

ANNOTATED MINUTES

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

BOARD BRIEFING

B-1 Briefing on EMS/ASA Ordinance #2. Presented by Bill Collins.

PRESENTATION AND RESPONSE TO BOARD QUESTIONS BY BILL COLLINS. STAFF TO RESPOND TO BOARD SUGGESTIONS AND DIRECTION VIA FOLLOW UP BRIEFING. PROPOSED ORDINANCE TO BE SUBMITTED FOR BOARD ACTION AFTER MARCH, 1994 ELECTION.

Tuesday, November 9, 1993 - 11:00 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

Chair Beverly Stein convened the meeting at 11:00 a.m., with Vice-Chair Gary Hansen, Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman present.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONERS HANSEN, THE CONSENT CALENDAR, (ITEMS C-1 THROUGH C-19) WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF HEALTH

- C-1 *In the Matter of the Appointment of Jonathan Jui, MD, as Medical Resource Representative to the MULTNOMAH COUNTY EMERGENCY MEDICAL SERVICES MEDICAL ADVISORY BOARD*
- C-2 *Ratification of Intergovernmental Agreement Contract 200644 Between Oregon Department of Human Resources, Children's Services Division and Multnomah County, Wherein the County Will Be Reimbursed for Providing the Services of a Public Health Nurse to Develop and Implement a Program to Strengthen the Intervention and Treatment Services Provided to Abused and Neglected Children in Substance Abusing Families*
- C-3 *Ratification of Intergovernmental Agreement Contract 200714 Between Oregon Health Sciences University and Multnomah County, Wherein County Will Pay Hospital for the Provision of Rape Evidentiary Examinations for Adults on an Emergency Basis*
- C-4 *Ratification of Intergovernmental Agreement Contract 200894 Between Multnomah*

County and Oregon Health Sciences University, School of Nursing, Providing Required Learning Experiences for Faculty and Students at County Clinics

- C-5 *Ratification of Intergovernmental Agreement Contract 200904 Between Multnomah County and Oregon Health Sciences University, for the Provision of Radiologic Consultation Services for the Interpretation of X-Rays Referred from the County During Normal Working Hours*
- C-6 *Ratification of Intergovernmental Agreement Contract 200924 Between Oregon Department of Human Resources, Office of Medical Assistance Programs and Multnomah County, for Reimbursement of HIV Targeted Case Management Program Services Provided by the County*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-7 *ORDER in the Matter of the Execution of Deed D940937 Upon the Complete Performance of a Contract to Frank A. Upham*

ORDER 93-366.

NON-DEPARTMENTAL

- C-8 *In the Matter of the Appointments of David R. Chambers and Derry Jackson to the MULTNOMAH COUNTY AUDITOR'S CITIZEN BUDGET ADVISORY COMMITTEE*
- C-9 *In the Matter of the Reappointments of Michael L. Williams, Position 1, Molly Weinstein, Position 2, Robert L. Jones, Position 5, and Winzel Hamilton, Position 6, to the MULTNOMAH COUNTY DISTRICT ATTORNEY'S CITIZEN BUDGET ADVISORY COMMITTEE*
- C-10 *In the Matter of the Appointment of Dave Simpson, Position 4, to the MULTNOMAH COUNTY DISTRICT ATTORNEY'S CITIZEN BUDGET ADVISORY COMMITTEE, Term Ending September, 1996*
- C-11 *In the Matter of the Appointments of Patricia Bozanich, Position 6, William Hoffstetter, Position 5, and William H. Trappe, Position 4, to the MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY CORRECTIONS CITIZEN BUDGET ADVISORY COMMITTEE*
- C-12 *In the Matter of the Appointments of Michael Zollitsch, Position 6, Harvey Lee Garnett, Position 1, and Ben Kasubuchi, Position 4, to the MULTNOMAH COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES CITIZEN BUDGET ADVISORY COMMITTEE, Terms Ending September, 1996*
- C-13 *In the Matter of the Appointments of Anthony S. Kim, Position 4, and Robin Bloomgarden, Position 7, to the MULTNOMAH COUNTY NON-DEPARTMENTAL CITIZEN BUDGET ADVISORY COMMITTEE*
- C-14 *In the Matter of the Appointments of Margaret Boyles, Position 6, and Daniel V.*

Gardner, Position 1, to the MULTNOMAH COUNTY SHERIFF'S CITIZEN BUDGET ADVISORY COMMITTEE

- C-15 *In the Matter of the Reappointment of Don MacGillivray to the MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE, Term Ending September, 1995*
- C-16 *In the Matter of the Reappointments of Mandated Position Designees to the COMMUNITY CORRECTIONS ADVISORY COMMITTEE: District Attorney Michael Schrunk - Jean Maurer; Law Enforcement Officer Robert Skipper - Larry Reilly; Circuit Court Judge Donald Londer - Doug Bray; Public Defender Jim Hennings - Michael Greenlock, Terms Ending July 30, 1995*
- C-17 *In the Matter of the Appointment of Matthias D. Kemeny, Lay Citizen Position, to the COMMUNITY CORRECTIONS ADVISORY COMMITTEE, Term Ending July 30, 1995*
- C-18 *In the Matter of the Appointment of Joelle M. Gelao to the MENTAL HEALTH ADVISORY COMMITTEE, Term Ending October, 1995*

DEPARTMENT OF SOCIAL SERVICES

- C-19 *Ratification of Intergovernmental Agreement Contract 103874 Between Portland Public Schools and Multnomah County, Mental Health, Youth, and Family Services Division, Developmental Disabilities Program, Wherein the School District Will Pay \$105,320 for Early Intervention and Early Childhood Special Education Services for Eligible Children in Multnomah County*

REGULAR AGENDA

DEPARTMENT OF LIBRARY SERVICES

- R-1 *RESOLUTION in the Matter of Authorizing and Approving, But Not Executing, the Interim Lease Agreement for the Central Library Operations During Renovation and Authorizing the County to Submit the Agreement to the Courts for Confirmation of the Legality of Use of General Obligation Bond Proceeds*

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-1. GINNIE COOPER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. RESOLUTION 93-367 UNANIMOUSLY APPROVED.

DEPARTMENT OF SOCIAL SERVICES

- R-2 *Ratification of Intergovernmental Agreement Contract 103904 Between the City of Portland and Multnomah County, Wherein the Housing and Community Services Division, Community Action Program Office, Will Assist the City Energy Office in Implementing its Block-by-Block Grant, by Providing Weatherization Services for Qualified Homes*

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-2. BILL THOMAS EXPLANATION. COMMISSIONER SALTZMAN COMMENTS IN SUPPORT. AGREEMENT UNANIMOUSLY APPROVED.

- R-3 *Budget Modification DSS #8 Requesting Authorization to Add a Mental Health Consultant to the Mental Health, Youth and Family Services Division, Child and Adolescent Mental Health Program Budget, Effective October 15, 1993, and Authorizing Funding Adjustments in Certain Line Items*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-3. SUSAN CLARK EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-4 *Budget Modification DSS #14 Requesting Authorization to Add \$33,333 Federal/State Funds to the Juvenile Justice Division Budget to Pay for a Parole Transition Coordinator and Related Expenses to Carry Out a Minority Over Representation Program Grant Project Administered in Coordination with the Housing and Community Services Division, Youth Program Office*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-4. DWAYNE McNANNAY EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

- R-5 *Budget Modification NOND #9 Requesting Authorization to Transfer \$5,990 from Materials and Services to Personal Services, Within the Tax Supervising and Conservation Commission Budget, for July Cost of Living Adjustment*

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER COLLIER, BUDGET MODIFICATION R-5 WAS UNANIMOUSLY APPROVED.

- R-6 *RESOLUTION AND ORDER in the Matter of Calling an Election on a Referendum of County Ordinance 772 (Ambulance Service Area Plan)*

UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER COLLIER, RESOLUTION 93-368 WAS UNANIMOUSLY APPROVED.

DISTRICT ATTORNEY

- R-7 *Budget Modification DA #5 Requesting Authorization to Cut Two Office Assistant II Positions and Add One Fiscal Specialist Senior within the*

District Attorney's Office, Administration Division Budget, No Net Budgetary Change

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-7. MICHAEL SCHRUNK EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-8 *ORDER in the Matter of the Reconveyance of the Old Gresham Library Property, Lots 1, 2 and 6, Block 4, Mt. Hood Addition to the City of Gresham, to the Gresham Historical Society Upon Full Payment of the Note Securing Payment of the Purchase Price*

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-8. BOB OBERST EXPLANATION AND RESPONSE TO BOARD QUESTIONS. ORDER 93-369 UNANIMOUSLY APPROVED.

PUBLIC CONTRACT REVIEW BOARD

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

R-9 *ORDER in the Matter of Exempting from Public Bidding a Contract with Amdahl for the Purchase of a Token Ring Adaptor*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-9. JIM MUNZ EXPLANATION AND RESPONSE TO BOARD QUESTIONS. ORDER 93-370 UNANIMOUSLY APPROVED.

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

PUBLIC COMMENT

R-10 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

There being no further business, the meeting was adjourned at 11:22 a.m.

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

Deborah L. Bogstad
Deborah L. Bogstad

PLANNING ITEMS

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

P-1 CS 6-93/PLA 12-93/HV 16-93 Review the October 13, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, Community Service Use for the Construction of a 22,000 Square Foot Equestrian Facility and Caretaker's Quarters; Approving, Subject to Conditions, the Requested Property Line Adjustment; and Approving, Subject to Conditions, the Requested Paving Variance, All for Property Located at 5207 SE CIRCLE AVENUE

DECISION READ, NO APPEAL FILED, DECISION STANDS. PLANNER SANDY MATHEWSON EXPLANATION AND RESPONSE TO BOARD QUESTIONS CONCERNING MULTNOMAH COUNTY SHERIFF'S MOUNTED POSSE REQUEST FOR FEE WAIVER. LT. BILL GOSS EXPLANATION AND RESPONSE TO BOARD QUESTIONS. COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, REIMBURSEMENT OF THE \$1,200 LAND USE FEES FOR P-1. BOARD DISCUSSION AND COMMENTS. MOTION APPROVED WITH COMMISSIONERS KELLEY, HANSEN AND COLLIER VOTING AYE AND COMMISSIONERS SALTZMAN AND STEIN VOTING NO.

P-2 C 3-93 RESOLUTION in the Matter of Designating the West Hills Scenic Study Area a Significant Scenic Resource Pursuant to OAR 660-16 and Statewide Planning Goal 5, Adopting Findings, and Directing Staff to Complete the Goal 5 Process

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF P-2. MS. MATHEWSON EXPLANATION. COUNTY COUNSEL JOHN DuBAY RESPONSE TO BOARD QUESTIONS. RESOLUTION 93-371 UNANIMOUSLY APPROVED.

P-3 CU 21-93 PUBLIC HEARING, ON THE RECORD, TESTIMONY LIMITED TO 15 MINUTES PER SIDE, in the Matter of a Review of the September 15, 1993 Planning and Zoning Hearings Officer Decision Denying a Conditional Use Request for a Commercial Activity in Conjunction with Farm Use, for Property Located at 24315 NW OAK ISLAND ROAD

MS. MATHEWSON PRESENTED STAFF REPORT AND CITED STATUTORY PROCEDURES AND REQUIREMENTS CONCERNING HEARING PROCESS. MR. DuBAY DISCUSSED NOVEMBER 3, 1993 LETTER TO BOARD FROM

PAUL GAMROTH REITERATING HIS TESTIMONY BEFORE THE HEARINGS OFFICER AND AT THE REQUEST OF MR. DuBAY, APPLICANTS' ATTORNEY GREG HATHAWAY STATED NO OBJECTION TO INCLUSION OF LETTER IN THE RECORD.

HEARINGS OFFICER ROBERT LIBERTY PRESENTATION AND EXPLANATION REGARDING LEGAL ISSUES AND CRITERIA USED IN HIS DECISION. MR. HATHAWAY INTRODUCED NW BREWERS GRAINS OWNER JOE WOLZEN; KEN VIGIL AND KRISTINA GIFFORD OF DAVID EVANS AND ASSOCIATES; AND MIKE GAMROTH, DAIRY SPECIALIST WITH OREGON STATE UNIVERSITY EXTENSION SERVICE. MR. HATHAWAY PRESENTED TESTIMONY IN SUPPORT OF A REVERSAL OF THE HEARINGS OFFICER DECISION.

MIKE GAMROTH TESTIMONY IN SUPPORT OF A REVERSAL OF THE HEARINGS OFFICER DECISION, AND RESPONSE TO BOARD QUESTIONS.

PAUL DeBONI TESTIMONY WITHDRAWING HEARINGS OFFICER LEVEL OPPOSITION TO PROPOSED CONDITIONAL USE REQUEST.

ROBERT WORKMAN TESTIMONY IN OPPOSITION TO REVERSAL OF HEARINGS OFFICER DECISION AND RESPONSE TO BOARD QUESTIONS.

DANIEL KEARNS, ATTORNEY FOR SAUVIE ISLAND DRAINAGE DISTRICT, REQUESTED THAT THE BOARD INCLUDE IN ITS FINAL ORDER, A LISTING OF THE REQUIRED DEQ CONDITIONS, INCLUDING A WASTEWATER LAGOON, IN THE EVENT OF A REVERSAL OF THE HEARINGS OFFICER DECISION AND RESPONDED TO BOARD QUESTIONS.

MR. HATHAWAY REBUTTAL TESTIMONY AND RESPONSE TO BOARD QUESTIONS. MR. WOLZEN AND MR. VIGIL RESPONSE TO BOARD QUESTIONS. MS. MATHEWSON, MR. HATHAWAY, MR. LIBERTY AND MR. DuBAY RESPONSE TO BOARD QUESTIONS.

COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, TO REVERSE THE HEARINGS OFFICER DECISION AND APPROVE THE CONDITIONAL USE PERMIT, SUBJECT TO THE CONDITIONS STATED IN THE STAFF REPORT AND COMPLIANCE WITH DEQ STIPULATIONS. BOARD COMMENTS. MOTION APPROVED WITH COMMISSIONERS KELLEY, HANSEN

**AND COLLIER VOTING AYE AND COMMISSIONERS
SALTZMAN AND STEIN VOTING NO.**

P-4 *Board Briefing and Discussion Regarding Prioritizing and Funding of Significant
Streams Goal 5 Work. Presented by Scott Pemble.*

*Commissioner Saltzman commented in support of recommendations contained in briefing report
and left at 3:30 p.m.*

**SCOTT PEMBLE PRESENTATION OF PROPOSED
TIMELINES AND COSTS ASSOCIATED WITH GOAL 5
WORK AND RESPONSE TO BOARD QUESTIONS.
COMMISSIONER KELLEY MOVED AND COMMISSIONER
COLLIER SECONDED, APPROVAL OF THE PROPOSED
WORK PLAN. LYN MATTEI COMMENTS IN SUPPORT OF
PLAN. MOTION UNANIMOUSLY APPROVED.**

There being no further business, the meeting was adjourned at 3:40 p.m.

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


Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

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

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

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

NOVEMBER 8 - 12, 1993

- Tuesday, November 9, 1993 - 9:30 AM - Board Briefing.Page 2
- Tuesday, November 9, 1993 - 11:00 AM - Regular Meeting.Page 2
- Tuesday, November 9, 1993 - 1:30 PM - Planning Items.Page 5
- Thursday, November 11, 1993 - HOLIDAY - OFFICES CLOSED.

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

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

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

Tuesday, November 9, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

BOARD BRIEFING

- B-1 Briefing on EMS/ASA Ordinance #2. Presented by Bill Collins. 9:30 AM TIME CERTAIN, 90 MINUTES REQUESTED.
-

Tuesday, November 9, 1993 - 11:00 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF HEALTH

- C-1 In the Matter of the Appointment of Jonathan Jui, MD, as Medical Resource Representative to the MULTNOMAH COUNTY EMERGENCY MEDICAL SERVICES MEDICAL ADVISORY BOARD
- C-2 Ratification of Intergovernmental Agreement Contract 200644 Between Oregon Department of Human Resources, Children's Services Division and Multnomah County, Wherein the County Will Be Reimbursed for Providing the Services of a Public Health Nurse to Develop and Implement a Program to Strengthen the Intervention and Treatment Services Provided to Abused and Neglected Children in Substance Abusing Families
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C-7 ORDER in the Matter of the Execution of Deed D940937 Upon the Complete Performance of a Contract to Frank A. Upham

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DEPARTMENT OF SOCIAL SERVICES

- C-19 Ratification of Intergovernmental Agreement Contract 103874 Between Portland Public Schools and Multnomah County, Mental Health, Youth, and Family Services Division, Developmental Disabilities Program, Wherein the School District Will Pay \$105,320 for Early Intervention and Early Childhood Special Education Services for Eligible Children in Multnomah County

REGULAR AGENDA

DEPARTMENT OF LIBRARY SERVICES

- R-1 RESOLUTION in the Matter of Authorizing and Approving, But Not Executing, the Interim Lease Agreement for the Central Library Operations During Renovation and Authorizing the County to Submit the Agreement to the Courts for Confirmation of the Legality of Use of General Obligation Bond Proceeds

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DISTRICT ATTORNEY

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Two Office Assistant II Positions and Add One Fiscal Specialist Senior within the District Attorney's Office, Administration Division Budget, No Net Budgetary Change

DEPARTMENT OF ENVIRONMENTAL SERVICES

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PUBLIC CONTRACT REVIEW BOARD

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

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PUBLIC COMMENT

R-10 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

Tuesday, November 9, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

P-1 CS 6-93/PLA 12-93/HV 16-93 Review the October 13, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, Community Service Use for the Construction of a 22,000 Square Foot Equestrian Facility and Caretaker's Quarters; Approving, Subject to Conditions, the Requested Property Line Adjustment; and Approving, Subject to Conditions, the Requested Paving Variance, All for Property Located at 5207 SE CIRCLE AVENUE

P-2 C 3-93 RESOLUTION in the Matter of Designating the West Hills Scenic Study Area a Significant Scenic Resource Pursuant to OAR 660-16 and Statewide Planning Goal 5, Adopting Findings, and Directing Staff to Complete the Goal 5 Process

P-3 CU 21-93 PUBLIC HEARING, ON THE RECORD, TESTIMONY LIMITED TO 15 MINUTES PER SIDE, in the Matter of a Review of the September 15, 1993 Planning and Zoning Hearings Officer Decision Denying a Conditional Use Request for a Commercial Activity in Conjunction with Farm Use, for Property Located at 24315 NW OAK ISLAND ROAD

P-4 Board Briefing and Discussion Regarding Prioritizing and Funding of Significant Streams Goal 5 Work. Presented by Scott Pemble. 30 MINUTES REQUESTED.

0267C/24-29/db

MEETING DATE: November 9, 1993

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CS 6-93/HV 16-93/PLA 12-93 Devision Review

BOARD BRIEFING Date Requested: _____
Amount of Time Needed: _____

REGULAR MEETING: Date Requested: November 9, 1993
Amount of Time Needed: 5 Minutes

DEPARTMENT: DES DIVISION: Planning and Development

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

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

CS 6-93/HV 16-93/PLA 12-93

Review the October 13, 1993 Hearings Officer Decision, approving, subject to conditions, community service use for the construction of a 22,000 square foot equestrian facility and caretaker's quarters, plus property line adjustment plus paving variance, all for property located at 5207 SE Circle Avenue

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1993 NOV - 2 PM 1:48

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: *RP* *Betsy Willis*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. Q56-93
HD 16-93
PLA 12-93

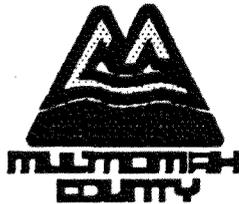
Agenda Placement Sheet No. of Pages 1

Case Summary Sheet No. of Pages 1
 Previously Distributed _____

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

Decision No. of Pages 23
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



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

Decision

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

October 13, 1993

CS 6-93, #522
HV 16-93, #522
PLA 12-93, #522

Community Service Request
Variance from Paved Parking Lot Requirements
Property Line Adjustment
(Proposed Multnomah County Sheriff's Equine Center)

Applicant requests Community Service approval for the construction of a 22,000-square foot equestrian facility and caretaker's quarters on this 2.65-acre site for Multnomah County Sheriff's Mounted Posse. Applicant further requests a Property Line Adjustment to provide for the proposed 330' x 350' caretaker's facility on the site. Applicant further requests a Variance from the paved parking standards of the Zoning Code.

Location: 5207 SE Circle Avenue
Legal: Tax Lots '33', '12' and '75', Section 18, 1S-3E, 1992 Assessor's Map
Site Size: 28.73. Acres **Size Requested:** 2.65 Acres
Property Owner: Portland Gun Club, 4711 SE 174th Avenue, 97236 (TL's '33' and '12')
City of Portland Water Bureau, 1120 SW Fifth Avenue, 97204 (Tax Lot '75')
Applicant: Multnomah County Sheriff's Mounted Posse
12240 NE Glisan Street, 97230

Comprehensive Plan: Low Density Residential

Present Zoning: LR-5, C-S, Urban Low Density Residential
Community Service District
Minimum lot size of 5,000 square feet per single family dwelling
or 5,000 square feet per dwelling unit

Hearings Officer

Decision #1: Approve, subject to conditions, community service use for the construction of a 22,000-square foot equestrian facility and caretaker's quarters, based on the following Findings and Conclusions.
(CS 6-93)

Decision #2: Approve, subject to conditions, the requested property line adjustment, all based on the following Findings and Conclusions.
(PLA 12-93)

Decision #3: Approve, subject to conditions, the requested paving variance, based on the following Findings and Conclusions.
(HV 16-93)



Zoning Map

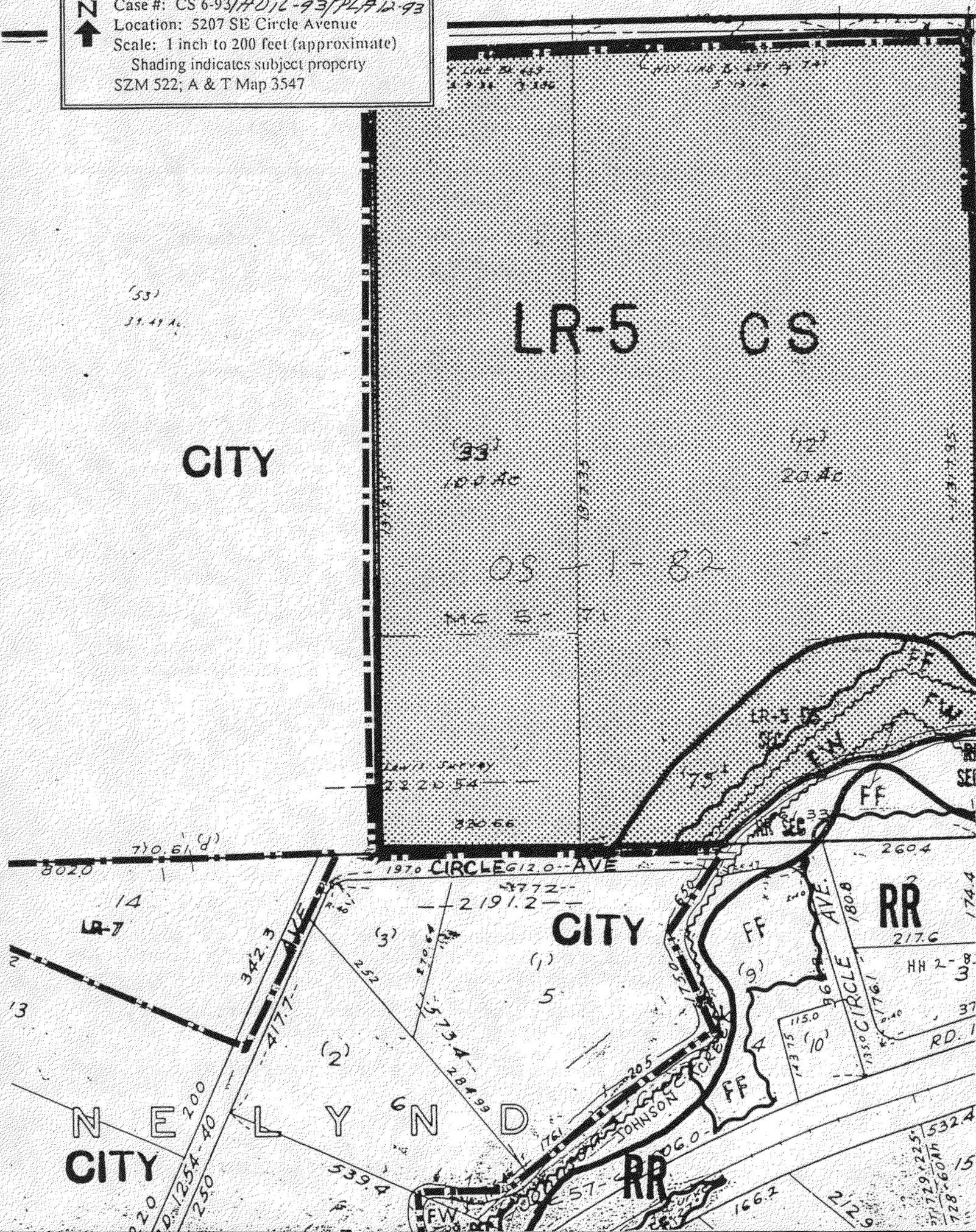
Case #: CS 6-93/HO 16-93/PL 12-93

Location: 5207 SE Circle Avenue

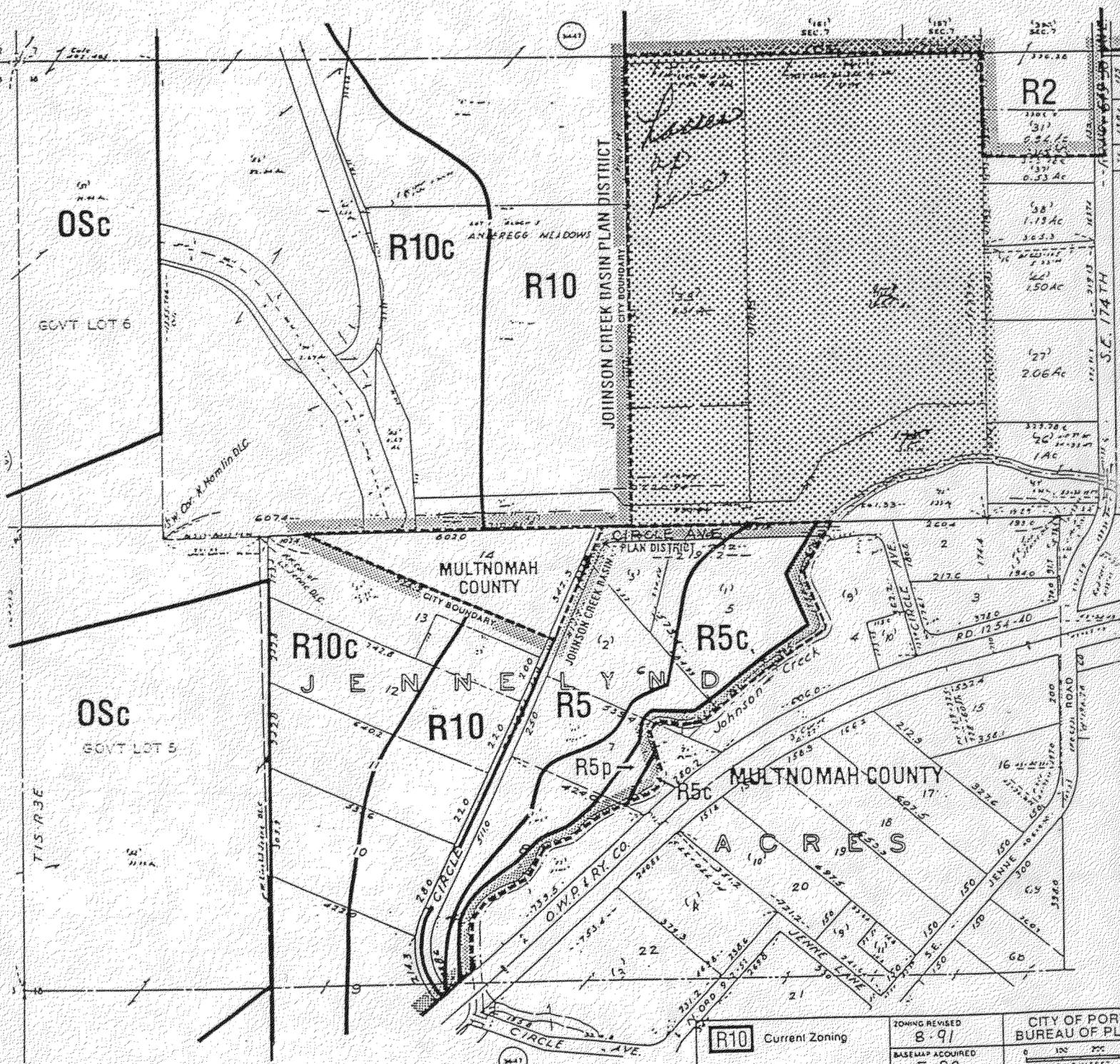
Scale: 1 inch to 200 feet (approximate)

Shading indicates subject property

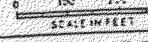
SZM 522; A & T Map 3547




City of Portland Zoning Map
 Case #: CS 6-93 / #D 16-93 / PL # 12-93
 Location: 5207 SE Circle Avenue
 Scale: 1 inch to 400 feet (approximate)
 Shading indicates subject property



NOTE: Zoning designations are subject to change; verify zoning prior to development or sales.

R10 Current Zoning	ZONING REVISED 8-91	CITY OF PORTLAND BUREAU OF PLANNING
..... Maximum Potential Zoning as per Comprehensive Plan	BASEMAP ACQUIRED 5-89	
:(R10):	LEGAL DESCRIPTION NW 1/4 SEC. 7	 3547
.....	18-15-3E	

Apartment Complex

Apartment Compl

BLOCK 5
YEREGG MEADOWS

R10

Proposed Subdivision

JOHNSON CREEK BASIN PLAN DISTRICT
CITY BOUNDARY

PROPOSED POSSE
EQUESTRIAN FACILITY

TRAPSHOOT RANGE

(33)
9.54 Ac

(12)
16.34 Ac

Riding Area

Emergency Access Easement

PORTLAND GUN CLUB

Portland Water Bureau
175'
2.79 Ac

Johnson Creek
46'
133 Ac

Portland Water Bureau

Circle Avenue

14 Residence
TNO MAH
JUNTY

PLAN DISTRICT

Residence
2.52

R5c

Residence
378.0

RD. 1254-4

Residence
2.00

R5

JOHNSON CREEK BASIN

Creek

Residence

1532.4

E

G

D

CON

F
3
0
3
0
R
1
Gu
Access
7
F
2
3
198
199
Reside
194
790

VICINITY AIR PHOTO

No Scale

Albertsons

Apartment Compl.

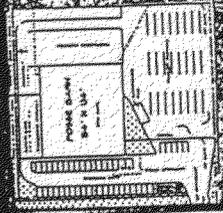
Butte

PORTLAND GUN CLUB

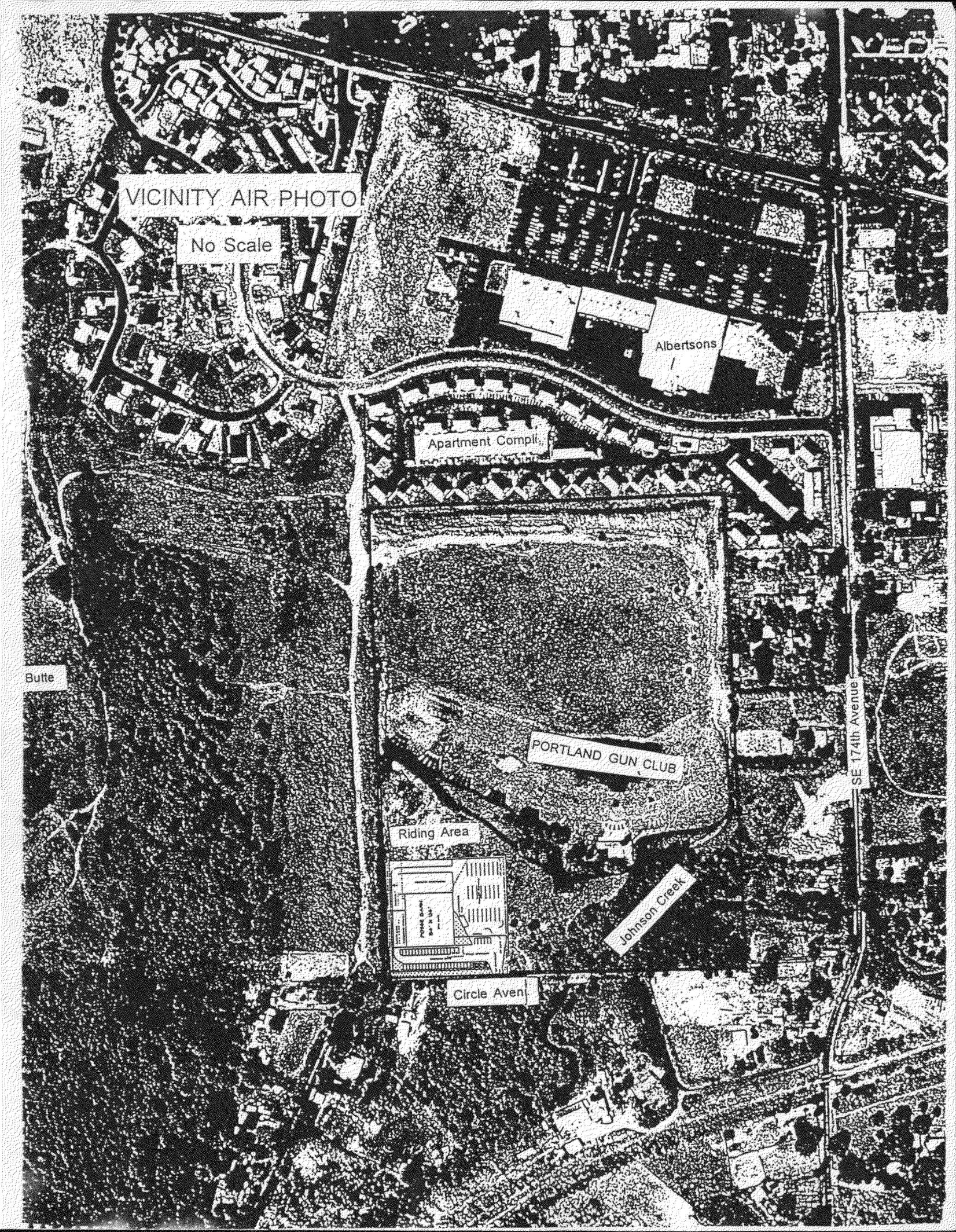
SE 174th Avenue

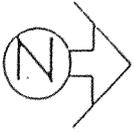
Riding Area

Johnson Creek

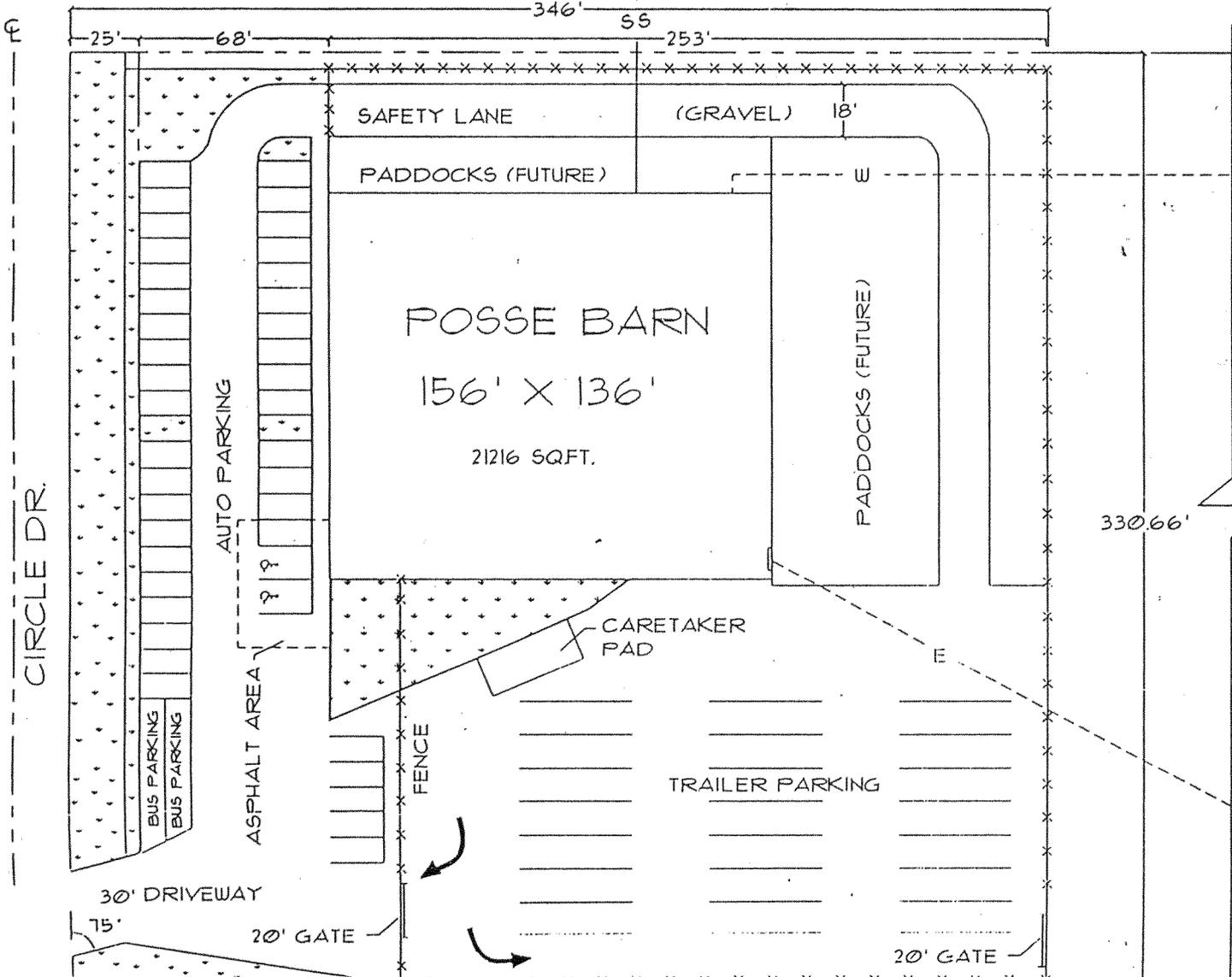


Circle Aven





CITY SEWER

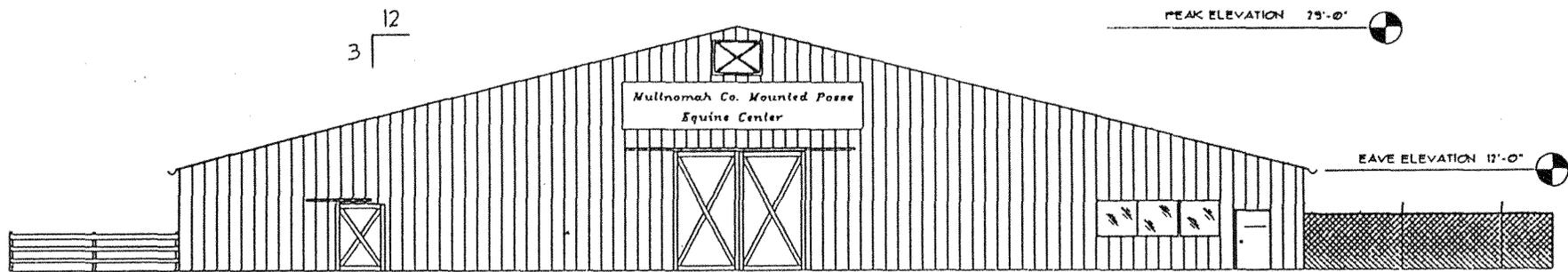


LEGEND

- W - WATER MAIN
- E - ELECTRIC
- SS - SANITARY SEWER
-  LANDSCAPING

- NOTE:
1. ELECTRICAL POWER POLE APPROX. 165' FROM BUILDING
 2. WELL TO BE DETERMINED AT FUTURE DATE

CS 6-93



SOUTH ELEVATION

SCALE 1/8" = 1'-0"

CS 6-93

MCSMP Equine Center
 Mult. Co. Sheriff's Mounted Posse
 Circle Ave.
 Portland, Oregon 97230

E T K

Ead Kohart Drafting / Design
 3444 S.E. Foster Rd., Portland, Or. 97234
 (503) 241-6444

REV	REVISIONS	Comments

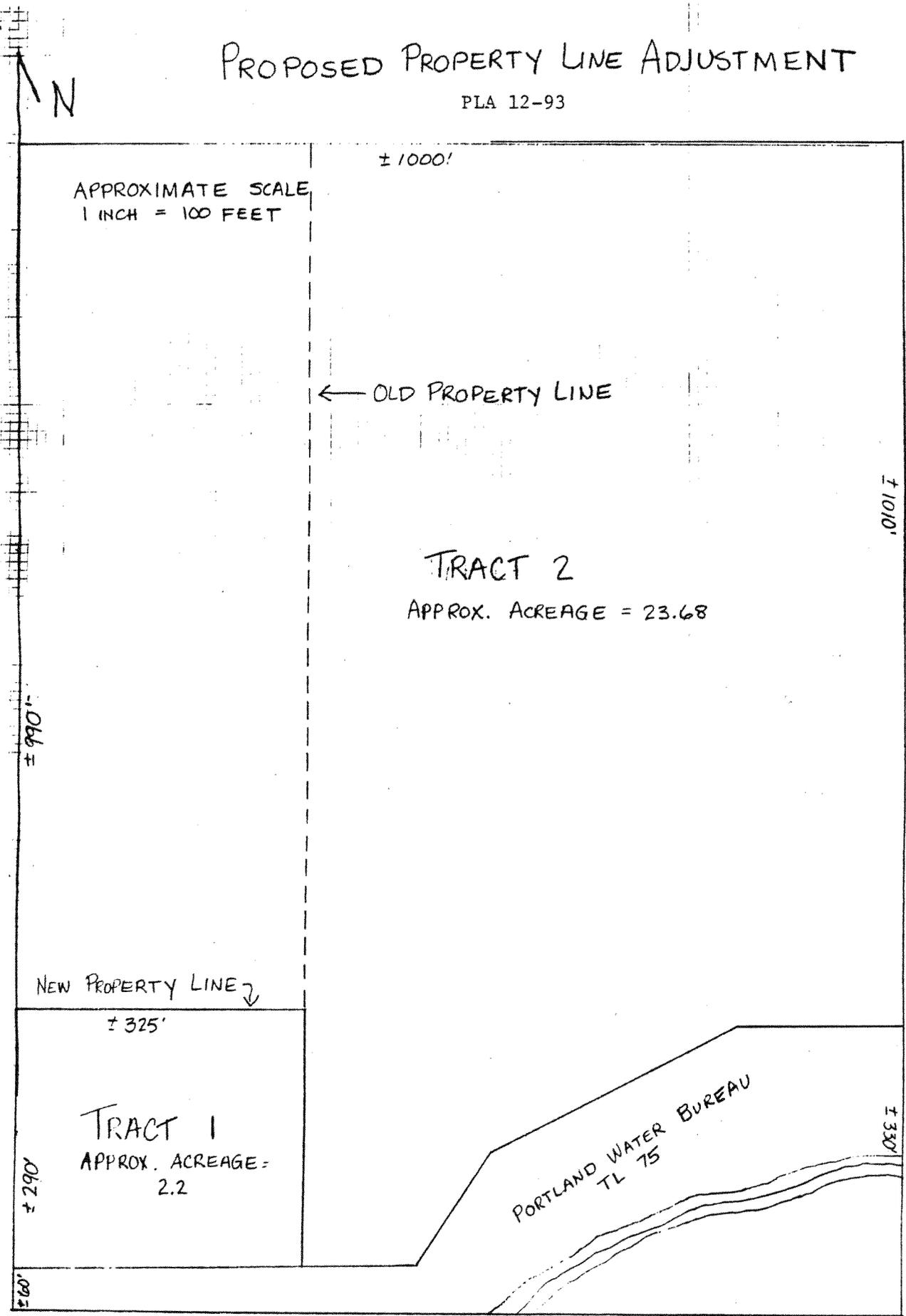
DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 PROJECT: _____

Table 4.b Proposed Posse Activities and Parking Demand			
Day	Activity	No. of Vehicles	No. of Trips
Monday	Posse training with professional instructor	10-20	20-40
Tuesday	National Association Handicapped Riders	5-10	10-20
Wednesday	Multnomah County 4-H Clubs	10-15	20-30
Thursday	Police Activities League	5	10
Friday	Open Posse and family night	10-25	20-50
Saturday	Police Activities League and special events: benefit horse shows, seminars	10-100	20-200
Sunday	Open Posse/Maintenance	10-20	20-40
Average Use	Weekdays	8-15	16-30
Peak Use	Saturday Activities	10-100	20-200

Reduced

PROPOSED PROPERTY LINE ADJUSTMENT

PLA 12-93



II. PROCEDURAL MATTERS

A. Parties To The Proceeding

1. Applicant and Proponents

The applicant's name and address are:

Multnomah County Sheriff's Mounted Posse, 12240 NE Glisan Street, Portland, Oregon 97230

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

Linda Bauer, Pleasant Valley Neighborhood Association, 6232 SE 158th Avenue, Portland, Oregon 97236

Sam Howe, 5265 SE Circle Avenue, Portland, Oregon 97236

Kathy Howe, 5265 SE Circle Avenue, Portland, Oregon 97236

Wayne Myers, through Kent Cox

Wayne Normand, 5250 SE Circle Avenue, Portland, Oregon 97236

Brett Sheldon, _____ Gresham, Oregon

Charles Wilson, through Kent Cox

Portland Water Bureau, 1120 SW Fifth Avenue, Portland, Oregon 97204-1926

2. Opponent

The following person testified orally and in writing in opposition to the proposed use:

Bruce Burmeister, 5926 SE Jenne Avenue, Portland, Oregon 97236

3. Party Status

In the absence of any challenges to their standing, I find the preceding persons to be parties to the appeal, as specified by MCC 11.15.8225. These persons, and/or their representative(s) (identified below) should receive notice of this decision.

4. Representatives And Witnesses

In addition to these persons testifying on their own behalf, the following persons testified in person and/or in writing, but only as representatives on behalf of the identified parties:

Lt. Bill Goss, Multnomah County Sheriff's Office liaison to the Mounted Sheriff's Posse, 12240 NE Glisan Street, Portland, Oregon 97230 (Representing the applicant)

Greg Winterowd, Suite 210 Office Courts Building, 700 North Hayden Island Drive,
Portland, Oregon 97217 (representing the applicant)

Kent Cox, 2304 NE Kelley, Gresham (representing Charles Wilson and Wayne
Normand, developers of the Anderegg Subdivision, which will be known as
Powell Butte Estates)

5. Others Who Testified

The following people testified in order to provide information, without taking a
position on the merits, and thus are not parties:

Robert E. Stacey, Director, Portland Bureau of Planning, 1120 SW Fifth Avenue,
Room 1002, Portland, Oregon 97204-1966

B. Impartiality Of The Hearings Officer

Before and after the hearing I had no *ex parte* contacts with any of the parties during
which I received evidence or arguments relevant to this application.

I have no financial interest in the outcome of this proceeding and have no family or
financial relationship with any of the parties.

I find that I am impartial and qualified to decide this matter.

C. Alleged Procedural Error: Defective Notice

Prior to the initial hearing it was revealed that two of the owners of land within the
100 foot notice area, were mailed written notice of the hearing six days in advance of the
hearing, instead of the 20 days required by ORS 197.763(3)(f)(A). This procedural defect
was cured by continuing the hearing until September 7, 1993 and providing the required 20
days notice.

D. Burden of Proof

The burden of proof is upon the applicant to submit evidence demonstrating
compliance with all applicable criteria and standards. MCC 11.15.8230(D)

**III. REVIEW OF THE STANDARDS, ANALYSIS OF THE EVIDENCE,
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. MULTNOMAH COUNTY CODE PROVISIONS: COMMUNITY SERVICE DESIGNATION

The applicant seeks approval for an equestrian facility (an indoor riding arena and associated maintenance, parking, storage facilities) as a "Community Service" under Multnomah County Code (MCC) 11.15.7005 to .7072. As a threshold matter I must determine whether the proposed use is among the permitted uses listed in MCC 11.15.7020, "Uses."

An "equestrian facility" is not among the Community Service uses authorized by MCC 11.15.7020. However, subsection (A) also authorizes other uses "of a similar nature" to those listed. The two listed uses which most closely approximate the proposed use are "(11) Philanthropic or eleemosynary institution" and "(19) Riding academy or the boarding of horses for profit." I find that the equestrian facility is a "similar use" to these two.

MCC 11.15.7015 contains eight criteria which the applicant must satisfy for a Community Service designation are addressed under separate headings below. The relevant provision is quoted in italics at the beginning of each subsection.

1. Consistency With Character Of The Area

11.15.7015 Approval Criteria

In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for transmission towers, which shall meet the approval criteria of MCC .7035, and except for regil [sic] sanitary landfills which shall comply with MCC .7045 through .7070:

(A) Is consistent with the character of the area;

I find that the proposed use is consistent with the present semi-rural character of the area, which includes large undeveloped properties and parklands to the west and large-lot rural residential development to the south. (See aerial photographs, Staff Report at p. 5.)

Although the proposed use is not the same as the urban uses to the north, or the anticipated urban uses which will come to surround in the future, that does not mean that it will be inconsistent with the character of the area. The use will be consistent with the urban recreational uses in the area, *i.e.* Powell Butte Park and the Springwater Trail.

2. No Adverse Effects On Natural Resources

(B) Will not adversely affect natural resources;

The proposed use will not adversely affect natural resources, provided (1) it secures

any necessary Confined Animal Feeding Operation permit; and (2) the variance to the paving requirements is granted, in order to reduce the potential effects of run-off on water quality in Johnson Creek. (See discussion of parking variance below.)

3. No Conflicts With Farm Or Forest Uses In The Area

(C) Will not conflict with farm or forest uses in the area;

Nearby land is not zoned for farm and forest uses.

Such agricultural uses as may exist on nearby by large residential lots to the south and east, are apparently noncommercial, and therefore not likely to employ management practices which conflict with the proposed equestrian facility. In any event, the use of the equestrian facility resembles the raising of livestock and would be compatible with these nearby non-commercial farm uses.

To the west, the western portion of Powell Butte is zoned and used as a recreational facility rather than for the production of timber or other forest uses. The eastern slope, is zoned for and will shortly be converted to urban residential uses.

To the north the land is in commercial and residential uses.

I find the use will not conflict with farm and forest uses in the area because (1) most of the area is not in farm or forest use and (2) the proposed use is low-intensity use compatible with the types of noncommercial farm activities in the vicinity.

4. Public Services Are, Or Will Be, Available

(D) Will not require public services other than those existing or programmed for the area;

The record in this proceeding shows that the equestrian facility will not require public services (here, water and sewer connections) "other than those programmed for the area," provided it is annexed into the City of Portland.

During the course of the hearing, I raised the issue of whether services could be provided to this facility, if, after annexation, the use was nonconforming. In his memorandum of September 14, 1993, Portland Planning Director Robert E. Stacey, clarified the Planning Bureau's position on this issue:

if the applicant is able to secure an agreement with the City' service bureaus for an extraterritorial extension of services and obtain building permits prior to annexation, the Bureau of Planning has no objection to this development proceeding under County permits. The City could annex the property after issuance of building permits are issued by the County. The equestrian facility, if a "nonconforming use" under our Zoning Code, would be permitted to continue

in accordance with the provisions of Chapter 33.258.050, Nonconforming Uses.

Based on this memo, the June 18 letter from Robert Cynkar of the Portland Bureau of Environmental Services and the information on page 2 of the post-hearing submittal by the Posse, I find this criterion will be satisfied if annexation followed by the provision of services are made a condition of final approval.

The Applicant is on notice that its investment in construction is at risk, because it is contingent upon decisions by the City of Portland regarding annexation and services. If for whatever reason, the City declines to provide those services, prior to occupancy and operation, this approval is void and the Posse may be obliged to abate an unauthorized use.

5. Outside Big Game Winter Habitat

(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

The area lies outside any identified big game winter habitat area, according to the maps used by the County for this purpose. (See Staff Report at 15.)

6. Will Not Create Hazardous Conditions

(F) Will not create hazardous conditions;

There have been three hazards identified in this proceeding which may be created by the proposed facility: (1) improperly stored or disposed of horse manure; (2) hazards created by escaping horses; (3) traffic safety.

The first hazard is addressed through requiring the applicant to secure the necessary Confined Animal Feeding Operation permit and related water discharge permit. The second will be addressed by fencing, which are an integral part of the applicant's proposed use. The third hazard is less easily addressed.

The turn on Circle Avenue (about 120 degrees) near the southeast portion of the subject site and the intersection of Southeast Jenne/174th with Circle Avenue were identified by some of those testifying as unsafe, problems which could be aggravated by the additional traffic to and from the equestrian facility, which could generate up to 200 trips on a Sunday. ("Posse Findings" page 8, Table 4.b.) There was testimony offered by Mr. Burmeister that serious accidents had occurred along SE Jenne/174th in the recent past, possibly caused by excessive speed and poor site lines.

In a letter to Bill Goss dated August 23, 1993, Mr. Ramirez in the County Transportation Department states that "there appear to be no accidents related to vehicles entering or exiting Circle Avenue onto 174th" judging from accident records for the last three years. The letter also states that the 85 percentile for traffic on 174th/Jenne Road

was 42 mph, compared to the posted speed of 40 mph. AASHTO's recommended clear site distance for 40 mph is 400 to 600 feet distance, compared to the actual site distance of 430 feet from the north and 534 feet from the south. Improvements increasing the site distance are programmed but not yet funded. I find this information is sufficient to address the safety concerns for the intersection of Circle Avenue with SE Jenne Road/174th.

The relationship of the proposed use to the safety concerns about the turn on Circle Avenue seems more tenuous to me, given that the site plan shows that access to the facility will be provided at the southeast corner of the proposed parking area, as far as possible, (about 500 feet) from the turn. The applicant has provided a second-hand report from Bob Wheatley in the County Transportation Department, who "does not believe that lack of vision clearance presents a traffic hazard." Posse Response at 3. Planning Staff who visited the site did not find the turn especially hazardous.

To the extent the County has any jurisdiction over the right of way, the County could improve site lines by clearing brush along the right of way and reduce hazards by installing a stop sign.¹ In addition to these measures, which I recommend the applicant pursue with the County or City Transportation Departments, safety aspects related to the design of the access road can be addressed during design review, under the criteria in MCC 11.15.7850(2) and (5).

Based on these facts and recommendations, I find the applicant has satisfied subsection (F).

7. Satisfaction Of Applicable Plan Policies

(G) Will satisfy the applicable policies of the Comprehensive Plan.

The applicable Plan Policies are discussed below.

8. Satisfaction Of Other Applicable Criteria

(H) Will satisfy such other applicable criteria as are stated in this Section.

No other criteria are stated in the Community Service section of the Multnomah County Code.

B. MULTNOMAH COUNTY CODE PROVISIONS: SETBACK STANDARD

MCC 11.15.2628(C), part of the Low-Density Residential zone, states that no "livestock shall be kept within 100 feet of any residence other than the dwelling on the same lot." The applicant argues that this standard applies only to existing houses and that there

¹ There is a disagreement over whether the County or the City have control over Circle Avenue. "Posse Response" of September 14, 1993 at page 3, footnote 1.

is no evidence the County has applied the standard in this fashion (measured from prospective houses) in the past.

The provision is written without reference to political boundaries or jurisdiction. For that reason I conclude that it applies to residences inside the boundaries of Portland. I also interpret this provision as being applicable to houses not yet built, such as those in the proposed Anderegg Meadows subdivision. It would be illogical to assume that a zoning ordinance provisions are intended to protect only existing uses; one of the fundamental purposes of these regulations is to assure the compatibility of future uses of land.

While I believe the County is morally, if not legally, bound to honor prior, reasonable and correct interpretations of its land use regulations, LUBA has repeatedly held that there is no requirement to honor prior incorrect interpretations. *Reeder v. Clackamas County*, 20 Or LUBA 238 at 244 (1992) and cases cited there.

Judging from the drawings provided by the applicant and the developer of the Anderegg subdivision, I find that the west wall of barn will be about 50 feet from the southern edge of the right-of-way for Powell Butte Parkway, the road along the eastern boundary of the future subdivision. Powell Butte Parkway is shown on the drawing as being approximately 40 feet in width. These distances, combined with the 10' side yard and 20' front yard setbacks in the applicable City zone, "Posse Response" at page 4, are sufficient for the barn to satisfy the setback requirement.

The applicant proposes to build paddocks on the west side of the barn. If paddocks are where horses are "kept" they could not be built west of the barn because they would be located within this setback area.

I believe the setback was intended to provide distance between the residential use and areas where animals remain, *i.e.*, where odors and noises associated with the animals persist. If the paddocks are used only for short periods, such as for a few hours on intermittent occasions, then horses are would not be "kept" in them within my interpretation of that term.

The applicant can address whether or not the paddocks can be allowed on the west side of the barn under this interpretation of "kept" during the course of design review.

C. MULTNOMAH COUNTY CODE PROVISIONS: VARIANCE STANDARDS

The applicant seeks a variance from MCC 11.15.6132(A)(1), which requires the parking lot to be surfaced with "two inches of blacktop on a four inch crushed rock base."

The proposed variance must be classified as "major" under MCC 11.15.8515², because the applicant is seeking a variance from paving any of the parking and loading areas.

The four subsections containing the standards for a major variance are set out and discussed under separate headings, below.

1. Practical Difficulties Relating To A Circumstance Or Condition Of The Property Or The Proposed Use

11.15.8505 Variance Approval Criteria

(A) *The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are cause [sic] practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall met [sic] criteria (3) and (4).*

(1) *A circumstance of 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 related 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.*

The applicant relies on three points to address this provision: (1) Anticipated installment of a water line in the Water Bureau conduit easement; (2) the damage to asphalt by horses hooves on hot days; (3) safety; traction is better on gravel. (Posse Findings at 13.)

In addition, during the course of the hearing, Linda Bauer of the Pleasant Valley Neighborhood Association testified that the City of Portland's Bureau of Planning's "Johnson Creek Basin Protection Plan" set limits on the amount of impervious surface which can be created, because they accelerate run-off and contribute to the existing problem with flooding. Ms. Bauer also noted that paved parking areas carry petroleum product pollutants

² That section provides:

11.15.8515 Variance Classification

(A) *A Major Variance is one that is in excess of 25 percent of an applicable dimensional requirement. A Minor Variance must be found to comply with MCC .85059(A). A Major Variance must be found to comply with MCC .8505(A).*

to Johnson Creek. Paving the parking area would also contribute to the existing pollution problem.

I find that the concerns about safety of the horses and riders and the potential adverse affects on nearby Johnson Creek, are a combination circumstances peculiar to this use in this location, and thus satisfy subsection (1).

2. The Standard Imposes Greater Restrictions On The Proposed Use Of The Property Than Other Subject Properties

- (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.*

While the applicant has not provided evidence or argument demonstrating satisfaction of this criterion, the record shows that the applicant's proposed use of the property is significantly less than what is authorized. Requiring paving, at the expense of safety, could compromise the safety of the users of the property, which could be considered an additional restriction the already limited use.

3. The Variance Will Not Be Materially Detrimental To The Public Welfare Or Injurious to Property Owners

- (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 affects the appropriate development of adjoining properties.*

The Applicant relies on a signed petition from surrounding residents. However, that petition doesn't mention a variance from the paving requirement, so it is far from certain the signatories agreed to accept the consequences of an unpaved parking lot. I cannot rely on this petition to demonstrate satisfaction of subsection (3).

The potentially detrimental consequences from a variance from the paving requirement are the dust and mud which might be generated by the large, unpaved area. In order to assure compliance with this standard, I am imposing a condition that the applicant is responsible for assuring that the unpaved area does not generate dust or mud. Dust can be eliminated by sprinkling the lot with water on dry days, whenever dust could become objectionable to neighboring property owners. Mud can be controlled or eliminated by providing an adequate layer of crushed rock.

4. The Variance Will Not Adversely Affect Realization Of The Comprehensive Plan

- (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.

If Condition A is satisfied, the property will not be subject to the County's Comprehensive Plan, but to Portland's. For that reasons I find this section inapplicable.

D. MULTNOMAH COUNTY CODE: CARETAKER RESIDENCE

The applicant's memo dated September 1, 1993, states (page 2):

The Posse does not intend to site the proposed caretaker's manufactured home prior to annexation to the City of Portland.

Therefore I make no decision regarding the proposed care-taker's facility.

E. MULTNOMAH COUNTY CODE: DESIGN REVIEW STANDARDS

Although the applicant requested approval under the Design Review Standards in MCC 11.15.7850 to .7865³. However, Design Review plans are reviewed and approved or denied by the Planning Director MCC 11.15.7845(A), not the Hearings Officer. I do not have the authority to approve a design review plan. MCC 11.15.8115. Design review plans come before a Hearings Officer only on appeal from a decision by the Planning Director. MCC 11.15.7865.

F. COMPREHENSIVE PLAN PROVISIONS: PLAN POLICIES

Aside from the direct applicability of plan policies, which by their terms, indicate their application to quasijudicial decisions, MCC 11.15.7015(G) requires satisfaction of "the applicable policies of the Comprehensive Plan." These policies are addressed below.

1. Policy 2: Off-Site Effects

Policy 2 of the Multnomah County Comprehensive Framework Plan provides:

THE COUNTY'S POLITY IS TO APPLY CONDITIONS TO ITS APPROVAL OF LAND USE ACTIONS WHERE IT IS NECESSARY TO:

A. PROTECT THE PUBLIC FROM THE POTENTIALLY DELETERIOUS EFFECTS OF THE PROPOSED USE; OR

B. FULFILL THE NEED FOR PUBLIC SERVICE DEMANDS CREATED BY THE PROPOSED USE.

³ MCC 11.15.7820 states: *The provisions of MCC .7805 through .7865 shall apply to all conditional and community service uses in any district * * * * ."*

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 14.

Potentially deleterious effects from animal wastes, runoff from the parking area and traffic hazards attributable to increased traffic, are addressed under MCC 1.15.8505(A)(3) above and Policies 13 and 16 below.

2. Policy 13: Air, Water and Noise Quality

Policy 13 of the Multnomah County Comprehensive Framework Plan provides, in relevant part:

FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASIJUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS. IF THE PROPOSAL IS A NOISE SENSITIVE USE AND IS LOCATED IN A NOISE IMPACTED AREA, OR IF THE PROPOSED USE IS A NOISE GENERATOR, THE FOLLOWING SHALL BE INCORPORATED INTO THE SITE PLAN: (Etc.)

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 56.

Water quality will be protected by requiring a CAFO permit, (see discussion under MCC 11.15.7015(B) above) and by granting the paving variance. (See discussion under MCC 11.15.8505(A)(1).)

The equestrian facility will provide between 61 spaces for parking including bus and truck/horse-trailer parking. Posse narrative at page 9; Attachment A (site plan.) It thus falls below the 150-space threshold for "indirect sources" which require an indirect source construction permit, which applies within the boundaries of the City of Portland. OAR 340-20-115(2)(a) (1993).

While this use, like all uses, generates some noise, it does not generate noises which are greater than noises in the area, indeed the use may be much quieter than the noises associated with the residential uses which could be built under the County zoning. Although the applicant did not submit evidence on this point, in reliance on my knowledge of the decibel levels from different kinds of activities, I conclude that the noise from the traffic to and from the site and from the horses themselves, will not violate the noise standards for new commercial and industrial uses in OAR 340-35-035.

3. Policy 14: Development Limitations

Policy 14 of the Multnomah County Comprehensive Framework Plan provides:

FOR 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 LIMITATION AREAS ARE THOSE WHICH ANY OF THE FOLLOWING CHARACTERISTICS:

- A. SLOPES EXCEEDING 20%.*
- B. SEVERE SOIL EROSION POTENTIAL;*
- C. LAND WITHIN 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.*

The topographical maps provide some confirmation of that conclusion with respect to items A, B and F.

During the hearing the boundary of the flood plain from Johnson Creek was identified on the zoning map; it does not encompass any part of the property.

With respect to subsections D, high water table, or E., a fragipan less than 30 inches from the surface, no information has been supplied. At page 16 the Staff Report, the staff expresses its concurrence with the applicant's conclusion that the area has "no identified limitations as described in Policy 14." For the last time, I will rely on the bald, unsupported statement of agreement by the staff, based on the assumption the staff has consulted the relevant documents or maps.⁴

4. Policy 16: Natural Resources

Policy 16 of the Multnomah County Comprehensive Framework Plan provides:

THE COUNTY'S POLICY IS TO PROTECT NATURAL RESOURCE AREAS AND TO REQUIRE A FINDING PRIOR TO APPROVAL OF A

⁴ In all subsequent review proceedings I will expect soil maps or copies of relevant maps or portions of maps of these hazards in order to determine compliance with the standard.

LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE LONG-RANGE AVAILABILITY AND USE OF THE FOLLOWING WILL NOT BE LIMITED OR IMPAIRED:

- A. MINERAL AND AGGREGATE SOURCES;*
- B. ENERGY RESOURCE AREAS;*
- C. DOMESTIC WATER SUPPLY WATERSHEDS;*
- D. FISH HABITAT AREAS; AND*
- E. WILDLIFE HABITAT AREAS; AND*
- F. ECOLOGICALLY AND SCIENTIFICALLY SIGNIFICANT NATURAL AREAS.*

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 66.

No information was provided by the applicant regarding subsections A, B or C. Since satisfaction of A and B, nor has the Staff provided any analysis of the applicant's compliance with Policy 16. Staff Report at 16.

Water resources, protected by subsection C, could be impaired either by pollution from the manure or by the applicant's draft on existing groundwater supplies. See Posse Findings at page 7, footnote 1. I find that the problem of potential contamination is adequately addressed by the provisions of Condition B. If the applicants to drill a well, they will need to provide evidence establishing their groundwater withdrawals will not impair water supplies of other users relying on the same aquifer.

The applicant states (Posse Findings 10) that the site does not appear on any Goal 5 inventories. Based solely on the applicant's unsupported conclusion I am finding compliance with this Policy. (See footnote 2, above.)

5. Policy 22: Energy Conservation

THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. IN ADDITION, IT IS THE POLICY OF MULTNOMAH COUNTY TO REDUCE DEPENDENCY ON NON-RENEWABLE ENERGY RESOURCES AND TO SUPPORT GREATER UTILIZATION OF RENEWABLE ENERGY RESOURCES. THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASIJUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED;

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

I make the following findings in support of my conclusion that these factors were "considered" prior to this decision:

The question presented by Subsection A and B is whether or not it would be more energy efficient to use this urban site for residential uses rather than the proposed low-intensity recreational use. However, a competing consideration is that placing this facility in a rural location will generate more vehicles miles traveled by its users. See Posse Findings at 11. Given the small area occupied by the use and the opportunity to take advantage of the park at Powell Butte and the Springwater Trail, I conclude that this site has sufficient energy advantages over an alternative, rural site to satisfy the requirements of the policy.

Subsection C, D and E, by their terms, do not apply to the propose use, which is not a residential development, is not a transportation facility and is not renewable energy resource.

6. Policies 31.F, G., H: Community Facilities And Uses

Policy 31 applies to "Community Facilities and Services." A review of the list of uses described as "Community Facilities" in subsection 31.E, shows that "Community Services" encompass many of the uses governed by MCC 11.15.7005 to .7072. From this I conclude that Policy 31 may apply to the proposed use.

I find that Policies 31.A through 31.E, and 31I. through K, by their terms, are intended to govern the adoption of implementing measures and are not intended to be directly applicable to quasijudicial decisions.

Policies 31.F and 31.G, establish numeric standards, which appear to have been intended to be directly applicable to quasijudicial decisions on applications for Community Service designations. This interpretation is supported by the absence of provisions in MCC 11.15.7015 or .7025 which implement these standards.

The applicant believes the equestrian facility fits within the class of "minor regional" facility under subsection E of Policy 31, but contends that it need not comply with the requirement in Policy 31.G because a collector street is .2 miles away, the roadway is 18 feet in width and the neighbors support the proposed use. Posse Findings, page 10.

There is no *de minimus* exception to Policy 31F, and neighbors' support for a proposed use is not the equivalent of the applicant's satisfaction of mandatory standards. If the proposed use was a "Minor Regional Community Service Facility" it would have to be denied because it did not satisfy subsection F.

As noted above, the Community Service uses authorized by MCC 11.15.7020 which most closely approximate the proposed use are (11) "Philanthropic or eleemosynary institution" and (19) "Riding academy or the boarding of horses for profit." Neither of these uses are listed as a "Community Facility" under Policy 31E. I conclude therefore, that subsection (F) is inapplicable to the proposed facility.

Policy 31.H, like Policy 31.F, applies only to the "Community Facilities" listed and classified in Subsection 31.E. Therefore it is inapplicable for the same reason.

7. Policy 37: Utilities

Multnomah County Plan Policy 37, "Utilities" provides:

POLICY 37

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

WATER AND DISPOSAL SYSTEM

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

WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR

- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.*

With respect to the requirements for water and sewage disposal, condition of Approval A, if fulfilled, will satisfy subsection A.

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.*

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 167-168.

Compliance with the policy subsections applicable to drainage and runoff can be addressed during site review. MCC 11.15.7830(E),(F),(G); .7850(6).

ENERGY AND COMMUNICATIONS

- H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND*

- I. COMMUNICATIONS FACILITIES ARE AVAILABLE*

FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 168.

The maps, aerial photograph and testimony demonstrate site is in an area of low and high density residential uses with urban commercial uses a short distance to the north. I am

able to infer from this information that energy and communication facilities are available.

8. Policy 38: Facilities

Multnomah County Plan Policy 38, "Facilities" provides:

POLICY 38

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

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

FIRE PROTECTION

B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND

C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENTS [sic] ON THE PROPOSAL.

POLICE PROTECTION

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

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 169-170.

With respect to subsections A and C, the required notice to the school and fire district were provided on the green forms, dated February 22, 1993.

According to the applicant, (Posse Findings at 11, footnote 2), the Senior Inspector for the Portland Fire Bureau stated that "adequate fire flows were a major concern" but the concern could be addressed either by connecting to the Anderegg Meadows water system or construction of a water tank to City of Portland standards. Condition A, (provision of water service by Portland) will satisfy Policy 38B.

G. LAND DIVISION ORDINANCE: PROPOSED PARCEL LINE ADJUSTMENT

The applicant requests a property line adjustment between two Gun Club parcels, in order to create the 2.2 acre parcel which they propose as the site of their facility. If the parcel line adjustment is of the type defined in MCC 11.45.010(T), it is exempted from the partitioning standards in MCC 11.45. I adopt the relevant portions of the Staff Report at pages 20-21 as my own findings of fact and conclusions of law, i.e. that the lot line adjustment is authorized under MCC 11.45.010.

IV. CONDITIONS OF APPROVAL

MCC 11.15.7115 allows the approval authority to:

*attach conditions and restrictions to any use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use * * * performance standards, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.*

MCC 11.15.8240 provides in pertinent part:

(A) *The Planning Commission or Hearings Officer may approve an application as submitted, deny it, or approve it with such modifications or conditions as may be necessary to carry out the Comprehensive Plan or to obtain the objectives of (D)(2) below.*

* * * * *

(D) *The following limitations shall be applicable to conditional approvals:*

(1) *Conditions shall be fulfilled within a time limitation setforth [sic] in the approval thereof, or if not time limit is set, within a reasonable time.*

(2) *Conditions shall be reasonably designed to fulfill public needs emanating from the proposed land use in either of the following respects:*

(a) *Protection of the public from the potentially deleterious effects of the proposed use; * * **

Based on these authorizations, I approve the use, subject to the following conditions and subsequent design review.

A. Provision Of Sewer And Water Upon Annexation By The City

As proposed by the applicant, final approval of this use is made conditional on the provision of water and sewer by the City of Portland.

B. The Applicant Is To Secure The Required CAFO And Associated DEQ Permits.

The applicant must secure the required Confined Animal Feeding Operation permit. Compliance with the conditions in that permit is a condition of approval of the use by the County. The permit shall be renewed as required.

C. Control Of Dust And Mud From Unpaved Parking And Loading Area

The Mounted Posse is responsible for preventing objectionable dust or mud from originating from the parking and loading surfaces for which they received a variance from the paving requirements. On days when dust could be a problem, the area shall be watered. Mud shall be avoided by the providing an adequate type and depth of crushed rock.

October 19 _____ 1993
Date

Robert Liberty, ps

Robert Liberty, Hearings Officer

Filed With the Clerk of the Board on October 22 1993.

In the matter of CS 6-93/HV 16-93/PLA 12-93:

Signed by the Hearings Officer: October 19, 1993
[date]

Decision mailed to parties: October 21, 1993
[date]

Submitted to Clerk of the Board: October 22, 1993
[date]

Last day to Appeal to the Board: November 2, 1993
[date]

Decision Reported to Board: **November 9, 1993 at 1:30 p.m.**
Room 602, Multnomah County Courthouse
1021 SW 4th Avenue, Portland, OR 97204

Appeal to the Board of County Commissioners

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

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



Multnomah County Sheriff's Office

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

BOB SKIPPER
SHERIFF

(503) 255-3600

MEMORANDUM

TO: Mr. Scott Pemble
Planning Director

cc: Posse File

FROM: Lt. Bill Goss *[Signature]*

DATE: October 21, 1993

SUBJECT: Fee Waiver Request

The Mounted Posse Equestrian Center land use hearing has been completed and the decision will be forwarded to the Board for ratification in early November. Please accept the attached information and my renewed request that you submit the Posse's request for waiver of planning fees.

The Posse submitted payments of \$800 and \$400 for the land use hearing and the concurrent variance. I have included copies of the cancelled checks used for payment of these two matters.

I would like to be notified when the request to the Board will be made so that I may be present to answer any questions the Board may have concerning this request. Please provide me with sufficient lead time to place it on my calendar. You may contact me at 251-2422.

I appreciate your willingness to make this request known to the Board. The Sheriff's Posse will enjoy counting the Planning and Development Board among its' long list of supporters.

RECEIVED
OCT 22 1993

Multnomah County
Zoning Division

MEETING DATE: November 9, 1993

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: C 3-93

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: November 9, 1993

Amount of Time Needed: 10 Minutes

DEPARTMENT: DES DIVISION: Planning and Development

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

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

C 3-93 This matter came before the Board on October 12, 1993, at which time the Board rejected the Planning Commission recommendation and designated the scenic views of the West Hills as iC, a significant scenic resource under Statewide Planning Goal 5. Findings which address the reasons the Board found the West Hills to be significant have been prepared for review and adoption. The ESEE analysis required by Goal 5 will come before the Board at a later date.

*11/10/93 copies to Scott Pemble,
Sandy Mathewson & Sharon Cowley*

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: *[Signature]* Betsy Williams

1993 NOV -2 PM 1:48
CLERK OF
COUNTY COMMISSIONERS
MULTI-NOMINAL COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C3-93

Agenda Placement Sheet No. of Pages 11

Case Summary Sheet No. of Pages 1
 Previously Distributed _____

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

Decision Resurrection No. of Pages 1
(~~Hearings Officer/Planning Commission~~) Bycc
 Previously Distributed _____

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



BOARD HEARING OF November 9, 1993

CASE NAME: **Goal 5 Scenic Resources,
West Hills Rural Area Plan**

TIME **1:30 pm**
NUMBER **C 3-93**

1. Proposal:

Adopt Findings and Conclusions relating to the scenic significance of the West Hills.

2. Background:

This matter came before the Board on October 12, 1993, at which time the Board rejected the Planning Commission Recommendation and designated the scenic views of the West Hills as 1 C, a significant scenic resource under State-wide Planning Goal 5. Findings which address the reasons the Board found the West Hills to be significant have been prepared for review and adoption. The ESEE analysis required by Goal 5 will come before the Board at a later date.

ACTION REQUESTED OF BOARD	
<input checked="" type="checkbox"/>	Adopt Findings
<input type="checkbox"/>	Hearing
<input type="checkbox"/>	Scope of Review
<input type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	New Information allowed

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

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

RESOLUTION

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

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

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

WHEREAS, This matter came before the Board of Commissioners for a public hearing on October 12, 1993, at which time the Board, after considering testimony, evidence and the Planning Commission Recommendation approved a motion to reject the Planning Commission Recommendation and designate the scenic views of the West Hills as significant ("1C"); and

NOW THEREFORE BE IT RESOLVED that the Board adopts the attached Findings and Conclusions as presented at the November 9, 1993 Board of Commissioner's meeting.

BE IT FURTHER RESOLVED that the West Hills Scenic Study Area is designated a significant scenic resource pursuant to OAR 660-16 and Statewide Planning Goal 5.

BE IT FURTHER RESOLVED that the Board directs Planning Staff to complete the Goal 5 process by identifying conflicting uses, analyzing their ESEE consequences, and proposing a program to provide an appropriate level of protection for the scenic values of the West Hills.

Approved this 9th day of November, 1993

By _____
Beverly Stein, Chair
Board of County Commissioners

REVIEWED:



John DuBay
Chief Assistant County Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

In the Matter of Designating the)
West Hills Scenic Study Area a) RESOLUTION
Significant Scenic Resource Pur-)
suant to OAR 660-16 and Statewide) 93- 371
Planning Goal 5, Adopting Findings)
and Directing Staff to Complete the)
Goal 5 Process)

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

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

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

WHEREAS, this matter came before the Board of Commissioners for a public hearing on October 12, 1993, at which time the Board, after considering testimony, evidence and the Planning Commission recommendation, approved a motion to reject the Planning Commission recommendation and designate the scenic views of the West Hills as significant ("1C"); now therefore

IT IS HEREBY RESOLVED that the Board adopts the attached Findings and Conclusions as presented at the November 9, 1993 Board of Commissioners' meeting; and

IT IS FURTHER RESOLVED that the West Hills Scenic Study Area is designated a significant scenic resource pursuant to OAR 660-16 and Statewide Planning Goal 5; and

IT IS FURTHER RESOLVED that the Board directs Planning Staff to complete the Goal 5 process by identifying conflicting uses, analyzing their ESEE consequences, and proposing a program to provide an appropriate level of protection for the scenic values of the West Hills.

ADOPTED this 9th day of November, 1993.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein
Beverly Stein, Chair

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

By *John L. DuBay*
John L. DuBay, Chief Deputy



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

C 3-93

West Hills Study Area Scenic Resources
Determination of Significance

FINDINGS AND CONCLUSIONS

I. BACKGROUND

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

II. LOCATION:

The north face of the West Hills (Tualatin Mountains), extending north of the ridgeline (roughly corresponding to Skyline Boulevard) to Highway 30 on the north, and from the Portland City Limits to the Columbia County line (see attached map).

III. QUANTITY:

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

Large areas of Multnomah County have already been designated as scenic resources. The most extensive is the Columbia River Gorge National Scenic Area (NSA), which takes up 52 square miles of the county, the Sandy River Gorge, which is a designated state and federal scenic waterway, and the Willamette River Greenway. The following table compares the sizes of these scenic areas with the West Hills study area.

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

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

SUMMARY:

While just over 1/4 of the non-urban area of Multnomah County has already been recognized and protected because of scenic value, the majority of these scenic resources are in the eastern portion of the county. The Willamette River Greenway, in the western portion of the county, is only 4 percent of total non-urban land. This lack of other scenic resources in western Multnomah County adds significance to the West Hills. In addition, the quantity of other scenic resources should not be a penalizing factor in considering whether the West Hills are significant.

IV. QUALITY:

A. QUALITY CRITERIA

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

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

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

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

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

B. ANALYSIS OF WEST HILLS SCENIC QUALITIES

Variety: The West Hills landform consists of the front of the Tualatin Mountains, a series of gentle mountains ranging in height from approximately 900' to 1500'. Various canyons bisect the face of the Hills, adding variety to the landform. Vegetation on the Hills is a mixture of coniferous and deciduous forest. Logging activity has created variety in the vegetation pattern, with different ages of regrowth appearing as different textures and shades of green. The Vine Maple and other early-succession species provide color variety in recently logged areas, especially in the fall.

Intactness: When viewed from a distance, such as from Gillihan Loop Road or the Sauvie Island Wildlife Refuge, the West Hills appear to be a velvety green background. While the results of logging are visible in places, this is a temporary activity and regrowth will occur. There is little housing or other development visible on the majority of the hillsides.

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

Viewing area Importance/Accessibility: Many places on Sauvie Island receive high visitor use, and the West Hills provide valuable background scenery. Important areas where the West Hills can be viewed include the Sauvie Island Wildlife Refuge, Bybee-Howell House,

Virginia Lakes, and various roads on the Island, which are popular bicycle routes. Recreational users of the Multnomah Channel and Willamette River also benefit from views of the Hills. Travellers along Highway 30 can enjoy glimpses and views of the Hills. Proximity and easy accessibility to the large urban population of Portland add significance.

C. COMPARISON TO OTHER SCENIC AREAS

The West Hills cannot be fairly compared to the other recognized scenic areas in the county. The Columbia River Gorge is a national scenic area, of such outstanding value and importance that any other scenery pales in comparison. The Sandy River and Willamette River Greenway are recognized on a state level. The intent of Goal 5 is to recognize resources that are important to the county, but which may not be significant if considered at a state or national level. The West Hills are significant when viewed alone. The Columbia River Gorge and Sandy River are also a different landscape character type than the West Hills.

D. SUMMARY

The West Hills exhibit important unity and coherence, being part of a mountain Greenway extending from Portland to the Coast Range. They are an integral part of the scenic framework of Sauvie Island, the Multnomah Channel and the Willamette River, and provide an outstanding contrast between the developed urban areas of Portland and the natural beauty of the forested hills. Views of the Hills provide valuable scenery to travelers along Highway 30 and the roads on Sauvie Island.

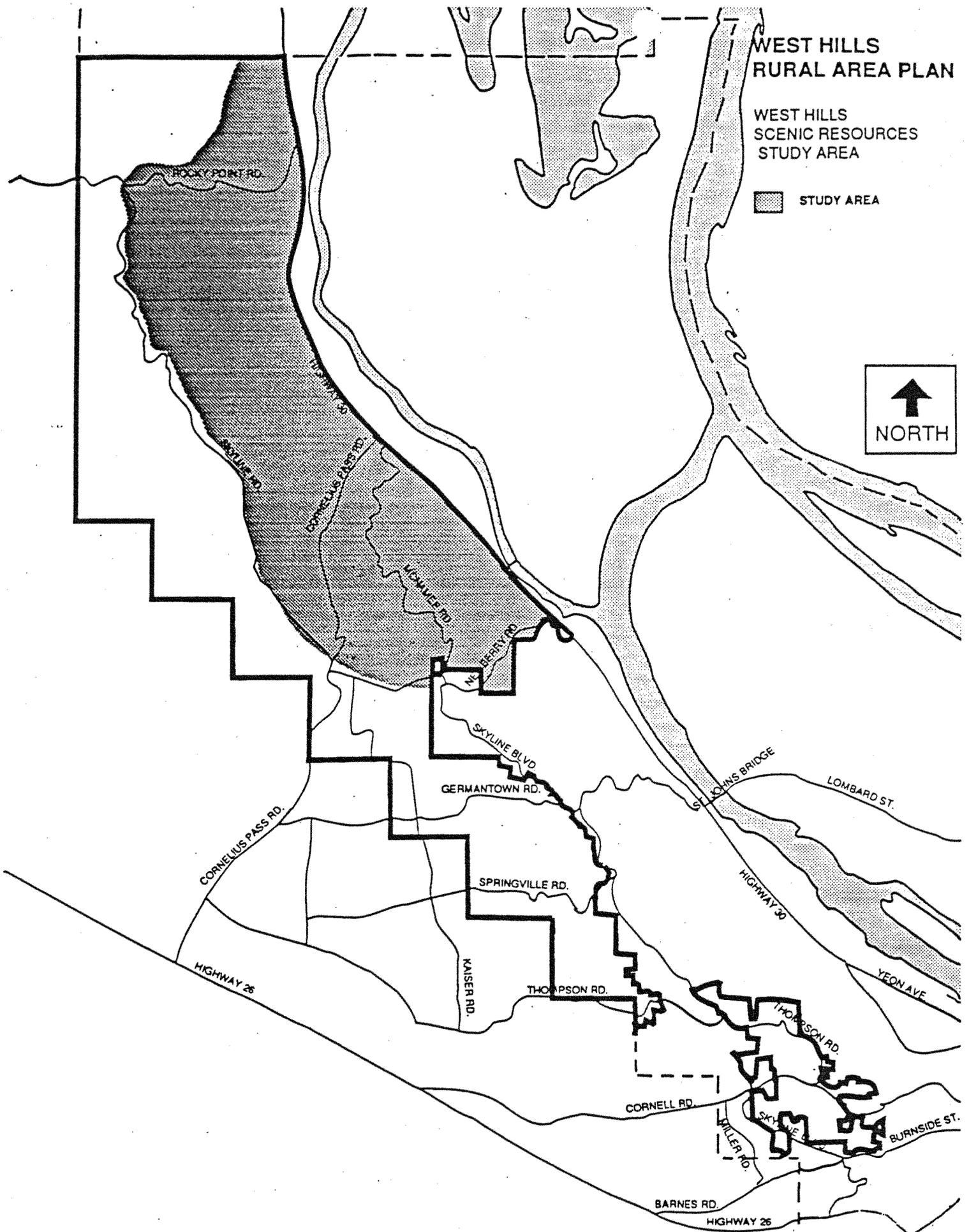
V. CONCLUSIONS:

1. The location of the West Hills study area has been identified in this report and on the attached map.
2. Analysis of the quantity of identified scenic resources in the county shows that the majority are in the eastern part of the county.
3. Analysis of the quality of the West Hills scenery, based on a compilation of criteria used in other studies to determine quality of scenic views, shows that the West Hills exhibit variety, intactness, unity and coherence, easy accessibility and proximity to Portland, and are part of the scenic view from many highly visited areas on and near Sauvie Island.
4. Based on this analysis of the quantity and quality of the West Hills scenic landscape, the West Hills are a significant scenic resource.

WEST HILLS RURAL AREA PLAN

WEST HILLS SCENIC RESOURCES STUDY AREA

 STUDY AREA



#1

PLEASE PRINT LEGIBLY!

MEETING DATE NOV 9, 1993

NAME PAUL R BONI

ADDRESS 330 NW ROYAL BLVD

STREET PORTLAND OR 97210

CITY ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-3

SUPPORT _____ OPPOSE

SUBMIT TO BOARD CLERK

#2
PLEASE PRINT LEGIBLY!

MEETING DATE 11/9/93

NAME ROBERT WORKMAN

ADDRESS 13955 N.W. LUCY REEDER RD.

STREET

PORTLAND, OR.
CITY

97231
ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # CU 21-93

SUPPORT _____

OPPOSE X P-3

SUBMIT TO BOARD CLERK

#3

PLEASE PRINT LEGIBLY!

MEETING DATE 11-9-93

NAME Daniel Kearns

ADDRESS 111 SW 5th Ave, Suite 3200

STREET	<u>Portland</u>	<u>OR</u>	<u>97204-3600</u>
CITY			ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # CU-21-93

SUPPORT Neutral **OPPOSE** 0-3

SUBMIT TO BOARD CLERK

MEETING DATE: November 9, 1993

AGENDA NO: P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CU 21-93 Decision Review - Public Hearing

BOARD BRIEFING Date Requested: _____
Amount of Time Needed: _____

REGULAR MEETING: Date Requested: November 9, 1993
Amount of Time Needed: 1 hour

DEPARTMENT: DES DIVISION: Planning and Development

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

PERSON(S) MAKING PRESENTATION: Sandy Mathewson

ACTION REQUESTED:

- INFORMATIONAL ONLY
- POLICY DIRECTION
- APPROVAL
- OTHER ^{(x) Deny}

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

CU 21-93 Public Hearing to review the Hearings Officer Decision of September 15, 1993, denying conditional use request for a commercial activity in conjunction with farm use, for property located at 24315 NW Oak Island Road.

Public Hearing: On The Record

Testimony Limited to 15 Minutes Per Side

12/10/93 Copies of 93-387 to Sharon Cowley

BOARD OF COUNTY COMMISSIONERS
MULTI-COUNTY OREGON
1993 NOV -2 PM 1:49

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: *JP Betty Willis*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. 0421-93

- Agenda Placement Sheet No. of Pages 1

- Case Summary Sheet No. of Pages 1
 Previously Distributed _____

- Notice of Review No. of Pages 10
*(Maybe distributed at Board Meeting)
 Previously Distributed _____

- Decision No. of Pages 16
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. 0421-93

I. Materials Distributed to the Board

- Agenda Placement Sheet (1 Pages)
- Case Summary Sheet (1 Pages)
- Notice of Review Application (10 Pages)
- Decision (16 Pages)
(Hearings Officer/Planning Commission)

II. Materials Available Upon Request

- Minutes (6 Pages)
- Transcript (32 Pages)
- Applicant's Application and Submittals (Pages)
- Case Correspondence (Letters)
- Slides (Slides)
- Exhibits/Maps (Exhibits)
(Maps)
- Other Materials ()



CASE NAME: Northwest Brewers Grains
Appeal of Conditional Use Denial

TIME: 1:30 pm
NUMBER: CU 21-93

1. Applicant Name/Address:

Northwest Brewers Grains
c/o Anderson, Beail & Raines
9706 Fourth Ave. NE Suite 305
Seattle, WA 98115-2157

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

2. Action Requested by applicant:

Approve a commercial activity in conjunction with farm use in the EFU zone, specifically a recycling and storage facility for spent brewery grain.

3. Staff Report Recommendation (August 2, 1993):

Approve, subject to conditions

4. Hearings Officer Decision (September 15, 1993):

Denied

5. If recommendation and decision are different, why?

The Hearings Officer found that the proposed use does not fit the definition of a "commercial activity in conjunction with farm use" under state statute or county code.

ISSUES

The Hearings Officer concluded that the proposed activity is not a "commercial activity in conjunction with farm use" because 1) it does not involve a commodity produced on the farm itself; 2) it does not involve a commodity produced by farmers in the vicinity; 3) it does not involve sales of items or products accessory to the sale or storage of farm commodities; and 4) it does not qualify as a farm use in its own right.

In addition, the Hearings Officer relied on a previous decision by Multnomah County [Chauncey] that required that in order to be in conjunction with farm use, the product must be sold primarily to farms within the vicinity. That decision denied an application for a bark grinding and processing operation in association with a nursery because the evidence in the record did not demonstrate that the products were sold primarily to farms within a 10 mile radius. LUBA upheld this decision based on a Supreme Court decision [Craven v. Jackson County] that found that to be "in conjunction with farm use", the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates. The spent grain which would be stored at the subject property is delivered as feed to dairy farms in NW Oregon and SW Washington, most of which are more than 10 miles away.



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

NOTICE OF REVIEW

1. Name: Hathaway , S. , Gregory
Last Middle First
2. Address: 1300 SW 5th, Suite 2300 , Portland , OR 97201
Street or Box City State and Zip Code
3. Telephone: (503) 241 - 2300
4. If serving as a representative of other persons, list their names and addresses:
Northwest Brewers Grains of Oregon, Inc.
9706 Fourth Ave. NE, Suite 305
Seattle, WA 98115-2157
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?
Denial of Conditional Use Request (Commercial Use
in conjunction with Farm Use), CU 21-93
6. The decision was announced by the Planning Commission on Sept. 16 , 19 93
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
Northwest Brewers Grain of Oregon, Inc. is the applicant for
Conditional Use Request CU21-93 and has appeared before the
Hearings Officer through its representative, Gregory S. Hathaway
and David Evans and Associates.

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

See Exh. - A

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: Gregory S. Hathaway Date: 9-27-93
GREGORY S. HATHAWAY

For Staff Use Only	
Fee:	
Notice of Review =	\$300.00
Transcription Fee:	
Length of Hearing	140 x \$3.50/minute = \$ 490.00
Total Fee = \$	790
Received by: <u>M. Hess</u>	Date: <u>9/27/93</u> Case No. <u>CU 21-93a</u>

EXHIBIT A

BEFORE THE MULTNOMAH COUNTY

BOARD OF COUNTY COMMISSIONERS

NORTHWEST BREWERS' GRAINS)	Case No. CU 21-93
OF OREGON, INC.,)	
)	SPECIFIC GROUNDS FOR REVIEW
Applicants,)	AND REQUEST FOR ARGUMENT
)	
Request for a Conditional Use)	
Permit for a Commercial)	
Activity in conjunction with)	
Farm Use in an EFU Zoning)	
District.)	

I. GROUNDS FOR REVERSAL OF DECISION

A. Factual Background

The Applicant has submitted a conditional use application for a commercial activity in conjunction with farm use to continue operation of a brewery grain ensilage and storage facility located on Sauvie Island. Applicant seeks to modernize and enhance its existing facility which it has utilized for the past nine years.

Applicant engages in the business of supplying high quality, low cost dairy cattle feeds to local dairy operations. The Applicant's feed source is brewers' grains which Applicant procures from the Blitz-Weinhard Brewery located in downtown Portland. Brewers' grain (which is nothing more than grains such as wheat and barley that have been physically altered by the brewing process) has been determined by the Oregon State Extension Service to be one of the best dairy feeds available due to its nutritive value and lower cost.

A simple but effective system facilitates maximization of the grain resource and enables dairy operations to benefit from a product which would otherwise be dumped in a landfill. The components of the system, as described below, are interdependent and essential to the system's participants.

1. **Grain Production:** Farmers produce the grain which is used by the brewery in the production of beer.

2. **Blitz-Weinhard Brewery:** The brewery provides a key market for the sale of farmers' crops. The brewing process transforms the grain into a mash commonly called "brewers' grains." Grains must be removed from the brewery approximately every three hours.

3. **Northwest Brewers' Grains, Inc.:** Applicant removes the grain from the brewery and in most instances delivers the grain directly to the dairy farm community of Northwest Oregon and Southwest Washington. Consistency of feed rations is critical to dairy cattle milk production. Therefore, the Applicant must maintain storage facilities to account for those instances when either dairy demand exceeds supply or when brewery production exceeds demand. Leachate resulting from grain storage is used by the Applicant to fertilize hay and grains grown on site. These crops are mixed with the grain during the ensilaging process to add further nutritive value to the feed.

4. **The Local Dairy Community:** The local dairy farmers are the final participants and beneficiaries in the system. N.W. Brewers' Grains distributes and transports the cattle feed directly to the dairy farmer. The dairy farmer facilitates the grains' product cycle by feeding the grain to their dairy cattle. According to the Oregon State Extension Service, milk production is increased by the feeding of brewers' grains because the grains are more easily digested and the nutrients more readily absorbed.

Applicant's use of the Sauvie Island property as a storage and ensilage site is a key component in the facilitation of a cycle which both begins and ends on the farm. The unique characteristics of both the dairy industry and the brewery business

require that the Applicant maintain storage facilities for the grain at a location central to dairy operations, close to the brewery, and yet away from high density urban zones.

Cessation of the Sauvie Island operation will break the product cycle and adversely impact both the agricultural and non-agricultural communities. Failure to utilize the grain as feed will result in disposing of the grain as waste; requiring as many as eight truckloads per day of grain to be dumped at the local landfill. Requiring Applicant to relocate the storage facility to an industrial area will result in prohibitive cost increases, leachate disposal problems and legitimate concerns over odor produced by the ensilaging process.

The Multnomah County Planning Staff concluded in its Staff Report dated August 2, 1993, that the Applicant's operation of a brewery grain ensilage and storage facility qualified as a commercial activity in conjunction with farm use pursuant to MCC 11.15.2012 (B) (1). The Planning Staff also concluded that the Applicant had demonstrated compliance with all of the County's applicable legal criteria and recommended approval of the Applicant's request subject to conditions.

B. Multnomah County's Prior Interpretation of "Commercial Activity In Conjunction With Farm Use": The Chauncy Case

In 1991, the Board of County Commissioners (the "Board") reviewed a conditional use permit application in which the applicants, Bowlus and Lynne Chauncey, sought approval to operate a commercial wood products firm ("Beaver Bark") within an Exclusive

Farm Use (EFU) District. The Board denied the request and the matter was appealed to the Land Use Board of Appeals ("LUBA"). LUBA affirmed the Board's denial. Chauncey v. Multnomah County, 23 Or LUBA 599 (1992). The applicants asserted that the commercial activity was in conjunction with farm use pursuant to MCC 11.15.2012(B)(1).

In applying the test as articulated by the Oregon Supreme Court in Craven v. Jackson County, 779 P.2d 1101 (Or. 1989) for whether a commercial activity is in conjunction with farm use, the Board denied the request based on the following four factors:

1. **Nature of the Applicants' Product:** The applicants asserted that their product could be used by nurseries and other agricultural enterprises. However, the applicants failed to prove that their product was actually used for agricultural purposes.
2. **Nature of the Applicants' Customers:** The applicants argued that their bark products were sold to nurseries. However, as an illustration of the non-agricultural nature of the applicants' activity, the evidence indicated that only two out of thirty-six nurseries within a 10-mile radius used the product. Consequently, the applicants could not prove that their customers were agricultural enterprises.
3. **The Focus of Applicants' Marketing:** Advertising conducted by the applicants was aimed at procuring non-agricultural customers. The advertisements indicated the applicants were marketing to homeowners rather than agricultural enterprises.
4. **Nature of the On-site Activity:** The applicants' on-site activity consisted of storing, grinding and distributing a non-agricultural product. None of these activities were consistent with the area character in terms of its nature or its location.

In Chauncy, the Board acknowledged that the standard for "commercial activity in conjunction with farm use" is met by "the consumption of a product by farms and not just the sale of

commodities produced on farms." However, the Board declined to approve the Chauncey application because the evidence did not show that the applicants' product was used for agricultural purposes.

The Hearings Officer decision in the present case states that the Chauncy decision is a "controlling interpretive precedent" applicable to this request by Northwest Brewers' Grains.

C. Specific Grounds For Appeal

The basis for the Hearings Officer's denial of the Applicant's request is that the Applicant's operation of a brewery grain ensilage and storage facility for distribution of cattle feed to dairy farmers does not qualify as a commercial activity in conjunction with farm uses pursuant to MCC 11.15.2021 (B). The decision by the Hearings Officer is in error based on the following grounds:

- 1. The Hearings Officer has improperly characterized the nature of the Applicant's commercial activity based upon the evidence in the record.**

In denying the Applicant's request, the Hearings Officer asserted the following factual findings to support his decision: (1) the brewers grain is a non-agricultural product; (2) the Applicant's "commercial activity is brewing beer"; (3) the Applicant's commercial activity has no relationship to the past and prospective agricultural uses of the Applicant's farm property; and (4) that the brewers grain is not essential to the dairy farmers. These findings by the Hearings Officer are not supported by the substantial evidence in the record and are incorrect.

The uncontroverted substantial evidence in the record indicates that: (1) the brewers grain is comprised of wheat and barley, clearly an agricultural product, which has been physically altered by the brewing process. It was improper for the Hearings Officer to mischaracterize this grain product by simply referring to it as a "by-product from a non-agricultural industrial enterprise". The Hearings Officer's mischaracterization ignores the evidence in the record that establishes the agricultural product cycle for brewers' grain; (2) the Applicant's commercial activity is not the brewing of beer, but rather, the storing and distribution of brewers grain for use as cattle feed for dairy farmers; (3) the Applicant's commercial activity does have a relationship with the agricultural activities occurring on the subject property because the brewers grain is mixed with crops grown on-site to create an additional dairy feed product, and the leachate from the storage of the grain will be used as fertilizer for the growing of crops on the property; and (4) the Oregon State Extension Service has stated that the brewers' grain is important to the dairy community since it is one of the best dairy feeds available due to its nutritive value and lower cost.

For the Board to properly determine whether the Applicant's use is a commercial activity in conjunction with farm uses, it is essential that the use be properly characterized based on the evidence in the record. For the reasons cited above, the Hearings Officer's findings are incorrect.

2. The Hearings Officer did not make a finding or a conclusion that the Applicant's commercial activity is not consistent with the Board's decision in Chauncy.

While the Hearings Officer cites the Chauncy decision as controlling in evaluating whether the Applicant's commercial activity qualifies as a commercial activity in conjunction with farm uses pursuant to MCC 11.15.2012 (B)(1), the Hearings Officer omitted any discussion of the factors the Board considered pertinent in Chauncy or the evidence in the record to determine whether Northwest Brewers' Grain met the Chauncy test. At page 13 of his decision, the Hearings Officer states, "[H]owever, Chauncy is a controlling interpretive precedent for a decision made by Multnomah County. I must review the record to determine whether or not the applicant meets the test articulated in that case". However, as stated above, the Hearings Officer did not review the substantial evidence in the record, including the three (3) letters from the Oregon State University Extension Service which demonstrate that the Applicant's commercial activity meets the Chauncy test.

3. The Hearings Officer's inference that the Applicant's commercial activity (which provides benefit to the dairy community) would violate the policy to prevent agricultural land from being diverted to non-agricultural use is incorrect and ignores the evidence in the record.

On page 15 of the Hearings Officer's decision, an inference is made that the Applicant's commercial activity is nothing more than an "extension or overflow of the urban brewing

facility". Consequently, the Hearings Officer cites the policy that agricultural land should be preserved for agricultural uses. This inference by the Hearings Officer completely ignores the substantial evidence in the record, including the aforementioned letters from the Oregon State University Extension Service, that describe the agricultural product cycle of brewers' grain and the benefits derived by the dairy community. As the Multnomah County Planning Staff concluded, "the spent grain that will be stored at the site is used exclusively as feed for cattle and dairy cows. This is clearly an agricultural use. In addition, waste water from the lagoon will be used for irrigating and fertilizing crops on the subject parcel, also an agricultural activity." The uncontradicted evidence in the record overwhelmingly demonstrates that the agricultural policy is uniquely satisfied in this case because of the facilitation of a cycle which both begins and ends on the farm.

4. The Hearings Officer mischaracterized public support for Applicant's use.

The Hearings Officer states that other than the Applicant, no other persons expressed support for the application. This statement is clearly erroneous as demonstrated by Appendix F to Applicant's conditional use application which evidences the express support of three of Applicant's neighbors. Furthermore, two Extension Dairy Specialists with Oregon State University and Extension Service have submitted testimony in support of Applicant's request.

The Hearings Officer similarly mischaracterized public opposition to Applicant's use of those parties listed as opponents. Some were merely concerned about the nature of conditions which might be imposed on Applicant's use. While the Hearings Officer states that these parties may be prejudiced if classified as proponents, the Applicant has clearly been prejudiced by classifying them as opponents.

The Hearings Officer's description of the Parties to the proceeding unfairly and prejudicially mischaracterizes the public support for Applicant's request.

II. REQUEST TO ARGUE BEFORE BOARD

The Applicant respectfully requests the Board allow Applicant and its representative the opportunity to argue this matter before the Board. Argument by the parties will assist the Board in making a decision in this matter due to the unique factual circumstances and complexity of the issues involved.

III. RELIEF REQUESTED

The Applicant requests that the Board reverse the decision of the Hearings Officer based on the above specific grounds and

approve the application as satisfying all applicable legal criteria as determined by your Planning Staff.

DATED this 29th day of September, 1993.

DAVIS WRIGHT TREMAINE

By: Gregory S. Hathaway

Gregory S. Hathaway
Of Attorneys for N.W. Brewers'
Grains, Inc.



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

**HEARINGS OFFICER DECISION
CU 21-93**

September 15, 1993

**Conditional Use Request
(Commercial Use in Conjunction with Farm Use)**

Applicant requests Conditional Use approval to construct storage facilities and a wastewater lagoon on property in the EFU zoning district to be used in an operation that stores spent brewery grain and delivers the product as livestock feed to farms.

Location: 24315 NW Oak Island Road

Legal: Tax Lots '3', '9' and '10', Section 32, T3N, R1W, 1992 Assessor's Map

Site Size: 117 acres

Size Requested: Same

Property Owner: Northwest Brewers Grains of Oregon Inc.
c/o Anderson, Beail & Raines
9706 Fourth Ave. NE, Suite 305
Seattle, WA 98115-2157

Applicant: Same

Comprehensive Plan: Agriculture

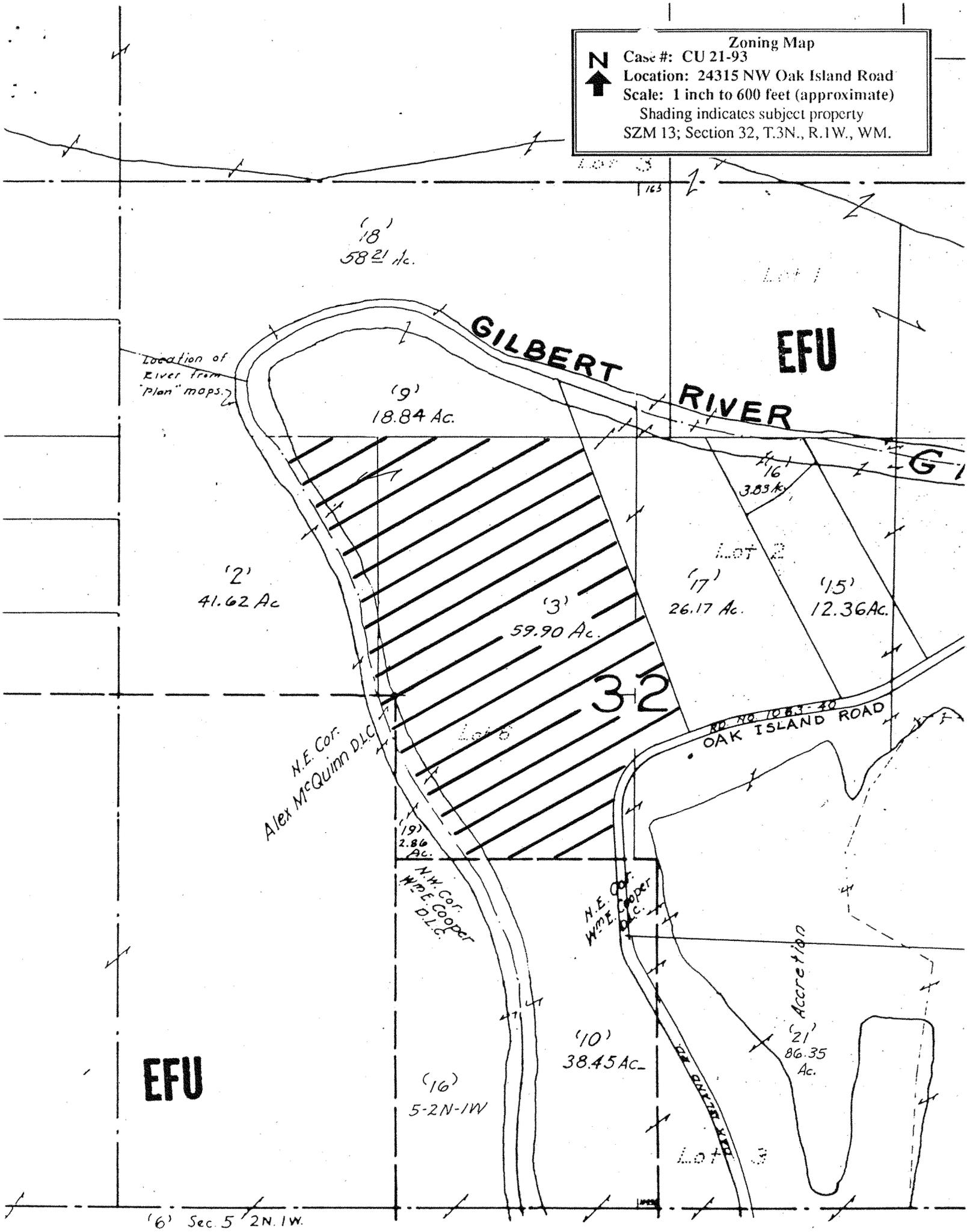
Present Zoning: EFU, Exclusive Farm Use District

**Hearings Officer
Decision:** DENY this request for a commercial activity in conjunction with farm use, based on the following Findings and Conclusion.

CU 21-93

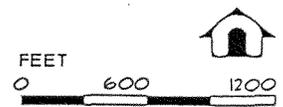
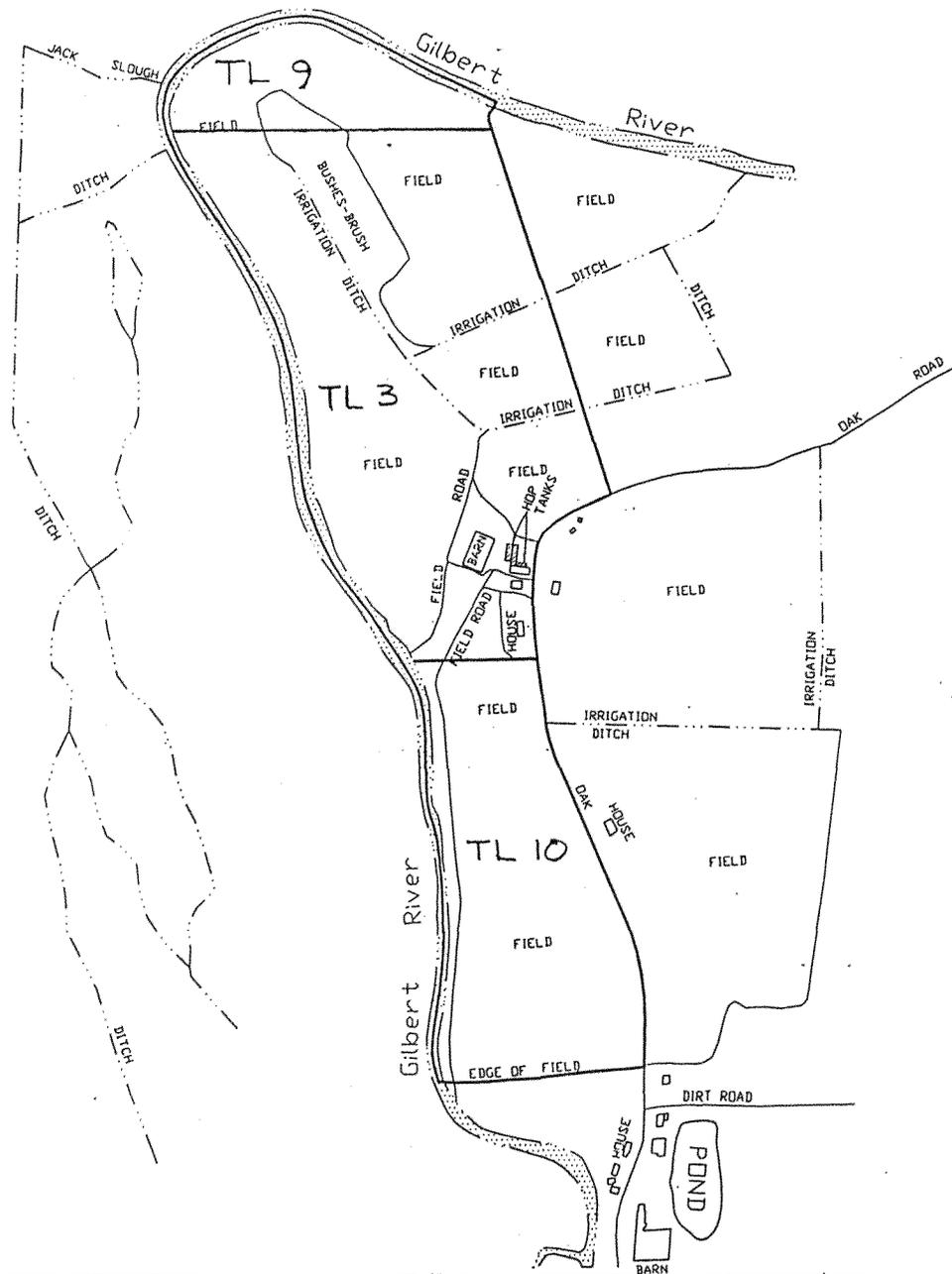
Zoning Map

Case #: CU 21-93
 Location: 24315 NW Oak Island Road
 Scale: 1 inch to 600 feet (approximate)
 Shading indicates subject property
 SZM 13; Section 32, T.3N., R.1W., WM.



LEGEND

- PROPERTY LINE
- IRRIGATION DITCHES
- RIVERS



DEA
DAVID EVANS AND ASSOCIATES, INC.

FIGURE 1
SITE MAP

CU 21-93

I. INTRODUCTORY MATTERS

A. The Permit Sought And Findings Of Fact Regarding The Proposed Use

The applicant seeks a Conditional Use Permit pursuant to MCC 11.15.7120(A) for "a brewery grain recycling facility." The applicant proposes the use as a "commercial activity in conjunction with farm use," a use authorized by MCC 11.15.2012(B)(1), in the County's Exclusive Farm Use (EFU) zone.

B. Parties To The Proceeding

1. Applicant

The applicant is:

Northwest Brewers Grains of Oregon Inc. c/o Anderson, Beail & Raines, 9706 Fourth Avenue Ave NE Suite 305, Seattle, Washington 98115-2157. At the hearing the applicant was represented by Robert Price (planner) and Ken Vigil (engineer) of David Evans & Associates, 2828 SW Corbett Avenue, Portland, Oregon 97201-4830. Documents submitted after the hearing were prepared by Gregory S. Hathaway, attorney, with Davis, Wright, Tremaine, 2300 First Interstate Tower, 1300 SW Fifth Avenue, Portland, Oregon 97201-5682.

2. Other Persons Supporting The Application

No other persons appeared, through oral or written testimony, in support of the application.

3. Opponents

The persons appearing, through oral or written testimony, in opposition to the application, are (in order of their appearance at or following the hearing):

Sauvie Island Drainage District¹, represented by David Hicks, Supervisor, 29264 NW

¹ In its testimony, the Drainage District described itself less as an opponent of the application than an advocate for certain conditions of approval, conditions to which the applicant has agreed. (See letter of 30 August 1993 from Greg Hathaway) However, because (1) there is no category of "neutral parties;" (2) the Drainage District has not endorsed the project; and (3) their interests might be prejudiced by classifying them as proponents, whereas there is no prejudice to them as opponents, I am classifying it as an opponent.

Sauvie Island Road, Portland, Oregon 97231. The District was also represented by their attorney Daniel Kearns of Preston, Thorgrimson, et al, 3200 US Bancorp Tower, 111 SW Fifth Avenue, Portland, Oregon 97204.

Vlad M. Voytilla, 300 West Mill Plain Blvd. Suite 600, Vancouver, WA 98660

Paul DeBonney, represented at the hearing by Vlad Voytilla.

Scott Hamersly, 8852 SE 91st, Portland, Oregon 97266.

Paul Gamroth, 23005 NW Oak Island, Portland, Oregon 97231

Vince Cooney, 7120 North Washburn, Portland, Oregon 97217

Dale Johnston, 91941 NW Reeder Road, Portland, Oregon 97231

Ginny Stern, 23434 NW Oak Island Road, Portland, Oregon 97231

Mark Stern, 23434 NW Oak Island Road, Portland, Oregon 97231

4. Party Status And Notice Of This Decision

In the absence of any challenges to their standing, I find the preceding persons to be parties to the proceeding, as specified by MCC 11.15.8225. These persons or their representatives should receive a copy of this decision.

C. Impartiality Of The Hearings Officer

Before and after the hearing I had no *ex parte* contacts with any of the parties concerning the merits of these applications.

I have no financial interest in the outcome of this proceeding and have no family or business relationship with any of the parties.

In the past year, I have been representing an organization opposing an application approved by Washington County. In the proceedings before the local government, the applicant was represented by David Evans & Associates (DEA). This information was presented at the commencement of the hearing, by Robert Price of DEA and confirmed by me. After a recess to discuss this issue with his client, Robert Price of DEA declined to ask for my recusal.

I find that my representation of a third party in an unrelated proceeding, in opposition to the interests of a different, unrelated client of DEA, does not affect my

impartiality as a decision maker in this proceeding.

D. Burden of Proof

The burden of proof is upon the applicant. MCC 11.15.8230(D).

E. Alleged Procedural Errors

No procedural errors were alleged before, during or after the hearing.

II. FINDINGS OF FACT REGARDING THE PROPOSED USE

According to the application:

The applicant recycles spent brewery grain for use as livestock feed. The grain is picked up from a local brewery and trucked either directly to dairy farms or to the subject site for short-term storage. The applicant prefers to take the grain directly from the brewery to dairy farms, and most of the grain (approximately 80 percent) is delivered directly. However, due to variations in production at the brewery and customer demand, a staging area is needed to temporarily store the grain. The Sauvie Island site serves as this staging area. Grain taken to the storage facility is usually stored for only a few days, but may be kept up to three months in ensilage, after which time it is loaded back onto trucks and delivered to farms for feed.

Application page 1.²

The applicant characterized its activity as a "currently nonconforming use" in operation since 1984. It stated that it seeks a CUP for two reasons:

To be in compliance with the County Comprehensive Plan and Zoning Ordinance, and to construct a new grain storage area and wastewater treatment facility as required by the Oregon Department of Environmental Quality (DEQ) Stipulation and Final Order No. WQIW-NWR-93-055.

² During the course of testimony during the hearing, it was revealed that the applicant's property was also being used for the storage and distribution of used brewers yeast or yeast by-products. (See letter from Gregory Hathaway dated 30 August 1993.) Since this activity was not described in the original application it cannot be considered in this proceeding; its authorization would require an amended or new application.

Id.

The applicant owns 117.19 acres, of which about 9 acres would be used for the spent grain storage and processing. Application at 2. The remainder of the land will lie fallow this year but the applicant intends "to plant oat and timothy hay on all three parcels next year, and to continue this practice." *Id.* The spent grain operation does not involve grain grown on the property.

The spent grain comes from a brewery located at NW 11th and Burnside in downtown Portland, about 13 miles from the applicant's property on Sauvie Island. Application at page 5. The spent grain would be used by dairy farmers "in Northwest Oregon and southwest Washington."³ *Id.*

These statements were not contradicted by any other testimony and are consistent with the evidence in the record. I adopt them, as other statements in the application, as my own findings of fact for purposes of the subsequent analysis of the application.

III. ANALYSIS OF THE APPLICATION UNDER THE STANDARDS IN STATE LAW, AND THE COUNTY ZONING CODE

A. State Statute Authorizing And Limiting Use In EFU Zones

1. Introduction: EFU Statutes Apply Directly To This Application And The County Must Adhere To Appellate Interpretations Of Those Statutes.

ORS 215.283(2)(a) authorizes "commercial activities that are in conjunction with farm use," in exclusive farm use zones. The statute is virtually identical to, and is the source of, the authorization of "commercial activities that are in conjunction with farm uses" in Multnomah County's EFU zone. MCC 11.15.2012(B)(1).

Regardless of the acknowledgment of the County's comprehensive plan and zoning ordinances, the statute continues to apply directly to this decision. *Kenagy v. Benton County*, 115 Or App 131, 136, 838 P2d 1076 (1992). *See also Forster v. Polk County*, 115 Or App 475, 478, 839 P2d 241 (1992).

Although the Oregon Supreme Court has articulated a deferential standard of review for local government interpretations of their ordinances, *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992), no such deference is due to local government interpretations of state statutes. *Smith v. Clackamas County*, 313 Or 519, 524-525, 836 P2d 7__ (1992),

³ I also adopt as my own findings of fact, those portions of page 5 of the application quoted in section III.A.3 of this decision.

Forster v. Polk County, supra, 115 Or App 478; and see *Ramsey v. City of Portland*, 115 Or App 20, 24 fn 2, 836 P2d 772 (1992).

In any event, given that LUBA has found and the County apparently agrees that the state and county definitions of the permitted use do not differ in substance, *Chauncey v. Multnomah County*, 23 Or LUBA 599, 604 (1992), the analysis under both definitions is identical.

2. Review Of Prior Decisions Interpreting "Commercial Activities In Conjunction With Farm Use"

The preliminary, and determinative question, is whether the proposed use fits within the definition of a "commercial activity in conjunction with farm use," under the state statute and county code.⁴

The most important precedents addressing this issue are: *Craven v. Jackson County*, 308 Or 281, 289, 779 P2d 1011 (1989); *Earle v. McCarthy*, 28 Or App 539, 560 P2d 665 (1977); and *Chauncey v. Multnomah County*, 23 Or LUBA 599, 604 (1992).

In each of these cases, the tribunal devoted some discussion to the closely related question of what the "farm use" is, with which the "commercial activity" is in conjunction. The reason for the joint discussion becomes evident when we note that the definition of "farm use" itself seems to contemplate storage and marketing of farm products in addition to the commercial element of the farming activity itself:

*(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling corps or * * * livestock * * *. "Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. * * **

ORS 215.203(2)(a).

⁴ During the course of the hearing I expressed my concern about whether the use was "in conjunction with farm use" under the terms of the statute and the County Code, and invited the parties to provide additional argument on this issue during the four weeks set aside for additional evidence and argument (2 weeks) and for rebuttal evidence and argument (2 weeks.) In his 16 August 1993 "Supplement To Conditional Use Application," Mr. Hathaway addressed this question on behalf of the applicant, and Mr. Voytilla, an opponent, provided a letter dated 13 August 1993 addressing this point.

In the *Earle* case, the applicant sought approval for a hop warehouse, to "store a large volume of crops from many hop growers" and incidentally to sell string and burlap used in hop production. *Earle v. McCarthy, supra*, 28 Or App 541. The facility was to be located on a 4-acre parcel south of Hopmere, in an exclusive farm use (EFU) zone in Marion County. *Id.* The plaintiffs argued that "storage of the product of land other than that on which the proposed warehouse would be located is no a permissible conditional use in an EFU zone." *Id.*

In reaching its conclusion about the permissibility of the use, the Court reviewed both the definitions of "farm use" in the zoning ordinance, based on ORS 215.213(2)(a), and §136.230(b), which reiterated the authorization in (then) ORS 215.213 of: "Commercial activities that are in conjunction with farm use." The Court held:

It is subsection (b) that plaintiffs erroneously contend is limited to on-site produce. To the contrary, since "Commercial activities that are in conjunction with farm use" is designated by the ordinance and the statute as "nonfarm use," then it must allow something more than what would be allowed as a "farm use." It is reasonable, therefore, to construe the term as including a warehouse for the commercial storage of agricultural products of lands other than that on which the warehouse is located. Accordingly, we hold that such a use is a permitted conditional use in an EFU zone.

Earle v. McCarthy, supra, 28 Or App 542.

In *Craven*, the applicant received permission from the county for a "a winery and retail tasting room in conjunction with a vineyard being planted on his land." *Craven v. Jackson County*, 308 Or 281, 283, 779 P2d 1011 (1989).⁵ The Supreme Court quoted portions of LUBA's findings including the observation that "The winery will process grapes grown on site and at other vineyards, but as the accompanying vineyard produces more grapes, the percentage of wine produced from those grapes will increase." *Craven, supra*, 308 Or 284.

In affirming the decisions made by the County, LUBA and Court of Appeals, the Supreme Court offered a lengthy, and somewhat confusing, discussion of the policy framework behind the EFU statutes' provisions for farm and nonfarm uses and buildings.⁶

⁵ The county decision on appeal predated the authorization by the 1989 Legislature of wineries and related facilities in EFU zones. See ORS 215.283(1)(s), 215.452 and *Craven, supra*, 308 Or 280 fn 3.

⁶ The court's opinion cites and discusses ORS 215.203(2)(a) (the definition of "farm use"), 215.213(1)(f) (nonresidential buildings customarily provided in conjunction with farm

The Court cautioned against interpreting "farm use" in ORS 215.203(2)(a) so broadly as to authorize "a shopping mall or supermarket as a farm use so long as the wares sold are mostly the products of a farm someplace." Such an interpretation would subvert the goal of preserving farm land. *Craven, supra*, 308 Or 288.

The Court then turned to the status of the winery as "a commercial activity in conjunction with farm use." The paragraph in the decision containing the Court's reasoning and conclusion states:

The phrase upon which the validity of the CUP turns is "in conjunction with farm use," which is not statutorily defined. We believe that, to be "in conjunction with farm use," the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates. The agricultural and commercial activities must occur together in the local community to satisfy the statute. Wine production will provide a local market outlet for grapes for other growers in the area, assisting their agricultural efforts. Hopefully, it will also make [the applicant's] efforts to transform a hayfield into a vineyard successful, thereby increasing both the intensity and value of agricultural products coming from the same acres. Both results fit into the policy of preserving farm land for farm use.

Craven, supra, 308 Or 288.

LUBA applied the *Craven* holding regarding ORS 215.283(2)(a) in *Chauncey v. Multnomah County*, 23 Or LUBA 599 (1992). In that case, LUBA upheld the County's interpretation of the same ordinance being applied here, MCC 11.15.2012(B)(1).

The County had denied an application for a bark grinding and processing operation in association with a nursery. On the same property there was pasture and trees "originally planted as Christmas trees." *Chauncey, supra*, 23 Or LUBA 600. The parties contested whether the evidence demonstrated that the operation would "enhance the farming enterprises of the local agricultural community to which the EFU land housing that commercial activity relates," an important phrase in the *Craven* holding. The applicant argued that the evidence showed the bark would be used by nurseries and Christmas tree farms within ten miles of the business.

use") 215.213(2)(c) ("commercial activities in conjunction with farm use" in marginal lands counties) and 215.283(2)(a) ("commercial activities that are in conjunction with farm use," in counties not applying ORS 215.213.) The applicable statute in the case was ORS 215.283(1)(f), since Jackson County has not chosen to adopt marginal lands or the optional criteria under ORS 214.213. See ORS 215.288. However, the text of the two provisions permitting "commercial activities that are in conjunction with farm use" is identical.

LUBA's decision turn on its analysis of the evidence in the record:

There is no evidence in the record regarding what quantity of wood by-products will be distributed from the subject site, what portion of the "smaller customers" to be served from the subject site are farm uses or what quantity of the wood by-products to be delivered from the subject site will be sold to farm uses.[footnote about direct deliveries omitted.] Further, even if the bifurcation of petitioners' business between the subject and processing sites is overlooked, the evidence in the record does not establish the quantity of wood by-products delivered, or dollar amount of sales, by petitioners' business to farm uses within a ten mile radius. We agree with respondent that in the absence of such evidence, petitioners cannot demonstrate as a matter of law that their proposed use of the subject site is a commercial activity in conjunction with farm use.

Chauncey v. Multnomah County, supra, 23 Or LUBA 606-607.

Other LUBA decisions determining whether proposed uses are "commercial uses" "in conjunction" with a farm or forest use, have turned on the particular provisions of a county code which differs from, or was not adopted to implement, ORS 215.283(2)(a).⁷

Because the appellate decisions have considered ORS 215.203(2)(a) as an alternate theory for approval of a commercial use related to farming, it may be useful to consider LUBA decisions on this subject for the indirect light they may shed on the interpretation of ORS 215.283(2)(a).

In *J & D Fertilizers v. Clackamas County*, 20 Or LUBA 44 (1990), LUBA concluded that the petitioner's chicken manure storage and processing facility was not a "farm use" because "none of the products are produced on the land where the preparation or storage takes place * * * ." *J & D Fertilizers, supra*, 20 Or LUBA 49-50. In a footnote, LUBA reviewed the Supreme Court's decision in *Craven*, attempting to understand and separate the analysis of the winery under ORS 215.203(2)(a) from the Court's analysis under ORS 215.283(2)(a):

Thus, the most we can conclude from Craven is that a winery and tasting room in conjunction with a vineyard onsite, i.e. a preparation and storage operation which processes at least some agricultural products grown onsite, can

⁷ *Burkey v. Clackamas County*, 17 Or LUBA 369, 374 (1989) (decision based on county code provision which was more specific than statute; *Lung v. Marion County*, 21 Or LUBA 302, 305-306 (1991) (decision based on more specific provision applicable in non-EFU zone); *Moody v. Deschutes County*, 22 Or LUBA 567, 572 (1992)(decision based on construction of other provisions in local ordinance.)

be farm use.

J & D Fertilizers, supra, 20 Or LUBA 50 fn 5.⁸

The fact that the source of the material to be disposed of was from outside the farming area was also listed as a factor in LUBA's determination that a diseased lamb disposal facility was not a "farm use." *Kunkel v. Washington County*, 16 Or LUBA 407, 417 (1988).

Because this application is subject to state statute, I am bound by these appellate precedents. In addition, I have made it a practice to treat the County's prior interpretations of its code as binding precedents, unless they are "clearly wrong." See *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992); *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 843 P2d 992 (1992); *Cope v. Cannon Beach*, 115 Or App 11, 836 P2d 775 (1992).

3. Application Of The Law To The Facts

In the two appellate decisions, the commercial facility which had been properly approved, was used to process and market farm products produced on neighboring farms (*Earle* and *Craven*) and/or on the operator/applicant's own property (*Craven*.) The proposed commercial activity here is the distribution of a by-product from a non-agricultural industrial enterprise, the brewing of beer. According to the testimony of the applicant's representatives, the brewing is carried out in the industrial area of NW Portland.

To the extent the facts that (i) the items which were the subject of the commercial marketing were agricultural commodities and (ii) were produced on farms in the vicinity, was important to the appellate courts' decisions, it is absent here. The commodity being marketed is produced in the city and is the by-product of an urban manufacturing process, although the raw materials themselves include agricultural products.⁹

Furthermore, as the applicant notes, the "commercial activity" has no relationship to the past and prospective agricultural uses of the applicant's farm property, which will be used to grow hay not grain used in brewing. The applicant's "commercial activity" is brewing

⁸ Previously LUBA had interpreted *Craven* to mean that the court regarded the winery as incidental and accessory to the primary farm use. *Von Lubken v. Hood River County*, 18 Or LUBA 18, 40 (1989). LUBA did not reiterate this interpretation in *J & D Fertilizers*, perhaps in light of the facts in the *Craven* case which do not fit an "accessory use" analysis.

⁹ Mike Gamroth, OSU Extension Dairy Specialist notes that while they are fed to cattle, "brewer's grains come from a more 'industrial' business". Application, Appendix C.

beer, not raising livestock or grain. An analogy for the proposed use would be the storage and distribution of recycled motor oils, for use as engine lubricants by farm machinery. The fact that the product is used on farms may not be sufficient to establish that it is a "commercial activity in conjunction with farm use."

If it were not for the *Chauncey* decision¹⁰, I would conclude that the applicant's proposed use is not allowed under ORS 215.283(2)(a) and MCC 11.15.2012(B)(1) because the commercial activity does not involve (i) a commodity produced on the farm itself (*Craven*); or (ii) a commodity produced by farmers in the vicinity (*Earle*); or (iii) sales of items or products accessory to the sale or storage of farm commodities (*Craven*) or (iv) could not qualify as a "farm use" in its own right (*Craven, Earle, J & D Fertilizers, Kunkel*).

However, *Chauncey* is a controlling interpretive precedent for a decision made by Multnomah County. I must review the record to determine whether or not the applicant meets the test articulated in that case. In response to the *Craven/Chauncey* test, the applicant states:

*The local agricultural community to which the applicant's activity relates can be determined to be dairy farmers in Northwest Oregon and southwest Washington." Due to the nature of dairy farms, they are widely spaced, and not many would occur within a 10-mile radius of the applicant's operation. * * * It is not feasible for the applicant to deliver most of their product within a 10-mile radius because most potential customers are located much farther away. For example, according to the applicant, no major commercial dairy farms currently exist on Sauvie Island. The applicant's business could not survive if it were limited to serving customers within 10 miles."*

Application at 5 (emphasis in original.)

The applicant has not disguised its difficulty with satisfying the *Craven* test. Instead it has made a reasoned argument for expanding the area under which it can meet the enhancement test.

The applicant relies on a quasijudicial decision made by the Land Conservation and Development Commission (LCDC) during the period prior to the creation of LUBA, *Balin v. Klamath County*, 3 LCDC 8 (1979). In that case, LCDC approved, in part, a rezoning adopted by the County in order to cite a farm implement dealership. In the course of that

¹⁰ In *Chauncey*, this County found and LUBA implicitly agreed, that the enhancement test can be met by the consumption of a product by farms and not just the sale of commodities produced on farms, subject to a limitation on the area within which these products are used.

decision LCDC addressed the question of whether the proposed dealership was a "a commercial activity in conjunction with" the nearby farming operations it served. *Balin v. Klamath County, supra*, 3 LCDC 19. Northwest Brewer notes in its 16 August 1993 supplement, that *Balin* was cited by the Court of Appeals in its decision on *Craven*.

I conclude that LCDC's decision in *Balin*, is insufficient authority to approve this application for five reasons.

First, LCDC's decision¹¹ specified a narrower grounds for its approval of the implement dealership than has been described by the applicant in its supplementary argument:

Clearly the statute is not intended to allow the establishment of grocery stores and gas stations on agricultural lands solely because they are situated in a primarily agricultural area and serve primarily agricultural needs. However, it can and should be read to express a legislative judgment that commercial activities limited to providing products and services essential to the practice of agriculture directly to the surrounding agricultural businesses are sufficiently important to justify the resulting loss of agricultural land. The record shows that such an enterprise is proposed and is needed.

Balin v. Klamath County, supra, 3 LCDC 19 (emphasis added.) The record in this proceeding does not demonstrate that the spent brewers grain is essential to the dairy farmers. In addition, providing feed to commercial dairy farms, none of which are on Sauvie Island and which are as far as 60 miles away from the site on Sauvie Island, cannot be described as a commercial activity serving "surrounding agricultural businesses."

Second, LCDC adopted an independent alternative basis for approving this use, an exception to Goal 3 (Agricultural Lands) under Goal 2, (Land Use Planning.) The text of LCDC's decision reveals that this exception was of the type now characterized as a "need" exception under ORS 197.763(1)(c) and OAR 660-04-020, 022 (1991). *Balin v. Klamath County, supra*, 3 LCDC 17-18. The outcome, approval of the implement dealership, depended on the Commission's overall acceptance of the proposed

Third, *Balin* was not cited or relied upon by the Supreme Court in its decision. Nor was it cited by the Court of Appeals in *Earle* or by LUBA in *Chauncey*.

Fourth, as a hearings officer for Multnomah County, I believe I am bound by the precedent in *Chauncey v. Multnomah County*.

¹¹ LCDC adopted the hearings officer's recommendation. *Balin v. Klamath County, supra*, 3 LCDC 22.

Fifth, the statute should be interpreted in the light of the Court of Appeals' expressed view that:

there is an overriding statutory and regulatory policy to prevent agricultural land from being diverted to nonagricultural use.

Hopper v. Clackamas County, 87 Or App 167, 172, 741 P2d 921 (1987) *rev den* 304 Or 680 (1988); *accord Nelson v. Benton County*, 115 Or App 453, 459, 839 P2d ___ (1992). This policy has been used by the Court of Appeals as the basis for interpreting provisions in the EFU statute and local ordinances implementing the statute:

*Section 137.020, like its statutory analog [ORS 215.213(1)(d)], defines non-farm uses which are permitted in farm zones. However, state and local provisions of that kind must be construed, to the extent possible, as being consistent with the overriding policy of preventing "agriculture land form being diverted to non-agricultural use." Hopper v. Clackamas County, 87 Or App 167, 172, 741 P2d 921 (1987) *rev den* 304 Or 680 (1988). Therefore, when possible, the non-agricultural uses which the provisions allow should be construed as ones that are "related to and [promote] the agricultural use of farm land. Hopper v. Clackamas County, supra, 87 Or App at 172. When no such direct supportive relationship can be discerned between agriculture and a use permitted by the provisions, the use should be understood as being as nondisruptive of farm use as the language defining it allows.*

McCaw Communications, Inc. v. Marion County, 96 Or App 552, 555, 773 P2d 779 (1989).¹²

B. Other State And County Standards

In the light of the prior determination and need for a timely decision, I do not address the degree to which the application satisfies the conditional use standards in MCC 11.15.7120(A) and any other applicable standards.

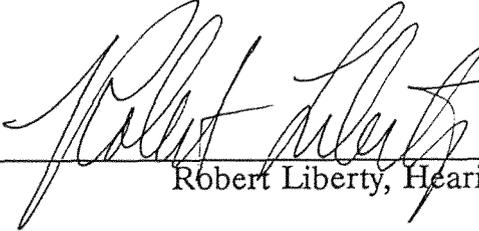
¹² In addition, there is a state policy to encourage urban uses, including industrial uses, to be located inside urban growth boundaries and to discourage their development outside UGBs. Goal 14, "Urbanization" and see *e.g. 1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or 447, 507 n 37, 511, 724 P2d 268 (1986); *1000 Friends of Oregon v. LCDC*, 292 Or 735, 745, 642 P2d 1158 (1982). To the extent this use can be considered an extension or overflow of the urban brewing facility, it may be inconsistent with that policy. These state policies are reflected in elements of the County's own urbanization policies. *Multnomah County Comprehensive Framework Plan, Volume 2: Policies*, at policies 5, 6, 9. See also MCC 11.15.7120(A)(7).

IV. CONCLUSION AND ORDER

The proposed use does not qualify as a permitted use in Multnomah County's EFU zone under MCC 11.15.2012(B)(1) or ORS 215.283(2)(a), as those provisions have been interpreted by the appellate courts, LUBA and the County.

The application is denied.

15 September 1993



Robert Liberty, Hearings Officer

Signed by the Hearings Officer:	<u>September 15</u> , 1993
	[date]
Decision mailed to parties:	<u>September 16</u> , 1993
	[date]
Submitted to Clerk of the Board:	<u>September 16</u> , 1993
	[date]
Last day to Appeal to the Board:	<u>September 27</u> , 1993
	[date]

Appeal to the Board of County Commissioners:

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

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

**Line 3. CU 21-93 (11:20-2:00) (Tape 2, Last half of Side A, all of Side B, All of Tape 3, Tape 4, Side a))
Conditional Use Request (Commercial Use in Conjunction with Farm Use Type I)
(Storage of Spent Brewery Grain and Yeast)**

24315 NW Oak Island Road

**Open Record For Two Weeks (August 16, 1993)
Open Record for Rebuttal for Two Weeks (August 30, 1993 at 4:30 p.m.)
Record Closed at 4:30 August 30, 1993
Denied (September 15, 1993 Decision)**

Robert Liberty disclosed that he has had contact with Mr. Price on opposite sides on another case - Mr. Price feels there is no conflict.

Sandy Mathewson made the staff presentation; did not show slides.

The applicant was represented by **Robert Price and Ken Vigil**
c/o David Evens and Associates, **2828 SW Corbett Avenue, 97201-4830**

Mr. Price:

- Three tax lots comprise this request.
- They work with Blitz Weinhard brewery.
- Grains are grown locally in the Willamette Valley.
- Spent grain cannot be disposed of through the sewer system.
- Spent grain is re-cycled.
- Most clients are nearby - some are as far away as Washington State.
- Truck loads vary - 12 to 30 trucks per week - all depending on Blitz Weinhard activity.
- DEQ requires applicant to formalize the operation.
- Site size needs to be one acre for the proposed use.
- Stipulated Final Order and Agreement sets forth what DEQ will do.
- The purpose is to protect Gilbert River.

- They have been doing this proposed use for the past nine years, without Multnomah County approval, with no adverse impacts to neighboring farms.
- It is part of a farm operation - truly a commercial use on agricultural property.
- They have identified the properties using the product - approximately 40% of the boundary is within Multnomah County. - it may be as low as 20%.
- They agree with the Staff Report.
- They do have DEQ requirements to meet - through the Stipulated and Final Order Agreement
- The only resource identified is the stream.

Mr. Vigil:

- Described treatment as part of the lagoon and on land.
- Grain is stored in bunkers
- He made reference to their aerial, marked as Petitioner's Exhibit A, dated August 2, 1993.
- There is a 50'-100' setback requirement.

David Kearns, Attorney, 111 SW 5th Avenue, #3200, 97204, representing the Sauvie Island Drainage District:

- They operate drainage ditches west of the subject site.
- He is concerned about MCC 11.15.7120, .7122.1 and .2.

David Hicks, Main Supervisor, Sauvie Island Drainage District, 29264 NW Sauvie Island Road, 97231:

- He become aware of the problem due to the smell - in September, 1992.
- There was discharge into the Gilbert River.
- He made reference to Petitioner's Exhibit A.

Mr. Kearns:

- Requests open record for 7 days to view the DEQ requirements. If approved, he requests added conditions, as follows:
 - 1). Compliance with DEQ requirements.
 - 2). No measurable contamination of irrigation/drainage ditches.
 - 3). Consent Decree as part of the approval, that would trigger a violation

Action:

Open Record for 7 days for added information.

Open Record for additional 7 days for rebuttal

Decision to be issued in September

Denied (September 15, 1993 Decision)

Opposition.

Vakldar Voytila, 300 West Mill Plain, Vancouver, WA, 98660:

- Representing several property owners of Tax Lot '17' including Paul DeBonny.
- Opposed over truck traffic, site improvements, and expanded use of the facility.
- Objects to the smell - Policy #13 - the smell is very powerful at times.
- Does not feel that nine years history should have any bearing on today's hearing.
- Tax Lot '17' is owned by eight individuals - at least four have not been notified by the applicant.
- He feels that an Open Record for 7 days should be sufficient time to review the file.

Scott Hamersly, 8852 SE 91st Avenue, 97266:

- Is one of the eight property owners of Tax Lot '17'.
- Is opposed because they use their property for recreational purposes.
- The pond sediment would be detrimental to wildlife.
- They also farm their property - a farmer comes to the site to plant crops each year.
- The smell is bad - if expanded, there can be a real problem, especially if there is storage on the site.
- If approved, requests water and air quality testing and reviewed at least every 3 years.

Paul Gamrock, 23005 NW Oak Island Road, 97231:

- He is a neighbor to the subject site, south of Tax Lot '10'.
- He has been here during the nine years that the operation has been here.
- The applicant has had two operations - spent grain and yeast product - for the past few months.
- He thinks surplus yeast is being released from holding tanks - then into the Gilbert River.
- The yeast product has a very bad odor.
- Yeast kills plants after it is in the ground.
- He questions if this operation affects his well?
- The applicant is now dispersing waste into their own property.
- There is now increased truck traffic - now since the yeast product is on-site.
- Truck traffic is at least 50 truck trips now, tankers and double loaders.

Vince Cony, 7120 N. Washburn, 97217:

- Owns 76 acres adjacent to Tax Lot '10'.
- He supports the lagoon and the general farm practices portions of the application.
- Air quality is a very strong concern, i.e., brewery grain and yeast are the real problems.
- Yeast has an adverse affect on the air quality and the neighbors are upset about this.
- Yeast is a new element within the last couple of months.
- His renters have informed him of the strong smell.

Dale Johnston, 91941 NW Reeder Road, 97231:

- He is two miles from the subject site.
- He is concerned about air quality - yeast is being pumped into the ground - brings strong odor when the wind blows his direction.
- Yeast comes to the site in tanker trucks - what happens if one tips over - into the ditch - who does the clean-up?
- Has smelled the yeast on six or seven occasions since January.
- Traffic has increased due to the yeast operation.

Rebuttal:

Mr. Price:

- Testing and consent decree is agreeable to them - to include some form of testing program.
- DEQ will require testing.
- Truck traffic - The County does not believe there is a problem with truck traffic.
- Truck traffic is relatively low.
- Truck trips per week - no trips per week - there is just a low number of trips per week.
- There has been no opposition from farmers in the area.

Mr. Vigil:

- Yeast material has been brought and stored on the site for some time.
- The Stipulated Order allows temporary use until a solution is made.
- Spent grain is the only issue they planned to discuss.

Ms. Christina Gifford:

- Yeast was sent to a local pig operation- that closed down - now is has been stored on the subject site for the past two years.
- Yeast is a extra commodity with no place to store.

Mr. Price:

- Yeast can be balanced and spread on equal parts.
- Design of the lagoon will take into consideration the yeast product..
- Yeast is not a hazardous material.
- Yeast can be taken directly to the customer - or needs to be stored on-site.

Mr. Kearns:

- Has been involved since January, 1993.
- When DEQ issues a permit - there is a five-year review period.
- The applicant is struggling to find a balance for his request.

Public Testimony was closed at this time.

Mr. Liberty has concerns about this being an authorized use under State Statute.

Mr. Price:

- Agrees to the waiver of the 120-day period for 30 days - making a 150-day period.

There was no objection for the 30-day extension from the opposition.

Action:

Open Record for 2 weeks (August 16, 1993)

Open Record for rebuttal for 2 weeks (August 16, 1993 at 4:30 p.m.)

Site Visit - Robert Liberty will not make a site visit unless requested to do so by August 30, 1993 at 4:30 p.m.

Record Closed - August 30, 1993 at 4:30 p.m.



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

NOTICE OF REVIEW

1. Name: Hathaway, S., Gregory
Last Middle First
2. Address: 1300 SW 5th, Suite 2300, Portland, OR 97201
Street or Box City State and Zip Code
3. Telephone: (503) 241 - 2300
4. If serving as a representative of other persons, list their names and addresses:
Northwest Brewers Grains of Oregon, Inc.
9706 Fourth Ave. NE, Suite 305
Seattle, WA 98115-2157
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?
Denial of Conditional Use Request (Commercial Use
in conjunction with Farm Use), CU 21-93
6. The decision was announced by the Planning Commission on Sept. 16, 1993
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
Northwest Brewers Grain of Oregon, Inc. is the applicant for
Conditional Use Request CU21-93 and has appeared before the
Hearings Officer through its representative, Gregory S. Hathaway
and David Evans and Associates.

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

See Exhibit A

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: Gregory S. Hathaway Date: 9-27-93
GREGORY S. HATHAWAY

For Staff Use Only

Fee:

Notice of Review = \$300.00
 Transcription Fee:
 Length of Hearing 140 x \$3.50/minute = \$ 490.00
 Total Fee = \$ 790

Received by: M. Hess Date: 9/27/93 Case No. CV 21-93a

EXHIBIT A

BEFORE THE MULTNOMAH COUNTY

BOARD OF COUNTY COMMISSIONERS

NORTHWEST BREWERS' GRAINS)	Case No. CU 21-93
OF OREGON, INC.,)	
)	SPECIFIC GROUNDS FOR REVIEW
Applicants,)	AND REQUEST FOR ARGUMENT
)	
Request for a Conditional Use)	
Permit for a Commercial)	
Activity in conjunction with)	
Farm Use in an EFU Zoning)	
District.)	

I. GROUNDS FOR REVERSAL OF DECISION

A. Factual Background

The Applicant has submitted a conditional use application for a commercial activity in conjunction with farm use to continue operation of a brewery grain ensilage and storage facility located on Sauvie Island. Applicant seeks to modernize and enhance its existing facility which it has utilized for the past nine years.

Applicant engages in the business of supplying high quality, low cost dairy cattle feeds to local dairy operations. The Applicant's feed source is brewers' grains which Applicant procures from the Blitz-Weinhard Brewery located in downtown Portland. Brewers' grain (which is nothing more than grains such as wheat and barley that have been physically altered by the brewing process) has been determined by the Oregon State Extension Service to be one of the best dairy feeds available due to its nutritive value and lower cost.

A simple but effective system facilitates maximization of the grain resource and enables dairy operations to benefit from a product which would otherwise be dumped in a landfill. The components of the system, as described below, are interdependent and essential to the system's participants.

1. **Grain Production:** Farmers produce the grain which is used by the brewery in the production of beer.

2. **Blitz-Weinhard Brewery:** The brewery provides a key market for the sale of farmers' crops. The brewing process transforms the grain into a mash commonly called "brewers' grains." Grains must be removed from the brewery approximately every three hours.

3. **Northwest Brewers' Grains, Inc.:** Applicant removes the grain from the brewery and in most instances delivers the grain directly to the dairy farm community of Northwest Oregon and Southwest Washington. Consistency of feed rations is critical to dairy cattle milk production. Therefore, the Applicant must maintain storage facilities to account for those instances when either dairy demand exceeds supply or when brewery production exceeds demand. Leachate resulting from grain storage is used by the Applicant to fertilize hay and grains grown on site. These crops are mixed with the grain during the ensilaging process to add further nutritive value to the feed.

4. **The Local Dairy Community:** The local dairy farmers are the final participants and beneficiaries in the system. N.W. Brewers' Grains distributes and transports the cattle feed directly to the dairy farmer. The dairy farmer facilitates the grains' product cycle by feeding the grain to their dairy cattle. According to the Oregon State Extension Service, milk production is increased by the feeding of brewers' grains because the grains are more easily digested and the nutrients more readily absorbed.

Applicant's use of the Sauvie Island property as a storage and ensilage site is a key component in the facilitation of a cycle which both begins and ends on the farm. The unique characteristics of both the dairy industry and the brewery business

require that the Applicant maintain storage facilities for the grain at a location central to dairy operations, close to the brewery, and yet away from high density urban zones.

Cessation of the Sauvie Island operation will break the product cycle and adversely impact both the agricultural and non-agricultural communities. Failure to utilize the grain as feed will result in disposing of the grain as waste; requiring as many as eight truckloads per day of grain to be dumped at the local landfill. Requiring Applicant to relocate the storage facility to an industrial area will result in prohibitive cost increases, leachate disposal problems and legitimate concerns over odor produced by the ensilaging process.

The Multnomah County Planning Staff concluded in its Staff Report dated August 2, 1993, that the Applicant's operation of a brewery grain ensilage and storage facility qualified as a commercial activity in conjunction with farm use pursuant to MCC 11.15.2012 (B) (1). The Planning Staff also concluded that the Applicant had demonstrated compliance with all of the County's applicable legal criteria and recommended approval of the Applicant's request subject to conditions.

B. Multnomah County's Prior Interpretation of "Commercial Activity In Conjunction With Farm Use": The Chauncy Case

In 1991, the Board of County Commissioners (the "Board") reviewed a conditional use permit application in which the applicants, Bowlus and Lynne Chauncey, sought approval to operate a commercial wood products firm ("Beaver Bark") within an Exclusive

Farm Use (EFU) District. The Board denied the request and the matter was appealed to the Land Use Board of Appeals ("LUBA"). LUBA affirmed the Board's denial. Chauncey v. Multnomah County, 23 Or LUBA 599 (1992). The applicants asserted that the commercial activity was in conjunction with farm use pursuant to MCC 11.15.2012(B)(1).

In applying the test as articulated by the Oregon Supreme Court in Craven v. Jackson County, 779 P.2d 1101 (Or. 1989) for whether a commercial activity is in conjunction with farm use, the Board denied the request based on the following four factors:

1. **Nature of the Applicants' Product:** The applicants asserted that their product could be used by nurseries and other agricultural enterprises. However, the applicants failed to prove that their product was actually used for agricultural purposes.
2. **Nature of the Applicants' Customers:** The applicants argued that their bark products were sold to nurseries. However, as an illustration of the non-agricultural nature of the applicants' activity, the evidence indicated that only two out of thirty-six nurseries within a 10-mile radius used the product. Consequently, the applicants could not prove that their customers were agricultural enterprises.
3. **The Focus of Applicants' Marketing:** Advertising conducted by the applicants was aimed at procuring non-agricultural customers. The advertisements indicated the applicants were marketing to homeowners rather than agricultural enterprises.
4. **Nature of the On-site Activity:** The applicants' on-site activity consisted of storing, grinding and distributing a non-agricultural product. None of these activities were consistent with the area character in terms of its nature or its location.

In Chauncy, the Board acknowledged that the standard for "commercial activity in conjunction with farm use" is met by "the consumption of a product by farms and not just the sale of

commodities produced on farms." However, the Board declined to approve the Chauncey application because the evidence did not show that the applicants' product was used for agricultural purposes.

The Hearings Officer decision in the present case states that the Chauncey decision is a "controlling interpretive precedent" applicable to this request by Northwest Brewers' Grains.

C. Specific Grounds For Appeal

The basis for the Hearings Officer's denial of the Applicant's request is that the Applicant's operation of a brewery grain ensilage and storage facility for distribution of cattle feed to dairy farmers does not qualify as a commercial activity in conjunction with farm uses pursuant to MCC 11.15.2021 (B). The decision by the Hearings Officer is in error based on the following grounds:

- 1. The Hearings Officer has improperly characterized the nature of the Applicant's commercial activity based upon the evidence in the record.**

In denying the Applicant's request, the Hearings Officer asserted the following factual findings to support his decision: (1) the brewers grain is a non-agricultural product; (2) the Applicant's "commercial activity is brewing beer"; (3) the Applicant's commercial activity has no relationship to the past and prospective agricultural uses of the Applicant's farm property; and (4) that the brewers grain is not essential to the dairy farmers. These findings by the Hearings Officer are not supported by the substantial evidence in the record and are incorrect.

The uncontroverted substantial evidence in the record indicates that: (1) the brewers grain is comprised of wheat and barley, clearly an agricultural product, which has been physically altered by the brewing process. It was improper for the Hearings Officer to mischaracterize this grain product by simply referring to it as a "by-product from a non-agricultural industrial enterprise". The Hearings Officer's mischaracterization ignores the evidence in the record that establishes the agricultural product cycle for brewers' grain; (2) the Applicant's commercial activity is not the brewing of beer, but rather, the storing and distribution of brewers grain for use as cattle feed for dairy farmers; (3) the Applicant's commercial activity does have a relationship with the agricultural activities occurring on the subject property because the brewers grain is mixed with crops grown on-site to create an additional dairy feed product, and the leachate from the storage of the grain will be used as fertilizer for the growing of crops on the property; and (4) the Oregon State Extension Service has stated that the brewers' grain is important to the dairy community since it is one of the best dairy feeds available due to its nutritive value and lower cost.

For the Board to properly determine whether the Applicant's use is a commercial activity in conjunction with farm uses, it is essential that the use be properly characterized based on the evidence in the record. For the reasons cited above, the Hearings Officer's findings are incorrect.

2. **The Hearings Officer did not make a finding or a conclusion that the Applicant's commercial activity is not consistent with the Board's decision in Chauncy.**

While the Hearings Officer cites the Chauncy decision as controlling in evaluating whether the Applicant's commercial activity qualifies as a commercial activity in conjunction with farm uses pursuant to MCC 11.15.2012 (B)(1), the Hearings Officer omitted any discussion of the factors the Board considered pertinent in Chauncy or the evidence in the record to determine whether Northwest Brewers' Grain met the Chauncy test. At page 13 of his decision, the Hearings Officer states, "[H]owever, Chauncy is a controlling interpretive precedent for a decision made by Multnomah County. I must review the record to determine whether or not the applicant meets the test articulated in that case". However, as stated above, the Hearings Officer did not review the substantial evidence in the record, including the three (3) letters from the Oregon State University Extension Service which demonstrate that the Applicant's commercial activity meets the Chauncy test.

3. **The Hearings Officer's inference that the Applicant's commercial activity (which provides benefit to the dairy community) would violate the policy to prevent agricultural land from being diverted to non-agricultural use is incorrect and ignores the evidence in the record.**

On page 15 of the Hearings Officer's decision, an inference is made that the Applicant's commercial activity is nothing more than an "extension or overflow of the urban brewing

facility". Consequently, the Hearings Officer cites the policy that agricultural land should be preserved for agricultural uses. This inference by the Hearings Officer completely ignores the substantial evidence in the record, including the aforementioned letters from the Oregon State University Extension Service, that describe the agricultural product cycle of brewers' grain and the benefits derived by the dairy community. As the Multnomah County Planning Staff concluded, "the spent grain that will be stored at the site is used exclusively as feed for cattle and dairy cows. This is clearly an agricultural use. In addition, waste water from the lagoon will be used for irrigating and fertilizing crops on the subject parcel, also an agricultural activity." The uncontradicted evidence in the record overwhelmingly demonstrates that the agricultural policy is uniquely satisfied in this case because of the facilitation of a cycle which both begins and ends on the farm.

4. The Hearings Officer mischaracterized public support for Applicant's use.

The Hearings Officer states that other than the Applicant, no other persons expressed support for the application. This statement is clearly erroneous as demonstrated by Appendix F to Applicant's conditional use application which evidences the express support of three of Applicant's neighbors. Furthermore, two Extension Dairy Specialists with Oregon State University and Extension Service have submitted testimony in support of Applicant's request.

The Hearings Officer similarly mischaracterized public opposition to Applicant's use of those parties listed as opponents. Some were merely concerned about the nature of conditions which might be imposed on Applicant's use. While the Hearings Officer states that these parties may be prejudiced if classified as proponents, the Applicant has clearly been prejudiced by classifying them as opponents.

The Hearings Officer's description of the Parties to the proceeding unfairly and prejudicially mischaracterizes the public support for Applicant's request.

II. REQUEST TO ARGUE BEFORE BOARD

The Applicant respectfully requests the Board allow Applicant and its representative the opportunity to argue this matter before the Board. Argument by the parties will assist the Board in making a decision in this matter due to the unique factual circumstances and complexity of the issues involved.

III. RELIEF REQUESTED

The Applicant requests that the Board reverse the decision of the Hearings Officer based on the above specific grounds and

approve the application as satisfying all applicable legal criteria as determined by your Planning Staff.

DATED this 29th day of September, 1993.

DAVIS WRIGHT TREMAINE

By: Gregory S. Hathaway

Gregory S. Hathaway
Of Attorneys for N.W. Brewers'
Grains, Inc.

OCT 26 1993

MEETING DATE: September 28, 1993

AGENDA NO: 92

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CU 21-93 Decision Review

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: September 28, 1993

Amount of Time Needed: 5 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: Sharon Cowley TELEPHONE #: 2610

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

DENIAL

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

CU 21-93 Review Hearings Officer Decision of September 15, 1993, denying conditional use request for a commercial activity in conjunction with farm use, for property located at 24315 NW Oak Island Road.

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

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: pc Betsy Williams

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C42193

Agenda Placement Sheet No. of Pages 1

Case Summary Sheet No. of Pages 1
 Previously Distributed _____

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

Decision No. of Pages 16
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



CASE NAME: Northwest Brewers Grains

TIME: 1:30 pm

Conditional Use Denial

NUMBER: CU 21-93

1. Applicant Name/Address:

Northwest Brewers Grains
c/o Anderson, Beail & Raines
9706 Fourth Ave. NE Suite 305
Seattle, WA 98115-2157

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

2. Action Requested by applicant:

Approve a commercial activity in conjunction with farm use in the EFU zone, specifically a recycling and storage facility for spent brewery grain.

3. Staff Report Recommendation (August 2, 1993):

Approve, subject to conditions

4. Hearings Officer Decision (September 15, 1993):

Denied

5. If recommendation and decision are different, why?

The Hearings Officer found that the proposed use does not fit the definition of a "commercial activity in conjunction with farm use" under state statute or county code.

ISSUES

The Hearings Officer concluded that the proposed activity is not a "commercial activity in conjunction with farm use" because 1) it does not involve a commodity produced on the farm itself; 2) it does not involve a commodity produced by farmers in the vicinity; 3) it does not involve sales of items or products accessory to the sale or storage of farm commodities; and 4) it does not qualify as a farm use in its own right.

In addition, the Hearings Officer relied on a previous decision by Multnomah County [Chauncey] that required that in order to be in conjunction with farm use, the product must be sold primarily to farms within the vicinity. That decision denied an application for a bark grinding and processing operation in association with a nursery because the evidence in the record did not demonstrate that the products were sold primarily to farms within a 10 mile radius. LUBA upheld this decision based on a Supreme Court decision [Craven v. Jackson County] that found that to be "in conjunction with farm use", the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates. The spent grain which would be stored at the subject property is delivered as feed to dairy farms in NW Oregon and SW Washington, most of which are more than 10 miles away.



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

HEARINGS OFFICER DECISION
CU 21-93

September 15, 1993

Conditional Use Request
(Commercial Use in Conjunction with Farm Use)

Applicant requests Conditional Use approval to construct storage facilities and a wastewater lagoon on property in the EFU zoning district to be used in an operation that stores spent brewery grain and delivers the product as livestock feed to farms.

Location: 24315 NW Oak Island Road

Legal: Tax Lots '3', '9' and '10', Section 32, T3N, R1W, 1992 Assessor's Map

Site Size: 117 acres

Size Requested: Same

Property Owner: Northwest Brewers Grains of Oregon Inc.
c/o Anderson, Beal & Raines
9706 Fourth Ave. NE, Suite 305
Seattle, WA 98115-2157

Applicant: Same

Comprehensive Plan: Agriculture

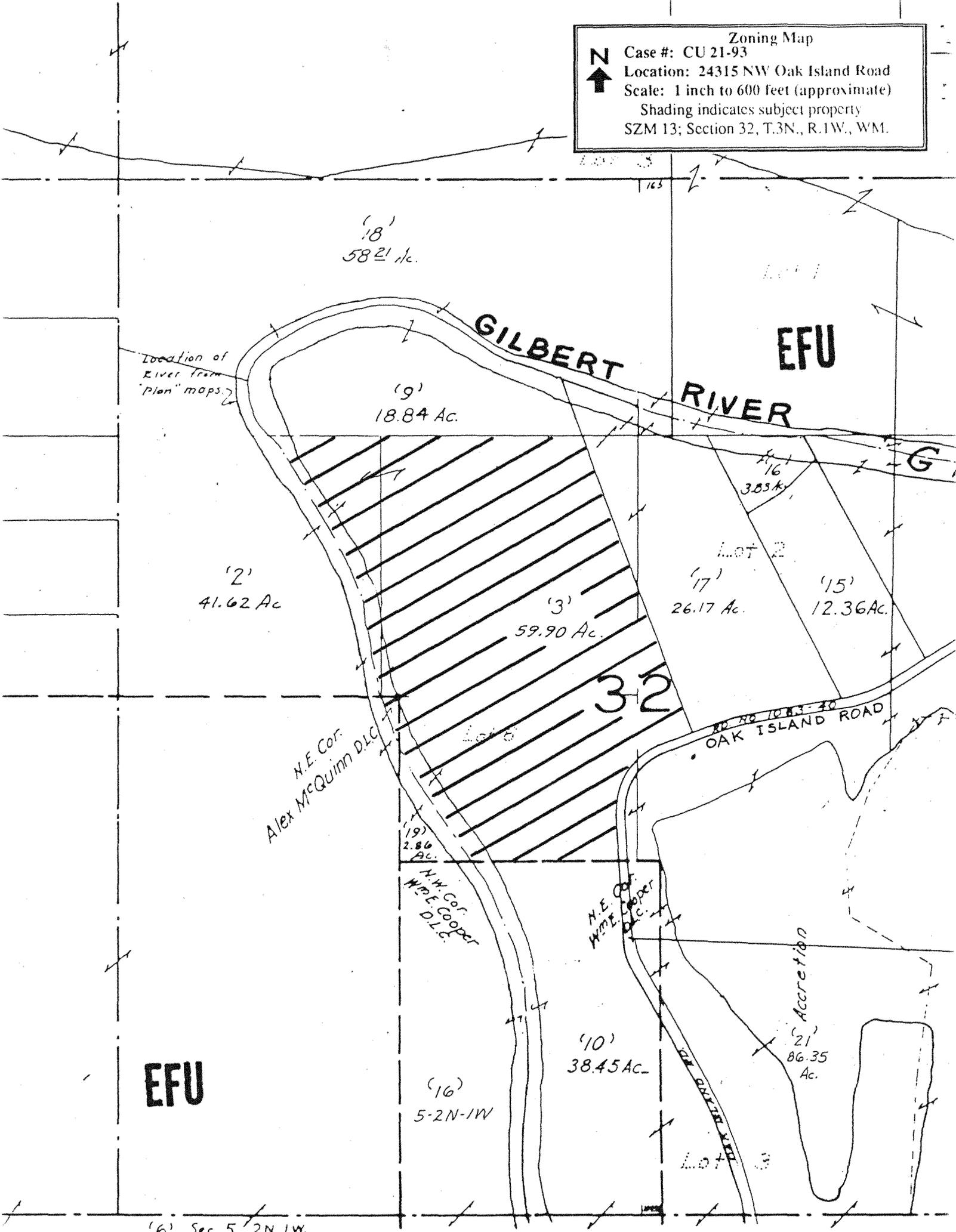
Present Zoning: EFU, Exclusive Farm Use District

Hearings Officer Decision: DENY this request for a commercial activity in conjunction with farm use, based on the following Findings and Conclusion.

CU 21-93

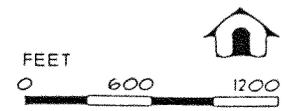
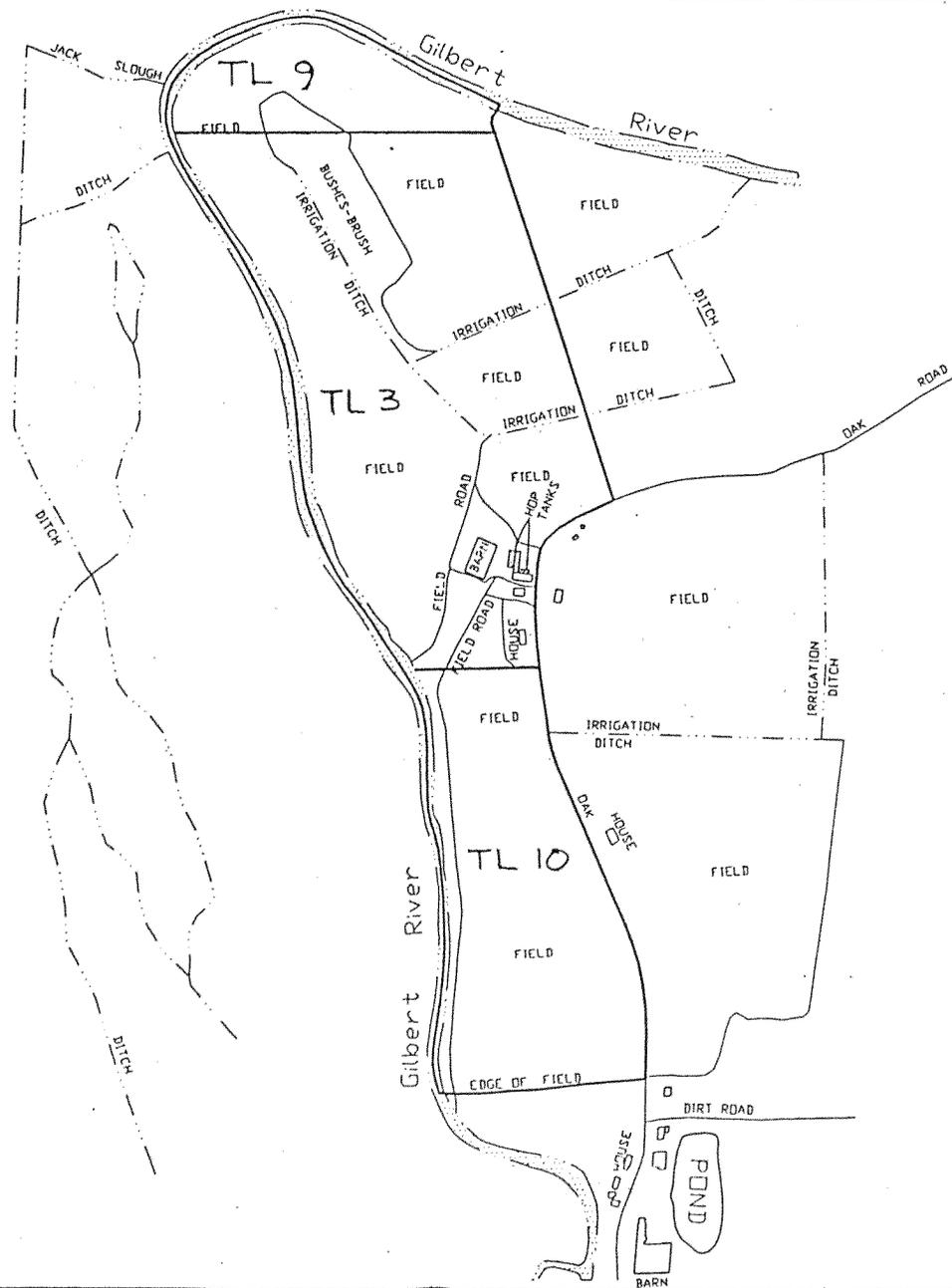
Zoning Map

Case #: CU 21-93
 Location: 24315 NW Oak Island Road
 Scale: 1 inch to 600 feet (approximate)
 Shading indicates subject property
 SZM 13; Section 32, T.3N., R.1W., WM.



LEGEND

-  PROPERTY LINE
-  IRRIGATION DITCHES
-  RIVERS



DEA
DAVID EVANS AND ASSOCIATES, INC.

FIGURE 1
SITE MAP

CU 21-93

I. INTRODUCTORY MATTERS

A. The Permit Sought And Findings Of Fact Regarding The Proposed Use

The applicant seeks a Conditional Use Permit pursuant to MCC 11.15.7120(A) for "a brewery grain recycling facility." The applicant proposes the use as a "commercial activity in conjunction with farm use," a use authorized by MCC 11.15.2012(B)(1), in the County's Exclusive Farm Use (EFU) zone.

B. Parties To The Proceeding

1. Applicant

The applicant is:

Northwest Brewers Grains of Oregon Inc. c/o Anderson, Beail & Raines, 9706 Fourth Avenue Ave NE Suite 305, Seattle, Washington 98115-2157. At the hearing the applicant was represented by Robert Price (planner) and Ken Vigil (engineer) of David Evans & Associates, 2828 SW Corbett Avenue, Portland, Oregon 97201-4830. Documents submitted after the hearing were prepared by Gregory S. Hathaway, attorney, with Davis, Wright, Tremaine, 2300 First Interstate Tower, 1300 SW Fifth Avenue, Portland, Oregon 97201-5682.

2. Other Persons Supporting The Application

No other persons appeared, through oral or written testimony, in support of the application.

3. Opponents

The persons appearing, through oral or written testimony, in opposition to the application, are (in order of their appearance at or following the hearing):

Sauvie Island Drainage District¹, represented by David Hicks, Supervisor, 29264 NW

¹ In its testimony, the Drainage District described itself less as an opponent of the application than an advocate for certain conditions of approval, conditions to which the applicant has agreed. (See letter of 30 August 1993 from Greg Hathaway) However, because (1) there is no category of "neutral parties;" (2) the Drainage District has not endorsed the project; and (3) their interests might be prejudiced by classifying them as proponents, whereas there is no prejudice to them as opponents, I am classifying it as an opponent.

Sauvie Island Road, Portland, Oregon 97231. The District was also represented by their attorney Daniel Kearns of Preston, Thorgrimson, et al, 3200 US Bancorp Tower, 111 SW Fifth Avenue, Portland, Oregon 97204.

Vlad M. Voytilla, 300 West Mill Plain Blvd. Suite 600, Vancouver, WA 98660

Paul DeBonney, represented at the hearing by Vlad Voytilla.

Scott Hamersly, 8852 SE 91st, Portland, Oregon 97266.

Paul Gamroth, 23005 NW Oak Island, Portland, Oregon 97231

Vince Cooney, 7120 North Washburn, Portland, Oregon 97217

Dale Johnston, 91941 NW Reeder Road, Portland, Oregon 97231

Ginny Stern, 23434 NW Oak Island Road, Portland, Oregon 97231

Mark Stern, 23434 NW Oak Island Road, Portland, Oregon 97231

4. Party Status And Notice Of This Decision

In the absence of any challenges to their standing, I find the preceding persons to be parties to the proceeding, as specified by MCC 11.15.8225. These persons or their representatives should receive a copy of this decision.

C. Impartiality Of The Hearings Officer

Before and after the hearing I had no *ex parte* contacts with any of the parties concerning the merits of these applications.

I have no financial interest in the outcome of this proceeding and have no family or business relationship with any of the parties.

In the past year, I have been representing an organization opposing an application approved by Washington County. In the proceedings before the local government, the applicant was represented by David Evans & Associates (DEA). This information was presented at the commencement of the hearing, by Robert Price of DEA and confirmed by me. After a recess to discuss this issue with his client, Robert Price of DEA declined to ask for my recusal.

I find that my representation of a third party in an unrelated proceeding, in opposition to the interests of a different, unrelated client of DEA, does not affect my

impartiality as a decision maker in this proceeding.

D. Burden of Proof

The burden of proof is upon the applicant. MCC 11.15.8230(D).

E. Alleged Procedural Errors

No procedural errors were alleged before, during or after the hearing.

II. FINDINGS OF FACT REGARDING THE PROPOSED USE

According to the application:

The applicant recycles spent brewery grain for use as livestock feed. The grain is picked up from a local brewery and trucked either directly to dairy farms or to the subject site for short-term storage. The applicant prefers to take the grain directly from the brewery to dairy farms, and most of the grain (approximately 80 percent) is delivered directly. However, due to variations in production at the brewery and customer demand, a staging area is needed to temporarily store the grain. The Sauvie Island site serves as this staging area. Grain taken to the storage facility is usually stored for only a few days, but may be kept up to three months in ensilage, after which time it is loaded back onto trucks and delivered to farms for feed.

Application page 1.²

The applicant characterized its activity as a "currently nonconforming use" in operation since 1984. It stated that it seeks a CUP for two reasons:

To be in compliance with the County Comprehensive Plan and Zoning Ordinance, and to construct a new grain storage area and wastewater treatment facility as required by the Oregon Department of Environmental Quality (DEQ) Stipulation and Final Order No. WQIW-NWR-93-055.

² During the course of testimony during the hearing, it was revealed that the applicant's property was also being used for the storage and distribution of used brewers yeast or yeast by-products. (See letter from Gregory Hathaway dated 30 August 1993.) Since this activity was not described in the original application it cannot be considered in this proceeding; its authorization would require an amended or new application.

Id.

The applicant owns 117.19 acres, of which about 9 acres would be used for the spent grain storage and processing. Application at 2. The remainder of the land will lie fallow this year but the applicant intends "to plant oat and timothy hay on all three parcels next year, and ton continue this practice." *Id.* The spent grain operation does not involve grain grown on the property.

The spent grain comes from a brewery located at NW 11th and Burnside in downtown Portland, about 13 miles from the applicant's property on Sauvie Island. Application at page 5. The spent grain would be used by dairy farmers "in Northwest Oregon and southwest Washington."³ *Id.*

These statements were not contradicted by any other testimony and are consistent with the evidence in the record. I adopt them, as other statements in the application, as my own findings of fact for purposes of the subsequent analysis of the application.

III. ANALYSIS OF THE APPLICATION UNDER THE STANDARDS IN STATE LAW, AND THE COUNTY ZONING CODE

A. State Statute Authorizing And Limiting Use In EFU Zones

1. Introduction: EFU Statutes Apply Directly To This Application And The County Must Adhere To Appellate Interpretations Of Those Statutes.

ORS 215.283(2)(a) authorizes "commercial activities that are in conjunction with farm use," in exclusive farm use zones. The statute is virtually identical to, and is the source of, the authorization of "commercial activities that are in conjunction with farm uses" in Multnomah County's EFU zone. MCC 11.15.2012(B)(1).

Regardless of the acknowledgment of the County's comprehensive plan and zoning ordinances, the statute continues to apply directly to this decision. *Kenagy v. Benton County*, 115 Or App 131, 136, 838 P2d 1076 (1992). *See also Forster v. Polk County*, 115 Or App 475, 478, 839 P2d 241 (1992).

Although the Oregon Supreme Court has articulated a deferential standard of review for local government interpretations of their ordinances, *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992), no such deference is due to local government interpretations of state statutes. *Smith v. Clackamas County*, 313 Or 519, 524-525, 836 P2d 7__ (1992),

³ I also adopt as my own findings of fact, those portions of page 5 of the application quoted in section III.A.3 of this decision.

Forster v. Polk County, supra, 115 Or App 478; and see *Ramsey v. City of Portland*, 115 Or App 20, 24 fn 2, 836 P2d 772 (1992).

In any event, given that LUBA has found and the County apparently agrees that the state and county definitions of the permitted use do not differ in substance, *Chauncey v. Multnomah County*, 23 Or LUBA 599, 604 (1992), the analysis under both definitions is identical.

2. Review Of Prior Decisions Interpreting "Commercial Activities In Conjunction With Farm Use"

The preliminary, and determinative question, is whether the proposed use fits within the definition of a "commercial activity in conjunction with farm use," under the state statute and county code.⁴

The most important precedents addressing this issue are: *Craven v. Jackson County*, 308 Or 281, 289, 779 P2d 1011 (1989); *Earle v. McCarthy*, 28 Or App 539, 560 P2d 665 (1977); and *Chauncey v. Multnomah County*, 23 Or LUBA 599, 604 (1992).

In each of these cases, the tribunal devoted some discussion to the closely related question of what the "farm use" is, with which the "commercial activity" is in conjunction. The reason for the joint discussion becomes evident when we note that the definition of "farm use" itself seems to contemplate storage and marketing of farm products in addition to the commercial element of the farming activity itself:

*(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or * * * livestock * * *. "Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. * * **

ORS 215.203(2)(a).

⁴ During the course of the hearing I expressed my concern about whether the use was "in conjunction with farm use" under the terms of the statute and the County Code, and invited the parties to provide additional argument on this issue during the four weeks set aside for additional evidence and argument (2 weeks) and for rebuttal evidence and argument (2 weeks.) In his 16 August 1993 "Supplement To Conditional Use Application," Mr. Hathaway addressed this question on behalf of the applicant, and Mr. Voytilla, an opponent, provided a letter dated 13 August 1993 addressing this point.

In the *Earle* case, the applicant sought approval for a hop warehouse, to "store a large volume of crops from many hop growers" and incidentally to sell string and burlap used in hop production. *Earle v. McCarthy, supra*, 28 Or App 541. The facility was to be located on a 4-acre parcel south of Hopmere, in an exclusive farm use (EFU) zone in Marion County. *Id.* The plaintiffs argued that "storage of the product of land other than that on which the proposed warehouse would be located is no a permissible conditional use in an EFU zone." *Id.*

In reaching its conclusion about the permissibility of the use, the Court reviewed both the definitions of "farm use" in the zoning ordinance, based on ORS 215.213(2)(a), and §136.230(b), which reiterated the authorization in (then) ORS 215.213 of: "Commercial activities that are in conjunction with farm use." The Court held:

It is subsection (b) that plaintiffs erroneously contend is limited to on-site produce. To the contrary, since "Commercial activities that are in conjunction with farm use" is designated by the ordinance and the statute as "nonfarm use," then it must allow something more than what would be allowed as a "farm use." It is reasonable, therefore, to construe the term as including a warehouse for the commercial storage of agricultural products of lands other than that on which the warehouse is located. Accordingly, we hold that such a use is a permitted conditional use in an EFU zone.

Earle v. McCarthy, supra, 28 Or App 542.

In *Craven*, the applicant received permission from the county for a "a winery and retail tasting room in conjunction with a vineyard being planted on his land." *Craven v. Jackson County*, 308 Or 281, 283, 779 P2d 1011 (1989).⁵ The Supreme Court quoted portions of LUBA's findings including the observation that "The winery will process grapes grown on site and at other vineyards, but as the accompanying vineyard produces more grapes, the percentage of wine produced from those grapes will increase." *Craven, supra*, 308 Or 284.

In affirming the decisions made by the County, LUBA and Court of Appeals, the Supreme Court offered a lengthy, and somewhat confusing, discussion of the policy framework behind the EFU statutes' provisions for farm and nonfarm uses and buildings.⁶

⁵ The county decision on appeal predated the authorization by the 1989 Legislature of wineries and related facilities in EFU zones. See ORS 215.283(1)(s), 215.452 and *Craven, supra*, 308 Or 280 fn 3.

⁶ The court's opinion cites and discusses ORS 215.203(2)(a) (the definition of "farm use"), 215.213(1)(f) (nonresidential buildings customarily provided in conjunction with farm

The Court cautioned against interpreting "farm use" in ORS 215.203(2)(a) so broadly as to authorize "a shopping mall or supermarket as a farm use so long as the wares sold are mostly the products of a farm someplace." Such an interpretation would subvert the goal of preserving farm land. *Craven, supra*, 308 Or 288.

The Court then turned to the status of the winery as "a commercial activity in conjunction with farm use." The paragraph in the decision containing the Court's reasoning and conclusion states:

The phrase upon which the validity of the CUP turns is "in conjunction with farm use," which is not statutorily defined. We believe that, to be "in conjunction with farm use," the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates. The agricultural and commercial activities must occur together in the local community to satisfy the statute. Wine production will provide a local market outlet for grapes for other growers in the area, assisting their agricultural efforts. Hopefully, it will also make [the applicant's] efforts to transform a hayfield into a vineyard successful, thereby increasing both the intensity and value of agricultural products coming from the same acres. Both results fit into the policy of preserving farm land for farm use.

Craven, supra, 308 Or 288.

LUBA applied the *Craven* holding regarding ORS 215.283(2)(a) in *Chauncey v. Multnomah County*, 23 Or LUBA 599 (1992). In that case, LUBA upheld the County's interpretation of the same ordinance being applied here, MCC 11.15.2012(B)(1).

The County had denied an application for a bark grinding and processing operation in association with a nursery. On the same property there was pasture and trees "originally planted as Christmas trees." *Chauncey, supra*, 23 Or LUBA 600. The parties contested whether the evidence demonstrated that the operation would "enhance the farming enterprises of the local agricultural community to which the EFU land housing that commercial activity relates," an important phrase in the *Craven* holding. The applicant argued that the evidence showed the bark would be used by nurseries and Christmas tree farms within ten miles of the business.

use") 215.213(2)(c) ("commercial activities in conjunction with farm use" in marginal lands counties) and 215.283(2)(a) ("commercial activities that are in conjunction with farm use," in counties not applying ORS 215.213.) The applicable statute in the case was ORS 215.283(1)(f), since Jackson County has not chosen to adopt marginal lands or the optional criteria under ORS 214.213. See ORS 215.288. However, the text of the two provisions permitting "commercial activities that are in conjunction with farm use" is identical.

LUBA's decision turn on its analysis of the evidence in the record:

There is no evidence in the record regarding what quantity of wood by-products will be distributed from the subject site, what portion of the "smaller customers" to be served from the subject site are farm uses or what quantity of the wood by-products to be delivered from the subject site will be sold to farm uses.[footnote about direct deliveries omitted.] Further, even if the bifurcation of petitioners' business between the subject and processing sites is overlooked, the evidence in the record does not establish the quantity of wood by-products delivered, or dollar amount of sales, by petitioners' business to farm uses within a ten mile radius. We agree with respondent that in the absence of such evidence, petitioners cannot demonstrate as a matter of law that their proposed use of the subject site is a commercial activity in conjunction with farm use.

Chauncey v. Multnomah County, supra, 23 Or LUBA 606-607.

Other LUBA decisions determining whether proposed uses are "commercial uses" "in conjunction" with a farm or forest use, have turned on the particular provisions of a county code which differs from, or was not adopted to implement, ORS 215.283(2)(a).⁷

Because the appellate decisions have considered ORS 215.203(2)(a) as an alternate theory for approval of a commercial use related to farming, it may be useful to consider LUBA decisions on this subject for the indirect light they may shed on the interpretation of ORS 215.283(2)(a).

In *J & D Fertilizers v. Clackamas County*, 20 Or LUBA 44 (1990), LUBA concluded that the petitioner's chicken manure storage and processing facility was not a "farm use" because "none of the products are produced on the land where the preparation or storage takes place * * * ." *J & D Fertilizers, supra*, 20 Or LUBA 49-50. In a footnote, LUBA reviewed the Supreme Court's decision in *Craven*, attempting to understand and separate the analysis of the winery under ORS 215.203(2)(a) from the Court's analysis under ORS 215.283(2)(a):

Thus, the most we can conclude from Craven is that a winery and tasting room in conjunction with a vineyard onsite, i.e. a preparation and storage operation which processes at least some agricultural products grown onsite, can

⁷ *Burkey v. Clackamas County*, 17 Or LUBA 369, 374 (1989) (decision based on county code provision which was more specific than statute; *Lung v. Marion County*, 21 Or LUBA 302, 305-306 (1991) (decision based on more specific provision applicable in non-EFU zone); *Moody v. Deschutes County*, 22 Or LUBA 567, 572 (1992)(decision based on construction of other provisions in local ordinance.)

be farm use.

J & D Fertilizers, supra, 20 Or LUBA 50 fn 5.⁸

The fact that the source of the material to be disposed of was from outside the farming area was also listed as a factor in LUBA's determination that a diseased lamb disposal facility was not a "farm use." *Kunkel v. Washington County*, 16 Or LUBA 407, 417 (1988).

Because this application is subject to state statute, I am bound by these appellate precedents. In addition, I have made it a practice to treat the County's prior interpretations of its code as binding precedents, unless they are "clearly wrong." See *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992); *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 843 P2d 992 (1992); *Cope v. Cannon Beach*, 115 Or App 11, 836 P2d 775 (1992).

3. Application Of The Law To The Facts

In the two appellate decisions, the commercial facility which had been properly approved, was used to process and market farm products produced on neighboring farms (*Earle* and *Craven*) and/or on the operator/applicant's own property (*Craven*.) The proposed commercial activity here is the distribution of a by-product from a non-agricultural industrial enterprise, the brewing of beer. According to the testimony of the applicant's representatives, the brewing is carried out in the industrial area of NW Portland.

To the extent the facts that (i) the items which were the subject of the commercial marketing were agricultural commodities and (ii) were produced on farms in the vicinity, was important to the appellate courts' decisions, it is absent here. The commodity being marketed is produced in the city and is the by-product of an urban manufacturing process, although the raw materials themselves include agricultural products.⁹

Furthermore, as the applicant notes, the "commercial activity" has no relationship to the past and prospective agricultural uses of the applicant's farm property, which will be used to grow hay not grain used in brewing. The applicant's "commercial activity" is brewing

⁸ Previously LUBA had interpreted *Craven* to mean that the court regarded the winery as incidental and accessory to the primary farm use. *Von Lubken v. Hood River County*, 18 Or LUBA 18, 40 (1989). LUBA did not reiterate this interpretation in *J & D Fertilizers*, perhaps in light of the facts in the *Craven* case which do not fit an "accessory use" analysis.

⁹ Mike Gamroth, OSU Extension Dairy Specialist notes that while they are fed to cattle, "brewer's grains come from a more 'industrial' business". Application, Appendix C.

beer, not raising livestock or grain. An analogy for the proposed use would be the storage and distribution of recycled motor oils, for use as engine lubricants by farm machinery. The fact that the product is used on farms may not be sufficient to establish that it is a "commercial activity in conjunction with farm use."

If it were not for the *Chauncey* decision¹⁰, I would conclude that the applicant's proposed use is not allowed under ORS 215.283(2)(a) and MCC 11.15.2012(B)(1) because the commercial activity does not involve (i) a commodity produced on the farm itself (*Craven*); or (ii) a commodity produced by farmers in the vicinity (*Earle*); or (iii) sales of items or products accessory to the sale or storage of farm commodities (*Craven*) or (iv) could not qualify as a "farm use" in its own right (*Craven, Earle, J & D Fertilizers, Kunkel.*)

However, *Chauncey* is a controlling interpretive precedent for a decision made by Multnomah County. I must review the record to determine whether or not the applicant meets the test articulated in that case. In response to the *Craven/Chauncey* test, the applicant states:

*The local agricultural community to which the applicant's activity relates can be determined to be dairy farmers in Northwest Oregon and southwest Washington." Due to the nature of dairy farms, they are widely spaced, and not many would occur within a 10-mile radius of the applicant's operation. * * * It is not feasible for the applicant to deliver most of their product within a 10-mile radius because most potential customers are located much farther away. For example, according to the applicant, no major commercial dairy farms currently exist on Sauvie Island. The applicant's business could not survive if it were limited to serving customers within 10 miles."*

Application at 5 (emphasis in original.)

The applicant has not disguised its difficulty with satisfying the *Craven* test. Instead it has made a reasoned argument for expanding the area under which it can meet the enhancement test.

The applicant relies on a quasijudicial decision made by the Land Conservation and Development Commission (LCDC) during the period prior to the creation of LUBA, *Balin v. Klamath County*, 3 LCDC 8 (1979). In that case, LCDC approved, in part, a rezoning adopted by the County in order to cite a farm implement dealership. In the course of that

¹⁰ In *Chauncey*, this County found and LUBA implicitly agreed, that the enhancement test can be met by the consumption of a product by farms and not just the sale of commodities produced on farms, subject to a limitation on the area within which these products are used.

decision LCDC addressed the question of whether the proposed dealership was a "a commercial activity in conjunction with" the nearby farming operations it served. *Balin v. Klamath County, supra*, 3 LCDC 19. Northwest Brewer notes in its 16 August 1993 supplement, that *Balin* was cited by the Court of Appeals in its decision on *Craven*.

I conclude that LCDC's decision in *Balin*, is insufficient authority to approve this application for five reasons.

First, LCDC's decision¹¹ specified a narrower grounds for its approval of the implement dealership than has been described by the applicant in its supplementary argument:

Clearly the statute is not intended to allow the establishment of grocery stores and gas stations on agricultural lands solely because they are situated in a primarily agricultural area and serve primarily agricultural needs. However, it can and should be read to express a legislative judgment that commercial activities limited to providing products and services essential to the practice of agriculture directly to the surrounding agricultural businesses are sufficiently important to justify the resulting loss of agricultural land. The record shows that such an enterprise is proposed and is needed.

Balin v. Klamath County, supra, 3 LCDC 19 (emphasis added.) The record in this proceeding does not demonstrate that the spent brewers grain is essential to the dairy farmers. In addition, providing feed to commercial dairy farms, none of which are on Sauvie Island and which are as far as 60 miles away from the site on Sauvie Island, cannot be described as a commercial activity serving "surrounding agricultural businesses."

Second, LCDC adopted an independent alternative basis for approving this use, an exception to Goal 3 (Agricultural Lands) under Goal 2, (Land Use Planning.) The text of LCDC's decision reveals that this exception was of the type now characterized as a "need" exception under ORS 197.763(1)(c) and OAR 660-04-020, 022 (1991). *Balin v. Klamath County, supra*, 3 LCDC 17-18. The outcome, approval of the implement dealership, depended on the Commission's overall acceptance of the proposed

Third, *Balin* was not cited or relied upon by the Supreme Court in its decision. Nor was it cited by the Court of Appeals in *Earle* or by LUBA in *Chauncey*.

Fourth, as a hearings officer for Multnomah County, I believe I am bound by the precedent in *Chauncey v. Multnomah County*.

¹¹ LCDC adopted the hearings officer's recommendation. *Balin v. Klamath County, supra*, 3 LCDC 22.

Fifth, the statute should be interpreted in the light of the Court of Appeals' expressed view that:

there is an overriding statutory and regulatory policy to prevent agricultural land from being diverted to nonagricultural use.

Hopper v. Clackamas County, 87 Or App 167, 172, 741 P2d 921 (1987) *rev den* 304 Or 680 (1988); accord *Nelson v. Benton County*, 115 Or App 453, 459, 839 P2d ___ (1992). This policy has been used by the Court of Appeals as the basis for interpreting provisions in the EFU statute and local ordinances implementing the statute:

*Section 137.020, like its statutory analog [ORS 215.213(1)(d)], defines non-farm uses which are permitted in farm zones. However, state and local provisions of that kind must be construed, to the extent possible, as being consistent with the overriding policy of preventing "agriculture land form being diverted to non-agricultural use." Hopper v. Clackamas County, 87 Or App 167, 172, 741 P2d 921 (1987) *rev den* 304 Or 680 (1988). Therefore, when possible, the non-agricultural uses which the provisions allow should be construed as ones that are "related to and [promote] the agricultural use of farm land. Hopper v. Clackamas County, supra, 87 Or App at 172. When no such direct supportive relationship can be discerned between agriculture and a use permitted by the provisions, the use should be understood as being as nondisruptive of farm use as the language defining it allows.*

McCaw Communications, Inc. v. Marion County, 96 Or App 552, 555, 773 P2d 779 (1989).¹²

B. Other State And County Standards

In the light of the prior determination and need for a timely decision, I do not address the degree to which the application satisfies the conditional use standards in MCC 11.15.7120(A) and any other applicable standards.

¹² In addition, there is a state policy to encourage urban uses, including industrial uses, to be located inside urban growth boundaries and to discourage their development outside UGBs. Goal 14, "Urbanization" and see e.g. *1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or 447, 507 n 37, 511, 724 P2d 268 (1986); *1000 Friends of Oregon v. LCDC*, 292 Or 735, 745, 642 P2d 1158 (1982). To the extent this use can be considered an extension or overflow of the urban brewing facility, it may be inconsistent with that policy. These state policies are reflected in elements of the County's own urbanization policies. *Multnomah County Comprehensive Framework Plan, Volume 2: Policies*, at policies 5, 6, 9. See also MCC 11.15.7120(A)(7).

CONDITIONS OF APPROVAL:

1. Comply with all DEQ requirements as outlined in the Stipulation and Final Order No. WQIW-NWR-93-055.
2. Obtain building permits for the new structures, if required by the Portland Building Bureau. Any structure shall meet the dimensional requirements of MCC .2016, and shall be located at least 100 feet from the Gilbert River as required by MCC .6404 (C)..

FINDINGS OF FACT:

1. Applicant's Proposal:

The applicant requests Hearings Officer approval to allow operation of a brewery grain recycling facility. The operation involves picking up spent grain from a Portland brewery and delivering it to farms for use as feed for cattle and dairy cows. Due to variations in supply and demand, excess spent grain would be stored on the subject property. Some of the grain is only stored for a few days, while some is kept for up to three months in ensilage. The applicant proposes to construct a paved and covered loading and unloading area, a grain storage area, and a pump station and holding lagoon to handle runoff from the stored grain, as required by DEQ. Treated liquid from the lagoon will be mixed with irrigation water and applied to crops on the property.

2. Site and Vicinity Characteristics:

The property consists of three taxlots bounded by the Gilbert River on the north and west and by Oak Island Road on the east. The terrain is level, and is used to grow hay and grass. A barn, shop, vehicle storage building, house and trailer are located on the property.

The surrounding area is level and used for agriculture. There is a house directly across the street. The next closest house is approximately 1/4 mile to the south along Oak Island Road.

3. Ordinance Criteria:

Ordinance criteria are in **bold**. Staff response follows each criteria. Applicant's response to criteria may be found in their Conditional Use Application, reference file CU 21-93.

MCC 11.15.2012 (B): The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7105 to .7140:

- (1) Commercial activities that are in conjunction with farm uses.**

Neither the Multnomah County Code or ORS 215 define "commercial activities in conjunction with

farm use". The spent grain that will be stored at the site is used exclusively as feed for cattle and dairy cows. This is clearly an agricultural use. In addition, wastewater from the lagoon will be used for irrigating and fertilizing crops on the subject parcel, also an agricultural activity.

MCC .7120 Conditional Use Approval Criteria

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

(1) Is consistent with the character of the area;

The surrounding area is typical of Sauvie Island, with large parcels devoted to agricultural use and widely scattered farm dwellings. The proposed activity involves a storage area for grain and ensilage, and a treatment lagoon for liquid runoff. These structures will be located on a small portion of the property near a cluster of agricultural buildings. The majority of the property will continue to be used for growing crops. Treated runoff from the lagoon will be utilized to fertilize and irrigate these crops. Storage facilities for feed and ensilage are typical of cattle and dairy farm operations. This will not be inconsistent with the agricultural character of the area.

(2) Will not adversely affect natural resources;

The Gilbert River is a significant wetland and may be a Class I stream. MCC .6422 requires that an SEC permit be obtained if the proposed activity would impact the wetland. MCC .6404 requires structures to be located at least 100 feet from Class I streams. The proposed location of the new structures is close to the existing buildings, far exceeding the 100 foot setback requirement. The new drainage and pumping system and treatment lagoon will serve to protect the River from adverse effects, so an SEC permit is not required.

The Sauvie Island Wildlife Area is a large sensitive waterfowl area located approximately 1/2 mile from the subject site. This is also a significant natural area as identified in the Comprehensive Plan. The proposed storage operation should have no adverse affect to this resource.

(3) Will not conflict with farm or forest uses in the area;

There are no forest uses in the area. Surrounding farm uses involve large scale crop production. The proposed new structures are limited to an area approximately one acre in size, plus treated runoff from the lagoon will be used for irrigation on other areas of the property. These are typical of many agricultural uses, and should cause no conflicts with other uses in the area. Adjoining property owners have indicated (reference Petition, Appendix F of applicant's submittal) that they have no objections to the proposed operation and that it does not conflict with farm uses in the area. In addition, the operation has been occurring (without permits) for the last nine years. No conflicts with area farm uses have come to the attention of the county in that time.

(4) Will not require public services other than those existing or programmed for the area;

The applicant has water rights to use irrigation water that will be mixed with the wastewater runoff. The property is already served by electricity. Road standards are adequate for the amount of truck traffic generated (18 - 30 trips per week). Drinking water is supplied by an on-site well. A portable toilet is currently used by the truck drivers who pick-up and deliver the grain. The Sanitarian has indicated that this is adequate unless the proposed new storage area is connected to a water supply, which is not proposed at this time. No other public services will be required.

(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

The Comprehensive Plan Wildlife Habitat Map shows no sensitive big game wintering areas near the subject property.

(6) Will not create hazardous conditions; and

The spent brewery grain is not a hazardous material. The proposed lagoon, which will capture and treat runoff from the stored grain, is a requirement of DEQ to prevent runoff into the Gilbert River. The treatment system will prevent further contamination of the river, so will prevent hazards, if any, that could occur from runoff reaching the river. Oak Island Road, Reeder Road, and Sauvie Island Road are all adequate to handle the 18 - 30 truck trips generated each week.

(7) Will satisfy the applicable policies of the Comprehensive Plan.

Comprehensive Plan policies are addressed in Section 4, below.

MCC .7122 Exclusive Farm Use Conditional Use Approval Criteria

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

(1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

The grain stockpiling has been in operation for nine years at the subject property, and there has been no indication by adjacent property owners that it has affected their farming practices. The stockpiling, loading and unloading occur on a very small portion of the property, and has caused no significant changes in agricultural practices on the subject or surrounding lands.

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

The proposed operation should have no impacts beyond the small area where the structures will be located. This will not cause an increase in operating costs to surrounding farms.

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

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

There are no non-farm dwellings, exception areas, or a UGB in the surrounding area.

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

Condition #1 requires the applicant to comply with DEQ requirements to prevent runoff into and contamination of the Gilbert River. Condition #2 requires that the dimensional requirements found in MCC .2016 be met in order to prevent new structures being located too close to the road and property lines. It also requires structures to be located at least 100 feet from the Gilbert River to protect the wetland and stream habitat, pursuant to MCC .6404 (C).

4. Comprehensive Plan Policies:

Policy 9 Agricultural Land: The county's policy is to designate and maintain as exclusive agricultural, land areas which are:

- A. Predominantly agricultural soil capability I, II, III, and IV, as defined by U.S. Soil Conservation Service;**
- B. Of parcel sizes suitable for commercial agriculture;**
- C. In predominantly commercial agriculture use; and**
- D. Not impacted by urban service; or**
- E. Other areas, predominantly surrounded by commercial agriculture lands, which are necessary to permit farm practices to be undertaken on these adjacent lands.**

The county's policy is to restrict the use of these lands to exclusive agriculture and other uses, consistent with state law, recognizing that the intent is to preserve the best agricultural lands from inappropriate and incompatible development.

The subject parcel is exclusive agricultural land. The proposed use is allowed by state law (OAR 660-33-120), and is compatible with and appropriate to be located on agricultural land.

Policy 13 Air, Water and Noise Quality: 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. If the proposal is a noise sensitive use and is located in a noise impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan...

The use is not noise sensitive. DEQ has required that the lagoon be built in order to prevent water quality problems. Condition #1 requires that DEQ standards be met. The sanitarian has indicated that sewage disposal is adequate for the use at present. There should be no effect to air quality by the proposed use.

Policy 22 Energy Conservation: The county's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. In addition, it is the policy of Multnomah County to reduce dependency on non-renewable energy resources and to support greater utilization of renewable energy resources. The county shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered:

- (1) The development of energy-efficient land uses and practices;
- (2) Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;
- (3) An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
- (4) Street layouts, lotting patterns and designs that utilize natural environmental and climatic conditions to advantage.
- (5) Finally, the county will allow greater flexibility in the development and use of renewable energy resources.

The proposed use is not suitable for location in an urban area due to odors produced by stored grain and ensilage and the need for fields to receive the wastewater. The Sauvie Island location is fairly energy efficient in that it is centrally located to both the Portland brewery where the grain is picked up and customers in western Oregon and Washington. No changes to transportation systems, street layouts or energy resources are proposed.

Policy 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

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

- (2) 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
- (3) There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
- (4) There is an adequate private water system, and a public sewer with adequate capacity.

Drainage

- (1) There is adequate capacity in the storm water system to handle the run-off; or
- (2) The water run-off can be handled on the site or adequate provisions can be made; and
- (3) 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

- (1) There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and
- (2) Communications facilities are available.

A private well serves the site with drinking water. The applicant has water rights to supply the water that will be mixed with the wastewater runoff and used for irrigation. On-site sewage disposal is currently provided by a chemical toilet, which the sanitarian has indicated is adequate under present circumstances. The proposed lagoon and pumping system will provide storage for wastewater runoff on site, so that it will not adversely affect water quality in the Gilbert River. Electricity and telephone service are available to the site.

Policy 38 Facilities: The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

School

- (1) The appropriate school district has had an opportunity to review and comment on the proposal.

Fire Protection

- (1) There is adequate water pressure and flow for fire fighting purposes; and
- (2) The appropriate fire district has had an opportunity to review and comment on the proposal.

Police Protection

- (1) The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.**

School District 19 had no comment on the application. The Multnomah County Sheriff and Sauvie Island Fire District 30 indicated that their service levels are adequate for the proposed use.

Policy 40 Development Requirements: The county's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

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

Dedication for pedestrian and bicycle paths is not appropriate on Oak Island Road due to its limited use and lack of connection to other bicycle corridors.

CONCLUSIONS:

1. The proposed grain storage facility is a commercial activity related to farm uses.
2. The proposed wastewater lagoon is required by DEQ to prevent runoff and protect the water quality of the Gilbert River, which is a significant wetland.
3. The applicant has carried the burden necessary for the approval of a commercial use in conjunction with farm use in the EFU zoning District.

The Staff Report and recommendation on Conditional Use application CU 21-93 will be presented at a public hearing on August 2, 1993 before the Hearings Officer.

The Hearings Officer MAY announce a decision on the item:

*at the close of the hearing; or,
upon continuance to a time certain; or,
after the close of the record following the hearing.*

A written decision is usually mailed to all parties within ten days following the Decision of the Hearings Officer.

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony to the record. A "Notice of Appeal" form and fee must be submitted to the County Planning Director within ten days after the Hearings Officer decision is submitted to the Clerk of the Board [REF. MCC 11.15.8260(A)(1)]. The appeal fee is \$300.00 plus a \$3.50-per-minute (\$800 maximum) charge for a transcript of the initial hearing(s) [REF. MCC 11.15.9020(B)]. "Notice of Appeal" forms and instructions are available at the Planning and Development Office at 2115 SE Morrison Street, Portland).

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

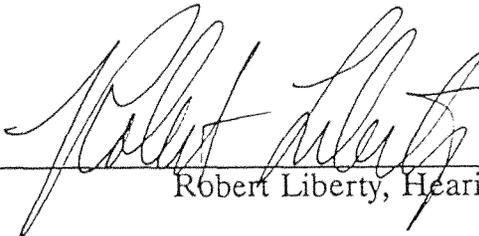
Hearings Officer decisions are typically reported to the Board for review on the first Tuesday following the ten day appeal period. The Board meets at 1:30 a.m. in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

IV. CONCLUSION AND ORDER

The proposed use does not qualify as a permitted use in Multnomah County's EFU zone under MCC 11.15.2012(B)(1) or ORS 215.283(2)(a), as those provisions have been interpreted by the appellate courts, LUBA and the County.

The application is denied.

15 September 1993


Robert Liberty, Hearings Officer

Signed by the Hearings Officer:	<u>September 15</u> , 1993 [date]
Decision mailed to parties:	<u>September 16,</u> 1993 [date]
Submitted to Clerk of the Board:	<u>September 16,</u> 1993 [date]
Last day to Appeal to the Board:	<u>September 27,</u> 1993 [date]

Appeal to the Board of County Commissioners:

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

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

BOARD OF
COUNTY COMMISSIONERS

1993 NOV -5 AM 9:34

MULTNOMAH COUNTY
OREGON

Paul Gamroth
23005 N.W. Oak Island Road
Portland, OR 97231

November 3, 1993

Board of County Commissioners
2115 S.E. Morrison St.
Portland, OR 97214

CU 21-93
Board Public Hearing
November 9, 1993
1:30 p.m.

Dear Sirs,

I live next to North west Brewers Grain on N.W. Oak Island Road, which is located on Sauvie Island. For the past nine years, Northwest Brewers Grain has been hauling spent brewers grain to and from their property which is next to mine. They have been good neighbors other than the speeding trucks that rumble by.

Approximately a year and a half ago, a tanker truck started traveling up and down the road. This tanker truck was hauling a new by product from the brewery to Northwest Brewers Grain. This product is the used or spent yeast which is required to make beer. At first there were no problems. The truck brought the yeast to Northwest Brewers Grain's barn where it was stored in tanks and then was reloaded and delivered when the customer needed it. The problem began when Northwest Brewers Grain lost their customer and had no way to dispose of the yeast byproduct, so they started dumping it in the Gilbert river. The Gilbert river is an irrigation canal which runs through a major portion of Sauvie Island. The reason I say it was dumped into the Gilbert river is because the yeast is hauled out by tanker and then unloaded into large capacity steel tanks. There were no overturned tankers to my knowledge and none of the storage tanks had burst. When the problem was first noticed and the yeast was discovered in the Gilbert, it was by a farmer irrigating his crops. The crops were all dying and he noticed that the water in the Gilbert around his irrigation pump that he was pumping onto his field was very murky. There were lab analysis done and it was determined that the yeast was the culprit. The complaints to the Sauvie Island Drainage district and the D.E.Q. resulted in Northwest Brewers Grain changing the way they disposed of the unwanted yeast. Northwest Brewers Grain began pumping the yeast onto their property using an irrigation gun to disperse it. This method of spreading it out over their land resulted in an unbelievable putrid stench! The closest I can describe the smell is- like rotting flesh. Guests would frequently leave, the U.P.S. delivery

truck and mailmen didn't want to deliver. The neighbors were forced to keep their windows and doors shut to keep the stench out in the heat of the summer and the smell still permeated into closed up homes. It was sickening.

The proposed evaporation pond will eliminate none of the current problems and cause far more problems in the future. All of Northwest Brewers Grain land surrounding the proposed pond sight is being drained by drainage tile. This tile directs the excess water on the fields to the Gilbert river. When the evaporation pond becomes full and the yeast is pumped onto the field as in the past, the ground is going to become saturated with yeast, which in turn will seep into the drain tile and then into the Gilbert. In other words, back to square one!

I am also very concerned about my well water. My well is only thirty feet deep. How long before all the wells in the surrounding area are effected?

The last concern I have is how this operation will effect the hundreds if not thousands of people each year who use the Sauvie Island Wildlife Management Area which Oak Island Road dead ends into. This road accesses the area for fishing, hunting, bird watching, hiking, biking and sightseeing on this beautiful Island. The odor from this open pond will no doubt drive all but the most hardy away. It seems that this is much too high a price to pay for one pond to store spent brewers yeast.

Sincerely,

A handwritten signature in cursive script that reads "Paul Gamroth". The signature is written in black ink and is positioned below the word "Sincerely,".

Paul Gamroth
PG/jw

November 7, 1993

Mr Edd and Cliff Ackley
Acron Corp.
50515 S.E. 35th
Portland, Or 97202

To whom it may concern:

Please except this letter in support of the Northwest Grain
Brewers Assc. conditional land use petition on Sauvie Island
Oregon, for creating new underground storage bins.

My support has one condition and that is all liquid products
or bi-product be stored in sealed containers or containers
that will prohibit the stench smell that is associated with
the liquid products or bi-products. If this condition can be
met then the Northwest Grain Brewers will have my support.

Sincerely:


Mr Edd /or Cliff Ackley
Oak Island Rd
Sauvie Island, Or.

November 7, 1993

Mr David Winterholler
20201 N.E. Interlachen Ln
Troutdale, Or. 97060

To whom it may concern:

Please except this letter in support of the Northwest Grain
Brewers Assc. conditional land use petition on Sauvie Island
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the liquid products or bi-products. If this condition can be
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Sincerely,



David Winterholler

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY

In the Matter of the Review of the Hearings Officer)
Decision which denied a proposed commercial)
activity in conjunction with farm use in the EFU district)

FINAL ORDER 93-387
Approving
CU 21-93

This matter came before the Board of Commissioners (Board) for a review hearing on November 9, 1993. After considering the Hearings Officer's reasons for denial, and evidence and arguments presented by the appellant's representatives, the Board, in a 3-2 vote, determined to reverse the Hearings Officer decision and approve CU 21-93.

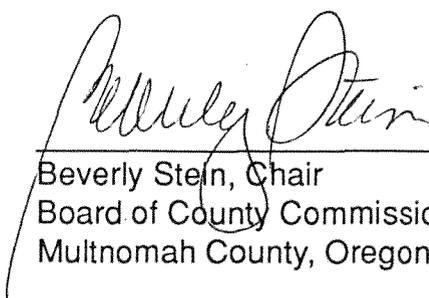
The Board adopts by reference the Conditions of Approval, Findings of Fact and Conclusions on CU 21-93 found in the Staff Report dated August 2, 1993. In addition, the Board adopts the following additional Condition of Approval:

3. This approval does not authorize the delivery, storage or disposal of spent brewers yeast or yeast by product on this property. Any such activity shall cease until separate approval is granted by the county.

Based on the foregoing, the Hearings Officer's decision is hereby reversed and the application is approved.

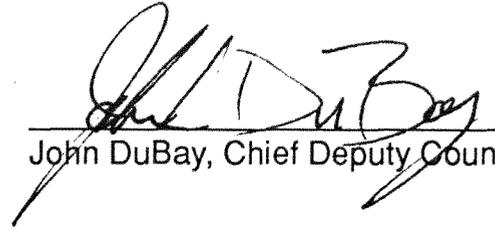


DATED this 9 day of December, 1993.



Beverly Stein, Chair
Board of County Commissioners
Multnomah County, Oregon

REVIEWED:



John DuBay, Chief Deputy County Counsel



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

STAFF REPORT

For the August 2, 1993 Public Hearing

This Staff Report consists of Conditions, Findings of Fact and Conclusions

CU 21-93,

Conditional Use Request
(Commercial Use in Conjunction with Farm Use)

Line 3.

Applicant requests Conditional Use approval to construct storage facilities and a wastewater lagoon on property in the EFU zoning district to be used in an operation that stores spent brewery grain and delivers the product as livestock feed to farms.

Location: 24315 NW Oak Island Road

Legal: Tax Lots '3', '9' and '10', Section 32, T3N, R1W, 1992 Assessor's Map

Site Size: 117 acres

Size Requested: Same

Property Owner: Northwest Brewers Grains of Oregon Inc.
c/o Anderson, Beal & Raines
9706 Fourth Ave. NE, Suite 305
Seattle, WA 98115-2157

Applicant: Same

Comprehensive Plan: Agriculture

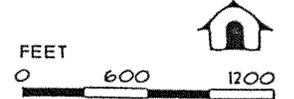
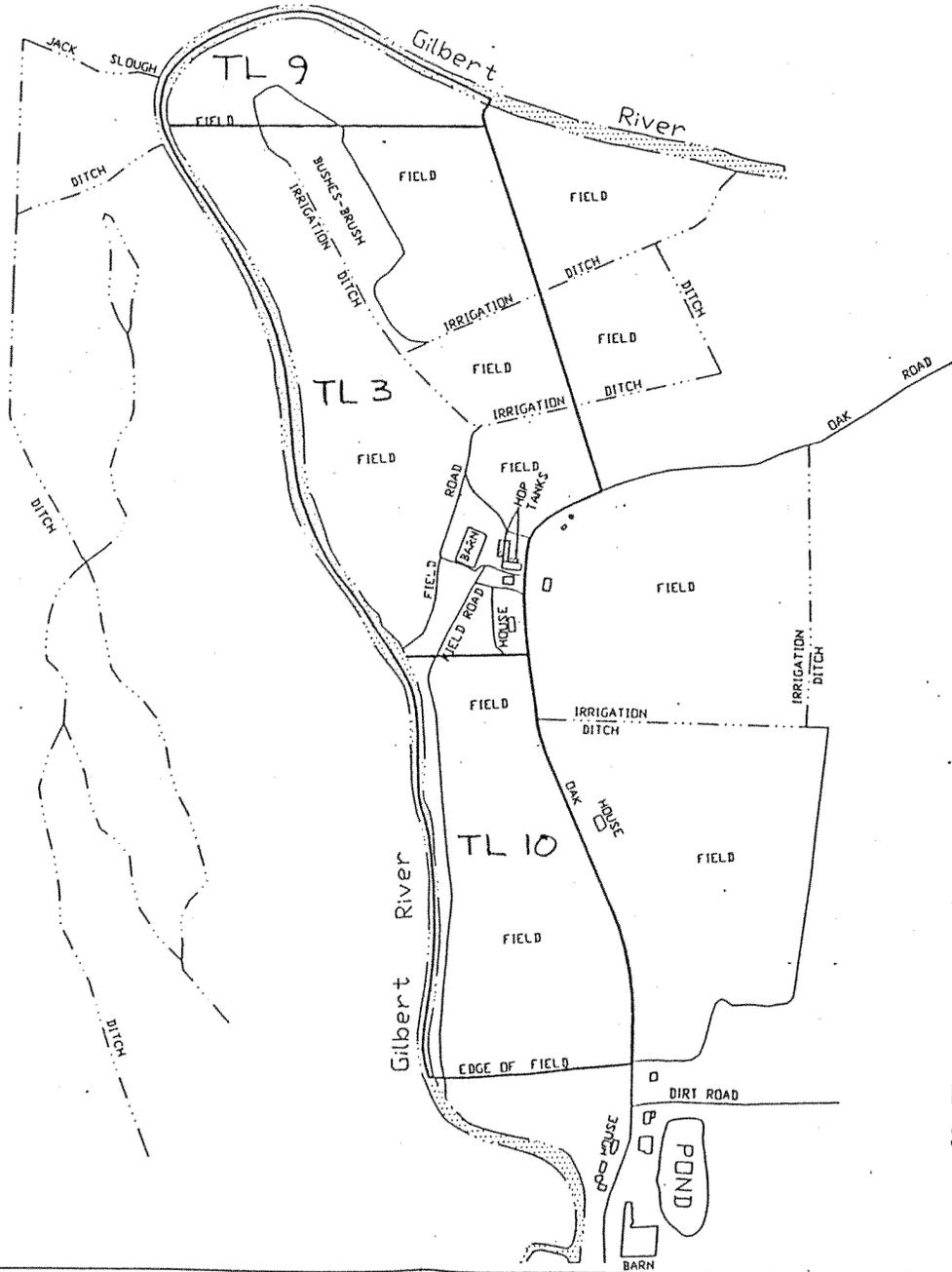
Present Zoning: EFU, Exclusive Farm Use District

**Recommended
Hearings Officer
Decision:**

APPROVE, subject to conditions, this request for a commercial activity in conjunction with farm use, based on the following Findings and Conclusion.

LEGEND

-  PROPERTY LINE
-  IRRIGATION DITCHES
-  RIVERS



DEA
DAVID EVANS AND ASSOCIATES, INC.

FIGURE 1
SITE MAP

CU 21-93

CONDITIONS OF APPROVAL:

1. Comply with all DEQ requirements as outlined in the Stipulation and Final Order No. WQIW-NWR-93-055.
2. Obtain building permits for the new structures, if required by the Portland Building Bureau. Any structure shall meet the dimensional requirements of MCC .2016, and shall be located at least 100 feet from the Gilbert River as required by MCC .6404 (C).

FINDINGS OF FACT:

1. Applicant's Proposal:

The applicant requests Hearings Officer approval to allow operation of a brewery grain recycling facility. The operation involves picking up spent grain from a Portland brewery and delivering it to farms for use as feed for cattle and dairy cows. Due to variations in supply and demand, excess spent grain would be stored on the subject property. Some of the grain is only stored for a few days, while some is kept for up to three months in ensilage. The applicant proposes to construct a paved and covered loading and unloading area, a grain storage area, and a pump station and holding lagoon to handle runoff from the stored grain, as required by DEQ. Treated liquid from the lagoon will be mixed with irrigation water and applied to crops on the property.

2. Site and Vicinity Characteristics:

The property consists of three taxlots bounded by the Gilbert River on the north and west and by Oak Island Road on the east. The terrain is level, and is used to grow hay and grass. A barn, shop, vehicle storage building, house and trailer are located on the property.

The surrounding area is level and used for agriculture. There is a house directly across the street. The next closest house is approximately 1/4 mile to the south along Oak Island Road.

3. Ordinance Criteria:

Ordinance criteria are in **bold**. Staff response follows each criteria. Applicant's response to criteria may be found in their Conditional Use Application, reference file CU 21-93.

MCC 11.15.2012 (B): The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7105 to .7140:

- (1) **Commercial activities that are in conjunction with farm uses.**

Neither the Multnomah County Code or ORS 215 define "commercial activities in conjunction with

farm use". The spent grain that will be stored at the site is used exclusively as feed for cattle and dairy cows. This is clearly an agricultural use. In addition, wastewater from the lagoon will be used for irrigating and fertilizing crops on the subject parcel, also an agricultural activity.

MCC .7120 Conditional Use Approval Criteria

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

(1) Is consistent with the character of the area;

The surrounding area is typical of Sauvie Island, with large parcels devoted to agricultural use and widely scattered farm dwellings. The proposed activity involves a storage area for grain and ensilage, and a treatment lagoon for liquid runoff. These structures will be located on a small portion of the property near a cluster of agricultural buildings. The majority of the property will continue to be used for growing crops. Treated runoff from the lagoon will be utilized to fertilize and irrigate these crops. Storage facilities for feed and ensilage are typical of cattle and dairy farm operations. This will not be inconsistent with the agricultural character of the area.

(2) Will not adversely affect natural resources;

The Gilbert River is a significant wetland and may be a Class I stream. MCC .6422 requires that an SEC permit be obtained if the proposed activity would impact the wetland. MCC .6404 requires structures to be located at least 100 feet from Class I streams. The proposed location of the new structures is close to the existing buildings, far exceeding the 100 foot setback requirement. The new drainage and pumping system and treatment lagoon will serve to protect the River from adverse effects, so an SEC permit is not required.

The Sauvie Island Wildlife Area is a large sensitive waterfowl area located approximately 1/2 mile from the subject site. This is also a significant natural area as identified in the Comprehensive Plan. The proposed storage operation should have no adverse affect to this resource.

(3) Will not conflict with farm or forest uses in the area;

There are no forest uses in the area. Surrounding farm uses involve large scale crop production. The proposed new structures are limited to an area approximately one acre in size, plus treated runoff from the lagoon will be used for irrigation on other areas of the property. These are typical of many agricultural uses, and should cause no conflicts with other uses in the area. Adjoining property owners have indicated (reference Petition, Appendix F of applicant's submittal) that they have no objections to the proposed operation and that it does not conflict with farm uses in the area. In addition, the operation has been occurring (without permits) for the last nine years. No conflicts with area farm uses have come to the attention of the county in that time.

- (4) Will not require public services other than those existing or programmed for the area;**

The applicant has water rights to use irrigation water that will be mixed with the wastewater runoff. The property is already served by electricity. Road standards are adequate for the amount of truck traffic generated (18 - 30 trips per week). Drinking water is supplied by an on-site well. A portable toilet is currently used by the truck drivers who pick-up and deliver the grain. The Sanitarian has indicated that this is adequate unless the proposed new storage area is connected to a water supply, which is not proposed at this time. No other public services will be required.

- (5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

The Comprehensive Plan Wildlife Habitat Map shows no sensitive big game wintering areas near the subject property.

- (6) Will not create hazardous conditions; and**

The spent brewery grain is not a hazardous material. The proposed lagoon, which will capture and treat runoff from the stored grain, is a requirement of DEQ to prevent runoff into the Gilbert River. The treatment system will prevent further contamination of the river, so will prevent hazards, if any, that could occur from runoff reaching the river. Oak Island Road, Reeder Road, and Sauvie Island Road are all adequate to handle the 18 - 30 truck trips generated each week.

- (7) Will satisfy the applicable policies of the Comprehensive Plan.**

Comprehensive Plan policies are addressed in Section 4, below.

MCC .7122 Exclusive Farm Use Conditional Use Approval Criteria

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

- (1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and**

The grain stockpiling has been in operation for nine years at the subject property, and there has been no indication by adjacent property owners that it has affected their farming practices. The stockpiling, loading and unloading occur on a very small portion of the property, and has caused no significant changes in agricultural practices on the subject or surrounding lands.

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

The proposed operation should have no impacts beyond the small area where the structures will be located. This will not cause an increase in operating costs to surrounding farms.

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

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

There are no non-farm dwellings, exception areas, or a UGB in the surrounding area.

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

Condition #1 requires the applicant to comply with DEQ requirements to prevent runoff into and contamination of the Gilbert River. Condition #2 requires that the dimensional requirements found in MCC .2016 be met in order to prevent new structures being located too close to the road and property lines. It also requires structures to be located at least 100 feet from the Gilbert River to protect the wetland and stream habitat, pursuant to MCC .6404 (C).

4. Comprehensive Plan Policies:

Policy 9 Agricultural Land: The county's policy is to designate and maintain as exclusive agricultural, land areas which are:

- A. Predominantly agricultural soil capability I, II, III, and IV, as defined by U.S. Soil Conservation Service;**
- B. Of parcel sizes suitable for commercial agriculture;**
- C. In predominantly commercial agriculture use; and**
- D. Not impacted by urban service; or**
- E. Other areas, predominantly surrounded by commercial agriculture lands, which are necessary to permit farm practices to be undertaken on these adjacent lands.**

The county's policy is to restrict the use of these lands to exclusive agriculture and other uses, consistent with state law, recognizing that the intent is to preserve the best agricultural lands from inappropriate and incompatible development.

The subject parcel is exclusive agricultural land. The proposed use is allowed by state law (OAR 660-33-120), and is compatible with and appropriate to be located on agricultural land.

Policy 13 Air, Water and Noise Quality: 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. If the proposal is a noise sensitive use and is located in a noise impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan...

The use is not noise sensitive. DEQ has required that the lagoon be built in order to prevent water quality problems. Condition #1 requires that DEQ standards be met. The sanitarian has indicated that sewage disposal is adequate for the use at present. There should be no effect to air quality by the proposed use.

Policy 22 Energy Conservation: The county's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. In addition, it is the policy of Multnomah County to reduce dependency on non-renewable energy resources and to support greater utilization of renewable energy resources. The county shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered:

- (1) The development of energy-efficient land uses and practices;
- (2) Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;
- (3) An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
- (4) Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.
- (5) Finally, the county will allow greater flexibility in the development and use of renewable energy resources.

The proposed use is not suitable for location in an urban area due to odors produced by stored grain and ensilage and the need for fields to receive the wastewater. The Sauvie Island location is fairly energy efficient in that it is centrally located to both the Portland brewery where the grain is picked up and customers in western Oregon and Washington. No changes to transportation systems, street layouts or energy resources are proposed.

Policy 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

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

- (2) 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
- (3) There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
- (4) There is an adequate private water system, and a public sewer with adequate capacity.

Drainage

- (1) There is adequate capacity in the storm water system to handle the run-off; or
- (2) The water run-off can be handled on the site or adequate provisions can be made; and
- (3) 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

- (1) There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and
- (2) Communications facilities are available.

A private well serves the site with drinking water. The applicant has water rights to supply the water that will be mixed with the wastewater runoff and used for irrigation. On-site sewage disposal is currently provided by a chemical toilet, which the sanitarian has indicated is adequate under present circumstances. The proposed lagoon and pumping system will provide storage for wastewater runoff on site, so that it will not adversely affect water quality in the Gilbert River. Electricity and telephone service are available to the site.

Policy 38 Facilities: The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

School

- (1) The appropriate school district has had an opportunity to review and comment on the proposal.

Fire Protection

- (1) There is adequate water pressure and flow for fire fighting purposes; and
- (2) The appropriate fire district has had an opportunity to review and comment on the proposal.

Police Protection

- (1) The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.**

School District 19 had no comment on the application. The Multnomah County Sheriff and Sauvie Island Fire District 30 indicated that their service levels are adequate for the proposed use.

Policy 40 Development Requirements: The county's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

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

Dedication for pedestrian and bicycle paths is not appropriate on Oak Island Road due to its limited use and lack of connection to other bicycle corridors.

CONCLUSIONS:

1. The proposed grain storage facility is a commercial activity related to farm uses.
2. The proposed wastewater lagoon is required by DEQ to prevent runoff and protect the water quality of the Gilbert River, which is a significant wetland.
3. The applicant has carried the burden necessary for the approval of a commercial use in conjunction with farm use in the EFU zoning District.

PLEASE PRINT LEGIBLY!

MEETING DATE 11-9-97

NAME Lyn Mattei

ADDRESS ONRC 522 SW 5th

STREET

CITY Portland

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-4

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

MEETING DATE: November 9, 1993

AGENDA NO: P-4

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Briefing Discussion/Prioritizing and Funding of Significant Streams

BOARD BRIEFING Date Requested: November 9, 1993

Amount of Time Needed: 30 Minutes

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: _____

DEPARTMENT: Non-Departmental DIVISION: Commissioner Sharron Kelley

CONTACT: R. Scott Pemble TELEPHONE #: 248-3043

BLDG/ROOM #: 412/PLANNING

PERSON(S) MAKING PRESENTATION: R. Scott Pemble

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

Board Briefing and Discussion Regarding Prioritizing and Funding of Significant Streams Goal 5 Work. Per Board Direction of October 26, 1993.

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1993 NOV - 3 AM 10:59

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Sharron Kelley

OR

DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DAN SALTZMAN • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

TO: BOARD OF COUNTY COMMISSIONERS

RSP
FROM: R. SCOTT PEMBLE, PLANNING DIRECTOR

TODAY'S DATE: OCTOBER 18, 1993

REQUESTED PLACEMENT DATE: NOVEMBER 9, 1993 PLANNING ITEMS

RE: GOAL 5 WORK PROGRAM PRIORITY FOR "SIGNIFICANT STREAMS" AND FUNDING STRATEGY FOR THE COMPLETION OF PRIORITY STREAM WORK

BOARD OF
COUNTY COMMISSIONERS
1993 NOV - 5 AM 9:32
MULTNOMAH COUNTY
OREGON

I. RECOMMENDATION/ACTION REQUESTED:

Request Board direction on a strategy for the completion of priority "Significant Stream" work. Request Board Policy directions for the funding of priority "Significant Stream" work. Brief the Board on overall strategy for the protection of ground water.

II. BACKGROUND/ANALYSIS:

The Land Conservation and Development Commission's (LCDC) April 1993 Remand Order requires Multnomah County to produce "Significant Streams" maps. Also, the LCDC remand order requires the county to complete the Goal 5 process for several resources associated with two gravel quarry sites: Angell Brothers and Howard Canyon sites. In the process of preparing stream maps, county planning staff identified some Goal 5 stream work that needs to be completed to respond to the Angell Brothers and Howard Canyon parts of the Remand Order and other work. for "1B" (not enough information to determine "Significance") and "1C" (Significant but not protected) designated streams.

At the October 26, 1993 Board hearing on "Significant Streams", several issues were raised concerning the timing and funding of the remaining stream work. The Chair requested the Planning Staff work with Commissioner Kelley and Commissioner Collier to develop a strategy for completing and funding stream work. The following explains the recommended work and funding strategy.

1. Complete Goal 5 stream work for all streams associated with the Angell Brothers quarry site (two "1B" seasonal streams and Burlington Bottoms) and Howard Canyon quarry site (three "1C" creeks: Big, Howard Canyon, and Knieriem/Ross). Funds have been budgeted for the Goal 5 work on streams asso-

ciated with the Angell Brothers quarry site through the West Hills Rural Area Planning program, however, the Howard Canyon associated work is not currently funded. The estimated cost to complete the Howard Canyon Goal 5 associated stream work is \$25,000. (At the time this summary was being prepared, it was announced some SCS Conservation Planning and Implementation Grant money has been awarded to Multnomah County for stream inventory work. The specifics of the award are not known, however, at the November 9, 1993 meeting the terms of the grant of the grant will be explained.)

2. Complete Goal 5 stream work for all other "1C" designated streams during the preparation of Rural Area Plans for the various areas of the county. All "1C" streams in the West Hills will be completed by June 30, 1994, the completion date for the West Hills Rural Area Plan. Streams in another Rural Planning Areas will be completed next fiscal year. Funds for Rural Area Plan work are included in the Division's annual Budget request.
3. Amend the Hillside Development and Erosion Control (HDP) zoning ordinance provision to require any earth disturbing activity within 100 feet from a water course or wetland to obtain an HDP permit. This amendment will provide the same degree of protection county-wide, to at least the same level of protection now accorded streams with an "SEC" designation. This work should be completed by January 1994 and is currently funded in the Periodic Review work program.
4. Amend the Significant Environmental Concern (SEC) section of the zoning ordinance to be more responsive to different water course and wetland situations throughout the county, providing appropriate levels of protection for all "3A" and "3C" protected significant streams. (e.g., setback buffers would be stipulated by type of water course based on water quality, water course dimensions, slope, soils, and geography). This work is not currently funded, however, depending on the current planning work load, county staff may be able to complete all or part of this work this fiscal year. Another alternative, Technical Assistance Grant money from LCDC may be available for this work after January 1994.

III. FINANCIAL IMPACTS:

The cost of additional Significant Stream work will depend on amount and the availability of outside funding and/or resources. Howard Canyon stream work (Strategy 1 above) will cost between \$20,000 to \$25,000 depending on the availability and terms of the SCS grant award.

The SEC Ordinance amendment work (Strategy 4 above) could be completed by county staff and assuming the work could extend into next fiscal year. If a faster response time is desired by the Board or demanded by the LCDC, a Personnel Services contract would be needed. Estimated cost, between \$5000 to \$10,000. LCDC Technical Assistance Grant will be pursued as a possible funding source for this work. Local match is usually 15 percent.

IV. LEGAL ISSUES:

All planning activities pertaining to streams must comply with the Statewide Land Use Planning Goal 5 rules and the LCDC Remand Order. The Goal 5 rule requires that a specific planning process must be followed and completed prior to concluding the level of protection that will be accorded a particular resource site. Failure to properly perform the process will result, in most cases, in costly litigation.

V. CONTROVERSIAL ISSUES:

Significant streams are not protected. East side streams have less Goal 5 work completed than west side streams. Two quarry sites will be re-evaluated in accordance with the LCDC Remand Order without the

benefit of the completed Goal 5 work on associated watercourses.

VI. LINK TO CURRENT COUNTY POLICIES:

All stream Planning activities are linked to the county's comprehensive plan 16G, a requirement of the state's land use planning program.

VII. CITIZEN PARTICIPATION:

Citizens have been involved in public hearings and workshops, reviewing the Planning Division's work on Periodic Review items. Also, citizens have been involved with the development of the West Hills Rural Area Planning program.

VIII. OTHER GOVERNMENT PARTICIPATION:

Affected state and local agencies have reviewed and commented on Periodic Review while in process.