applicant's pre-application conference, nor at any time thereafter, was it brought to applicant's attention that the criteria found in MCC .6420 needed to be addressed. The staff report and Hearings Officer decision also lack analysis with respect to MCC .6420. While neither the Hearings Officer, nor staff, specifically addressed it, the record before the Hearings Officer clearly establishes that applicant meets the standards in MCC .6420 (B), (C), (D), (E), (F), (G), (M), (N), (O), (P), and (Q). MCC .6420 (A), (H), (I), (J), (K), and (L) are not applicable to applicant. This fact is also established by evidence from the record before the Hearings Officer.

MCC .6420 (B), (C), (D), and (M):

(B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Comment: Applicant meets this standard. The site is presently under a forest management plan and has recently been harvested and replanted. The area that applicant's proposes to build upon was identified as a clearing under the forest management plan. Applicant proposed homesite will result in the least amount of forest land being disturbed. See A.G. Crook, SEC-h permit application and Land Development Consultants submissions for more detail.

(C) The harvesting of timber on lands designated SEC shall be conducted in a manner which will insure that natural, scenic, and water shed qualities will be maintained to the greatest extent practicable or will be restored within a brief period of time.

Comment: Applicant meets this standard. Applicant has no immediate intention to harvest any trees that will be detrimental to the areas qualities. Applicant will conduct forest practices that will aid in tree growth and the productivity of the forest on the property. See A.G. Crook SEC-h permit report.

(D) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

Comment: Applicant meets this standard. Applicant has presented significant evidence that the area chosen in which to locate a dwelling is the area that best achieves this standard. Applicant has done significant studies on alternative housing locations at the request of the County staff and Hearings Officer. The site chosen was based upon input from professional, experts, and neighbors as to the best location for a home on the site. All the studies and comments point to the Northwest location as the site that best achieves the balance sought by the County. Applicant has presented evidence that the Northwest location best promotes forest practices as it disturbs the least amount of forested area. No trees would require removal to site a home there. Other sites looked at would require either significant tree removal, significant grading, and other disturbances to the land. These activities would not only be detrimental to the land, and increase erosion potential, but would be cost prohibitive to the applicant.

It has been the County's staff contention that the applicant has not adequately addressed alternative site locations. Not

only at the hearings officer level, but again at the County Board level, staff continues to represent that applicant has not addressed alternative site locations. Taken in its best light, such a statement is designed solely to mislead the Board. Applicant has gone out of its way to address each and every alternative homesite suggested by the staff. The record contains several professionally done evaluations of the impacts building a home on the other examined sites would have on this land. See the record. Applicant has complied with each County staff request and evaluated each alternative site identified by staff. Yet the County staff is alleging other sites exists. No other homesite identified by staff will better balance functional considerations and costs with the need to preserve and protect areas of environmental significance than the one proposed by applicant.

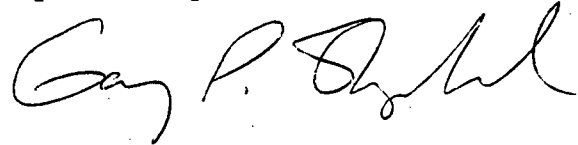
**(M) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the environmental character.**

Comment: Applicant meets this standard. Applicant has proposed to locate her home in an area where the construction will have the least impact on the soil and will not increase the possibility of erosion. The area is relatively flat and already cleared. Alternative site locations will require significant cut, fill, and grading, and retention because of the steep slopes present. Applicant has provided substantial evidence to this fact.

Evidence in the record as well as evidence presented at hearings before the Board has and will establish that applicant meets or exceeds the standards in MCC .6420. Applicant meets all

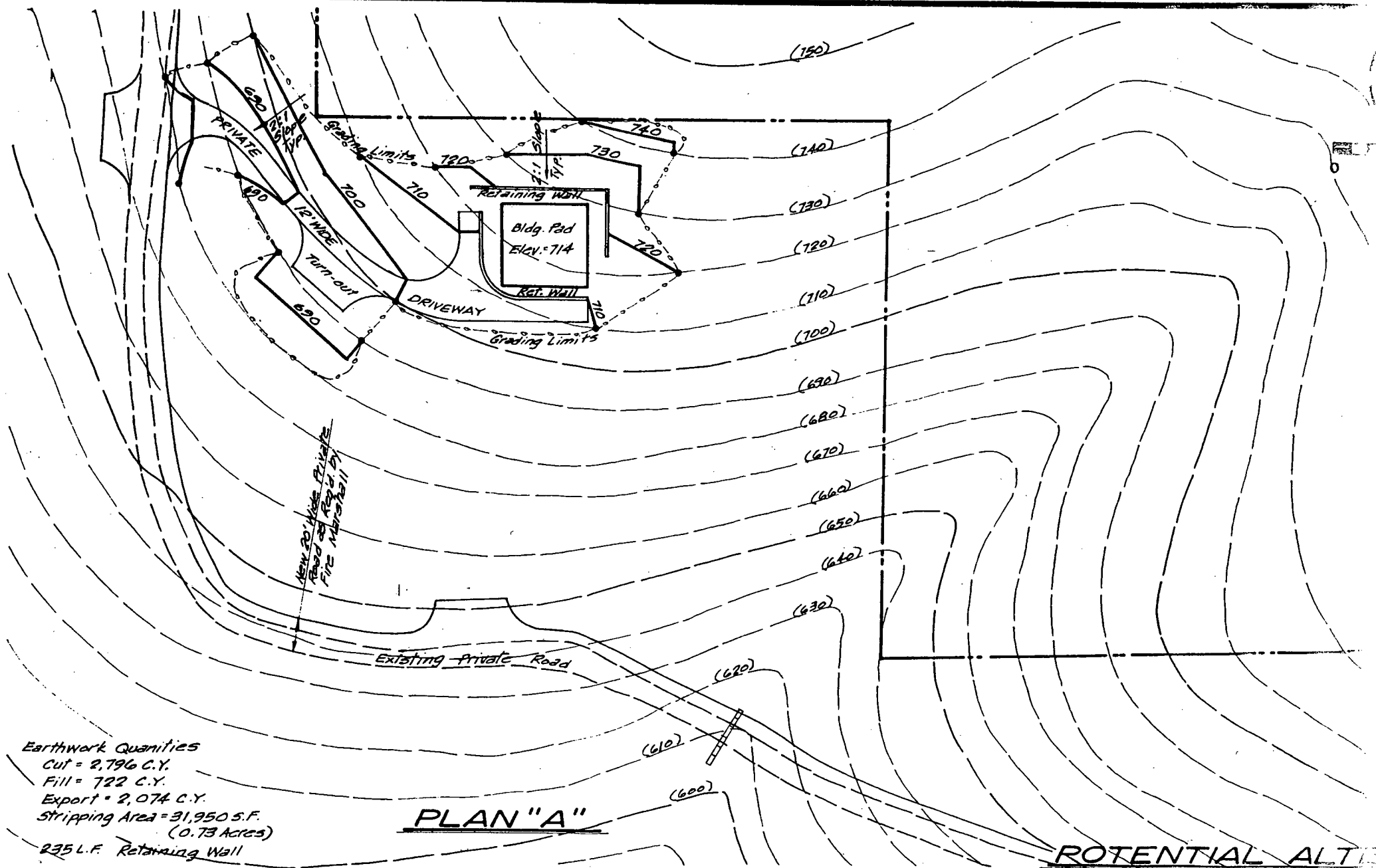
the related Goal 5 standards subject to the Board's review. Mr.  
Rochlin's assertions otherwise have no basis in fact or law.

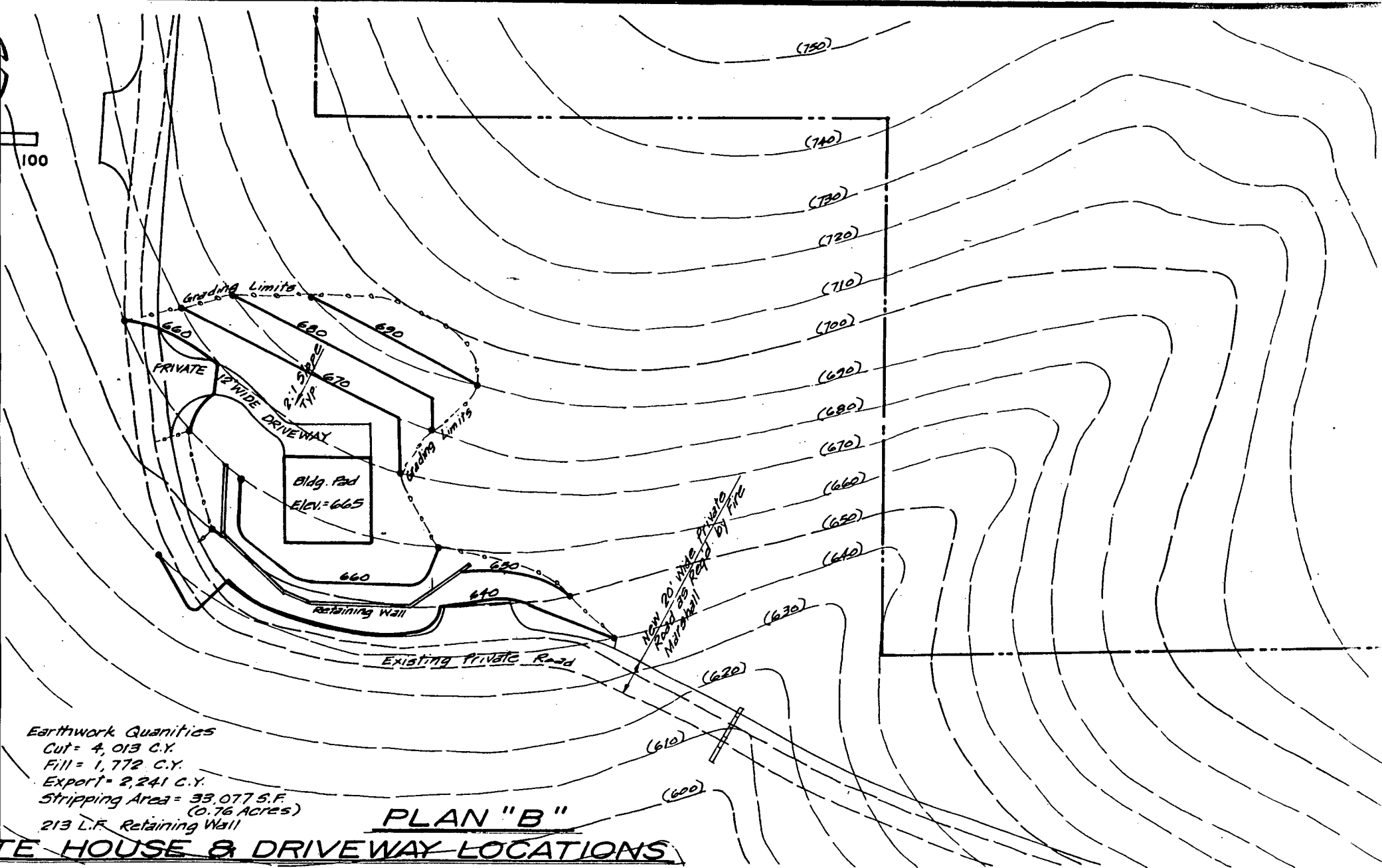
Respectfully Submitted

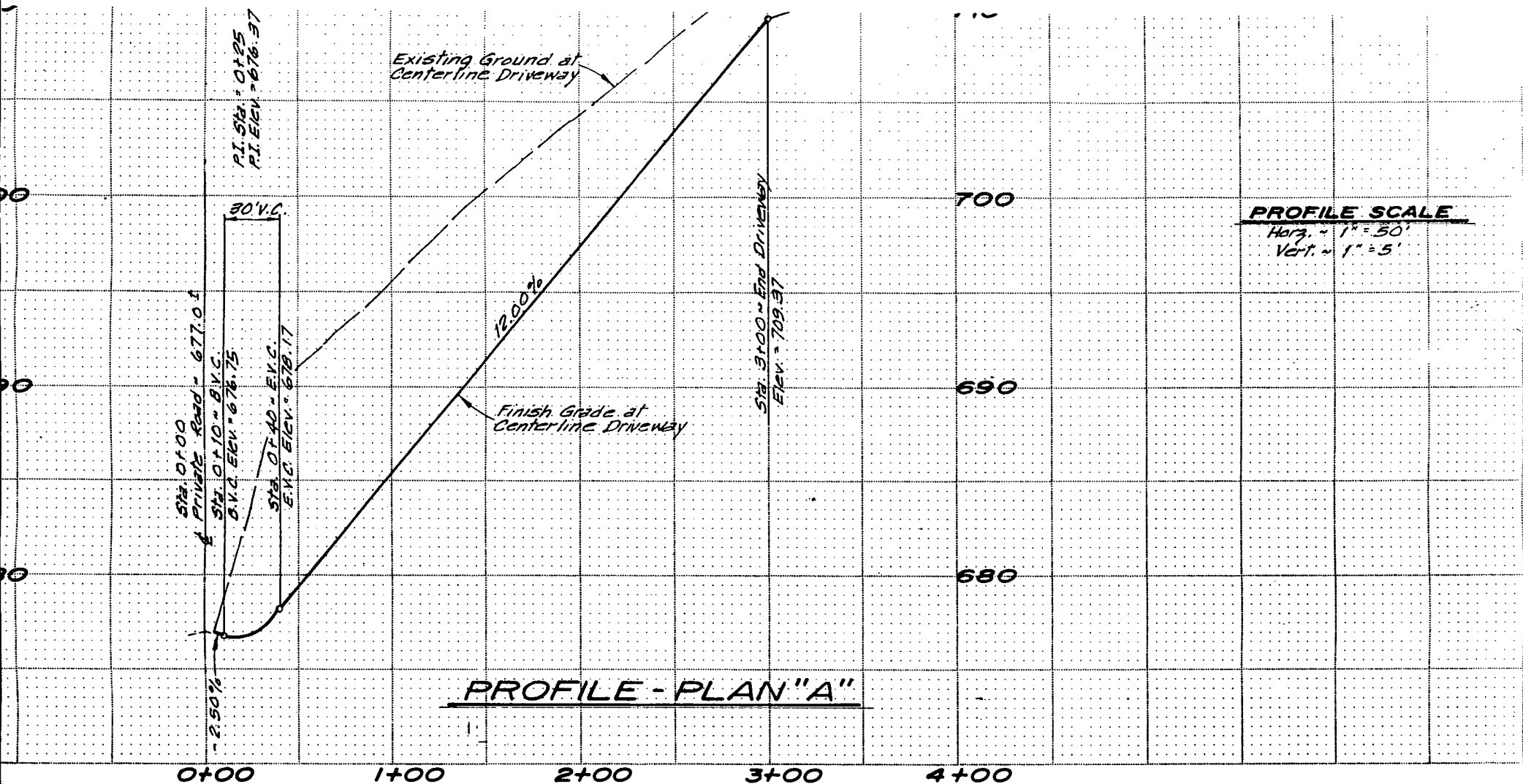
A handwritten signature in black ink, appearing to read "Gary P. Shepherd". The signature is fluid and cursive, with the first name "Gary" being the most prominent.

William C. Cox  
Gary P. Shepherd  
Of Attorneys for Applicant





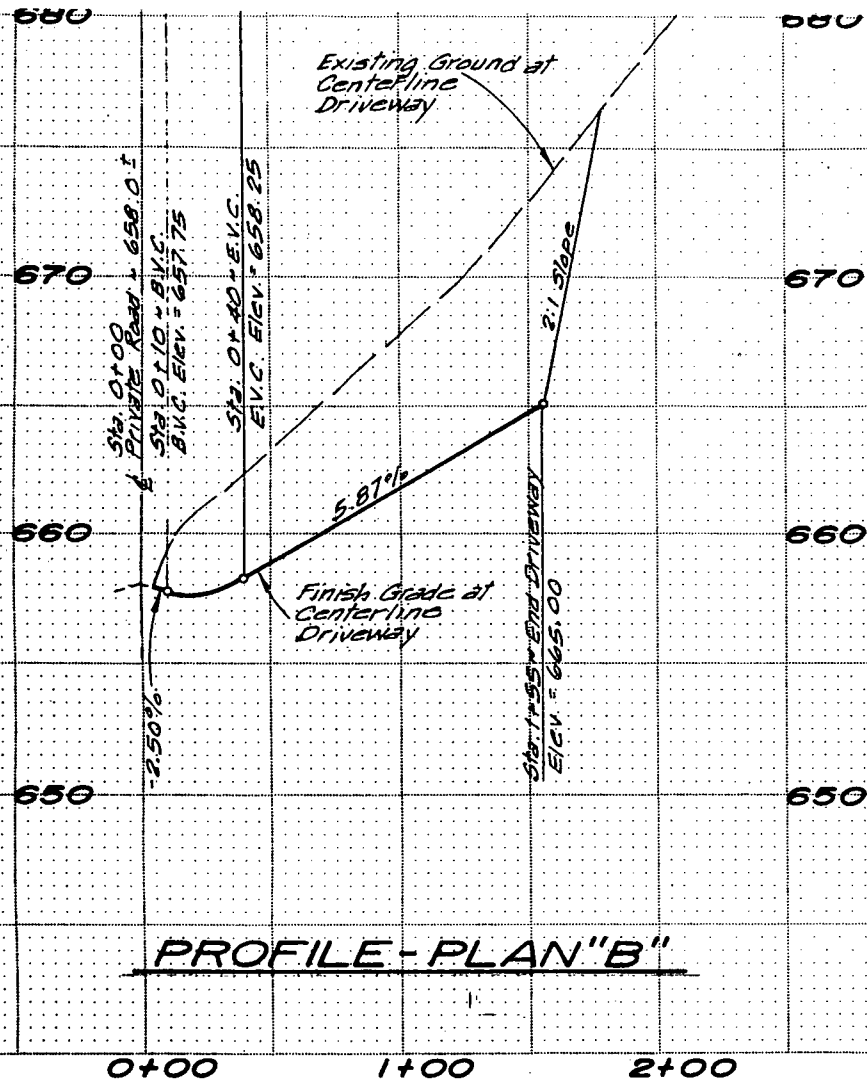




PREPARED FOR:

KIM EVANS  
 7555 N.W. 214TH. PL  
 HILLSBORO, OR. 97124  
 (503) 671-4461

APPROVALS:



REVISIONS	DATE

PROJECT:

**DWELLING NOT RELATED TO  
FOREST MANAGEMENT AND A  
VARIANCE FROM SETBACK  
REQUIREMENTS FOR LOT 15,  
2NW-25, MULTNOMAH CO.,  
OREGON**

DRWG. TITLE:

**POTENTIAL  
ALTERNATE HOME  
AND DRIVEWAY  
LOCATIONS**

DESIGNED:  
LHP

DRAWN:  
LHP

CHECKED:  
HH

DATE:  
3-26-96

**LAND DEVELOPMENT  
CONSULTANTS  
INC.**

(503) 648-4061  
209 N.E. LINCOLN ST.  
HILLSBORO, OR 97124

PLANNING  
CIVIL ENGINEERING  
SURVEYING

JOB NO.  
1900

DRAWING NO.  
1

DATE  
3-26-96

## FACSIMILE

RECEIVED

SEP 13 1996

Multnomah County  
Zoning Division

Prior 10:12am dn

Date:

9-13

To:

Susan Muir or  
person receiving/handling this in her absence.

@ fax #

248-3389

From:

Kim Evans

Message:

Please incorporate this into  
the record, which is closed  
as of 4:30 today.

Call to confirm you've received  
this at 647-5861

Number of pages including cover sheet

2

Please respond

x to above

Call 503-645-5544 if this transmission is incomplete.

Our fax # is: 503-645-8156

(Please incorporate this in the record)

## Meeting with Susan Muir on Property.

As we walked down to the cleared area that she was suggesting to build on, she saw the stakes placed from the south property lines. Susan mentioned we could get a variance there, which is identical to the application site.

We then stated that the plan for this site was for a mini-pasture & barn area which would not hinder the road that exists. She agreed, and ultimately stated she did not know how to "word it" to indicate the clearing unbuildable. She then agreed to meet with Stacy Warren to work this out, which this meeting never took place. The application site was all staked out for her, yet she didn't feel it was important to walk up to it to discuss that site. She left agreeing the clearing was unbuildable, agreed to meet with Stacy Warren, and didn't feel it "necessary" to walk up to the site which is the application site.

Kim Evans

List of Information Prepared by LDC on Alternative Homesites

(These items are in addition to the Applicant's Statement dated July 11, 1995 and the Applicant's Supplemental Statement dated January 3, 1996).

- Letter to Gary Clifford, Multnomah County Planning, dated January 18, 1996.
- "Narrative" dated March 27, 1996 and "Site Plan of Potential Alternate House & Driveway Locations" dated March 26, 1996.
- "Narrative - Alternative Building Site" dated May 2, 1996 with a colored map of development limitations and a site plan of an alternative house and driveway location dated May 2, 1996.
- "Supplemental Comments Regarding Homesite Location" dated May 17, 1996 with the following exhibits: Exhibit A - Washington County Zoning Map (District "A" - quarry site), Exhibit B - Washington County CDC Section 379, Mineral & Aggregated Overlay District, Exhibit C - Site Plan with District "B" boundary (impact area of District "A"), Exhibit D - Letter dated May 16, 1996 from Agra Earth & Environmental, Inc., and Exhibit E - Letter, not dated, from Mike Pihl Logging.

LDC  
SW/sw

Notes of Meeting at Property Site  
May 6, 1996

Parties present included Kim Evans, property owner, Fred Bender, client, and Susan Muir, Multnomah County Planner.

Alternate site was already staked by Kevin & Fred Bender. Susan Muir seemed to agree that this alternate location was no better than that being proposed. She wants to see an additional statement/report addressing the criteria with very specific arguments as to why this alternate location is no better than the proposed location and that the proposed location is the first/closest buildable site.

Susan Muir mentioned that she had received a letter from a private aggregate company regarding the house location. We were unable to determine the aggregate site location and proximity to the property at this time. She will fax over copy of the letter.

LDC  
SW/sw



Notes of Meeting with Susan Muir at Mult. Co.  
May 7, 1996

Discussed the County's siting standards. To alter staff's position on this application she would need to see a convincing argument that the proposed location is the best location, that other alternate sites are not buildable ("lesser of evils"). Her opinion is that this is not possible to demonstrate.

If continuing with the proposed homesite location, follow up on quarry site. Document Washington County's zoning and standards. Additional comments from the quarry owners regarding the homesite may be helpful to show interference with mineral resources. Additional comments from property owners to the south may also be useful to show interference with their agricultural/forestry resource uses. In this district, the County is most concerned about minimizing impacts to forestry resources. Interference with mineral resources and agricultural resources is less important than interference with forestry resources, in the County's interpretation.

May also be helpful to have additional comments from Tualatin Valley Fire & Rescue that the alternative house locations are no easier for them to provide service to than the proposed location, and additional comments from the Oregon Department of Forestry & Tualatin Valley Fire & Rescue that proposed fire breaks will be adequate.

LDC  
SW/sw

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SEP 13 1996

Multnomah County  
Zoning Division  
Board of County Commissioners

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

Re. CU 7-95, HV 17-95—Post Hearing Testimony for September 13, 1996

**I. Applicability of Purported Washington County Requirements.**

Mr. Cox's peculiar claim that a dwelling cannot be sited as required by Multnomah County because Washington County has conflicting regulations or permit conditions, must fail:

No land use law allows or requires application of Washington County regulations or land use decisions in Multnomah County. ORS 215.416(8), quoted under IV B below, requires a decision based on this county's standards.

An advocate of an odd legal proposition must convince by reason and law. Mr. Cox's claim is utterly unsupported. Even if the Board were moved to uphold it, it could not, because it could give no reason in the findings for applying another county's requirements.

If Washington County requirements were to apply, and if they would preclude siting as required by Multnomah County, the proposal must be denied for being unable to satisfy with a single plan, what would be applicable criteria of both counties. Mr. Cox would not stretch the point to claim that only Washington County requirements apply in this county.

**II. If Alternate Dwelling Site is in a Mapped Slope Hazard Area.**

Slope hazard provisions of Comprehensive Plan Policy 14 are implemented by MCC Chapter 6700 which requires a Hillside Development Permit (HDP) in a mapped hazard area. HDP criteria have no prohibitions, only procedural safeguards for steeper slopes.

Slope hazard maps outline areas that are generally steep, but typically include flatter areas. Development is allowed by MCC .2074(A)(5)(c) on slopes up to 40%, which is not a limiting factor in this case. Staff believes the property has suitable and practical alternate sites that satisfy some criteria not met by the proposal, e.g. setbacks and access length. Preference for developing on a particular part of a property cannot justify a variance on grounds of hardship or necessity. *Hinzpeter v. Union County*, 16 Or LUBA 111 (1987)

**III. SCOPE OF REVIEW**

**A. Review of Issues Not Raised by Appellant.**

MCC .8270(G) limits issues only when a review is based on appeal by a party.

“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 ...”

After an appeal had been filed by the applicant, the Board voted to review on its own motion, pursuant to MCC .8260(A)(2) and .8265. The motion could have no purpose but to hear additional issues. In *Century 21 Properties v. City of Tigard*, after appeal by a party, the city council voted to review on its own and considered an issue not in the notice of review. Tigard, like Multnomah County, limits review on appeal to issues in the notice of review. LUBA held the limit applies to appeals by parties, not

to review on a council motion.<sup>1</sup> A party cannot preempt Board authority to review issues by appealing on narrower grounds before a decision is even presented to the Board on the date specified by the MCC.

## **B. Notice to Parties.**

Mr. Cox claims he first learned at the hearing of issues not in his notice of review. The claim is neither significant nor credible.<sup>2</sup>

1. A "Corrected Notice" of decision mailed to parties on July 11th, says the decision would be reported to the Board of Commissioners on July 25th. On that date the Board voted to hold a *de novo* review, on its own motion, without limitation of issues. Untimeliness aside, Mr. Cox's objection on August 27th has no legal or moral merit.

2. On August 7th, 20 days before the Board hearing, a "NOTICE OF DE NOVO HEARING" was mailed to all parties. The first page indicates the "Proposed Action(s) and Use(s) to be considered at the hearing as follows:"

- "(1) A Board ordered review (Order 96-128) of the Hearings Officer Decision and
- (2) Applicant is appealing the Decision of the Hearings Officer ..."

And, on page 4, the notice of hearing provides:

"Proposal Summary: The Board of County Commissioners issued an order of review on July 25, 1996, regarding the Hearings Officer Decision denying CU 7-95/HV 17-95 pursuant to MCC 11.15.8260 and .8265. Additionally, appellant challenges the Hearings Officer decision issued June 28, 1996 ..."

MCC .8265 concerns only review on the Board's own motion. Misreading of a notice by a party cannot deprive the Board and the public of the right to address important issues. Mr. Cox did not claim to have not received the notice, of which timing and substance are specified by law. If not served, he would have objected at or before the hearing (the time and place of which he did acquire).

3. Issues subject to review were identified in the March Staff Report, in oral and written testimony before the Hearings Officer, and in testimony placed in the record a week before the Board hearing. If a party was uninformed, it was not for lack of reasonable opportunity.

4. If Mr. Cox were to have learned of issues at the hearing, and if that were due to an actual procedural error not yet demonstrated, a remedy cannot deprive the public of consideration of lawful subjects of review. It suffices to allow time to address issues in writing, for which purpose the record was kept open to dates acceptable to Mr. Cox. *Stockwell v. Clackamas County*, 24 Or LUBA 358 (1992).

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<sup>1</sup> *Century 21 Properties v. City of Tigard*, 17 Or LUBA 1298, *Reversed on other grounds*, 99 Or App 435 (1989). The City Council's motion to review was invalid because it was adopted after a time limit in the Tigard code. There has been no claim of an untimely motion in this case.

<sup>2</sup> Mr. Cox's own "Washington County" issue was not raised in his notice of review.

#### IV. TEMPLATE TEST

##### A. Differences Between State and County Versions.

OAR 660-06-027(1)(d)(C) and identical ORS 215.750(1)(c), require:

- (i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and
- (ii) At least 3 dwellings existed on January 1, 1993 on the other lots or parcels.

Corresponding county standards in MCC .2052(c) require:

- (i) The lot and at least all or part of 11 other lots exist within a 160-acre square when centered on the center of the subject lot parallel and perpendicular to the section lines; and
- (ii) Five dwellings exist within the 160 acre square.

Significant differences are underlined above and listed in the following table:

	<u>State Qualification</u>	<u>County Qualification</u>
Lots and Dwellings in Place	January 1, 1993	Now
Number of Dwellings	Three	Five
Location of Dwellings	Anywhere on lots	Within template
Orientation of Template	Any	Aligned with section lines

##### B. Which Standards Apply; What Has Been the County's Past Practice?

The primary direction for applicable standards is ORS 215.416(8) which provides:

- (8) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county ...

A secondary direction is ORS 197.646(3) which provides:

- (3) When a local government does not adopt ... land use regulation amendments as required [to implement a new or amended statute or state administrative rule], the new or amended rule or statute shall be directly applicable to the local government's land use decisions.

Except when a state standard is preemptive, the county has complied with ORS 197.646(3) and 215.416(8) by applying the stricter features of both new state requirements and unamended corresponding county requirements. LUBA ruled in *Dilworth v. Clackamas County* that the state template standard is not preemptive. And, rejecting the hearings officer's ruling that only state standards apply, DLCD said:

"We do not disagree with the finding that the county must apply the applicable state laws directly as required by ORS 197.646(3). We do disagree with the conclusion that the county may not apply their more stringent standards in addition to the applicable state laws." (James W. Johnson, April 30, 1996)

Combining stricter features of different regulations is sometimes difficult. For example, 5 dwellings today or 3 dwellings 3 years ago satisfy the county or state requirements. But neither requires 5 dwellings 3 years ago. The solution is to apply

state and county standards consecutively, as sieves. A proposal must pass both. That method satisfies DLCD and gives full and fair meaning to ORS 215.416(8) and 197.646(3), which require a decision based on county regulations and on state standards not yet reflected in county regulations.

A problem presented if county standards are invalid when new state standards are effective, is the limits of the effect are indefinable! How closely or distantly related must county and state rules be for a county regulation to be deemed nullified or to remain valid? That uncertainty is what likely led the Hearings Officer to inconsistently apply sometimes county and sometimes state standards. The correct ruling is that county regulations not conflicting with a statute or OAR are effective. Serial application of state and county standards yields a correct result without having to perfectly identify regulations controlling the same matter, or determine which standard is stricter when there are multiple differences, or to devise a valid combination of the stricter requirements of both.

### **C. The Applicable County Template Standard is Not Met.**

The application must be denied for failing the county test of 5 dwellings within the prescribed template. Mr. Cox admitted that one of 5 structures identified as qualifying dwellings by the applicant, is just a vestigial foundation.<sup>3</sup> Also, the applicant has not proven that the other 4 dwellings are within the boundaries of the template.

### **V. Process Does Not Enable "Balancing" of Some Standards.**

Some standards, such as the 200 foot setback, are absolute. No interpretation can turn 50 or 199 feet into 200. If, hypothetically, siting to minimize use of forest land (MCC .2074(3)) would require a setback of less than 200 feet, or a driveway longer than 500 feet, or would impede farm or forest practices on nearby land, that siting could not be allowed. Some standards that require "least" impact or "most" preservation of some resource may draw flexibility from context. Superlative terms are sometimes interpreted to mean the "most" or "least" that does not preclude permitted use. But there can be no stretching just to allow an applicant's preferred siting. Balancing of the few flexible standards is possible only to the extent that the purpose of a standard is not defeated and as necessary to avoid completely precluding a permitted use. The amount of stretch is hard to determine, which is why approval or denial of a forest dwelling is not a ministerial act, but is a discretionary proceeding requiring judgment and legal knowledge. The instant case does not require perfect resolution of this problem, because the applicant fails to meet absolute requirements as well as requirements having limited flexibility. And failure to comply with even one approval standard requires denial.



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<sup>3</sup> The standard applied in the March 20th staff report is 5 dwellings in place on January 1, 1993. But being in place on that date pertains to only the state standard of 3 dwellings. Outcome is unaffected; 5 dwellings weren't there in 1993 and aren't there today.

September 16, 1996

Christopher H. Foster  
15400 NW McNamee Rd.  
Portland, OR. 97231

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SEP 16 1996

Multnomah County Board of Commissioners  
c/o Division of Planning and Development  
2115 SE Morrison St.  
Portland, OR 97214

Multnomah County  
Zoning Division

RE: Case File, CU-7-95, HV-17-95

**Response** to the Applicant's Submission of Sept 13th, ( Memorandum by William C. Cox )

**1. Preliminary Issue:**

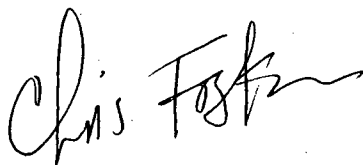
Mr. Cox is incorrect at Page 7 of his September 13th Memorandum, that I, Christopher Foster, did not participate in the in the earlier proceedings at the " hearings officer level ". Apparently, Mr. Cox did not thoroughly review the Record and further, either disagrees, did not hear, or chose to ignore my oral and written testimony before the Board on this matter. My timely written testimony of March 25, ( Exhibit CC) raised some of same legal subjects which are still at issue. In addition, at the Board Review Hearing, I entered into the Record the testimony of all other participants (including the DLCD James Johnson Letter) as evidence in my own behalf. Mr. Cox's Memorandum insists on revisiting dead issues.

**2. On the Procedural Issue that the Board's expanded Review under MCC .8260 and .8265 was not timely and therefore invalid:**

On pages 1-3 of the Memorandum, Mr. Cox argues that the Board missed a ten day window of opportunity to expand the scope of review and therefore the issues are limited to those raised by the Appellant. There exists a clear and decisive case where the very same code sections were at issue : Forest Park Estate Joint Venture vs. Multnomah County (Cite as 20 Or LUBA 319,1990) This case is a perfect fit which rejects Mr Cox's argument. The decision on this issue states in Headnotes at 1.;

" 1. Where a local code provides that (1) planning commission decisions become final 10 days after they are filed with the clerk, *unless* the governing body orders review; and (2) a governing body order for review must be made at the governing bodies next meeting regarding land use matters; then a planning comission decision is not final if the governing body adopts an order for review at such a meeting, even if the order is adopted more than 10 days after the planning commission's decision was filed."

**3. In reponse to all other legal issues raised in the Memorandum of September 13th by Mr. Cox, I adopt as my own, the submission of Arnold Rochlin also of September 13th. Additionally, should Mr. Rochlin choose to enter a final response before the close of the Record, I adopt that submission too, as my own.**



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Multnomah County  
Zoning Division

Board of County Commissioners

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

Re. CU 7-95, HV 17-95—Post Hearing Testimony for September 17, 1996

This is in reply to the applicant's two submittals dated September 13, 1996.<sup>1</sup>

**I. Scope of Review (A 1-6)**

**A. Timeliness of Board Motion to Review**

Uncontested facts are: the deadline for appeal was July 22nd, only the applicant filed an appeal, and the Board Order for review was adopted on July 25th. Mr. Cox seems to no longer dispute that the Board can hear any issue on a timely review order. He now argues the order is null because it was late (A 1-3). It was not late.

*Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990) involved the same issue. Invoking regulations still in effect, LUBA upheld a Board review order adopted 12 days after a decision was filed with the Clerk of the Board. MCC .8260(A) provides:

Decisions of the Planning Commission or Hearings Officer shall be final at the close of business on the tenth day following submittal of the written decision to the Clerk of the Board under MCC .8255, unless:

(1) A Notice of Review from a party is received by the Planning Director within ten days after the decision has been submitted to the Clerk of the Board under MCC .8255; or

(2) The Board, on its own motion, orders review under MCC .8265.

Note that subsection (2) has no 10 day deadline. MCC .8265 provides:

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 ...

The Order for Review was adopted on July 25th, when the summary appeared on the agenda as provided by .8255. But the applicant argues it was late because it was after the appeal deadline. In *Forest Park Estate v. Multnomah County*, *supra*, LUBA held:

"Under MCC 11.15.8260(A), a planning commission decision becomes final ten days after being submitted to the county clerk, unless either of two events occurs. One event is the filing of a notice of review by a party within ten days after the planning commission decision is submitted to the county clerk. MCC 11.15.8260(A)(1). The other event is the board of commissioners ordering review in accordance with MCC 11.15.8265. MCC 11.15.8260(A)(2). In contrast to MCC 11.15.8260(A)(1), there is no requirement in MCC 11.15.8260(A)(2) (or MCC 11.15.8265) that a board of

<sup>1</sup> Both are titled "Applicant's Record Submittal". One has no subtitle, the other has a bold face subtitle starting with "Template Test". Page references to the Cox memos are identified by "A" and "B", B being the one with the subtitle. Each memo bears the names of two attorneys, but for brevity, only Mr. Cox's name is used here.

commissioners' order of review be adopted within ten days after the planning commission decision is submitted to the clerk." *Id.* at 325. (footnote omitted)

**B. There are no actual constitutional issues (A 3-5)**

"Due process" is tossed about, but Mr. Cox does not formulate a constitutional argument. It merits no further discussion. A legitimate question is whether the Board has authority to order a *de novo* review. After waving the constitutional flag, Mr. Cox relies on the county code to claim that the review should be on the record. But the code expressly allows *de novo* review at the Board's discretion; his statute and case law citations on code interpretation are inapposite.

The applicable code section is .8270 Scope of Review, which provides in relevant part:

(A) The Board, upon receipt of a 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.

\* \* \* \* \*

(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.

Mr. Cox supposes considerations pertaining to "additional testimony or other evidence" also apply to a decision to hold a *de novo* review. He is wrong. Note the semicolon in (E) separating Board authority to hear *de novo* from its restricted power to allow limited additional evidence. Note the use of "additional evidence and other testimony", the distinct alternative to *de novo*, in the phrase limiting new evidence. Note that in (E)(4), allowing only specific useful evidence is inconsistent with the meaning of *de novo*. A request to admit specific evidence is usually to establish a point favoring one side. The Board may not grant that advantage, except in prescribed circumstances. In contrast, the code requires no justification for *de novo* review because it opens a hearing impartially.

Mr. Cox argues that Board Resolution 95-55 is invalid because its policy can be effected by ordinance only. The Resolution only states the Board's intent to invoke existing authority to hear all reviews *de novo*. The review order is authorized by MCC .8270(A)(2) and (E)



and requires no other authority. Mr. Cox's argument is irrelevant and his quotations of judicial declamations concern only points not at issue.<sup>2</sup>

There was no abominable surprise; issues raised on review were before the Hearings Officer, and the Order of Review was adopted at the lawful time and place, in the prescribed manner and with service of required notices. Mr. Cox now claims injury by only lately receiving the agenda placement request for July 25th (A 5). That is not a required notice (but it was open to inspection in the case file). Notice that the decision would be presented to the Board on July 25th was in the notice of decision mailed to all parties. Mr. Cox has given no reason why the Board could not order review, or how service of the agenda packet could have changed anything. He has identified no objection that could have been effective only on or before July 25th. Finally, notice of review by Board Order was included in the lawfully served August 7th notice of the Board hearing.

## **II. Request to Strike Testimony (A 6-7 & B 8)**

The applicant asks to strike my testimony and Chris Foster's, on grounds of not appearing before the Hearings Officer, and not justifying new evidence. Mr. Cox must know Foster testified (Exhibit CC, List of Exhibits in Hearings Officer's decision).

Regarding me, Mr. Cox cites MCC .8270(E) which has nothing to do with standing; it concerns scope of review. Admissibility of new evidence and argument is encompassed by the customary meaning of *de novo*. But, even in an on the record review, the Board can hear new argument at its discretion, as opposed to receiving new evidence (.8270(D)). All of my testimony (August 27th, September 13th, and this) consists of argument only.

Under MCC .8225, which controls standing, "persons who demonstrate to the approval authority ... that they could be aggrieved ..." are parties. I explained how I would be aggrieved in a statement submitted to the Board on August 27th. The Chair allowed my appearance as a party. Mr. Cox has not challenged my August 27th statement. He asserts a non-existent requirement of appearance before the Hearings Officer.<sup>3</sup>

Mr. Cox renews his request to strike the DLCD letter. It was properly placed before the Hearings Officer (Exhibit KK) and the Board. To bury the issue, Chris Foster and I submitted the letter in support of our own positions. The real concern is its authority and content, which clearly expresses how ORS 197.746(3) is to be applied.

## **III. Template Test (B 2-8)**

ORS 197.646(3) applies state requirements to decisions when a county hasn't implemented the standards by amending its code. I agree the state template test is applicable, but so is the county's. Mr. Cox makes much of statutory and court admonitions to interpret a code without adding what is not there. But he does exactly that. Nothing in ORS 197.646(3) says county regulations are nullified. It says only that state requirements must be applied.

<sup>2</sup> If Resolution 95-55 were relevant, it would make no difference that it is a resolution and not an ordinance, if its substance and process of adoption were sufficient. *Multnomah County v. City of Fairview*, 17 LUBA 305 (1988). Substance and process of adoption of Resolution 95-55 have not been addressed.

<sup>3</sup> Mr. Cox argues it is wrong to allow "individuals to literally [sic] lie in wait and spring upon an applicant at the last moment." I have addressed only issues before the Hearings Officer or raised by Mr. Cox. Written testimony was in the planning file for public review a week before the hearing. I participated after the Hearings Officer's decision because I didn't know I would be aggrieved by a decision on broadly significant issues until too late in that process. A rule as advocated by Mr. Cox would press people like me to enter a case on speculation of merely possible aggrievement.

And, ORS 215.416(8) requires a decision to be based on county standards.<sup>4</sup> When 197.646(3) is invoked, unless a state requirement is preemptive, county and state standards apply; that is the only way to apply both statutes, not adding to or detracting from their language. *Dilworth v. Clackamas County* established that the state template standard is not preemptive, which Mr. Cox does not dispute. He disputes the relevance of *Dilworth*, mistaking the purpose for which it was cited. *Dilworth* has nothing to do with ORS 197.646(3). It establishes that the state template rule is not preemptive, allowing state and county template standards to be applied together. In discussion, the words "more" or "less" restrictive are used to describe the common result of applying both state and county standards; stricter provisions of either effectively determine disposition.

Mr. Cox wrongly makes an issue of acknowledgment. As discussed in my August 27th testimony, ORS 197.625(3)(a) and (b) provide that unacknowledged land use enactments are effective at the time provided by the local charter or code (though with added findings when statewide goals are involved). Actually, the disputed county template standard was acknowledged a few years ago. Either way, the proposal does not comply.<sup>5</sup>

#### **IV. SEC/Goal 5—Applicability of State and County Regulations (B 8-13)**

##### Applicability of General SEC Criteria in MCC .6420 (B 10-11)

The applicant now tacitly accepts that criteria of MCC .6420 would ordinarily apply to this development. He claims an exception on fallacious grounds (*italic*):

1. *The criteria should be disregarded because it was only I who cited them, and my standing is challenged.* Even if I did not have standing, Chris Foster, adopted all my testimony as his own at the August 27th hearing.
2. *The issue is not in the Notice of Review.* This review is also on the Board's motion.
3. *The applicant did not know that SEC applicants must address these SEC approval criteria.* If Mr. Cox's claim were true, that "neither during applicant's pre-application conference, nor at any time thereafter, was it brought to the applicant's attention that the criteria found in MCC .6420 needed to be addressed" the applicant is not thereby excused. It would be absurd to make criteria inapplicable because a party is unaware. If there was an error, the only remedy is to give more time to address the standards, which was done.

Mr. Cox now purports to address some of the criteria (B 11-13). But he makes no attempt to show how the following criteria are satisfied (the applicable version is Ord. 801, 1994):

(G) Significant fish and wildlife habitats shall be protected.

(M) The design, bulk, construction materials, color and lighting of buildings shall be compatible with the character and visual quality of areas of significant environmental concern.

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<sup>4</sup> ORS 215.416(8): "Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county ..."  
ORS 197.646(3): "When a local government does not adopt ... land use regulation amendments as required [to implement a new or amended statute or state administrative rule], the new or amended rule or statute shall be directly applicable to the local government's land use decisions."

<sup>5</sup> Mr. Cox tosses another red herring, ORS 197.175(2)(c). That statute applies only to a county or city that has no acknowledged comprehensive plan or zoning code.

(N) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

(O) The applicable policies of the Comprehensive Plan shall be satisfied. (This would primarily incorporate the version of the West Hills Reconciliation Report adopted in Ord. 797.)

The applicant discusses, but does not prove compliance with other criteria:

(B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

The provision requires preservation of as much forest land as possible, consistent with a dwelling. The applicant confuses forest land with existing growth. That the proposal is to build in an unplanted area doesn't convert land zoned for forest use, and capable of growing commercial quantities and quality of Douglas Fir, from forest land.

(D) A building, structure or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

The applicant has not shown that siting at an alternate location, as suggested by staff, would cost more, or negatively impact any functional considerations. A claim of added cost and greater resource impact, is without credible evidentiary support. Environmental, functional and cost elements are not shown to be balanced.

(J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbance activities. (Mr. Cox cites a 1990 version, which is codified as (M), and which is substantially different, not including the Best Management Practices standard.)

The applicant claims evidence in the record shows compliance, but doesn't identify it. The applicant has not shown the proposal complies with Best Management Practices standards.

#### Applicability of SEC-h Criteria—MCC .6426

The applicant does not address these criteria. He claims they are inapplicable because they were adopted after the application was filed in July, 1995 (B 8-9). SEC-h criteria in MCC .6426 were in fact adopted in 1994, as part of Ord. 801, and were effective in 1994 as prescribed by ORS 197.625(3)(a). ORS 197.625(3)(b) requires additional findings of compliance with state goals "applicable to the amendment".<sup>6</sup> That provision is in addition to, and not in place of, county standards. Neither the underlined phrase nor all of

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<sup>6</sup> ORS 197.625(3)(a) and (b) provide:

(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation is effective at the time specified by local government charter or ordinance and is applicable to land use decisions ..."

(b) Any approval of a land use decision ... subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment."

subsection (3)(a) makes sense unless regulations are effective before acknowledgment. There has been no showing that criteria in MCC .6426(A) to (D) have been met.

Mr. Cox concludes with an assertion that Goal 5 requirements are met, and "Mr. Rochlin's assertions otherwise have no basis in fact or law." I make no assertions of fact. I rely on the applicant's failure to carry the burden of establishing the facts necessary to prove compliance with the criteria. My legal claims are specifically supported by reason and law that actually applies to the points at issue.

A handwritten signature in cursive script, appearing to read "Amy Rochlin". The signature is written in dark ink and is positioned in the upper right quadrant of the page.

**William C. Cox** attorney at law

*Land Use and Development Consultation  
Project Management*

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SEP 18 1996

Multnomah County  
Zoning Division

September 18, 1996

Board of County Commissioners  
Multnomah County  
c/o Multnomah County Division of Planning and Development  
2115 S.E. Morrison Street  
Portland, Oregon 97214

**Re: Applicant's Record submittal, Board of County Commissioners  
Scope of Review**

Kim Evans, Applicant  
Case File: CU 7-95; HV 17-95

The following memorandum of law is in response to testimony submitted by Arnold Rochlin. Applicant finds Mr. Rochlin's testimony highly suspect, drawing legal conclusions without support in law. Specifically applicant would like to address the proper scope of review before the Board of County Commissioners.

The scope of review in this matter is limited to the issues timely appealed by applicant. Mr. Rochlin cites to *Century 21 Properties v. City of Tigard*, 17 Or LUBA 1298 (1989) for the proposition that upon a proper motion, the Board can review issues on appeal not raised by applicant. Applicant, in this case, need not dispute that the Board, upon a **proper** motion, can review issues not appealed by applicant. The fact is here, the Board's motion to review the Hearings Officer decision was not timely, and therefore **not proper**. Therefore, the scope of review

is limited to those issues raised in applicant's timely filed Notice of Review.

Applicant would like to direct the Boards' attention to *Century 21 Properties, Inc., v. City of Tigard*, 99 Or App 435, 783 P2d 13 (1989), reversing and remanding the Land Use Board of Appeals case cited by Mr. Rochlin, but ignored in his analysis. A copy is attached to this memorandum. This case is factually and legally on point with the case now before the Board and therefore dictates the scope of review in this matter.

There, as here, the reviewing body acting on its own motion, took review of an earlier approval decision. There, as is here, the applicant argued the reviewing body did **not** initiate review within the time allowed by code, and that therefore, the earlier approval decision had become final. In *Century 21*, the Court, reversed LUBA's decision affirming the Tigard City Council's approval, and agreed with applicant "that the Council's review was untimely." *Century 21 Properties, Inc.*, 99 Or App at 437. The Court ruled that Tigard City Council did not initiate review within the ten days prescribed by City Code and therefore the planning commission's decision became final.

Tigard City Code provides that "review of a planning commission decision may be initiated, *inter alia*, if the council, 'on its own motion, seeks review by voice vote within ten days of mailed notice of the final decision.'" *Century 21*, 99 Or App at 437 (citing Tigard development code Section 18.32.310(b)(2)). Tigard City Code in 18.32.310(b)(1), also provides the applicant may appeal by filing a notice of review within the ten day period.

In *Century 21*, the City council did not initiate review by motion, although applicant did, within the required ten day

period, but purported to do so at a later meeting. See *Century 21*, 99 Or App at 437. There, the City argued that council's and LUBA's decision should nevertheless be affirmed because the "applicant brought a timely appeal to the council from the commissioner's decision and that the council could have taken the same action in that context as it did on its own motion."

*Century 21*, 99 Or App at 439. In response, the Court held:

"Without deciding whether the council could have done so (or whether an undecided appeal to the council is now pending), we conclude that the council *did not do so*. It acted on its own but untimely motion pursuant to section 18.32.310(b)(2). That is a jurisdictional defect, and the fact, if such it be, that the same substantive decision could have been made through a different route does not cure the defect." *Century 21*, 99 Or App at 439.

Similar to Tigard's development code, Multnomah County Code (MCC) § 11.15.8260(A) provides:

Decisions of the Planning Commission or the Hearings Officer shall be *final at the close of business on the tenth day following submittal of the written decision to the Clerk of the Board* under MCC .8255 unless

- (1) A Notice of Review from a party is received by the Planning Director... or
- (2) The Board, on its own motion, orders review under MCC .8265. (emphasis added).

As were the facts in *Century 21*, here the Board could have invoked its own review authority within the mandated 10 day period, but *did not do so*. The decision of the Hearings Officer was submitted to the Board Clerk on July 3, 1996. The last day to appeal the decision would have then been July 13, 1996. Because of an error by the County planning staff in delivering

notice, the last day to appeal was extended to July 22, 1996.

Applicant filed a Notice of Review on July 12, 1996. The Board of Commissioners did not Order a review of the Hearings Officer decision until a meeting on July 25, 1996, after the extended ten day period for appeal had expired. As concluded by the Court of Appeals in *Century 21*, this is a "jurisdictional defect."

Because the Board was not timely in Ordering review of the Hearings Officer decision, and neither the County Planning Department nor opponents appealed the Hearings Officer decision, the only timely and effective appeal was the Notice of Review submitted by applicant.

Therefore, the only issues reviewable by the Board in this matter, are those issues appealed in applicant's notice of review. With respect to the other decisions of the Hearings Officer not appealed by applicant, including his interim ruling regarding the template test and Goal 5 compliance, they have become final. To review elements of the Hearings Officer decision not appealed by applicant would, in this matter, violate County Code and established judicial precedence, resulting in substantial prejudice to applicant's rights.

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "Gary P. Shepherd".

William C. Cox  
Gary P. Shepherd  
Of Attorneys for Applicant



435

Argued and submitted October 18, reversed and  
remanded November 22, 1989, reconsideration  
denied January 5, petition for review denied  
February 22, 1990 (309 Or 334)

CENTURY 21 PROPERTIES, INC.,  
*Petitioner,*

*v.*

CITY OF TIGARD,  
*Respondent.*

(LUBA 89-043; CA A61910)

783 P2d 13

\*\*\*\*\*  
[Syllabi and synopses not included]  
\*\*\*\*\*

Judicial Review from Land Use Board of Appeals.

Paul G. Ellis, Portland, argued the cause for petitioner. On the brief was Forrest N. Rieke, Portland.

Jeff H. Bachrach, Portland, argued the cause for respondent. With him on the brief was O'Donnell, Ramis, Elliott & Crew, Portland.

Before Richardson, Presiding Judge, and Newman and Deits, Judges.

RICHARDSON, P.J.

Reversed and remanded.

RICHARDSON, P.J.

Petitioner seeks review of LUBA's affirmance of the Tigard city council's approval of an application to develop an apartment complex on property adjacent to petitioner's. Acting on its own motion pursuant to section 18.32.310(b)(2) of city's community development code, the council took review of the planning commission's earlier approval decision and added as a condition of approval that the applicant dedicate a right of way for street purposes along the boundary between the applicant's and petitioner's properties.<sup>1</sup> Petitioner contends that the council did not initiate review within the time allowed by section 18.32.310(b)(2) and that, therefore, the planning commission's decision had become final. Petitioner also argues that the added condition of approval will result in an unconstitutional taking of its property. LUBA rejected petitioner's contentions. We agree that the council's review was untimely. We therefore reverse, without reaching petitioner's taking argument.

Section 18.32.310(b)(2) of the development code provides that review of a planning commission decision may be initiated, *inter alia*, if the council,

"on its own motion, seeks review by voice vote within ten days of mailed notice of the final decision."

Section 18.32.270 provides that notice of planning commission decisions "shall be mailed to the applicant, to all the parties to the decision and shall be made available to the members of the council." The council did not initiate review within ten days of the mailing of notice to the participants, but purported to do so at a later meeting held less than ten days after the council members received an agenda that referred to the planning commission's action.

City argues, and LUBA concluded, that the ten-day period under section 18.32.310(b)(2) does not start to run until

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<sup>1</sup> The city planning director had imposed that condition. On the applicant's appeal, the planning commission concluded that the applicant could satisfy the roadway requirement by a private driveway rather than a dedicated street. Petitioner contends that, under the code, the condition of a public street will require that it dedicate land to widen the roadway in the event that it develops an apartment complex on its property.

the decision is "made available" to the council members pursuant to section 18.32.270. Petitioner contends that the time begins to run when "mailed notice" is given to those entitled to receive it under section 18.32.270. We agree with petitioner. Section 18.32.270 specifies that notice is to be mailed to the applicant and other parties; the decision or notice of it is to be "made available" to council members, but nothing needs to be mailed to them. Section 18.32.310(b)(2), in turn, makes "mailed notice" the event that triggers the time for the council to initiate review on its own motion.

City and LUBA reasoned that the two sections fit together logically only if the "availability" of notice to the council members is the event from which the council's initiation of review is timed. However, there is nothing ambiguous in the two sections to leave room for that interpretation. There is also nothing illogical in a literal reading of the sections. They appear to contemplate that an informal mode of notice to the council members is sufficient to assure that they will be apprised but that the council's time for initiating review should coincide with the ten-day period, dating from the sending of notice, within which private parties may appeal a commission decision to the council under section 18.32.310(b)(1).

City relies on *League of Women Voters v. Coos County*, 82 Or App 673, 729 P2d 588 (1986), and argues that a "party's appeal clock cannot begin until the party has received proper notice." That reliance does not succeed, because the council is not a party. We said in *League of Women Voters*:

"[T]he variety and informality of local recordkeeping procedures give the decisionmaking bodies and their agents the familiarity that the parties who appear before them do not have with where the information resides in their courthouses and city halls. Although we suggest no evil motivation in this or in the generality of cases, the relationship between parties who seek to appeal a county's land use decision and officials of the county is hardly the same as the relationship between the clerk and the parties to a civil action. In the land use context, the county is the deciding body as well as the recordkeeper." 82 Or App at 679.

No comparable remoteness from or presumption of unfamiliarity with city's decisions is true of the city council.

We conclude that the council did not initiate its own motion review within the time permitted by section 18.32.310(b)(2).<sup>2</sup>

City argues, for a number of reasons, that the council's and LUBA's decisions should nevertheless be affirmed. It first contends that the applicant brought a timely appeal to the council from the commission's decision and that the council could have taken the same action in that context as it did on its own motion.<sup>3</sup> Without deciding whether the council could have done so (or whether an undecided appeal to the council is now pending), we conclude that the council did not do so. It acted on its own but untimely motion pursuant to section 18.32.310(b)(2). That is a jurisdictional defect, and the fact, if such it be, that the same substantive decision could have been made through a different route does not cure the defect.

City's next argument, somewhat at odds with its first, is that the notice to the parties of the planning commission's decision was defective and that the ten-day period for initiating review was therefore tolled. The defect identified by city is:

"The notice incorrectly referenced CDC 18.230.290(A) as the appropriate appeal provision and informed the parties that an appeal to the city council must be filed by February 21, 1989. The correct reference should have been to CDC 18.32.290(b), which provides that a planning commission decision made on appeal from a director's decision can only be heard by the city council if the council itself calls it up for review."

That defect, if it was one, can have no bearing on jurisdictional matters. We said in *League of Women Voters v. Coos County*, *supra*, that

"the time for appeal by a party who has been given notice is not tolled by the fact that notice has not been given to other parties who are entitled to it." 82 Or App at 681.

Here, notice was sent to the parties entitled to it. The only defect that city ascribes to the notice is that it misinformed the parties that they could appeal, when in fact review could

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<sup>2</sup> City argues that the ordinance, as we construe it, would create unworkable obstacles in the process of providing notice to the lay members of the council. However, the meaning of the ordinance is clear, and city is, of course, free to amend it.

<sup>3</sup> The council refunded the appeal fee to the applicant when it decided to conduct review on its own motion, but the appeal has not been formally terminated.

only be initiated by the council. The council could have invoked its own review authority, whether or not the parties had an independent right of appeal or were correctly informed that they did or did not. The notice was not incorrect in any particular relating to the council's authority to initiate review, and city may not complain that its notice might have misinformed others about their right to seek review.

City next contends that petitioner's taking claim is not "ripe," because the right-of-way condition on the development of the adjacent parcel cannot affect petitioner's property unless certain future events occur. See n 1, *supra*. City also contends that the controversy is moot, because the applicant has already deeded the right-of-way to city and, therefore, "[n]o practical effect would result by reversing the city council's decision and replacing it with the planning commission's." City apparently understands that the asserted ripeness and mootness problems affect the reviewability of the entire controversy. They do not. Petitioner appealed to LUBA from the council's land use decision approving an application for an apartment complex.<sup>4</sup> One of the issues that petitioner raised in that appeal was that the right-of-way dedication required by the council will result in a taking. If city's ripeness and mootness arguments were correct, they might affect the reviewability of that issue, which we do not reach in any event. However, they have no bearing on the justiciability of the other error that petitioner ascribes to the appealed decision and on which we base our conclusion that the city council had no authority to make the decision.<sup>5</sup>

Reversed and remanded.

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<sup>4</sup> Technically, there were applications for and approvals of site development, a minor land partition and a variance.

<sup>5</sup> We reject without discussion city's argument that the error was a mere failure to follow local procedures and that petitioner alleged no prejudice to its substantial rights. See ORS 197.835(8)(a)(B).

TO: BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY

FROM: SANDRA DUFFY  
CHIEF ASSISTANT COUNTY COUNSEL

RE: EVANS APPEAL CU 7-95; HV 17-95

DATE: SEPTEMBER 18, 1996

RECEIVED  
SEP 18 1996

Multnomah County  
Zoning Division

### INTRODUCTION

This appeal from a decision of the hearings officer is ready for a decision by the Board. A de novo hearing was held on August 27, 1996. The record was closed but the parties were permitted to present written argument. Submittals were received from appellant's attorney, from opponent Arnold Rochlin and opponent Chris Foster. The Board's decision is scheduled for September 24, 1996.

Susan Muir of the County's Planning Staff and I have reviewed the submittals and will give you a brief opinion on three issues: (1) The Scope of Review; (2) The Record; and (3) The SEC criteria.

#### (1) The Scope of Review:

This Board has the authority to consider all issues contained in the decision of the Hearings Officer. The case cited by Mr. Cox (Century 21 Properties) v. City of Tigard, 99 Or App 435 (1989) ) does not support his contention that you are limited to considering only the issues he has raised in his appeal. That case was distinguished by LUBA in Forest Park Estate v. Multnomah County, 20 Or LUBA 319 (1990) which interpreted Multnomah County Code (as opposed to City of Tigard code). Mr. Cox asserts that the County's decision to order a review of the decision was untimely because it was not within 10 days of the decision. While an aggrieved party must file an appeal within 10 days (MCC 11.15.8260(A)(1), the Board may order a review of a hearings officer decision without that 10 day time limit (MCC 11.15.8260(A)(2). LUBA stated in the Forest Heights case:

In contrast to MCC 11.15.8260(A)(1), there is no requirement in MCC 11.15.8260(A)(2) (or MCC 11.15.8265) that a board of commissioner's order of review be adopted within ten days after the planning commission decision is submitted to the clerk.

(2) Record.

Mr. Cox's submittal of September 13, 1996 has attached to it documentary evidence that is not part of the record and should not be included in the record of this matter. The last three pages are a fax transmittal from Kim Evans which requests that the cover sheet (with a handwritten narrative on the back) and two attachments be incorporated into the record "which is closed as of 4:30 today." The two attachments are typewritten notes of two meetings with a county planning staff person and a list of information regarding alternative homesites. The record was closed by the Board at the conclusion of the de novo hearing. This is new matter not in the record and not to be considered in the decision of this matter.

(3) SEC criteria.

The County concurs with the analysis done by Mr. Rochlin in his submittal regarding this issue. Mr. Rochlin and Mr. Cox both correctly note that the general criteria found in MCC 11.15.6420 for the Significant Environmental Concern (SEC) overlay is applicable to SEC applications. The County Staff did not apply these general criteria in this application. The reason that they did not do so is that at the time of the application the SEC code had just been newly drafted. When Staff began applying the SEC code, they were not applying the general criteria to the areas that had subdistrict designations (eg. SEC-h [wildlife]; SEC-v [views]; or, SEC-s [streams]), i.e. they did apply the general criteria to SEC overlay areas that did not have a subdistrict designation. (There are still some areas of Multnomah County with only SEC overlays that do not have any of the subdistricts identified.) Since this application was processed, and since the original staff report was written, the Staff has begun applying the general criteria to ALL SEC applications, with or without subdistricts and any new application would be required to meet both the general and specific criteria.

The application of the general SEC criteria could be anticipated to provide additional reasons for denial of the application.





BOARD HEARING OF AUGUST 27, 1996

TIME 9:30am

CASE NAME Kim Evans Dwelling Not Related to Forest Mgmt. NUMBER

CU 7-95/ HV 17-95

1. Appellant Name/Address

Kim Evans  
7555 NW 214th Place  
Hillsboro, OR 97124

2. Action Requested by Applicant

Appellant appeals Hearings Officer Decision.

3. Planning Staff Recommendation

Deny appellant's request to reverse Hearings Officer decision and overturn Hearings Officer findings of approval on MCC 11.15.2052(A)(4), 11.15.2074(A)(2), 11.15.2074(A)(3), 11.15.2074(A)(5), 11.15.2074(D), 11.15.8505(A)(1), 11.15.8505(A)(3), 11.15.8505(A)(4), Goal 5 and the West Hills Reconciliation Report and Comprehensive Plan Policy 14.

4. Hearings Officer Decision:

Denial based on three criteria relating to location, length of road and variance criteria.

5. If recommendation and decision are different, why?

See attached Staff Report and Hearings Officer decision.

**ISSUES**  
(who raised them?)

6. The appellant raised the following issues.

- Whether the applicant has established a basis for variance(s) that allow placement of the intended single family dwelling not related to forest management at the homesite chosen by applicant rather than the one preferred by the hearings office (MCC 11.15.2074(A)(1), 11.15.2074(A)(4) and 11.15.8505(A)(2).
- Whether the Hearings Officer was correct in allowing the Department of Land Conservation and Development representative to participate in the hearing.

The staff, under the Board Order of Review, raised the issues listed under the staff recommendation.

7. Do any of these issues have policy implications? Explain.

Yes, the Hearings Officer has ruled that the applicable template test is found in ORS 660-06-027 rather than the more restrictive template test found in the Multnomah County Code. The Hearings Officer argues

**ACTION REQUESTED OF BOARD**

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

that until Multnomah County receives acknowledgement by the State for its implementing regulations pursuant to the amended Goal 4 administrative rules, the state administrative rules shall apply directly to this application.

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

In the Matter of Reviewing the Hearings  
Officer's Decision Denying CU 7-95/HV 17-95  
Pursuant to MCC 11.15.8260 and .8265

ORDER  
96-128

It is hereby Ordered that the decision of the Hearings Officer in CU 7-95/HV 17-95 be reviewed by the Board pursuant to its authority under MCC 11.15.8260 and .8265. This review is de novo, set for August 27, 1996 at 9:30 a.m., with each party allocated 20 minutes.

Approved this 25th day of July, 1996.



MULTNOMAH COUNTY, OREGON

By Beverly Stein  
Beverly Stein  
Multnomah County Chair

REVIEWED:  
LAURENCE KRESSEL, COUNTY COUNSEL  
for MULTNOMAH COUNTY, OREGON

By Sandra N. Duffy  
Sandra N. Duffy, Chief Assistant Counsel



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

TOTAL  
0000-00  
4527 FH

500.00  
7/12/96  
12:12PM

## NOTICE OF REVIEW

1. Name: Evans, Kim  

Last Middle First
2. Address: 7555 NW 214th Pl., Hillsboro, Oregon  

Street or Box City State and Zip Code
3. Telephone: (        )        -
4. If serving as a representative of other persons, list their names and addresses:  
Mrs. Evans is represented by:  
William C. Cox, Attorney at Law  
0244 S.W. California Street  
Portland, Oregon 97219  
(503) 246-5499  
ALL CORRESPONDENCE SHOULD BE THROUGH MR. Cox
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?  
Denial of conditional use permit and major variance request.
6. The decision was announced by the Planning Commission on 7/3, 1996
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
I am the applicant, and thus a person entitled to  
notice under MCC .8220(C). I also made an appearance  
of record before the approval authority.

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

See Attached

9. Scope of Review (Check One):

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

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

Signed: 

Date: 7/12/96

**For Staff Use Only**

Fee:

Notice of Review = \$500.00

Transcription Fee:

Length of Hearing  x \$3.50/minute = \$

Total Fee = \$

Received by:

Date:

Case No.

GROUNDS FOR REVERSAL OF DECISION

MULTNOMAH COUNTY HEARINGS OFFICER DECISION

CU 7-95 & HV 17-95

This appeal is limited to the issues of whether applicant has established a basis for variance(s) that allow placement of the intended single family dwelling not related to forest management at the homesite chosen by applicant rather than the one preferred by the hearings officer and whether hearings officer was correct in allowing the Department of Land Conservation and Development representative to participate in the hearing without being a party and without approval of all parties to the application.

Specifically this appeal deals with the Hearings Officer conclusion stated in findings related to MCC .2074(A)(1) which are located under item number 9, page 13 of the decision; MCC. 2074(A)(4) also located under item number 9 pages 14/15 of the decision; and, MCC 11.15.8505(A)(2) located on pages 20/21 of the decision. The intent of this appeal is to limit the issues on appeal to the above identified findings and Conclusion and Decision items 1, 2 and 3.

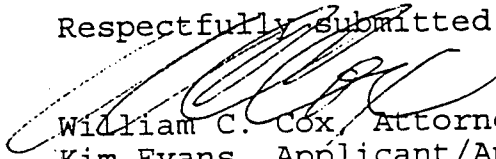
It is appellant's contention that the Hearings Officer decision should be reversed because he exceeded his jurisdiction by imposing personal rather than legal standards in his analysis. He also failed to follow procedures applicable to the matter before him in a manner that prejudiced the applicant's substantial rights by allowing input into the record by a non-party (DLCD) and did not allow direct confrontation of a DLCD conclusion which amounts to legal analysis by a non-attorney.

The hearing's officer decision improperly construed the applicable law when he based his decision on home placement without considering the impact other placements would have on the forest resource on the site and on surrounding uses. The site is zoned for forest use. The application is for a home not in conjunction with forest uses. There is substantial evidence in the record that the alternative locations considered by the hearings officer as possibly better sites would result in

substantial damage to the forest resource. The decision does not recognize those facts. The hearings officer decision concentrates of surrounding property at the expense of the subject parcel's future as forest resource.

The hearings officer's decision is not based upon substantial evidence in the record. The alternative locations were suggested by County staff but no evidence is in the record that they are superior to or even equivalent to the one chosen by the applicant. Furthermore, the hearings officer decision fails to properly consider that the access road will continue beyond any site chosen by the applicant. As the hearing officer recognized, the road used to access the home continues beyond the subject parcel of property. There is substantial and un rebutted evidence in the record that the road will exist regardless of the future use of the site for a home.

Respectfully submitted,



William C. Cox, Attorney for  
Kim Evans, Applicant/Appellant

**BEFORE THE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON**

Regarding a request for a Conditional Use Permit by )  
Kim Evans for a single family dwelling not related )  
to forest management and a Variance to side and )  
rear yard setbacks for property located at 13913 NW )  
Skyline Boulevard in unincorporated Multnomah )  
County, Oregon. )

FINAL ORDER  
CU7-95 HV 17-95  
(Evans)

**I. APPLICANT'S REQUEST**

The applicant requests a Conditional Use Permit for a single family dwelling not related to forest management on a 20-acre Lot of Record in the Commercial Forest Use (CFU) zoning district. The applicant proposes to place the dwelling approximately 50 feet from both the north and west property lines which requires a Major Variance from the 200 foot side and rear yard setback requirements in this zone. The proposed development also requires findings under Statewide Planning Goal 5 because the proposed development is located in an area designated on the Comprehensive Plan as a Primary Wildlife Habitat.

**II. HEARING AND RECORD**

A public hearing concerning this application was held on March 20, April 19, and May 2. The written record was closed on May 17, 1996.

A list of exhibits received into the record by the Hearings Officer is attached as Exhibit 1.

**III. PRELIMINARY ISSUES**

**1. Template Test**

The Hearings Officer has previously found in his Intermediate Ruling dated April 29, 1996, that since the County has not yet amended its land use regulations to implement the 1994 amendments to Goal 4 and its administrative rules, ORS 197.646(3) requires that the amended goal and administrative rules "shall be directly applicable to the local government's land use decision." Therefore, the applicable template test is found in OAR 660-06-027.

**RECEIVED**  
JUL 1 1996

Multnomah County  
Zoning Division



Since the Hearings Officer issued his intermediate ruling, the Oregon Department of Land Conservation and Development (DLCD) through Mr. James W. Johnson, Farm/Forest Coordinator and Sandra Duffy, Multnomah County Counsel, have argued that ORS 197.646(3) does not preclude the County from applying more restrictive county standards in the interim, before the local code has been amended to comply with the 1994 Goal 4 requirements. DLCD cites to Dilworth v. Clackamas County, \_\_\_ Or. LUBA \_\_\_ (LUBA No. 95-115, January 4, 1996). County Counsel cites to Kola Tepee v. Marion County, 17 Or. LUBA 910 (1989); Spathas v. Portland, 28 Or. LUBA 351 (1994); Brewster v. Keizer, 27 Or. LUBA 432 (1994); and Zorn v. Marion County, 19 Or. LUBA 54 (1985).

Although the Dilworth case was factually similar to this one, in Dilworth, LUBA was not called upon to consider the effects of ORS 197.646(3). Therefore, Dilworth is of no value here hence the central issue here is the effect of ORS 197.646(3). Furthermore, neither Koala Tepee, Spathas, Brewster or Zorn deal directly with the impact and meaning of ORS 197.646(3). Therefore, they are of little value to the issue at hand.

Unlike the situation with ORS 315.283 which is a standard that courts have interpreted to be only a minimum standard that must be applied to acknowledge plans for land zoned EFU, ORS 197.646(3) is a statute that applies certain legislative statutes and regulations to local decisions directly before post acknowledgement amendments have been incorporated into the local government's comprehensive plan and land use regulations.

In essence, the County and DLCD argue that in the interim, after plans and zoning codes are acknowledged, but before post-acknowledgement Goal amendments are incorporated into local land use regulations, local governments are free to follow more restrictive ordinances than the amended goals and administrative regulations that will eventually need to be complied with. In short, they argue that where local post acknowledgement ordinances have not been acknowledged by LCDC, but are more restrictive than the new goal amendments and rule changes that the local government will be required to implement, such local ordinances should not be suspended in favor of less restrictive state law provisions, despite the requirements of ORS 197.646(3).

While the Hearings Officer acknowledges the policy grounds on which the County and DLCD base their arguments, the Hearings Officer has reviewed the cited cases and finds that there is nothing in those cases, and nothing in the record before the Hearings Officer which demonstrates that the legislature intended that the requirements of ORS 197.646(3) somehow do not apply when a local government has already adopted a more restrictive but unacknowledged land use ordinance.

The cases cited by the County involve the application of statewide goals and administrative rules after acknowledgement of local implementing regulations has occurred. None of the cited cases addressed the situation presented here where the County has adopted more restrictive local regulations before post-acknowledgment. In such cases,

ORS 197.646(3) specifically provides that the new or amended goal, rule or statute "shall be directly applicable to the local government's land use decision." The statute is unambiguous and leaves no room for interpretation. Furthermore, even if the statute were ambiguous, none of the parties have cited to any legislative history that would shed light on relevant legislative intent. Therefore, the Hearings Officer finds that the template test set forth in OAR 660-06-027 applies directly to this application because the County has not yet obtained acknowledgement for its implementing regulations pursuant to the amended Goal 4 administrative rules.

2. Interpretation of the Term "Centered on the Center of the Subject Tract" for Purposes of Applying the Template Test in OAR 660-06-027

The Hearings Officer finds that although the so called "center of gravity" test was used by the County as a method for determining the center of the template for purposes of the County ordinance, the Hearings Officer finds that the same method is also a reasonable interpretation of the "center of the center" test for purposes of OAR 660-06-027.

There is no definition of the phrase "centered on the center of the subject tract" for purposes of OAR 660-06-027. Dictionary definitions are of no help in determining a methodology for finding the center of an irregular shape such as this. Staff's use of a "balance point" or "center of gravity" seems to be a reasonable method of uniformly determining the "center" of a tract of property, regardless of its shape. Furthermore, the analysis of Mr. Matthew A. Rochlin, from a mathematics standpoint, needs further support to staff's use of the "center of gravity" methodology for determining the "center" of irregularly shaped parcels.

Based upon the "center of gravity" established by staff and accepted by the Hearings Officer, there is uncontroverted evidence in the record indicating that three dwellings existed on January 1, 1993 within a 160 acre grid (template) centered on the center of the subject parcel. Therefore, the applicant has satisfied the applicable template test as set forth in OAR 660-06-027.

3. Goal 5 Application

The Hearings Officer agrees with the legal analysis of the applicant with regard to whether or not Ordinance 832 (amending the County's SEC zone) codified at MCC 11.15.6426, are the relevant approval standards in this case, or whether the requirements of Goal 5 and its administrative rules apply directly to this application.

The Hearings Officer finds that according to Ordinance 832, the County amended Ordinance 801, which included MCC 11.15.6426, establishing the SEC overlay district and SEC-h (wildlife habitat). Ordinance 801 implemented the previously adopted Ordinance 797 which adopted the "West Hills Reconciliation Report." In February of 1995, LCDC issued a

decision declaring the county Ordinance 797 and 801, et al. deficient as not meeting the requirements of Goal 5. In response, Multnomah County passed Ordinance 832, and Section 11.15.6400, et seq. of the code. As of approximately January 3, 1996 (see Exhibit X) when this application was deemed complete, the County did not have an acknowledged SEC overlay implementing regulation pursuant to Goal 5 on this site. Therefore, under ORS 197.625(3)(b), Goal 5 applies directly to this land use decision.

Based upon the findings prepared by the applicant which are adopted and incorporated by reference here, the Hearings Officer finds that the applicant can comply with the requirements of Goal 5.

4. Motion to Strike DLCD Letter

The applicant's attorney, William Cox, has objected to an April 30, 1996 letter from James W. Johnson, Farm/Forest Coordinator for DLCD. Mr. Cox has raised the following arguments in support of his motion to strike:

A. "Participation by DLCD not in accordance with statute."

Mr. Cox has cited ORS 197.090 for the proposition that only the "director" has authority to participate in a local land use proceeding. Therefore, since Mr. Johnson is not the "director" of DLCD, Mr. Cox argues that DLCD's participation is not accordance with the statute.

The Hearings Officer rejects Mr. Cox's proposition. ORS 197.090 does not say that only the director of DLCD can participate in a local land use proceeding. Rather it provides a methodology by which the director may participate. Furthermore, nothing in ORS 197.090 requires the Hearings Officer to exclude evidence submitted by someone other than DLCD's director even if such evidence from DLCD fails to follow the process called for in the statute.

B. "Failure to comply with local government requirements, MCC 11.15.8225(A) regarding record submissions."

In this argument, Mr. Cox asserts that only "parties" have the right to make an appearance of record and that Mr. Johnson, and DLCD have not qualified as a party in accordance with .8225(A).

The Hearings Officer finds that Mr. Cox is correct that only "parties" have the right to make an appearance of record according to the Multnomah County Code. However, the Hearings Officer finds that Mr. Johnson, acting in his role as a Farm/Forest Coordinator for DLCD, was presumably acting with the consent of the director of DLCD, and therefore, on behalf of DLCD and its director, and as such has the statutory duty and authority under ORS

197.090(B) to coordinate the activities of DLCD with regard to land conservation and development activities of various local governments in the state. In that regard, Mr. Johnson's letter asserts a position concerning what he believes to be the proper application of ORS 197.646(3) in this case. Because the Hearings Officer adopted a position contrary to DLCD's opinion, Mr. Johnson, on behalf of DLCD, satisfied the "adversely affected or aggrieved" test and therefore qualifies as a party under MCC .8825.

C. "Failure to comply with local government requirement, MCC 11.15.8225(B) regarding record."

Within this argument, Mr. Cox makes the following points:

1. DLCD letter was not submitted "at or prior to the hearing."

The Hearings Officer finds that Mr. Johnson's failure to assert a position at or prior to the hearing date on April 3 did not constitute a violation of .8225(B). The Hearings Officer received the letter into the record at the time it was submitted and allowed the applicant to provide additional oral and written rebuttal and testimony concerning the letter. Therefore, the evidence was received before the hearing itself was closed and the Hearings Officer finds that .8225(B) was not violated.

2. The letter fails to set forth evidence and argument either for or against the application being reviewed.

The Hearings Officer finds that Mr. Johnson's letter on behalf of DLCD provided argument contrary to the position taken by the applicant. Since the Hearings Officer tentatively adopted the position proposed by the applicant with regard to the so called "template test," DLCD's letter constitutes argument against the position taken by the applicant. Therefore this criteria is met.

3. The letter fails to show in what manner the interests of the person would be affected or aggrieved.

Because the letter is from DLCD and since that agency has a statutory duty to coordinate with local governments in relation to land conservation and development decisions, the Hearings Officer finds that the letter from DLCD contains sufficient facts indicating that the interests of DLCD would be adversely affected or aggrieved by a decision contrary to DLCD's position regarding the interpretation of ORS 197.646(3).

For the above stated reasons, the Hearings Officer rejects the applicant's motion to strike and allows the letter from DLCD to remain in the record.

## 5. Alternate Housing Locations

The subject site is a 20 acre parcel located in the CFU district. The parcel does not front on a public road, and instead takes access from a private easement and logging road that connects to NW Skyline Boulevard. The property has an unusual shape that contains slopes from approximately 7% to 40%.

Given the site's existing access limitations, size, configuration, slopes and surrounding uses, in order to locate a non-forest dwelling in the northwest corner of the site, the applicant would be required to seek variances from side yard and rear yard setbacks. Also, since the access road is in excess of 500 feet in length, the code requires finding that if such a road is longer than 500 feet, that such length is the minimum length required due to physical limitations unique to the property.

In response to these code criteria, the Hearings Officer encouraged the applicant to analyze alternative housing locations on site, so that appropriate findings could be made concerning staff's view that the proposed site was not the only acceptable building location. It should be noted that the Hearings Officer's purpose for requesting alternative dwelling location analysis was not to find the most acceptable building site, but rather to enable the Hearings Officer to make the appropriate comparative findings relevant to the approval criteria. For example, the following criteria require some level of comparative analysis:

A. An access road in excess of 500 feet is necessary due to physical limitations unique to the property and that the road is the minimum length required (see .2074(A)(4)).

B. The amount of forest land used to site the dwelling or other structure, access road and service corridor is minimized (see .2074(A)(3)).

C. The dwelling or structure is located such that it has the least impact on nearby or adjoining forest lands or agricultural lands that satisfies the minimum yard and setback requirements of .2048(C)-(G) (see .2074(A)(1)).

Based upon the above referenced criteria, all of which require some form of comparative analysis (e.g. minimum length required, minimization of forest land used, least impact on nearby forest and agricultural uses), the Hearings Officer finds that the applicant has undertaken a good faith effort to identify, analyze and compare other alternative locations for the proposed residence within the site, and in doing so, has enabled the Hearings Officer to make appropriate findings relative to other possible locations for the dwelling within the site. The applicant has identified the following other possible homesites:

1. Central Portion of the Site

This area is within the central portion of the site and is approximately one to one and one-half acres in size. This area would not require any setback variances in order to be developed. However, this area contains slopes in excess of 30% and would require significant engineering (cut, fill, retaining walls) to be developed. It would also require removal of a ten year old stand of Douglas Fir. Two potential homesites have been identified in this portion of the site.

2. Southeastern Portion of the Site

Two other alternative homesite locations have been identified here. One lies north of the roadway as the road enters the property. The other is the "meadow area" identified by staff. The "meadow area" is located between the existing road and the southern property line, in an area designated as a slope hazard area on the county's maps. However, based upon a site observation by staff, this area does not contain slopes steep enough to qualify as a slope hazard area. The evidence indicates that the "meadow area" appears to have slopes of approximately 10% -- comparable to those of the proposed homesite in the northwest portion of the parcel. Given the narrow width of the site in the "meadow area", setback variances may be required depending on the location of the dwelling.

The applicant has argued that the requested homesite location in the northwest corner of the site is the most viable and only feasible location for a dwelling on the property. Although the Hearings Officer tends to agree with the applicant that the proposed homesite in the northwest area is probably the most viable and feasible location from a development standpoint, "viability" and "feasibility" are not the relevant approval criteria. The relevant criteria are analyzed below relative to the facts in the record.

#### IV. CRITERIA AND FINDINGS

1. Conditional Use Permit

A. **MCC 11.15.2052(A): A dwelling not related to forest management may be allowed subject to the following:**

- (1) **The lot shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 25, 1990**

### Findings

MCC .2062(A)(2) requires (a) a deed creating the parcel be recorded prior to 1990, and (b) that the parcel satisfy the applicable laws when created, (c) that the parcel does not meet the minimum lot size standards (80 acres), and (d) that the parcel is not contiguous to other substandard lots under the same ownership.

The evidence indicates that a warranty deed dated October 7, 1996 describing the site was recorded with the Multnomah Recording Section on April 10, 1980 in Book 1432, Page 1782 (attached as Exhibit 83). The subject parcel is 20 acres in size and exceeded the minimum lot size in the MUF-19 zone when it was originally created in 1951 (deed recorded with Multnomah County Recording Section in Book 1504, Page 61). The parcel is currently less than 80 acres in size and thereby does not meet the current minimum lot size requirements in the CFU zone. The applicant does not own contiguous property either in the CFU or EFU zoning districts. Therefore, this criteria is satisfied.

- (2) **The lot shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent County Maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable.**

### Findings

The subject property is not located adjacent to any county maintained roads, therefore the 200 foot setback standard applies. Due to the unusual configuration of this lot, limitations of the terrain, and surrounding uses, the applicant has chosen to request a variance to the standard. Therefore, this criteria can be met so long as a variance to a 200 foot setback standard is met.

- (3) **The lots shall meet the following standards: [Note: Pursuant to ORS 197.646(3), since revisions to OAR 660-06, adopted by the State on February 18, 1994, have not yet been acknowledged by the county, the OAR requirements concerning lot standards requires that this amended goal and administrative rule apply directly to the local government's land use decision. Therefore, the following lot standards in OAR 660-06-027(1)(d)(c) apply]:**

**OAR 660-06-027(1)(d): In western Oregon, a governing body of a county or its designate may allow the establishment of a single family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:**

**(C) capable of producing more than 85 cubic feet per acre per year of wood fiber if**

**(i) all or part of at least 11 other parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and**

**(ii) at least three dwellings existed on January 1, 1993 on the other lots or parcels.**

### Findings

The template prepared by the Multnomah County staff (Exhibit C) demonstrates compliance with OAR 660-06-027(1)(d)(c). All or part of at least 11 other parcels that existed on January 1, 1993 are within the 160 acre square. These parcels include Parcels 2 and 3 of Plat 1990-43, Tax Lots (14), (24), and (36) on Map 2 and 2W-25, Tax Lots (5), (10) and (38) on Map 2 and 2W-26, Tax Lots 100, 101 and 200 on Map 2 and 2-35 in Washington County, Tax Lots (22 and 32 on Map 2 and 2W-36.) Furthermore, at least three dwellings existed on January 1, 1993 on the other lots or parcels within the 160 acre square. These dwellings are located on Tax Lot (24 on Map 2 and 2W-25, Tax Lots 101 and 200 on Map 2 and 2-35 in Washington County, and Tax Lots (22) and (32) on Map 2 and 2W-36.

- (4) The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands**

### Findings

The Skyline Boulevard area is rural residential in character. Land uses in the surrounding area are depicted in Exhibit A5. Numerous dwellings exist in the surrounding area on parcels of this size or smaller.

There is very little commercial forestry or agricultural use in this section of Skyline Boulevard. While the subject property is in the CFU district, it is adjacent to EFU land. Farming has been inhibited by poor soils, steep demography, lack of irrigation, high elevation, cold winds, occasionally heavy snow cover, and the threat of soil erosion from intensive farming and marginally steep ground. What little farming does exist is mostly in low yield hay production or pasture. Large parcels in the EFU district are used for hay production, pasture and forest, however, they are not producing commercial level yields.



Properties employed in hay production and pasture are located in all directions from the subject site distances in excess of 300 feet. Practices associated with the cultivation of field crops such as grains, clover, hay, etc., including plowing, discing, harrowing, cultipacking, ground application of soil amendments (fertilizer, lime), herbicides and pesticides, seeding, harvesting, baling and gathering, and transport of the harvested material. These practices employ the use of various types of farm equipment including tractors and towed appliances such as plows, rotovators, discs, harrows, cultipackers, spreaders, seed drills, sprayers and specialized mowers and balers. Pasture lands, except for unmanaged forage areas (cleared land), receive much of the same treatment as land used for field crops and similar farm equipment is used (tractors, plows, disc, etc.)

Properties employed in some level of forest use, predominantly not on a commercial scale, are located in all directions of the site, with abutting parcels to the north, west and south.

The applicant has selected a dwelling location in the northwest corner of the site. As discussed in more detail below, the Hearings Officer finds that the location of the dwelling in this portion of the site will not force a significant change in or significantly increase the costs of or impede accepted forestry or farming practices on surrounding forest or agricultural land, because although a secondary fire break needs to be located in forest land to the northwest, this easement change poses only a minor change in accepted forestry practices on the accepted forest practices on the applicant's site. Evidence clearly indicates that whatever minor change might be imposed by this secondary fire break, the result would not be significant either in terms of cost or in terms of accepted forestry practices. No other changes are evident based on the evidence in the record.

The above findings demonstrate that the proposed dwelling, and activities associated with the dwelling, will not force a significant change in accepted farm/forest practices on surrounding lands devoted to farm/forest use; nor will it significantly increase the cost of or impede accepted farm/forest practices on surrounding lands developed to farm/forest use.

The aerial photograph (Exhibit B7) serves as a vicinity map of surrounding forestry and farming activities in the area. The applicant has researched contiguous tax lots to determine the nature of adjacent farm/forest uses. Questionnaires were mailed to adjacent property owners to gather information regarding existing and planned forestry and farm practices. There are 9 tax lots adjacent to the subject site under 9 different ownerships. Nine (9) questionnaires were mailed out, one to each adjacent property owner. Of the mailed questionnaires, 4 were returned (Refer to Exhibit B4). The following information has been gathered from Multnomah County and

Washington County Assessor's records, returned questionnaires and review of the aerial photograph.

Summary of Farm/Forest Activities on Adjacent Properties

Tax Map	Tax Lot	Acreage	Owner	Use
2N2W25	(14)	19.80	Paula M. Williams	F
2N2W25	(24)	19.39	Frederick/Carrie King	D/H/F
2N2W25	Parcel 3	20.94	Western States Dev. Corp.	H/F
2N2W26	(5)	26.71	Leon/Sen Speroff	D/F
2N2W26	(10)	20.00	Edward/Fritzi Parkinson	F
2N2W26	(38)	14.32	Vanport Manufacturing, Inc.	F
2N2W36	(22)	38.00	Gordon/Violet Nerheim	D/F
2N2W36	(32)	76.99	Blanche D. Miller	D/F
2N2W35	101	5.30	Adele M. Benyo	D/F

Key

D = Dwelling, F = Forest/Timber, H = Hay

- (5) 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 of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgement of the Comprehensive Plan in 1980, will be acceptable

Findings

According to Comprehensive Plan findings on wildlife habitat, the Oregon Department of Fish and Wildlife maps do not list this area as being located within a big game winter habitat area. Therefore, this criteria is met.

- (6) **The proposed dwelling will be located on a lot within a rural fire protection district, or the proposed resident has contracted for residential fire protection**

Findings

The parcel is located within the boundaries of the Tualatin Valley Fire and Rescue and Beaverton Fire Department boundary. Therefore, this criteria is met.

- (7) **Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance**

Findings

The parcel is served by an access easement for ingress-egress from Skyline Boulevard as noted in Exhibit A2. Therefore, this criteria is met.

- (8) **The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest tax deferral**

Findings

According to the Multnomah County Assessment records, the parcel is not receiving farm or forest deferral at this time. As a condition of approval, the applicant will be required to demonstrate that the parcel has been disqualified from receiving farm or forest tax deferral prior to receiving any additional permits from the County.

- (9) The dwelling meets the applicable development standards of MCC .2074; (as follows)

**MCC .2074 Development Standards for Dwellings and Structures**

Except as provided for the replacement or restoration of dwellings under MCC .2048(E) and .2049(B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

- (A) The dwelling or structure shall be located such that:
- (1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G);

Findings

The applicant has undertaken an analysis of alternative housing locations as referred to in the preliminary issues discussed elsewhere in this report.

The Hearings Officer finds that this criteria requires that a dwelling or structure must be located such that it has the least impact on nearby or adjoining forest or agricultural land.

The Hearings Officer finds that the proposed dwelling, if it is located in the northwest corner as requested by the applicant, will not have the least impact on nearby forest lands because 50 feet of the secondary fire break would need to be located off-site, within adjoining forest land. Although the Hearings Officer has previously found that the impact to this adjoining forest land from the fire break would be minimal, there is clear evidence in the record demonstrating that by locating the dwelling in the central portion of the site, where setback variances would not be required and where all fire breaks could be accommodated on site, that such placement would have less impact on adjoining forest land. Therefore, the Hearings Officer finds that this criteria has not been met.

- (2) Forest operations and accepted farming practices will not be curtailed or impeded.

Findings

The Hearings Officer finds that by locating the dwelling on the northwest corner of the site, forest operations and accepted farming practices on site will not be significantly curtailed or impeded. It is unclear from the text of this criteria whether

the criteria requires a finding that forest operations and accepted farming practices will not be curtailed or impeded to any degree, or whether such impact must just be significant in degree. The Hearings Officer finds that based upon the overall context of this criteria and its application in past cases, the criteria should be interpreted to mean that forest operations and accepted farming practices may not be curtailed or impeded to a significant degree. Because the Hearings Officer finds that the only impact on adjoining resource uses would be the 50 foot off-site fire break, and because such impact is not significant, this criteria is met.

- (3) **The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized**

#### Findings

The Hearings Officer finds that there is an existing accessway to the subject property which extends from Skyline Boulevard to the proposed home site and beyond to adjacent lots west of the site. Although the access road will require some improvements in order to comply with applicable standards, the location of a dwelling along this access road will not require any new road building on land devoted to forest use and thereby would minimize the amount of forest land used to site the dwelling, even though the dwelling would be located in a more remote corner of the site.

Furthermore, the amount of forest land used to site the dwelling in the northwest corner of the site is minimized compared to locating the dwelling in the central or southern portion of the site where additional land would be required for retaining walls and other associated engineering features, given the slope of the land in these areas. Therefore, this criteria is met.

- (4) **Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required**

#### Findings

There has been considerable debate during the various hearings on this matter concerning this criteria. In this case, an access road in excess of 500 feet is necessary due to the fact that the site is more than 500 feet away from Skyline Boulevard. The distance from Skyline Boulevard constitutes a physical limitation unique to the property.

Although this access road, in its present condition, currently provides access to this property as well as other properties beyond this one, the question is whether the proposed length of the access road is the minimum length required to serve a dwelling on the site. The Hearings Officer finds that since the applicant could locate a dwelling in the central or southern portions of the site and thereby reduce the length of the access road, the applicant has not demonstrated that the access road is the minimum length required. Therefore, this criteria is not met.

**(5) The risks associated with wildfire are minimized.  
Provisions for reducing such risk shall include:**

- (a) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC .2074(D) with permanent signs posted long the access route to indicate the location of the emergency water source;**
- (b) Maintenance of a primary and a secondary fire safety zone.**
  - (i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be space with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**
  - (ii) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

Percent Slope	Distance In Feet
Less than 10	Not required
Less than 20	50

Less than 25	75
Less than 40	100

(iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning, forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.

(iv) No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

(c) The building site must have a slope less than 40 percent.

### Findings

The applicant has proposed an accessway that will meet the driveway standards of MCC .2074(D). Permanent signs posted along the access route could be used to indicate the location of an emergency water source. It is not clear based upon evidence in the record whether access for a pumping fire truck to within 15 feet of any perennial water source on the lot will be provided. However, since irrigation will be provided along the north property line with sprinkler heads, the Hearings Officer presumes that access for a fire truck within 15 feet of the perennial water source that would serve to irrigate the property by the sprinkler heads will be available. This could be required as a condition of approval.

The applicant has demonstrated that a 30-foot wide primary fire safety zone can be provided on site in the 50-foot setback proposed around the proposed homesite in the northwest corner of the site.

However, the code requires a 100-foot wide secondary fire safety zone. Within the secondary fire safety zone, trees need to be spaced with greater than 15 feet between their crowns. Also, trees must be pruned to remove low branches within eight feet of the ground as the maturity of the tree and accepted silviculture practices may allow. Finally, within the 100-foot secondary fire safety zone, all other vegetation must be maintained less than two feet in height. In other words, vegetation, including trees and underbrush must be thinned and cropped in order to provide an adequate secondary fire break.

In this case, along the north and west sides of the proposed dwelling site, only half (50 feet) of the 100-foot wide secondary fire safety zone can be provided on site. The remaining 50 feet of the secondary fire safety zone must be provided on forested land adjacent to the site by use of easement. The applicant indicates that an easement will be provided on the adjacent forested land to the west and north in order to accommodate the required secondary fire safety zone. Since there does not appear to be any prohibition providing the secondary fire safety zone adjacent property through the use of an easement, the Hearings Officer finds this criteria can be met.

Finally, the evidence indicates that the requirements for the fire safety zone would not restrict or contradict a forest plan approved by the State of Oregon pursuant to the State Forest Practice Rules. Therefore, these criteria can be met.

**(B) The dwelling shall:**

- (1) Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**
- (2) Be attached to a foundation for which a building permit has been obtained; and**
- (3) Have a minimum floor area of 600 square feet.**

**Findings**

The proposed single family dwelling would be required to receive a building permit which will conform to the Uniform Building Code, would be attached to a foundation and would be required to have a minimum floor area of at least 600 square feet. Therefore this criteria can be met.



- (C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

### Findings

The applicant indicates that the proposed water supply for the dwelling would come from a well with a depth of approximately 550 feet located on the property. No surface water is involved in this request. Furthermore, the subject site does not involve a critical ground water area. Therefore this criteria can be met.

- (D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:
- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;
  - (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;
  - (3) Provide minimum curve radii of 48 feet or greater;
  - (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
  - (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:
    - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;
    - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;
  - (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;
  - (7) Provide for the safe and convenient passage of vehicles by the placement of:

- (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or
- (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.

### Findings

The applicant has provided written verification that the culverts can comply with the 52,000 lb. gross vehicle weight standard. Furthermore criteria 2, 3 and 4 can be met based upon evidence in the record.

Criteria 5 requires that grades on the roadway cannot exceed 8 percent with a maximum of 12 percent on short segments except that the maximum grade may be exceeded upon written approval by the fire protection service provider having responsibility for the area. The proposed driveway exceeds the 12 percent limitation at various points along its course. However, Tualatin Valley Fire and Rescue has provided a letter dated February 27, 1996 approving the driveway subject to compliance with an exception standard detailed within the fire code. Based upon the letter dated February 27, 1996 from the fire protection service provider having responsibility, it appears that criteria 5 could be met.

Evidence in the record indicates that criteria 6 and 7 can be met based upon the proposed site plan. Therefore, these criteria can be met.

- (10) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;

### Findings

The above referenced statement was recorded with the Multnomah County Division of Records on September 27, 1995 and is included as Exhibit 5B in the record. Therefore this criteria has been met.

## **2. Variance**

### **A. Variance Approval Criteria MCC 11.15,8505(A)**

The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met.

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

### **Findings**

The applicant is requesting a variance to the 200-foot setback requirement to allow the dwelling to be located 50 feet south of the north property line and 50 feet east of the west property line in the northwest corner of the site. The Hearings Officer finds that the subject property is unique in that it is L-shaped with long narrow necks extending to the northeast. Furthermore, the contours on the property indicate that the legs of "L" are relatively level compared to the central portion of the "L" which generally contains greater slopes.

Based upon all of the evidence in the record, the Hearings Officer finds that the shape of the parcel and its topography relative to its shape does present a circumstance and condition relative to this property does not apply generally to other properties in the same vicinity. Therefore this criteria is met.

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

### **Findings**

The applicant has argued that the most suitable homesite on the property is within the northwest corner of the site that a variance is required from the setbacks in this area. Due to the width of the lots in the northwest corner of the site, the zoning regulation requiring a 200-foot setback does restrict the parcel to a greater degree than the other parcels in the vicinity or district and unless the variance is approved it would eliminate the possibility of locating a dwelling in this area.

Even though the Hearings Officer agrees that locating the proposed dwelling in the northwest corner of the site may be the most suitable location from a development standpoint, the applicant has not provided substantial evidence in the record demonstrating that by locating the dwelling in the less suitable central portion of the site where no variances would be required, that such location would restrict the use of the property to a greater degree than it restricts other property in the vicinity. Since it is possible to locate a dwelling in the central location on the site without the variance and since there is no evidence that such a location would be unduly restrictive, the Hearings Officer finds that this criteria has not been met.

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

#### Findings

The Hearings Officer finds that authorizing the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located nor will it adversely affect appropriate development of adjoining properties, because the proposed dwelling site is overall, the most suitable building site. The only negative impact from locating the dwelling in the proposed location is the relatively insignificant impact of locating the 50-foot secondary fire break off-site in the forested area on the north and west portion of the site. To the extent that surrounding forest properties in the area of the proposed dwelling are willing to accommodate the secondary fire break in the adjacent forest land and to the extent that location of this off-site secondary forest break does not significantly affect forest use on that property, the Hearings Officer finds that authorization of this variance will not be materially detrimental to the public welfare or injurious to the property in the vicinity of the district nor will it adversely affect appropriate development of the adjoining forest properties. Therefore this criteria can be met.

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

#### Findings

The Hearings Officer finds that granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use that is not listed in the underlying zone so long as all the criteria in the zoning code and any applicable state laws are met. The Hearings Officer finds that provisions in the County's Comprehensive Plan are implemented through enacted County zoning ordinances,

applicable statutes and administrative rules. Therefore this criteria can be met if all applicable zoning ordinances, statutes, and administrative rules are satisfied.

The applicant's property has been identified as a Goal 5 resource where conflicting uses exist between residential and wildlife habitat. Goal 5 and its administrative rules in OAR Chapter 660 Division 16 require the conservation and protection of wildlife areas and habitats.

The application of Goal 5's administrative rules to individual sites in a quasi-judicial action is somewhat problematic. Nonetheless, the applicant has submitted limited information which has inventoried of the location, quantity and quality of plant and wildlife resources on the property, and has identified conflicting uses as required by the Goal. Furthermore, the applicant's conservation plan seeks to minimize potential impacts, while outlining means to protect and enhance habitat, conserve open space and promote the health of natural resources. Based upon the above-referenced information and record, the Hearings Officer finds that the applicant has satisfied the requirements of Goal 5. Since Multnomah County has not yet had its recent Goal 5 amendments acknowledged by the Land Conservation and Development Commission at the time this application was deemed complete, the requirements of Goal 5 and its administrative rules apply directly to this application. The Hearings Officer concludes that the requirements of Goal 5 and its administrative rules are or can be satisfied by the inventory, analysis of conflicting uses and conservation plan submitted by the applicant.

## **V. CONCLUSION AND DECISION**

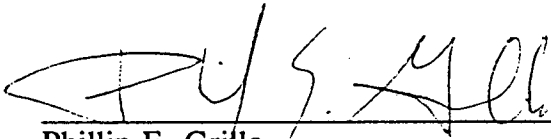
Although most of the relevant criteria have been satisfied, the Hearings Officer concludes that the applicant has not demonstrated that:

- 1) The location of the dwelling is located such that it has the least impact on adjoining forest or agricultural lands.
- 2) Any access road in excess of 500 feet in length is the minimum length required.

- 3) The zoning restriction (setback requirements) would restrict the use of the site to a greater degree than it restricts other property in the vicinity.

For these reasons, the proposed applications must be **Denied**.

It is so ordered this 28<sup>th</sup> day of June, 1996.



Phillip E. Gryllo  
Hearings Officer  
Multnomah County

**List of Exhibits**  
**CU 7-95; HV 17-95**  
(Revised May 21, 1996)

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- Exhibit A** Applicant's Statement Submitted July 12, 1995
- Exhibit A1** Site Plan and Grading Plan
  - Exhibit A2** Current Warranty Deed & Roadway Easement
  - Exhibit A3** Warranty Deed Dated October 7, 1976
  - Exhibit A4** SCS Soils Map and Description
  - Exhibit A5** Aerial Photographs (1984 & 1986)
  - Exhibit A6** Maps of 160-acre grid
  - Exhibit A7** Assessment/Ownership Records of Properties within 160 acre grid (Multnomah County and Washington County - Includes Washington County Tax Map)
  - Exhibit A8** Land Use Planning Notes, No's 1 and 2, Oregon Department of Forestry, March and September 1991.
  - Exhibit A9** "Geotechnical Reconnaissance and Stability Questionnaire"
  - Exhibit A10** Service Provider Statements
- Exhibit B** Applicant's Supplemental Statement Submitted January 4, 1996
- Exhibit B1** "Private On-Site Sewage Disposal Certification" Form with Approved Land Feasibility Study (LFS 138-95)
  - Exhibit B2** Letter to Multnomah County RFPD No. 20 Dated 12/21/95
  - Exhibit B3** Oregon Department of Forestry (ODF) Letter Dated 11/27/95
  - Exhibit B4** Returned Questionnaires from Adjacent Property Owners on Farm/Forest Activities
  - Exhibit B5** Multnomah County Conditions & Restrictions Statement Recorded 9/27/95 as Vol./Pg. No. 95-118085 in Multnomah County Book of Records
  - Exhibit B6** Sec-h Permit Application Prepared by AG Crook Company
  - Exhibit B7** 1994 Aerial Photograph (Vicinity Map)
  - Exhibit B8** Site Plan, Grading Plan & Driveway Profile (Revised 12/21/95)
- Exhibit C** Staff Template Map

- Exhibit D** Letter from Kevin Bender dated January 12, 1996  
**Exhibit E** Letter from David Jossi dated January 15, 1996  
**Exhibit F** Letter from Tualatin Valley Fire and Rescue dated February 14, 1996  
**Exhibit G** Staff Report Prepared for March 20, 1997 Public Hearing  
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**Exhibit V** August 8, 1995 Letter from Planning Staff  
**Exhibit W** August 15, 1995 Letter from Land Development Consultants with Owner consent to Variance Form  
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**Exhibit Z** January 18, 1996 Letter from Planning Staff  
**Exhibit AA** January 24, 1996 Letter from Planning Staff  
**Exhibit BB** January 31, 1996 Letter from Land Development Consultants

**Items Submitted After March 20, 1996 Hearing**

- Exhibit CC** March 25, 1996 Letter from Christopher Foster  
**Exhibit DD** March 27, 1996 Letter from William Cox  
**Exhibit EE** March 21, 1996 Letter from Michael Carlson  
**Exhibit FF** March 28, 1996 Memo to File from Staff



**Exhibit GG** Notice of continuation

**Items Submitted At April 3, 1996 Hearing**

**Exhibit HH** Staff Rebuttal

**Exhibit II** Submittal by Mr. Cox

**Items Submitted After April 3, 1996 Hearing**

**Exhibit JJ** Intermediate Ruling

**Exhibit KK** Department of Land Conservation and Development Letter  
Dated 4/30/96

**Items Submitted At May2, 1996 Hearing**

**Exhibit LL** Western Helicopter Services Letter Dated 5/1/96

**Exhibit MM** Department of Land Conservation and Development Letter  
Dated 4/9/96

**Exhibit NN** Applicant's Submittal Dated 5/2/96

**Exhibit OO** Baker Rock Resources letter dated April 30, 1996

**Items Submitted After May2, 1996 Hearing**

**Exhibit PP** Applicant's Submittal Dated May 8, 1996

**Exhibit QQ** Applicant's Submittal Dated May 17, 1996

**Exhibit QQ-A** Washington County Zoning Map

**Exhibit QQ-B** Washington County Zoning Ordinance

**Exhibit QQ-C** District 'B' Map

**Exhibit QQ-D** Letter from Agra Earth & Environmental  
dated May 16, 1996

**Exhibit QQ-E** Letter from Mike Pihl Logging, Inc.

**Exhibit RR** Letter from Soderstrom Architects, May 16, 1996

**Exhibit SS** Letter from Jeffrey L. Miller dated May 16, 1996

**Exhibit TT** Letter from Western States Development dated May 17, 1996

**Exhibit UU** Letter from Department of Forestry dated May 17, 1996 w/  
cover sheet from Western States Development

**Exhibit VV** Email from County Counsel

**Exhibit WW** Memo from Staff dated 5/21/96

RECEIVE

APR 29 1996

BEFORE THE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON

Multnomah County  
Zoning Division

Regarding a request by Eric and Kimberly Evans for  
a Conditional Use Permit and Variance to construct  
a single family dwelling not related to forest use  
located in the CFU zone at 13913 NW Skyline  
Blvd., in unincorporated Multnomah County,  
Oregon.

INTERMEDIATE RULING

CU7-95 HV 17-95

(Evans)

At the conclusion of the April 3rd hearing, the applicant requested the Hearings Officer to issue an Intermediate Ruling with regard to the applicable law concerning the "template test" and whether or not Goal 5 is directly applicable in this case. Concerning these legal issues, the Hearings Officer makes the following findings:

1. Template Test. The Hearings Officer finds that the applicable template test for determining whether or not this dwelling can be permitted in a forest zone is found at OAR 660-06-027. Since Multnomah County has not yet amended its land use regulations to implement the 1994 amendments to Goal 4 and its administrative rules, ORS 197.646(3) requires that the amended goal and administrative rules "shall be directly applicable to local government's land use decision." Therefore, in this case the applicable template test is found in OAR 660-06-027.

2. Interpretation of the term "Centered on the Center of the Subject Tract." In this case, there has been considerable debate concerning the manner in which the center of the subject tract is determined, in order to apply the template test. Having reviewed the testimony and exhibits received in this manner, the Hearings Officer finds that the county's justification for using the "center of gravity" as a method of determining the center of the template is reasonable and is supported by a valid technical explanation. Furthermore, although the "center of gravity" test was used by the county as the method for determining the center of the template for purposes of the county ordinance, the Hearings Officer finds that the same method is also a reasonable interpretation of the template test for purposes of OAR 660-06-027. Therefore, the Hearings Officer will use the center of gravity test as a method of computing the template test for purposes of OAR 660-06-027.

3. Goal 5 Application. The Hearings Officer agrees with analysis and conclusions of the applicant/appellant with regard to whether or not the SEC criteria or the Goal 5 criteria apply directly with this application. The Hearings Officer finds that Goal 5 and its administrative rules apply directly to this quasi-judicial action.

**4. Conclusion.** This Intermediate Ruling is being provided at the request of the applicant/appellant in advance of the hearing on this matter which has been continued to 3:00 pm May 2, 1996. The Hearings Officer intends to provide more detailed findings concerning the above mentioned conclusions as part of the Final Order in this case.

It is so ordered this 29<sup>th</sup> day of April, 1996.



Phillip E. Grillo  
Hearings Officer  
Multnomah County

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- Exhibit FF** March 28, 1996 Memo to File from Staff



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

## Staff Report

This Staff Report consists of Conditions, Findings of Fact, and Conclusions.  
Prepared for a Public Hearing to be held on March 20, 1996

### CU 7-95; HV 17-95

**Conditional Use Request for a Single Family Dwelling Not Related to Forest Management  
Variance to Side and Rear Yard Setback  
Compliance with the West Hills Reconciliation Report (a component of the Comprehensive Plan)  
to meet State Goal 5 requirements**

Applicant requests Conditional Use approval of a single family dwelling not related to forest management on a 20.00 acre Lot of Record in the Commercial Forest Use zoning district. Applicant proposes to place the dwelling 50' from both the north and west property lines which would require a major Variance from the 200 foot side and rear yard setback requirements. The proposed development requires a finding of State Planning Goal 5 Compliance for the development because it is located in an area designated as Primary Wildlife Habitat.

**Location of Proposal:** 13913 NW Skyline Blvd.

**Tax Roll Description:** Tax Lot '15', located in Sec 25, T 2N, R 2W

**Plan Designation:** Commercial Forest

**Zoning District:** Commercial Forest Use (CFU) with Primary Wildlife Habitat Designation

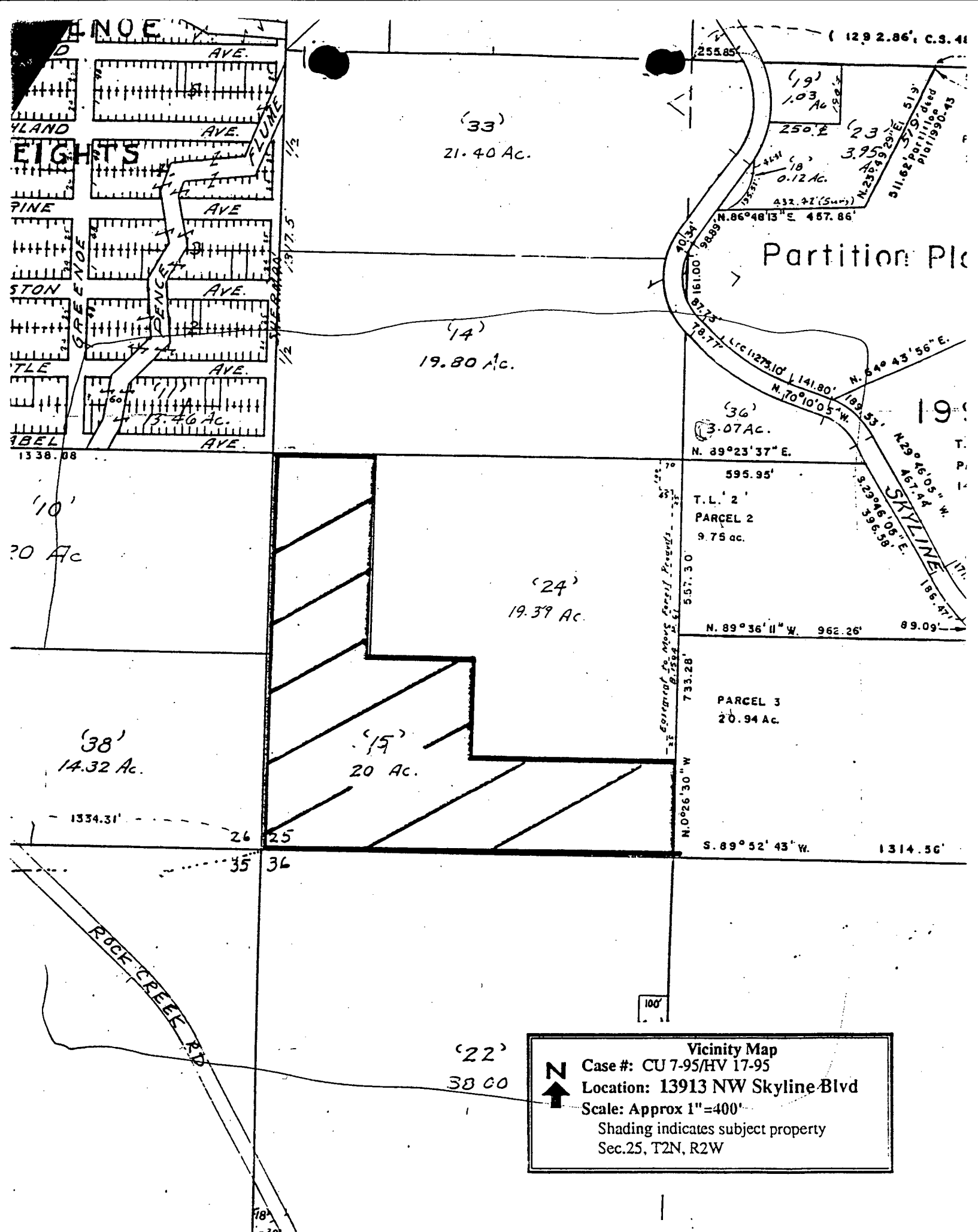
**Applicant:** Kim Evans  
7555 NW 214th Place  
Hillsboro, OR 97124

**Owner:** Eric D. and Kimberly R. Evans  
7555 NW 214th Place  
Hillsboro, OR 97124

**Staff Contact:** Susan Muir

EXHIBIT

G







**LIST OF EXHIBITS**  
**CU 7-95; HV 17-95**  
(PREPARED MARCH 13, 1996)

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- EXHIBIT A**     **APPLICANT'S STATEMENT SUBMITTED JULY 12, 1995**
- EXHIBIT A1     SITE PLAN AND GRADING PLAN
  - EXHIBIT A2     CURRENT WARRANTY DEED & ROADWAY EASEMENT
  - EXHIBIT A3     WARRANTY DEED DATED OCTOBER 7, 1976
  - EXHIBIT A4     SCS SOILS MAP AND DESCRIPTION
  - EXHIBIT A5     AERIAL PHOTOGRAPHS (1984 & 1986)
  - EXHIBIT A6     MAPS OF 160-ACRE GRID
  - EXHIBIT A7     ASSESSMENT/OWNERSHIP RECORDS OF PROPERTIES WITHIN 160-  
ACRE GRID (MULTNOMAH COUNTY AND WASHINGTON COUNTY -  
INCLUDES WASHINGTON COUNTY TAX MAP)
  - EXHIBIT A8     LAND USE PLANNING NOTES, NO'S 1 AND 2, Oregon Department of  
forestry, March and September 1991
  - EXHIBIT A9     "GEOTECHNICAL RECONNAISSANCE AND STABILITY QUESTIONNAIRE"
  - EXHIBIT A10    SERVICE PROVIDER STATEMENTS
- EXHIBIT B**     **APPLICANT'S SUPPLEMENTAL STATEMENT SUBMITTED JANUARY 4, 1996**
- EXHIBIT B1     "PRIVATE ON-SITE SEWAGE DISPOSAL CERTIFICATION" FORM WITH  
APPROVED LAND FEASIBILITY STUDY (LFS 138-95).
  - EXHIBIT B2     LETTER TO MULTNOMAH COUNTY RFPD NO. 20 DATED 12/21/95
  - EXHIBIT B3     OREGON DEPARTMENT OF FORESTRY (ODF) LETTER DATED 11/27/95
  - EXHIBIT B4     RETURNED QUESTIONNAIRES FROM ADJACENT PROPERTY OWNERS  
ON FARM/FOREST ACTIVITIES
  - EXHIBIT B5     MULTNOMAH COUNTY CONDITIONS & RESTRICTIONS STATEMENT  
RECORDED 9/27/95 AS VOL/Pg NO. 95-118085 IN MULTNOMAH  
COUNTY BOOK OF RECORDS.
  - EXHIBIT B6     SEC-H PERMIT APPLICATION PREPARED BY A.G. CROOK COMPANY
  - EXHIBIT B7     1994 AERIAL PHOTOGRAPH (VICINITY MAP)
  - EXHIBIT B8     SITE PLAN, GRADING PLAN & DRIVEWAY PROFILE (REVISED  
12/21/95)
- EXHIBIT C**     **STAFF TEMPLATE MAP**
- EXHIBIT D**     **LETTER FROM KEVIN BENDER DATED JANUARY 12, 1996**
- EXHIBIT E**     **LETTER FROM DAVID JOSSI DATED JANUARY 15, 1996**
- EXHIBIT F**     **LETTER FROM TUALATIN VALLEY FIRE & RESCUE DATED FEBRUARY 14, 1996**
- EXHIBIT G**     **STAFF REPORT PREPARED FOR MARCH 20, 1996 PUBLIC HEARING**

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**CU 7-95; HV 17-95**  
(PREPARED MARCH 13, 1996)

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- EXHIBIT G**     **STAFF REPORT PREPARED FOR MARCH 20, 1996 PUBLIC HEARING**

## **Recommended Hearings Officer Decision:**

### **CONDITIONAL USE:**

**(CU 7-95):** DENY, development of this property with a single family dwelling not related to forest management because based on the following conclusions and findings, the application does not demonstrate compliance with the Oregon Administrative Rules 660-06, the Multnomah County Comprehensive Plan or the Multnomah County Zoning Code;

### **VARIANCE**

**(HV 17-95):** DENY, the north yard and west yard setbacks of 50' for the proposed single family dwelling based on the following conclusions and findings;

### **/WEST HILLS RECONCILIATION REPORT AND GOAL 5 COMPLIANCE**

DENY, Goal 5 compliance based on the following conclusions and findings;

### **Staff Report Format**

This staff report addresses three requested actions: first, a request for conditional use approval for a dwelling not related to forest management; second, a request for approval of a variance to the side and rear yard setback standards for the single family; third, a determination of Goal 5 Compliance for development within a primary wildlife habitat area. The Findings of Fact and Conclusions for the Conditional Use appear first, followed by the Findings of Fact and Conclusions for the Variance second, followed third, by the Goal 5 Compliance discussion. There are two submittals by the applicant used in the response to the code criteria. Any Exhibit referenced by the applicant will have a letter, followed by a number. An Exhibit included in the original submittal dated July 11, 1995 will be lettered 'A' followed by the number, any Exhibit referenced as part of the second submittal received January 4, 1996 will be lettered 'B', followed by the number. Any additional Exhibits referenced in the Staff responses will be labeled only by letters.

## **FINDINGS OF FACT:**

### **Applicant's Proposal:**

The applicant requests the Hearings Officer approval to develop the above described property with a single family dwelling not related to forest management. The subject property is 20 acres in size and is predominantly wooded. The site has areas of moderate and steep slopes. The site does not front a public road, but is accessed by an existing roadway easement from Skyline Boulevard. Also requested is approval of a variance to the required yard setbacks of 200 feet. The applicant proposes setbacks of 50'. In addition, the proposed development is located within a designated Primary Wildlife Habitat which requires approval.

# **1. CONDITIONAL USE ORDINANCE CONSIDERATIONS AND FINDINGS:**

**NOTE: THE APPLICANT'S RESPONSE TO AN APPROVAL CRITERIA WILL BE INDICATED BY THE BEGINNING NOTATION "APPLICANT'S RESPONSE:". (Additional Planning Staff comments may be added where supplemental information is needed or where staff may not concur with the applicant's statements.)**

- A. MCC 11.15.7120 Conditional Use Approval Criteria (General): "(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." The approval criteria listed below are listed in the district; therefore, the general criteria in this subsection do not apply.
- B. Revisions to OAR 660-06, adopted on February 18, 1994, have not yet been adopted by the county. Consequently, any requirements of the OAR that are not included in the county code, as well as any OAR requirements that are more restrictive than county code criteria, must also be applied to this proposal. Applicable ordinance criteria are listed below in bold. Additional OAR requirements follow in [*bold, italics and bracketed*].
- C. MCC 11.15.2052 (A): A dwelling not related to forest management may be allowed subject to the following:

- (1) The lot shall meet the lot of record standards of MCC .2062 (A) and (B) and have been lawfully created prior to January 25, 1990;

**Applicant's Response:** MCC .2062 (A)(2) requires (a) a deed prior to 1990, (b) that the parcel satisfied the applicable laws when created, (c) that the parcel does not meet the minimum lot size (80 acres), and (d) that the parcel is not contiguous to other standard lots under the same ownership. MCC .2062(B) offers definitions applicable to MCC .2062(A).

A warranty deed dated October 7, 1976 describing the site was recorded with the Multnomah County Recording Section on April 10, 1980 in Book 1432, Page 1782 (attached as Exhibit A3). The subject parcel is 20 acres in size, and exceeded the minimum lot size in the MUF-19 zone when it was originally created in 1951 (deed recorded with Multnomah County Recording Section in Book 1504, Page 61). The parcel is less than 80 acres in size and, thereby, does not meet the current minimum lot size in the CFU Zone. The applicant does not own contiguous property, either in CFU or EFU zoning. These findings demonstrate that the subject parcel satisfies the lot of record standards of MCC .2062 (A) and (B), and was lawfully created prior to January 25, 1990.

*All currently contiguous ownerships must be considered to be the subject "tract" of this*

*application. ["Tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. OAR 660-06-027(5)(a)]*

*Under the OAR, an additional dwelling is not allowed if there is an existing dwelling on the "tract". [A proposed dwelling under this rule is not allowed: ... Unless no dwellings are allowed on other lots or parcels that make up the tract ... If the tract on which the dwelling will be sited includes a dwelling. OAR 660-06-027(4)(c)&(d)]*

**Staff Comment:** Assessor's printout is in the file and is made a part of the record as Exhibit A7.

- (2) The lot shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent County Maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;

**Applicant's Response:** The subject property is not located adjacent to any county maintained roads, therefore the required minimum yard of 60 feet to the centerline of any adjacent county maintained road cannot be applied to this property.

Due to the unusual configuration of this lot, the limitations of the terrain and the desire to preserve the densely forested areas on the property, the proposed homesite cannot satisfy the 200-foot setback standard. The only feasible location for a homesite is in the north-west corner, where the lot is approximately 325 feet in width, measured east-west. Given the width of the lot in this area, it is not possible to meet the 200-foot setback to the property lines. Therefore, the applicant requests a variance pursuant to MCC .8505, which is addressed below in this report.

**Staff Comment:** The lot is of sufficient size to accommodate siting the dwelling in accordance with the minimum yard setbacks as required in MCC .2074. Staff does not concur that the proposed location is the only feasible location for a homesite. The applicant has submitted the Variance application and addressed the criteria of MCC .8505 through .8525 as applicable (section 2 of this report).

- (3) The lot(s) shall meet the following standards: ...

- (c) The lot shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and

**Applicant's Response:** According to the Multnomah County SCS Soil Survey (See Exhibit A4), the soils on the subject property are Cascade Silt Loam (7C, 7D, & 7E). The soils have a Site Index of 157, which translates into a yield of approximately 153 cubic feet per acre per year.

- (i) The lot and at least all or part of 11 other lots [that existed on January 1, 1993, OAR 660-06-027(1)(d)(C)(i)] exist within a 160-acre square when centered on the center of the subject lot parallel and perpendicular to section

lines; and

**Applicant's Response:** Aerial photographs and maps attached as Exhibits A5 and A6 demonstrate the existence of 13 other lots within a 160 acre square centered on the center of the subject lot parallel and perpendicular to Section lines.

(ii) Five dwellings [*that existed on January 1, 1993, OAR 660-06-027(1)(d)(C)(ii)*] exist within the 160-acre square.

**Applicant's Response:** Aerial photographs and maps attached as Exhibits A5 and A6 demonstrate the existence of five (5) dwellings within the 160 acre square.

**Staff Comment:** Exhibit A6 submitted by the applicant includes 5 numbered arrows, and one arrow with the notation 'on the line' (tax lot '22'). The Assessment and Taxation information included with the applicant's submittal shows tax lot '36' as being 'vacant land', [Exhibit A7, p. 15] this tax lot shows an arrow number '1'. Staff cannot make the finding based on the A&T information and site visits that a dwelling existed on tax lot '36' on January 1, 1993. If the arrow labeled 'on the line' on Exhibit A6 is to be one of the five (5) dwellings included in the template test, staff would need reliable survey information verifying the dwelling on tax lot '22' is within the template. In addition, the 160 acre square template as positioned by Staff includes the house, arrow number 3 on tax lot '32', 'on the line' of the template and Staff would need survey information verifying the location of the dwelling. Without this additional survey information Staff can only verify 3 dwellings within the 160 acre template and the parcel does not meet the 5 dwelling minimum established in MCC 11.15.2052. The Staff's template overlay is included as Exhibit C.

(d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (c) above.

**Applicant's Response:** No lots or dwellings within an urban growth boundary were counted in (a) through (c) above.

(e) The lot is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species recognized by the Forest Practices Rules.

**Applicant's Response:** Soils on the subject parcel have a Site Index of 157, which means that a fully stocked stand of 70 year old Douglas fir trees can produce 10,720 cubic feet of lumber per acre. The SCS survey says the "soil is suited to Douglas Fir. Dividing the yield by 70 years provides the average growth rate of 153 cubic feet per year per acre. When multiplied by the 20 acres on the site, the annual growth is approximately 3,060 cubic feet (See Exhibit A4). Therefore, this lot is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species.

(4) The dwelling will not force a significant change in, significantly increase the costs of,

or impede accepted forestry or farming practices on surrounding forest or agricultural lands;

**Applicant's Response:** The Skyline Boulevard area is rural residential in character. Land uses in the surrounding area are depicted on the attached aerial photographs (Exhibit A5). Numerous dwellings exist in the surrounding area on parcels of this size or smaller. The addition of this single family dwelling will not alter that character. The proposed development is a single-family, detached dwelling not in relation to forest use. Water supply for the dwelling will be provided through an on-site well. An on-site septic system will be established in compliance with Multnomah County regulations. The proposed driveway will be constructed to Multnomah County and Fire District standards. It is anticipated that the proposed dwelling will not exceed an additional 10 vehicle trips per day along Skyline Boulevard or the existing roadway easement.

Since the proposed dwelling does not yet exist and is hypothetical at this time, no concrete evidence as to the actual activities of the future occupants can be provided with this analysis. However, it can be concluded from observation and prior knowledge of other existing rural residential uses that activities associated with single-family dwellings will likely be those customarily carried on, such as eating, sleeping, gardening, outdoor recreation, raising a family and occasional entertainment of guests.

There is very little commercial forestry or agriculture in this section of Skyline Ridge. While the subject property is in the CFU District, it is adjacent to EFU land. Farming has been inhibited by poor soils, steep topography, lack of irrigation, high elevation, cold winds, sometime heavy snow cover, and the threat of soil erosion from intensive farming on marginally steep ground. What little farming exists is mostly in low-yield hay production or pasture. The large parcels in the EFU District are used for hay production, pasture, and forest; however, they are not producing commercial-level yields.

Properties employed in hay production and pasture are located in all directions of the subject site at distances in excess of 300 feet. Practices associated with the cultivation of field crops such as grains, clover, hay, etc. include plowing, discing, harrowing, cultipacking, ground application of soil amendments (fertilizer, lime), herbicides and pesticides, seeding, harvesting, baling and gathering, and transport of the harvested material. These practices employ the use of various types of farm equipment, including tractors and towed appliances such as plows, rotovators, discs, harrows, cultipackers, spreaders, seed drills, sprayers and specialized mowers and balers. Trucks are employed for the transport of some of this equipment, as well as the seed, amendments, sprays and end products. Pasture lands, except for unmanaged forage areas (cleared land), receive much the same treatment as lands used for field crops and similar farm equipment is used (tractors, plows, disc, seed drills, etc.). Tilling and replanting of managed pastures ordinarily occurs on a seven year cycle. Harvesting is done by grazing animals instead of mechanized equipment.

Properties employed in some level of forest use, predominantly not on a commercial scale, are located in all directions of the site, with abutting parcels to the north, west and south. Forest practices include road building prior to harvest; timber harvest stock piling

and burning of slash subsequent to harvest; replanting; spraying of herbicides and pesticides and periodic thinning and trimming as the timber grows. Road building, harvesting, slash burning and thinning require the use of heavy equipment such as bulldozers, skidders, yarders (on steep sites) loaders and trucks. Chain saws are also used in harvesting and thinning operations. Replanting is accomplished using hand labor, as is trimming and some early thinning of the stand. Spraying in areas with moderate residential density on nearby lands is normally accomplished from the ground. However, spraying may also be accomplished from the air using low-flying fixed-wing aircraft or helicopters in order to limit drift of spray material to nearby properties. Effects from these activities include noise from heavy equipment and chain saws during harvest and thinning operations, smoke from slash fires, limited spray drift from herbicide and pesticide applications subsequent to harvest and replanting and periodic appearances by persons involved in ongoing stand management.

Nonfarm/nonforest uses and dwellings exist in all directions around the subject site. Farm and forest uses on lands near and adjacent to the site are currently being impacted by existing nonfarm/nonforest uses. Any potential impacts from the proposed dwelling to farm or forest activities beyond the existing nonfarm/nonforest uses is nullified by the impacts of these existing nonfarm/nonforest uses.

Impacts to ongoing farm and forest uses from the dwelling site are mitigated by several factors in addition to the presence of existing dwellings in the area. These factors include intervening distances and vegetation. The closest farm/forest operation to the north is located over 100 feet from the dwelling site. A farm operation is located over 100 feet to the east of the dwelling site. The dwelling site is separated from farm/forest uses to the south by a distance of over 1,000 feet. The dwelling site is separated from farm/forest uses to the west by a distance of approximately 100 feet. The subject property is densely wooded, as well as properties to the north, west and south. These factors combine to insulate the dwelling site from other farm and forest activities occurring on properties surrounding the site.

Potential physical impacts to the occupants of the dwelling from farm/forest uses and practices will be offset by location of the dwelling 200 feet from the east property line in compliance with required setbacks. A variance is sought as part of this application to allow the dwelling to be located 50 feet from the north property line and 50 feet from the west property line. A variance is necessary due to the limiting slopes, dense vegetation and unusual configuration of the parcel. Impacts to the dwelling from accepted farm and forest practices could include dust and noise from tilling and harvest operations, and possibly spray drift and smoke. Dust from tilling operations does not normally extend beyond 100 feet, nor does drift from spray operations. Tilling, planting, spraying and harvesting operation for field crops are likely to occur on only an 8 to 10 day spread in any given year. Farm tractors are generally equipped with mufflers. The configuration and location of fields to the north, west and south will place operating farm equipment over 100 feet away from the proposed dwelling all of the time during tilling and harvest operations. Observed ground spraying of herbicides and pesticides produces no significant spray drift or overspray beyond the ground area being sprayed, if it is done using an



accepted practice. Trespass and vandalism on nearby farm and forest properties is as likely to originate from outside the area as it is from dwellings in the vicinity. Trespass and vandalism on farm and forest land in the immediate vicinity of the development site cannot be effectively prevented by any physical means. However, the number of existing dwellings in the vicinity will discourage trespass and vandalism. Farm and forest lands are readily observable from nearby dwellings. Trespass and vandalism on these properties will be discouraged by the potential for observation. Trespass on nearby farm and forest lands by domestic animals (livestock, dogs) can be prevented by erection of strong fencing, if livestock are present, and by enforcement of the County's leash laws. However, livestock is not proposed on the subject site and adjacent properties with livestock are fenced.

The above findings demonstrate that the proposed dwelling, and activities associated with the dwelling, will not force a significant change in accepted farm/forest practices on surrounding lands devoted to farm/forest use; nor will it significantly increase the cost of or impede accepted farm/forest practices on surrounding lands devoted to farm/forest use.

The aerial photograph (Exhibit B7) serves as a vicinity map of surrounding forestry and farming activities. The applicant has researched contiguous tax lots to determine the nature of adjacent farm/forest uses. Questionnaires were mailed to adjacent property owners to gather information regarding existing and planned forestry and farm practices. There are 9 tax lots adjacent to the subject site under 9 different ownerships. Nine (9) questionnaires were mailed out, one to each adjacent property owner. Of the mailed questionnaires, 4 were returned (Refer to Exhibit B4). The following information has been gathered from Multnomah County and Washington County Assessor's records, returned questionnaires and review of the aerial photograph.

#### Summary of Farm/Forest Activities on Adjacent Properties

<u>Tax Map</u>	<u>Tax Lot</u>	<u>Acreage</u>	<u>Owner</u>	<u>Use</u>
2N2W25	(14)	19.80	Paula M. Williams	F
2N2W25	(24)	19.39	Frederick/Carrie King	D/H/F
2N2W25	Parcel 3	20.94	Western States Dev. Corp.	H/F
2N2W26	(5)	26.71	Leon/Sen Speroff	D/F
2N2W26	(10)	20.00	Edward/Fritzi Parkinson	F
2N2W26	(38)	14.32	Vanport Manufacturing, Inc.	F
2N2W36	(22)	38.00	Gordon/Violet Nerheim	D/F
2N2W36	(32)	76.99	Blanche D. Miller	D/F
2N2W35	101	5.30	Adele M. Benyo	D/F

#### Key

D = Dwelling, F = Forest/Timber, H = Hay

Five (5) of the adjacent properties contain residential uses. All 9 of the adjacent properties contain forestry/timber uses. Two (2) of the adjacent properties contain farm uses

(hay production). Properties in all directions around the site are employed in forest/timber uses, while only the properties adjacent to the east are in farm use (Tax Lot (24) and Parcel 3, Map 2N2W-25, are employed in hay production). Since specific management information for these activities is not available, documentation of typical farm and forest management information has been obtained from the Oregon State University Extension Service (attached to the original Applicant's Narrative Statement as Exhibit A8). An abstraction of this information is contained within the original Applicant's Narrative Statement.

As discussed within the original Applicant's Narrative Statement, impacts to ongoing farm and forest uses from the dwelling site are mitigated by several factors, including the presence of numerous existing dwellings in the area. These factors include intervening distances and vegetation. The closest forest operation to the north is located over 50 feet from the dwelling site. A farm operation is located over 200 feet to the east of the dwelling site. The dwelling site is separated from forest uses to the south by a distance of over 1,000 feet. The dwelling site is separated from forest uses to the west by a distance of approximately 50 feet. The subject property is densely wooded, as are properties to the north, west, east and south. These factors combine to insulate the dwelling site from other farm and forest activities occurring on properties surrounding the site.

The above discussion, in conjunction with the discussion contained under the same section within the original Applicant's Narrative Statement, demonstrate that the proposed dwelling, and activities associated with the dwelling, will not force a significant change in accepted farm/forest practices on surrounding lands devoted to farm/forest use; nor will it significantly increase the cost of or impede accepted farm/forest practices on surrounding lands devoted to farm/forest use.

**Staff Comment:** The five (5) dwellings used in the applicant's survey are not the five dwellings used for the demonstration of the template test. Tax lot '5' in Section 26 is listed as having a dwelling on it and the Assessment and Taxation information lists this as 'Vacant Land'. This may be because it is in common ownership with tax lot '8' of Section 25 to the northeast of tax lot '5' and they would be considered a 'tract' (Exhibit A7 p. 38). The applicant states that "All 9 of the adjacent properties contain forestry/timber uses". The placement of the proposed dwelling will impact these surrounding uses by reducing the existing distance between other dwellings and any forest uses. Overspray by air of chemicals may have to be limited or reduced by siting the dwelling in the center of the narrow neck in the northwest corner. As explained in the Applicant's Submittal (Exhibit A8, No. 2, p. 3) "In the case of herbicide applications, the FPA (Forest Practices Act) requires that when applying herbicides by aircraft, the operator must leave an unsprayed strip of at least 60 feet adjacent to dwellings. The requirement of leaving an unsprayed strip of 60 feet may mean that the operator must stop spraying considerable distance away from any dwelling to avoid any drift within the 60 foot unsprayed strip." Therefore, Staff cannot determine compliance with MCC 11.15.2052(A)(4).

- (5) 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 of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgement of the Comprehensive Plan in 1980, will be acceptable;

**Applicant's Response:** According to the Comprehensive Plan findings on wildlife habitat, the Oregon Department of Fish and Wildlife maps do not list this area among the sensitive areas important to the survival of big game.

- (6) The proposed dwelling will be located on a lot within a rural fire protection district, or the proposed resident has contracted for residential fire protection;

**Applicant's Response:** The parcel is within the boundaries of Multnomah County RFPD #20.

**Staff Comment:**—The parcel is within the Tualatin Valley Fire and Rescue and—Beaverton fire Department boundary.

- (7) Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance;

**Applicant's Response:** The parcel is served by an access easement for ingress-egress from Skyline Boulevard (Exhibit A2).

- (8) The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest tax deferral;

*The following OAR requirement supercedes the above requirement to disqualify the property from farm or forest deferral. If the property is planted to Department of Forestry standards then the property can be retained or added onto tax deferral programs.*

**[OAR 660-06 029(5): Approval of a dwelling shall be subject to the following requirements:**

- (a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.**
- (b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved.**
- (c) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met.**

***(d) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.]***

**Applicant's Response:** According to Multnomah County Assessment records, the parcel is not receiving farm or forest deferral.

**(9) The dwelling meets the applicable development standards of MCC .2074; (as follows:)**

**Applicant's Response:** As demonstrated in the following sections of this report, the proposed dwelling meets, or can feasibly be conditioned to meet, the applicable standards of MCC .2074.

**MCC .2074 Development Standards for Dwellings and Structures**

Except as provided for the replacement or restoration of dwellings under MCC .2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

**(A) The dwelling or structure shall be located such that:**

**(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058 (C) through (G);**

**(2) Forest operations and accepted farming practices will not be curtailed or impeded;**

***[OAR 660-06-029(1)(b): The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;]***

**Applicant's Response:** Sections MCC 11.15.2074 (A)(1) and (2) contain language similar to that found in Section MCC 11.15.2052 (A)(4). While it appears that the standards may be different in scope, they are both intended to ensure that dwellings not related to forest practices will not significantly conflict with nearby or adjoining farm/forest lands and practices. Therefore, since the standards are so similar, if compliance with .2052(A)(4), then it follows that compliance with .2074(A)(1) and (2) has also been demonstrated, provided the findings are adequate to demonstrate compliance with both.

Aerial photographs depicting adjacent and surrounding farm/forest uses are attached as Exhibit A5. As discussed above under .2050(A)(4), this development will not impact, curtail or impede farm/forest lands, operations or accepted practices due to the dense vegetation and steep terrain surrounding the homesite.

The proposed homesite location is the most suitable location for a dwelling on the parcel. The proposed dwelling location is a relatively flat area, near the highest point on the parcel. The majority of the parcel contains slopes above 20%, which are too steep for a dwelling site. Most of the parcel is also densely vegetated with Douglas Fir trees. The proposed homesite is already free of the dense vegetation found throughout the property. Construction of a dwelling on the proposed homesite would not require the removal of significant amounts of vegetation, whereas a homesite location elsewhere on the property would necessitate the removal of a significant amount of Douglas Fir trees. The steep terrain and existing vegetation on other parts of the parcel restrict the potential of locating a homesite in other locations on the parcel (refer to the attached site plan, Exhibit A1).

Due to the dense vegetation and steep slopes throughout the property, the impact of a dwelling on nearby or adjoining farm/forest lands will be virtually the same at any location on the site. Through compliance with the applicable criteria, listed within this report, and conditions of approval, the proposed house location will have minimal impact on existing and future farm/forest operations. Since the proposed roadway easement is already in existence and the proposed homesite will require the least amount of grading and vegetation removal, it is apparent that a dwelling in the proposed location will have the least impact on nearby or adjoining forest or agricultural lands, now existing or in the future.

As previously stated within this report, the proposed dwelling cannot meet the 200-foot setback requirement due to the width of the lot in this area. Therefore, a variance is requested as part of this application (Variance criteria are addressed in this report, below).

As previously stated within this report, no future forestry practices are planned for the subject property. The site was logged over 7 years ago and has been entirely replanted, except for the proposed house location. The proposed house location is the best one because it is cleared of trees and would not require the removal of any young trees that were recently replanted.

**Staff Comment:** Although Staff is reviewing the application for the cleared area in the north west corner of the site, there is another larger, relatively flat cleared area in the south east portion of the property that has not been reforested recently with young trees. Staff does not concur that the proposed house location is the best one based on the argument that it is cleared of trees and would not require the removal of any young trees that were recently replanted. The issue is that the development is required to demonstrate that it has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements for the CFU district and that forest operations and accepted farming practices will not be curtailed or impeded. The siting must ensure that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.

Two letters were submitted into the file one by Kevin Bender of Western States Development Corporation (Exhibit D), owner of the adjacent property (tax lot 2 of parcel

2 of partition plat 1990-43) and the other by David Jossi (Exhibit E), the contract farmer that manages the property for Mr. Bender. Both letters are in opposition to locating the homesite to the south east end of the property due to potential impacts of surrounding farm practices. Staff believes that due to the topography on the site that slopes down from the hay field and the dense vegetation between the two parcels that a different homesite may not affect the agriculture operation if it were closer to the east property site. However, Staff is reviewing the application for the development site proposed in the north west corner of the property and does not have the information necessary to review any other development proposal for another area on the property. According to information submitted by the applicant, there is one house existing within 160' of the boundary of the hay farm in question (tax lot 36), there are two homes within 500 feet of the boundary of the existing hay farm (tax lots 24 and tax lot '1' of parcel 2 of partition plat 1990-43, this home is not noted as a dwelling on the 'Vicinity Map' or aerial photograph submitted by the applicant on January 4, 1996) and there are two houses within 1,000 feet of the boundary of the existing hay operation. The proposed homesite is in excess of 1,000' from the hay farm and the nearest potential site in the south east corner is approximately 160-200' from the hay operation. In addition, the parcel currently being managed by Mr. Jossi went through a land division case in 1989 in which the application submitted by Western States Development Corporation stated:

#### "Past and Present Uses

All attempts at farming this parcel have failed to make a profit. Hay production failed because of the poor soils, steep slopes, and poor markets. Attempts to grow winter wheat and dry land wheat failed because the soil produced substandard grain. The 33 acres cleared on these tax lots are presently left in grass, which is mowed once a year, bundled, and removed. The applicant's attempts to make this land profitable, in conformance with ORS 215.203, have failed for reasons that remain problems even for Christmas tree farms.

The reasons for unprofitable farm operation include poor soils, steep topography, lack of irrigation, high elevation, cold winds, sometime heavy snow cover, and the threat of soil erosion from intensive farming on marginally steep ground.

The problems of soil and slope and weather are shared by all surrounding EFU properties. There is no intensive commercial farming on this portion of Skyline Ridge. What little farming exists is mostly in low-yield hay production for pasture. There is one Christmas tree farm on a nearby parcel--growing Nobil fir on approximately 7 acres.

\* \* \*

In sum, numerous efforts to sustain commercial agriculture uses on the property have failed."

Staff cannot find that locating the proposed dwelling closer to the areas in forestry use and away from what has been termed a failing agricultural operation will have the least impact on nearby or adjoining forest or agriculture lands.

**(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

**Applicant's Response:** Publications provided by the Oregon Department of Forestry (ODF), attached as Exhibit A8, are pertinent to this section. These publications are Numbers 1 and 2 of Land Use Planning Notes, which were released in March and September 1991. Land Use Planning Notes indicates that the requirements for Section .2074(A)(3) are intended to minimize the amount of land taken out of forest production by residential uses. According to Notes, the standard can be met by siting dwellings close to existing dwellings and roadways, and by minimizing the length of access roads and service corridors. Notes also indicates that minimization of risks associated with wildfire, per Section .2074(A)(5), requires consideration of topography and slope direction, length of access and fuel supply for wildfire. Dwelling siting on level land is encouraged by ODF. Access drives should be as short and level as possible and must be capable of supporting fire fighting equipment.

The following discussion outlines significant factors which dictate the location of a dwelling and access drive on the subject site. There is an existing accessway on the subject property, which extends from Skyline Boulevard to the proposed homesite and beyond to adjacent lots west of the site. The access road may require some improvements in order to comply with applicable standards. Location of a home along this access road does not require any new road building on land devoted to forest use.

According to Land Use Planning Notes, No. 1, the ODF restricts the location of structures to areas of slope less than 40%. The slope of access drives is also limited to a maximum of 15%. Exhibit A1 depicts the slopes existing throughout the subject site. The highest area on the property is the northwest corner. The dwelling location contains slopes less than 40%. The slope near the proposed building site is 10%. The remainder of the property consists of slopes ranging from 10% to 50%, with the majority of the property in excess of 40% slopes. The steepest areas are in the southwestern portion of the site. Exhibit A1 indicates that portions of the property containing slopes less than 40% are predominantly found in the northwest and southeast parts of the property. The proposed location of the dwelling is one of the more level areas on the subject property. Due to steep slopes on the property and limitations on the maximum slope of an accessway, a driveway running strait and directly to a dwelling cannot be constructed on the subject property if the existing access is to be utilized. The applicant's proposed driveway takes advantage of the existing access road and maintains a maximum 15% slope. In order for the driveway to maintain a maximum 15% slope, it must follow the contours of the property and loop around to the proposed dwelling site.

The proposed dwelling site also contains minimal amounts of vegetation as compared to the remainder of the property, thereby being an appropriate dwelling location in terms of

reducing fire hazards and preserving existing trees.

A dwelling exists on tax lot (24), which abuts the subject property to the east. The proposed homesite will be located approximately 700 feet west of the existing dwelling on tax lot (24). A homesite location south of this area on the subject property would be located at a greater distance from the existing dwelling on tax lot (24), as well as more than 700 feet from dwellings on other abutting properties. Theoretically the homesite could be located closer to the eastern property line in the northwestern corner, and thereby closer to the dwelling on tax lot (24), but the slopes in this area are greater than the chosen building site and exceed 40% at some points. The proposed dwelling location is approximately 1,300 feet from Skyline Boulevard and Rock Creek Road. A dwelling location anywhere else on the site would also be an estimated 1,300 feet from Skyline Boulevard. Areas on the property exist which would be closer to Rock Creek Road than the chosen site, but these areas are excessively steep.

The proposed homesite utilizes an existing access road. No matter where the proposed dwelling is located on the property the same amount of area will be devoted to roads, since this roadway is used to access lots to the west of the site. Therefore, any homesite location will utilize an equal amount of forest land to site the dwelling, access road and service corridors.

Based on the above findings, the subject property contains a number of limiting factors to development. The proposed dwelling location was designed in consideration of the characteristics of the site, the forest uses of the property, and requirements intended to minimize risks associated with wildfire. Given the existence of the access road to the proposed homesite, and slopes and vegetation found at the homesite, it is apparent that this proposal minimizes the amount of forest land used for development, as well as minimizes the risks associated with wildfire.

The discussion contained within the original Applicant's Narrative Statement under these sections demonstrates that the "amount of forest land used to site the dwelling, access road and service corridor is minimized. The access road is existing and will be improved, for the entire length, no matter where the dwelling is inevitably located. The area north of the existing road, just as the road enters the property, is not a suitable location for the proposed dwelling as it would necessitate the removal of recently replanted trees. In spite of this, the applicant does not believe that it is necessary to demonstrate that "a dwelling could not be built north of the drive just as the drive enters the property", since the roadway has been in existence for a number of years and is only proposed for improvement.

**Staff Comment:** Staff does agree that the siting standards in the State Code and Multnomah County Code are in part to minimize the risk of fire. As evident from the topography map submitted by the applicant, the proposed development site is relatively flat, however, the development site is located at the top of a site with slopes up to 40%. So, although the footprint of the building may indeed be flat, the fire considerations include the slope hazard area directly to the south and east of the proposed homesite, as well as other areas throughout the site. The OAR's and Multnomah County Code do



have requirements for fire safety zones that can mitigate building near steep slopes. The access road cannot meet the 15% maximum slope standard. In addition, the standard is for the proposed dwelling, not the other dwellings served by the access way.

- (4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and

**Applicant's Response:** The applicant proposes to utilize an existing roadway easement to access the proposed homesite. According to Land Use Planning Notes, No. 1, the ODF restricts the slope of access drives to a maximum of 15%. Exhibit A1 depicts the slopes existing throughout the subject site. The highest area on the property is the northwest corner. The slope near the proposed building site is 10%. The remainder of the property consists of slopes ranging from 10% to 50%, with the majority of the property in excess of 40% slopes. The steepest areas are in the southwestern portion of the site. Exhibit A1 indicates that portions of the property containing slopes less than 40% are predominantly found in the northwest and southeast parts of the property. The proposed location of the dwelling is one of the more level areas on the subject property. Due to steep slopes on the property and limitations on the maximum slope of an accessway, a driveway running strait and directly to a dwelling cannot be constructed on the subject property if the existing access is to be utilized. The applicant's proposed driveway takes advantage of the existing access road and maintains a maximum 15% slope. In order for the driveway to attain a maximum 15% slope, it must follow the contours of the property and loop around to the proposed dwelling site. For these reasons, the proposed roadway is the minimum length required.

**Staff Comment:** The issue is whether physical limitations unique to the property make a road more than 500 feet long necessary in this case. The applicant must also demonstrate that the proposed length of the road is the minimum length necessary. The home cannot be built within 500 feet of a public road because the property is accessed by a private easement off of Skyline Boulevard. However, staff is not convinced that the farthest corner from Skyline Boulevard is the only acceptable building location. Any physical limitations on the subject property are not unique, as the majority of the property in the vicinity is steep terrain and forested. Staff does believe that slope, soil, waterbodies, habitats and drainage features are physical conditions. The existing cleared area, whether or not it was approved under a Forest plan is not a physical limitation. The County is not obligated to follow the plan or to approve a dwelling that is consistent with that plan. Any work which may have been completed under a Forest Plan, or the fact that there are existing cleared areas on a site does not preclude locating a dwelling at a different location which may be located closer to Skyline Boulevard in order to minimize the length of the accessway required, which is the standard. It is not relevant that there is an existing logging road and an existing cleared area for the proposed homesite. The Code does not say an access road longer than 500 feet is permitted when it is an existing road. The Code asks whether physical conditions make violation of the 500 foot standards essential. The fact there is an existing road and cleared area does not make it essential or necessary to use the access road and cleared area for the proposed dwelling.

(5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

(a) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC .2074(D) with permanent signs posted along the access route to indicate the location of the emergency water source;

(b) Maintenance of a primary and a secondary fire safety zone.

(i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(ii) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	Not required
Less than 20	50
Less than 25	75
Less than 40	100

(in) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.

(iv) No requirement in (i), (ii), or (in) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

(c) The building site must have a slope less than 40 percent.

**Applicant's Response:** No perennial water source is located on the site. The proposed dwelling will have an automatic sprinkler system. The sprinklers greatly reduce the risk of a home fire that could spread to the woods. The applicant proposes to install an irrigation system to include wet, stand pipes every 100 feet along west, north and east property

lines in vicinity of the homesite, each with 50 feet of hose. Plans also include tank storage for 1,000 gallons of water with 200 feet of hose and an operable gas driven pump. In addition, fire breaks, as outlined in this subsection, will be developed during construction. Fire breaks are indicated on the attached site plan (Exhibit A1). The proposed homesite has a slope of less than 40 percent, as required by Subsection (c) (See Exhibit A1). Driveway access will be improved and maintained to the standards of the Fire Marshal.

**Staff Comment:** The requirements of a secondary fire safety zone cannot be met because of the proposed setbacks of 50' to the north and west property lines..

**(B) The dwelling shall:**

- (1) Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;
- (2) Be attached to a foundation for which a building permit has been obtained; and
- (3) Have a minimum floor area of 600 square feet.

*[OAR 660-06-035(5) The dwelling shall have a fire retardant roof.]*

*[OAR 660-06-035(6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.]*

**Applicant's Response:** Upon approval of this application, the proposed dwelling will be designed and constructed in compliance with the standards of the Uniform Building Code. The dwelling will be attached to a foundation, for which a building permit will have been obtained, and have more than 600 square feet of floor area. The proposed dwelling will be constructed with a fire retardant roof. Any chimneys in the proposed dwelling will have spark arresters.

**Staff Comment:** The proposed single family dwelling will be required to receive a building permit which will require conformance with the Uniform Building Code.

**(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**

**Applicant's Response:** The water supply will come from a well of about 550 feet, located on the property. No water lines across neighboring properties are necessary. No surface water is involved. OAR 690, Division 10 deals with critical groundwater areas; this is not a critical groundwater area and the rules do not apply. OAR 690, Division 20 deals with surface water and does not apply.

**(D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:**

- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;**
- (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**
- (3) Provide minimum curve radii of 48 feet or greater;**
- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**
- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:**
  - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
  - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**
- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;**
- (7) Provide for the safe and convenient passage of vehicles by the placement of:**
  - (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
  - (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.**

**Applicant's Response:** The dwelling is to be accessed by an existing private roadway easement from Skyline Boulevard. The roadway will be improved and maintained to support a minimum gross vehicle weight of 52,000 pounds. No bridges or culverts will be constructed. The roadway will have an all-weather surface 20 feet wide for the private road portion of the access serving Lot 24 and the subject property. The remainder of the access is a driveway serving only the proposed dwelling. That portion of the access will be covered with a 12-foot wide all-weather surface. All curves will have a minimum curve radii of 48 feet. The easement will have an unobstructed vertical clearance of 13 feet 6 inches or greater. Portions of the driveway on the subject property may exceed the 12% maximum. The Multnomah County RFPD #20 will review the proposed driveway. Their written approval will be supplemented at a later date. A turnaround with a radius of 48 feet or more will be provided at the end of the access. Additional turnarounds will be provided in compliance with the above standards. Refer to the attached site plan and grading plan for an illustration of the driveway (Exhibit A1).

A site plan, grading plan and driveway profile (revised 12/21/95) are attached as Exhibit B8. These plans contain detailed information regarding the existing and proposed road widths and grades, as well as typical improvement cross sections. These plans have been designed and certified by a registered professional engineer (Harris Hymen, P.E.).

As previously stated within this report, the road plans and a "Minimum Design Standards For Residential Driveways and Privately Maintained Roads" form were submitted to the Fire District for review on December 21, 1995 (copy of letter attached as Exhibit B2). A response from the Fire District has not been received at this date, but is expected within a few days. Since the 180 day period ends on January 8, 1996, this supplemental report is submitted without the necessary form from the Fire District. This form will be supplemented to Multnomah County as soon as it is available.

**Staff Comment:** There are three culverts existing on the proposed accessway (two noted on the Site Plan, Grading Plan & Profile sheet, one that is not indicated but located near the profile station 34.00) that have not been demonstrated to support a minimum gross vehicle weight (GVW) of 52,000 lbs. The Tualatin Valley Fire and Rescue has determined that the fire apparatus access roadway requirements cannot be complied with in the proposed development and accessway (Exhibit F). The Fire Chief also states that "when buildings are completely protected with an approved automatic fire sprinkler system, the provision of the requirements may be modified by the chief..." Staff cannot find that the fire department exemption to meet uniform fire code requirements addresses the Multnomah County Code and Oregon Administrative Rule requirement of providing grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except upon written approval from the fire district. Staff finds that the Multnomah County Code exemption is not included so that Multnomah County can approve developments with no fire access, but to allow for occasions where road grades may exceed 12% but where fire service providers are able to still access the site. For instance some Fire District Standards, including the Tualatin Valley, have less restrictive road standards that allow grades of up to 15%. The road accessway standards, including the exemption for short segments, still allow for fire equipment to access the site when a fire district has the equipment capable of maneuvering the higher grades. The proposed development site cannot be serviced by fire fighting equipment.

(10) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;

**Applicant's Response:** The above-described statement was recorded with the Multnomah County Division of Records on September 27, 1995 as Vol/Pg No. 95-118085, a copy of which is attached as Exhibit B5.

D. MCC 11.15.2052 (B): Dwellings not related to forest management shall not be allowed upon the effective date of a small scale resource land program adopted pursuant to the requirements of OAR 660, Division 6 and 33.

*No longer applicable. See below.*

*[OAR 660-06-070, Small-Scale Resource Land, Repealed by LCDC February 18, 1994.]*

## **2. VARIANCE ORDINANCE CONSIDERATIONS:**

**G. Ordinance Considerations and Findings of Fact**

**Variance Approval Criteria MCC 11.15.8505(A):**

**The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met.**

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

**Applicant's Response:** The applicant is requesting a variance to the 200 foot setback requirement to allow the dwelling to be located 50 feet south of the north property line and 50 feet east of the west property line. The subject lot is uniquely "L" shaped with long narrow necks extending to the north and east. The contours depicted on the attached site plan (Exhibit A1) demonstrate that these necks are relatively level compared to the extreme slopes found on the remainder of the property.

The reason necessitating the variance is the proposed location of the homesite on a relatively flat area of land with minimal vegetation, which happens to be on one of the narrow necks of land in this parcel. The distance between the property lines in the neck is approximately 325 feet. It is physically impossible to locate the dwelling 200 feet from all property lines. If the home is placed 200 feet from one line, a variance in excess of 100 feet is required for the setback to the opposite property line.

The shape of the parcel and the terrain both require the location of the homesite on the narrow neck of land. The shape of this parcel is unique in this vicinity and in the CFU District. The following discussion outlines significant factors which dictate the location of a dwelling on the subject site. There is an existing accessway on the subject property, which extends from Skyline Boulevard to the proposed homesite and beyond to adjacent lots west of the site. Location of a home along this access road does not require any new road building on land devoted to forest use. According to Land Use Planning Notes. No. 1, the ODF restricts the location of structures to areas of slope less than 40%. Exhibit A1 depicts the slopes existing throughout the subject site. The highest area on the property is the northwest corner. The dwelling location contains slopes less than 40%. The slope near the proposed building site is 10%. The remainder of the property consists of slopes ranging from 10% to 50%, with the majority of the property in excess of 40% slopes. The steepest areas are in the southwestern portion of the site. Exhibit A1 indicates that portions of the property containing slopes less than 40% are predominantly found in the northwest and southeast parts of the property. The proposed location of the dwelling is one of the more level areas on the subject property. The proposed dwelling site also contains minimal amounts of vegetation as compared to the remainder of the property, thereby being an appropriate dwelling location in terms of reducing fire hazards. Therefore, due to the steep slopes and dense vegetation found throughout the site in conjunction with the unique configuration of the lot, a variance to the 200 foot setback requirement is

necessary in order to minimize the amount of grading and vegetation removal necessary to establish the dwelling, as well as to minimize the risks associated with wildfire.

**Staff Response:** Staff concurs that the shape of the property may be somewhat unique because it is "L" shaped but it is also a 20 acre parcel that does have areas that are not noted as 'Slope Hazard Areas' that could meet the setback requirements. The entire Skyline Ridge has lots with steep slopes that do not appear to be unique to this parcel. Staff does not concur that a previously cleared area is a circumstance or condition that would justify granting a variance on the property. The shape of the parcel and the terrain do not require the location of the homesite on the narrow neck of land as the applicant has stated. There may be areas with circumstances or conditions within the 20 acre parcel that do not apply generally to other areas within the 20 acre parcel, however, it appears there may be another area or areas without conditions such as steep slopes and vegetation as well as the proposed building site.

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

**Applicant's Response:** As discussed above, under Section .8505(1), the only suitable homesite on this property is within the narrow neck of land that requires this variance. Due to the width of the lot in this area, the zoning regulation requiring 200-foot setbacks restricts this parcel to a greater degree than other parcels in the vicinity or district as it eliminates the possibility of locating a dwelling in this area.

**Staff Response:** As stated earlier there are portions of the property that are wide enough to accommodate a dwelling within the setbacks. These areas may not be the ideal location for development for views because they are located in a valley, however the 200 foot setback would not restrict development of the property.

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

**Applicant's Response:** Properties surrounding the subject site are developed in a mixture of farm/forest and rural residential uses. Findings under Sections .2052(A)(4) and .2074(A)(1) through (3), above, evaluate the impact of the dwelling, in the proposed location, on adjoining properties. Given the topography and dense vegetation of the site, these findings demonstrate that authorization of this variance, allowing location of the dwelling as proposed, will not be materially detrimental to the public welfare, or injurious to property in the vicinity or district, or adversely affect development of adjacent properties.

**Staff Comment:** Staff believes the intent of the 200 foot setback requirement is to keep proposed development within the CFU zoning district away from forest practices occurring on nearby properties to protect existing forest operations against impacts of siting dwellings nearby. These new dwellings can be impacted by noise, fire and other impacts

associated with forest practices that in turn may affect how the forest and timber operations are managed and not allow them to continue in the manner that they are being managed prior to the dwelling. Staff believes by locating the development in the northernmost section of the property it is actually being pushed closer to the forested area and actually in essence being 'nestled' in between forested areas, creating a greater impact potential than other locations with similar physical conditions on the site. Staff cannot make the finding that this development area will have the least amount of impacts on the development of adjoining properties.

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

**Applicant's Response:** The proposed dwelling is consistent with Comprehensive Plan Policy 11, Commercial Forest Land ("The county's policy is to allow forest management with related and compatible uses ") and Implementing Strategy A.1 .c (dwellings not related to forest management are allowed as conditional uses.) The variance to allow the dwelling within 200 feet of a property line does not alter Multnomah County Code standards allowing a non-forest-related dwelling, which is listed in the CFU Zoning District under MCC 11.15.2052. Granting the variance will not establish a use that is not permitted in the CFU Zone. Applicable Comprehensive Plan policies are addressed in this report, below.

**Staff Comment:** The granting of a variance will not establish a use which is not listed in the underlying zone however Staff cannot make the finding that the variance will not affect the realization of the Comprehensive Plan by allowing development closer to areas reserved and designated for resource lands. Strategy A.1.c. states that "...dwellings not related to forest management...are to be allowed under approval criteria and siting standards designed to assure conservation of the natural resource base, protection from hazard, and protection of big game winter habitat". Staff believes that granting this variance will not assure conservation of the forest resource by locating it within the narrow portion of the property that extends into the narrow neck shaped portion of the property surrounded by forest uses.

### **3. STATE PLANNING GOAL 5 CONSIDERATIONS:**

The following section of this Staff Report is required pursuant to ORS 197.625 §(3)(a) because Multnomah County has adopted amendments to its Comprehensive Framework Plan that had not been acknowledged by the Land Conservation and Development Commission at the time this application was submitted.

In response to the Land Conservation and Development Remand Order 93-RA-876 the Multnomah County Board on September 22, 1994 adopted the West Hills Rural Reconciliation Report (Effective date October 23, 1994), applying Goal 5 requirements to specific scenic, stream, wildlife and mineral resources in the West Hills. The West Hills Reconciliation Report is an unacknowledged amendment to the Multnomah County Comprehensive Framework Plan.



## **Wildlife.**

The subject site includes a significant Goal 5 wildlife habitat area classified as a "primary wildlife area" for the reasons set out in the West Hills Reconciliation Report at pages V-3 through V-16. Conflict with the proposed use, and the Goal 5 analysis showing how conflicts are to be resolved to comply with Goal 5 are in the Reconciliation Report at pages V-18 through V-51. Except for findings showing how the proposal protects Goal 5 resources, which are set forth below, the findings of significance and Goal 5 analysis in the Reconciliation Report, together with the included relevant maps and tables, are hereby adopted by this reference.

Specific measures to protect primary wildlife habitat areas in the West Hills are at page VI-25 of the Reconciliation Report. These measures are applicable to this proposal which is in the Primary Wildlife Habitat and are discussed below.

Fencing should be prohibited along roadways, thus reducing barriers to wildlife movement. Design standards for fences outside of the "cultivated" area discussed below should be adopted which ensure that fences do not block passage for a wide range of wildlife species.

**Applicant's Response:** This request does not include any proposed fencing.

The "cultivated" area (i.e., lawns and gardens of residential lots in the primary habitat areas should be limited to one acre (consistent with fire safety standards), leaving the remaining land in the parcel in native vegetation, to be altered only in conjunction with approved forest management practices. This cultivated area should be designed to minimize the edge effect along roads.

**Applicant's Response:** The cultivated area will not exceed one acre on the subject site. The remainder of the land on this site will be maintained in native vegetation.

Certain introduced vegetation should be prohibited (e.g., English Ivy, Vinca, and other invasive species), even in cultivated areas.

**Applicant's Response:** Any introduced vegetation will be native to the area.

Erosion control standards should be adopted where there will be prolonged exposure of soils, or excavation, associated with residential development.

**Applicant's Response:** Erosion control methods in compliance with Multnomah County standards will be utilized during construction.

Development along significant streams should be regulated as proposed in the discussion of streams.

**Applicant's Response:** There are no significant streams located on or adjacent to the subject site.

The "Specific protection measures for primary wildlife habitat areas" on pages VI-25 and VI-26 do not address the "Program to Achieve the Goal" on page VI-24 which reads:

**"Residential and Community Service/Conditional Uses**

Standards for protection of wildlife habitat should consider various measures to ensure the maintenance and enhancement of the designated primary habitat areas as homes for various species of wildlife. Differing standards are necessary for protection of primary, secondary, and impacted wildlife habitat areas. Implementation of these standards as regards residential and community service/conditional uses should be accomplished through use of a Significant Environmental concern (SEC) overlay zone for wildlife habitat protection."

Although the subject property was not "zoned" SEC-h at the time of application, the Reconciliation Report had been adopted as a part of the County's Comprehensive Plan. In order to demonstrate compliance with the "Program to achieve the goal" in the Reconciliation Report, it has been determined by Counsel that the above language requires evaluation of the standards in the adopted Significant Environmental concern (SEC). Where a parcel to be developed contains both primary and secondary, or primary and impacted wildlife habitat areas, development activities should be limited to the secondary or impacted areas to the maximum extent feasible.

**11.15.6426 Criteria for Approval of SEC-h Permit Wildlife Habitat**

**(B) Development Standards:**

- (1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

**Applicant's Response:** The proposed location for siting of the home is a non-forested area of approximately 0.75 acres in size.

**Staff Response:** The proposed location for development which is a 'cleared' area does not meet minimum clearance standards for fire safety.

- (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

**Applicant's Response:** The proposed home site is 1350 feet from NW Skyline Boulevard at the closest point. A right-of-way gravel road approximately 1100 feet in length provides access to the southeast corner of the property from NW Skyline Boulevard. It provides the only reasonable and practical access to the property and proposed homesite.

**Staff Response:** There is no location on the site that is within 200 feet of a public road, however there may be other areas on the subject parcel which may be suitable for devel-

opment that would reduce the distance from a public road.

- (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length

**Applicant's Response:** The access road/driveway are approximately 2,200 feet in length. See Section C. Wildlife Conservation Plan below.

**Staff Response:** The private easement to the site is longer than 500 feet in length, however there may be other areas on the subject parcel which may be suitable for development that would reduce the distance from a public road.

- (4) The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary

**Applicant's Response:** Adjacent property access road greater than 200 feet from the subject property boundary.

**Staff Response:** The nearest access road is approximately 800' from the property boundary on tax lot 32.

- (5) The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.

**Applicant's Response:** Structures on adjacent property greater than 200 feet from the subject property boundary.

**Staff Response:** The only type of development occurring within 200 feet of the property boundary is the haying operation mentioned earlier.

- (6) Fencing within a required setback from a public road shall meet the following criteria:

**Applicant's Response:** No fencing is proposed.

- (7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:

**Applicant's Response:** Landscaping will not include any plants from the nuisance plant list. Nuisance plants that currently occur on the property (Himalayan blackberry, scotch broom, Canada Thistle) shall be removed and kept clear from a one acre area surrounding the homesite.

- (C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

- (1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or
- (2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section B and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section B.

**Applicant's Response:** Two non-forested areas currently occur on the property (see description of non-forested areas above). Siting a home at either of these areas will not meet the requirements of Section B. To site a home on the property within the requirements set forth in Section B would require that additional forest cover be cleared and a new driveway/access road be constructed. It is therefore recommended that the home be sited at one of the two existing non-forested areas on the property and that a wildlife conservation plan be established. It is believed that establishment of alternative conservation measures than those required under Section B will result in less detrimental impacts to the forested wildlife habitat of the property than the siting of a home within the requirements of Section B.

**Staff Response:** Staff will concur that the access drive/easement is required to be greater than 500' in length because of the extended private easement used to access the site. However, the staff does not believe that there are physical characteristics unique to the property that prevent minimizing the length of the access road more than the 2,200 feet that is proposed. Staff cannot make the finding that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use. Therefore, Staff cannot find Goal 5 compliance with a primary wildlife habitat area because the application has not demonstrated that there is a minimum departure from the standards in Section B.

**Continued Applicant's Response:** The siting of a home on the property will result in some adverse impacts to wildlife. However, impacts are not expected to be significant. The increased presence of humans on the property could result in adverse impacts to wildlife species that are intolerant to human activity. Anticipated impacts are considered to be unavoidable and expected to occur no matter where the home is sited on the property.

The greatest single impact to wildlife on the property will be the presence of domestic dogs and cats. Domestic dogs can cause serious impacts to wildlife. Dogs can prey on a wide on a variety of animals ranging from big game to rodents and birds. The presence of barking dogs can result in reduced use or avoidance of an area by wildlife. Domestic cats prey on small mammals, birds, and snakes. Repeated hunting by cats in the same area can result in locally reduced populations of some small bird and mammal species.

The limited car travel that will occur along the proposed driveway/access road is not

expected to result in any significant impacts to wildlife. The number of vehicle trips per day along the driveway/access road generated by a single residence are expected to be few. Due to the size and proposed gravel surface of the driveway vehicular travel is expected to be at a slow rate of speed. Therefore injury or death to wildlife from vehicle impact is not expected to occur.

(3) The wildlife conservation plan must demonstrate the following:

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

**Applicant's Response:** Currently the home site is proposed to be sited at the non-forested area located at the northwestern portion of the property. No additional areas will be cleared for siting of the home. Lay down areas needed during the construction of the home will be revegetated with native plant species.

- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

**Applicant's Response:** The clearing of vegetation associated with siting of the home will not exceed one acre in size.

- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.

**Applicant's Response:** No fencing currently exists on the property and none is proposed.

- (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.

**Applicant's Response:** If the home is sited, at the non-forested area located at the northwestern portion of the property, the other larger non-forested area that is located in the central portion of the property could be reforested at a 2:1 or greater ratio. Reforestation with trees and shrubs to provide year round food and cover for wildlife would help to improve the overall habitat value of the property.

- (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property occurs.

**Applicant's Response:** Currently the vegetation that occurs within the drainages is so dense that it likely prevents the use of these areas by many species of wildlife. The thin-

ning of vegetation along the drainages will improve the usefulness of these areas for wildlife. Enhancement of the drainages could occur through the thinning of the dense sapling pole red alder and big-leaf maple stand and the control of the dense understory growth with herbicide applications. Following the clearing of vegetation non-weedy trees and shrubs useful to wildlife could be planted. A detailed list of recommended plants is included in Appendix III.

- (4) For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

**Applicant's Response:** Not applicable.

**Additional Applicant Comment:** The proposed siting of a home on the property is expected to result in some adverse impacts to wildlife. These impacts in the form of human and domestic animal presence are expected to occur no matter where the home is located on the property. However, these impacts are not expected to be significant.

As currently proposed, the home is to be sited within a non-forested area in the northwestern portion of the property. The siting of a home at this location, requires the establishment of a wildlife conservation plan under Multnomah County Code 11.15.6426 Section B. The establishment of the wildlife conservation plan should improve the overall wildlife habitat value of the property and mitigate for any adverse impacts to wildlife as a result of siting the home on the property.

The wildlife conservation plan proposes the revegetation of non-forested areas, the planting of high value wildlife trees and shrubs, and the enhancement of the two drainages on the property. The implementation of these measures will likely improve the overall habitat value of the property and meet the requirements set forth in Multnomah County Code 11.15.6426 Section B.

#### **COMPREHENSIVE FRAMEWORK PLAN CONSIDERATIONS:**

- H. Applicable Comprehensive Framework Plan Policies (including those 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.**

**Applicant's Response:** The subject dwelling will generally have no impact on air quality. A well and on-site disposal system will be established on the site to serve the proposed dwelling, in compliance with all applicable standards. The dwelling location is

not within a noise impacted area and the dwelling is not a noise generator.

**Staff Comment:** The LFS is included as Exhibit B1.

**(2) POLICY NO. 14, DEVELOPMENTAL LIMITATIONS. 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.

**Applicant's Response:** Portions of the subject property contain slopes exceeding 20%. The proposed homesite will utilize an existing roadway easement for access. As illustrated on the attached site plan (Exhibit A1), the homesite is in one of the more level areas on the property. A completed "Geotechnical Reconnaissance and Stability Questionnaire" is attached as Exhibit A9.

**Staff Comment:** The Slope Hazard Map submitted by the applicant indicates that the road traverses slopes steeper than 25%. The Geotechnical Reconnaissance and Stability Preliminary Study indicates that the Maximum slope on the property is 20% which staff would conclude does not include the roadway to the site. Staff believes that the road is development and cannot find that it has been directed away from slopes exceeding 20%.

**(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.**

**Applicant's Response:** The applicant plans to serve the proposed dwelling with an on-site well and an on-site disposal system. An on-site sewage verification form will be submitted at a later date. Service providers are listed on the attached application form.

- (5) 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.**

**Applicant's Response:** Service provider forms for school, fire and police services are attached as Exhibit A10.

**CONCLUSIONS FOR CONDITIONAL USE REQUEST**

- 1. The application for development of this property with a single family dwelling not related to forest management does not demonstrate compliance with Multnomah County Code, the Oregon Administrative Rules or the Multnomah County Comprehensive Framework Plan.**



## CONCLUSIONS FOR VARIANCE REQUEST

1. The subject 20 acre parcel does not include circumstances of size and steep slopes that do not generally apply to other property in the same district.
2. The zoning requirement would not restrict the use of this property from development.
3. The authorization of the variance will not be detrimental to the public welfare or injurious to the property in the vicinity.
4. The variance requested will adversely affect the realization of the Comprehensive Plan if approved in conjunction with a Conditional Use Permit for a single family dwelling.

## CONCLUSIONS FOR GOAL 5 COMPLIANCE

1. The application does not demonstrate that there is a minimum departure from the standards required to allow the use because of physical limitations to the 20 acre parcel.

*This Staff Report and recommendation was available on March 13, 1996 seven days before the March 20, 1996 public hearing scheduled before a County Hearings Officer. The Hearings Officer may announce a decision on the item (1) at the close of the hearing; (2) upon continuance to a date and time certain; or (3) after the close of the record following the hearing.*

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

## Appeal to the Board of County Commissioners

The hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Office decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$500.00 plus a \$3.50 - per-minute charge for a transcript of the initial hearings(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in Portland) or you may call 248-3043.

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



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

## Supplemental Staff Report

This Staff Report supplements the original staff report prepared for the Public Hearing held on March 20, 1996

### Template Test

The Multnomah County Transportation and Land Use Division has been consistent in its interpretation of the center of a property being the 'center of gravity' and using the "pin method" as demonstrated at the March 20, 1996 hearing. Multnomah County demonstrated the "pin method" during the adoption of the CFU guidelines at public hearings in the fall and winter of 1992 and has consistently applied them to all inquiries regarding the template test.

### Existing Dwellings within Template Test

The OAR's state that *"At least three other dwellings existing on January 1, 1993"*, Multnomah County Code states *"five dwellings exist within the 160-acre square"*. Staff recommends that a partially demolished dwelling not be counted in the template (Exhibit DD). The information that Multnomah County has from the Assessment and Taxation Records is that there was no dwelling on the property as of January 1, 1993. Any issues regarding the buildability or vesting of tax lot '36' cannot be determined under this application. In addition, Staff cannot make the determination that lots which at one time have had land use permits to build houses but no existing dwellings located on them can count in the template test. These dwellings do not exist and were not existing as of January 1, 1993. The applicant has submitted three different template overlays, one as Exhibit A6, the second as Exhibit K submitted at the hearing, and the third as Exhibit DD8. All three contain different numbers of dwellings and different locations of dwellings particularly on tax lots '22' and '32'. Staff would still request more detailed information to determine the location of these two dwellings if they are to be included in the template test. Staff has also consistently interpreted the Multnomah County Code to mean that the dwellings themselves be located within the 160 acre square, not just a portion of the parcel with the dwelling on it. As stated in the original staff report, staff can only verify 3 dwellings within the 160 acre template.

### Impeding Accepted Forestry or Farming Practices

The staff report addressed the issue of aerial spraying regarding the code criteria which states that *"The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands"*. The issue was whether or not the proposed fifty foot setback would affect the adjoining properties and their ability to spray as part of a forest management practice. The Staff is stating that the operator must leave an unsprayed strip of at least 60 feet to adjacent dwellings according to the Forest Practices Act. If the proposed home is located fifty feet from the property line, the

EXHIBIT

adjoining property could not be sprayed to its property line, but rather ten feet in from its property line. In other words, a portion of the forested area on the adjoining property would not be able to be sprayed because the proposed home would be located within sixty feet of the property line.

The secondary fire safety zone requires that "vegetation should be pruned and spaced so that fire will not spread between crowns of trees". The applicant has stated that they will be receiving agreements from adjoining property owners to maintain the secondary fire safety zone on adjoining properties because they do not meet these standards on-site. Staff has not reviewed these agreements and didn't review this proposal as part of the original submittal. Staff would conclude that the secondary fire break does affect the large trees and the spacing of them which affects the forestry operations which are occurring or may occur in the future on the adjoining properties.

### **Fire Access Standards**

The applicant submitted a letter at the March 20, 1996 Hearing from the Tualatin Valley Fire & Rescue dated February 27, 1996 (Exhibit M). Staff would like to clarify that the staff recommendation regarding Multnomah County Code compliance and the State OAR's regarding road standards does not take into consideration the Fire Chief's ability to waive the access standards under the Uniform Fire Code. Staff understands that a Fire Chief does not have the mechanism to deny a building permit or development proposal, but rather they require developments to meet the Uniform Fire Code. Staff has interpreted the State OAR's regarding fire protection not only as a protection measure for the dwelling, but also to reduce the risk of wildfire to surrounding forest areas. In discussions with Fire Chiefs within Multnomah County, sprinkler systems within the dwellings are not designed to put the fire out, but rather to give the occupants of the dwelling extra time to get out alive in the case of a fire. The Fire District's purpose is to save lives and the sprinkler systems proposed assists them in decreasing the risk of deaths due to fire. However, in addition to addressing these life and safety issues, the State Code and Multnomah County Code are required to protect forest practices in those areas designated for State Planning Goal 4 protection areas, Forest Lands.

### **Variance Criteria**

Due to the discussion at the March 20, 1996 hearing, a clarification of the Staff response to the Variance criteria that states "A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses" is needed. Staff is stating that there are some areas that are unique due to slope or natural features in places on the 20 acre parcel. But, there are not circumstances or conditions that apply to the entire 20 acre parcel that do not apply generally to other property in the same vicinity or district. The Staff report is not intended to suggest other locations that would be approvable, but it is required to make findings based on the information submitted. However, the Staff cannot reasonably make the finding that the zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district because it appears from a site visit there is a cleared area that may meet the setbacks, is not steeper than 25% and is adjacent to the existing roadway. The applicant has submitted two proposed development sites within what was being called the 'Center' area at the March 20, 1996 hearing and is labeled so on Exhibit B8.

## **Goal 5 Compliance**

On August 8, 1995 following a completeness check for the application materials submitted by the applicant on July 12, 1995 the Staff notified the applicant of the materials to be submitted to determine Goal 5 Compliance (Exhibit V) which included addressing the criteria of MCC 11.15.6426. The applicant submitted their responses to the criteria on January 4, 1996.

August 21, 1996

Arnold Rochlin  
P.O. Box 83645  
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Board of County Commissioners  
c/o Planning Division (hand delivered)

Re. CU 7-95, HV 17-95—Evans—Hearing 8/27/96

This testimony concerns four issues: impact on accepted farm and forest practices, variance criteria, applicability of the county's CFU zone regulations, and applicability of the county's SEC regulations.

## I. IMPACT ON ACCEPTED FARM AND FOREST PRACTICES

MCC 11.15.2052(A)(4) allows a dwelling in the CFU zone only if:

"The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands."

Similarly, .2074(A) provides: "The dwelling or structure shall be located such that:"

"(1) It has the least impact on nearby or adjoining forest or agricultural lands ..."

and

"(2) Forest operations and accepted farming practices will not be curtailed or impeded."

The Hearings Officer's findings of compliance with these standards are wrong.

First, the Hearings Officer considers only farm and forest practices reported to be used by current owners. It is well established in law that the language of the code encompasses all generally accepted farm and forest practices, not only those currently necessary or preferred. Because the proposal would site a house only 50 feet from both the North and West boundaries, it would be unsafe for neighbors to spray approved pesticides, herbicides, fungicides and fertilizers on farm or forest land up to the boundaries of the subject property. That alone impedes accepted farm and forest practices 150 feet into neighboring properties (anywhere that's within 200 feet of the proposed dwelling site).

Second, in order to find compliance with the requirement of MCC 11.15.2074(A)(5)(b)(iii) for a 100 foot "secondary fire safety zone" for a dwelling only fifty feet from two property lines, the Hearings Officer finds that the requirement can be satisfied by a condition placing 50 feet of the required safety zone on adjoining properties! The decision does not indicate that neighbors have granted easements, or even been informed of this notion. Since the safety zone requires removal of ground cover and some trees, and trimming of trees and precludes replanting, it must curtail "accepted forestry or farming practices on surrounding forest or agricultural lands". The Hearings Officer's completely unsupported assertion that removing even 50 foot wide strips on neighbors' land from productive use does not significantly impact farm or forest practices is obviously wrong and ignores the actual 150 foot impact.

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BOARD OF  
COUNTY COMMISSIONERS

## II. VARIANCE CRITERIA

The applicant seeks a variance from the requirement of 200 foot setbacks, to allow siting of the dwelling in a remote corner of a narrow extension of a 20 acre parcel which, as staff points out, has ample room in other locations for a dwelling that complies with siting standards.

MCC 11.15.8505(A) allows approval of a variance "only when there are practical difficulties in application of the Chapter." Case law defines "practical difficulties" as meaning conditions, such as plot size, shape and topography, which preclude otherwise permissible use in compliance with standards. There are no such circumstances here. It is well established that neither the burdens created by ordinary compliance with a regulation, nor frustration of preferences of a developer, can be the basis for a finding of practical difficulties or hardship, so long as permitted uses can be substantially implemented.

Regarding .8505(A)(1), the Hearings Officer wrongly finds that the topography and shape of the property justify a setback variance. Staff has identified alternate siting on the property that would satisfy the setback standards. The Hearings Officer has not found alternate sites to be unsuitable, and his findings regarding .8505(A)(2) are inconsistent with the .8505(A)(1) findings. Regarding .8505(A)(2), the findings say: "... the applicant has not provided substantial evidence in the record demonstrating that by locating the dwelling in the less suitable central portion of the site where no variances would be required, that such location would restrict the use of the property to a greater degree than it restricts other property in the vicinity." (Whether parts of the site not preferred by the applicant are actually less suitable is disputed by all parties but the applicant, who merely prefers the remote location.)

Regarding .8505(A)(3), the Hearings Officer wrongly finds approval of the variance will not be "injurious to property in the vicinity ... or adversely affect the appropriate development of adjoining properties." He admits that because the house would be only 50 feet from two property lines, use on adjoining properties must be restricted anywhere within 100 feet of the house for fire protection purposes. And, as discussed above, spraying within 200 feet of the house will be precluded.

The Hearings Officer interprets .8505(A)(4) in a way that is necessarily wrong, because it deprives it of all meaning. He finds that to the extent that the proposal can satisfy other approval criteria, and to the extent that there can be a finding that variance criteria .8505(A)(1) to (3) are satisfied, .8505(4) is presumed satisfied. If that were true, there could be no meaning at all in .8505(4). The decision maker cannot find compliance without a case specific finding that the relevant purposes of the comprehensive plan are not undermined by the variance, and they are. (See Staff Report for March 20th, page 26.)

## III. APPLICABILITY OF COUNTY CFU ZONE REGULATIONS

The Hearings Officer wrongly concludes that county regulations defining qualification for a "template" dwelling may not be applied because the CFU regulations were not updated to reflect 1993 statutes and OARs concerning farm and forest land. The key difference between the state and county standards is that the statute requires that three properties in the template area had dwellings in January, 1993 and the county regulation, MCC .2052(A)(3)(c)(ii), requires five dwellings. The proposal meets the three dwelling state standard, but not the five dwelling county standard. There is no dispute about what the

difference is between the state and county standards.<sup>1</sup> The Hearings Officer ruled that the county had failed to amend its code to comply with amended statutes and OARs, thereby arguably invoking ORS 197.646(3) which provides in relevant part:

“When a local government does not adopt comprehensive plan or land use regulation amendments as required by subsection (1) of this section, the new or amended goal, rule or statute shall be directly applicable to the local government’s land use decisions.”

No party has disputed that the county CFU Chapter had not been updated to fully reflect amended state requirements when the subject application was filed, but the Hearings Officer wrongly leaps from that fact to a conclusion that any provision of the CFU that does not correspond to an amended state provision, is superseded in this process by direct application of the state provision. Staff, the Department of Land Conservation and Development (DLCD) and opponents of the application have all pointed out that his broad conclusion is unjustified because the statute allows counties to have forest zone regulations that are more protective than the state standards. ORS 215.750 provides that a county may allow a single family dwelling if it satisfies minimum standards that follow. ORS 215.750(4)(a) expressly disallows template dwellings if they don’t comply with local regulations. It is the view of both DLCD and LUBA that the new legislation was intended to allow local governments to have stricter standards. It couldn’t be clearer than in *Dilworth v. Clackamas County*, \_\_ Or LUBA \_\_ (LUBA No. 95-115, Final Order 01/04/96) where LUBA said on page 4, upholding the Clackamas County six dwelling template standard:

“We agree with the county that it is not precluded from regulating the establishment of dwellings more stringently than is required under ORS 215.750.”

DLCD rejected the Hearings Officer’s position (which had been issued in a preliminary ruling). The following is quoted from the DLCD letter of April 30, 1996 submitted to the Hearings Officer by James W. Johnson :

“We do not disagree with the finding that the county must apply the applicable state laws directly as required by ORS 197.646(3). We do disagree with the conclusion that the county may not apply their more stringent standards in addition to the applicable state laws.

“ORS 197.646(3) requires a local government to directly apply any new or amended goal, rule or statute when a local government has not adopted comprehensive plan or plan amendments to implement new state laws. This statute does not preclude a county from applying other standards found in county land use regulations. The statute in effect establishes a minimum requirement which must be met in addition to any other applicable laws. This interpretation was confirmed by [LUBA] in *Dilworth v. Clackamas County*, \_\_ Or LUBA \_\_ (LUBA No. 95-115, January 4, 1996). Like the subject case, *Dilworth* involved the application of template dwelling standards which are more stringent than those found in state law.”

These authorities indicate that each CFU standard must be considered alone. If it’s the same as or stricter than the state standard, it remains valid. If less strict, it cannot apply, and the state standard applies alone. The Hearings Officer holds *Dilworth* to be irrelevant because that case did not consider the impact of ORS 197.646(3). The whole point is that

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<sup>1</sup> The Hearings Officer correctly support the staff’s “center of gravity” method of applying a template.

197.646(3) substitutes state standards for county standards only when the county standards do not satisfy the state standards, and *Dilworth* establishes that a stricter county template standard does comply with the state standard. The Hearings Officer understands ORS 197.646(3), but completely misses the point that the issue is not that the statute requires state law to apply, but that it does not preclude concurrent application of non-conflicting county standards.

The strongest support for the applicant's position is found in *Blondeau v. Clackamas County*, \_\_ Or LUBA \_\_ (LUBA No. 94-222 03/21/95). It dealt with applicability of county farm regulations that had not yet been updated to reflect the same 1993 legislation that enacted the forest rules at issue in this case. The Clackamas County code did not provide for "lot of record" dwellings as are now allowed by the state. A key element of difference between *Blondeau* and this case is that prior to the 1993 legislation, "lot of record" farm dwellings (but not forest dwellings) were not allowed by state law, and the statute was amended to specifically enable them. The unamended Clackamas County code was understandably silent on lot of record farm dwellings, the silence meaning the county did not authorize them. LUBA held that the county must make its position known by an intentional code action, even if it amounts to readoption of the existing omission of lot of record dwellings.

Provisions in ORS 215.705 concern lot of record dwellings and 215.750 concerns template dwellings. While only .750 is of concern here, a comparison is useful. Each includes a similar provision (.705(1)(c) and .750(4)(a)) allowing the local government to deny a dwelling if it does not comply with the local regulations or comprehensive plan. But ORS 215.705(5), concerning only lot of record dwellings, allows a county to deny a dwelling for not meeting the intent of its plan or regulations "by application of criteria adopted by ordinance". Arguably (though I disagree) that provision requires adoption of an ordinance subsequent to enactment of the statute. But however .705(5) is to be interpreted, there is no comparable provision in .750 concerning template dwellings, and it is on .705(5) that Blondeau relies.

The Hearings Officer's holding leads to either absurdity or inconsistency. Consistent application of his theory requires that the whole scheme of ORS 215.700-750 replace the county's CFU regulations for all applications (made prior to the recent readoption and amendment). But over and over, except for the template test, the Hearings Officer does apply CFU regulations without a thought to whether or not they are more restrictive than the state standards. Beginning at page 7, the Hearings Officer applies CFU regulations 11.15.2052(A)(1 through 9), .2074(A)(1 through 5), (B)(1 through 3), (C), and (D)(1 through 7). He never considers that these provisions include requirements such as the required 200 foot setback, 500 foot maximum driveway and minimum impact siting, all of which are standards more protective of forest land than state requirements.

Among the several reasons for denial of the application, this issue is the most critical; the wrong decision would be a precedential land mine. Whenever state standards are revised, the county could not rely on any related county standard remaining effective, no matter how apparent it is that the standard remains lawful under the revised statute. If the state were to again change its forest dwelling standards, every regulation in the zoning code, no matter that it remains lawful, would have to be re-enacted, if it would have the effect of denying a dwelling that the statute might allow or of imposing development standards stricter than found in the statute. We don't need that waste, and qualified authorities say the law doesn't require it.



#### IV. SEC Standards and Goal 5

In considering this issue, it is significant that no party, staff or decision maker has disputed that the subject property is entirely within an area inventoried as a significant Goal 5 resource, and that development must satisfy the requirements of either Goal 5 directly, or the county's SEC standards, or both. Which are applicable is disputed, but no party claims none apply. The applicant and Hearings Officer argue for only Goal 5. As is explained below, state law requires application of the county's regulations, acknowledged or not.

The Hearings Officer's determination that the county has no SEC regulations applicable to the wildlife habitat on the site relies on a misunderstanding of the law. Because acknowledgment of revised SEC regulations has been delayed by a very few objections to specific provisions by the DLCD Director and some private individuals, the Hearings Officer wrongly concludes that none of the SEC provisions are effective.

First, if his basic analysis were correct, the county would still have the already acknowledged SEC regulations that were in effect before the amendments, and which were substantially unchanged in the amended SEC chapter. Those regulations are the SEC criteria in MCC .6420, which are entirely ignored by the Hearings Officer. MCC .6420 criteria were readopted in 1994 and again later, substantially unchanged, and are applicable to all SEC permits in addition to the provisions of .6426, applicable to only SEC-h (habitat) overlays. Until 1994, the only SEC approval criteria were in .6420. In all subsequent versions of the SEC chapter, .6420 has provided: "Any proposed activity or use requiring an SEC permit shall be subject to the following." Criteria of subsection A through N follow. It cannot be reasonably argued that "any activity requiring an SEC permit" does not include SEC-w, v, h and s. And, if an unreasonable claim of exemption were put forward, the significance of putting the quoted sentence into .6420 for the first time, simultaneously with the new SEC-w, v, h and s provisions of .6422 through .6428, cannot be reasonably understood as anything but a statement that those provisions are requirements in addition to .6420. The Hearings Officer's discussion is entirely of applicability of .6426, inexplicably ignoring the acknowledged, unchanged, unchallenged and expressly applicable provisions of .6420. (Decision p.3).

Second, the controlling statute sections are ORS 197.625(3)(a) and (b):

"(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation is effective at the time specified by local government charter or ordinance and is applicable to land use decisions ..."

"(b) Any approval of a land use decision ... subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment."

The Hearings Officer errs in believing subsection (b) to be an alternative to (a). The plain language indicates that, where the regulations are not acknowledged, they are to be applied, and there are to be additional findings of compliance with the relevant goals.

The DLCD Director's opinion on compliance with the goals carries great weight, and may be arguably decisive. Even assuming the latter, the DLCD findings and orders are most significant in holding that, with a few specifically identified exceptions, the new SEC regulations complied with the Goals as the regulations were adopted prior to this application. The Hearings Officer seems to not understand that, though the regulations in effect at the time of application remain in effect throughout the process, it is always the most recent and correct interpretations of laws and regulations that are effective. Therefore,

only the latest orders of DLCD and LCDC are significant, and they find the SEC regulations relevant to this application, and enacted prior to the application, to be in substantial compliance with the statewide goals. Only provisions, if any, that continue to be held out of compliance are even arguably inapplicable, and the Hearings Officer has identified none!

The applicant has failed to carry the burden of affirmatively proving compliance with the SEC standards, whether all the provisions of current .6420 and .6426, or only .6420 as acknowledged in 1990, and substantially the same as the current version. Compliance of the proposal with some provisions is doubtful. There is no need for opponents to address individual criteria, as they were not at all addressed by the applicant, and not otherwise shown to be satisfied by the evidence in the record.

## V. SUMMARY

The Board should find that the application should be denied for the following reasons in addition to those offered by the Hearings Officer or Staff:

1. In violation of MCC 11.15.2052(A)(4) and .2074(A)(1) and (2) the proposal would impact, impede and curtail accepted farming and forestry practices on surrounding lands by siting a house within 50 feet of 2 boundaries, requiring restricted forest growth in fire safety zones within 100 feet of the dwelling and precluding spraying of chemicals within 200 feet.
2. For reasons given above, there is not compliance with variance approval criteria MCC 11.15.8505(A), (A)(1), A(3) and A(4).
3. The proposal violates the template dwelling standard of MCC 11.15.2052(A)(3)(c)(ii).
4. The proposal is not shown to comply with any of the applicable SEC criteria of MCC 11.15.6420 and .6426.



August 20, 1996

Christopher H. Foster  
15400 NW McNamee Rd.  
Portland, OR. 97231

Multnomah County Board of County Commissioners  
2115 SE Morrison  
Portland, Or.  
Case File : CU-7- 96

Introduction

This testimony is given in support of the of the Planning Staff's recommendation for denial based upon the applicability of the local " template test " ordinance which exceeds the requirements of new State Statutes and O.A.R.S.at the time of effective date. I ask that you reject all of the Hearing's Officers findings in favor of the Staff Report. I believe that the Hearings' Officer has erred on many issues, as the Staff Report demonstrates. This submission discusses just one issue; an issue with broad implications. Having participated in this case before the Hearings' Officer in written testimony, I offer the following for your consideration.

Preliminary Issue

The kind of decision sought by the Applicant is one which overturns or invalidates a local ordinance. Its a generic type of argument that applies equally in any planning jurisdiction. The working interpretation or correct implementation of Statutes offered by the Applicant here is not one held by Staff, County Counsel, or the DLCD. I believe it to be the kind of decision the Applicant seeks is one in which ORS. 197.829 1(d) gives deference to LUBA. I don't believe it to be a local hearings officer's nor a County Commmission"s burden and responsibility to find new interpretation of State Statutes nor review vague and complicated legislative history which supposedly overturns commonly held understandings. Similarly, the language of ORS. 215.416 at (4) and (8) suggest that this kind of decision-making belongs at the state rather than local level. While there is no law which forbids you from making this type of decision, I think the responsibility lies elsewhere, not here. Its not your obligation.

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 AUG 22 AM 11:42

What Is The Basis Of the Hearings' Officer Version of ORS 197.646 (3) ? The Blondeau vs. Clackamas County LUBA Opinion?

The Hearing's Officer argues that 197.646 (3) requires that the amended goals and administrative rules "shall be directly applicable" in the absence of implementing local ordinances. But in applying the amended rules, he ignores the express language and intent of the legislation. Note that the Statute and Administrative Rule says **Counties may authorize forest dwellings**. If Counties were ordered to site such dwellings, or were given exclusive instructions as to what was necessary to support a denial, the language would be different. There would be no sense to authorizing **Counties** and the language would say **shall** if they were ordered as is the case with other parts of the law. The effect of the Hearing's Officer ruling is to order the County to site the dwelling. In view of the wording of 197.646(3), there must be a reason why we should abandon the language which gives the Counties authority and uses the word "**may**".

The ruling being sought by the Applicant appears to be an attempt to build and expand upon the Blondeau opinion. The implications or relevancy of Blondeau is doubtful for several reasons. That opinion did not seem to turn on any one issue or single argument but but drew from three or four elements which do not exist in this case.

1. The case before us is about the applicability of the "template test", not the "lot of record" provisions as in Blondeau. There is no legislative history offered thusfar which connects the provisions as equal or causes doubt about the express language of ORS 215.750 which states a county "**may** allow"(emphasis added) the establishment of such dwellings.

2. No one here is offering the kind of meaning that Clackamas County offered with regard to 215.705 1(c) or its counterpart at 215.750 4(a). Although the language was never clarified, I find the legislative discussion in Blondeau to be adequate in explaining the aim of the provision was to address things like local floodplain or Goal 5 mineral-aggregate provisions which might otherwise prohibit dwellings. In any case, there are no pre-existing broad comprehensive plan policies which ban dwellings from Multnomah County forestland as was the case in Clackamas County's ( or any other county's) best farmland. Multnomah County already has an implementing ordinance for forest template dwellings The significant conflict between old policies and new Statutes spawned the confusion and misunderstanding of 215.705 1(c) as brought forth in Blondeau.

3. The Blondeau opinion was based in part upon the meaning and effect of the provisions of ORS. 215.705 (5). No such provision applies to template dwellings in the forest zone.

4. Perhaps one of the most important distinctions is that in Blondeau, the parties were in silent agreement over the meaning of all parts of ORS. 197.646. No such agreement exists in this case. This issue is perhaps more important than whatever the legislative intent of HB. 3661. Does 197.646 suspend local ordinances which already exceed newly adopted State Statutes and O.A.R.S. until such a time that they choose to reaffirm them? How does one jump to this conclusion? This is a significant reach!

(a) The position that the Applicant seems to be forwarding here is that that local ordinances were, in their entirety, (or on at least any subject HB3661 arguably touches on) somehow suspended. In other words, the slate was wiped clean when HB 3661 became law. Was it HB 3661 that did this or was it ORS 197.646? Why isn't the Hearing's Officer also throwing out the other Goal 4 provisions like setbacks or driveway lengths which clearly exceed the new rules?

For the sake of argument, suppose that a local ordinance in pre-existence was identical to the new provisions of the law save one small detail which exceeded or was in addition to the new provisions. Say, for example that the old local provision slightly exceeded ORS.215.730(F) in specifying a certain type of spark arrestor or screen size for chimneys. The kind of decision being sought here would similarly suspend this existing provision, even though this provision had

been duly considered, had already been the subjected to local hearings and findings, and finally, subject to LCDLDC acknowledgement proceedings. The provision would be sususpended until, upon local iniation, the county re-affirmed its provision through new hearings, findings and acknowledgement proceedings. This procedure typically takes several months and not without substantial costs. Was this burdensome outcome really the intent of HB3661 or does ORS. 197.646 require this? Are these two parts of the law in agreement? What about any additional provisions which may or not be directly addressed in the legislation or spelled out in the regulation?

(b) Its clear in Dillworth vs Clackamas County, (LUBA, March 96' ) counties may adopt more stringent regulation with regard to "template dwellings". I don't think this is an issue here. I believe that the Hearings' Officer is in agreement on this point. The more pertinent questions in this case are (1) What does it take to stay or get there? and (2) What part of the law ( if any ) orders the suspension of the existing ordinances which meet, exceed, or are in addition to new regulation?

Chris Fosh



# SODERSTROM ARCHITECTS, P.C.

William Cox  
8/27/96  
Submittal

May 16, 1996

Kim Evans  
7555 N.W. 214th Pl.  
City, State Zip

RE: Lot 15 2N2W-25

Dear Ms. Evans:

I have walked your 20 acre property west of Skyline Blvd. for the purpose of selecting the most advantageous site for your new home. The terrain limits siting possibilities to only two locations. Of these two, only one has a view of the valley. I agree with you that this location, at the end of the access road, has significant advantages due to its higher elevation, ventilation, and outlook. Locating a home on the lower portions of the site near the canyons, natural drainage pathways, and slope hazards, brings the additional risk of dry-rot from the constant moisture present due to limited natural aeration.

Your preferred site benefits from solar access throughout the day. Energy conservation is a significant factor in site selection. On this site, you will have passive solar heating from the south, which is also your view orientation. Solar access from the view orientation is quite a rare opportunity which you should use to your advantage.

Your dwelling will not be related to forest management, however, your selected location allows future forestry activities to occur with little impact to your home. If you built on the central portion of the site, for example, access for future logging would severely impact your house. Building on the "edge" of the future forest crop, is a responsible thing to do.

It is also my understanding that due to the moisture and hazardous soils conditions, all percolation tests failed on the lower portions of the site. Percolation was approved for a septic tank and drainfield disposal system on your preferred location.

You have an opportunity to site your dwelling down in the damp, dark hole or on the brow of a sunny hill with a commanding southern view. Obviously, those who presume to make this decision for you have never walked on your property. If they had, there would be no question. You have selected the only buildable site.

ARCHITECTURE  
PLANNING  
INTERIOR DESIGN  
EXTERIOR RESTORATION  
SPACE PLANNING

DAVID SODERSTROM  
CAMERON HYDE  
JON WIENER  
DOUG WALTON  
MARC BEVENS  
DAN DANIELSON  
E. HENRY FITZGIBBON

1200 N.W. FRONT AVE  
SUITE 410  
PORTLAND, OR 97209

503/220-5817  
FAX: 503/273-8584

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 AUG 27

Ms. Kim Evans

Page 2

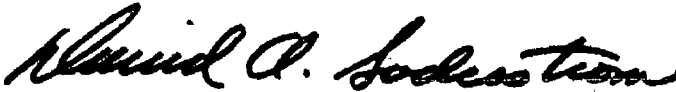
William Cox  
8/27/96  
SUBMITTAL

I have practiced architecture for 33 years, and during that time sat for seven years on the City of Portland Variance Committee, five years with Multnomah County's Hearing Council, nearly eight years as President of Portland's Design Commission, and two years on the Portland Planning Commission. All those years of public service adjudicating land-use issues, in addition to my design practice, qualified me, in my opinion, to offer you some judgment in this matter. After being on your property, however, it would seem that your preferred location should be obvious to anyone, since the facts are so clearly in your favor.

I look forward to assisting you further with the detailed siting and design of your home, if, after this protracted approval process, you can still afford to build.

Sincerely,

SODERSTROM ARCHITECTS, P.C.



David A. Soderstrom

DAS/kkc

c:\project\partners\davidlevansltr.doc

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 AUG 27 1

JEFFREY L. MILLER, AIA  
ARCHITECT

TEN MACLEAY BLVD.  
PORTLAND, OREGON 97210  
503/222-2234

William COX  
8/27/96  
Submittal

May 16, 1996

Attn: Susan Muir  
Multnomah County Planning Dept.  
2115 SE Morrison  
Portland, Oregon 97214  
503-248-3043

Dear Ms. Muir:

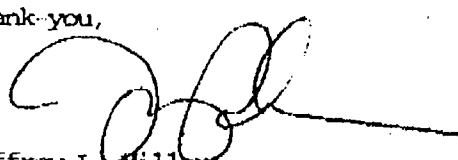
This letter is in regard to the potential home location of Mr. and Mrs. Evans, whom own property just northwest of my property.

Mrs. Evans came to my home to introduce herself and family, and acquire a signature, at your request, with the understanding that I approve of their building their home and it's location. Now I understand that you are proposing the location to be on the south property line, which would also require a variance. I do not approve of the site that you are proposing them to build their home.

In addition, I would like to see no changes to their application, regarding their home site and that I understood it would be, due to the fact that it would infringe on my continuing Christmas tree operation. In the past I have used helicopters to harvest the trees and a home in the southern or central area could impact it. I have no objection to the northwest area at the end of the road on the property in question.

Please have this letter incorporated into the record on this case.

Thank-you,

  
Jeffrey L. Miller

BOARD OF  
COUNTY COMMISSIONERS  
96 AUG 27  
MULTNOMAH COUNTY  
OREGON



MAY-08-96 WED 07:54

LAND DEVELOPMENT CONS

FAX NO. 15036817646

P.02



21880 S.W. FARMINGTON ROAD  
BEAVERTON, OREGON 97007-5470  
(503) 642-2531  
FAX (503) 642-2534

RECEIVED  
MAY 2 1996

Multnomah County  
Zoning Division

William Cox  
8/27/96  
SUBMITTAL

April 30, 1996

Ms. Susan Muir  
Multnomah County Department of Environmental Services  
Division of Planning and Development  
2115 SE Morrison Street  
Portland, OR 97214

Re: Case File: CU 7-95; HV 17-95

Dear Susan,

Our company owns a 40 acre piece of property that lies on the Washington County, Multnomah County border within Washington County. On page 2 of the staff report that you copied for our use our property can be identified as #35 touching the South West corner of the applicants property.

It is my understanding that Multnomah County has recommended denial of the applicants conditional use request, however we understand that you would recommend approval of another location.

At this time I would like to voice our concerns about locating a residential dwelling adjacent to a mineral and aggregate resource. Any residential uses would have to balance against the authorized mineral and aggregate uses. Please enter our concerns into the record.

Sincerely,

*Todd A. Baker*

Todd A. Baker  
Marketing Representative

96 AUG 27  
MULTNOMAH COUNTY  
OREGON  
BOARD OF  
COUNTY COMMISSIONERS





May 16, 1996  
21-08795

AGRA Earth & Environmental, Inc.  
7477 SW Tech Center Drive  
Portland, Oregon  
U.S.A. 97223-8025  
Tel (503) 639-3400  
Fax (503) 620-7892

William Cox  
8/27/96  
SUBMITTAL

Kim Evans  
7555 N.W. 214th Place  
Hillsboro, Oregon 97124

Dear Ms. Evans:

RE: PRELIMINARY GEOLOGIC ASSESSMENT  
40 ACRE PROPERTY BETWEEN SKYLINE AND ROCK CREEK RD.  
MULTNOMAH COUNTY, OREGON

AGRA Earth & Environmental, Inc. (AEE), was requested to review some of the pertinent materials from Multnomah Case File: CU 7-95; HV 17-95, regarding the subject property.

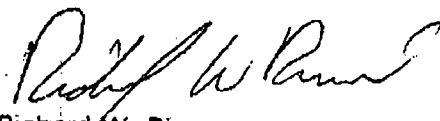
Based upon the topography moderate to steep slopes toward the southwest), the drainage patterns, vegetation, experience with recent slope stability problems in the region, and a potential quarry site immediately southwest of the site, it is our opinion that the house should be situated as far from the steep slopes and drainages as possible.

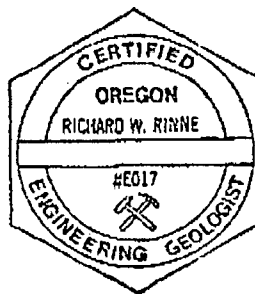
Because of the topography, the bulk of the quarry site would be opened to the northeast, toward your property. This being the case, impacts from quarrying operations (dust, noise, visual) would be lessened with distance. This would place the structure at the extreme northern or eastern part of the property.

If you have any questions or need additional information, please feel free to contact the undersigned at (503) 639-3400.

Sincerely,

AGRA Earth & Environmental, Inc.

  
Richard W. Rinne  
Principal Engineering Geologist



96 AUG 27  
MULTNOMAH COUNTY  
OREGON  
BOARD OF  
COUNTY COMMISSIONERS

Engineering & Environmental Services

TOTAL P.02



William Cox  
8/27/96  
SUBMITTAL

Mr. and Mrs. Eric Evans  
7555 NW 214th Place  
Hillsboro, OR 97124

Dear Mr. and Mrs. Evans:

At your request, I have walked your property and have determined that locating a residence in the central portion of your property makes future timber harvests more difficult than the location you have proposed with Multnomah County.

Most of the property has steep to moderately steep slopes. The center of the property would accomodate a yarder and skycar to yard the timber to a landing. Merchandizing the timber and stockpiling the logs could be easily done at the southern portion of the property which is currently cleared. The resource can be conveniently loaded from this staging area on trucks for shipment. Having a residence close to this type of operation is quite dangerous and would not be recommended.

Other options for future harvestation exists, but involves greater expence because of the limited ability to gain access to some areas with ground equipment. This also creates much more ground disruption and erosion.

I hope this information is helpful in respect to locating your home. If you have any questions, please don't hesitate to call.

Sincerely,

Mike Pihl  
Mike Pihl Logging, Inc.

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 AUG 27 J

Oregon

DEPARTMENT OF  
FORESTRY

Columbia Unit

"STEWARDSHIP IN  
FORESTRY"

May 17, 1996

Kim Evans  
7555 N.W. 214th Place  
Hillsboro, Or. 97124William COX  
8/27/96  
SUBMITTAL

RE: Tax Lot 15, Section 25, T2N R2W W.M.

Dear Mrs. Evans,

This letter is in regards to your request for a satisfactory equivalent to the recommended site standards for a dwelling located in the north portion of the above stated property.


Due to the proposed placement of the dwelling, the recommended alternatives described below need only take place to the west and north of the dwelling. South of the dwelling, which is down slope and east of the dwelling, which is where the dry summer east winds come are far more critical and likely directions from which a fire would come and threaten your dwelling. I understand these two sides of the dwelling will have the recommended site standards of at least a thirty foot primary fire break and a one hundred foot secondary fire break.

The recommended site standard equivalents are as follows:

- 1) A primary fuel free fire break of 50 feet from the dwelling
- 2) All structures, including the dwelling to have a non-combustible roofing material.
- 3) 3,000 gallon water storage tank for the sole purpose of fire protection.
- 4) An underground irrigation system around the residence

I hope the above mentioned alternatives assists you in your desired site location.

Sincerely yours,

  
John Krause  
Forest Practices Forester  
Oregon Department of ForestryMULTNOMAH COUNTY  
OREGON

96 AUG 21

J. E. SAFF  
Hillsboro City, OR  
(503) 267-2636  
X (503) 397-6360

ARNOLD ROCHLIN  
8/27/96  
SUBMITTAL

August 27, 1996

Arnold Rochlin  
P.O. Box 83645  
Portland, OR 97283

Board of County Commissioners  
CU 7-95 HV 17-95 Evans

### BASIS OF ENTITLEMENT TO STATUS AS A PARTY

I would be aggrieved if a dwelling were approved in a forest zone without correct application of the relevant county code provisions, including SEC standards and relevant CFU standards stricter than the minimum standards of ORS 215.705 through 215.750 and implementing OAR's.

I have been concerned with correct interpretation and application of land use laws and regulations in this region and have expended considerable effort in furthering that interest over the last several years. I chair the Forest Park Neighborhood Association Land Use Committee and am active in land use affairs of the Friends of Forest Park, of which I am an officer and director. In furtherance of my concerns, I am a member of 1000 Friends of Oregon, Audubon Society of Portland and the Oregon Natural Resources Council. Though my own property on the west side of the county is in the City of Portland, near county farm and forest zones, and an incorrect decision would adversely affect enjoyment of my property. I have an interest in preserving forest land as provided by state and county laws, regulations, goals and policies.

I am not here merely to offer information, such as would be offered by an expert witness. I have a philosophical and practical interest in the outcome and am here in hope of avoiding aggrievement by a decision harmful to those interests.

*League of Women Voters v. Coos County*, 15 LUBA 447 (1987) supports the contention that my dissatisfaction with an adverse decision would constitute aggrievement. "Aggrievement" in the MCC is a term intended to correspond in meaning to the language of former and current provisions of ORS Chapters 197 and 215 and must be interpreted to mean the same as it does in the statutes. *Joseph v. Lane County*, 18 Or LUBA 41, 51 (1989).



BOARD OF  
COUNTY COMMISSIONERS  
96 AUG 27  
MULTNOMAH COUNTY  
OREGON

April 30, 1996

VIA FACSIMILE

Phillip Grillo, Hearings Officer  
% Multnomah County Division of Planning and Development  
2115 SE Morrison Street  
Portland, Oregon 97214

Arzolo Rochlin  
8/27/96  
Submittal

DEPARTMENT OF  
LAND  
CONSERVATION  
AND  
DEVELOPMENT

Dear Mr. Grillo:

The department has reviewed the Intermediate Ruling in CU7-95 HV 17-95 involving the application for a single family dwelling not related to forest use in the CFU zone. We have the following comments.

In the Ruling, the hearings officer finds that the applicable criteria for review of a "template" dwelling are those found in OAR 660-06-027. We understand that this ruling would also in effect void the more stringent law found in the Multnomah County Zoning Ordinance. We do not disagree with the finding that the county must apply the applicable state laws directly as required by ORS 197.646(3). We do disagree with the conclusion that the county may not apply their more stringent land use regulations in addition to the applicable state laws.

ORS 197.646(3) requires a local government to directly apply any new or amended goal, rule or statute when a local government has not adopted comprehensive plan or plan amendments to implement new state laws. This statute does not preclude a county from applying other standards found in county land use regulations. The statute in effect establishes a minimum requirement which must be met in addition to any other applicable laws. This interpretation was confirmed by the Land Use Board of Appeals in *Dilworth v. Clackamas County*, \_ Or LUBA \_ (LUBA No. 95-115, January 4, 1996). Like the subject case, *Dilworth* involved the application of template dwelling standards which are more stringent than those found in state law. LUBA agreed with the county "that it is not precluded from regulating the establishment of dwellings more stringently than is required under ORS 215.750."

Please enter this letter into the record of the proceedings. We also request a copy of the final decision and the findings and conclusions in support of the decision. If you have any questions, please contact me at 503.373.0082.

Respectfully,

*James W. Johnson*  
James W. Johnson  
Farm/Forest Coordinator

<i:\multco.eva>

c: Susan Muir, Multnomah County Division of Planning  
Celeste Doyle, AAG  
Jim Knight and Michael Rupp, DLCD  
DLCD Field representatives

RECEIVED  
APR 30 1996

Multnomah County  
Zoning Division

96 AUG 21  
MULTNOMAH COUNTY  
OREGON  
BOARD OF  
COUNTY COMMISSIONERS

John A. Kitzhaber  
Governor



1175 Court  
Salem, OR  
(503) 37  
FAX 1

**DeNovo Hearing**  
**Board Review of CU 7-95/HV 17-95**  
**Staff Summary**  
**September 24, 1996**

This summary is provided to the Chair of the Board of County Commissioners to outline the differences between the Staff recommendation and the Hearings Officer ruling. **This summary contains only those criteria that do not have congruent staff and HO positions, and any criteria appealed by the applicant.** Please refer to the Staff report dated March 20, 1996, the Hearings Officer decision dated June 26, 1996 and the Appellants Notice of Review for the entire recommendation, decision, and appeal.

#	Code Section	Staff Recommendation	Hearings Officer Ruling	Appealed	Board Action Requested
<b>CONDITIONAL USE PERMIT</b>					
1	<b>11.15.2052(A) (3)(c)(ii)</b> - Template Test, requires 5 dwellings within 160 acre template.	There are not 5 dwellings existing within the 160 acre template. Staff can only verify that 3 dwellings existed within the template as of January 1, 1993.	Ruled that the applicant meets the State template test and that County Code does not apply but OAR 660-06-027 applies directly and the State rules only require 3 dwellings to be existing within the template.	NO	<b>Overturn Hearings Officer finding</b> that OAR is directly applicable. Rule with staff finding that MCC 11.15.2052(A)(3)(c)(ii) is the applicable criteria and that this application has not demonstrated that there were 5 dwellings within the 160 acre template existing as of January 1, 1993.
2	<b>11.15.2052(A) (4)</b> - dwelling shall not impede accepted forestry or farming practices on surrounding lands	The applicant proposes locating the dwelling 50' from two property lines that are surrounded by forest lands. The Forest Practices Act requires that when applying herbicides by aircraft, the operator must leave an unsprayed strip of at least 60' to adjacent dwellings. If a house is within 60' of a property line, this will impede the surrounding property owner's ability to spray up to their	Determination that the location of the dwelling will not force a significant change in or significantly increase the costs of or impede accepted forestry or farming practices on surrounding forest or agricultural land.	NO	<b>Overturn Hearings Officer ruling</b> based on the fact that the applicant has not demonstrated that accepted farm and forestry practices will not be minimized with such small setbacks for the dwelling. Surrounding property owners will no longer be able to manage current or future logging operations with accepted forest practices.

		property line. In addition the applicant cannot meet the secondary fire break of 100'. Staff cannot make the finding that the proposed dwelling will not impede accepted forestry or farming practices on surrounding lands.			
3	11.15.2074(A) (1) - The dwelling shall be located such that it has the least impact on nearby or adjoining forest or agricultural lands.	Staff cannot make the finding that the dwelling shall have the least impact on nearby or adjoining forest or ag lands due to the fact that there appears to be a location on the property that would have less of an impact than the chosen site. There is a flat area cleared for a pasture that is located more towards the center of the property.	The Hearings Officer rules that the applicant has not demonstrated that they will have the least impact on surrounding forest land due to 50 feet of the secondary fire break needing to be located off-site on adjoining forest lands.	YES	<b>Affirm Hearings Officer Ruling.</b> The dwelling can be located to have less of an impact on nearby or adjoining forest or agricultural lands by locating it in the flat spot at the center of the property.
4	11.15.1074(A) (2) - Forest operations and accepted farming practices will not be curtailed or impeded	Staff does not make a finding of compliance based on the proposed location of the dwelling.	Ruled that the forest operations and accepting farming practices on site will not be <u>significantly</u> curtailed or impeded and that surrounding operations will not be curtailed or impeded to a significant degree.	NO	<b>Overturn Hearings Officer ruling</b> based on the fact that the applicant has not demonstrated that accepted farm and forestry practices will be curtailed or impeded and that the code does not specify "significantly" curtailing or impeding. The issue is this house will effect forest management practices on surrounding properties.
5	11.15.2074(A) (3) - The amount of forest land used to site the dwelling or other structure,	Staff does not make the finding that the amount of forest land used for the development has been minimized.	Ruled that the road and the cleared portion proposed for the house location are existing and therefore have minimized the amount of forest land used for development.	NO	<b>Overturn Hearings Officer Ruling.</b> The road and house site were graded under a forestry permit and did not take into account such issues



	access road, and service corridor is minimized.	Staff does not agree that utilizing an existing logging road will minimize amount of land. The proposed logging road does not meet minimum fire standards and was not reviewed by Planning prior to construction.			as wildlife migration patterns, fire safety standards and other issues. The fact that the cleared areas are existing does not guarantee compliance with this code section. The fact is the road length is maximized by this proposal, not minimized.
6	11.15.2074(A)(4) - Any access road in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required.	Staff acknowledges that the home cannot be built within 500 feet of the public roadway. The applicant must also demonstrate that the proposed length of the road is the minimum length necessary. The applicant proposes that the existing cleared area proposed for development is a physical limitation that requires the road be long enough to reach it. Staff does not believe that the existing cleared area is a physical limitation. Any work that may have been approved under a forest management plan does not preclude an application for a dwelling in a resource zone from demonstrating compliance with code criteria.	The Hearings Officer finds that since the applicant could locate a dwelling in the central or southern portions of the site and thereby reduce the length of the access road, the applicant has not demonstrated that the access road is the minimum length required.	YES	<b>Affirm Hearings Officer Ruling.</b> It is clear that the access road must be greater than 500' in length because the property is more than 500' from Skyline Blvd. However, the applicant has in no way demonstrated that the road is the minimum length required due to the fact that there are other areas more suitable for development on the subject property that would not require this long of a roadway.
7	11.15.2074(A)(5) - primary and secondary fire safety zones	The requirements of a secondary fire safety zone cannot be met because of the proposed setbacks of	Ruled that this criteria was met. Indicates that the requirements for the fire safety zone would not restrict or contradict a forest plan	NO	<b>Overturn Hearings Officer Ruling.</b> With a 50 foot setback as proposed by the applicant, the 30 primary

		50' to the north and west property lines.	approved by the State of Oregon pursuant to the State Forest Practices Rules.		fire safety zone can be met, however, the additional 100 foot of fire safety zone cannot be met on the property.
8	11.15.2074(D) - criteria dealing with fire access standards for weight, grades and turnarounds.	The Tualatin Valley Fire and Rescue determined that the fire apparatus access roadway requirements could not be complied with due to steepness of slopes. The chief stated that the home could be sprinkled to comply with the uniform fire code. Staff could not make the finding that compliance with the uniform fire code meant compliance with the Oregon Administrative Rule requirement of meeting access standards. There is a provision for waiving them upon written approval by the fire chief for short segments of roads that may be steeper than the standard on short segments. Staff does not believe that provision is to allow NO access to the home, but rather to allow fire districts that have the smaller trucks that can make it up 12% grade roads rather than the standard of 8%.	Ruled that the Tualatin Valley Fire and Rescue authority has approved the driveway with an exception standard detailed in the uniform fire code. Ruled criteria has been met.	NO	<b>Overtake Hearings Officer Ruling.</b> The issue is not only fire trucks but other emergency vehicles cannot access this property, including ambulances. The waiver for short segments of road to be steeper than 12% does not mean that homes can be built on inaccessible sites. It allows for some rural fire district to waive the 8% maximum grade if they have equipment that can maneuver 12% grades.
<b>VARIANCE</b>					
9	11.15.8505(A) (1) - A circumstance or	Staff believes that the property may be somewhat unique	Ruled that the criteria has been met based upon the shape of the parcel and its topography	NO	<b>Overtake Hearings Officer Ruling.</b> This is a 20 acre parcel with at

	condition applies to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.	because it is "L" shaped but realizes that it is a 20 acre parcel that does have more than one area that is flat enough to meet the requirements. The shape of the parcel and the terrain do not require the location of the homesite on the narrow neck of land as the applicant has stated. Staff cannot make the determination this criteria is met.	relative to its shape and it does present a circumstance and condition relative to this property does not apply generally to other properties in the same vicinity.		least 3 areas suitable for development. Nearly all of the properties along Skyline Blvd. have some slope issues to deal with. This application has not demonstrated that the entire site is in such a condition that a home could not be located on the parcel unless this variance was granted.
11.15.8505(2) - 0	The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.	There are portions of the property that are wide enough to accommodate a dwelling within the setbacks on the subject property. These areas may not be the ideal location for development for views because they are located in a valley, however the 200 foot setback would not restrict development of the property.	The HO agreed that locating the proposed dwelling in the NW corner of the site may be the most suitable location from a development standpoint, but did not feel the applicant provided substantial evidence demonstrating that by locating the dwelling in the less suitable central portion of the site where no variances would be required, that such location would restrict the use of the property to a greater degree than it restricts other property in the vicinity. The HO found that this criteria had not been met.	YES	<b>Affirm Hearings Officer Ruling.</b> The point of this criteria is 'is there any location on the property that can meet the setbacks?' The answer is yes. The argument regarding whether or not these are suitable for views is not a determining factor listed in the code or in good site planning.
11.15.8505(3) - 1	The authorization of the variance will not be materially detrimental to	The Staff determined nestling the dwelling in-between two large forested areas without maintaining a setback would not facilitate the continuation of	Ruled that the variance will not be <u>materially</u> detrimental to the property in the vicinity or district nor will it affect appropriate development of adjoining properties. Found the application met criteria.	NO	<b>Overturn Hearings Officer Decision.</b> The location of this house is as close as it can feasibly get to the surrounding forest uses. The location inhibits the surrounding

	the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affect the appropriate development of adjoining properties.	forest management in the manner that they are being managed prior to the dwelling they are impacting the development of adjoining properties.			properties from forest management practices and the applicant has not demonstrated that that impact is not materially detrimental to the surrounding natural resources.
1 2	11.15.8505(A) (4) - The granting of the variance will not adversely affect the realization of the Comp Plan nor will it establish a use which is not listed in the underlying zone.	Staff recommended that by allowing development closer to areas reserved and designated for resource lands may affect the realization of the Comprehensive Plan. Strategies of the comp plan state that "dwellings not related to forest management...are to be allowed under approval criteria and siting standards designed to assure conservation of the natural resource base, protection from hazard, and protection of big game winter habitat." Staff believes this variance would not assure conservation of the forest resource by locating it within the narrow portion of the property that extends into the narrow neck shaped portion of the property surrounded by forest uses.	Ruled that the comp plan should be implemented through enacted County zoning ordinances, applicable statutes and administrative rules. Therefore, the criteria can be met if all applicable zoning ordinances, statutes, and administrative rules are satisfied.	NO	<b>Overturn Hearings Officer Ruling.</b> The Multnomah County Comprehensive Plan sets out to ensure that dwellings shall be sited so as to preserve the natural resources of Multnomah County. Approving a dwelling in a location that inhibits the forest practices on adjoining parcels cannot meet this comp plan policy, as demonstrated by the staff findings in the zoning criteria recommendations with regards to effects on surrounding properties.
<b>GOAL 5</b>					
1 3	<b>West Hills Reconciliation Report</b>	Staff applied the Significant Environmental	Determined that the applicable goal 5 criteria would be administrative rules (OAR 660	NO	<b>Overturn Hearings Officer Ruling.</b> County Counsel has advised the

		Concern criteria to this application as an implementation instrument for the West Hills Reconciliation Report. This application was determined to be complete prior to the SEC zone acknowledgment by the State and out implementation of the criteria. The applicant provided a response to the SEC criteria and the County Staff made the determination that they did not demonstrate the minimum departure from the standards required in order to allow the use.	Division 16) and not the West Hills Reconciliation Report and found the applicant to meet the State Goal 5 requirements.		Planning Division that when the Board adopts county law, the staff must implement those laws. Although certain elements of the West Hills Reconciliation Report were remanded back to the County, we were required to implement those policies not remanded. Therefore, the West Hills Reconciliation Report should be directly applied to this application. The application has not demonstrated that they have minimized the impacts to wildlife habitats due to the fact that the maximum length of roadway has been applied for and the have not mitigated any of those impacts.
--	--	--	--	--	--

#### COMPREHENSIVE PLAN POLICIES

1 4	<b>Policy 14 -</b> Development limitations. It is the County's policy to direct development 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 effect to surrounding persons or	The slope hazard map submitted by the applicant indicates that the road traverses slopes steeper than 25%. The geotechnical reconnaissance and stability preliminary study indicates that the maximum slope on the property is 20% which staff would conclude does not include the roadway to the site. Staff believes that the road is development and cannot find that it has been directed away from slopes exceeding 20%. This was not reviewed	Hearings Officer did not address the comp plan policies specifically, other than as mentioned earlier that implementation of the zoning ordinance would ensure compliance with the comp plan.	NO	<b>Overturn Hearings Officer Ruling.</b> The Staff recommendation should stand on this section as the Hearings Officer did not make a finding one way or another on the comprehensive plan policies. The staff has determined that this project has not demonstrated that it has directed development away from areas that the County has determined to be hazardous.
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	properties.	during construction of the road because it was exempt as a forest road.			
--	-------------	--	--	--	--

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY

Land Use Planning Cases Cu 7-95;	)	Proposed
HV 17-95 modifying the June 26, 1996	)	
Hearings Officer Decision denying an	)	
application by Kim Evans for a single family	)	FINAL ORDER
residence not related to forest management,	)	96-
setback variances, and compliance with State	)	
Planning Goal 5 in the Commercial Forest Use	)	
(CFU zone) on property located at 13913 NW	)	
Skyline Blvd. in unincorporated Multnomah	)	
County, Oregon.	)	

WHEREAS, this matter is before the Multnomah County Board of Commissioners as an appeal, filed by William Cox representing Kim Evans, and a Board Order of Review (Order 96-128), of the Hearing Officer's decision in land use cases CU 7-95 and HV 17-95; and

WHEREAS, after proper notice of a public hearing, the Board of County Commissioners accepted testimony and evidence presented at a de novo hearing on August 27, 1996, and considered written testimony at a subsequent hearing on September 24, 1996, and the Board being fully advised; now therefore

IT IS HEREBY ORDERED that the Hearing Officer's decision dated June 26, 1996 in the matter of CU 7-95 and HV 17-95 is AFFIRMED

related to code sections 11.15.2074(A)(1), 11.15.2074(A)(4), 11.15.8505(2) and OVERTURNED related to code sections 11.15.2052(A)(3)(c)(ii), 11.15.2052(A)(4), 11.15.2074(A)(2), 11.15.2074(A)(3), 11.15.2074(A)(5), 11.15.2074(D), 11.15.8505(A)(1), 11.15.8505(A)(3), 11.15.8505(A)(4) and the determination of compliance with Goal 5 and the West Hills Reconciliation Report.

FURTHERMORE, the Board of County Commissioners adopts the following findings and conclusions:

1. The Hearings Officer's findings in the decision dated June 26, 1996 on Code Sections 11.15.2074(A)(1), 11.15.2074(A)(4), 11.15.8505(2).
2. The Staff Report and supplemental staff report dated March 20, 1996 with regard to Code Sections 11.15.2052(A)(3)(c)(ii), 11.15.2052(A)(4), 11.15.2074(A)(2), 11.15.2074(A)(3), 11.15.2074(A)(5), 11.15.2074(D), 11.15.8505(A)(1), 11.15.8505(A)(3), 11.15.8505(A)(4) and the determination of compliance with Goal 5 and the West Hills Reconciliation Report.
3. The Board rejects the appellant's arguments contained in the memorandums dated September 13, 1996 and September 18, 1996 and adopts the findings and conclusions in response to those memorandums contained in the submittals by Sandra Duffy, County Counsel dated September 18, 1996 and the findings and



conclusions submitted by Arnold Rochlin dated September 13, 1996  
and September 17, 1996.

DATED this 27<sup>th</sup> day of September, 1996.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Beverly Stein, Chair

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

---

Sandra N Duffy, Chief Assistant

#1

**PLEASE PRINT LEGIBLY!**MEETING DATE 9/24/96

NAME JAY KRAVITZ  
 ADDRESS 14323 NW SKYLINE  
 STREET Portland  
 CITY 97231  
 ZIP

I WISH TO SPEAK ON AGENDA ITEM NO. 12  
 SUPPORT OPPOSE ☒  
 SUBMIT TO BOARD CLERK

#2

**PLEASE PRINT LEGIBLY!**MEETING DATE 9/24/96

NAME SETH TAXE  
 ADDRESS 13700 NW NEWBERRY RD  
 STREET PDX  
 CITY 97231  
 ZIP

I WISH TO SPEAK ON AGENDA ITEM NO. WRAP  
 SUPPORT ☒ OPPOSE  
 SUBMIT TO BOARD CLERK

#3

**PLEASE PRINT LEGIBLY!**MEETING DATE 9/24/96

NAME JAMEY HAMMOND  
 ADDRESS 2981 NW 53<sup>rd</sup> Dr  
 STREET Portland  
 CITY OR 97210  
 ZIP

I WISH TO SPEAK ON AGENDA ITEM NO.   
 SUPPORT OPPOSE  
 SUBMIT TO BOARD CLERK

#5

**PLEASE PRINT LEGIBLY!**MEETING DATE 9-24

NAME

ADDRESS

Chris Foster15400 NW McNamee Rd.

STREET

Portland OR 97267

CITY

ZIP

I WISH TO SPEAK ON AGENDA ITEM NO. P-2SUPPORT ☒OPPOSE ☐SUBMIT TO BOARD CLERK ☐

#4

**PLEASE PRINT LEGIBLY!**MEETING DATE Sept 24'96

NAME

ADDRESS

Philip Thompson25925 N.W. St. Helens Rd.

STREET

Scappoose Ore 97056

CITY

ZIP

I WISH TO SPEAK ON AGENDA ITEM NO. P2SUPPORT ☒OPPOSE ☐SUBMIT TO BOARD CLERK ☐

#6

**PLEASE PRINT LEGIBLY!**MEETING DATE 9/24/96

NAME

ADDRESS

DONIS McArdle17405 NW Skyline

STREET

Portland

CITY

97231

ZIP

I WISH TO SPEAK ON AGENDA ITEM NO. \_\_\_\_\_

SUPPORT ☐OPPOSE ☐SUBMIT TO BOARD CLERK ☐

#7

**PLEASE PRINT LEGIBLY!**

MEETING DATE 9/24/96

NAME BRIAN LIGHTCAP  
ADDRESS 13342 NW Newberg Rd  
STREET Portland, OR  
CITY 97231 ZIP

I WISH TO SPEAK ON AGENDA ITEM NO. \_\_\_\_\_  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_  
SUBMIT TO BOARD CLERK \_\_\_\_\_

Meeting Date: SEP 24 1996  
Agenda No: P-2  
Est. Start Time: 6:00pm

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

**SUBJECT:** First Reading of an Ordinance adopting the West Hills Rural Area Plan (C 2-93)

**BOARD BRIEFING**      Date Requested:  
                                 Amt. of Time Needed:  
                                 Requested By:

**REGULAR MEETING**      Date Requested:      September 24, 1996  
                                 Amt. of Time Needed:      2 Hours

**DEPARTMENT:**      DES      **DIVISION:** Transportation & Land Use Planning  
**CONTACT:**      Gordon Howard      **TELEPHONE:** 248-3043  
                                 **BLDG/ROOM:** 412 / 109

**PERSON(S) MAKING PRESENTATION:** Gordon Howard

**ACTION REQUESTED**

☐ Informational Only      ☐ Policy Direction      ☒ Approval      ☐ Other

**SUGGESTED AGENDA TITLE**

First Reading of an Ordinance adopting the West Hills Rural Area Plan (C 2-93)

**SIGNATURES REQUIRED**

**Elected Official:** \_\_\_\_\_

or

**Department Manager:** KR Larry F. Nicholas pro

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 SEP 17 PM 2:52

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM BRIEFING  
ORDINANCE SUPPLEMENT**

**To:** Multnomah County Board of Commissioners

**From:** Planning Staff

**Today's Date:** September 13, 1996

**Requested  
Placement Date:** September 24, 1996

**Subject:** First Reading on Adoption of the West Hills Rural Area Plan, a component of the Multnomah County Comprehensive Framework Plan

**I. Recommendation / Action Requested:**

Approve on first reading the ordinance adopting the West Hills Rural Area Plan, and schedule a second reading of the ordinance for October 17, 1996.

**II. Background / Analysis:**

Multnomah County began work on the West Hills Rural Area Plan in 1993 with an issues identification process. The result of this process was a Scoping Report, identifying major issues expressed by citizens at two public workshop meetings, other governmental agencies, and organized interest groups.

In the Fall of 1993 a twelve-member Citizens' Advisory Committee, appointed the Chair, began a series of public meetings to formulate planning policies to be included in the West Hills Rural Area Plan. This group met monthly for approximately nine months, and their work was presented at two public workshop meetings held in the Summer of 1994. It was then forwarded to the Planning Commission as part of a staff-recommended West Hills Rural Area Plan.

In the Fall of 1994 the Planning Commission began consideration of the West Hills Rural Area Plan. The Planning Commission held a public hearing (noticed to all property owners) on the draft plan, and after several meetings amended the staff-recommended plan and transmitted a recommended draft in April, 1995 to the Board of Commissioners.

At this point, the Oregon Department of Land Conservation and Development (DLCD) informed Multnomah County that the Board of Commissioners could not consider the draft West Hills Rural Area Plan until completion of a separate document, entitled the West Hills Reconciliation Report, which dealt only with the issues of wildlife habitat, streams, scenic views, and mineral and aggregate resources in the West Hills Rural Area. Multnomah County was engaged in a dispute with the DLCD regarding expansion of the

Angell Brothers quarry. After the disputants agreed to a mediated settlement, the Board of Commissioners adopted a revised West Hills Reconciliation Report in September, 1995. After a lengthy review, the Oregon Land Conservation and Development Commission (LCDC) "acknowledged" the West Hills Reconciliation Report and its settlement of the issues of wildlife habitat, streams, scenic views, and mineral and aggregate resources in the West Hills Rural Area. In March, 1996, but required one additional minor change. In May, 1996, the Board of Commissioners made this minor change. As a result, the Board of Commissioners may now consider adoption of the West Hills Rural Area Plan.

The primary focus of the West Hills Rural Area Plan is to maintain the area as rural. Multnomah County should not allow significant expansion of the urban growth boundary into the area and should preserve its mixture of forestry and farming activities, natural resources, and rural residences. Virtually all participants in the process of developing the West Hills Rural Area Plan agreed on this basic point.

For an analysis of the major issues associated with the plan, please see Section V., Controversial Issues.

### **III. Financial Impact:**

Implementing the West Hills Rural Area Plan through amendments to the zoning and other County ordinances will require on-going long-range planning staff to complete the work and on-going current planning staff to apply the plan policies to land use permits.

### **IV. Legal Issues:**

The proposed West Hills Rural Area Plan has been submitted to the Oregon Department of Land Conservation and Development for a 45-day review period regarding compliance with the Goals of the Oregon Statewide Planning Program. We have received no comment from the Department within the review period (which ended on August 22, 1996).

### **V. Controversial Issues:**

The following is a discussion of issues staff expects to be controversial at the public hearing. Staff will be prepared to respond to any questions or comments regarding issues other than the three discussed below at the public hearing.

#### **A. DWELLINGS IN COMMERCIAL FOREST USE ZONED AREAS**

This issue has been the focus of considerable public controversy for many years in the West Hills Rural Area. The Commercial Forest Use zoning district implements Goal 4 of the Oregon Statewide Planning Program, which calls for the preservation of forest lands in order to sustain the state's forest economy and provide additional benefits in terms of open space and fish and wildlife habitat

preservation. Based upon changes in the Oregon Administrative Rules which significantly restricted non-forest related development on forest lands, Multnomah County made major changes in the Commercial Forest Use zoning district, which reduced the ability to subdivide land or build additional residences on these lands. As a result, lands which were marginally recognizable as commercial forest lands (and had more liberal zoning rules to match) were rezoned with much more restrictive zoning regulations. The West Hills Rural Area contains approximately 15,100 acres of land zoned for Commercial Forest Use (approximately 75% of the land area in the West Hills).

In 1993, the State Legislature passed a law which allowed counties the option of adopting less restrictive zoning rules for new residences in the Commercial Forest Use zoning district. Among the options are 1) allowing long-time (since 1985) owners of vacant forest tracts the option to build one single-family residence on the tract regardless of other zoning rules, and 2) changing the "template" test, which requires a certain number of lots and existing residences to be in place around a vacant parcel before it can be developed with a residence, so as to make it less restrictive. The third option is to attempt to rezone some Commercial Forest lands to rural residential by proving an "exception" to Statewide Planning Program Goal 4 (Forestry) is justified and that the lands in question are built, committed or constrained to the point where it is infeasible to practice commercial forestry on them.

The recommendation of the Planning Commission is to divide the West Hills Rural Area's commercial forest use lands into two sub-categories, labeled as CFU-1 lands and CFU-2 lands. CFU-1 lands consist of areas where the predominant size of ownerships is greater than 40 acres, while CFU-2 lands would be areas with a predominant ownership size of less than 40 acres. Multnomah County would use more restrictive zoning rules in the CFU-1 areas to protect them for large-scale commercial forestry operations, while using less restrictive zoning rules to allow some additional residences in areas where property is already parceled into smaller lots, many with existing residences. The map on Page 11 of the Draft West Hills Rural Area Plan shows the proposed boundaries of the two Commercial Forest Use zoning sub-districts. The CFU-1, or larger parcel lands, are about 9,200 acres with 33 existing residences (average of 1 dwelling unit per 280 acres) while the CFU-2, or smaller parcel lands, are about 5,900 acres with 318 dwelling units (average of 1 dwelling unit per 18 acres). Under the Planning Commission's recommendation, new dwellings in the CFU-1 areas would be allowed only on parcels of at least 160 acres in size, while in the CFU-2 areas new dwellings would be allowed pursuant to the current template test, with the additional proviso that long-time (since 1985) owners of vacant property could place a single-family residence on that property. If the Planning Commission's recommendation is adopted, there is the potential for approximately 150 additional dwellings on Commercial Forest Use zoned lands in the West Hills (there are currently approximately 350 dwellings on these lands). It should be noted that each of these 150 potential additional dwellings would



require approval of a Conditional Use Permit for the dwelling, and Multnomah County might deny some of these permits because the proposed development could not meet other standards relating to fire access, affect on forest practices, etc.

Alternatives to the Planning Commission's recommendation range from zoning rules which would allow no new additional dwellings on forest lands in the West Hills to zoning rules which would allow approximately 300 additional dwellings on forest lands in the West Hills if Multnomah County adopted the most liberal zoning regulations allowed by the Oregon Administrative Rules.

#### B. URBAN RESERVES DESIGNATION

The METRO 2040 plan for the future growth of the Portland Metropolitan Area has developed a process for analyzing areas for potential future addition to the Area's Urban Growth Boundary based upon demonstrated need and policy decisions. These areas are called urban reserves. METRO has identified two areas for consideration as urban reserve study areas in the West Hills Rural Area. One of these areas, consisting of approximately 470 acres, is located in the southwest corner of the West Hills Rural Area and consists primarily of the Bonny Slope subdivision and adjacent lands in the vicinity of Laidlaw Road. The Planning Commission recommends that Multnomah County support study of this area as an urban reserve, because of its higher level of existing development and its relative lack of farming, forest, or natural areas. The second area, consisting of approximately 60 acres, is located on the south side of Springville Road adjacent to the Washington County line. The Planning Commission does not recommend support of this area for study as an urban reserve because it is entirely designated as Exclusive Farm Use land.

In order to preserve the rural nature of the West Hills and its significant attributes, the Planning Commission recommends that Multnomah County oppose any efforts to expand the urban growth boundary into any other area of the West Hills other than the Bonny Slope area described above.

#### C. CORNELIUS PASS RAILS TO TRAILS CONVERSION

METRO has been studying the feasibility of converting the Burlington Northern's Cornelius Pass railroad line, which may be abandoned by the railroad prior to 1999, for conversion to a recreational trail. The rail line runs from the Astoria rail line adjacent to Highway 30 and Multnomah Channel through the West Hills rural area near McCarthy Creek and Cornelius Pass Road, through a tunnel under Skyline Blvd. and then into Washington County, where it runs to Hillsboro. METRO's study of this issue has aroused significant opposition among some adjacent property owners, as well as support from other property owners and interested parties.

If METRO gets the opportunity and decides to build this trail, it will need land use approval from Multnomah County in the form of a conditional use permit. The Planning Commission recommends that Multnomah County take a neutral stand on the project at this time, supporting only study of the feasibility for conversion to trail use. The Citizens' Advisory Committee had recommended support of the trail, with mitigation of the concerns of neighboring property owners. Multnomah County also recommends study of the route as a bicycle route to replace the existing designated route along Cornelius Pass Road between Highway 30 and Skyline Blvd. Opponents of the trail conversion are concerned about the impacts of persons using the trail in areas where it generally runs along the rear property line of existing residences, and the danger and vandalism inherent in the use of the half-mile long tunnel under Skyline Blvd. The trail's supporters argue that it will provide a significant recreational opportunity for hikers, equestrians, and potentially bicyclists away from conflicts with vehicular traffic.

#### **VI. Link to Current County Policies:**

The West Hills Rural Area Plan would be the first adopted as part of Multnomah County's rural area planning program, begun in 1993. The aim of this program is the adoption of rural area plans (considered "subsets" of the Multnomah County Comprehensive Framework Plan) for all of Multnomah County's rural communities. The Transportation and Land Use Planning division is currently working with citizens' committees on rural area plans for the area East of the Sandy River and the Sauvie Island/Multnomah Channel area. Work has not yet begun on a West of Sandy River rural area plan, and Multnomah County must complete planning work for the fifth area, the Columbia Gorge National Scenic Area, in conjunction with the Columbia River Gorge Commission.

#### **VII. Citizen Participation:**

Prior to beginning plan preparation, Multnomah County completed a process of scoping all major issues associated with land use in the West Hills. This process included two public forums noticed to all residents at which the attendees were asked for input on major issues they wished to be addressed. The result was a scoping report presented to the Planning Commission and Board of Commissioners in August, 1993.

In October 1993, the Multnomah County Chair appointed a Citizens' Advisory Committee to provide input on the preparation of the West Hills Rural Area Plan. This committee met monthly through May, 1994 and came forth with a set of recommended policies and principles to guide the plan. These policies and principles were presented to the public in June, 1994 at two open houses in the West Hills.

Multnomah County mailed notice of the Planning Commission hearing on the West Hills Rural Area Plan in December, 1994 to all West Hills Rural Area property owners. Notice of this public hearing has also been mailed to all property owners.

### **VIII. Other Government Participation:**

Multnomah County invited the participation of other local governmental agencies throughout the preparation of West Hills Rural Area Plan. We have received comments and input from the following state and local agencies:

- Oregon Department of Land Conservation and Development
- Oregon Department of Forestry
- Oregon Department of Fish & Wildlife
- Oregon Department of Water Resources
- Oregon Department of Transportation
- Columbia County Planning Division
- Washington County Planning Division
- Portland Planning Bureau
- Burlington Water District
- Tualatin Valley Fire & Rescue
- Scappoose Fire District
- Portland School District
- Scappoose School District
- Portland Bureau of Environmental Services
- Portland Parks and Recreation Bureau
- METRO Planning Division
- METRO Parks and Greenspaces Division

## ORDINANCE FACT SHEET

### **Ordinance Title:**

An Ordinance adopting the West Hills Rural Area Plan, a portion of the Multnomah County Comprehensive Framework Plan.

### **Give a brief statement of the purpose of the ordinance including rationale for adoption, description of persons benefited, alternatives explored:**

The ordinance will result in the adoption of the West Hills Rural Area Plan, which will refine the Multnomah County Comprehensive Framework Plan by providing a policy direction for land use issues in the West Hills Rural Area.

The West Hills Rural Area consists of approximately 19,000 acres, located in Multnomah county north and west of the City of Portland. Its boundaries are Washington County on the west, Columbia County on the north, Highway 30 and the City of Portland on the east, and the City of Portland on the south. Approximately 1,000 acres in the Balch Creek basin is discontinuous from the rest of the West Hills Rural Area, and is surrounded by the City of Portland and urban portions of Multnomah County. The West Hills Rural Area has approximately 3,000 residents.

Over the past several years the West Hills Rural Area has been the subject of several controversial land use issues and policies. The largest of these have involved land use rules for areas designated as Commercial Forest lands (approximately 75% of the West Hills) and rules for protection of natural and environmental resources such as streams, wildlife habitat, scenic views, and the mineral and aggregate resource represented by the Angell Brothers quarry property. Other issues of concern to West Hills residents include placement of regional parks and recreational facilities in the West Hills Rural Area, placement of regional transportation facilities in the area, and expansion of the Portland Metropolitan Area's Urban Growth Boundary into the area. The proposed West Hills Rural Area plan addresses all these issues and provides policy guidance for their resolution over the next 20 years. This will benefit not only residents and property owners within the West Hills, but also the entire Portland Metropolitan Area, for which the West Hills is an important "greenspace" adjacent to some of the older and denser parts of the city.

As part of the formulation of the West Hills Rural Area Plan, the Planning Division and the Citizens' Advisory Committee explored many alternative visions for the West Hills. The document reflects a "balance" between these visions in many respects. However, the one almost universal vision expressed was that the West Hills Rural Area should remain RURAL, and not be urbanized by significant expansion of the urban growth boundary into the area.

**What other local jurisdictions have enacted similar legislation?**

All local jurisdictions have adopted Comprehensive Plans which are subject to "acknowledgement" by the Oregon Land Conservation and Development Commission. While many local jurisdictions have more specific community or area plans, to date only urban communities have prepared such plans. Multnomah County is the first jurisdiction to prepare a "community" plan for rural areas. The West Hills Rural Area Plan is the first of these efforts. Other rural areas in Multnomah County are Sauvie Island/Multnomah Channel, East of Sandy River, West of Sandy River, and the Columbia Gorge National Scenic Area.

**What is the fiscal impact, if any?**

Implementing the West Hills Rural Area Plan through amendments to the zoning and other County ordinances will require on-going long-range planning staff to complete the work and on-going current planning staff to apply the plan policies to land use permits.

**SIGNATURES**

Person filling out form:

Deborah Gd. Howard

Planning and Budget (if fiscal impact):

\_\_\_\_\_

Department Manager/Elected Official:

Larry F. Nicholas

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON  
ORDINANCE NO. \_\_\_\_\_

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An Ordinance adopting the West Hills Rural Area Plan, a portion of the Multnomah County Comprehensive Framework Plan.

Multnomah County Ordains as follows:

Section I. Findings.

(A) On August 31, 1993, the Multnomah County Board of Commissioners accepted the West Hills Rural Area Plan Scoping Report, prepared in June 1993 by Cogan Sharpe Cogan, which listed issues Multnomah County would address in the West Hills Rural Area Plan.

(B) The Chair of the Multnomah County Board of Commissioners subsequently appointed a Citizens' Advisory Committee of twelve members to conduct public meetings and assist in the preparation of the West Hills Rural Area Plan.

(C) The Citizens' Advisory Committee held monthly meetings from November, 1993 through May, 1994, and formulated draft policies and principles to be included within the West Hills Rural Area Plan.

(D) These draft principles and policies were presented at two public open houses in June 1994 within the West Hills Rural Community.

(E) The Multnomah County Planning Commission held a public hearing on the draft West Hills Rural

1 Area Plan on December 5, 1994. On April 3, 1995, the Planning Commission completed revisions to the  
2 West Hills Rural Area Plan document and recommended its adoption by the Multnomah County Board of  
3 Commissioners.

4

5 (F) At this point, Multnomah County forwarded the draft West Hills Rural Area Plan to the Oregon  
6 Department of Land Conservation and Development (DLCD) for a required 45 day review. In May, 1995,  
7 the DLCD informed Multnomah County that the Board of Commissioners could not consider adoption of  
8 the West Hills Rural Area Plan until the County's remaining Periodic Review issues, relating to wildlife  
9 habitat, streams, scenic views, and the mineral and aggregate resources of the Angell Brothers quarry had  
10 been resolved and "acknowledged" as being consistent with Goal 5 of the Statewide Planning Program by  
11 the Oregon Land Conservation and Development Commission.

12

13 (G) Therefore, the Multnomah County Board of Commissioners did not schedule a public hearing to con-  
14 sider adoption of the West Hills Rural Area Plan.

15

16 (H) In September, 1995, Multnomah County submitted a revised resolution of the remaining Periodic  
17 Review issues related to Goal 5 of the Statewide Planning Program to the Oregon Land Conservation and  
18 Development Commission. On March 7, 1996 the Oregon Land Conservation and Development  
19 Commission "acknowledged" Multnomah County's Periodic Review work to be complete, and directed  
20 the County to make one minor change regarding the application of a wildlife habitat zoning overlay on a  
21 small portion of the West Hills. The Board of Commissioners adopted this change in May, 1996. Thus,  
22 the West Hills Rural Area Plan could proceed to a hearing before the Board of Commissioners.

23

24 (I) On July 10, 1996, the draft West Hills Rural Area Plan was again sent to the Oregon Department of  
25 Land Conservation and Development for a 45-day review period. Multnomah County received no com-  
26 ment within the review period.

1  
2 (J) On September 4, 1996, the Multnomah County Division of Transportation and Land Use Planning  
3 mailed notice of a public hearing on the West Hills Rural Area Plan to all property owners and other inter-  
4 ested parties.

5  
6 Section II. Amendment of Comprehensive Framework Plan

7  
8 The Multnomah County Comprehensive Framework Plan is hereby amended to include the West Hills  
9 Rural Area Plan, attached hereto as Exhibit "A."

10  
11 ADOPTED THIS \_\_\_\_\_ 1996, being the date of its first reading before the Board of  
12 County Commissioners of Multnomah County.

13  
14  
15  
16  
17 By \_\_\_\_\_  
18 Beverly Stein  
19 Multnomah County Chair  
20  
21

22 REVIEWED:

23 LAWRENCE KRESSEL, COUNTY COUNSEL  
24 for MULTNOMAH COUNTY, OREGON

25 By Sandra N. Duffy  
26 SANDRA N. DUFFY, CHIEF ASSISTANT COUNSEL



# **BOARD OF COMMISSIONERS DRAFT** **WEST HILLS RURAL AREA PLAN**

*Strike-outs and underlines reflect changes from Planning Commission recommendation to incorporate the policies of the adopted West Hills Reconciliation Report*

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# INTRODUCTION

This document contains the Rural Area Plan for the West Hills Rural Area. It is part of the overall Multnomah County Comprehensive Framework Plan, and when adopted by the Board of County Commissioners, will constitute an official element of the plan.

This plan is a guide to decision making with regard to land use, capital improvements, and physical development (or lack thereof) of the community. It will be used by the County, other governmental agencies, developers and residents of the area. The residents have a deep interest in their community's preservation.

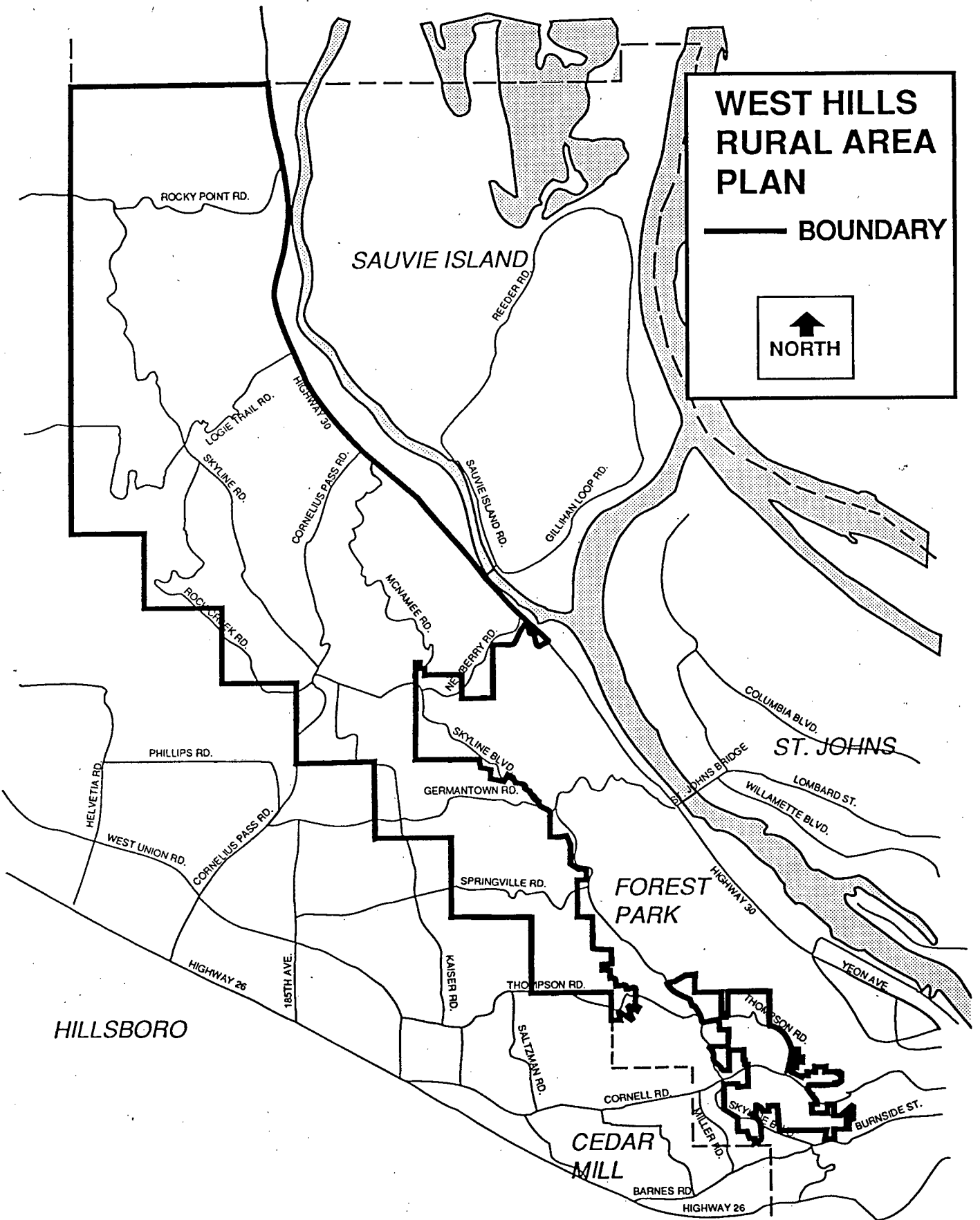
This plan represents a commitment on the part of Multnomah County to see that the plan elements are carried out and implemented to the best of the County's financial and enforcement capabilities. It also represents a commitment on the part of the West Hills Rural Area community to support the accomplishment of the identified policies contained within this plan.

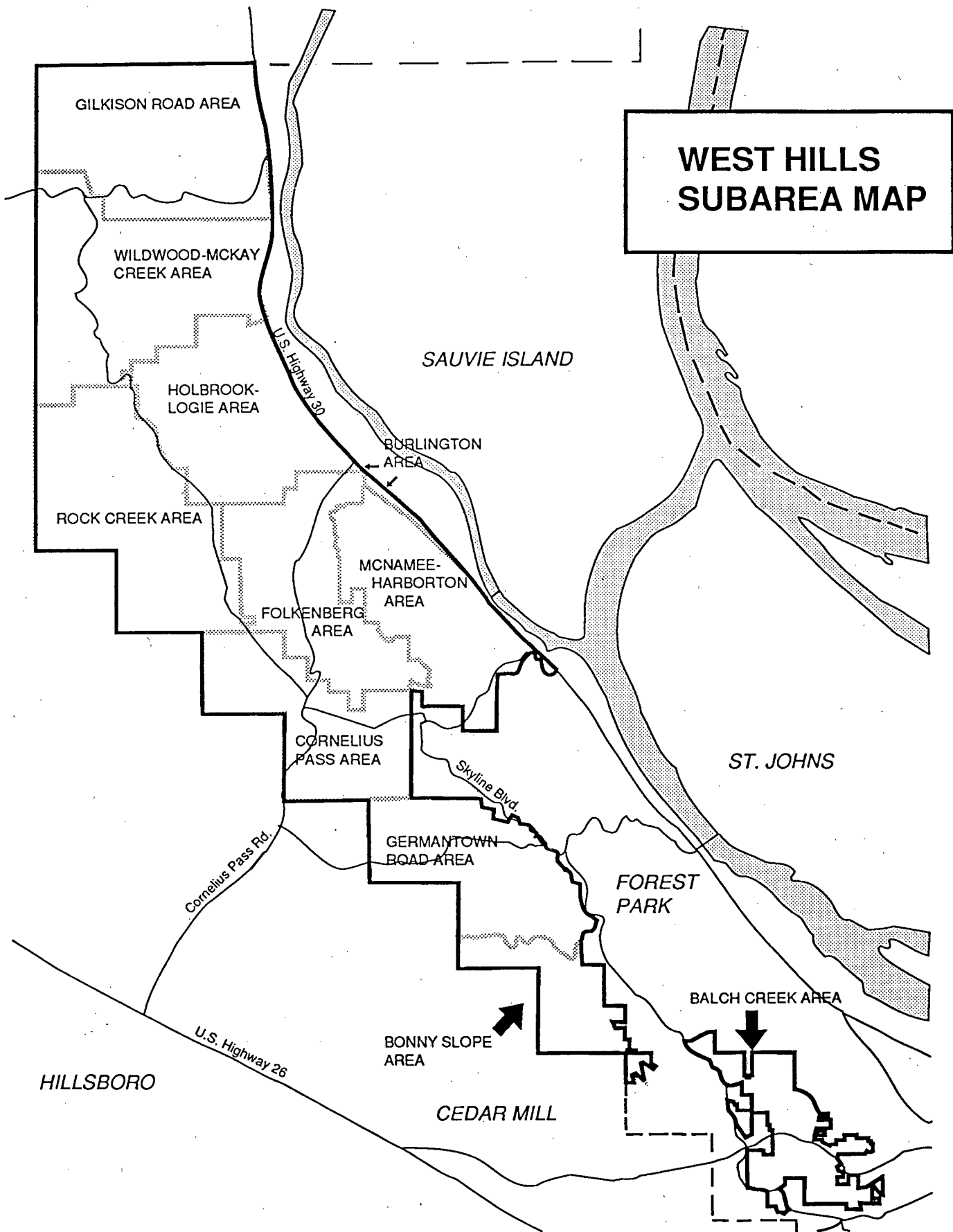
The elements of this plan reflect future trends and policies for the West Hills Rural Area during the next 15 to 20 years. The plan can be changed only if it goes through the process of an official plan amendment.

The Rural Area Planning Program was initiated in 1993 by Multnomah County. With the annexation of urban unincorporated communities and the increasing land use issues faced in the rural areas of Multnomah County, the Board of Commissioners directed the creation of five rural area plans in order to address land use issues faced by these areas.

The first rural area plan to be completed is the West Hills Rural Area Plan. Work began on the Plan in January, 1993, with the initiation of an issues identification process. This process included interviews with key stakeholders, interviews with other governmental agencies, solicitation of written comment, and two public forums held within the West Hills Rural Area in order to gain input on major issues facing the community. A Scoping Report summarizing this material was presented to the Multnomah County Planning Commission and Board of Commissioners in September, 1993.

After adoption of the Scoping Report, which identified major issues to be addressed in the plan, the Multnomah County Chair appointed the West Hills Citizen's Advisory Committee, consisting of twelve members, plus one Planning Commission ex-officio member, to work with Planning Division staff on preparation of this document. The Committee held monthly meetings between November 1993 and June 1994 to review all elements included within this document. The Committee's role was not to make official recommendations to the Planning Commission and Board of Commissioners, but rather to review and comment upon materials prepared by Planning Division staff, and provide a forum for additional public involvement in the preparation of the West Hills Rural Area Plan. In July, 1994 Multnomah County hosted two public forums in order to present material which came from the Citizen's Advisory Committee meetings. Next, Planning Division staff prepared this document for review and comment by the Planning Commission and Board of Commissioners at noticed public hearings.





The West Hills Rural Area Plan work process was complicated by work required by the Oregon Land Conservation and Development Commission to address issues related to Goal 5 regarding natural and environmental resources in the West Hills independently of the West Hills Rural Area Plan. These issues were related to quarry expansions, wildlife habitat, significant streams, and scenic views. Work required by the Commission's April 1993 Remand Order was completed in October, 1994, and sent to the Land Conservation and Development Commission for review. After the Department of Land Conservation and Development recommended that the work submitted be found inadequate in certain respects, Multnomah County agreed to enter mediation regarding disputed issues, particularly regarding the Angell Brothers Quarry site. Therefore, this plan does not include a Mineral and Aggregate subsection of the Natural Resources section. It is the intent of Multnomah County to amend the West Hills Rural Area Plan by adding language which reflects the outcome of mediation and subsequent efforts on this issue. The remainder of the Natural Resources section does not require amendment because it includes no findings, policies, or strategies in conflict with the Department of Land Conservation and Development's review of the County's work.

This document is organized by subject, with relevant Goals, Policies, and Strategies, interspersed with findings. At the end of the document, the reader will find a compilation of all Goals, Policies, and Strategies.

# WEST HILLS RURAL AREA PLAN

## RURAL CHARACTER

The West Hills is a rural area, and its residents, many of its vacant land property owners, and the residents of the greater Portland Metropolitan Area have identified the rural character of the West Hills as a valuable attribute, which should be preserved.

-- Residents moved to the West Hills Rural Area for various reasons, but mainly because of some aspect of its rural nature, be it dependence on resource use, or escape from what they perceive to be undesirable city life.

-- While some owners of vacant land would undoubtedly wish for urbanization of the West Hills Rural Area, others are satisfied with continued forest and farm operations which they maintain, others look forward to moving to the area and enjoying its rural nature as well, and others appreciate the stewardship involved in keeping their land in a natural state.

-- People residing in the greater Portland Metropolitan Area appreciate the rural nature of the West Hills for its greenspaces.\* Maintenance of the greenspace concept in the area provides protection of environmental qualities such as fish & wildlife habitat and scenic hillsides, and provides potential for enjoyment of these environmental qualities in a way similar to the adjacent Forest Park in the City of Portland. They also appreciate how the quality of their own lives is enhanced by the rural nature of the West Hills, because development of the West Hills would impose costs upon them in terms of needed infrastructure and degraded air and water quality.

People interested in the future of the West Hills Rural Area have identified seven basic qualities which defined the rural character of the West Hills, and which they wished to preserve.

1. LOW POPULATION/DENSITY OF PEOPLE

2. PEACE AND QUIET/PRIVACY

3. PRIVATE PROPERTY RIGHTS\*\*

\*The term "greenspaces" is used by METRO in their Greenspaces Master Plan, and although not specifically defined, is encompassed in the plan's subtitle, which reads, "A Cooperative Regional System of Natural Areas, Open Space, Trails and Greenways for Wildlife and People."

\*\*Private property rights are important within a rural context -- very few property owners wish to have the right to build an apartment house or a rendering plant on their property. But many governmental restrictions on the use of private property, particularly to protect "environmental" qualities such as wildlife habitat, are viewed with hostility, not only for their impacts on property value, but also for the restrictions on the personal freedoms of property owners to "steward" their property as they wish. Many feel that government should use incentives, such as tax policy, rather than regulatory restrictions, in order to promote a healthy rural community.

4. ABUNDANT WILDLIFE
5. CLEAN AIR AND WATER
6. RENEWABLE RESOURCE USE (FORESTRY & AGRICULTURE)
7. GREENSPACE/OPEN SPACE\*

While these values have some common underpinnings, in many ways they are in direct conflict with each other. In such cases, it is the goal of the West Hills Rural Area Plan to "balance\*\*" these values and come forth with a vision for the West Hills Rural Area which preserves the important parts of each of these qualities.

**GOAL: THE GOAL OF THE WEST HILLS RURAL AREA PLAN IS TO PRESERVE THE RURAL CHARACTER OF THE AREA**

**POLICY 1: Where possible, use incentives, rather than restrictions or disincentives, to accomplish land use and other policies contained in the West Hills Rural Area Plan.**

\*This value represents the value the greater Portland Metropolitan Area places upon the West Hills Rural Area.

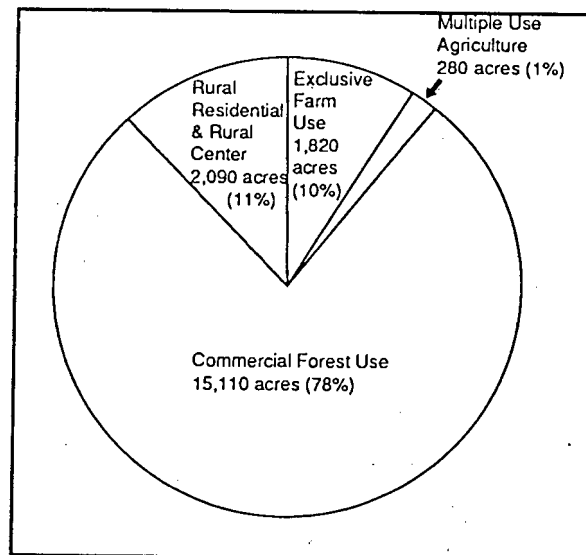
\*\*The concept of "balancing" conflicting uses is often attacked by those who would do "what is right," even if this results in one value being ignored so that the more important value is triumphant. However, this is an approach used by those who assume that their viewpoint is the "absolute truth," and fails to take into account that opposing viewpoints and ideologies have significant merit in the eyes of their followers. It is not the task of the West Hills Rural Area Plan to uncover one-sided "truths" and exclude other viewpoints -- it is instead our task to find the common ground that competing values have, and find the appropriate balance between those competing values which will result in an outcome preserving the most important points of each.

# LAND USE

The 19,300 acres of the West Hills Rural Area is divided into five rural land use designations/zoning districts (Note: All five rural land use designations in the West Hills are coterminous with identically-named zoning districts.). In addition, approximately 250 acres within the Portland Metro Area's Urban Growth Boundary and also within the Balch Creek basin are included within the West Hills Rural Area Plan -- this area, or parts of it, will remain within the final plan boundaries only if it is removed from the Urban Growth Boundary. It will be discussed in the Urban Growth section of this plan. The following pie chart illustrates the proportion of different land use designations in the West Hills Rural Area.

## PIE CHART:

### WEST HILLS RURAL AREA LAND USE DESIGNATIONS



## COMMERCIAL FOREST USE

Commercial Forest Use areas constitute over 15,000 acres, or about 78% of the West Hills rural area. The primary purpose of the Commercial Forest Use zoning district is to conserve and protect designated lands for continued commercial growing and harvesting of timber.

Until 1992, areas now designated Commercial Forest Use in the West Hills were split between areas designated Commercial Forest Use (mostly in the far northwest of the County in the vicinity of Dixie Mountain and Rocky Point Rd.) and areas designated Multiple Use Forest. The Multiple Use Forest Zoning District allowed lot sizes as low as 19 or 38 acres, depending on location, and allowed construction of a residence on most any lot. Revisions to the Oregon Administrative Rules governing forest lands required Multnomah County to eliminate the Multiple Use Forest zoning district and place all lands so designated into a new Commercial Forest Use zoning district. This new district contains severe limitations on the construction of residences, and limits new subdivision lots to a minimum size of 80 acres. Additional changes in state law in 1993 provide some potential for relaxing these strict rules, if so desired by Multnomah County. The new law allows forest dwellings on existing lots under three scenarios -- 1) if a tract containing the proposed dwelling contains at least 160 acres, 2) if the lot of record meets a template test which measures the number of existing lots and residences within a certain distance of the lots, and 3) if the lot of record was purchased by the present owner



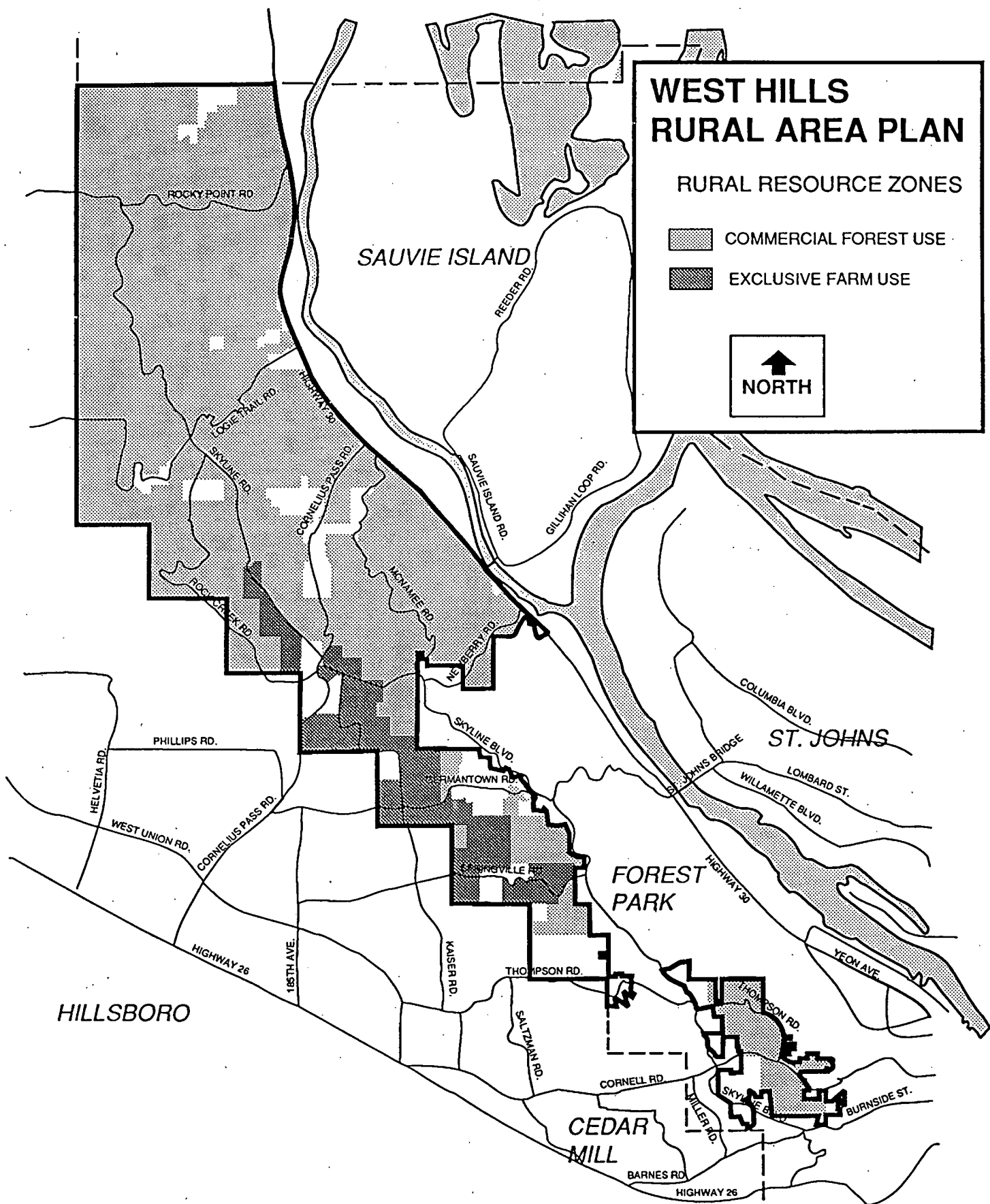
prior to 1985. (These are summaries of somewhat complex provisions in the law -- for a more complete set of rules, see the relevant section of the Oregon Administrative Rules).

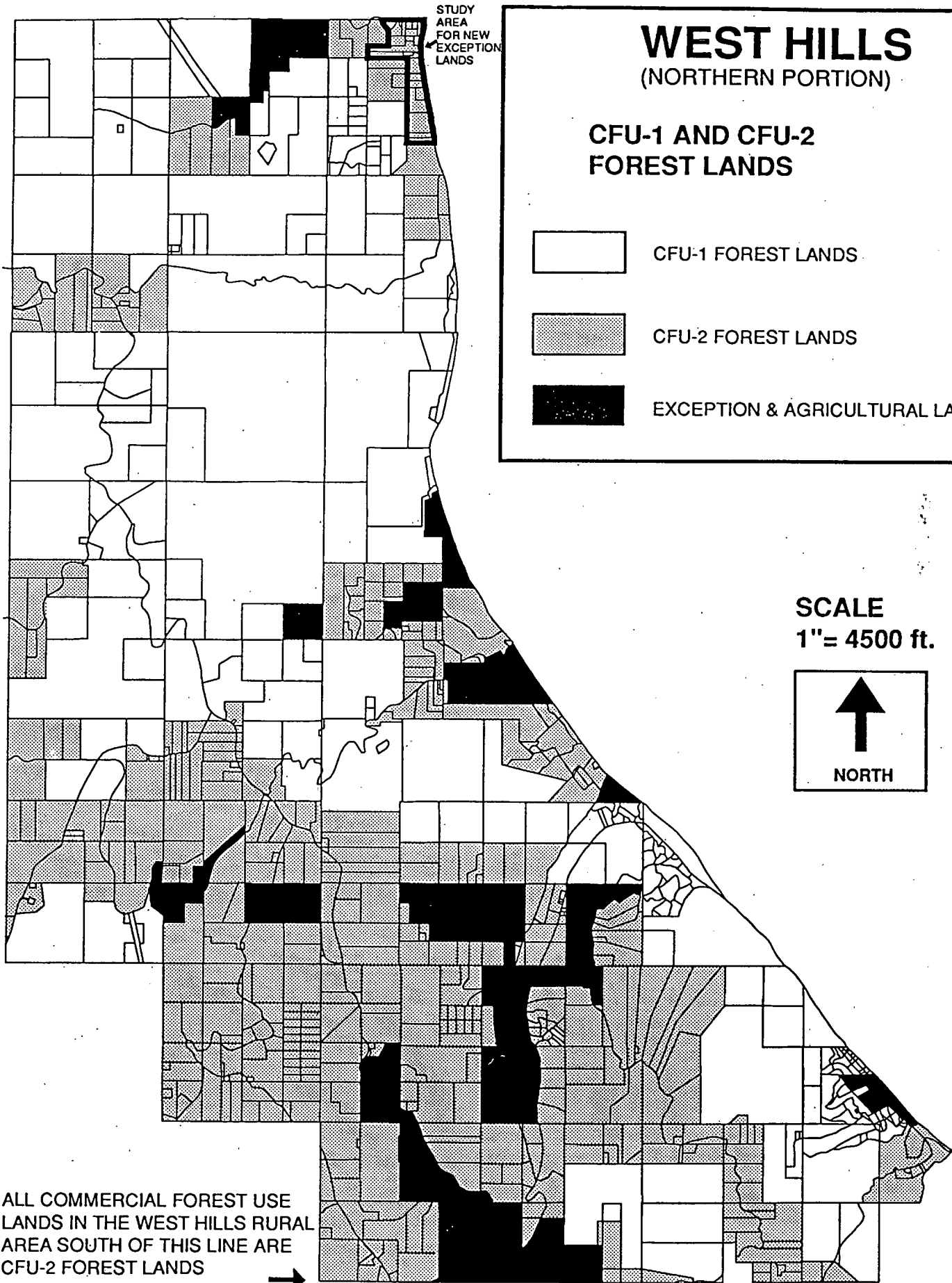
Under review, the Commercial Forest Use areas of the West Hills can clearly be divided into two general subareas. The first, which shall be designated COMMERCIAL FOREST - 1, constitutes about three-fifths of the the Commercial Forest Use - zoned areas in the West Hills. Primary forest lands are defined as areas where the primary lot pattern consists of lots of record (as defined by the Multnomah County zoning code for Commercial Forest Use-zoned areas) in excess of 40 acres and where there are few existing residences. Primary forest lands may include smaller lots of record which do not by themselves meet the definition, but which are isolated from other smaller lots of record by lands which do meet the definition of primary forest lands. The second, which shall be designated as COMMERCIAL FOREST - 2, consists of the remainder of the Commercial forest Use-zoned areas. Secondary forest lands are defined as areas consisting of contiguous lots of record less than 40 acres, many of which have existing residences. Secondary forest lands may include larger lots of record which by themselves do not meet the definition, but which are isolated from other larger lots of record by lands which do meet the definition of secondary forest lands. The following table provides statistical information about these two areas:

COMMERCIAL FOREST USE SUB-CATEGORIES (description)	ACRES	EXISTING RESIDENCES
COMMERCIAL FOREST - 1(large acreages, undeveloped)	9,200(61%)	33 (1 du/279 ac.)
COMMERCIAL FOREST - 2(small acreages, inter- spersed with existing residences)	5,900(39%)	318 (1 du/18 ac.)

Clearly, forest practices are conducted differently within these two areas. Certain industrial practices used in primary forest lands, such as controlled burns and aerial spraying are most likely not appropriate in the secondary forest lands. Forest practices on smaller lots, many with existing residences, will be more limited in scope, since many property owners in these areas have other land use objectives (e.g. aesthetic considerations) and have greater constraints (on activities such as controlled burns and aerial spraying) which prevent maximization of their lands for industrial forest practices. Most of these lands were Multiple Use Forest prior to 1993 and thus many are already developed with uses, particularly residences, which prevent full-scale forest practices. The increased flexibility provided in the State rules relating to Commercial Forest Use lands allows Multnomah County to adopt more flexible land use and zoning rules for secondary forest lands which provide a better fit to their actual character.

As a final point, the rural lands rules of the Statewide Planning Program have been the subject of much discussion and political controversy since the inception of the Statewide Planning Program in 1973. The rural lands rules have been changed many times, and may be changed





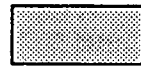
# WEST HILLS

(NORTHERN PORTION)

## CFU-1 AND CFU-2 FOREST LANDS



CFU-1 FOREST LANDS

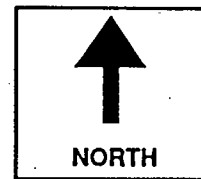


CFU-2 FOREST LANDS



EXCEPTION & AGRICULTURAL LANDS

SCALE  
1" = 4500 ft.



ALL COMMERCIAL FOREST USE  
LANDS IN THE WEST HILLS RURAL  
AREA SOUTH OF THIS LINE ARE  
CFU-2 FOREST LANDS

in significant ways again. The existing Commercial Forest Use zoning district in the West Hills provides many benefits to environmental values, such as wildlife habitat and streams, which are ancillary to its primary resource-based purpose of providing protection of commercial timber lands. Regardless of changes to state law, Multnomah County should maintain strong controls on non-forest related uses in order to protect not only continued forestry uses, but also maintain protection of environmental resources that are important to the protection of wildlife habitat and significant streams.

**POLICY 2. Preserve resource-based land uses related to forest practices as the primary land use in the West Hills.**

**STRATEGY:** Divide Commercial Forest Use lands within the West Hills into two categories. The first, designated CFU-1 Forest Lands, consists of areas with large land-holdings generally in excess of 40 acres and areas with few or no existing residences. The second, designated CFU-2 Forest Lands, consists of areas with smaller land holdings generally less than 40 acres, and areas with scattered existing residences. (SEE MAP ON PAGE 11)

**STRATEGY:** Preserve CFU-1 Forest Lands for continued commercial timber production by limiting residential uses to tracts of 160 acres or greater, or non-contiguous tracts of 200 acres or greater.

**STRATEGY:** Allow non-forestry related uses, such as residences, on CFU-2 Forest Lands as follows:

- a. dwellings on 160 acre tracts or 200 acre non-contiguous tracts.
- b. dwellings on existing lots of record owned continuously by the current owner or antecedents of the current owner since 1985 which are capable of producing less than 5,000 cubic feet per year of commercial timber.
- c. dwellings on existing lots of record which contain at least eleven existing lots and five existing dwellings within a 160 acre square template centered on the lot of record containing the proposed dwelling.

All dwellings potentially authorized under any of these conditions must meet additional development standards and lot aggregation requirements to ensure public safety, public health and welfare, and protection of natural and environmental resources.

**STRATEGY:** If current statewide planning regulations of Commercial Forest Use lands are changed, Multnomah County should not allow new subdivision lots of less than 40 acres in the CFU-2 district or less than 80 acres in the CFU-1 district in order to preserve forest practices and natural resources such as wildlife habitat, streams, and scenic views.

## EXCLUSIVE FARM USE

Exclusive Farm Use land constitutes approximately 1,800 acres, or 10%, of the West Hills rural area. Exclusive Farm Use areas in the West Hills are located along the west side of the Tualatin Mountains, draining into the Tualatin River watershed, in the Cornelius Pass, Germantown Road, and Bonny Slope subareas. Areas designated for exclusive farm use are intended for the preservation and maintenance of agricultural lands for farm use consistent with existing and future needs for agricultural products.

Changes in state law passed by the 1993 legislature significantly restrict the ability to subdivide land or build new dwellings on land designated Exclusive Farm Use. Multnomah County will amend the Exclusive Farm Use zoning district to implement the new state law in 1995. Among issues the County must decide upon at that time is whether to allow owners of lots of record prior to 1985 more opportunity to construct a single-family dwelling. Among issues the County must implement in the new state law are further restrictions on non-farm uses within "high value farmlands," defined as all Class I and Class II, and some Class III and Class IV soils in the Willamette Valley. The location of these soils within the West Hills Exclusive Farm Use areas will be determined as part of the implementation of the new state law.

### **POLICY 3    Preserve farm lands in the West Hills for agriculture as the primary use.**

**STRATEGY:** Allow non-agricultural uses, such as residences, on Exclusive Farm Use Lands as permitted by Oregon Administrative Rules, with additional development standards and lot aggregation requirements to ensure public safety, public health and welfare, and protection of natural and environmental resources.

## EXCEPTION LANDS

Three land use designations/zoning districts in the West Hills Rural Area encompass areas for which an "exception to either Goal 3, Agricultural Lands, or Goal 4, Forest Lands, has been approved by Multnomah County and acknowledged by the Oregon Land Conservation and Development Commission (LCDC).

The only area for which an additional "exception" is proposed consists of approximately 80 acres adjacent to the intersection of U.S. Highway 30 and Gilkison Road adjacent to the Columbia County line. This area contains 23 existing lots and 15 existing homes and a small motel. If acknowledged by LCDC, this area would be redesignated and rezoned from Commercial Forest Use to Rural Residential.

## RURAL RESIDENTIAL

Rural Residential designated areas of the West Hills constitute approximately 2,000 acres, or 10% of the West Hills rural area. Pockets of this designation are scattered throughout the West Hills, generally coinciding with areas of existing smaller lots (1-5 acres) and existing homes. No changes in land use designation or zoning district are proposed for these areas within the West Hills, with the exception of the additional area to be considered adjacent to the intersection of U.S. Highway 30 and Gilkison Road.

## MULTIPLE USE AGRICULTURE

Multiple Use Agriculture land constitutes only 300 acres, or 1.5% of the West Hills rural area. Four small pockets of land with this designation lie along the western edge of the West Hills, in the Tualatin River basin. Lot sizes in this area are generally 5 to 10 acres, with existing homes on virtually every lot. No changes in land use designation or zoning district are proposed for these areas.

## RURAL CENTER

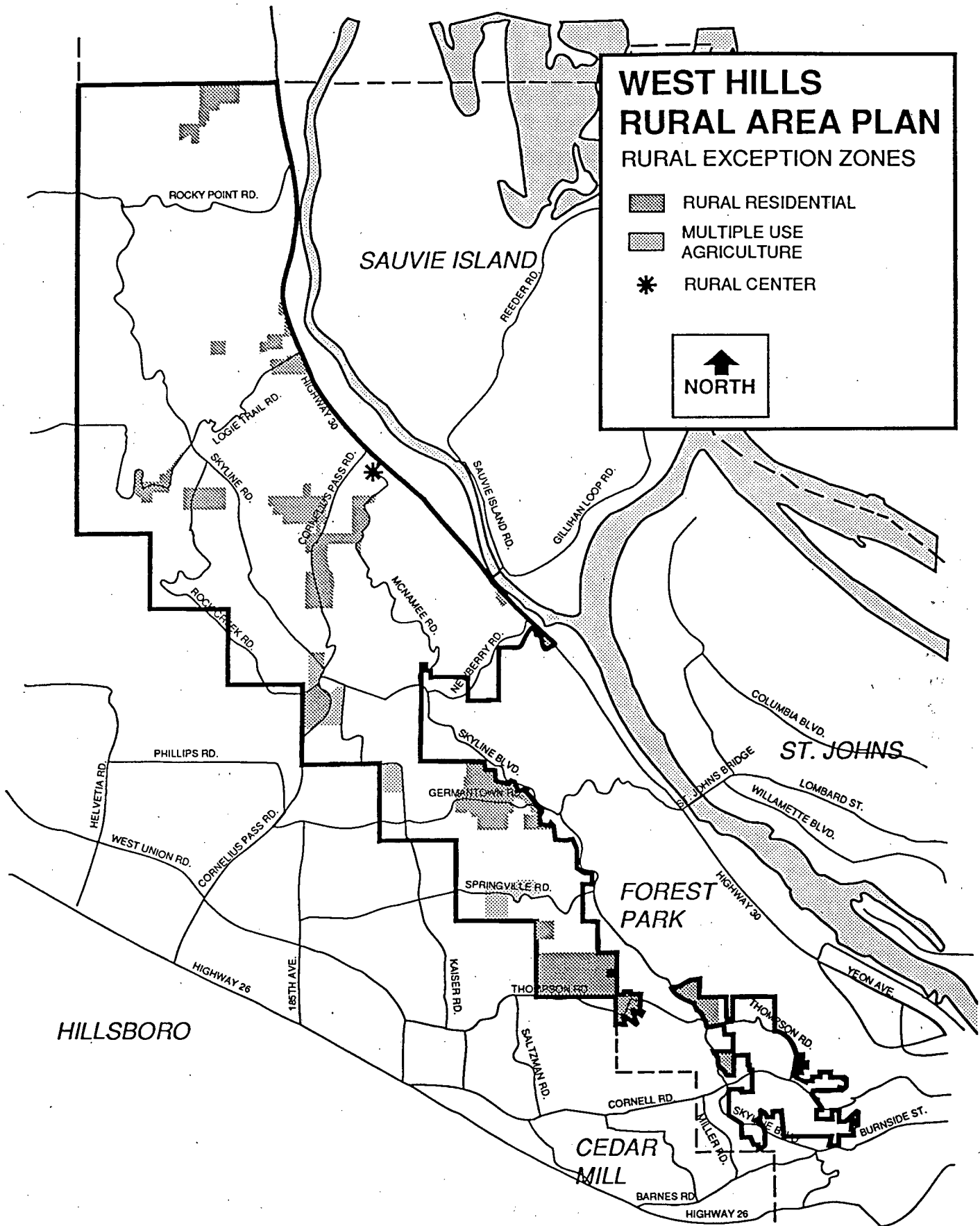
### Burlington

Burlington is the only identified rural center in the West Hills rural area. It was the subject of a land use study in 1981, which identified the current rural center boundaries (approximately 30 acres). The remainder of the 90 acre Burlington area (analyzed in the 1981 land use study) is designated Commercial Forest Use, and is virtually undeveloped. This study area sits at the base of the Tualatin Mountains, and lies between the Burlington Northern Astoria line railroad tracks to the east of Highway 30, and the Burlington Northern Cornelius Pass line railroad tracks to the south and west.

On October 28, 1994, the Oregon Land Conservation and Development Commission adopted new administrative rules and goal amendments establishing planning and zoning requirements for unincorporated communities (OAR 660, Division 22, Unincorporated Communities). Planning for Burlington must conform to these new rules.

Burlington has the distinction of being quite rural despite being near the Urban Growth Boundary of Portland. The study area contains four businesses, two public service facilities, and 41 homes, 11 of which are outside of the existing rural center boundary. Additionally, the eleven acre Holbrook School site, located at the north end of Burlington, at the intersection of Highway 30 and Cornelius Pass Rd, has been purchased for use as a residential care facility. No new residences have been constructed within the Burlington Rural Center since 1981. Based upon OAR 660-22, Burlington qualifies as a "Rural Community," since it consists of residential uses and at least two other land uses that provide commercial, industrial, or public uses to the community, the surrounding rural area, or to persons traveling through the area.

The elevation of the Burlington area ranges from close to sea level to 200 feet above sea level. Elevation rises severely from Highway 30 to the Burlington Northern Cornelius Pass line



railroad tracks to the south, and more gently to the north. Property beyond the Burlington Northern Astoria line railroad tracks to the north and east is subject to flooding from high water levels in Multnomah Channel.

State Highway 30 and Cornelius Pass Rd. provide major access to Burlington. The remaining roads in the area, Burlington, Wapato, and McNamee, provide access to homes and properties abutting them. Many "paper" roads, unbuilt and in some cases unbuildable, criss-cross the area.

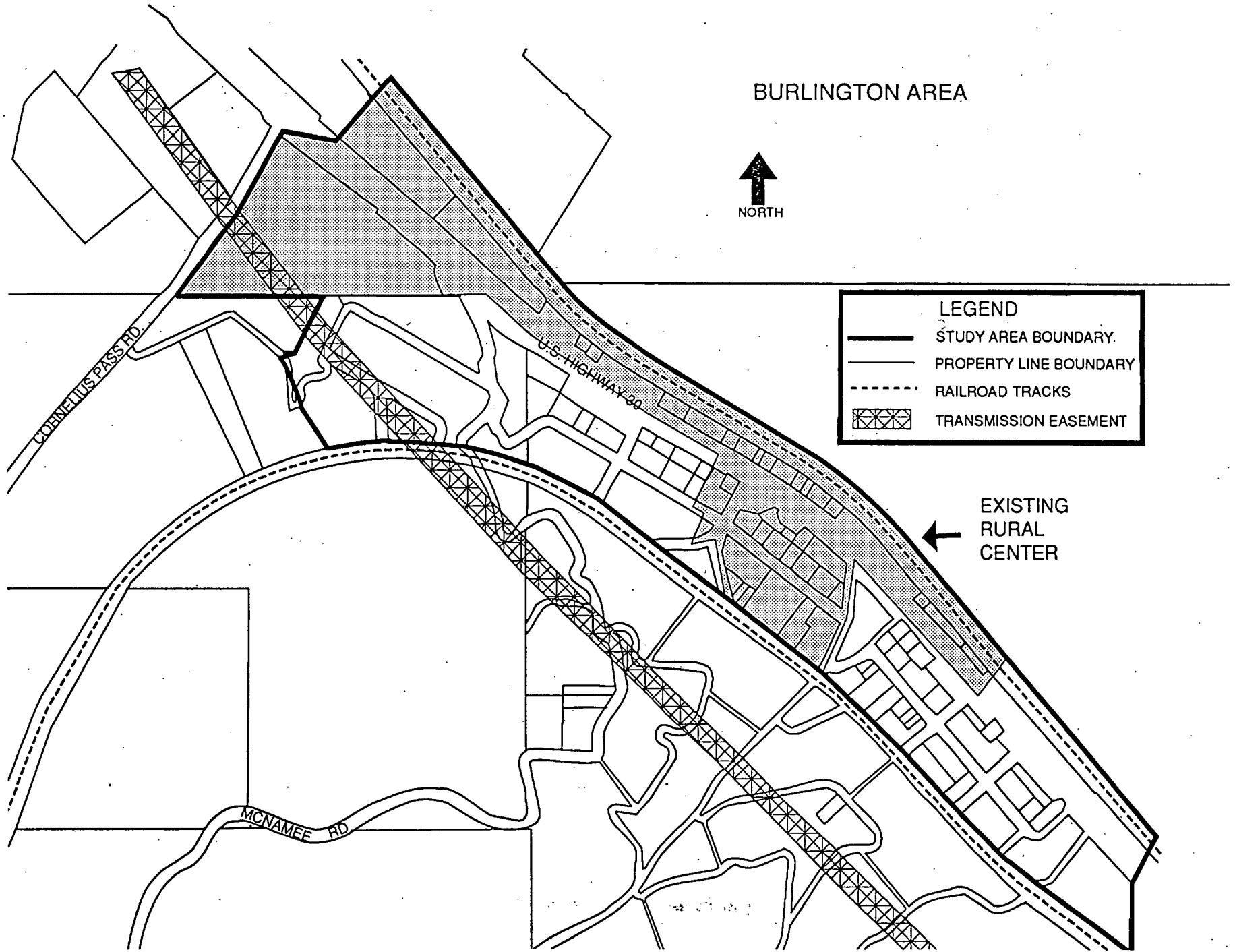
Public services available in Burlington include schools, water, police, and fire protection. Students attend schools in the Portland School District. Provision of water and fire services are available through the Burlington Water District. The water district purchases water from the City of Portland and holds the water supply in a reservoir located southwest of the highway on property owned by the District. Due to infrastructure age and maintenance delay, the Water District is experiencing a 38% leakage in water transmission. Also, due to undersizing of the infrastructure and residential development in excess of initial design, there is inadequate water pressure to meet the needs of some residents. However, the affected residents are not within the boundaries of the current rural center, all of which has an adequate existing water supply. The Water District currently serves 293 people and an additional 65 to 69 people who live outside the district. Fire protection is contracted out to the City of Portland by the Water District, at a cost in Fiscal Year 1993-94 of \$38,000. Police service is provided by the Multnomah County Sheriff.

Most of the area, with the exception of the northern portion, is within the Burlington Subdivision, platted in 1909, with an average lot size at 8,000 square feet. This subdivision extends west and south of the Burlington Northern Cornelius Pass line railroad tracks into commercial forest lands. Most of the subdivision located outside of the existing rural center boundary is under a single ownership.

The Burlington community has both positive and negative aspects to be considered as part of any expansion of the Burlington Rural Center. Positive aspects which would lead to a conclusion of allowing expansion include:

1. Expansion of the Burlington rural center would provide a concentrated focus for the local commercial needs of West Hills residents, as well as road-oriented commercial needs of Highway 30 motorists.
2. Allowing additional residential development in Burlington would provide an opportunity for rural lifestyles which is much in demand for the West Hills rural area.
3. Due to its location and the amount of existing development, Burlington has little significant value in relation to identified Goal 5 resources such as wildlife habitat, significant streams, or scenic views.
4. Burlington has a water district in place to provide public water service to a more concentrated population, as opposed to the use of individual wells. However, the district's current system





is antiquated and inadequate to serve additional development outside of the rural center -- see #3 under negatives below.

Negative aspects which would lead to a conclusion of maintaining the existing rural center boundary include:

1. Burlington is severely constrained geographically by the Tualatin Mountains which rise steeply from Highway 30.
2. Residential development is less desirable here compared to other areas of the West Hills due to the geographic constraints and the proximity to the heavy traffic on Highway 30.
3. The Burlington Water District has antiquated facilities which are incapable of serving a significant influx of new residents and businesses outside of the existing rural center.
4. The Burlington Rural Center does not currently include the types of businesses which would serve the West Hills Rural Area -- its function is to mainly serve traffic along Highway 30. It is questionable whether, even if local services were available, West Hills residents would use Burlington as a rural center.

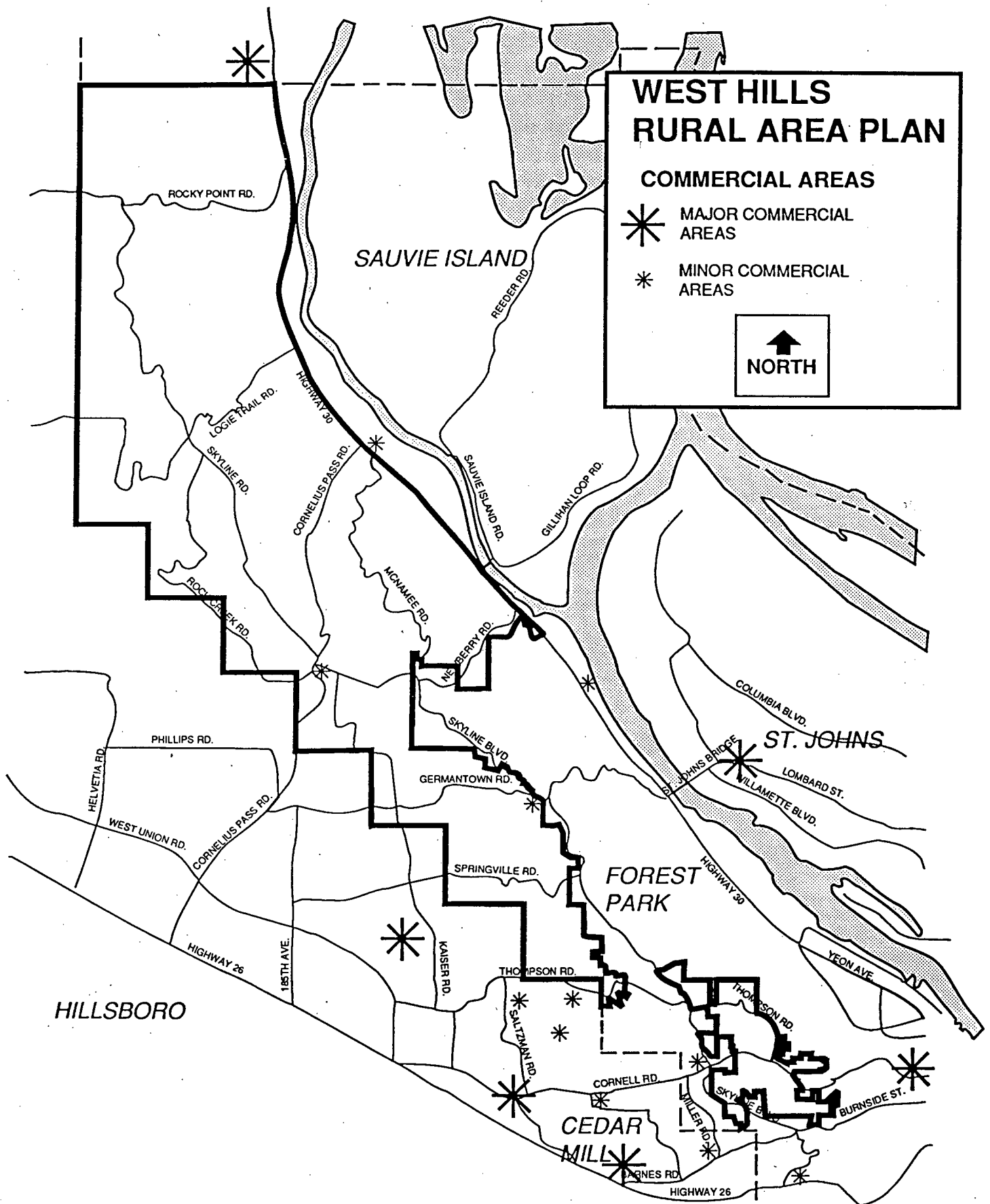
Any future expansion of the rural center boundaries in Burlington is dependent upon 1) a community public facility plan prepared pursuant to OAR 660 Division 11 for improvements to the facilities of the Burlington Water District, 2) evidence of increased demand for new housing in Burlington, and 3) market analysis indicating that an expansion of the Burlington Rural Center is necessary to serve the commercial and institutional land use needs of the West Hills Rural Area and not merely to serve Highway 30 traffic. If these three criteria can be met, expansion of the rural center zoning district in Burlington should be considered for the remainder of the 90-acre Burlington community. Until then, no expansion of the Burlington Rural Center is proposed.

#### Other Potential Rural Centers

As mentioned above, the West Hills Rural Area is not served by the Burlington Rural Center. West Hills Rural Area residents have no community focus. Commercial needs are met by nearby communities -- Northwest Portland, Tanasbourne, West Union, Cedar Mill, and Bethany to the south, and Scappoose to the north. A small nucleus of uses near the intersection of Skyline Blvd. and Cornelius Pass Rd. -- a grocery store, an auto garage, Skyline Elementary School, the American Legion Post, and a church, do provide a potential focus for a future rural center. However, the current population of the West Hills shows no great desire for an enhanced community focus area which would be provided by a rural center in this location. Should the community show a need or desire for such a rural center, planning studies should focus on the area near the intersection of Skyline Blvd. and Cornelius Pass Rd. for its establishment.

**POLICY 4** Do not designate additional "Exception" lands in the rural West Hills unless they meet the criteria outlined in Oregon Planning Goal 2 (Land Use).

**STRATEGY:** Consider redesignation of approximately 80 acres at the intersection



of U.S. Highway 30 and Gilkison Road, adjacent to the Columbia County line, from Commercial Forest Use to Rural Residential.

**POLICY 5** Promote a community core in the rural West Hills through establishment of a rural center which serves the local needs of West Hills residents.

**STRATEGY:** Consider a limited area near the intersection of Cornelius Pass Road and Skyline Blvd. for designation as a Rural Center if justified by a county-initiated assessment of the need for additional commercial or other uses to support public needs in the rural West Hills.

**STRATEGY:** Do not consider expansion of the existing Burlington Rural Center unless 1) existing facilities of the Burlington Water District are upgraded, 2) evidence of increased demand for housing and commercial or institutional services in Burlington exists in the form of construction on vacant lots within the existing rural center boundaries, and 3) a market analysis indicates that the expansion of the Burlington Rural Center is necessary to serve West Hills Rural Area needs.

# URBAN GROWTH

## URBAN GROWTH BOUNDARY

The Urban Growth Boundary defines the location of urban development for the Portland Metropolitan Area. It is adopted and amended by METRO, formerly the Metropolitan Service District, a regional government for the Portland Metropolitan Area designed to look at metropolitan-wide planning and public facility and service issues. Only land within the Urban Growth Boundary may be zoned and developed with urban-type uses.

METRO has authority over changes to the Urban Growth Boundary. If any changes are proposed by Multnomah County to the boundary, such a change must be approved by the METRO Commission. METRO has established criteria for consideration of changes to the Urban Growth Boundary, criteria which must be met in order for such a change to be approved.

The West Hills Rural Area includes 245 acres inside the Urban Growth Boundary, all within the Balch Creek Basin. This area has been included in order to analyze whether it should remain in the Urban Growth Boundary, or be removed. No additions are proposed to the Urban Growth Boundary within the West Hills Rural Area. Such changes would be antithetical to the overriding desire of residents, property owners, and residents of the Greater Portland Metropolitan Area to retain this area in its current rural state. However, areas within the Balch Creek Basin which are inside the Urban Growth Boundary should be considered for removal due to two factors: 1 ) the lack of public facilities, particularly sewer service, which the City of Portland has determined that it shall not provide at any future time to properties in the Balch Creek Basin, and 2) the location of these lands inside the important and sensitive Balch Creek Watershed, with its natural areas, wildlife, cutthroat trout populations, and importance as a regional open space link due to the location of several public parks and private park preserves within its bounds.

The 245 acres can be divided into four subareas:

Subarea One consists of approximately 92 acres to the east of Greenleaf Rd., south of Cornell Rd. It is within the Urban Growth Boundary, and is currently zoned R10 (10,000 sq. ft. minimum lot size), R20 (20,000 sq. ft. minimum lot size), and RR (five acre minimum lot size). It is lightly developed, with a significant number of larger, vacant lots, and is located on steeper slopes within the Balch Creek basin.

Subarea Two consists of approximately 90 acres to the west of Greenleaf Rd., south of Cornell Rd. Most of it is currently zoned R-20(20,000 sq. ft. minimum lot size), but approximately two acres is zoned RR (five acre minimum lot size). It is extensively developed with existing low-density single family residences, served by public water from the City of Portland. This subarea is on the fringe of the Balch Creek Basin on less steep ridgeline areas.

Subarea Three consists of approximately 50 acres along Ramsey Drive, Ramsey Crest Drive,



  
NORTH

and Walmer Drive east of Skyline Blvd. This subarea is within the Urban Growth Boundary, but is zoned Rural Residential (RR), with a five acre minimum lot size. It is subdivided for the most part into lots of one-third to one-half acre in size, most with existing residences. About three-quarters of this area is not within the Balch Creek Basin, draining westward toward the Tualatin River. However, the smaller portion within the Balch Creek Basin includes a steep five acre vacant parcel of land which could, if improperly developed, result in significant erosion into Balch Creek.

Subarea Four consists of approximately 13 acres located along Hilltop Drive, south of Cornell Road and the Audubon Society property. It is divided into five lots, four of which have existing residences. This subarea is generally located along a ridgeline separating the Balch Creek Basin from areas draining to the south. It is currently zoned R10 (10,000 square foot minimum lot size).

**POLICY 6: Do not adjust the Urban Growth Boundary in the West Hills.**

**STRATEGY:** Study 90 acres of relatively undeveloped land in the Balch Creek basin (SUBAREA ONE) for proper zoning which will recognize this area's severe development limitations.

**STRATEGY:** Rezone approximately 50 acres located along Walmer, Ramsey, and Ramsey Crest Drives (SUBAREA THREE) from Rural Residential to appropriate urban residential zoning districts.

**URBAN RESERVES**

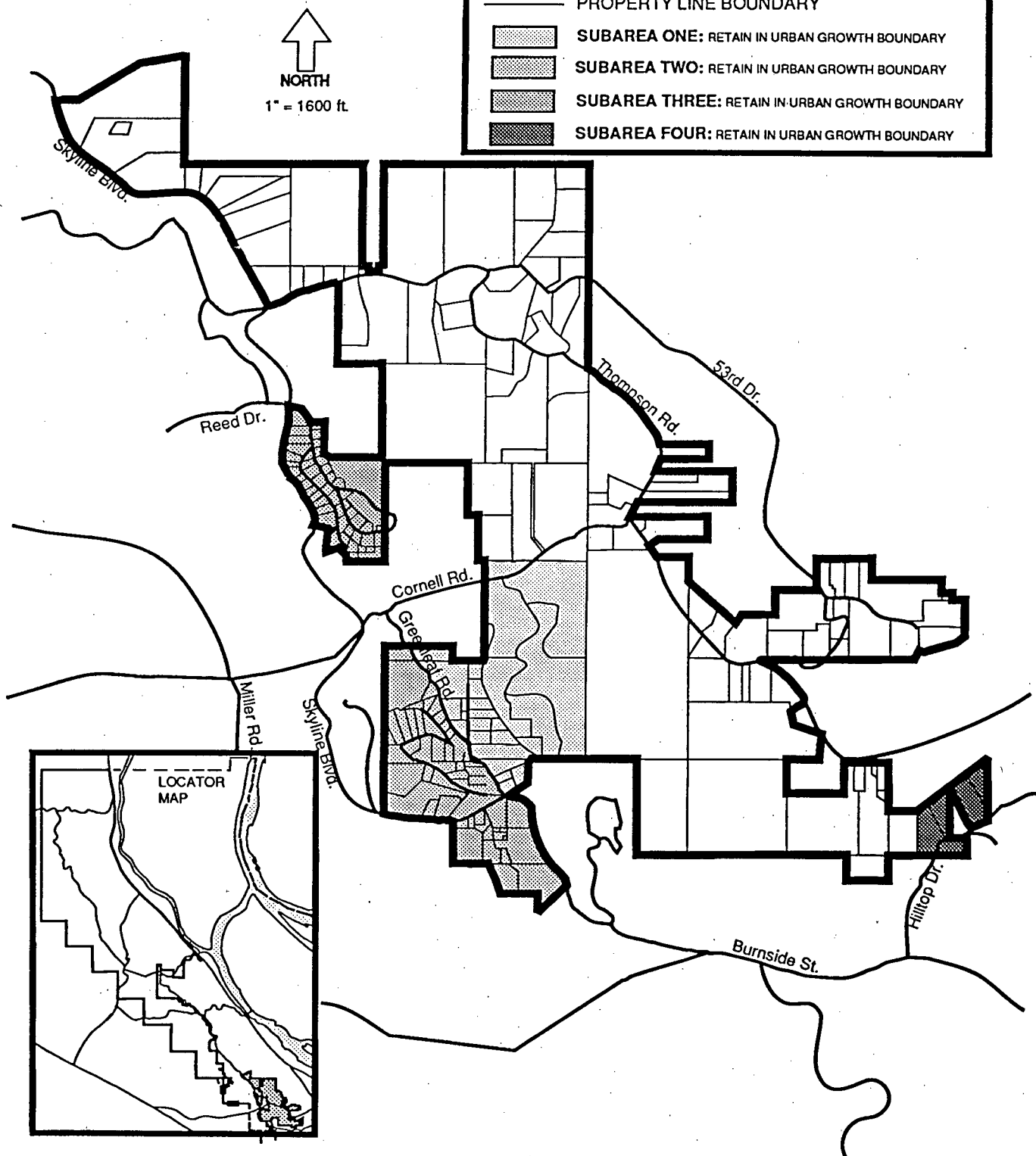
Metro is currently in the process of completing the Region 2040 Project, which is a long-range planning program that will allow people in the Portland region to help decide what the region will be and look like in the next 50 years -- through the year 2040. The results of the project will outline the broad policy decisions that must be made to determine how the region should grow.

Current state law requires the Urban Growth Boundary to accommodate 20 years of growth. Unless policies change, Metro will need to add land to the Urban Growth Boundary starting in 1995 in order to meet the 20-year need. The Region 2040 project is looking at three concepts to address the growth projected for the Portland Metropolitan Area. Concept A would accommodate growth by expanding the Urban Growth Boundary in a way that meets state and regional land use goals and policies. Concept B would not move the Urban Growth Boundary, instead relying on increasing densities and intensities of development within the existing boundary, by more intensive use of remaining vacant lands and redevelopment opportunities. Concept C would, in addition to making modest additions to the existing boundary and increasing development densities and intensities within the existing boundary, accommodate about one-third of future growth in "satellite" cities just outside of the current Urban Growth Boundary, separated from the main mass of the Portland Metropolitan Area by broad "greenbelts" of agricultural land, forest land, and open space.

# BALCH CREEK AREA

West Hills Rural Area Plan

Land Use Issue Areas





In December 1994 the Metro Council adopted a concept plan which was essentially a combination of Concepts A and B. Under this concept, very limited areas of the West Hills, given their proximity to the existing Portland urban area, would be considered for inclusion in an "urban reserve" which would designate land to be added to the Urban Growth Boundary in the future in order to accommodate the 20 to 50 year growth projections for the Portland Metropolitan Area. While the final decision on which lands should be designated as urban reserves belongs with Metro, the County has the responsibility to provide strong direction to the regional planning agency through adoption of this West Hills Rural Area Plan as to what lands should be considered for inclusion in an urban reserve and what lands should not.

Inclusion of lands within the West Hills Rural Area into the Urban Reserve, for eventual urbanization, is contrary to the overall goal of this plan, which is to maintain the West Hills' rural nature. Additionally, it is apparent from METRO's analysis that little if any land in the West Hills is needed for designation of Urban Reserves, because many other fringe areas to Portland are more suitable for urbanization. The rugged terrain of the West Hills, the cost of providing urban infrastructure (roads, sewers, etc.), and the inevitable environmental degradation which accompanies urban growth all are factors against expanding urban development into the West Hills Rural Area.




One small portion of the West Hills is suitable for consideration as an Urban Reserve area -- this is the Bonny Slope area, along Laidlaw Road. This area is bounded on three sides by the Urban Growth Boundary. The southern portion of this subarea, the Bonny Slope subdivision, consists of rural lots one to five acres in size, mostly developed with homes. The northern portion of the subarea consists of steeper forested lands. Given its location, and relative lack of constraints, this area should be considered for future expansion of the urban growth boundary.

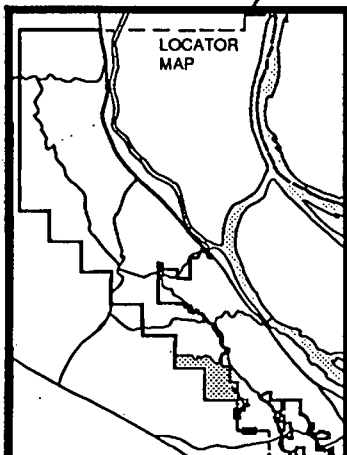
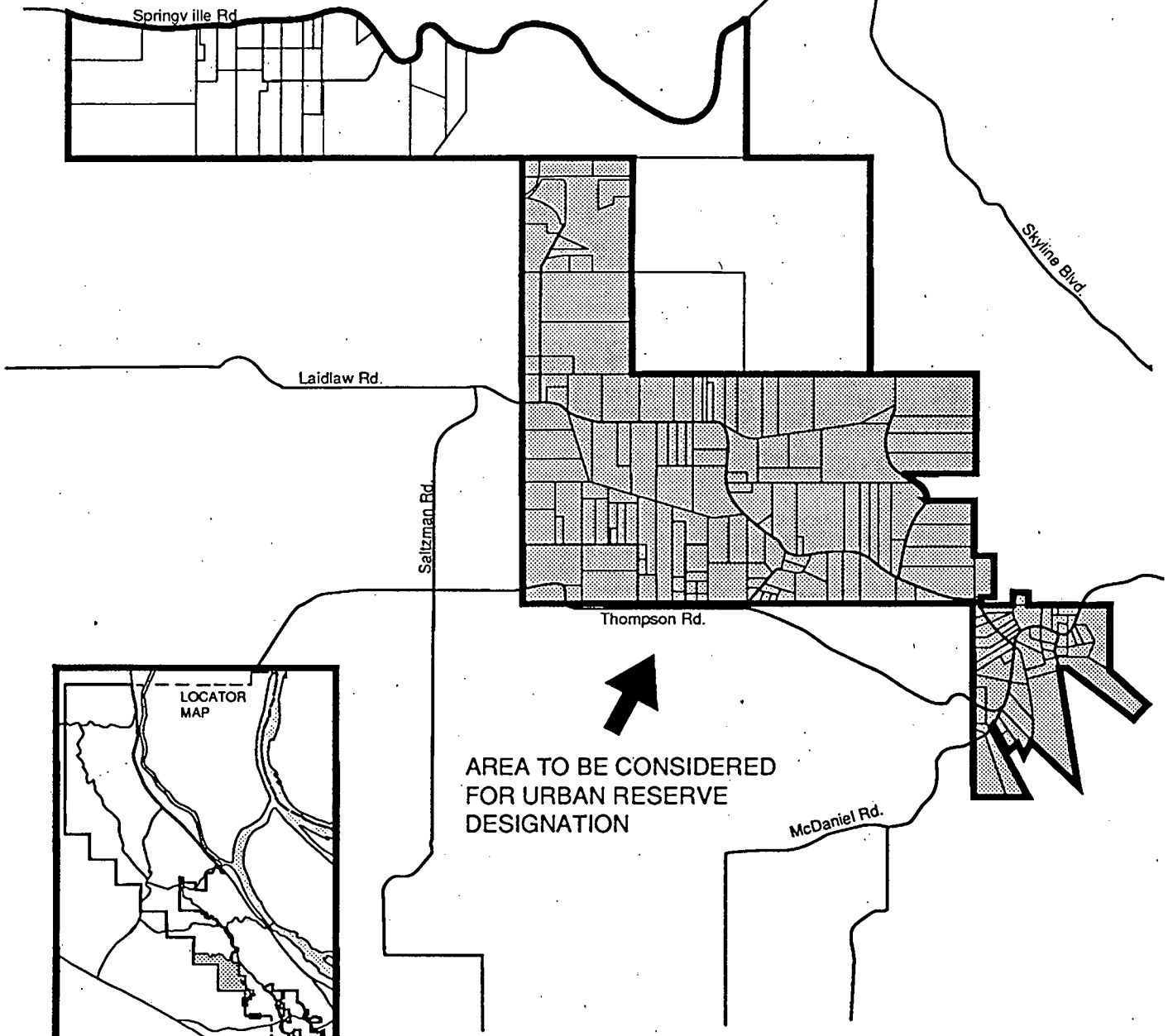
**POLICY 7: Urge METRO to designate most of the West Hills Rural Area as a Rural Reserve within the Regional Framework Plan -- consider Urban Reserve designations only for fringe areas adjacent to Portland and Washington County urban areas.**

**STRATEGY: Forward to Metro a resolution directing that only the southern and central portions of the Bonny Slope subarea of the West Hills Rural Area be considered as an urban reserve area as part of the Region 2040 project.**

# BONNY SLOPE AREA WEST HILLS RURAL AREA PLAN

  
NORTH  
1"=1700 ft.

LEGEND	
	STUDY AREA BOUNDARY
	ROAD
	PROPERTY LINE BOUNDARY



AREA TO BE CONSIDERED  
FOR URBAN RESERVE  
DESIGNATION

# TRANSPORTATION

## REGIONAL ROADS

### U.S. Highway 30

Highway 30, which runs along the eastern boundary of the West Hills Study Area, is maintained by the Oregon Department of Transportation (O.D.O.T). It is a four lane high-speed roadway which runs from Portland to Astoria along the eastern boundary of the West Hills Rural Area. The road operates with minimal congestion, having traffic volumes well below the capacity of the road. ODOT has no identified construction projects, other than routine maintenance, for this segment of Highway 30. Projects along Highway 30 in adjacent jurisdictions include a re-surfacing of the approaches from Highway 30 to the St. Johns bridge, scheduled for 1997, and on-going studies to add capacity to the roadway in Columbia County to the north. Also, Multnomah County will perform work to upgrade the Sauvie Island Bridge approaches to Highway 30.

### "Western Bypass"

Regional transportation maps from the 1960's show a conceptual route for a "Western Bypass" roadway northward from Highway 26 in Washington County, over Cornelius Pass, through Sauvie Island, and then over the Columbia River to Washington State. However, no studies of such a route have been conducted by O.D.O.T. and none are planned.

O.D.O.T. is currently studying a "Western Bypass" roadway to the south of the West Hills, which would run from Interstate 5 in Wilsonville to Highway 26 in Washington County. This study is currently in the Alternatives Analysis phase, which will review five alternatives for resolving transportation problems in southwestern Washington County. Once the alternatives analysis is completed, O.D.O.T. will subject the preferred alternative to an Environmental Impact Statement (EIS). The EIS must include projected changes to traffic volumes and character on Cornelius Pass Road as a result of any new roadway to the south.

Any future consideration of extending a "Western Bypass" roadway northerly from Highway 26 over Cornelius Pass would require consensus of the jurisdictions through which the roadway would pass, including Multnomah County. Such a roadway, while perhaps conducive to regional traffic, would bring major changes to the West Hills in terms of the following issues:

- 1) Negatively impacting agricultural and timber lands through which the roadway might pass;
- 2) Negatively impacting identified Goal 5 resources in the West Hills. Significant scenic views of the east face of the West Hills would be interrupted by a major roadway. Any roadway would cross several significant streams. And any roadway would critically interrupt significant wildlife habitat areas connecting Forest Park and the Coast Range.
- 3) Negatively impacting the rural character of the area. This change would be most signifi-

cant, since placement of a major regional road corridor through the West Hills would lead to strong pressures to urbanize the West Hills.

**POLICY 8: Oppose placement of regional roadways in the West Hills Rural Area, should such roadways be under consideration by any regional transportation authority in the future.**

## COUNTY ROADS

In February, 1993, Multnomah County adopted a plan of Trafficways which gave roadways in rural areas functional classifications. Roadways in the West Hills are now classified into several categories, as shown below:

**Principal Arterial** streets are generally four lanes or more and can carry a large volume of traffic, usually in excess of 25,000 trips per day. A significant feature of the principal arterial is its ability to carry "through" trips; that is, trips which begin and end outside of the County area.

Highway 30

**Rural Arterial** roads are generally two lanes which serve inter- and intra-county trips. They are characterized by their significance as traffic distributors between areas in the County, connecting cities and rural centers. They generally carry a daily traffic volume of up to 10,000 vehicle trips.

Cornelius Pass Road

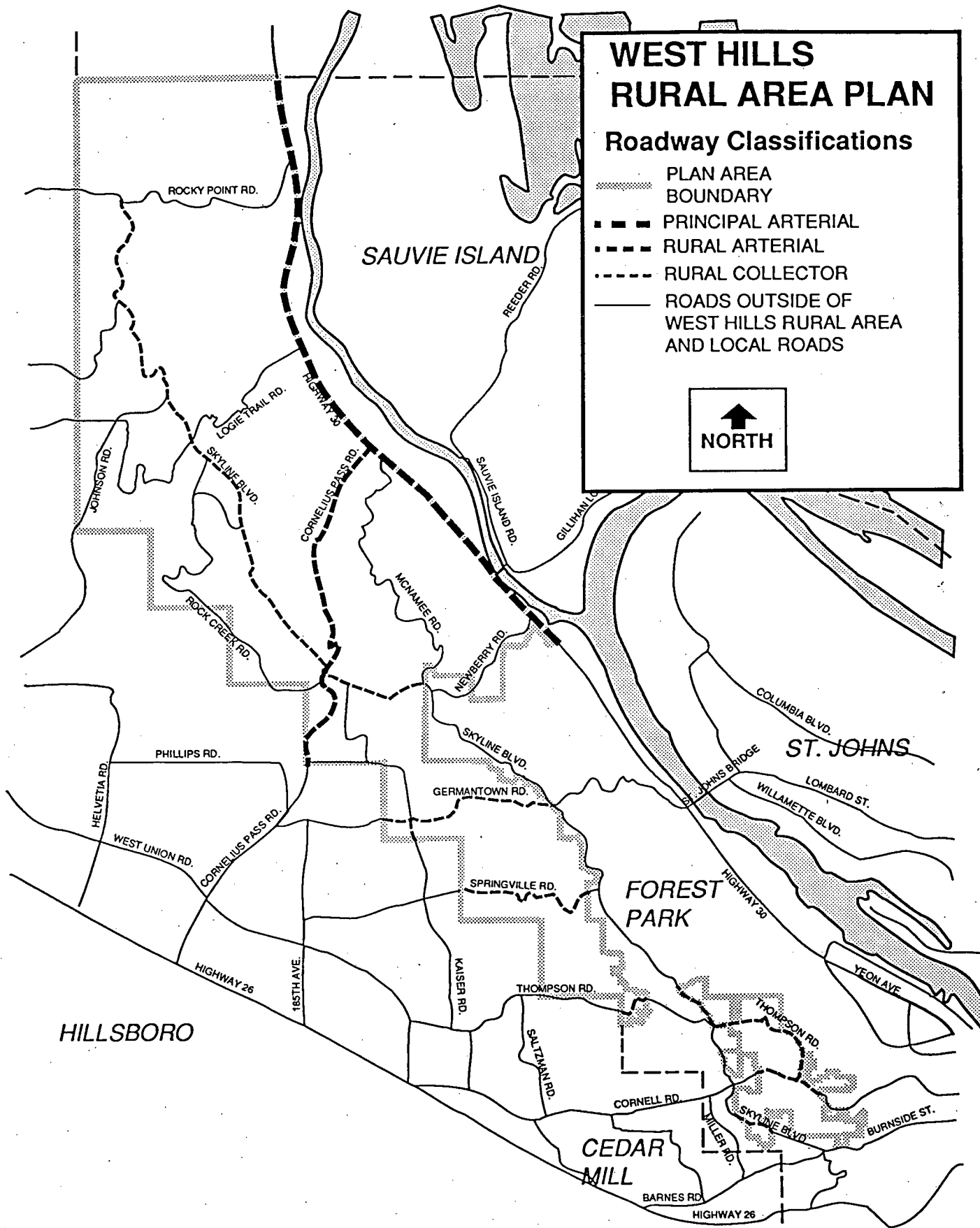
**Rural Collector** streets typically have traffic volumes of less than 3,000 vehicles per day. They are characterized by serving as the connection between local roads and the arterials serving a rural area of the County.

Skyline Blvd.  
Germantown Road  
Springville Road  
Laidlaw Road  
Thompson Road  
Cornell Road

All other roadways in the West Hills Rural Area are classified as local roads.

The County Transportation Division will soon be working on revisions to rural road standards. These revisions will result in widened shoulder areas to make pedestrian use of roadways easier. Currently, rural roadways in the area should have 12-14 foot standard lane widths, with 4-6 foot paved shoulder widths. However, many West Hills rural roads do not meet these standards due to the constraints of steep topography. Also, in agricultural areas, roadside drainage ditches take priority over paved shoulders.

The Transportation Division will also soon begin working with the City of Portland to resolve



inconsistencies in functional classifications and roadway standards for roads which cross jurisdictional boundaries. This will affect Cornell Rd., Skyline Blvd., Burnside/Barnes Rd., Thompson Rd., Springville Rd., and Germantown Rd. A major inconsistency between the City vs. County road plans involves the relative importance of Skyline Blvd. vs. Miller Rd. in serving local traffic in the Forest Heights area. The City of Portland currently places more emphasis on future improvements on Miller Rd. between Cornell Rd. and Barnes Rd. than does the County.

Traffic on Cornell Rd. is an on-going problem in the Balch Creek area. Cornell Rd. carries significant traffic to and from Washington County which is diverted onto the roadway due to traffic on Highway 26. The resulting traffic flow on Cornell Rd. is greater than the roadway can safely carry. It is hoped that construction of the West Side Light Rail facility, along with improvements to Highway 26, will reduce the amount of through traffic on Cornell Rd.

Cornelius Pass Rd. serves as a rural arterial running through the West Hills. It is the route of commercial traffic from Highway 30 to Washington County, and is also used by haulers of hazardous materials who are prohibited from driving on Highway 26 through the Vista Ridge tunnel. It is also a designated bicycle route. The roadway has seen two significant improvements in recent years, the reconstruction of the Cornelius Pass Rd./Skyline Blvd. intersection, and the reconstruction of the switchback on Cornelius Pass Rd. to the north of the Skyline Blvd. intersection. However, this leaves an unreconstructed section between these two improvements. Also, the entire grade from Highway 30 to Cornelius Pass Rd. is difficult. One solution to the problem of bicycle and truck traffic conflicting on the roadway would be the relocation of the bike route to the Burlington Northern right-of-way, currently being studied as a "rails-to-trails" conversion. The County has no authority to regulate the use of Cornelius Pass Rd. for hazardous materials hauling, and no restrictions on such hauling exist on Cornelius Pass Rd. in Washington County. Use of compression, or "jake" brakes, has been identified by residents along Cornelius Pass Road as a major noise problem.

## BICYCLE ROUTES

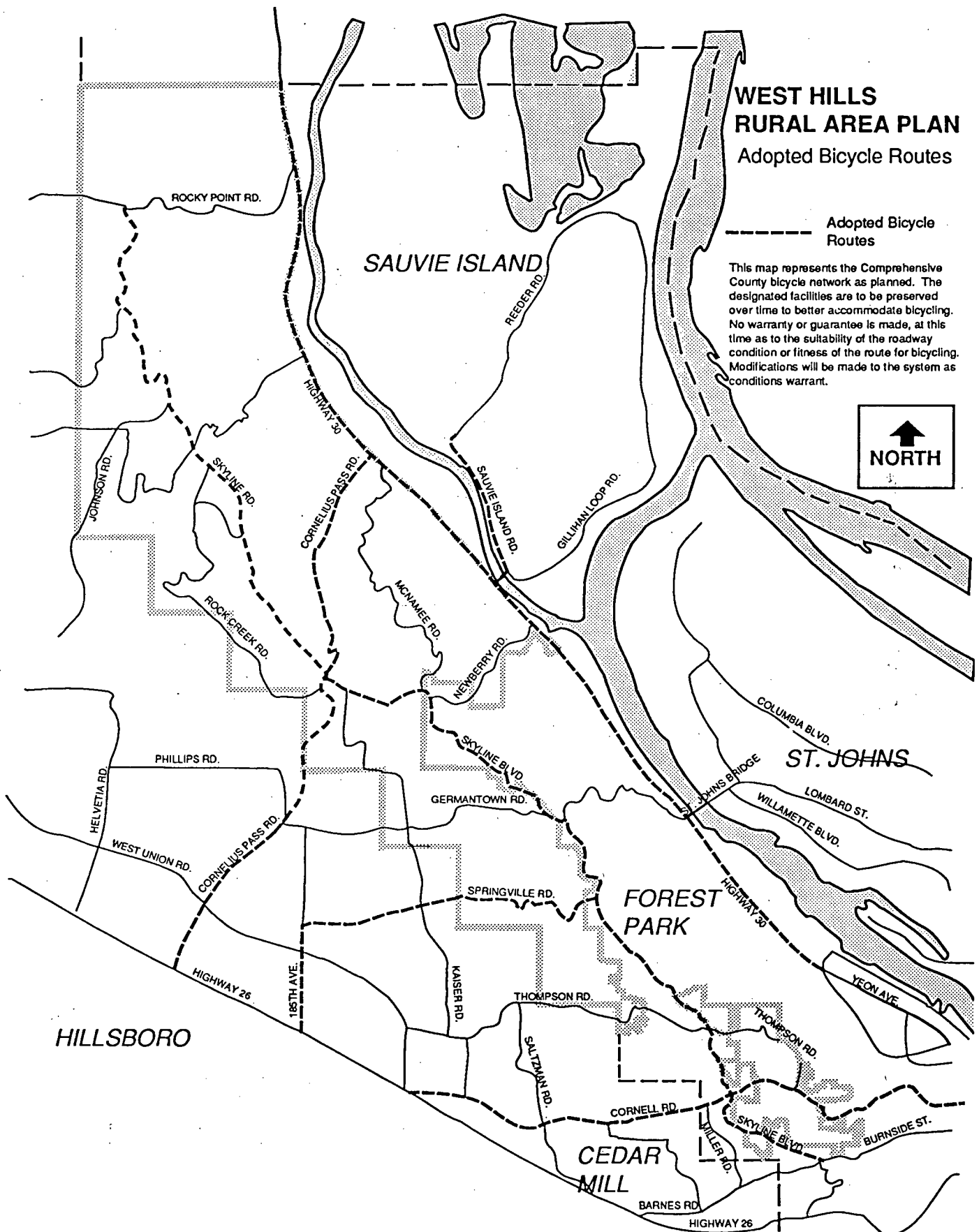
As part of its 1990 Bicycle Master Plan, Multnomah County has an adopted plan for bicycle routes for the West Hills Rural Area). The roadways which have bicycle route designations are Highway 30, Cornelius Pass Rd., Skyline Blvd., Springville Rd., and Cornell Rd. The bicycle route facilities on Highway 30 are maintained by O.D.O.T., and are striped and signed for bikes to current state standards, including adequate shoulders. County maintained rural bike routes should be accommodated by paving of road shoulders to a width of at least 4 feet and preferably 6 feet. Not all designated bike routes in the West Hills have such shoulders, the lack of which increases hazards for bicycle riders. As repaving occurs on County maintained roads designated as bicycle routes, the County widens and paves shoulders to allow for safer bicycle usage. Widened shoulders are especially important on Skyline Blvd., which is a popular bicycle route for both commuters and recreational riders.

The Burlington Northern Cornelius Pass right-of-way, under study as part of the rails-to trails program, may also serve as a recreational bicycle route in the future. See discussion of this issue under Parks & Recreation.

# WEST HILLS RURAL AREA PLAN Adopted Bicycle Routes

----- Adopted Bicycle Routes

This map represents the Comprehensive County bicycle network as planned. The designated facilities are to be preserved over time to better accommodate bicycling. No warranty or guarantee is made, at this time as to the suitability of the roadway condition or fitness of the route for bicycling. Modifications will be made to the system as conditions warrant.



**POLICY 9: Improve West Hills Rural Area roadways to attain appropriate safety levels for local motorized and non-motorized traffic.**

**STRATEGY:** Accelerate re-paving and shoulder-paving on Skyline Blvd. to make the route safer for use of automobiles, bicycles, pedestrians, and equestrians.

**STRATEGY:** Include in the capital improvement program a project to upgrade Cornelius Pass Road, with first priority the road between its intersection with Skyline Blvd. and the switchback to the north, and second priority being the road between the switchback and Highway 30.

**STRATEGY:** Include in feasibility studies of a "rails-to-trails" conversion of the Burlington Northern Cornelius Pass line consideration of making the trail a bicycle route as well in order to remove the bicycle route from Cornelius Pass Rd. and eliminate modal conflicts.

**POLICY 10: Discourage through traffic on local roads not shown on the Circulation Plan.**

**STRATEGY:** On local roads with heavy through traffic consider additional control measures such as traffic signals and speed bumps to reduce such traffic.



# PUBLIC FACILITIES

## Schools

The West Hills Rural Area is served by three different school districts, Portland, Beaverton, and Scappoose.

The majority of the West Hills Rural Area is served by the Portland School District. Skyline Elementary School, located near Cornelius Pass, serves the West Hills. The West Hills is within the attendance boundaries of West Sylvan Junior High School, located to the south, and Lincoln High School, located adjacent to downtown Portland.

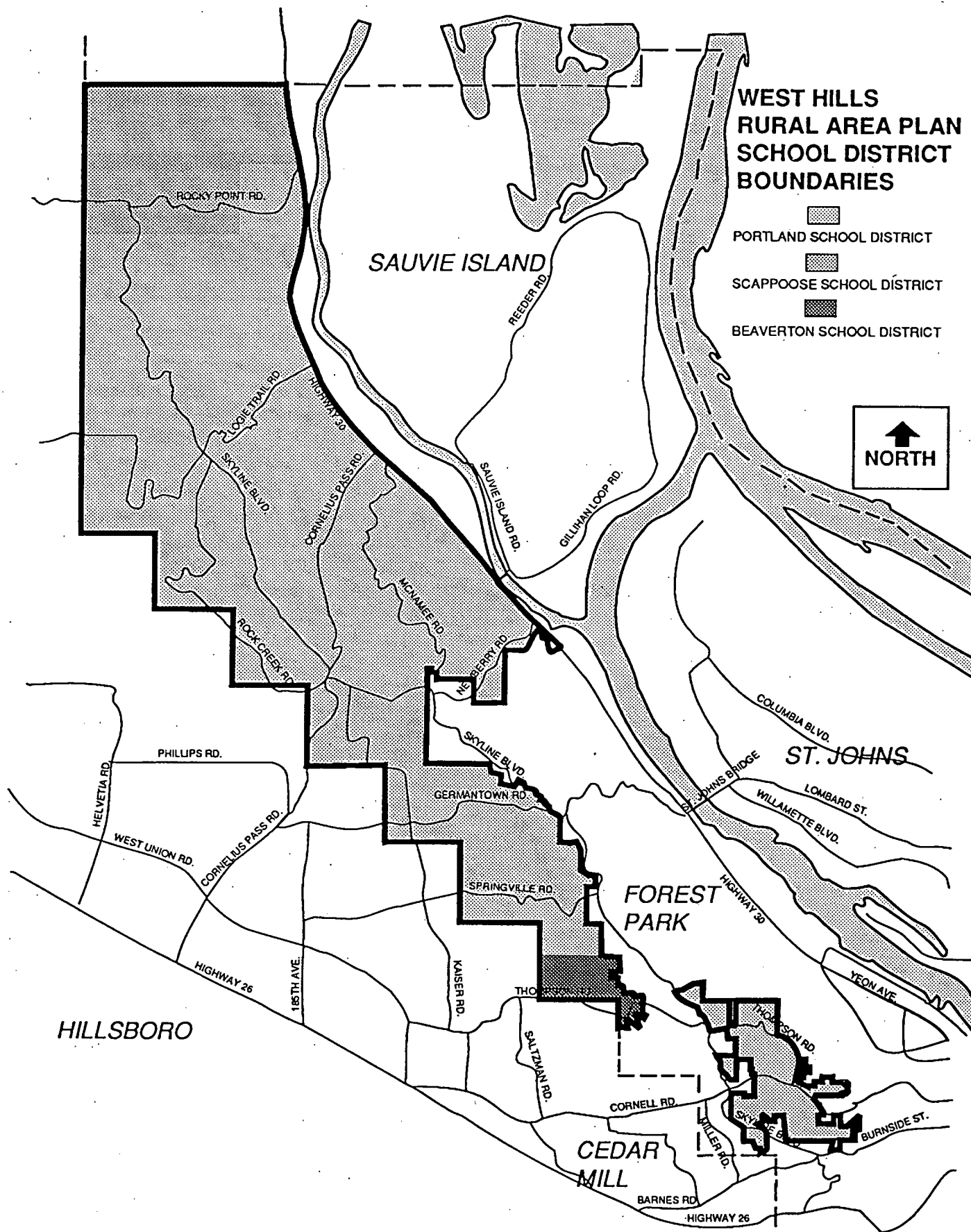
The schools serving the West Hills Rural Area are operating well below capacity of the school sites. The only school which may have problems in the intermediate term future is Skyline Elementary School, which has a building capacity of between 215 and 340 students, depending upon internal organizational arrangements. During the 1992-93 school year 214 students attended the school. This is a 19% increase over the past five years. The district's five year projection for student enrollment envisions an increase to 255 students by 1999. The school's enrollment is projected to grow further due to development of the Forest Heights project, and other smaller projects, within the City of Portland. The Portland School District intends to monitor the growth of enrollment at Skyline Elementary, and consider shifting attendance boundaries or new construction if enrollment grows beyond Skyline School's existing capacity.

A portion of the Bonny Slope area is located in the Beaverton School District. Children from this area attend Cedar Hills Elementary School, Cedar Park Middle School, and Sunset High School. The Beaverton School District is planning to reconfigure its attendance boundaries to ensure that none of these schools are overcrowded.

The northern-most area of the West Hills is within the Scappoose School District. Students attend Grant Watch Elementary School for grades K-3, Peterson Elementary School for Grades 4-6, Scappoose Middle School for grades 7-8, and Scappoose High School for Grades 9-12. The district is currently conducting a survey of existing facilities, with the expectation that growth in the Scappoose city area of Columbia County will result in increased enrollment at the district's schools. However, there are no current capacity or facility problems identified in the District.

**POLICY 11. Coordinate planning and development review activities with the affected school districts to ensure that adequate school facilities exist to serve local needs.**

**STRATEGY: Monitor student population at Skyline Elementary School, and work with the Portland School District on solutions if the school becomes overcrowded.**



## Fire Protection & Emergency Services

The West Hills Rural Area is served by four different fire and emergency services providers -- Multnomah County Rural Fire District # 20, Scappoose Fire District, Tualatin Valley Fire & Rescue, and Portland City Fire Bureau.

The Tualatin Valley Fire & Rescue District provides fire and emergency services to the Balch Creek and Bonny Slope areas. The area is served from two of the district's stations, the West Slope Station on Canyon Road and the Cedar Mill station located on Cedar Mills Blvd. at Highway 26. The district has sufficient apparatus to serve the area. The district will be studying the best methods for dealing with wildland fires within its boundaries, and will consider measures such as prohibition of wood shingle roofs and requiring minimum cleared areas around structures. The district also requests that the County coordinate development proposals within its boundaries with the district so as to ensure that adequate fire safety measures are incorporated into all new development.

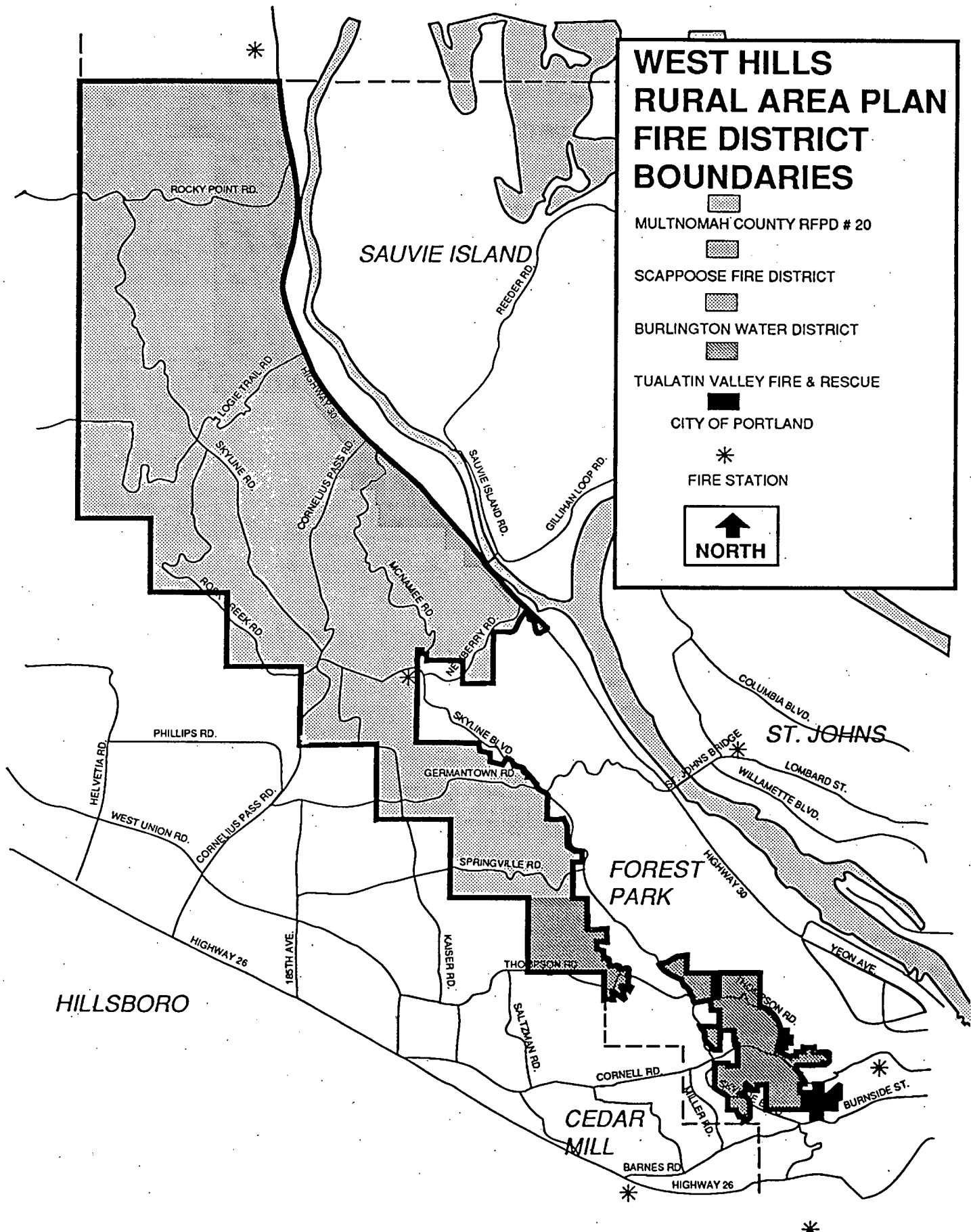
The Multnomah County Rural Fire District #20 serves about two-thirds of the West Hills from a station on Skyline Blvd. On July 1, 1995, it will merge with the Tualatin Valley Fire & Rescue District. The volunteer force will remain at the existing stations on Skyline Blvd.; the second station, on Johnson Rd. will be closed. The Tualatin Valley Fire & Rescue District plans to replace and add to the existing fire-fighting equipment, and eventually plans to move the existing station to a location more central to the area being served. Merger with the Tualatin Valley Fire & Rescue District will provide backup professional fire and emergency services to the area, and will provide more training and equipment for the existing volunteer force.

The Scappoose Fire District serves the northeastern portion of the West Hills Rural Area, from the County Line south to approximately Chestnut St., and approximately 1 1/2 miles inland. The District has three fire stations, one of which is located on Cleetwood Drive near Morgan Road in the West Hills. The District has 50 volunteers and two paid personnel. Equipment includes five engines with a combined capacity of 5,750 gallons, one 3,200 gallon water tender, two rescue units, two ambulances, three wildland firefighting units with a combined capacity of 1,500 gallons, and one command vehicle. The District has no identified problems providing service to the West Hills area.

The Burlington Water District provides fire protection services to land within its boundaries. Currently it contracts with the City of Portland to provide fire and emergency services. The Portland Fire Bureau services the Burlington area from Station # 22, located in St. Johns, with a response time to the area of 15-20 minutes. Due to the lengthy response time the district receives a low level of current services.

**POLICY 12: Require proposed development in the West Hills to meet fire safety standards.**

**STRATEGY: Ensure that agencies responsible for fire protection in the West Hills Rural Area are provided an opportunity to comment on development applications prior to approval of the application.**



## Water Service

Only a small percentage of the West Hills Rural Area is served by a public water supply system. The Portland Water Bureau serves the Balch Creek area to the south, an area formerly served by the Sylvan Water District before it was incorporated into the Portland City System. However, the Bureau has no water lines in the Balch Creek rural area, and homes in this area are served by wells. The Burlington Water District receives its water supply from the City of Portland, via a pipeline along Highway 30. The District is bound by its bylaws to provide water service to any parcel within the district, however, the existing water distribution system is barely adequate to serve existing development and has little or no capacity to handle expanded water use.

The remainder of the West Hills is not served by any water district, and relies on groundwater for its supply. Local groundwater supplies within the West Hills are variable, but are generally limited due to the varied geology of the Tualatin Mountains. Currently, proposed development must show an adequate water supply quantity prior to approval of building permits. Permits requiring discretionary review are conditioned so as to require proof of an adequate water supply quantity prior to building permit issuance so that an applicant is not subject to the expense of drilling a well prior to approval of the conditional use. However, the County has no standards as to the quantity or source of the adequate water supply. Quality requirements are pursuant to Oregon Department of Environmental Quality standards for potable drinking water.

**POLICY 13** Require proposed development to be supplied by a public water system with adequate capacity or a private water system with adequate capacity.

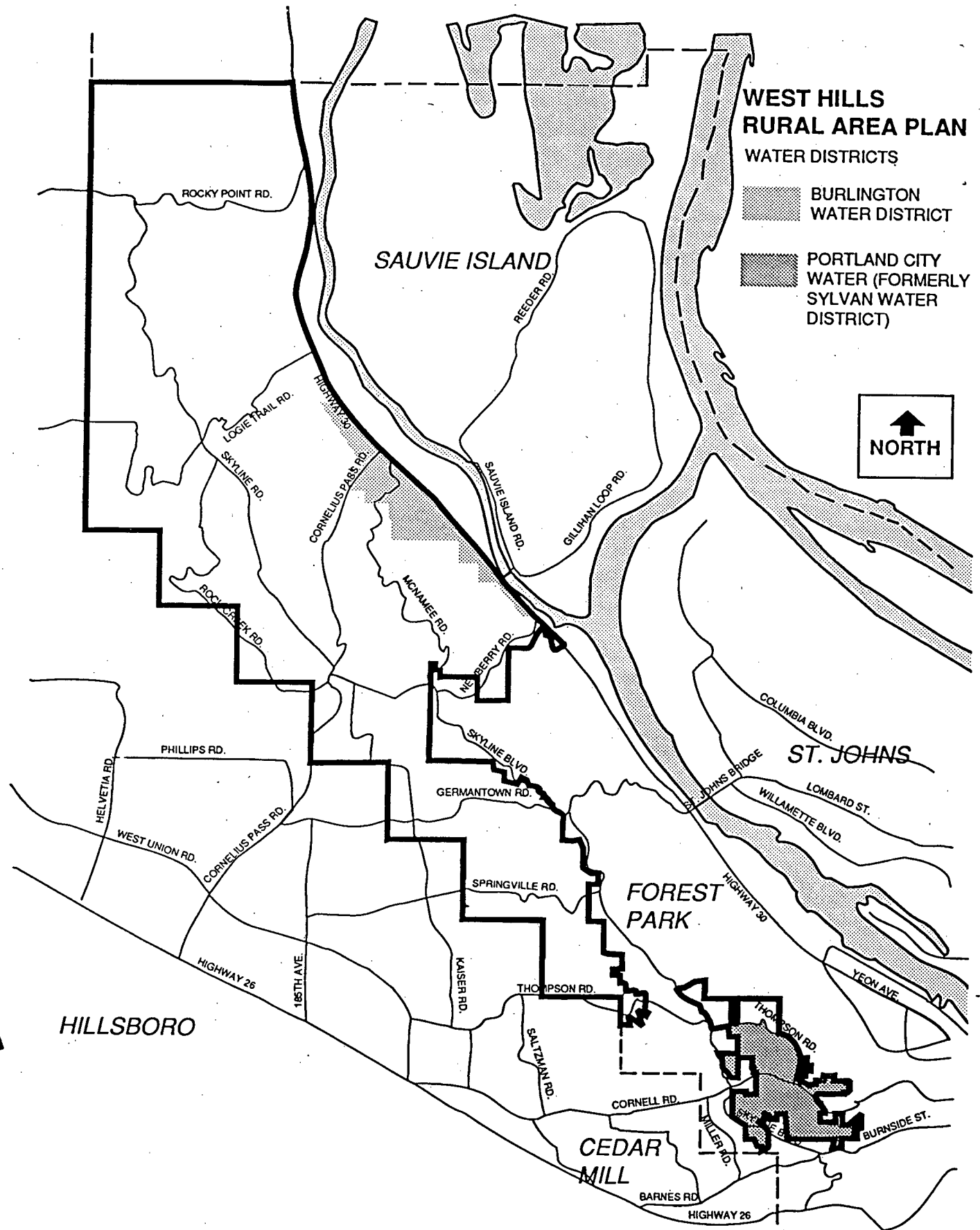
**STRATEGY:** Require a finding of adequate quantity of water available to a development project prior to final approval of the project, and clearly spell out a procedure which allows adequate public review of the proposed water source without requiring the project applicant to undergo excessive and possibly unnecessary expense.

**STRATEGY:** Work cooperatively with the Burlington Water District in ensuring adequate water supply to its customers.

## Sewage Disposal

All existing development within the West Hills Rural Area is served by private on-site sewage disposal systems. No public sewers are planned or contemplated for the area, due to its rural nature. Approval for proposed private sewage disposal systems is the responsibility of the City of Portland Building Bureau, which implements standards set forth by the Oregon Department of Environmental Quality. A number of different methods for on-site disposal of sewage effluent are available for consideration. The entire West Hills area has significant limitations to the use of septic systems, due to the shallow soil depths in the Tualatin Mountains.

A small portion of the Balch Creek area is within the urban limit line, and has land use desig-



nations and zoning which anticipate provision of public sewer service. However, the City of Portland has determined that it does not intend to provide sewer service to any properties within the Balch Creek basin other than the Royal Highlands development within the City of Portland. This existing subdivision was served by a small treatment plant, but the plant has been replaced by a pumping station which pumps the effluent out of the Balch Creek basin and into a City of Portland sewer line to the south.

**POLICY 14: Discourage public sewer service to areas outside of the Urban Growth Boundary and areas where public sewer service would accommodate inappropriate levels of development.**

**STRATEGY: Consider lowering the allowed density of urban residential land for areas within the Balch Creek basin which have no public sewer service.**

#### Electricity and Telephone

No issues currently exist in the West Hills Rural Area regarding electrical or telephone service.

#### Police Protection

Police protection in the West Hills is provided by the Multnomah County Sheriff. The Sheriff's office is located at 122nd St. and Glisan St. in the Mid-County area. Currently the entire West Hills Rural Area is served by one patrolling officer at a time. Multnomah County has engaged in on-going discussions with the City of Portland as to the best way to provide police protection to the West Hills Rural Area, and these discussions will continue in the future.

# PARKS AND RECREATION

## GREENSPACES

The METRO Greenspaces Master Plan identifies much of the West Hills as a significant greenspace which should be protected through purchase or other means. Multnomah County's adopted Natural Areas Plan also identifies much of the West Hills as a significant natural area, mainly areas adjacent to Forest Park and in the Balch Creek Basin.

In order to make a small step towards implementing the METRO Greenspaces Master Plan and the Natural Areas Plan, the Multnomah County Parks and Recreation Division (now transferred to METRO) has over the past several years reviewed all land in the West Hills which is foreclosed by Multnomah County ownership as a result of tax delinquency. Parcels which are deemed to have potential for enhancing recreational and natural values have been retained by the County and will be transferred to the City of Portland or METRO rather than sold off. In addition, the Natural Areas Fund, which consists of money earned by the County from the sale of tax-foreclosed properties throughout Multnomah County, can be used to purchase land of recreational or natural value.

## FOREST PARK

The West Hills Rural Area abuts in several areas onto Forest Park in the City of Portland. This 5,000 acre park is unique, since it is the largest natural park area within an incorporated city in the United States. Forest Park has a large influence on planning for the West Hills Rural Area. Protection of its integrity as a natural park amidst urban development, as home to numerous native plant and animal species, is a high priority for both the City of Portland and Multnomah County, as well as for neighborhood and conservation organizations. The City of Portland is currently preparing a Natural Resources Management Plan for Forest Park, which is designed to protect and enhance the natural qualities of the park.

The Natural Resources section of this (West Hills Rural Area) plan discusses various levels of significance and protection programs for significant natural resources in the West Hills. Many of these resources, particularly wildlife habitat, are significant in large part because they provide a contiguity to the north and west with Forest Park. Additionally, natural values associated with Forest and Macleay Parks also extend into the Balch Creek basin to the south and west.

Because of the rights of private property owners to make economic use of their property, full protection of Forest Park is only possible if the boundaries of the park are expanded by purchase of privately owned land -- this in turn is only possible if local jurisdictions and non-profit groups have the financial resources and make a policy choice to purchase private land-holdings in the West Hills.

Barring any large-scale purchase program, which would most likely require approval of a bond measure by local voters, several smaller-scale efforts are under way to add public lands to the



West Hills. Friends of Forest Park, a private group dedicated to preservation and enhancement of Forest Park, has purchased (with County assistance) a 38 acre parcel located between McNamee Road and Highway 30, north of the Angell Bros. quarry site. This parcel contains a significant old grove forest. To the south of this area is a series of land divisions creating lots in excess of 38 acres which have had conservation easements placed upon most of the land area excepting residential sites for each lot. These easements were obtained by the Friends of Forest Park and recorded with Multnomah County. While they do not prohibit resource-based uses of the land under easement, such as forestry, they do restrict items such as fencing, clearing for structures, containment of domestic animals, and other impacts associated with residential development.

**POLICY 15: Maintain and enhance the recreational values of Forest Park and adjacent areas in concert with the City of Portland, METRO, and other agencies.**

**STRATEGY: Review lands which become available through tax foreclosure in the the vicinity of Forest Park and within the Balch Creek Basin for potential recreational use.**

**STRATEGY: Target key parcels needed for enhancement of Forest Park recreational values for acquisition through revenue from the Natural Area Fund.**

**STRATEGY: Coordinate management of acquired properties in the vicinity of Forest Park to preserve natural resource values consistent with the Natural Resource Management Plan to be approved by the City of Portland.**

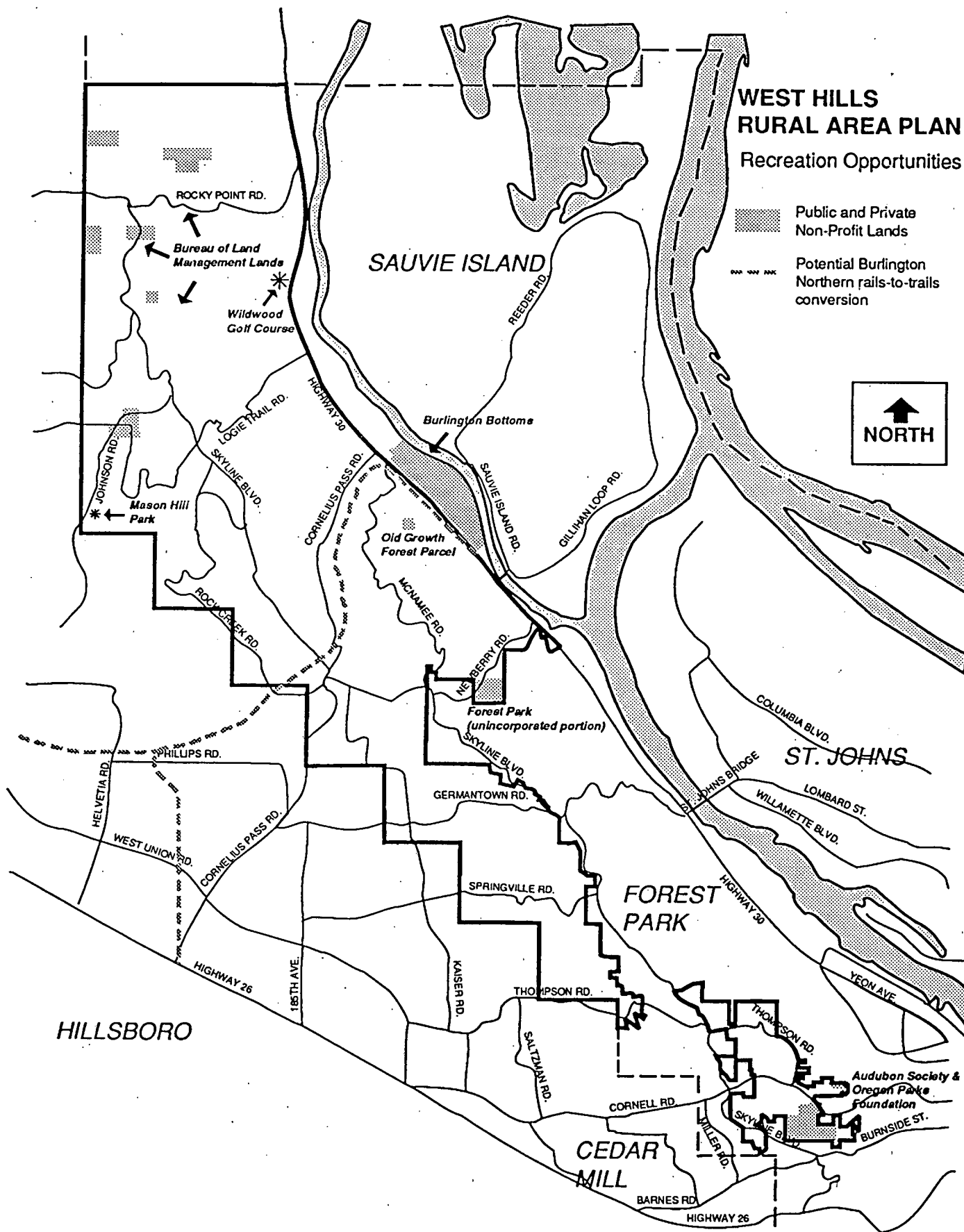
**STRATEGY: Promote and provide incentives for voluntary use of conservation easements by property owners in lieu of purchase.**

### BALCH CREEK

The lower portions of the Balch Creek Basin are largely owned by the City of Portland, the Audubon Society, and the Oregon Parks Foundation. The Balch Creek unincorporated area is bounded on the west by Forest Park. However, most of the land in the upper portion of the Balch Creek basin is privately owned, and most of this area is designated and zoned as Commercial Forest Use. The County does not regulate forest practices on these lands, and thus commercial forestry is bound only by the Oregon Forest Practices Act. Any program to fully protect the Balch Creek basin in its natural state must consider the need to purchase privately-held lands within the Balch Creek basin. Such an option is possible only if local jurisdictions and non-profit groups have the financial resources and make a policy choice to purchase private landholdings in the Balch Creek area.

### OTHER RECREATIONAL FACILITIES

Since the West Hills is a rural area, it contains no traditional "urban" neighborhood parks. The only established County Park within the West Hills Rural Area is Mason Hill Park, a one acre plot of land at the intersection of Johnson and Munson Roads. This park, site of the original



Mason Hill Schoolhouse, has no off-street parking, and the only facilities on the site consist of a covered picnic table and an outhouse.

One major private recreational facility exists in the West Hills Rural Area: the Wildwood Golf Course. The course, opened in 1991, was previously operated from the 1920's until 1971. It has 9 holes on approximately 116 acres, with a total play yardage of 2,935. The course has considered expansion to 18 holes, but such an expansion would occur to the east of Highway 30, between the Highway and Multnomah Channel.

The United States Bureau of Land Management(BLM) owns approximately 643 acres of land in the northern portion of the West Hills, divided into six non-contiguous parcels. Currently the lands are managed for timber production, but with greater consideration for other resource values such as water quality and wildlife habitat than is required by the Oregon Forest Practices Act. The BLM has not considered public recreational uses of these properties to date due to their remote nature in the Dixie Mountain area.

### RECREATIONAL TRAILS

Two significant regional recreational trails efforts may have an impact on the West Hills. The Greenway to the Pacific project, coordinated by METRO, is just completing a Concept Plan (Phase 1 ) which looks at six broad corridors for a recreational trail route between the Portland Metropolitan Area and the Coast Range and Pacific Ocean. Two of these conceptual corridors affect the West Hills: 1 ) the "Columbia Blue Way" corridor which would link Astoria to Portland, and 2) the "Vernonia Loop" corridor, which would build upon the existing Banks-Vernonia State Linear Park trail to the west, and connect this with Portland through the West Hills. Both conceptual corridors are several miles wide, so no specific route alignments are being considered in Phase 1. Phase 2 of the project, scheduled for 1994 through 1996, would review the corridors and result in the adoption of specific corridor and trail routes. Phase 3, development of the trail, would not begin until at least 1996.

A new regional trails effort is looking at the Burlington Northern right-of-way from Highway 30 through Cornelius Pass to Washington County. Burlington Northern has given notice of an intent to abandon the right-of-way within the next several years. METRO is organizing a committee to review the feasibility of converting the rail corridor into a bicycle or hiking trail. Studies will be ongoing over the next several years. METRO and Multnomah County must address several clear problems before conversion of the right-of-way to a trail, including burned or decaying trestles, use of the Cornelius Pass tunnel, and impacts to adjacent property owners and residents.

**POLICY 16: Support and promote the placement of links within a regional trail system for use by pedestrians, equestrians, and bicyclists.**

**STRATEGY: Support and participate in the feasibility studies for the conversion of the Burlington Northern Cornelius Pass line into a recreational trail, which will provide a regional trail for the Portland Metropolitan area; consider its impacts on adjacent properties and include affected property owners in discussions on all**

phases of the project.

**STRATEGY:** If the Greenway to the Pacific project locates a trail alignment in the West Hills, do not obstruct METRO's acquisition of the right-of-way for such a facility and review development proposals along the trail alignment for compatibility with the proposed trail.

**POLICY 17:** Consider and mitigate the impact on adjacent private properties of all proposed recreational facilities.

# ENVIRONMENTAL QUALITY

## AIR QUALITY

No significant issues regarding air quality, other than those which affect the Portland Metropolitan Area as a whole, have been identified in the West Hills. Odors from an agricultural processing operation at the southern end of Sauvie Island do affect areas along Highway 30 and Newberry Road. The Oregon Department of Environmental Quality has jurisdictional authority to address this issue.

## NOISE

No significant issues regarding noise impacts have been identified in the West Hills. The existing Angell Brothers Quarry operation produces significant amounts of noise from its mining and crushing operations, but this noise is well contained within the 400 acre site.

## WATER QUALITY

### Tualatin River Basin

The west side of the West Hills Rural Area Plan is within the Tualatin River Basin. While this approximately 7,500 acres is less than 2% of the the 698 square mile Tualatin River drainage basin (most of the remainder is within Washington County), the West Hills does include important and significant headwater areas for Rock Creek, McKay Creek, and Bronson Creek. The Tualatin River has been identified by the Oregon Environmental Quality Commission as a water body with degraded water quality due to the presence of excessive phosphorous and ammonia-nitrogen in the river's waters. These nutrients are the primary factors in the growth of algae in the Tualatin River, which depletes oxygen-levels within the waters, which in turn results in the loss of fish and aquatic life, increased water turbidity, and increased noxious odors. Total Maximum Daily Loads (TMDL's) have been mandated for these elements. Multnomah County is subject to a compliance order and schedule issued by the Oregon Department of Environmental Quality in order to achieve the TMDL's.

In order to address State requirements, Multnomah County has adopted a "Tualatin River Basin Nonpoint Source Control Watershed Management Plan" (January, 1992). Since the high ammonia-nitrogen levels in the river are primarily due to the discharge from sewer treatment facilities within Washington County, the Multnomah County document focuses on control of phosphorous discharge into Tualatin River tributaries. However, the Best Management Practices summarized in the document apply to all potential sources of pollutants into the drainage system. At this time, on-going compliance with these practices by agricultural operations and rural residences is voluntary, with the County conducting an education program to make residents aware of the need maintain the quality of water running off into the drainage basin.

Studies of streams within the West Hills conducted as part of the Goal 5 analysis of significant

streams (see discussion under Natural Resources) has shown that agricultural practices have a significant negative impact upon the water quality of streams in the West Hills, particularly those streams which flow westerly into the Tualatin River Basin. Multnomah County has received a recommendation from the METRO Parks and Greenspaces Division that new agricultural activities should be prohibited by the zoning code within 100 feet of any stream in the West Hills. Regulation of agricultural practices through zoning is permitted by Oregon statute, but no County zoning ordinance in Oregon currently regulates agricultural practices. To some extent, regulation or prohibition of rural agricultural operations runs counter to Oregon Statewide Planning Goal 3, which encourages maintenance of rural lands with good soils for agriculture in order to allow Oregon's agricultural economy to grow and to provide protection for farmers from the pressures of urbanization. An alternative to mandatory zoning regulations is the pursuit of a voluntary educational program in conjunction with the Soil Conservation Service and the West Multnomah Soil and Water Conservation District which would encourage farmers to apply stream protection measures which would benefit both agriculture and stream water quality in the West Hills.

Multnomah County requires any non-agricultural development proposal within the Tualatin Basin to receive a Grading and Erosion Control permit, pursuant to Section 11 .15.6700 et. seq. of the Multnomah County Zoning Ordinance. The Ordinance contains specific standards for grading and erosion control measures, and also requires all development to meet standards set forth in the "Erosion Control Plans Technical Guidance Handbook" issued in 1991 by the City of Portland, and also in the "Surface Water Quality Facilities Technical Guidance Handbook" issued in 1991 by several local agencies including the City of Portland and the Washington County Unified Sewerage Agency.

**POLICY 18: Use voluntary measures to decrease the negative impacts of some agricultural practices upon water quality in area streams.**

**STRATEGY: Do not institute zoning regulation of agricultural practices to protect streams at this time -- instead pursue a voluntary educational program jointly with the U.S. Natural Resources Conservation Service and the West Multnomah Soil and Water Conservation District.**

#### Drainage into Multnomah Channel

The drainages on the east side of the Tualatin Hills which drain into Multnomah Channel run through steep terrain with significant erosion potential (see discussion under Hazards). Runoff from these drainages has the potential to impact Multnomah Channel and the Rafton Tract (Burlington Bottoms), both of which are identified by the Multnomah County Comprehensive Plan as significant wetlands. In order to control erosion, all site grading proposals in this area which propose to disturb more than 50 cubic yards of soil, or which add more than 50 cubic yards of fill, or which obstruct or alter a drainage course, or which take place within 100 feet of the bank of a watercourse must obtain a Grading and Erosion Control permit. Any proposed development which is located on steep slopes (greater than 25%) or within an identified and mapped slope hazard area must also obtain a Hillside Development Permit. In addition, all development located within 300 feet of a significant stream (see discussion under Natural

Resources) must obtain a Significant Environmental Concern (SEC) permit. A series of standards by which to consider approval of the permit are contained within the ordinance.

While clearing for agricultural purposes would have a negative impact upon these drainages due to the steep terrain, soils in this area are not suitable for agricultural operations, and thus little or no clearing for such purposes is expected.

**POLICY 19: Protect water quality in areas adjacent to Multnomah Channel through control of runoff from West Hills Rural Area streams.**

**STRATEGY: Revise the ESEE analysis and protection program for Burlington Bottoms to include discussion of water quality impacts from West Hills drainages into this wetland, and adopt appropriate zoning ordinance amendments to protect water quality in Burlington Bottoms.**

**STRATEGY: During the Sauvie Island/Multnomah Channel Rural Area Plan preparation, review ESEE analysis and protection program for Multnomah Channel to include discussion of water quality impacts from West Hills drainages into the channel, and adopt appropriate zoning ordinance amendments to protect water quality in Multnomah Channel.**

#### Balch Creek

Balch Creek drains into the Willamette River. Its upper reaches from Macleay Park in the City of Portland are in relatively natural condition. Balch Creek and its tributaries have been the object of considerable study by the City of Portland, in both the Balch Creek Watershed Protection Plan (Portland Planning Bureau) and the Balch Creek Watershed Stormwater Management Plan Background Report (Portland Bureau of Environmental Services).

The Stormwater Management Plan contains extensive data on water quality within the Balch Creek watershed. The data show that Balch Creek has generally good water quality when compared with similar streams adjacent to urban areas, but the stream does have high levels of phosphorous (similar to the Tualatin Basin), and has significantly elevated levels of sedimentation during storm events, which indicates problems with soil erosion. Events of mass erosion have occurred periodically in the watershed, as recently as February 1992. Also, ongoing surface erosion from roads and residential housing development have negative impacts on water quality in the basin. Since soils in the Balch Creek basin are unsuitable for agricultural activities, little or no impact from such activities has occurred, or is expected to occur.

The City of Portland has protected the portions of the Balch Creek basin within city limits with an environmental overlay zone. This overlay zone is applied to protect the City's inventoried significant natural resources and their functional values. Two subzones exist: 1 ) the Environmental Protection (EP) overlay zone, which is applied to areas where the City has determined the natural resource to be of such significant value that almost all development would have a detrimental impact; and 2) the Environmental Concern (EC) overlay zone, which

is applied to areas with high functional values where the City has determined that development may be allowed if adverse impacts are mitigated.

While these zones are mainly designed to protect Natural Resources identified under Goal 5 of the Oregon Statewide Planning Program, they also contain a requirement that all proposed development within these zones comply with the City's Erosion Control Plans Technical Guidance Handbook (for ground disturbing activity under 1,000 square feet), or prepare a site-specific Erosion Control Plan (for ground disturbing activity greater than 1,000 square feet).

Additionally, Portland has adopted specific water quality measures which affect areas with environmental overlay zoning in the Balch Creek basin. All development-related earth-disturbing activities must take place between May 1 and September 30. Proposed development may not increase the amount of flow in Balch Creek through Macleay Park and the Northwest Industrial Area. And site clearing must be the minimum necessary for construction. Significantly, forest practices (logging) are regulated by the Environmental Overlay Zone, due to the fact that forest practices may be regulated inside the Urban Growth Boundary of cities.

Multnomah County currently protects water quality in the Balch Creek Basin with a requirement that all development activities (with a few exceptions, most notably forest practices) obtain a grading and erosion control permit. Any proposed development which is located on steep slopes (greater than 25%) or within an identified and mapped slope hazard area must also obtain a Hillside Development Permit. The County's ordinance also requires all development-related earth-disturbing activities take place between May 1 and September 30, and requires submittal of a specific erosion control plan for all development activities. Balch Creek is also a protected stream (see Natural Resources section) with any development activities within 300 feet of its banks requiring approval of a Significant Environmental Concern (SEC) permit.

**POLICY 20: Develop and maintain consistent regulations for significant streams under the jurisdiction of both the City of Portland and Multnomah County.**

**POLICY 21: Use hillside development and erosion control standards to control the effects of nonpoint runoff into streams from sources such as roadways, parking areas, and farms.**

#### Ground Water Quality

No major issues concerning ground water quality have been identified for the West Hills. Monitoring of six in-stream sites in the Tualatin River basin has indicated that normal background levels of phosphorous in these streams, which are fed mainly by groundwater, are higher than the current threshold for TMDL's mandated by the Oregon Department of Environmental Quality (See discussion of ground water supply under discussion of Public Facilities and Services).



# NATURAL HAZARDS

## Flooding

The Federal Emergency Management Agency (FEMA) requires local communities to maintain and enforce minimum floodplain management standards in order to be eligible to participate in the National Flood Insurance Program (NFIP). FEMA accepted floodplain maps compiled by Multnomah County in 1980.

Only one small area within the West Hills is mapped as a flood hazard area. This area is located along a major tributary of Rock Creek to the south of Germantown Road and to the east and west of Kaiser Road. The area within the 100-year flood area is designated as a Flood Hazard Area, and, pursuant to the Multnomah County Zoning Ordinance, any new construction or substantial improvement to existing construction must meet a set of requirements set forth in the ordinance to ensure safety from flood hazards.

## Groundwater Levels

There are no areas in the West Hills identified as having a high water table, defined as eight or less feet below the ground surface. High water table areas are generally low-lying and gently-sloped — the West Hills is characterized by steep slopes and hilly, rugged terrain.

## Foundation Conditions

Foundation conditions refers to how a soil might shrink or swell due to various factors. The ability of a soil type to shrink or swell is affected by moisture, internal drainage, susceptibility to flooding, and the soil's density, plasticity, mineral composition, and texture. Unstable soil conditions in Multnomah County are mapped in the Soil Conservation Service 1983 Soil Survey and in a geological hazards study commissioned by Multnomah County in 1978.

Foundation limitations are rated as severe in approximately 95% of the West Hills. The remaining areas are rated as moderate, and no areas are rated as having slight foundation limitations. Along with other factors, foundation conditions are considered in the mapping of Slope Hazard areas by Multnomah County.

## Soil Erosion

Areas subject to soil erosion have been inventoried for the County by the 1983 Soil Conservation Service Study of Multnomah County soils. Soils along the east face of the Tualatin Mountains, draining into Multnomah Channel, are generally subject to severe soil erosion potential, while soils on the west face, draining into the Tualatin river watershed, have moderate or slight soil erosion potential. Along with other factors, soil erosion potential is considered in the mapping of Slope Hazard areas by Multnomah County.

## Mass Movement

Mass movement refers to the movement of a portion of the land surface down slope. This includes rock falls, rock slides, and landslides. Susceptibility to mass movement is directly related to two factors -- soil type and steepness of slope. Areas along the east face of the Tualatin Mountains, draining into Multnomah Channel, are generally highly susceptible to mass movement, as is borne out by evidence of historic landslides in this area. Areas along the west face, draining into the Tualatin watershed, are moderately susceptible. Along with other factors, mass movement is considered in the mapping of Slope Hazard areas by Multnomah County.

## Seismic Hazards

The Portland area has a complex tectonic structure which includes faults that may be associated with past earthquake activity. There is growing indirect evidence that the Portland Hills lineament may be capable of producing earthquakes. This lineament shows up on State maps as a trend, from near the coast north of Astoria through Portland and into Central Oregon. The approximate location of the epicenter of Portland's 1962 earthquake (5.2 on the Richter scale) was at Holbrook, in the vicinity of Highway 30 and Logie Trail Rd.

Seismic monitoring stations were installed in the Portland area in 1980. The U.S. Geologic Survey (USGS) and the Oregon Department of Geology and Mineral Industries (DOGAMI) are currently producing maps delineating the regional geology and potential for ground motion in the Portland Metropolitan Area. To date, the only portion of the West Hills which has been mapped is a part of the Balch Creek basin. The mapping project grades earthquake hazards into four categories, "A" (greatest hazard) through "D" (least hazard). Most of the Balch Creek area is designated as Zone "C", with areas of higher hazard ("B" and "A") located generally along Cornell and Thompson Roads. The County has no mitigation program for seismic hazards at this time due to the lack of information on the remainder of the West Hills. Most likely, any mitigation program will be implemented through the enforcement of revised building codes which strengthen structures against seismic activities.

**POLICY 22: Protect against seismic hazards to structures and ground areas susceptible to upset.**

**STRATEGY: Work with the City of Portland to implement appropriate building code revisions for areas of greatest seismic hazard, when information on the location of such areas becomes available.**

## Slope Hazard Areas

Based upon information available relating to steepness of slope, soil type, foundation conditions (shrinking and swelling), soil erodibility, and potential for mass movement, an overlay of slope hazard areas within the West Hills was prepared for Multnomah County by Shannon and Wilson in 1978. These areas are subject to the provisions of the Hillside Development and Erosion Control Zoning Overlay of the Multnomah County Zoning Ordinance. Except for

specifically exempted activities, all development, construction, or site clearing in identified slope hazard areas, as well as all areas with average slopes in excess of 25%, must obtain a Hillside Development Permit. Issuance of a Hillside Development permit requires all standards of the Grading and Erosion Control provisions of the Zoning Ordinance to be met, and in addition requires preparation of a geotechnical report for the proposed activity.

**POLICY 23: Protect lands having slopes greater than 25% from inappropriate development.**

**STRATEGY: Revise the Multnomah County Comprehensive Framework Plan to designate lands with average slope greater than 25% as having development limitations. This action will resolve an inconsistency between the Comprehensive Framework Plan and the Hillside Development Overlay provisions of the Multnomah County Zoning Ordinance.**

# NATURAL RESOURCES

All natural resources identified in the West Hills Rural Area Plan have been analyzed pursuant to Goal 5 of the Oregon Statewide Planning Program.

## SCENIC VIEWS

Multnomah County has determined that the east face of the Tualatin Mountains is an outstanding scenic backdrop when viewed from Highway 30, Sauvie Island, Multnomah Channel, and the Willamette River. It provides valuable scenery to travelers and provides an outstanding contrast between the developed urban areas of Portland and the natural beauty of the forested hills. It is important to note that the outstanding scenic qualities of the West Hills derive solely from the vantage points below -- views from the West Hills outward, or within the West Hills itself, are not judged to be outstanding and thus are not protected beyond the protection afforded by continuing rural zoning and development standards.

However, analysis of the economic, social, environmental, and energy consequences of the conflicts between scenic views and other allowed uses and Goal 5 resources indicate that Scenic Views should not be protected at the expense of prohibiting these other uses. In addition, forest practices (logging) are not regulated by the County, so most of the alterations to the scenic landscape will go on unchecked by scenic considerations. Therefore, Multnomah County has proposed a standard for judging uses which conflict with scenic views which requires the conflicting use to be visually subordinate\* to the surrounding landscape.

**POLICY 24: Balance protection of scenic views with flexibility of use by property owners.**

**STRATEGY: Do not preclude or prevent building on any lot because of scenic considerations.**

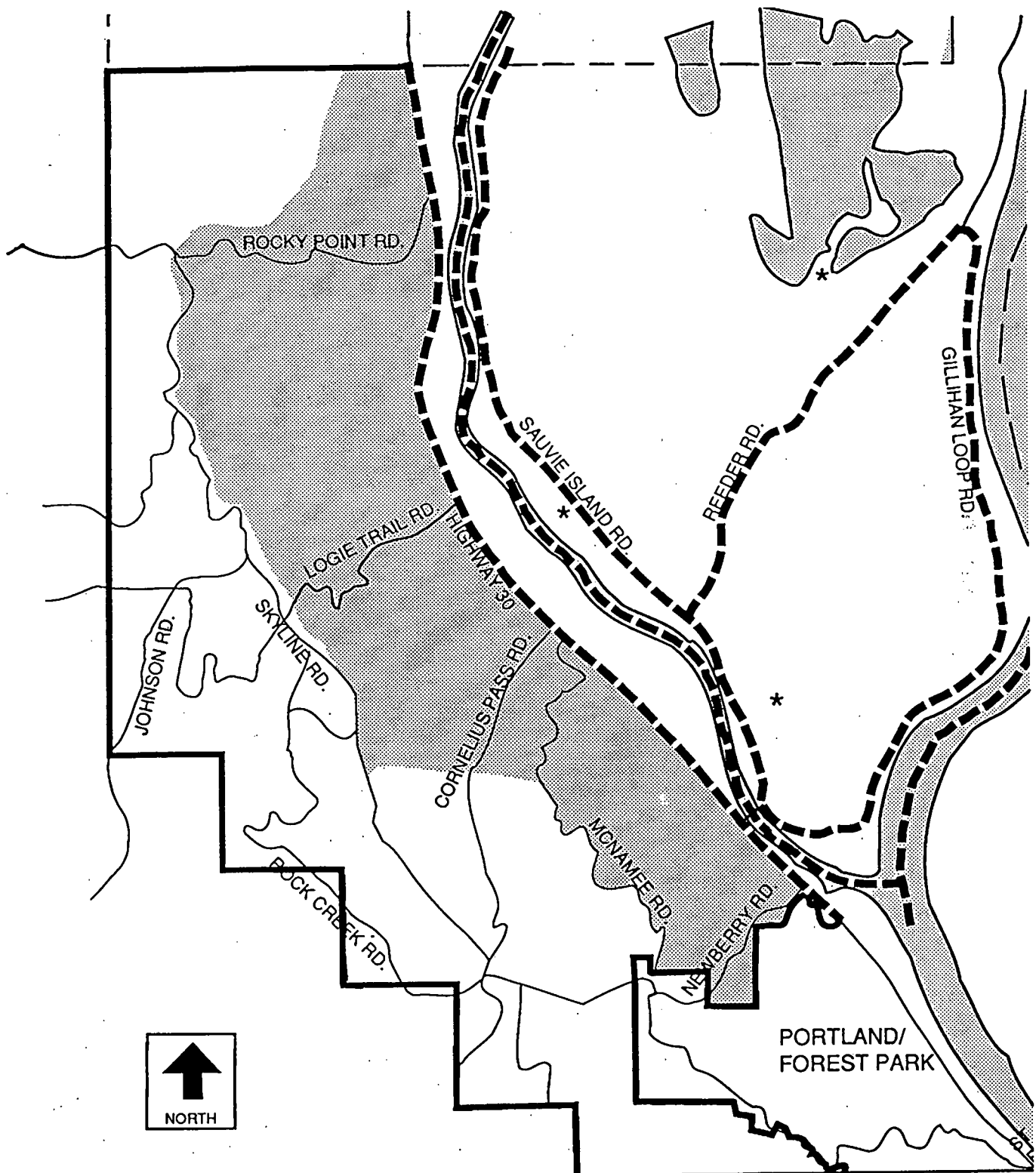
**STRATEGY: Allow placement of residences so that a view from the property is possible as long as the proposed development is visually subordinate.**

**STRATEGY: Regulate the use of reflective glass in scenic areas.**

**STRATEGY: Require industrial uses to meet the same siting standards as residential development in order to protect scenic views.**

**STRATEGY: Work with the Oregon Department of Forestry to better protect scenic views from the negative impacts associated with timber harvesting.**

\* "Visually subordinate" is defined as development that does not noticeably contrast with the surrounding landscape, as viewed from an identified viewing area. Development that is visually subordinate may be visible, but is not visually dominant in relation to its surroundings.



## WEST HILLS SCENIC RESOURCES



SIGNIFICANT AREA



KEY VIEWING AREA



KEY VIEWING CORRIDOR

**STRATEGY Provide incentives for development compatible with significant scenic views.**

**STREAM RESOURCES**

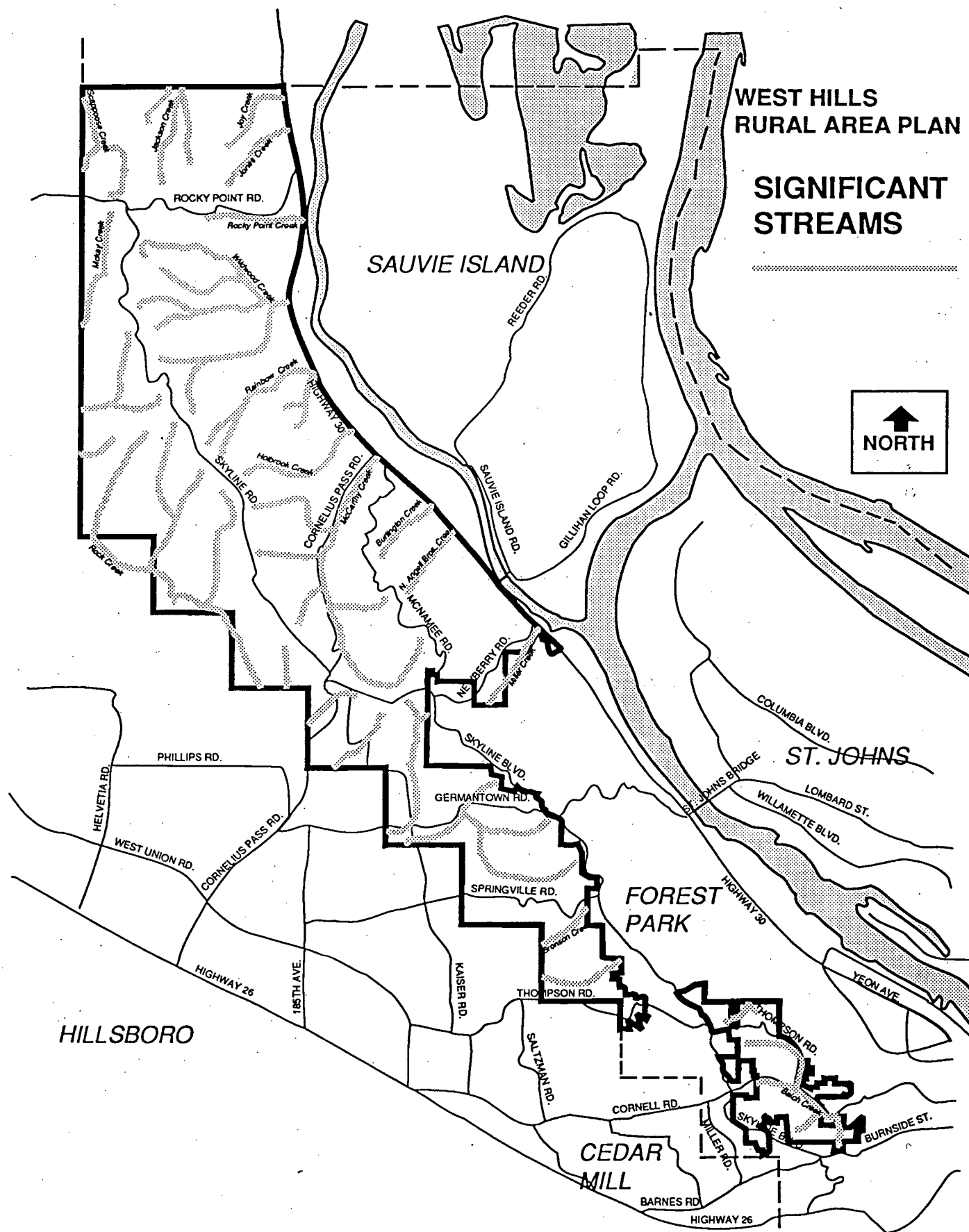
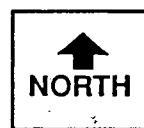
Based upon the five criteria for determining significant streams outlined in Policy 1 6-G of the Multnomah County Comprehensive Framework Plan (economic value, educational value, recreational value, public safety value, and natural areas value), 17 streams or stream systems have been determined to be significant. The following list summarizes the important values of each significant stream or stream system:

Rock Creek	Economic, Educational, Recreational, Public Safety, Nat. Area
Balch Creek	Economic, Educational, Recreational, Public Safety, Nat. Area
"Wildwood" Creek	Economic, Recreational, Public Safety, Natural Area
Miller Creek	Economic, Recreational, Public Safety, Natural Area
Jackson Creek	Economic, Public Safety, Natural Area
Joy Creek	Economic, Public Safety, Natural Area
Jones Creek	Economic, Public Safety, Natural Area
Rocky Point Creek	Economic, Public Safety, Natural Area
Scappoose Creek	Economic, Public Safety, Natural Area
"Rainbow" Creek	Economic, Public Safety, Natural Area
Bronson Creek	Economic, Public Safety, Natural Area
"N. Angell Bros" Crk	Recreational, Public Safety, Natural Area
McKay Creek	Public Safety, Natural Area
"Holbrook" Creek	Public Safety, Natural Area
McCarthy Creek	Public Safety, Natural Area
Saltzman Creek	Recreational
"Burlington" Creek	Recreational

Analysis of the economic, social, environmental, and energy consequences of the conflicts between significant streams and other allowed uses and Goal 5 resources indicate that for rural areas such as the West Hills strong protection measures can be put into place to protect streams which will still allow conflicting uses on other parts of the large lots. Therefore, a 300-foot wide buffer area on each side of each protected stream will be protected by the Significant Environmental Concern (SEC) zoning overlay. The 300 foot distance is justified by analysis which shows that the maximum width of the riparian zone along any West Hills streams is approximately 300 feet, and work by the Washington Department of Ecology which shows that a 300 foot buffer will provide adequate wildlife habitat. Development will be allowed within this 300 foot area only if it can demonstrate that it will have no net impact on the functional characteristics, or values of the stream. Detailed maps of this 300-foot riparian zone are available at the offices of the Planning Division.

Agricultural uses were shown by the Goal 5 analysis to have negative impacts upon some significant streams in the West Hills. Regulation of agricultural activities to protect significant streams is feasible under State law. However, it is not desirable or necessary for the County to institute regulations for agricultural activities and practices in the West Hills, for the following reasons:

## SIGNIFICANT STREAMS



1. Only a small percentage of the West Hills rural area is suitable for agricultural practices because of topography and soil type. Most streams are not, and will not be affected by, agricultural practices.
2. Regulation of agricultural activities and practices would require a major effort by Multnomah County in order to study and adopt appropriate regulatory mechanisms and would require significant expenditure in order to enforce them. This effort may not provide sufficient benefits to justify its expense.
3. Agriculture is one of the two predominant resource-based uses (forestry is the other) allowed on rural lands in Oregon — the prime reason for protection of such lands is for their continued resource use. The regulatory burden of mandatory restrictions would significantly undercut this agricultural use, and would be considered onerous by many if not most farmers.
4. The U.S. Soil and Water Conservation Service and the West Multnomah Soil and Water Conservation District have as one of their primary missions the promotion of sound agricultural practices which protect streams from degradation due to agricultural activities and practices.

Similarly, although forestry has significant impacts upon significant streams, Multnomah County has no regulatory authority to prohibit or regulate forestry on Commercial Forest lands (such authority is theoretically possible if the County can justify an "exception" to Goal 4 -- Forest Lands of the Statewide Planning Program -- but such an "exception" would be difficult if not impossible to justify) and regulation of forestry on "exception" lands (rural residential & multiple use agriculture) would require the County to implement and enforce its own forest management guidelines, which would apply to only 10% of the West Hills. Recent improvements to the Oregon Forest Practices Act significantly increase protections for streams within the West Hills, and make County regulation of forestry in this area even less necessary.

Multnomah County conducted an inventory of West Hills streams in 1994. While the survey was intended to be comprehensive, a large rural area such as the West Hills contains a diversity of streams, some of which may not be mapped on source materials such as United States Geological Survey maps used by Multnomah County as a source database for inventory work. It is important for Multnomah County to consider new information regarding additional significant streams in a timely manner. An example of an area needing further survey work lies in the Joy Creek watershed.

**POLICY 25: Balance protection of significant streams with flexibility of use by property owners.**

**STRATEGY: Minimize runoff from roads, particularly from County road clearing processes.**

**STRATEGY: Encourage "friends of" individual streams to educate people about best management practices necessary to protect streams.**



**STRATEGY:** Work with the Oregon Department of Forestry to better protect significant streams from the negative impacts associated with timber harvesting.

**STRATEGY:** Work with the local Soil and Conservation Districts to educate farmers about sound farming practices which also protect significant streams.

**STRATEGY:** Provide incentives for development compatible with significant streams.

**STRATEGY:** Consider additional streams for significance and protection if requested by a property owner or other interested party.

## WILDLIFE HABITAT

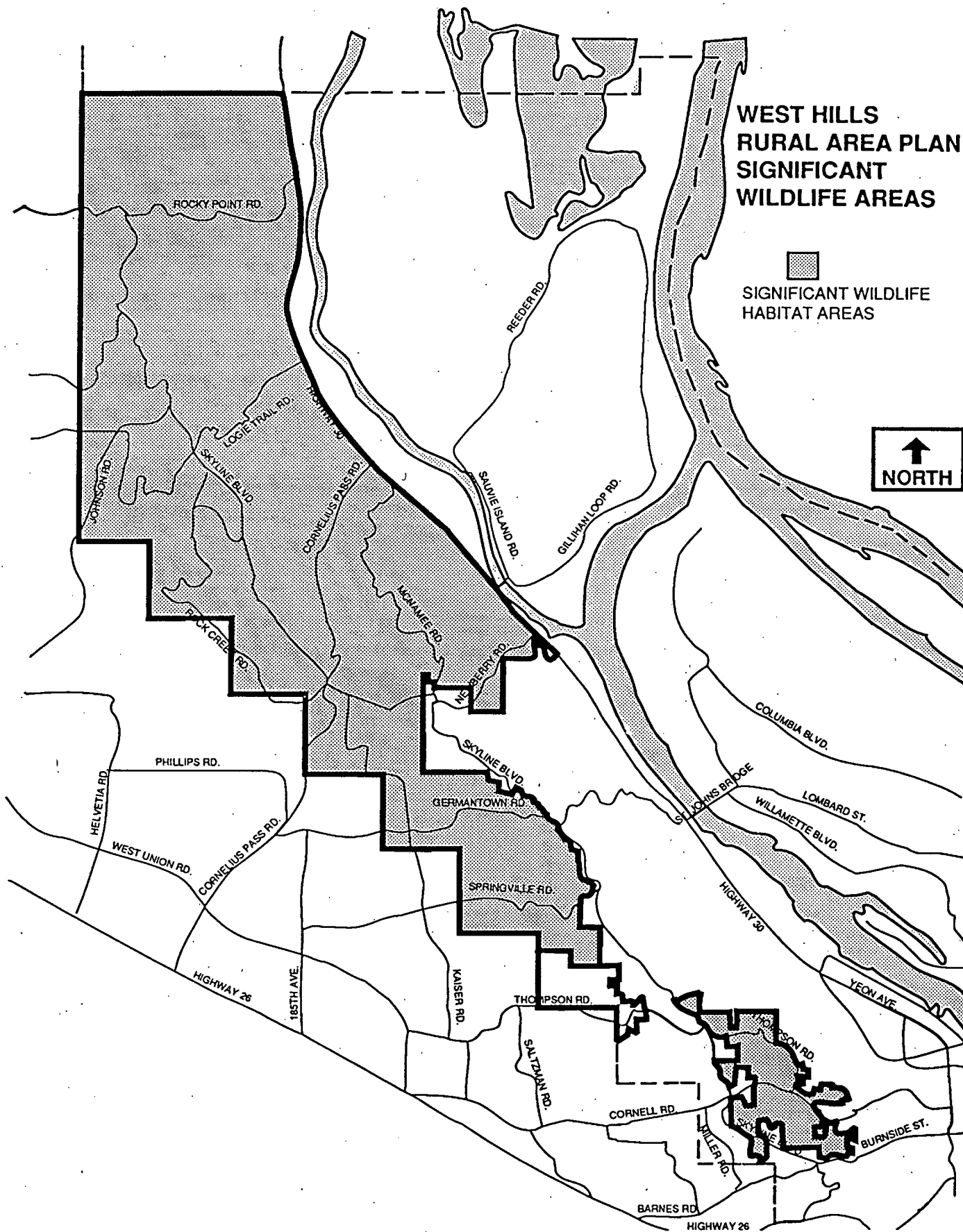
Wildlife Habitat has been identified as a significant Goal 5 resource in the West Hills. All of the West Hills, excepting a small area consisting of the Bonny Slope subdivision along Laidlaw Road and adjacent areas, has been determined to be significant wildlife habitat, because it is all part of an ecosystem which supports a diverse wildlife population relatively undisturbed by the rural levels of development in the West Hills. This ecosystem is part of a larger system which includes Forest Park to the south and east and natural areas in Washington and Columbia Counties, stretching eventually to the Oregon Coast Range, on the north and west. Forest Park is especially dependent upon a natural connection to the West Hills in order to retain the diversity of wildlife which makes the park a unique recreational facility not only in Portland, but throughout the United States. It should be noted that the Balch Creek area is also an integral part of this wildlife habitat resource, because it is adjacent to Forest Park and is also close to the Portland metropolitan area, and also because it has been demonstrated by the City of Portland that it has significant wildlife habitat values. The existence of the Portland Audubon Society lands and other adjacent parcels owned by the Oregon Parks Foundation are testament to Balch Creek's wildlife habitat value.

Analysis of the economic, social, environmental, and energy consequences of the conflicts between significant wildlife habitat and other allowed uses and Goal 5 resources indicate that for rural areas such as the West Hills wildlife habitat protection measures can be implemented which will still allow conflicting uses on portions of large lots. Therefore, the Significant Environmental Concern (SEC) overlay zone for wildlife habitat in the West Hills will rely on siting guidelines and mitigation plans to limit the location of a conflicting use on a lot, but not prohibit the conflicting use entirely.

Agriculture and forest practices are not appropriate for regulation to protect wildlife habitat for reasons similar to those discussed under Streams above.

**POLICY 26:** Balance protection of wildlife habitat with flexibility of use by property owners.

**STRATEGY:** Enforce existing animal control restrictions on free-ranging domestic pets which can have a negative impact on wildlife.



**STRATEGY:** Encourage fencing which allows wildlife to pass through.

**STRATEGY:** Encourage clustering of development to minimize conflicts with wildlife.

**STRATEGY:** Develop programs to educate people about how wildlife habitat can co-exist with other uses on private property.

**STRATEGY:** . Continue to collect data and information on the status of wildlife and wildlife habitat in the West Hills.

**STRATEGY:** Work with the Oregon Department of Forestry to better protect wildlife habitat from the negative impacts associated with timber harvesting.

**STRATEGY:** Work with the local Soil and Conservation Districts to educate farmers about sound farming practices which also protect wildlife habitat.

**STRATEGY** Provide incentives for development compatible with wildlife habitat .

#### MINERAL AND AGGREGATE RESOURCES

Multnomah County has identified three mineral and aggregate sites in the West Hills Rural Area. Two of these sites were found not to be significant, because they contained small quantities of minable material and they were inactive (The Krueger site, located on Rock Creek Road, and the County quarry site, located on Quarry Road south of Skyline Blvd. and west of Brooks Rd.)

The third site, the Angell Brothers quarry, is significant. The quarry was begun in 1958, prior to any requirements for County permits. Multnomah County issued a conditional use permit to mine 71 acres adjacent to and west of Highway 30 near the Sauvie Island bridge in 1980. In 1990 Multnomah County approved an expansion of 42 acres to the site. In 1995, pursuant to a mediated settlement, Multnomah County is protecting an additional area of approximately 210 acres west of the existing approved mining area for future mining of aggregate materials. Once Multnomah County approves a conditional use permit for actual mining of this expansion area, the Angell Brothers site will continue to provide significant amounts of mineral and aggregate materials for the foreseeable future to the Portland Metropolitan Area.

However, as documented in the West Hills Reconciliation Report, the expansion of the Angell Brothers site would have significant conflicts with protection of scenic views, streams, and wildlife habitat. The Reconciliation Report contains specific measures to minimize and reconcile these conflicts, which result in some limitations upon the size and scope of the quarry expansion.

**POLICY 27: Allow expansion of the Angell Brothers quarry to provide needed aggregate materials for the Portland metropolitan area.**

**POLICY 28: Balance the need for aggregate material with the protection of scenic views, streams, and wildlife habitat in the vicinity of the Angell Brothers quarry by implementing the measures contained within the West Hills Reconciliation Report.**

# WEST HILLS RURAL AREA LAND USE DESIGNATIONS BY ACREAGE

## RURAL DESIGNATIONS

SUBAREA	COMMERCIAL FOREST USE	EXCLUSIVE FARM USE	MULTIPLE USE AGRICULTURE	RURAL RESIDENTIAL & RURAL CENTER	TOTAL BY SUBAREA
BALCH CREEK	740			70	810
BONNY SLOPE	210	150	55	440	855
GERMANTOWN ROAD	510	800	125	450	1,885
CORNELIUS PASS	800	800	100	120	1,820
MCNAMEE-HARBORTON	1,830			70	1,900
BURLINGTON	60			30	90
FOLKENBERG	1,395			435	1,830
UPPER ROCK CREEK	2,055	70		125	2,250
HOLBROOK-LOGIE	1,560			150	1,710
WILDWOOD-MCKAY CREEK	3,290			80	3,370
GILKISON ROAD	2,660			120	2,780
<b>TOTAL BY LAND USE DESIGNATION</b>	<b>15,110</b>	<b>1,820</b>	<b>280</b>	<b>2,090</b>	<b>19,300</b>

## URBAN DESIGNATIONS

	R10	R20	RURAL RESIDENTIAL*	TOTAL
BALCH CREEK	65	125	55	245

\*ZONING INCONSISTENT WITH URBAN LAND USE DESIGNATION

# WEST HILLS RURAL AREA LAND USE DESIGNATIONS, EXISTING DWELLINGS, AND BUILDOUT UNDER CURRENT RULES\*

\* as of January, 1996

## RURAL DESIGNATIONS

SUBAREA	COMMERCIAL FOREST USE		EXCLUSIVE FARM USE		MULTIPLE USE AGRICULTURE		RURAL RESIDENTIAL & RURAL CENTER		TOTAL BY SUBAREA	
	EXISTING DWELLINGS	POTENTIAL DWELLINGS	EXISTING DWELLINGS	POTENTIAL DWELLINGS	EXISTING DWELLINGS	POTENTIAL DWELLINGS	EXISTING DWELLINGS	POTENTIAL DWELLINGS	EXISTING DWELLINGS	POTENTIAL DWELLINGS
BALCH CREEK	39	+18					6	+10	45	+28
BONNY SLOPE	3	+4	11	+2	13	+5	136	+38	163	+49
GERMANTOWN ROAD	16	+10	21	+8	29	+5	46	+57	112	+80
CORNELIUS PASS	27	+7	33	+9	17	+6	22	+10	99	+32
MCNAMEE-HARBORTON	38	+13					33	+32	71	+45
BURLINGTON	11	+1					30	+7	41	+8
FOLKENBERG	28	+25					48	+73	76	+98
UPPER ROCK CREEK	69	+26	2	+2			17	+10	88	+38
HOLBROOK-LOGIE	57	+11					70	+25	127	+36
WILDWOOD-MCKAY CREEK	33	+12					9	+6	42	+18
GILKISON ROAD	30	+14					26	+4	56	+18
<b>TOTAL BY LAND USE DESIGNATION</b>	<b>351</b>	<b>+141</b>	<b>67</b>	<b>+21</b>	<b>59</b>	<b>+16</b>	<b>443</b>	<b>+272</b>	<b>920</b>	<b>+450</b>

## URBAN DESIGNATIONS

	R10		R20		RURAL RESIDENTIAL		TOTAL	
	EXISTING DWELLINGS	POTENTIAL DWELLINGS	EXISTING DWELLINGS	POTENTIAL DWELLINGS	EXISTING DWELLINGS	POTENTIAL DWELLINGS	EXISTING DWELLINGS	POTENTIAL DWELLINGS
BALCH CREEK	4	+345	45	+75	38	+14	87	+434

RURAL  
AREA

TOTALS  
FOR  
ENTIRE  
WEST  
HILLS

URBAN  
AREA

# COMPILATION OF WEST HILLS RURAL AREA GOAL, POLICIES, AND STRATEGIES

**GOAL:** THE GOAL OF THE WEST HILLS RURAL AREA PLAN IS TO PRESERVE THE RURAL CHARACTER OF THE AREA

**POLICY 1:** Where possible, use incentives, rather than restrictions or disincentives, to accomplish land use and other policies contained in the West Hills Rural Area Plan.

**POLICY 2.** Preserve resource-based land uses related to forest practices as the primary land use in the West Hills.

**STRATEGY:** ~~Do not consider designating additional rural "exception" lands except those that meet the criteria set forth in Goal 2 of the Statewide Planning Program.~~

**STRATEGY:** Divide Commercial Forest Use lands within the West Hills into two categories. The first, designated CFU-1 ~~PRIMARY~~ Forest Lands, consists of areas with large land-holdings generally in excess of 40 acres and areas with few or no existing residences. The second, designated CFU-2 ~~SECONDARY~~ Forest Lands, consists of areas with smaller land holdings generally less than 40 acres, and areas with scattered existing residences.

**STRATEGY:** Preserve CFU-1 Forest Lands for continued commercial timber production by limiting residential uses to tracts of 160 acres or greater, or non-contiguous tracts of 200 acres or greater.

**STRATEGY:** Allow non-forestry related uses, such as residences, on CFU-2 Forest Lands as follows:

- a. dwellings on 160 acre tracts or 200 acre non-contiguous tracts.
- b. dwellings on existing lots of record owned continuously by the current owner or antecedents of the current owner since 1985 which are capable of producing less than 5,000 cubic feet per year of commercial timber.
- c. dwellings on existing lots of record which contain at least eleven existing lots and five existing dwellings within a 160 acre square template centered on the lot of record containing the proposed dwelling.

All dwellings potentially authorized under any of these conditions must meet additional development standards and lot aggregation requirements to ensure public safety, public health and welfare, and protection of natural and environmental resources.

**STRATEGY:** If current statewide planning regulations of Commercial Forest Use lands are changed, Multnomah County should not allow new subdivision lots of less than 40 acres in the CFU-2 district or less than 80 acres in the CFU-1 district in order to preserve forest practices and natural resources such as wildlife habitat, streams, and scenic views.

**POLICY 3** Preserve farm lands in the West Hills for agriculture as the primary use.

**STRATEGY:** Allow non-agricultural uses, such as residences, on Exclusive Farm Use Lands as permitted by Oregon Administrative Rules, with additional development standards and lot aggregation requirements to ensure public safety, public health and welfare, and protection of natural and environmental resources.

**POLICY 4** Do not designate additional "Exception" lands in the rural West Hills unless they meet the criteria outlined in Oregon Planning Goal 2 (Land Use).

**STRATEGY:** Consider redesignation of approximately 80 acres at the intersection of U.S. Highway 30 and Gilkison Road, adjacent to the Columbia County line, from Commercial Forest Use to Rural Residential.

**POLICY 5** Promote a community core in the rural West Hills through establishment of a rural center which serves the local needs of West Hills residents.

**STRATEGY:** Consider a limited area near the intersection of Cornelius Pass Road and Skyline Blvd. for designation as a Rural Center if justified by a county-initiated assessment of the need for additional commercial or other land uses to support public needs in the rural West Hills.

**STRATEGY:** Do not consider expansion of the existing Burlington Rural Center unless 1) existing facilities of the Burlington Water District are upgraded, 2) evidence of increased demand for housing and commercial or institutional services in Burlington exists in the form of construction on vacant lots within the existing rural center boundaries, and 3) a market analysis indicates that the expansion of the Burlington Rural Center is necessary to serve West Hills Rural Area needs.

**POLICY 6:** Do not adjust the Urban Growth Boundary in the West Hills.

**STRATEGY:** Study 90 acres of relatively undeveloped land in the Balch Creek basin (SUBAREA ONE) for proper zoning which will recognize this area's severe development limitations.

**STRATEGY:** Rezone approximately 50 acres located along Walmer, Ramsey, and Ramsey Crest Drives (SUBAREA THREE) from Rural Residential to ~~R-20 and R-40.~~ appropriate urban residential zoning districts.



**POLICY 7:** Urge METRO to designate most of the West Hills Rural Area as a Rural Reserve within the Regional Framework Plan – consider Urban Reserve designations only for fringe areas adjacent to Portland and Washington County urban areas.

**STRATEGY:** Forward to Metro a resolution directing that only the southern and central portions of the Bonny Slope subarea of the West Hills Rural Area be considered as an urban reserve area as part of the Region 2040 project.

**POLICY 8:** Oppose placement of regional roadways in the West Hills Rural Area, should such roadways be under consideration by any regional transportation authority in the future.

**POLICY 9:** Improve West Hills Rural Area roadways to attain appropriate safety levels for local motorized and non-motorized traffic.

**STRATEGY:** Accelerate re-paving and shoulder-paving on Skyline Blvd. to make the route safer for use of automobiles, bicycles, pedestrians, and equestrians.

**STRATEGY:** Include in the capital improvement program a project to upgrade Cornelius Pass Road, with first priority the road between its intersection with Skyline Blvd. and the switchback to the north, and second priority being the road between the switchback and Highway 30.

**STRATEGY:** Include in feasibility studies of a “rails-to-trails” conversion of the Burlington Northern Cornelius Pass line consideration of making the trail a bicycle route as well in order to remove the bicycle route from Cornelius Pass Rd. and eliminate modal conflicts.

**POLICY 10:** Discourage through traffic on local roads not shown on the Circulation Plan.

**STRATEGY:** On local roads with heavy through traffic consider additional control measures such as traffic signals and speed bumps to reduce such traffic.

**POLICY 11:** Coordinate planning and development review activities with the affected school districts to ensure that adequate school facilities exist to serve local needs.

**STRATEGY:** Monitor student population at Skyline Elementary School, and work with the Portland School District on solutions if the school becomes overcrowded.

**POLICY 12:** Require proposed development in the West Hills to meet fire safety standards.

**STRATEGY:** Ensure that agencies responsible for fire protection in the West Hills Rural Area are provided an opportunity to comment on development applications

prior to approval of the application.

**POLICY 13** Require proposed development to be supplied by a public water system with adequate capacity or a private water system with adequate capacity.

**STRATEGY:** Require a finding of adequate quantity of water available to a development project prior to final approval of the project, and clearly spell out a procedure which allows adequate public review of the proposed water source without requiring the project applicant to undergo excessive and possibly unnecessary expense.

**STRATEGY:** Work cooperatively with the Burlington Water District in ensuring adequate water supply to its customers.

**POLICY 14:** Discourage public sewer service to areas outside of the Urban Growth Boundary and areas where public sewer service would accommodate inappropriate levels of development.

**STRATEGY:** Consider lowering the allowed density of urban residential land use designations for areas within the Balch Creek basin which have no public sewer service.

**POLICY 15:** Maintain and enhance the recreational values of Forest Park and adjacent areas in concert with the City of Portland, METRO, and other agencies.

**STRATEGY:** Review lands which become available through tax foreclosure in the vicinity of Forest Park and within the Balch Creek Basin for potential recreational use.

**STRATEGY:** Target key parcels needed for enhancement of Forest Park recreational values for acquisition through revenue from the Natural Area Fund.

**STRATEGY:** Coordinate management of acquired properties in the vicinity of Forest Park to preserve natural resource values consistent with the Natural Resource Management Plan to be approved by the City of Portland.

**STRATEGY:** Promote and provide incentives for voluntary use of conservation easements by property owners in lieu of purchase.

**POLICY 16:** Support and promote the placement of links within a regional trail system for use by pedestrians, equestrians, and bicyclists.

**STRATEGY:** Support and participate in the feasibility studies for the conversion of the Burlington Northern Cornelius Pass line into a recreational trail, which will provide a regional trail for the Portland Metropolitan area; consider its impacts on adjacent properties and include affected property owners in discussions on all

phases of the project.

**STRATEGY:** If the Greenway to the Pacific project locates a trail alignment in the West Hills, do not obstruct METRO's acquisition of the right-of-way for such a facility and review development proposals along the trail alignment for compatibility with the proposed trail.

**POLICY 17:** Consider and mitigate the impact on adjacent private properties of all proposed recreational facilities.

**POLICY 18:** Use voluntary measures to decrease the negative impacts of some agricultural practices upon water quality in area streams.

**STRATEGY:** Do not institute zoning regulation of agricultural practices to protect streams at this time – instead pursue a voluntary educational program jointly with the ~~Soil~~ U.S. Natural Resources Conservation Service and the West Multnomah Soil and Water Conservation District.

**POLICY 19:** Protect water quality in areas adjacent to Multnomah Channel through control of runoff from West Hills Rural Area streams.

**STRATEGY:** Revise the ESEE analysis and protection program for Burlington Bottoms to include discussion of water quality impacts from West Hills drainages into this wetland, and adopt appropriate zoning ordinance amendments to protect water quality in Burlington Bottoms.

**STRATEGY:** During the Sauvie Island/Multnomah Channel Rural Area Plan preparation, review ESEE analysis and protection program for Multnomah Channel to include discussion of water quality impacts from West Hills drainages into the channel, and adopt appropriate zoning ordinance amendments to protect water quality in Multnomah Channel.

**POLICY 20:** Develop and maintain consistent regulations for significant streams under the jurisdiction of both the City of Portland and Multnomah County.

**POLICY 21:** Use hillside development and erosion control standards to control the effects of nonpoint runoff into streams from sources such as roadways, parking areas, and farms.

**POLICY 22:** Protect against seismic hazards to structures and ground areas susceptible to upset.

**STRATEGY:** Work with the City of Portland to implement appropriate building code revisions for areas of greatest seismic hazard, when information on the location of such areas becomes available.

**POLICY 23: Protect lands having slopes greater than 25% from inappropriate development.**

**STRATEGY: Revise the Multnomah County Comprehensive Framework Plan to designate lands with average slope greater than 25% as having development limitations. This action will resolve an inconsistency between the Comprehensive Framework Plan and the Hillside Development Overlay provisions of the Multnomah County Zoning Ordinance.**

**POLICY 24: Balance protection of scenic views with flexibility of use by property owners.**

**STRATEGY: Do not preclude or prevent building on any lot because of scenic considerations.**

**STRATEGY: Allow placement of residences so that a view from the property is possible as long as the proposed development is visually subordinate.**

**STRATEGY: Regulate the use of reflective glass in scenic areas.**

**STRATEGY: Require industrial uses to meet the same siting standards as residential development in order to protect scenic views.**

**STRATEGY: Work with the Oregon Department of Forestry to better protect scenic views from the negative impacts associated with timber harvesting.**

**STRATEGY Provide incentives for development compatible with significant scenic views.**

**POLICY 25: Balance protection of significant streams with flexibility of use by property owners.**

**STRATEGY: Minimize runoff from roads, particularly from County road clearing processes.**

**STRATEGY: Encourage "friends of" individual streams to educate people about best management practices necessary to protect streams.**

**STRATEGY: Work with the Oregon Department of Forestry to better protect significant streams from the negative impacts associated with timber harvesting.**

**STRATEGY: Work with the local Soil and Conservation Districts to educate farmers about sound farming practices which also protect significant streams.**

**STRATEGY Provide incentives for development compatible with significant streams.**