

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Applications of	)	
Rich Morton (MP 01-08 and MP 01-09)	)	ORDER NO. 9-2003
for two Major Partitions in the Rural	)	FINDINGS AND CONCLUSIONS
Residential (RR-2) Zone	)	

WHEREAS, on December 28, 2000, Rich Morton filed three applications for three partitions; MP 01-08, MP 01-09 and MP 01-10, in the Rural Residential (RR-2) Zone; and

WHEREAS, after an amended tentative map was submitted following wetland delineation, MP 01-08 and 01-09 were referred by the Planning Director for initial review and decision by the Columbia County Planning Commission;<sup>1</sup> and

WHEREAS, the Columbia County Planning Commission held a hearing on the two applications on October 7, 2002, and carried the hearing over for additional evidence and testimony until November 4, 2002; and

WHEREAS, on November 4, 2002, the Columbia County Planning Commission re-opened the hearing, deliberated on the matter and voted to approve the applications; and

WHEREAS, on November 12, 2002, Columbia County Planning Commission Chair, Jeff VanNatta, signed the final orders; and

WHEREAS, on November 18, 2002, John Heller, as representative for Joyce Heller, appealed the final orders for MP 01-08 and MP 01-09 to the Board of County Commissioners; and

WHEREAS, on January 29, 2003, the Columbia County Board of Commissioners held a de novo hearing in the matter of the two applications; and

WHEREAS, during the hearing, evidence was received into the record, a list of which is attached hereto as Attachment 1, and is incorporated herein by this reference; and

WHEREAS, after hearing testimony and receiving evidence, the Board continued the hearing for seven days for additional evidence and testimony until February 5, 2003; and

WHEREAS, on February 5, 2003, the Board re-opened the hearing, heard additional testimony and received Exhibit 10 into the record; and

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<sup>1</sup> MP 01-10 is subject to Planning Director Review. As of the date of this final order, no decision has been made regarding the application.

WHEREAS, having considered the evidence and testimony in the record, the Board of County Commissioners deliberated on the matter and voted to approve applications MP 01-08 and MP 01-09, upon the condition that the preliminary plat for both partitions show the easterly boundary line as the boundary line shown on the Duncanson Company, Inc. Survey dated April 28, 1999 (Exhibit 10), as the easterly property line.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Board of County Commissioners adopts the following Findings of Fact and Conclusions of Law in the Staff Reports to the Board of County Commissioners, dated January 22, 2003, which are attached hereto as Attachments 2 and 3, respectively and are incorporated herein by this reference:
  - A. MP 01-08, Findings # 2- 7, and 9-13;
  - B. MP 01-09, Findings # 2-11, and 13.
2. The Board of County Commissioners adopts Supplemental Findings set forth in Attachment 4, which is attached hereto and is incorporated herein by this reference.
3. Applications MP 01-08 and MP 01-09, are APPROVED subject to the following conditions of approval for each application:
  - A. MP 01-08 & MP 01-09- The Preliminary Plat Map for both partitions shall show the Easterly boundary line on the Duncanson Survey, (Exhibit 10), as the Easterly boundary line between the Morton and Heller property.
  - B. MP 01-08
    - (1) A Final Plat in conformance with all requirements for Final Plats, must be prepared and submitted to Land Development Services within one (1) year of the date of approval of the Preliminary Plat. If this one year deadline is not met, the Preliminary Plat must be resubmitted for approval under the then current Subdivision and Partitioning Ordinance and laws.
    - (2) Before the Final Plat may be signed, the following shall occur:
      - (A) Any required easements for septic systems approved under Evaluation Reports issued for tax lot 4106-030-03200, parcels 1 and 2, must be mapped on the Final Plat and any necessary easements must be recorded in the deed records for Columbia County.
      - (B) Each parcel must be at least two acres in size as evidenced by a survey and as stated on the final plat by a surveyor licensed in the

State of Oregon.

- (C) The Applicant shall dedicate a 50' public right of way, as designed and shown on the partition plat. The public road shall be constructed to County Road Standards as a public access road into tax lot 4106-030-03200, and shall include a turn-around approved by the Columbia County Road Department and all relevant agencies.
  - (D) The 50' public right of way, as required above, shall be named pursuant to Columbia County Ordinance No. 81-6, and shall comply with the Columbia County Rural Addressing System, and be approved by Columbia County and Columbia River Fire & Rescue. The approved name of the dedicated public right of way shall be indicated on the partition plat.
  - (E) The Applicant shall place a terminal Type III, Street Barricade at the end of the public right-of-way turn around. The barricade shall be constructed to County Road Standards.
  - (F) Wetland area boundaries identified in the PBS Environmental Preliminary Compensatory Wetland Mitigation Plan Report, as revised September 2002, as modified and approved by the State of Oregon Division of State Lands (DSL), shall be mapped. The wetland map shall be recorded in the Columbia County deed records at the same time that any deed to a parcel created by these partitions is recorded in the deed records for Columbia County. No development shall occur in wetlands or the additional wetland setbacks for structures.
  - (G) The Applicant shall submit a copy of Bonneville Power Administration written permit to allow roads, and septic systems, including drainfields, on Bonneville Power Administration right-of-way easements.
  - (H) The Applicant shall submit a copy of an approved Removal/Fill Permit issued by the Corps of Engineers and Division of State Lands, to the Land Development Services Department.
  - (I) The Applicant shall place all road signs required by the Columbia County Road Standards so that they conform with the Manual of Uniform Traffic Control Devices.
- (3) Before Building Permits will be issued, the Applicant shall:

- (A) Submit a statement to LDS from the local water provider indicating that adequate water supply is available to each parcel resulting from the partition.
- (B) Obtain Columbia County Road Access Permits for each parcel resulting from the partition for which a building permit is sought.
- (C) Submit documentation from DSL indicating that the existing creek crossing is adequate for a private driveway before building permits can be issued on the south side of the creek.
- (D) Comply with all provisions of the fire code for adequate water supply and fire access. The Applicant shall work with the Fire Marshall of Columbia River Fire & Rescue to approve fire hydrant locations.

C. MP 01-09

- (1) A Final Plat in conformance with all requirements for Final Plats, must be prepared and submitted to Land Development Services within one (1) year of the date of approval of the Preliminary Plat. If this one year deadline is not met, the Preliminary Plat must be resubmitted for approval under the then current Subdivision and Partitioning Ordinance and laws.
- (2) Before the Final Plat may be signed, the following shall occur:
  - (A) Any required easements for septic systems approved under Evaluation Reports issued to Tax Lot No. 4106-030-03202, proposed lots 1, 2 and 3, and Tax Lot 4106-030-03200, parcels 1 and 2, must be mapped on the final plat and appropriate written easements must be provided and recorded in the deed records for Columbia County.
  - (B) Each parcel must be at least 2 acres in size as evidenced by a survey and as stated on the final plat by a surveyor licensed in the State of Oregon.
  - (C) The Applicant shall dedicate a 50' public right of way, as designed and shown on the partition plat. The public road shall be constructed to County Road Standards as a public access road into tax lot 4106-030-03202, and shall include a turn-around approved by the Columbia County Road Department and all relevant agencies, so that each parcel resulting from this partition has 50' of usable frontage on a public right-of-way. All rights to dedicate and build such a 50'

public right of way from Sykes Road to each parcel must be established and documented.

- (D) The 50' public right of way, as required above, shall be named pursuant to Columbia County Ordinance No. 81-6, and shall comply with the Columbia County Rural Addressing System, and be approved by Columbia County and Columbia River Fire & Rescue. The approved name of the dedicated public right of way shall be indicated on the partition plat.
  - (E) The applicant shall:
    - (i) Dedicate 10 feet of right-of-way for public road purposes for the length of Parcel #1 (MP 01-09) along Sykes Road.
    - (ii) Make road improvements to Sykes Road fronting lot 03202, to include road overlay, drainage, bike lane, curb and sidewalk.
  - (F) Wetland area boundaries identified in the PBS Environmental Preliminary Compensatory Wetland Mitigation Plan Report, as revised September 2002, as modified and approved by the State of Oregon Division of State Lands (DSL), shall be mapped. The wetland map shall be recorded in the Columbia County Deed Records at the same time that any deed to a parcel created by these partitions is recorded in the Columbia County Deed Records. No development shall occur in the wetlands or in the additional wetland setbacks for structures.
  - (G) The Applicant shall provide a copy of Bonneville Power Administration written permit for roads, septic systems and drain fields within Bonneville Power Administration right-of-way easements, to the Land Development Services Department.
  - (H) The Applicant shall provide a copy of an approved Removal/Fill Permit issued by the Corps of Engineers and Division of State Lands, to the Land Development Services Department.
  - (I) The Applicant shall place all road signs required by the Columbia County Road standards so that they are in conformance with the Manual of Uniform Traffic Control Devices.
- (3) Before Building Permits will be issued, the Applicant shall:

- (A) Comply with all applicable provisions of the fire code for adequate water supply and fire access. The Applicant shall work with the Fire Marshall of Columbia River Fire and Rescue and McNulty Water Association to approve hydrant location.
- (B) Submit a statement to the Land Development Services Department from the local water provider indicated that adequate water supply is available to each parcel created by this partition and before building permits can be issued for the construction of dwellings on parcels resulting from this partition.
- (C) Obtain Columbia County Road Access Permits for each parcel resulting from the partition for which a building permit is sought.

Dated this 26th day of February, 2003.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: [Signature]  
Joe Corsiglia, Chair

By: [Signature]  
Rita Bernhard, Commissioner

By: not present  
Anthony Hyde, Commissioner

Approved as to form

By: [Signature]  
Assistant County Counsel

## ATTACHMENT 1

### MP 01-08 & MP 01-09 EXHIBITS

#### EXHIBIT 1- COUNTY COUNSEL'S FILE

- (1) Notice of Public Hearing (Publication);
- (2) Notice of Public Hearing (Property Owner Notice);
- (3) Affidavit of Mailing;
- (4) Affidavit of Publication;
- (5) Board Communication from Todd Dugdale with the following attachments:
  - a. PC Final Order l Orders MP 01-08 and MP 01-09;
  - b. Board Staff Reports;
  - c. Maps: Vicinity Map and Zone Map;
  - d. Preliminary Plat Map;
  - e. Wetland Delineation and Mitigation map (PBS);
- (6) Appeal of MP 01-08 dated 11/18/02;
- (7) Appeal of MP 01-09 dated 11/18/02;
- (8) Board Communication dated November 26, 2002, with the following attachments:
  - a. Lists of interested parties to receive notice;
  - b. Hearing notices for Planning Commission;
  - c. Planning Commission Final Orders;
  - d. Planning Commission Staff Reports dated 11/07/02 and 11/07/02;
- (9) Planning Commission Record of MP 01-08, including the following:
  - a. Appeal of MP 01-08;
  - b. October 7, 2002 Planning Commission Minutes;
  - c. November 4, 2002, Planning Commission Minutes;
  - d. Final Order MP 01-08;
  - e. Staff Report to Planning Commission for continuance with the following attachments:
    - i) Preliminary Compensatory Wetland Mitigation Report cover page with index;
    - ii) Site Mitigation Areas;
    - iii) Letter from John Heller to Rich Morton with cover sheet dated October 10, 2002;
    - iv) Letter to Jim Holycross from Peter and Valarie Koss dated October 14, 2002;
    - v) Letter to Planning Department from John Heller dated October 21, 2002;
    - vi) Rebuttal Testimony from Rich Morton dated October 21, 2002;
    - vii) Further Rebuttal Testimony from Rich Morton dated October 22, 2002;
  - f. Planning Commission On-referral staff report dated 9/27/02;
  - g. Application for MP 01-08;

- h. Further Rebuttal from Rich Morton dated November 4, 2002;
- i. Cover sheet with letter from John Heller dated November 1, 2002;
- j. Letter from Joyce Ann Heller dated August 12, 2002;
- k. Letter from Department of Energy dated September 17, 2002;
- l. Letter from Department of Energy dated September 9, 2002;
- m. Referral and Acknowledgment McNulty Water Association dated 8/30/02;
- n. Referral and Acknowledgment Or Division of State Lands dated 9/04/02;
- o. Referral and Acknowledgment from McNulty water dated 8/14/02;
- p. Referral and Acknowledgment from County Roadmaster dated 8/13/02;
- q. Referral and Acknowledgment from County Roadmaster dated 9/03/02;
- r. Referral and Acknowledgment from Sanitarian dated 9/06/02;
- s. Referral and Acknowledgment from St. Helens Fire District date d8/30/02;
- t. Referral and Acknowledgment from St. Helens CPAC dated 9/03/02;
- u. Referral and Acknowledgment from Bonneville Power dated 8/06/02;
- v. Referral and Acknowledgment from St. Helens Fire Dept. dated 8/14/02;
- w. Letter to Rich Morton from LDS dated November 13, 2002;
- x. Letter to Rich Morton from LDS dated November 13, 2002;
- y. Letter to LDS from Richard Louie, McNulty Water dated October 3, 2002;
- z. Letter to Joyce Heller from Rich Morton dated August 28, 2002;
- aa. Letter to LDS from Terry and Cathy Joeckel dated August 14, 2001;
- bb. Referral and Acknowledgment from Sally Ann Marson, St. Helens CPAC dated 8/14/02;
- cc. Letter to LDS from Terry and Cathy Joeckel dated August 6, 2002;
- dd. Referral and Acknowledgment from City of St. Helens dated 8/7/02;
- ee. Referral and Acknowledgment from St. Helens CPAC dated 8/04/02;
- ff. Letter to Jim Holycross from Peter and Valarie Koss dated August 14, 2002;
- gg. Letter to Phil Dewey dated 11/29/1999;
- hh. Letter to Sate Board of Examiners dated December 19, 2002;
- ii. Letter to Phil Dewey dated 3/17/00;
- jj. Letter to Rich Morton from Jim Holycross;
- kk. Letter to John Heller dated 2/12/01;
- ll. Letter to Rich Morton from Jim Holycross;
- mm. Letter to Rich Morton from Jim Holycross;
- nn. Note of sent items to John Heller;
- oo. Notice of Public Hearing Planning Commission;
- pp. List of persons to receive notice;
- qq. Certificate of Mailing dated November 13, 2002;
- rr. Certificate of Mailing dated 10/25/02;
- ss. Notice published in spotlight;
- tt. Notice published in the Chronicle;
- uu. Certificate of Mailing dated 9/27/02;
- vv. Notice published in the spotlight;
- ww. Notice published in the Chronicle;



- xx. Certificate of mailing dated September 5, 2002;
  - yy. Renotification notice dated 8/02/02 with list of people to receive notice;
  - zz. Letter to Jim Holycross from Rich Morton dated 2/14/02;
  - aaa. Letter to Hal Wilson from Rich Morton dated 2/08/02;
  - bbb. Letter to Hal Wilson from Rich Morton dated 1/15/02;
  - ccc. Letter to Jim Holycross with Cover Sheet dated 9/20/01;
  - ddd. Letter to Rich Morton from DSL dated 9/13/01;
  - eee. Certificate of Mailing dated August 6, 2002;
  - fff. Letter to Lori Warner dated March 9, 2001;
  - ggg. Letter to Lori Warner dated March 7, 2001;
  - hhh. Waiver of 150 day rule;
  - iii. Letter to Rich Morton dated March 1, 2002;
  - jjj. Land Use Notification (DSL) dated 3/01/01 with maps;
  - kkk. Memo to LDS from Lonny Welter dated Jan 9, 01;
  - lll. Wetland Land Use Notification dated 2.21/01;
  - mmm. Referral and Acknowledgment from BPA dated Jan 5, 2002;
  - nnn. Letter to Jim Holycross dated Jan. 11, 2001;
  - ooo. Referral and Acknowledgment from St. Helens fire dated 1/11/01;
  - ppp. Referral and Acknowledgment from County Roadmaster dated 1/9//01;
  - qqq. Referral and Acknowledgment from David Middle dated 1/11/01;
  - rrr. Referral and Acknowledgment from Columbia River PUD dated January 5, 2001;
  - sss. Referral and Acknowledgment from McNulty Water Association dated 1/8/01;
  - ttt. Referral and Acknowledgment from County Sanitarian dated 1/8/01;
  - uuu. Map;
  - vvv. Certificate of Mailing dated 1/5/01;
  - www. Referral Contact List;
  - xxx. Notice of Minor Partition dated 1/05/01;
  - yyy. Letter to Rich Morton dated 1/03/01;
  - zzz. Declaration of Protective Covenants;
- (10) Planning Commission Record of MP 01-0-9 including the following:
- a. Staff Report on continuance;
  - b. Preliminary Compensatory Wetland Mitigation Plan report with index and map;
  - c. Cover sheet with letter from John Heller dated 10/10/02;
  - d. Email to john heller dated June 7, 2001;
  - e. Letter from Peter and Valerie Koss dated October 11, 2002;
  - f. Letter to LDS from John Heller dated October 21, 2002;
  - g. Rebuttal from Rich Morton dated October 21, 2002;
  - h. Further Rebuttal from Rich Morton dated October 22, 2002;
  - i. Planning Commission on referral staff report;
  - j. Final Order MP 01-09;
  - k. Further Rebuttal from Rich Morton dated November 4, 2002;
  - l. Cover sheet with letters from John Heller dated November 1, 2002;
  - m. Memo to LDS from Lonny Welter dated November 8, 2002;

- n. Letter to Rich Morton from Jim Holycross dated 1/18/2002;
- o. Letter to Rich Morton dated 1/18/02;
- p. Letter to Rich Morton dated November 13, 2002;
- q. Letter to Planning Commission from Rich Morton dated August 30, 2002;
- r. Joint Permit Application Form (Corps of Engineers);
- s. Letter to Jim Holycross from Sue Kinish dated 9/17/02;
- t. Referral and Acknowledgment from OR Division of State lands;
- u. Letter to Jim Holycross from Terry and Cathy Joeckel dated 8/14/01;
- v. Referral and Acknowledgment from BPA dated 8/06/02;
- w. Referral and Acknowledgment City of St. Helens;
- x. Referral and Acknowledgment from McNulty;
- y. Referral and Acknowledgment from Roadmaster;
- z. Referral and Acknowledgment from St. Helens Fire;
- aa. Referral and Acknowledgment from St. Helens CPAC;
- bb. Referral and Acknowledgment from Sanitarian;
- cc. Referral and Acknowledgment from St. Helens CPAC;
- dd. Referral and Acknowledgment from St. Helens CPAC;
- ee. Referral and Acknowledgment from Sanitarian;
- ff. Referral and Acknowledgment from McNulty Water;
- gg. Referral and Acknowledgment from Roadmaster;
- hh. Referral and Acknowledgment from St. Helens Fire;
- ii. Notice of Hearing dated August 28, 2002;
- jj. List of persons to receive notice;
- kk. Letter to PC from Robert and Mary Adams;
- ll. Letter to PC from Joyce Ann Heller;
- mm. Certificate of Mailing dated November 13, 2002;
- nn. Certificate of Mailing dated 10/25/02;
- oo. Notice published in Spotlight;
- pp. Notice published in Chronicle;
- qq. Certificate of mailing;
- rr. Notice published in Spotlight;
- ss. Notice published in Chronicle
- tt. Certificate of mailing dated 9/05/02;
- uu. Renotification notice;
- vv. List of people to receive notice;
- ww. Certificate of mailing dated August 6, 2002;
- xx. Letter to Rich Morton dated March 7, 2002;
- yy. Waiver of 150 day rule;
- zz. Letter to Rich Morton dated March 1, 2001;
- aaa. Wetland Land Use notice dated 3/01/01;
- bbb. Referral and Acknowledgment county Roadmaster;
- ccc. Letter to Rich Morton from Jim Holycross;
- ddd. Letter to Jim Holycross from St. Helens fire;

- eee. Letter to rich Morton from Jim Holycross dated 1/09/01;
- fff. Referral and Acknowledgment from St. Helens Fire;
- ggg. Referral and Acknowledgment from Roadmaster;
- hhh. Referral and Acknowledgment from ST. helens CPAC;
- iii. Referral and Acknowledgment from Columbia River PUD;
- jjj. Referral and Acknowledgment McNulty Water;
- kkk. Referral and Acknowledgment county Sanitarian;
- lll. Certificate of mailing dated January. 5, 2001;
- mmm. Referral Contact List;
- nnn. Minor Partition Notice dated Jan 5, 2001;
- ooo. Letter to Rich morton from Jim Holycross date 1/03/01;
- ppp. List of People to receive notice;
- qqq. Letter from Rich Morton dated 2/14/02;
- rrr. Referral and Acknowledgment from County Sanitarian dated 1/8/01;
- sss. Letter to Joe Corsiglia from Robert & Mary Adams

EXHIBIT 2- Letter to Rich Morton from Bonneville Power Administration;

EXHIBIT 3- Preliminary Partition Plat;

EXHIBIT 4- Decision in Applegate v. Ward, Columbia County Case No. 00-2272;

EXHIBIT 5- Proposed Property Line Adjustment;

EXHIBIT 6- Letter from John Heller to Columbia County Board of Commissioner;

EXHIBIT 7 to 9- Computer Printouts (area summaries);

EXHIBIT 10- Duncanson Survey;

EXHIBIT 11- Letter from Joyce Heller to Columbia County Board of Commissioners.

**Attachment 2**  
**COLUMBIA COUNTY**  
**BOARD OF COMMISSIONERS**  
**MP 01-08**  
 January 22, 2003  
 ON-APPEAL STAFF REPORT

HEARING DATE: January 29, 2003

FILE NUMBER: MP 01-08

APPLICANT: Rich Morten  
 34385 Southview Drive  
 St. Helens, Oregon 97051

PROPERTY OWNER: Same as Above,

PROPERTY LOCATION: South of Sykes Road

REQUEST: To divide approximately 5.77 acres into 2 parcels of approximately 2.17 (Parcel 1) and 2.10 (Parcel 2) acres each in the RR-2 zone.

TAX ACCT. NO.: 4106-030-03200

EXISTING ZONING: Rural Residential (RR-2)

150TH Day: 06/02/01 (Waiver of the 150 Day Rule Singed by Applicant)

**REVIEW CRITERIA:**

<u>Zoning Ordinance</u>	<u>Page(s)</u>
Section 221	6
Section 624	3 - 6
 <u>Subdivision &amp; Partitioning Ordinance</u>	
Section 204	6, 7

Section 602	7, 8
Section 604	3
Section 611	8 - 10
Section 612	10
Section 613	11
Section 614	11, 12
Section 912	12, 13
Section 1015	13, 14

### Zoning Ordinance

Section 1170	14
Section 1180	14, 15

### **BACKGROUND:**

The applicant requests approval to divide an approximately 5.77 acre parcel (size prior to PLA) into 2 parcels of 2.21 and 2.53 acres in the RR-2 zone. The property is located south of Sykes County Road outside the City of St. Helens Urban Growth Boundary. Proposed access will be provided from a dedicated public right-of-way. Both parcels have been approved for a septic system by the County Sanitarian. The subject property is located in the St. Helens Rural Fire Protection District. (Please also see MP 01-09, MP 01-10, and PLA 01-19)

### **HISTORY:**

The applicant made application for three partitions; MP 01-08, MP 01-09, and MP 01-10 on 12/28/00. The partitions were to be accessed via two roads from Sykes Road. Notice was sent out to nearby property owners and agencies for comment.

The Division of State Lands (DSL) Wetlands Program became involved when DSL was notified by the County Sanitarians on 2/21/01 that problems with proposed septic system locations and wetlands existed on several of the proposed parcels. DSL then determined that a wetland delineation should be made by the applicant on 3/01/01 to define areas outside of wetlands that could be used for sanitation systems. On 3/05/01 a Waiver of the 150 Day Rules was signed by the applicant to allow time for completion of a wetland delineation.

The results of the Wetland Delineation Report by PBS Environmental dated May 2001 indicated that the most easterly of the two proposed access roads could not be used because of wetland issues. The applicant then reconfigured the road and parcels to avoid infringement on delineated wetland by taking the most easterly road out of the proposal and reconfiguring the parcels where the road has been.

A re-notification was sent out on 8/02/02 to all nearby property owners and affected agencies since the reconfiguration of access roads and several proposed parcels was a relatively significant change to that which was originally proposed.

Subsequent to re-notification the fee was paid by a nearby property owner and 2 of the 3 partitions, MP 01-08 and MP 01-09, were referred to the Planning Commission. The reason for referral was stated that, "... There is a property boundary dispute....".

A Planning Commission hearing was held and this application was approved on November 11, 2003. The Planning Commission decision was then appealed to the Board of County Commissioners who scheduled a public hearing to hear the appeal on January 29, 2003.

#### **FINDINGS:**

**Finding 1:** The reason for referral of this administrative action to the Planning Commission stating "...There is a property boundary dispute..." is not a valid land use issue as long as the applicant can obtain title insurance for the land partitioning. This is a survey issue. The reason for referral is part of an on-going dispute between the adjoining property owner, the applicant of this partition, and Dewey Surveying.

#### **Zoning Ordinance and Subdivision & Partitioning Ordinance Review Criteria follow:**

§ 604 of the Columbia County Subdivision and Partitioning Ordinance provide that the Planning Director may approve a major or minor partition unless a variance is necessary, at which time the provisions of § 210 shall be followed, or an adjoining property owner requests a referral to the Planning Commission under § 213.B. Both a variance and a referral require the partition to be submitted to the Planning Commission for review and decision.

**Finding 2:** The applicant has submitted the information necessary to process this request as a major partition under § 103 (C) (26), and § 501 - 514 of the Columbia County Subdivision and Partitioning Ordinance. An adjoining property owner has paid the appropriate fee and requested referral to the Planning Commission under § 213.B. A public hearing before the Planning Commission was held on October 7, 2002 and continued to November 11, 2002, when a tentative decision was reached.

Following with § 620 of the Columbia County Zoning Ordinance which contains the following dimensional standards for the Rural Residential (RR-2) zone:

"624 Standards:

- .1 The minimum lot size for uses permitted under this section shall be 2 acres.

**Finding 3:** The Applicant indicates on the preliminary map that one parcel will contain 2.21 acres while the other parcel will contain 2.53 acres. The final plat will not be signed by LDS unless it shows a minimum of 2 acres for each parcel free and clear of right-of-way for a new public road dedication.

Continuing with Zoning Ordinance § 624:

- .2 Dwellings permitted under this section must meet all of the following standards:
- A. be connected to an existing public or community water district providing adequate domestic water; and
  - B. be approved for an individual subsurface septic system, or be served by a public or community sewer system; and
  - C. have direct access onto a public right-of-way meeting applicable County road standards; and
  - D. be within and can be served by a rural fire protection district.

**Finding 4:** The proposed parcels are in the McNulty Water Association service boundary. McNulty Water has stated that water is available to the proposed parcels. Both of the proposed parcels have been approved for an individual septic system by the County Sanitarian. Proposed parcels 1 and 2 of tax lot 4106-030-03200 have both received a favorable evaluation report for an on-site sewage disposal system dated November 13, 2002. The applicant shall name and dedicate a public right-of-way meeting applicable County Road Standards before this application can be approved. Each parcel resulting from the partitioning of the subject property shall have 50' of frontage on and have direct access onto a public right-of-way. The subject property is within the St. Helens Rural Fire Protection District boundary. The sequencing of the partitions on these contiguous parcels, MP -1-08, MP 01-09, and MP 01-10 requires that the public road be dedicated and improvements completed on other applications prior to approval of the final plat. This means that the public road on that portion of property concerning MP 01-10 needs to be dedicated to the public and approved by the County Board of Commissioners with improvements made to the satisfaction of the County Road Department prior to approval and Recording of MP 01-09. The road accessing parcels resulting from MP 01-09 shall then be dedicated and improved and recorded before MP 01-08 can be finalized and recorded.

and following with the Zoning Ordinance § 624:

- "3 The minimum average lot width shall be one 100 feet.
- .4 The minimum average lot depth shall be one 100 feet."

**Finding 5:** The dimensions of each new parcel will easily exceed the above minimum lot dimensions.

Continuing with Zoning Ordinance § 624:

- "5 lots or parcels shall conform to the following requirements before a building permit may be issued for construction on the property;
  - A. All lots or parcels legally recorded on or after June 4, 1991 shall have a minimum of 50 feet of usable frontage on a public right-of-way. All such public rights-of-way shall be improved in accordance with the requirements of the Columbia County Uniform Road Improvement Design Standards. In lieu of such improvements, the owner or developer of the lot or parcel may secure a surety bond, or place cash in escrow or trust, to insure that the improvements will be completed according to the procedure outlined in § 801 of the Columbia County Subdivision and Partitioning Ordinance.
  - B. All lots or parcels legally recorded before June 4, 1991 shall have a minimum of 50 feet of usable frontage on a public right-of-way or private non-exclusive easement. One-half of the public right-of-way or private non-exclusive easement adjacent to the lot or parcel shall be improved in accordance with the requirements of the Columbia County Uniform Road Improvement Design Standards. In lieu of such improvements, the owner or developer of the lot or parcel may secure a surety bond, or place cash in escrow or trust, to insure that the improvements will be completed according to the procedure outlined in § 801 of the Columbia County Subdivision and Partitioning Ordinance. However, in the sole discretion of the Board, in lieu of the improvements or cash or surety bond to secure such improvements, the Board may require the owner or developer of the lot or parcel to put up cash in an amount equivalent to the cost of the



improvements dedicated toward the improvement of the entire road rather than the portion adjacent to the lot or parcel."

**Finding 6:** The applicant shows on the preliminary map of the partition that each of the new parcels will have 50 feet of frontage on a yet to be named public right-of-way that is required to be named and dedicated on the final plat as a condition of approval. The applicant cannot count acreage used for the public right-of-way dedication for new roads to meet minimum parcel size requirements.

Continuing with Zoning Ordinance § 624:

- .6 No dwelling shall be constructed closer than 30 feet to a property line. Where the property abuts resource zoning, the setback shall be increased to 50 feet.
- .7 Unless otherwise prohibited, the maximum building height for all non-farm, non-forest structures shall be 35 feet or 2-1/2 stories, whichever is less.
- .8 Unless otherwise prohibited, structures such as barns, silos, windmills, antennas, chimneys, or similar structures may exceed the height limitations to a maximum height of 50 feet."

**Finding 7:** All of the above dimensional criteria shall be controlled as part of the building permit review process.

Following with Section 200 GENERAL PROVISIONS, of the Zoning Ordinance:

221 One Principal Use Per Lot: Only one principal use may be placed on each legal lot or parcel.

**Finding 8:** The applicant shall have no more than one principal use per lot.

and following with the County Subdivision and Partitioning Ordinance:

SECTION 204. CONFLICT WITH PUBLIC AND PRIVATE PROVISIONS.

- A. Public Provisions. The regulations are not intended to interfere with or annul any other provision of law. Where any provision of these regulations imposes restrictions different

from those imposed by any other provision of these regulations or any other ordinance, rule, regulation or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.

- B. Private Provisions. These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of these regulations, or the determinations of the Commission in approving a subdivision or in enforcing these regulations, and such private provisions are not inconsistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these regulations and determinations made thereunder.

**Finding 9:** Staff agrees that the higher standards shall control and that private provisions shall be operative and supplemental to these regulations and determinations made thereunder.

...following with the Subdivision & Partitioning Ordinance;

## **SECTION 602. CONTENTS OF TENTATIVE MAP FOR MAJOR PARTITIONING.**

- A. General Information Required. The following general information shall be shown on the tentative map:
- (1) Location of the partition by (quarter-quarter) section, township, and range and a legal description sufficient to find the location and boundaries of the proposed tract or the tract designation or other description. (Assessor's map is recommended.)
  - (2) Date, north point, and scale of drawing.
  - (3) Appropriate identification clearly stating the map is part of the major partition.
  - (4) Names and addresses of the owner, partitioner, engineer and/or surveyor, land planner, if any, or any other professional person employed in the preparation, layout or design of the major partition.
  - (5) The location, approximate dimensions, and acreage of parcels, and the proposed parcel numbers.

- (6) Location of approved means of sewage disposal for each lot in accordance with Section 913.B. of this ordinance, if known.
- (7) Location of approved means of water supply for each lot in accordance with Sections 913.C.(1) or 913.D.(1) of this ordinance, if known.

B. Existing Conditions. The following conditions shall also be shown on the tentative map for major partitioning:

- (1) The location, width, and names of both opened and unopened streets within or adjacent to the project area, together with easements, other rights-of-way, and other important features such as section lines, corners, city boundary lines, and monuments.
- (2) The location, width, and use or purpose of any easement on the property.
- (3) The location and direction of all water courses and the location of all areas subject to flooding.
- (4) The location of structures, irrigation canals and ditches, pipelines and railroads, and any natural features such as rock out-croppings and cover which are of an area or size sufficient to influence the design of the major partition.
- (5) Existing uses of the property, including location of all existing structures to remain on the property after development, and the location of any well(s) and septic system(s).
- (6) The location within the development area and in the adjoining streets and property of existing sewers and water mains, culverts and drain pipes, and elevations of sewers at points of probable connection.
- (7) Approximate location of boundary lines of property adjacent to the development.
- (8) Zoning classification of the land and adjoining land.

**Finding 10:** The applicant has submitted the necessary information outlined above.

...following with the Subdivision & Partitioning Ordinance;

**SECTION 611. INFORMATION ON FINAL PLAT.**

Consistent with the provisions of ORS 92.050, an applicant for a major land partition must comply with the following requirements:

- A. No subdivider shall submit a plat of a partition for record until all the requirements of ORS 209.250 and the plat requirements of the partition have been met.
- B. The survey for the plat of the partition shall be of such accuracy that the linear error of closure shall not exceed one foot in 10,000 feet.
- C. The survey and plat of the partition shall be made by a registered professional land surveyor. Unless the Planning Director provides otherwise, created parcels that are 20 acres or greater, but less than 40 acres, need not be surveyed or monumented if zoned Primary Forest, Forest Agriculture or Primary Agriculture. Similarly zoned parcels that are 40 acres or greater need not be surveyed or monumented. *[Amended 1-29-97]*
- D. The plat of the partition shall be of such scale that all survey and mathematical information, and all other details may be clearly and legibly shown thereon. Each lot or parcel shall be numbered consecutively. If used, blocks shall be lettered or numbered. The lengths and courses of all boundaries of each lot or parcel shall be shown. Each street shall be named.
- E. The locations and descriptions of all monuments found or set shall be carefully recorded upon all plats and the proper courses and distances of all boundary lines shall be shown.
- F. The location, dimensions and purpose of all recorded and proposed public and private easements shall be shown on the partition plat along with the county clerk's recording reference if the easement has been recorded with the county clerk.
- G. The area of each lot or parcel shall be shown on the partition plat.
- H. In addition to showing bearings in degrees, minutes and seconds of a degree, and distances in feet and hundredths of a foot, the following curve information shall be shown on the partition plat either on the face of the map or in a separate table:
  - (1) Arc length;
  - (2) Chord length;
  - (3) Chord bearing;
  - (4) Radius; and
  - (5) Central angle.

- I. The surveyor submitting any partition plat that is within one-half mile of an established geodetic control monument, which has been approved by the National Geodetic Survey or has been approved by and filed with the county surveyor, shall, by field survey according to Federal Geodetic Control Committee guidelines for third order class II, show the measured angles and distances from the geodetic control monument to a monumented boundary corner of a partition.  
If there is an azimuth mark for the geodetic control monument or if there is another geodetic control monument that is intervisible to the primary geodetic control monument, the bearings shall be based, if practicable, on the bearings between the geodetic control monument and the azimuth mark or the intervisible geodetic control monument.
- J. Notwithstanding the provisions of subsection (9.) of this section, the county surveyor may waive the requirement of a distancing to a geodetic control monument if the partition thereof has previously furnished the required information.
- K. Except as otherwise provided in this section, all partition plats designating the location of land in any county in the State of Oregon offered for record shall have attached thereon an affidavit of the surveyor having surveyed the land represented on the plat, to the effect that the surveyor has correctly surveyed and marked with proper monuments the lands as represented, and has placed a proper monument as provided in ORS 92.060 indicating the initial point of the survey, and giving the dimensions and kind of monument, and its location in accordance with ORS 92.060 one and accurately describing the tract of land upon which the lots and blocks or parcels are laid out.
- L. Unless there is proof of adequate water supply and sewage disposal for each lot pursuant to Section 913 of this ordinance, the final plat shall indicate those lots for which an adequate supply of water or sewage disposal has not been proven.

## **SECTION 612. APPROVAL OF THE FINAL MAP.**

- A. Before any partition plat that covers land within the corporate limits of any city can be recorded, it must be approved by the county surveyor. However, for the purposes of this ordinance, the governing body of the city may, by resolution or order, designate the city surveyor to serve in lieu of the county surveyor.

Except as provided in subsection C of this section, if the land is outside the corporate limits of any city, the partition plat shall be approved by the county surveyor and planning director before it is recorded. All partition plats which contain a dedication for public or county road purposes must also be approved and accepted by the Board of County Commissioners before they can be recorded. [2-10-93]

- B. Before approving the partition plat as required by this section, the county surveyor, as provided by subsection A of this section, shall check the partition plat and make such computations and other determinations that the partition plat complies with the provisions of this and other applicable laws. For performing such service, the county surveyor shall collect from the partitioner a fee as set by ordinance, order or resolution of the Board. [2-10-93]
- C. Any partition plat prepared by the county surveyor in a private capacity shall be approved in accordance with subsection B of this section by the surveyor of a county other than the county where the land is located and who has been designated by the county surveyor. The designated county surveyor shall collect the applicable partition plat check fee, and any travel expenses incurred, as established by the designated county surveyor's board of commissioners. The partition plat check fee and other expenses shall be paid by the subdivider prior to approval of the partition plat by the designated county. [2-10-93]

### **SECTION 613. REQUIREMENTS OF THE MAJOR PARTITION FINAL PLAT.**

The following certificates shall appear on the major partition final plat:

- A. A certificate signed and acknowledged by all parties having any record title interest in the land being partitioned consenting to the preparation and recording of the plat.
- B. A certificate signed and acknowledged by all parties having record title interest in the property partitioned, dedicating or reserving all parcels of land shown on the final plat intended for any public use.
- C. A certificate for execution by the Planning Director.
- D. A certificate for execution by the County Surveyor.

### **SECTION 614. FILING OF FINAL MAP.**

- A. The partition plat described in ORS 92.050, when made and approved as required and offered for record in the records of the county where the described land is situated, shall, upon the payment of the fees provided by law, be filed by the county recording officer. The fact of filing and the date thereof shall be entered thereon, and it shall then be securely filed with other partition plats of like character and designated as "Record of Partition Plats." Partition plats shall be recorded and numbered by year and sequentially.

- B. At the time of filing such partition plat, the person offering it for filing shall also file with the county an exact copy thereof, made with permanent black india type ink or silver halide permanent photocopy upon a 4 mil double matted mylar. The surveyor who made the partition plat shall make an affidavit to indicate that the photocopy or tracing is an exact copy of the partition plat. The copy filed with the county recording officer shall be certified by that officer to be an exact copy and then shall be filed with the county surveyor, and be preserved by filing without folding or cutting. The subdivider shall provide without cost the number of prints from such copy as may be required by governing body of the county.
- C. For the purpose of preserving the original partition plats, any such plats may be stored for safekeeping without folding or cutting.
- D. The person offering for filing an approved plat of a partition for a parcel of land to which a water right is appurtenant shall also submit a copy of the partition plat to the Water Resources Department for the purpose of updating the water rights records of the department. The county recording officer shall not accept for filing a plat of a partition for a parcel of land without:
- (1) A statement of water rights noted on the partition plat.
  - (2) A copy of the acknowledgment from Water Resources Department under ORS 92.122, if the person offering the partition plat for filing indicates on the statement of water rights that a water right is appurtenant to the subdivision or partition.
- E. No action may be maintained against the county recording officer for recording an instrument that does not contain the statement of water right or the acknowledgment required under subsection (D) of this section.
- F. Within 10 days after receiving a copy of an approved plat of a partition submitted as required under ORS 92.120 (5), the Water Resources Department shall send to the person submitting the partition plat an acknowledgment confirming receipt of the (plan,) partition plat (or replat).

**Finding 11:** If the preliminary map is approved then all final plat provisions must be met before the final plat can be signed by the Director. Dewey Surveying, is operated by Phil Dewey as a private practice. Phil Dewey is also the elected County Surveyor. Dewey Surveying was hired by the applicant to complete any surveying work for this partitioning. Phil Dewey also serving in the capacity as County Surveyor will have the Clatsop County Surveyor review his work completed by Dewey Surveying for the applicant.

... and following with the Subdivision & Partitioning Ordinance:

## **SECTION 912. DRAINAGEWAYS.**

If a subdivision is traversed by a water course such as a drainage way, channel, canal, or stream, there shall be provided a storm-water easement or drainage right-of-way conforming substantially with the lines of the water course, and such further width as will be adequate for the purpose. Streets or parkways parallel to major water courses or drainageways may be required.

### **A. Surface Drainage and Storm Sewer Systems.**

- (1) **General Provisions.** The Commission shall not recommend for approval any partition or subdivision which does not make adequate provisions for storm or flood water runoff. The storm water drainage system shall be separate and independent of any sanitary sewer system. Inlets shall be provided so surface water is not carried across any intersection. Surface water drainage patterns shall be shown for each and every lot and block. The sewer system shall be built to the standards of the County.
- (2) **Accommodation of Upstream Drainage Areas.** A culvert or other drainage facility shall in each case be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside of the development. The County's Engineer or Roadmaster shall determine the necessary size of the facility, based on the provisions of the construction standards and specifications, assuming conditions of maximum potential watershed development permitted by the Zoning Ordinance.
- (3) **Effect on Downstream Drainage.** Where it is anticipated that the additional runoff incidental to the development of the subdivision will overload an existing drainage facility, the Commission may withhold approval of the subdivision until provisions have been made for improvement of the existing drainage facility.
- (4) **Drainage Easements.** When topography or other conditions are such as to make impractical the inclusion of drainage facilities within street rights-of-way, perpetual unobstructed easements, at least 15 feet in width, for such drainage facilities shall be provided across property outside the road lines and with satisfactory access to the street. When a proposed drainage system will carry water across private land outside the development, appropriate drainage rights must be secured.



...and continuing with the Subdivision & Partitioning Ordinance;

### **SECTION 1015. OTHER REQUIREMENTS.**

In rural and urban areas, in addition to the improvements required by the provisions of this ordinance, the subdivider may be required to provide other improvements because of specific features of the land and the design and location of the subdivision or major partition.

Improvements such as bridges, culverts, and the fencing of watercourses, rights-of-way, and recreation areas and facilities may be required where necessary for the health, safety, and general welfare of residents of the subdivision or major partition.

**Finding 12:** The subject property contains several drainage and waterways that are identified in the Wetland Delineation Report by PBS Environmental, May 2001. A condition of approval shall be that the wetland/drainageways running north/south from Sykes Road to the east/west running creek shall have wetland/drainageway easements extending 25' upland from the delineated wetland boundary over each parcel that water passes through. When a proposed drainage system will carry water across private land outside the development, appropriate drainage rights must be secured.

Following with Section 1170 of the County Zoning Ordinance:

### **Section 1170 PROTECTION OF WATER QUALITY, STREAMBANK STABILIZATION, AND FISH AND WILDLIFE HABITAT** WQ

- .1 Riparian areas in Columbia County are defined as follows:
  - C. For all other rivers, streams, and sloughs, the area of riparian vegetation shall extend 25 feet landward of the ordinary high water line except where shrub and forested wetlands are located adjacent to the river, then the riparian area shall be the entire area of shrub or forested wetland. Where emergent wetland vegetation exists adjacent to a river, the 25 feet shall be measured from the landward extent of the emergent vegetation.

Following with the County Zoning Ordinance, Section 1180 WETLAND AREA OVERLAY:

- 1182 **Definition:** A significant wetland is an area where the water table is at, above, or below the land surface long enough so the area supports predominantly hydrophytic vegetation, has soils indicative of wet conditions, and is large enough to be of biological value. In case of dispute over whether an area is of biological value and should be considered a

wetland, the recommendation of the Oregon Department of Fish and Wildlife and the Columbia County Soil and Water Conservation District shall be relied upon. Wetland areas have been identified in the Columbia County Comprehensive Plan. When additional areas are identified by the Oregon Department of Fish and Wildlife, the County will apply the goal 5 rule and, if appropriate, proceed with a plan amendment to include the area(s) in the Comprehensive Plan.

- 1183 Permitted Uses: Uses and developments permitted outright or conditionally in the underlying zone shall be permitted if they will not result in filling, drainage, removal of vegetation, or other alteration which would destroy or reduce the biological value of a wetland as defined in Section 1182. Minor drainage improvements necessary to ensure effective drainage on surrounding agricultural lands shall be allowed where such an action has been fully coordinated with the Oregon Department of Fish and Wildlife and the Columbia County Soil and Water Conservation District. Existing drainage ditches may be cleared to original specifications without review.
- 1184 Development Standards: Uses that are not water-dependent or water-related shall be setback to the extent of riparian vegetation identified in the Comprehensive Plan. Riparian vegetation shall be protected in accordance with Section 1170.

**Finding 13:** Wetland Areas were identified on the subject property by the Division of State Lands who then requested a Wetland Delineation. A Wetland Delineation Report was prepared for the applicant by PBS Environmental indicating the proposed 2.21 and 2.53 acre parcels contain a portion of Wetland C and Wetland B as described on Figure 5 of the Wetland Delineation Report. These wetlands are identified as stream channel wetlands as opposed to emergent wetlands. A condition of approval shall be that all identified wetlands have 25' easements extending landward from the delineated wetland boundary identified on a map and recorded with deeds to parcels resulting from this partitioning. The 25' wetland easements will also serve as riparian area. Future dwellings on the subject parcels shall be setback taking into account the riparian areas comprising the stream channel wetlands on the subject parcels.

#### COMMENTS:

1. The Sanitarian has reviewed the application and has no objection to its approval as submitted.
2. The County Road Department responded by letter dated January 9, 2001 in regard to MP 01-08, MP 01-09, and MP 01-10 that, "The Road Department will require the following:
  1. Dedication of five feet of right-of-way to Sykes Road fronting properties

03001 and 3202.

2. Engineer designed road improvements to Sykes Road fronting lot 03202, to include road overlay, drainage, bike lane, curb and sidewalk.
3. Engineer designed public road to County Standards for the access road into lot 03200."

The County Road Department again commented on August 15, 2002 as follows:

"Recommended other name than "North Morten Drive", we already have a Morten Lane near this location. The new public road will required to meet county Standards to include a 20' wide paved surface, 3' shoulders and ditching/culverts as required. The corners will need to meet radius requirements and possible eyebrow widening."

3. The Engineer for the McNulty Water Association has reviewed the application and has no objection to its approval as submitted.

The Manager for the McNulty Water Association has reviewed the application and has no objection to its approval as submitted.

4. The Columbia River PUD has reviewed the application and has no objection to its approval as submitted.
5. As of 1/23/01: The St. Helens CPAC has reviewed the application and has no objection to its approval as submitted.  
As of 9/19/02: Each CPAC member responded individually.
6. Pam Rensch of the St. Helens CPAC has reviewed the application and has no objection to its approval as submitted.
7. Sally Ann Marson of the St. Helens CPAC has reviewed the application and has no objection to its approval as submitted as long as criteria are met."
8. Terry & Cathy Joeckel stated concerns in a letter dated 8/6/02 as follows:

1. "Can a road be placed over emergent wetland area? What requirement is there if a road abuts a stream channel wetlands? How will this be addressed in the final report to ensure that the road is constructed properly with the culverts and drainage going away from out property consistent with the topography (downhill to the creek)?

**Response:** Yes, a road can be placed in a wetland if the property owner goes through the proper application process including a State Removal Fill Permit to enhance or create a wetland to replace the portion of a wetland being filled for road improvements. This maintains the “no net loss” policy towards wetlands. The applicant hired PBS Environmental Consultants to do the wetland mitigation and permitting. The portion of the wetland that would be filled for the road grade purposes would be mitigated by the enhancement or creation of a wetland in a different location. A Joint Corps of Engineers/Division of State Lands Removal Fill Permit application was made by the applicant’s consultant and submitted to DSL.

The wetland maps in the planning department file, provided by PBS, indicate that the northeast corner of the Road where the 90 angle is, is over emergent wetlands and the stream channel wetlands begin in the corner where the eyebrow widening may be required.

2. With the drainfields being present in the area abutting the Road, how are the owners to get from the Road to the land without driving over the drainfields? Can a drainfield be placed in a transmission line easement that may have vehicle traffic from time to time for maintenance purposes?

Due to the large volume of wetlands on 3202, the sanitation permits have been issued with a complex series of easements over property in 3200. This is possible because the developers own both parcels. According to a copy of a map provided by the sanitation department, the drainfield for lot 2 (parcel 2 in 3202) requires an easement on lot 3 (Parcel 3 in 3202) and lot 4 (Parcel 1 in 3200) in the little arm that is extended to the west which abuts up to the dedicated Road and is in the BPA Transmission easement. In addition, the drainfield for lot 3 (parcel 3 in 3202) requires an easement onto lot 5 (parcel 1 in 3200) in the little arm that is extended to the west of the parcel which also abuts up to the dedicated Road and also is in the BPA Transmission easement. We have marked this area on the map in orange. It is our understanding that BPA drives very heavy vehicles over their easements when they are doing maintenance on transmission lines. It is also our understanding that most people that install drainfields recommend that you “not drive your personal vehicle over them”. If auto and heavy vehicle traffic are allowed over these drainfields they will likely fail.

We have not seen the sanitation permits for 3200, lots 4 and 5 and do not know where the drainfields are on these lots.

**Response:** On-site sewage disposal system construction standards are developed and administered by the Oregon State Department of Environmental Quality. As a contract agency, the county has been granted limited authority in applying these standards. Such standards, a compilation of soil science, geology, hydrology and the application of contaminated water (sewage) into the ground, are solely concerned with insuring non contamination of ground water

sources, including surface water (wetland) areas. Property development and all pending permits must meet planning department approval prior to issuance. It is the site developers responsibility to insure that relevant standards can be met and the county's responsibility to insure that such standards are met.

As part of these standards, disposal systems must be protected form heavy traffic use. Site visits by the Sanitaricians have indicated that physical conditions on these sites support proper road construction with proper disposal system setbacks. Power companies (BPA in this case) support disposal system installations providing such installations don't interfere with tower access.

Sewage disposal construction sites for lots 4 and 5 are on file, should you wish to examine them.

3. Can a driveway be placed over a wetlands area?  
It is out understanding that lot 2 (parcel 2 in 3202) will have a driveway off the Road. This entire area of the road has been designated as emergent wetlands. How will this be addressed in the final report?

**Response:** The applicant has hired PBS Environmental Consulting to go through the Joint Corps of Engineers and Division of States Lands Removal/Fill permitting process which if approved would allow the filling of a wetland in one location if a wetland is enhanced or created in another location. This would fulfill the general State and Federal Policy of "No net loss" of wetlands. A condition of approval shall be that a copy of the approved Removal/Fill Permit be submitted to LDS for the file before the plat can be signed.

4. Will lot 1 (parcel 1 in 3202) be required to enter their property from Sykes Road or is there an easement across lot 2 (parcel 2 in 3202) for access to the Road?

**Response:** Yes, Lot 1 will be required to access from Sykes Road since it will have at least 50' of frontage on Sykes Road and no frontage on the proposed new public road. An easement to cross parcel 2 is also an option if the County Road Department will grant an access permit from the new public road after consideration of the wetland complexity.

5. Can a forestry permit to cross a creek be transferred to new owners or will a permit be required from the Department of State Lands?

**Response:** The existing creek crossing already has a culvert in place. The applicant will be required to submit documentation from DSL and Columbia River Fire & Rescue stating that the existing creek crossing is adequate for a private driveway before building permits can be issued.

6. How are wetlands designations noted for future sale of the lots?

**Response:** A 25' wetland easement is required to be noted and mapped around all wetland

boundaries identified in the Wetland Delineation Report by PBS Environmental, May 2001 as a condition of approval of this partitioning. The noted and mapped wetland easements shall be recorded along with the deeds to parcels resulting from this partitioning. When lots are sold the title report will show encumbrances including wetland easements.

7. Would it make sense to require that the parcels be redrawn into larger parcels to accommodate the wetlands so that when new owners want to site a home, they are not faced with frustration due to the limited possibilities for siting?

**Response:** The applicant and the applicants consultant have demonstrated to the County Sanitarians, Road Department, and Planning Department; The Bonneville Power Administration, and DSL that the wetlands can be accommodated. The applicant has obtained or is in the process of obtaining all necessary approvals and permits to allow the proposed lot configurations. The final plat will not be signed off until all necessary permits have been approved with a copy in the partitioning file. It is the responsibility of the buyer of proposed parcels to show due diligence in reading all materials and disclosures including the title report and deeds that show any encumbrances such as wetlands on the land.

8. How will the “traffic impact” with the location of the new Road be addressed? We are concerned about the blind corner that is to the west of this road. With the potential for eight new homes off the Road, and the multiple entries to and from Sykes Road each day from the multiple vehicles residing at each home, it is possible that the speed along this portion of Sykes Road will need to be decreased to avoid a potentially fatal accident.”

**Response:** The existing level of service for Sykes Road is adequate to handle added vehicle trips from this partitioning to the existing roadway network. The County Road Standards “Sight Distance” standard states, “The sight distance requirements for intersections shall be 10 times the 85<sup>th</sup> percentile speed of the intersecting street (35 mph traffic speed requires 350 feet of sight distance). The speed limit on Sykes Road at this location is 40 mph therefore 400' of sight distance is required. Sight distance is actually greater than 400' at the intersection of the proposed new public road and Sykes Road.

9. Les & Sophie Taylor commented by letter dated 8/7/02 that, “We are the owners of Parcel 1 of Partition Plat 1997-54 Columbia County Oregon to wit; 1.98 acres on Sykes Road. The proposed change in the road to access the 15.25 acres of land owned by Rich Morten will border a portion of our property on the south. We suggest that Morten Properties LLC install a white vinyl three-rail fence along the proposed roadway, on both sides, and install Emerald Green arborvitae along the fence as is done along the North of the Arbor Homes property to serve as a buffer from exhaust, dust and noise due to traffic on this access road. This fence will coincide with the existing fence and the vegetation will

coincide with the attractive existing landscape of the Arbor Homes Subdivision.

While the road change as presently proposed affects only a small portion of our Southern border, the buffer should be continued across the Southern property line as the possibility exists that the road could continue through to Heritage Lane in the future.”

10. Kristine Lambert, Pete and Valarie Koss, and Terry and Cathy Joeckel sent a series of questions regarding this partition to LDS on 8/13/02 (See attached).
11. Terry & Cathy Joeckel commented by letter date 8/14/02 that, “We request the following be requirements for approval of partitions MP 01-08, MP 01-09, and MP 01-10.
  1. A 20 foot paved road centered with rock shoulders and ditches to divert run off away from adjacent properties.
  2. 3-4 foot tall arborvitae (or similar dense evergreen hedge shrubs) on 3 foot centers, two rows offset, adjacent to the road with a three rail white vinyl fence between the landscaping and adjoining property.
  3. Road, landscaping, and fence to be 100% complete prior to the start of any construction.
  4. Protective Covenants to include those existing on Morten Homestead Estates Parcels 1 and 2 of Partition Plat No. 1997-54 under Columbia County Clerk’s Fee No. 97-13958 in the records of Columbia County, State of Oregon.
12. As of 1/11/01: The St. Helens Fire District offers the following for future development considerations:
  1. All driveways over 150 feet in length must conform to the Columbia County Fire Services Fire Apparatus Access Roads and Driveways Standard.
  2. Hydrant coverage must meet SHRFD fire flow requirements (basically, hydrants capable of 1000 gallons per minute within 1000 feet of structures.
  3. Any future land clearing operations will be considered commercial in nature. Burning of land clearing debris will not be permitted by SHRFD, DEQ, or Department of Forestry regulations.

As of 9/19/02: The St.Helens/Rainier Rural Fire District stated in a letter dated 8/16/02 (See attached) that they would like to have a hydrant at the Sykes Road/North Morten Drive intersection, or close to it, and an additional hydrant about 1000 feet or so down North Morten to serve the new lots. I will work with Mr. Morten and McNulty Water to refine this plan and ensure adequate coverage for new homes.”

13. As of 9/6/02: The Bonneville Power Administration reviewed the application and has no objection to its approval as submitted. "Applications must be submitted to BPA for any use proposed within the right-of-way."

As of 9/17/02: The Bonneville Power Administration commented, "Since my letter to you dated September 4, 2002, it has come to my attention that Rich Morten has been working closely with Bonneville Power Administration maintenance forman Don Swanson on his plans to partition his property. BPA has no objection to the property partition and has verbally approved his plans for roads, septic drainfields, etc., on his property. BPA will be issuing a written permit in the near future."

14. The City of St. Helens has reviewed the application and has no objection to its approval as submitted.

15. The Oregon Division of State Lands commented: "The Division is in receipt of a State Removal/Fill permit application for filling of wetlands on project site. Application is currently being evaluated."

14. The City of St. Helens has reviewed the application and has no objection to its approval as submitted.

15. Paulette Lichatowich, Smith Road CPAC Representative of the St. Helens CPAC has the following comments and concerns regarding these minor partitions:

1. "I believe the applications are inadequate. They fail to show the correct placement of the road and wetland mitigation. The road shown on the preliminary plat is different than the road discussed in Rich Morton's presentation.

**Response:** The applications are adequate and include information required for application submittal. Since the applications were originally submitted and notification was sent out the context for the applications has changed when the Wetland Delineation Report by PBS Environmental indicated the presence of wetlands on the property. Originally two road accesses were proposed but with the delineation of wetlands the eastern most road was removed so it would not impact the wetlands. Rich Morten's presentation at the St. Helens CPAC meeting indicated only one road instead of the original proposal of two roads. The preliminary map sent out during re-notification indicated only one access road. The applications do show the applicant's proposed location for the road but are not required to show "wetland mitigation."

2. Placement of the proposed public road and the wetland mitigation are legitimate concerns of affected homeowners that should be clarified.

**Response:** The applicant has demonstrated to County Sanitarians, Road Department, and



Planning Department that placement of the road juxtapositioned with the wetlands will be a workable location if the applicant's wetland "no net loss" mitigation and Joint Removal/Fill Permit are approved by DSL and the Corps of Engineers.

3. Mr. Morten presented his conceptual vision for the development but concrete plans are needed. Residents in the area deserve to know what the final minor partitions will look like so they can judge how they will be affected. This application should have more than a preliminary plat and a vision statement from the developer.

**Response:** The usual procedure for review of partitions following State and County law for review of partitions has been followed. The applicant is not required to submit more than a "Tentative Map and Plan" as discussed in the County Subdivision and Partitioning Ordinance (CCS&PO), Sections 601 through 605. Once findings have been made that the tentative map and plan meet the criteria for approval of the tentative map and plan and the proposed partitions are approved the applicant is then ready to meet County law regarding final platting criteria, CCS&PO, Sections 609 through 614.

4. If the design of the new public road or wetland mitigation area is inadequate or creates unforeseen problems, county staff should address who will be responsible for correcting the problem prior to construction and occupancy of future homes. In other words, who will bear the burden of correcting problems associated with design flaw?

**Response:** The applicant is required to have a Registered Professional Engineer (PE) prepare the Road Plans based upon Columbia County Road Design Standards and the firm's professional credential to do civil engineering work related to design of the required road type. If a PE or Professional Engineer stamps engineered plans for a road then they are held responsible if the engineering fails. Any proposed wetland mitigation will have to be approved by the Oregon Division of State Lands, Wetlands Program. Mitigation includes the responsibility for the issuance of a Joint Corps of Engineers/Division of State Lands Removal/Fill Permit that must also be approved by these agencies.

5. Mr. Morten testified that his door is open to everyone to discuss his plans for the area. Then later he gave an ultimatum about what he would do if the plat plan wasn't approved. The CPAC meeting is an opportunity for citizens to air their concerns. I don't believe all neighbors must agree with the developer, but a good faith attempt to discuss and address concerns should be evident. That does not appear to be the case here.

P.S. I'm confused: Why does the hand written application lot sizes differ slightly on the preliminary plat and the referral applications numbers?"

**Response:** Staff was present at the CPAC meeting and felt that it was evident that the Mortens did make a "good faith" attempt to discuss and address concerns with those present.

Staff observed that the Mortens made themselves available for questions and answers and made a "good faith" effort to inform those present of what they were proposing.

Regarding parcel size discrepancies between the preliminary plat and the referral applications numbers the bottom line is that there must be enough acreage for the dedicated public right-of-way; and all of the proposed parcels. The proposed parcels must meet minimum lot size standards for their respective zones. The RR-5 zone must have parcels no smaller than 5 acres. The RR-2 zoned parcels must have lots no smaller than 2 acres unless a variance to lot size has been approved. Proposed parcel sizes for the three partitions are as follows:

	MP 01-08	MP 01-09	MP 01-10
Original Application:	2.21, 2.53	2.09, 2.06, 2.11	5.0, 5.0, 5.08
Original Tentative Map:			
Revised Tentative Map:	2.17, 2.10	2.09, 2.07, 2.04	5.0, 5.0, 5.01

The bottom line is they all meet minimum parcel size standards for RR-2 and RR-5. No proposed parcels are less than 2 or 5 acres.

**ADDITIONAL MATERIALS AND COMMENTS RECEIVED DURING CONTINUANCE:** The Following comments were received after the Planning Commission hearing on October 7, 2002:

1. Preliminary Compensatory Wetland Mitigation Plan, report, prepared by PBS Environmental, revised September 2002, received by County on October 8, 2002 (3 pages).
2. A letter from John Heller to Rich Morten Dated October 10, 2002.
3. A letter from the Koss' dated October 11, 2002.
4. A letter from John Heller to the Planning Commission dated October 21, 2002.
5. A rebuttal letter of: the Koss' letter of October 11, 2002; the John Heller letter dated October 10, 2002; and the Staff Reports for MP 01-08 and MP 01-09 from Rich and Doug Morten dated October 21, 2002.
6. A further rebuttal letter from Rich and Doug Morten dated October 22, 2002 to the John Heller fax letter dated October 21, 2002 .

No other comments have been received as of the date of this staff report (1/22/03).

#### **PLANNING COMMISSION CONCLUSION AND DECISION:**

The Planning Commission at their regularly scheduled public hearing on November 11, 2003

adopted the findings conclusions and conditions as stated in the staff report MP 02-08 and Final Order MP 02-08 and **APPROVED** this request for a partition to divide approximately 5.77 acres into 2 parcels of approximately 2.17 (Parcel 1) and 2.10 (Parcel 2) acres each in the RR-2 zone with the following conditions approved by the Planning Commission:

1. A final plat must be prepared and submitted to Land Development Services within ONE YEAR of the date of approval of the Preliminary Plat. If this one year deadline is not met, the Preliminary Plat must be resubmitted for approval under the current Subdivision and Partitioning Ordinance.

**Before the Final Plat can be Signed:**

2. Each parcel must be at least 2 acres in size, as evidenced by a survey and as stated on the final plat by a licensed surveyor in the State of Oregon.
3. Any required easements for septic systems approved under evaluation reports issued for tax lot 4106-030-03200 parcels 1 & 2 mapped on the final plat and an appropriate written easement provided and recorded with the deed documents.
4. The applicant is required to name and dedicate on the partition plat a 50' public right-of-way with Engineer designed public road constructed to County Road Standards for the access road into lot 03200. The road shall have an approved turn around.
5. The road name shall be approved with documentation provided to LDS indicating approval of the road name by Columbia County 911 and Columbia River Fire & Rescue. The parcels (MP 01-10 & MP 01-09) on which the public road will access land subject to this request (MP 01-08) shall be recorded individually on separate plats prior to approval of the final plat for MP 01-08.
6. The applicant shall place a terminal Type III, Street Barricade at the end of the public right-of-way's turn around. The barricade shall be constructed to County Road Standards specified on page 135 of the Road Standards.
7. A wetland area boundary shall be mapped around and including all wetlands identified in the Preliminary Compensatory Wetland Mitigation Plan Report as modified and approved by State of Oregon (DSL) Division of State Lands and submitted by PBS Environmental, Revised September 2002. The noted and mapped wetland area shall be recorded with the deeds to parcels resulting from this partitioning. No development shall occur in wetlands which have additional setbacks for structures

8. The applicant shall provide a copy to Land Development Services (LDS) of the Bonneville Power Administration written permit to allow roads, septic systems including drainfields on BPA right-of-way easements.
9. The applicant shall provide LDS with a copy of the approved Removal/Fill Permit issued by the Corps of Engineers and Division of State Lands.
10. The applicant will be required to submit documentation from DSL stating that the existing creek crossing is adequate for a private driveway before building permits can be issued on the south side of the creek.
11. The applicant shall place all signage as specified on page 64 of the County Road Standards, in compliance with the Manual of Uniform Traffic Control Devices which may include Stop, Dead End, Road Name signs.
12. All applicable provisions of the fire code for adequate water supply and fire access must be met before building permits can be issued. The applicant shall work with the Fire Marshall of Columbia River Fire & Rescue to approve hydrant location.

**Before Building Permits can be Issued:**

13. A statement from the local water provider is required indicating that adequate water supply is available to each parcel resulting from this partition and before building permits can be issued for the construction of dwellings on parcels resulting from this partitioning.
14. County Road Access permits are required before building permits may be issued on parcels resulting from this partitioning.

**Attachment 3**  
**COLUMBIA COUNTY**  
**BOARD OF COMMISSIONERS**  
**MP 01-09**  
January 22, 2003  
ON-APPEAL STAFF REPORT

HEARING DATE: 01/29/03

FILE NUMBER: MP 01-09

APPLICANT: Rich Morten  
34385 Southview Drive  
St. Helens, Oregon 97051

PROPERTY OWNER: Same as Above,

PROPERTY LOCATION: South of Sykes Road

REQUEST: To divide approximately 6.15 acres into 3 parcels of approximately 2.09, 2.07, and 2.04 acres each in the RR-2 zone.

TAX ACCT. NO.: 4106-030-03202

EXISTING ZONING: Rural Residential (RR-2)

150TH Day: 06/02/01 (Waiver of the 150 day rule signed by applicant)

**BACKGROUND:**

The applicant requests approval to divide an approximately 6.15 acre parcel (size prior to PLA) into 3 parcels of 2.09, 2.07, and 2.04 acres in the RR-2 zone. The property is located south of and fronts on Sykes County Road outside the City of St. Helens Urban Growth Boundary. Proposed access will be provided from a dedicated public right-of-way. The subject property is located in the St. Helens Rural Fire Protection District. (Please also see MP 01-08, MP 01-10, and PLA 01-19)

**REVIEW CRITERIA:**

<u>Zoning Ordinance</u>	<u>Page(s)</u>
Section 604	3
Section 624	3 - 5
<u>Subdivision &amp; Partitioning Ordinance</u>	<u>Page(s)</u>
Section 204	6
Section 602	6, 7
Section 604	3
Section 611	8, 9
Section 612	9, 10
Section 613	10
Section 614	10, 11
Section 912	11, 12
Section 1015	12
<u>Zoning Ordinance</u>	
Section 1170	13
Section 1180	13, 14

**HISTORY:**

The applicant made application for three partitions; MP 01-08, MP 01-09, and MP 01-10 on 12/28/00. The partitions were to be accessed via two roads from Sykes Road. Notice was sent out to nearby property owners and agencies for comment.

The Division of State Lands (DSL) Wetlands Program became involved when DSL was notified by the County Sanitarians on 2/21/01 that problems with proposed septic system locations and wetlands existed on several of the proposed parcels. DSL then determined that a wetland delineation should be made by the applicant on 3/01/01 to define areas outside of wetlands that could be used for sanitation systems. On 3/05/01 a Waiver of the 150 Day Rules was signed by the applicant to allow time for completion of a wetland delineation.

The results of the Wetland Delineation Report by PBS Environmental dated May 2001 indicated that the most easterly of the two proposed access roads could not be used because of wetland issues. The applicant then reconfigured the road and parcels to avoid infringement on delineated wetland by taking the most easterly road out of the proposal and reconfiguring the parcels where the road has been.

A re-notification was sent out on 8/02/02 to all nearby property owners and affected agencies since the reconfiguration of access roads and several proposed parcels was a relatively significant change to that which was originally proposed.

Subsequent to re-notification the fee was paid by a nearby property owner and 2 of the 3 partitions, MP 01-08 and MP 01-09, were referred to the Planning Commission. The reason for referral was stated that, "... There is a property boundary dispute....".

A Planning Commission hearing was held and this application was approved on November 11, 2002. The Planning Commission decision was then appealed to the Board of County Commissioners who scheduled a public hearing to hear the appeal on January 29, 2003.

## **FINDINGS**

**Finding 1:** The reason for referral of this administrative action to the Planning Commission stating "... There is a property boundary dispute..." This is not a valid land use issue with applicable criteria that can be decided by the Planning Commission. This is a survey issue. The reason for referral is part of an on-going dispute between the adjoining property owner, the applicant of this partition, and Dewey Surveying. The Planning Commission found that at least 2 acres for each lot in the division can be met; and, the applicant can only partition land for which he has title as evidenced by a Title Policy.

### **Zoning Ordinance and Subdivision & Partitioning Ordinance Review Criteria follow:**

§ 604 of the Columbia County Subdivision and Partitioning Ordinance provide that the Planning Director may approve a major or minor partition unless a variance is necessary, at which time the provisions of § 210 shall be followed, or an adjoining property owner requests a referral to the Planning Commission under § 213.B. Both a variance and a referral require the partition to be submitted to the Planning Commission for review and decision.

**Finding 2:** A variance has not been requested under § 210, of the Subdivision and Partitioning Ordinance. The applicant has submitted the information necessary to process this request as a major partition under § 103 (C) (26), and § 601 - 615 of the Columbia County Subdivision and Partitioning Ordinance. An adjoining property owner has paid the appropriate fee and requested referral to the Planning Commission under § 213.B. A public hearing before the Planning Commission was held on October 7, 2002 and continued to November 11, 2002, when a tentative decision was reached.

Following with § 620 of the Columbia County Zoning Ordinance which contains the following

dimensional standards for the Rural Residential (RR-2) zone:

"624 Standards:

- .1 The minimum lot size for uses permitted under this section shall be 2 acres.

**Finding 3:** The Applicant indicates on the preliminary map that each parcel will contain a minimum of 2 acres or more. The final plat will not be signed by LDS unless it shows a minimum of 2 acres for each parcel free and clear of right-of-way for a new public road dedication.

Continuing with Zoning Ordinance § 624:

- .2 Dwellings permitted under this section must meet all of the following standards:
  - A. be connected to an existing public or community water district providing adequate domestic water; and
  - B. be approved for an individual subsurface septic system, or be served by a public or community sewer system; and
  - C. have direct access onto a public right-of-way meeting applicable County road standards; and
  - D. be within and can be served by a rural fire protection district.

**Finding 4:** The proposed parcels are in the McNulty Water Association service boundary. McNulty Water has stated that water is available to the proposed parcels. Since public sewer is not available to the proposed parcels, the applicant is required to have all parcels approved for an individual septic system that are zoned RR-2. Proposed lots 1,2 and 3 of Tax Lot 4106-030-03202 have received favorable Evaluation Reports for on-site sewage disposal systems, dated November 13, 2001, January 18, 2002 and January 18, 2002, respectfully. The applicant shall name and dedicate a public right-of-way meeting applicable County Road Standards before this application can be approved. Each parcel resulting from the partitioning of the subject property shall have direct access onto a public right-of-way. The subject property is within the St. Helens Rural Fire Protection District boundary. The sequencing of the partitions on these contiguous parcels, MP01-08, MP01-09 and MP01-10, requires that the public road be accepted as dedicated and improvements completed on the road subject to other applications prior to approval of this final plat.



and following with the Zoning Ordinance § 624:

"3 The minimum average lot width shall be one 100 feet.

.4 The minimum average lot depth shall be one 100 feet."

**Finding 5:** The dimensions of each new parcel will exceed the above minimum lot dimensions.

Continuing with Zoning Ordinance § 624:

".5 lots or parcels shall conform to the following requirements before a building permit may be issued for construction on the property;

A. All lots or parcels legally recorded on or after June 4, 1991 shall have a minimum of 50 feet of usable frontage on a public right-of-way. All such public rights-of-way shall be improved in accordance with the requirements of the Columbia County Uniform Road Improvement Design Standards. In lieu of such improvements, the owner or developer of the lot or parcel may secure a surety bond, or place cash in escrow or trust, to insure that the improvements will be completed according to the procedure outlined in § 801 of the Columbia County Subdivision and Partitioning Ordinance.

B. All lots or parcels legally recorded before June 4, 1991 shall have a minimum of 50 feet of usable frontage on a public right-of-way or private non-exclusive easement. One-half of the public right-of-way or private non-exclusive easement adjacent to the lot or parcel shall be improved in accordance with the requirements of the Columbia County Uniform Road Improvement Design Standards. In lieu of such improvements, the owner or developer of the lot or parcel may secure a surety bond, or place cash in escrow or trust, to insure that the improvements will be completed according to the procedure outlined in § 801 of the Columbia County Subdivision and Partitioning Ordinance. However, in the sole discretion of the Board, in lieu of the improvements or cash or surety bond to secure such improvements, the Board may require the owner or developer of the lot or parcel to put up cash in an amount equivalent to the cost of the improvements dedicated toward the improvement of the entire road rather than the portion adjacent to the lot or parcel."

**Finding 6:** The applicant shows on the preliminary map of the partition that each of the new

parcels will have 50 feet of frontage on a yet to be named public right-of-way that is required to be named and dedicated as a condition of approval. The applicant cannot count acreage used for the public right-of-way dedication for new roads to meet minimum parcel size requirements.

Continuing with Zoning Ordinance § 624:

- "6 No dwelling shall be constructed closer than 30 feet to a property line. Where the property abuts resource zoning, the setback shall be increased to 50 feet.
- .7 Unless otherwise prohibited, the maximum building height for all non-farm, non-forest structures shall be 35 feet or 2-1/2 stories, whichever is less.
- .8 Unless otherwise prohibited, structures such as barns, silos, windmills, antennas, chimneys, or similar structures may exceed the height limitations to a maximum height of 50 feet."

**Finding 7:** All of the above dimensional criteria shall be controlled as part of the building permit review process.

... and following with the County Subdivision and Partitioning Ordinance:

SECTION 204. CONFLICT WITH PUBLIC AND PRIVATE PROVISIONS.

- A. Public Provisions. The regulations are not intended to interfere with or annul any other provision of law. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule, regulation or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.
- B. Private Provisions. These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of these regulations, or the determinations of the Commission in approving a subdivision or in enforcing these regulations, and such private provisions are not inconsistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these

regulations and determinations made thereunder.

**Finding 8:** Staff agrees that the higher standards shall control and that private provisions shall be operative and supplemental to these regulations and determinations made thereunder.

...following with the Subdivision & Partitioning Ordinance;

## **SECTION 602. CONTENTS OF TENTATIVE MAP FOR MAJOR PARTITIONING.**

A. General Information Required. The following general information shall be shown on the tentative map:

- (1) Location of the partition by (quarter-quarter) section, township, and range and a legal description sufficient to find the location and boundaries of the proposed tract or the tract designation or other description. (Assessor's map is recommended.)
- (2) Date, north point, and scale of drawing.
- (3) Appropriate identification clearly stating the map is part of the major partition.
- (4) Names and addresses of the owner, partitioner, engineer and/or surveyor, land planner, if any, or any other professional person employed in the preparation, layout or design of the major partition.
- (5) The location, approximate dimensions, and acreage of parcels, and the proposed parcel numbers.
- (6) Location of approved means of sewage disposal for each lot in accordance with Section 913.B. of this ordinance, if known.
- (7) Location of approved means of water supply for each lot in accordance with Sections 913.C.(1) or 913.D.(1) of this ordinance, if known.

B. Existing Conditions. The following conditions shall also be shown on the tentative map for major partitioning:

- (1) The location, width, and names of both opened and unopened streets within or adjacent to the project area, together with easements, other rights-of-way, and other important features such as section lines, corners, city boundary lines, and monuments.

- (2) The location, width, and use or purpose of any easement on the property.
- (3) The location and direction of all water courses and the location of all areas subject to flooding.
- (4) The location of structures, irrigation canals and ditches, pipelines and railroads, and any natural features such as rock out-croppings and cover which are of an area or size sufficient to influence the design of the major partition.
- (5) Existing uses of the property, including location of all existing structures to remain on the property after development, and the location of any well(s) and septic system(s).
- (6) The location within the development area and in the adjoining streets and property of existing sewers and water mains, culverts and drain pipes, and elevations of sewers at points of probable connection.
- (7) Approximate location of boundary lines of property adjacent to the development.
- (8) Zoning classification of the land and adjoining land.

**Finding 9:** The applicant has submitted the necessary information outlined above.

...following with the Subdivision & Partitioning Ordinance;

#### **SECTION 611. INFORMATION ON FINAL PLAT.**

Consistent with the provisions of ORS 92.050, an applicant for a major land partition must comply with the following requirements:

- A. No subdivider shall submit a plat of a partition for record until all the requirements of ORS 209.250 and the plat requirements of the partition have been met.
- B. The survey for the plat of the partition shall be of such accuracy that the linear error of closure shall not exceed one foot in 10,000 feet.
- C. The survey and plat of the partition shall be made by a registered professional land surveyor. Unless the Planning Director provides otherwise, created parcels that are 20 acres or greater, but less than 40 acres, need not be surveyed or monumented if zoned Primary Forest, Forest Agriculture or Primary Agriculture. Similarly zoned parcels that are 40 acres or greater need not be surveyed or monumented. *[Amended 1-29-97]*

- D. The plat of the partition shall be of such scale that all survey and mathematical information, and all other details may be clearly and legibly shown thereon. Each lot or parcel shall be numbered consecutively. If used, blocks shall be lettered or numbered. The lengths and courses of all boundaries of each lot or parcel shall be shown. Each street shall be named.
- E. The locations and descriptions of all monuments found or set shall be carefully recorded upon all plats and the proper courses and distances of all boundary lines shall be shown.
- F. The location, dimensions and purpose of all recorded and proposed public and private easements shall be shown on the partition plat along with the county clerk's recording reference if the easement has been recorded with the county clerk.
- G. The area of each lot or parcel shall be shown on the partition plat.
- H. In addition to showing bearings in degrees, minutes and seconds of a degree, and distances in feet and hundredths of a foot, the following curve information shall be shown on the partition plat either on the face of the map or in a separate table:
  - (1) Arc length;
  - (2) Chord length;
  - (3) Chord bearing;
  - (4) Radius; and
  - (5) Central angle.
- I. The surveyor submitting any partition plat that is within one-half mile of an established geodetic control monument, which has been approved by the National Geodetic Survey or has been approved by and filed with the county surveyor, shall, by field survey according to Federal Geodetic Control Committee guidelines for third order class II, show the measured angles and distances from the geodetic control monument to a monumented boundary corner of a partition.

If there is an azimuth mark for the geodetic control monument or if there is another geodetic control monument that is intervisible to the primary geodetic control monument, the bearings shall be based, if practicable, on the bearings between the geodetic control monument and the azimuth mark or the intervisible geodetic control monument.
- J. Notwithstanding the provisions of subsection (9.) of this section, the county surveyor may waive the requirement of a distancing to a geodetic control monument if the partition thereof has previously furnished the required information.
- K. Except as otherwise provided in this section, all partition plats designating the location of land in any county in the State of Oregon offered for record shall have attached thereon an affidavit of the surveyor having surveyed the land represented on the plat, to the effect

that the surveyor has correctly surveyed and marked with proper monuments the lands as represented, and has placed a proper monument as provided in ORS 92.060 indicating the initial point of the survey, and giving the dimensions and kind of monument, and its location in accordance with ORS 92.060 one and accurately describing the tract of land upon which the lots and blocks or parcels are laid out.

- L. Unless there is proof of adequate water supply and sewage disposal for each lot pursuant to Section 913 of this ordinance, the final plat shall indicate those lots for which an adequate supply of water or sewage disposal has not been proven.

## **SECTION 612. APPROVAL OF THE FINAL MAP.**

- A. Before any partition plat that covers land within the corporate limits of any city can be recorded, it must be approved by the county surveyor. However, for the purposes of this ordinance, the governing body of the city may, by resolution or order, designate the city surveyor to serve in lieu of the county surveyor.

Except as provided in subsection C of this section, if the land is outside the corporate limits of any city, the partition plat shall be approved by the county surveyor and planning director before it is recorded. All partition plats which contain a dedication for public or county road purposes must also be approved and accepted by the Board of County Commissioners before they can be recorded. [2-10-93]

- B. Before approving the partition plat as required by this section, the county surveyor, as provided by subsection A of this section, shall check the partition plat and make such computations and other determinations that the partition plat complies with the provisions of this and other applicable laws. For performing such service, the county surveyor shall collect from the partitioner a fee as set by ordinance, order or resolution of the Board. [2-10-93]

- C. Any partition plat prepared by the county surveyor in a private capacity shall be approved in accordance with subsection B of this section by the surveyor of a county other than the county where the land is located and who has been designated by the county surveyor. The designated county surveyor shall collect the applicable partition plat check fee, and any travel expenses incurred, as established by the designated county surveyor's board of commissioners.

The partition plat check fee and other expenses shall be paid by the subdivider prior to approval of the partition plat by the designated county. [2-10-93]

## **SECTION 613. REQUIREMENTS OF THE MAJOR PARTITION FINAL PLAT.**

The following certificates shall appear on the major partition final plat:

- A. A certificate signed and acknowledged by all parties having any record title interest in the land being partitioned consenting to the preparation and recording of the plat.
- B. A certificate signed and acknowledged by all parties having record title interest in the property partitioned, dedicating or reserving all parcels of land shown on the final plat intended for any public use.
- C. A certificate for execution by the Planning Director.
- D. A certificate for execution by the County Surveyor.

**SECTION 614. FILING OF FINAL MAP.**

- A. The partition plat described in ORS 92.050, when made and approved as required and offered for record in the records of the county where the described land is situated, shall, upon the payment of the fees provided by law, be filed by the county recording officer. The fact of filing and the date thereof shall be entered thereon, and it shall then be securely filed with other partition plats of like character and designated as "Record of Partition Plats." Partition plats shall be recorded and numbered by year and sequentially.
- B. At the time of filing such partition plat, the person offering it for filing shall also file with the county an exact copy thereof, made with permanent black india type ink or silver halide permanent photocopy upon a 4 mil double matted mylar. The surveyor who made the partition plat shall make an affidavit to indicate that the photocopy or tracing is an exact copy of the partition plat. The copy filed with the county recording officer shall be certified by that officer to be an exact copy and then shall be filed with the county surveyor, and be preserved by filing without folding or cutting. The subdivider shall provide without cost the number of prints from such copy as may be required by governing body of the county.
- C. For the purpose of preserving the original partition plats, any such plats may be stored for safekeeping without folding or cutting.
- D. The person offering for filing an approved plat of a partition for a parcel of land to which a water right is appurtenant shall also submit a copy of the partition plat to the Water Resources Department for the purpose of updating the water rights records of the department. The county recording officer shall not accept for filing a plat of a partition for a parcel of land without:
  - (1) A statement of water rights noted on the partition plat.

- (2) A copy of the acknowledgment from Water Resources Department under ORS 92.122, if the person offering the partition plat for filing indicates on the statement of water rights that a water right is appurtenant to the subdivision or partition.
- E. No action may be maintained against the county recording officer for recording an instrument that does not contain the statement of water right or the acknowledgment required under subsection (D) of this section.
- F. Within 10 days after receiving a copy of an approved plat of a partition submitted as required under ORS 92.120 (5), the Water Resources Department shall send to the person submitting the partition plat an acknowledgment confirming receipt of the (plan,) partition plat (or replat).

**Finding 10:** If the preliminary map is approved then all final plat provisions must be met before the final plat can be signed off by the Director. Dewey Surveying, is operated by Phil Dewey as a private practice. Phil Dewey is also the elected County Surveyor. Dewey Surveying was hired by the applicant to complete any surveying work for this partitioning. Phil Dewey also serving in the capacity as County Surveyor will have the Clatsop County Surveyor review his work completed by Dewey Surveying for the applicant.

... and following with the Subdivision & Partitioning Ordinance:

## **SECTION 912. DRAINAGEWAYS.**

If a subdivision is traversed by a water course such as a drainage way, channel, canal, or stream, there shall be provided a storm-water easement or drainage right-of-way conforming substantially with the lines of the water course, and such further width as will be adequate for the purpose. Streets or parkways parallel to major water courses or drainageways may be required.

### **A. Surface Drainage and Storm Sewer Systems.**

- (1) **General Provisions.** The Commission shall not recommend for approval any partition or subdivision which does not make adequate provisions for storm or flood water runoff. The storm water drainage system shall be separate and independent of any sanitary sewer system. Inlets shall be provided so surface water is not carried across any intersection. Surface water drainage patterns shall be shown for each and every lot and block. The sewer system shall be built to the standards of the County.
- (2) **Accommodation of Upstream Drainage Areas.** A culvert or other drainage facility shall in each case be large enough to accommodate potential runoff from its entire



upstream drainage area, whether inside or outside of the development. The County's Engineer or Roadmaster shall determine the necessary size of the facility, based on the provisions of the construction standards and specifications, assuming conditions of maximum potential watershed development permitted by the Zoning Ordinance.

- (3) Effect on Downstream Drainage. Where it is anticipated that the additional runoff incidental to the development of the subdivision will overload an existing drainage facility, the Commission may withhold approval of the subdivision until provisions have been made for improvement of the existing drainage facility.
- (4) Drainage Easements. When topography or other conditions are such as to make impractical the inclusion of drainage facilities within street rights-of-way, perpetual unobstructed easements, at least 15 feet in width, for such drainage facilities shall be provided across property outside the road lines and with satisfactory access to the street. When a proposed drainage system will carry water across private land outside the development, appropriate drainage rights must be secured.

...and continuing with the Subdivision & Partitioning Ordinance;

#### **SECTION 1015. OTHER REQUIREMENTS.**

In rural and urban areas, in addition to the improvements required by the provisions of this ordinance, the subdivider may be required to provide other improvements because of specific features of the land and the design and location of the subdivision or major partition. Improvements such as bridges, culverts, and the fencing of watercourses, rights-of-way, and recreation areas and facilities may be required where necessary for the health, safety, and general welfare of residents of the subdivision or major partition.

**Finding 11:** The subject property contains several drainage and waterways that are identified in the Wetland Delineation Report by PBS Environmental, May 2001. A condition of approval shall be that the wetland/drainageways running north/south from Sykes Road to the east/west running creek shall have wetland/drainageway easements, extending 25 feet upland of the delineated wetland boundary, over each parcel that water passes through. When a proposed drainage system will carry water across private land outside the development, appropriate drainage rights must be secured.

Following with Section 1170 of the County Zoning Ordinance:

**Section 1170 PROTECTION OF WATER QUALITY, STREAMBANK  
STABILIZATION, AND FISH AND WILDLIFE HABITAT**

WQ

.1 Riparian areas in Columbia County are defined as follows:

- C. For all other rivers, streams, and sloughs, the area of riparian vegetation shall extend 25 feet landward of the ordinary high water line except where shrub and forested wetlands are located adjacent to the river, then the riparian area shall be the entire area of shrub or forested wetland. Where emergent wetland vegetation exists adjacent to a river, the 25 feet shall be measured from the landward extent of the emergent vegetation.

Following with the County Zoning Ordinance, Section 1180 WETLAND AREA OVERLAY:

1182 **Definition:** A significant wetland is an area where the water table is at, above, or below the land surface long enough so the area supports predominantly hydrophytic vegetation, has soils indicative of wet conditions, and is large enough to be of biological value. In case of dispute over whether an area is of biological value and should be considered a wetland, the recommendation of the Oregon Department of Fish and Wildlife and the Columbia County Soil and Water Conservation District shall be relied upon. Wetland areas have been identified in the Columbia County Comprehensive Plan. When additional areas are identified by the Oregon Department of Fish and Wildlife, the County will apply the goal 5 rule and, if appropriate, proceed with a plan amendment to include the area(s) in the Comprehensive Plan.

1183 **Permitted Uses:** Uses and developments permitted outright or conditionally in the underlying zone shall be permitted if they will not result in filling, drainage, removal of vegetation, or other alteration which would destroy or reduce the biological value of a wetland as defined in Section 1182. Minor drainage improvements necessary to ensure effective drainage on surrounding agricultural lands shall be allowed where such an action has been fully coordinated with the Oregon Department of Fish and Wildlife and the Columbia County Soil and Water Conservation District. Existing drainage ditches may be cleared to original specifications without review.

1184 **Development Standards:** Uses that are not water-dependent or water-related shall be setback to the extent of riparian vegetation identified in the Comprehensive Plan. Riparian vegetation shall be protected in accordance with Section 1170.

**Finding 13:** Wetland Areas were identified on the subject property by the Division of State Lands who then requested a Wetland Delineation. A Wetland Delineation Report was prepared

for the applicant by PBS Environmental indicating the proposed 2.09, 2.07, and 2.04 acre parcels contain a portion of wetlands as described on Figure 5 of the Wetland Delineation Report. These wetlands are identified as stream channel wetlands as opposed to emergent wetlands. A condition of approval shall be that all identified wetlands have 25' easements extending landward of the wetland boundary identified on a map and recorded with deeds to parcels resulting from this partitioning. The 25' wetland easements will also serve as riparian area. future dwellings on the subject parcels shall be setback 25' taking into account the riparian areas comprising the stream channel wetlands on the subject parcels.

#### COMMENTS:

1. The Sanitarian has reviewed the application and has no objection to its approval as submitted.
2. The County Road Department responded by letter dated January 9, 2001 in regard to MP 01-08, MP 01-09, and MP 01-10 that, "The Road Department will require the following:
  1. Dedication of five feet of right-of-way to Sykes Road fronting properties 03001 and 3202.
  2. Engineer designed road improvements to Sykes Road fronting lot 03202, to include road overlay, drainage, bike lane, curb and sidewalk.
  3. Engineer designed public road to County Standards for the access road into lot 03200."

The County Road Department again commented on August 15, 2002 as follows:

"Recommended other name than "North Morten Drive", we already have a Morten Lane near this location. The new public road will required to meet county Standards to include a 20' wide paved surface, 3' shoulders and ditching/culverts as required. The corners will need to meet radius requirements and possible eyebrow widening."

3. The Engineer for the McNulty Water Association has reviewed the application and has no objection to its approval as submitted.

The Manager for the McNulty Water Association has reviewed the application and has no objection to its approval as submitted.

4. The Columbia River PUD has reviewed the application and has no objection to its approval as submitted.

5. As of 1/23/01: The St. Helens CPAC has reviewed the application and has no objection to its approval as submitted.  
As of 9/19/02: Each CPAC member responded individually.
6. Pam Rensch of the St. Helens CPAC has reviewed the application and has no objection to its approval as submitted.
7. Sally Ann Marson of the St. Helens CPAC has reviewed the application and has no objection to its approval as submitted as long as criteria are met.”
8. Terry & Cathy Joeckel stated concerns in a letter dated 8/6/02.
9. Les & Sophie Taylor commented by letter dated 8/7/02 that, “We are the owners of Parcel 1 of Partition Plat 1997-54 Columbia County Oregon to wit; 1.98 acres on Sykes Road. The proposed change in the road to access the 15.25 acres of land owned by Rich Morten will border a portion of our property on the south. We suggest that Morten Properties LLC install a white vinyl three-rail fence along the proposed roadway, on both sides, and install Emerald Green arborvitae along the fence as is done along the North of the Arbor Homes property to serve as a buffer from exhaust, dust and noise due to traffic on this access road. This fence will coincide with the existing fence and the vegetation will coincide with the attractive existing landscape of the Arbor Homes Subdivision.

While the road change as presently proposed affects only a small portion of our Southern border, the buffer should be continued across the Southern property line as the possibility exists that the road could continue through to Heritage Lane in the future.”

10. Kristine Lambert, Pete and Valarie Koss, and Terry and Cathy Joeckel sent a series of questions regarding this partition to LDS on 8/13/02. The questions are:
  1. “Can a road be placed over emergent wetland area? What requirement is there if a road abuts a stream channel wetlands? How will this be addressed in the final report to ensure that the road is constructed properly with the culverts and drainage going away from our property consistent with the topography (downhill to the creek)?

**Response:** Yes, a road can be placed in a wetland if the property owner goes through the proper application process including a State Removal Fill Permit to enhance or create a wetland to replace the portion of a wetland being filled for road improvements. This maintains the “no net loss” policy towards wetlands. The applicant hired PBS Environmental Consultants to do the wetland mitigation and permitting. The portion of the wetland that would be filled for the road grade purposes would be mitigated by the enhancement or creation of a wetland in a different location. A Joint Corps of Engineers/Division of State Lands Removal Fill Permit application was made by the applicant’s consultant and submitted to DSL.

The wetland maps in the planning department file, provided by PBS, indicate that the northeast corner of the Road where the 90 angle is, is over emergent wetlands and the stream channel wetlands begin in the corner where the eyebrow widening may be required.

2. With the drainfields being present in the area abutting the Road, how are the owners to get from the Road to the land without driving over the drainfields? Can a drainfield be placed in a transmission line easement that may have vehicle traffic from time to time for maintenance purposes?

Due to the large volume of wetlands on 3202, the sanitation permits have been issued with a complex series of easements over property in 3200. This is possible because the developers own both parcels. According to a copy of a map provided by the sanitation department, the drainfield for lot 2 (parcel 2 in 3202) requires an easement on lot 3 (Parcel 3 in 3202) and lot 4 (Parcel 1 in 3200) in the little arm that is extended to the west which abuts up to the dedicated Road and is in the BPA Transmission easement. In addition, the drainfield for lot 3 (parcel 3 in 3202) requires an easement onto lot 5 (parcel 1 in 3200) in the little arm that is extended to the west of the parcel which also abuts up to the dedicated Road and also is in the BPA Transmission easement. We have marked this area on the map in orange. It is our understanding that BPA drives very heavy vehicles over their easements when they are doing maintenance on transmission lines. It is also our understanding that most people that install drainfields recommend that you "not drive your personal vehicle over them". If auto and heavy vehicle traffic are allowed over these drainfields they will likely fail.

We have not seen the sanitation permits for 3200, lots 4 and 5 and do not know where the drainfields are on these lots.

**Response:** On-site sewage disposal system construction standards are developed and administered by the Oregon State Department of Environmental Quality. As a contract agency, the county has been granted limited authority in applying these standards. Such standards, a compilation of soil science, geology, hydrology and the application of contaminated water (sewage) into the ground, are solely concerned with insuring non contamination of ground water sources, including surface water (wetland) areas. Property development and all pending permits must meet planning department approval prior to issuance. It is the site developers responsibility to insure that relevant standards can be met and the county's responsibility to insure that such standards are met.

As part of these standards, disposal systems must be protected form heavy traffic use. Site visits by the Sanitarians have indicated that physical conditions on these sites support proper road construction with proper disposal system setbacks. Power companies (BPA in this case) support disposal system installations providing such installations don't interfere with tower access.

Sewage disposal construction sites for lots 4 and 5 are on file, should you wish to examine them.

3. Can a driveway be placed over a wetlands area?  
It is out understanding that lot 2 (parcel 2 in 3202) will have a driveway off the Road. This entire area of the road has been designated as emergent wetlands. How will this be addressed in the final report?

**Response:** The applicant has hired PBS Environmental Consulting to go through the Joint Corps of Engineers and Division of States Lands Removal/Fill permitting process which if approved would allow the filling of a wetland in one location if a wetland is enhanced or created in another location. This would fulfill the general State and Federal Policy of "No net loss" of wetlands. A condition of approval shall be that a copy of the approved Removal/Fill Permit be submitted to LDS for the file before the plat can be signed.

4. Will lot 1 (parcel 1 in 3202) be required to enter their property from Sykes Road or is there an easement across lot 2 (parcel 2 in 3202) for access to the Road?

**Response:** Yes, Lot 1 will be required to access from Sykes Road since it will have at least 50' of frontage on Sykes Road and no frontage on the proposed new public road. An easement to cross parcel 2 is also an option if the County Road Department will grant an access permit from the new public road after consideration of the wetland complexity.

5. Can a forestry permit to cross a creek be transferred to new owners or will a permit be required from the Department of State Lands?

**Response:** The existing creek crossing already has a culvert in place. The applicant will be required to submit documentation from DSL and Columbia River Fire & Rescue stating that the existing creek crossing is adequate for a private driveway before building permits can be issued.

6. How are wetlands designations noted for future sale of the lots?

**Response:** A 25' wetland easement is required to be noted and mapped around all wetland boundaries identified in the Wetland Delineation Report by PBS Environmental, May 2001 as a condition of approval of this partitioning. The noted and mapped wetland easements shall be recorded along with the deeds to parcels resulting from this partitioning. When lots are sold the title report will show encumbrances including wetland easements.

7. Would it make sense to require that the parcels be redrawn into larger parcels to accommodate the wetlands so that when new owners want to site a home, they are not faced with frustration due to the limited possibilities for siting?

**Response:** The applicant and the applicants consultant have demonstrated to the County Sanitarians, Road Department, and Planning Department; The Bonneville Power

Administration, and DSL that the wetlands can be accommodated. The applicant has obtained or is in the process of obtaining all necessary approvals and permits to allow the proposed lot configurations. The final plat will not be signed off until all necessary permits have been approved with a copy in the partitioning file. It is the responsibility of the buyer of proposed parcels to show due diligence in reading all materials and disclosures including the title report and deeds that show any encumbrances such as wetlands on the land.

8. How will the “traffic impact” with the location of the new Road be addressed? We are concerned about the blind corner that is to the west of this road. With the potential for eight new homes off the Road, and the multiple entries to and from Sykes Road each day from the multiple vehicles residing at each home, it is possible that the speed along this portion of Sykes Road will need to be decreased to avoid a potentially fatal accident.”

**Response:** The existing level of service for Sykes Road is adequate to handle added vehicle trips from this partitioning to the existing roadway network. The County Road Standards “Sight Distance” standard states, “The sight distance requirements for intersections shall be 10 times the 85<sup>th</sup> percentile speed of the intersecting street (35 mph traffic speed requires 350 feet of sight distance). The speed limit on Sykes Road at this location is 40 mph therefore 400' of sight distance is required. Sight distance is actually greater than 400' at the intersection of the proposed new public road and Sykes Road.

11. Terry & Cathy Joeckel commented by letter date 8/14/02 that, “We request the following be requirements for approval of partitions MP 01-08, MP 01-09, and MP 01-10.
1. A 20 foot paved road centered with rock shoulders and ditches to divert run off away from adjacent properties.
  2. 3-4 foot tall arborvitae (or similar dense evergreen hedge shrubs) on 3 foot centers, two rows offset, adjacent to the road with a three rail white vinyl fence between the landscaping and adjoining property.
  3. Road, landscaping, and fence to be 100% complete prior to the start of any construction.
  4. Protective Covenants to include those existing on Morten Homestead Estates Parcels 1 and 2 of Partition Plat No. 1997-54 under Columbia County Clerk’s Fee No. 97-13958 in the records of Columbia County, State of Oregon.
12. As of 1/11/01: The St. Helens Fire District offers the following for future development considerations:
1. All driveways over 150 feet in length must conform to the Columbia County Fire Services Fire Apparatus Access Roads and Driveways Standard.

2. Hydrant coverage must meet SHRFD fire flow requirements (basically, hydrants capable of 1000 gallons per minute within 1000 feet of structures.
3. Any future land clearing operations will be considered commercial in nature. Burning of land clearing debris will not be permitted by SHRFD, DEQ, or Department of Forestry regulations.

As of 9/19/02: The St. Helens/Rainier Rural Fire District stated in a letter dated 8/16/02 that they would like to have a hydrant at the Sykes Road/North Morten Drive intersection, or close to it, and an additional hydrant about 1000 feet or so down North Morten to serve the new lots. I will work with Mr. Morten and McNulty Water to refine this plan and ensure adequate coverage for new homes.”

13. As of 9/6/02: The Bonneville Power Administration reviewed the application and has no objection to its approval as submitted. “Applications must be submitted to BPA for any use proposed within the right-of-way.”

As of 9/17/02: The Bonneville Power Administration commented, “Since my letter to you dated September 4, 2002, it has come to my attention that Rich Morten has been working closely with Bonneville Power Administration maintenance forman Don Swanson on his plans to partition his property. BPA has no objection to the property partition and has verbally approved his plans for roads, septic drainfields, etc., on his property. BPA will be issuing a written permit in the near future.”

14. The City of St. Helens has reviewed the application and has no objection to its approval as submitted.
15. Paulette Lichatowich, Smith Road CPAC Representative of the St. Helens CPAC has the following comments and concerns regarding these minor partitions:

1. “I believe the applications are inadequate. They fail to show the correct placement of the road and wetland mitigation. The road shown on the preliminary plat is different than the road discussed in Rich Morton's presentation.

**Response:** The applications are adequate and include information required for application submittal. Since the applications were originally submitted and notification was sent out the context for the applications has changed when the Wetland Delineation Report by PBS Environmental indicated the presence of wetlands on the property. Originally two public roads were proposed but with the delineation of wetlands the eastern most road was removed so it would not impact the wetlands. Rich Morten’s presentation at the St. Helens CPAC meeting indicated only one road instead of the original proposal of two roads. The preliminary map sent out during re-notification indicated only one access road. The applications do show the applicant’s proposed location for the road but are not required to show “wetland mitigation.”



2. Placement of the proposed public road and the wetland mitigation are legitimate concerns of affected homeowners that should be clarified.

**Response:** The applicant has demonstrated to County Sanitarians, Road Department, and Planning Department that placement of the road juxtapositioned with the wetlands will be a workable location if the applicant's wetland "no net loss" mitigation and Joint Removal/Fill Permit are approved by DSL and the Corps of Engineers.

3. Mr. Morten presented his conceptual vision for the development but concrete plans are needed. Residents in the area deserve to know what the final minor partitions will look like so they can judge how they will be affected. This application should have more than a preliminary plat and a vision statement from the developer.

**Response:** The usual procedure for review of partitions following State and County law for review of partitions has been followed. The applicant is not required to submit more than a "Tentative Map and Plan" as discussed in the County Subdivision and Partitioning Ordinance (CCS&PO), Sections 601 through 605. Once findings have been made that the tentative map and plan meet the criteria for approval of the tentative map and plan and the proposed partitions are approved the applicant is then ready to meet County law regarding final platting criteria, CCS&PO, Sections 609 through 614.

4. If the design of the new public road or wetland mitigation area is inadequate or creates unforeseen problems, county staff should address who will be responsible for correcting the problem prior to construction and occupancy of future homes. In other words, who will bear the burden of correcting problems associated with design flaw?

**Response:** The applicant is required to have a Registered Professional Engineer (PE) prepare the Road Plans based upon Columbia County Road Design Standards and the firm's professional credential to do civil engineering work related to design of the required road type. If a PE or Professional Engineer stamps engineered plans for a road then they are held responsible if the engineering fails. Any proposed wetland mitigation will have to be approved by the Oregon Division of State Lands, Wetlands Program. Mitigation includes the responsibility for the issuance of a Joint Corps of Engineers/Division of State Lands Removal/Fill Permit that must also be approved by these agencies.

5. Mr. Morten testified that his door is open to everyone to discuss his plans for the area. Then later he gave an ultimatum about what he would do if the plat plan wasn't approved. The CPAC meeting is an opportunity for citizens to air their concerns. I don't believe all neighbors must agree with the developer, but a good faith attempt to discuss and address concerns should be evident. That does not appear to be the case here.

P.S. I'm confused: Why does the hand written application lot sizes differ slightly on the preliminary plat and the referral applications numbers?"

**Response:** Staff was present at the CPAC meeting and felt that it was evident that the Mortens did make a “good faith” attempt to discuss and address concerns with those present. Staff observed that the Mortens made themselves available for questions and answers and made a “good faith” effort to inform those present of what they were proposing.

Regarding parcel size discrepancies between the preliminary plat and the referral applications numbers the bottom line is that there must be enough acreage for the dedicated public right-of-way; and all of the proposed parcels. The proposed parcels must meet minimum lot size standards for their respective zones. The RR-5 zone must have parcels no smaller than 5 acres. The RR-2 zoned parcels must have lots no smaller than 2 acres unless a variance to lot size has been approved. Proposed parcel sizes for the three partitions are as follows:

	MP 01-08	MP 01-09	MP 01-10
Original Application:	2.21, 2.53	2.09, 2.06, 2.11	5.0, 5.0, 5.08
Original Tentative Map:			
Revised Tentative Map:	2.17, 2.10	2.09, 2.07, 2.04	5.0, 5.0, 5.01

The bottom line is they all meet minimum parcel size standards.

16. The Oregon Division of State Lands commented: “The Division is in receipt of a State Removal/Fill permit application for filling of wetlands on project site. Application is currently being evaluated.”
17. Robert and Mary Adams commented by letter dated 9/21/02 as follows:

“A letter was received from your office informing us of a public hearing notice regarding property owned by Morten Properties, LLC. The property is identified on the Assessor’s records as tax account number 4106-030-03202 and is zoned Rural Residential (RR-2).

We support the partition and anticipate a high quality development as submitted to you by Rich Morten, 34385 Southview Dr., St. Helens, Oregon.”

**ADDITIONAL MATERIALS AND COMMENTS RECEIVED DURING**

**CONTINUANCE:** The Following comments were received after the Planning Commission hearing on October 7, 2002:

1. Preliminary Compensatory Wetland Mitigation Plan, report, prepared by PBS Environmental, revised September 2002, received by County on October 8, 2002 (3 pages).
2. A letter from John Heller to Rich Morten Dated October 10, 2002 .
3. A letter from the Koss’ dated October 11, 2002.
4. A letter from John Heller to the Planning Commission dated October 21, 2002.

5. A rebuttal letter of: the Koss' letter of October 11, 2002; the John Heller letter dated October 10, 2002; and the Staff Reports for MP 01-08 and MP 01-09 from Rich and Doug Morten dated October 21, 2002.
6. A further rebuttal letter from Rich and Doug Morten dated October 22, 2002 to the John Heller fax letter dated October 21, 2002.

No other comments have been received as of the date of this staff report (01/22/03).

#### **PLANNING COMMISSION CONCLUSION AND DECISION:**

The Planning Commission at their regularly scheduled public hearing on November 11, 2003 adopted the findings conclusions and conditions as stated in the staff report MP 02-09 and Final Order MP 02-09 and **APPROVED** this request for a partition to divide approximately 6.15 acres into 3 parcels of approximately 2.09, 2.07, and 2.04 acres in the RR-2 zone with the following conditions:

1. A final plat must be prepared and submitted to Land Development Services within ONE YEAR of the date of approval of the Preliminary Plat. If this one year deadline is not met, the Preliminary Plat must be resubmitted for approval under the current Subdivision and Partitioning Ordinance.

#### **Before the Final Plat can be Signed:**

2. Any required easements for septic systems approved under Evaluation Reports issued to Tax Lot No. 4106-030-03202 proposed lots 1,2 and 3 must be mapped on the final plat and appropriate written easements provided and recorded with the deed documents.
3. Each parcel must be at least 2 acres in size, as evidenced by a survey and as stated on the final plat by a licensed surveyor in the State of Oregon.
4. Any required easements for septic systems approved under evaluation reports issued for tax lot 4106-030-03200 parcels 1 & 2 mapped on the final plat and an appropriate written easement provided and recorded with the deed documents.
5. The applicant is required to name and dedicate a 50' public right-of-way constructed to County Road Standards, as shown on the partition plat, with approved turn around, to the County so that each parcel resulting from this partitioning, except parcel #1 fronting on Sykes Road, has 50' of usable frontage on a public right-of-way. The road name shall be approved with documentation provided to LDS indicating approval of the road name by Columbia County 911

and Columbia River Fire & Rescue. The parcel on which the public road creation will access this partition, MP01-10 shall be recorded prior to approval of the final plat.

6. The Road Department will require the following:
  - A. Dedication of 10 feet of right-of-way to Sykes Road fronting tax lot 3202 (Parcel #1 of MP 01-09).
  - B. Engineer designed road improvements to Sykes Road fronting lot 03202, to include road overlay, drainage, bike lane, curb and sidewalk.
7. Wetland area boundaries shall be mapped around and including all wetlands identified in the Preliminary Compensatory Wetland Mitigation Plan Report by PBS Environmental, revised September 2002 as modified and approved by the State of Oregon (DSL) Division of State Lands. The noted and mapped wetland area shall be recorded with the deeds to parcels resulting from this partitioning.
8. The applicant shall provide a copy to Land Development Services (LDS) of the Bonneville Power Administration written permit to allow roads, septic systems including drainfields on BPA right-of-way easements.
9. The applicant shall provide LDS with a copy of the approved Removal/Fill Permit issued by the Corps of Engineers and Division of State Lands (DSL).
10. The applicant shall place all signage as specified on page 64 of the County Road Standards, in compliance with the Manual of Uniform Traffic Control Devices which may include Stop, Dead End, Road Name signs.
11. All applicable provisions of the fire code for adequate water supply and fire access must be met before building permits can be issued. The applicant shall work with the Fire Marshall of Columbia River Fire & Rescue and McNulty Water Association to approve hydrant location

**Before Building Permits can be Issued:**

12. A statement from the local water provider is required indicating that adequate water supply is available to each parcel resulting from this partition and before building permits can be issued for the construction of dwellings on parcels resulting from this partitioning.
13. County Road Access permits are required before building permits may be issued on parcels resulting from this partitioning.

## ATTACHMENT 4

### SUPPLEMENTAL FINDINGS MP 01-08 AND MP 01-09

1. The Columbia County Subdivision and Partitioning Ordinance (SPO) sets forth the required contents of a tentative map for major partitioning in § 602. Among other information required on the map is “the location, approximate dimensions, and acreage of parcels, and the proposed parcel numbers.” § 602(A)(5). The section also requires that an Applicant submit information regarding “the approximate location of boundary lines of property adjacent to the development.” § 602(B)(7). The Board of County Commissioners finds that the Applicant submitted such information into the record for both applications. A preliminary partition plat map was submitted with the survey mark of Dewey Surveying, Inc, St. Helens, Oregon. (Exhibit 3). The tentative partition plat map showed both proposed partitions, and included the location, approximate dimensions and acreage of the proposed parcels as well as the approximate location of the boundary lines. According to the Dewey Survey, the approximate dimensions of the proposed lots given the boundary line locations would leave each parcel with more than 2 acres of lot area; MP 01-08 having two proposed parcels with 2.17 and 2.10 acres each and MP 01-09 having three proposed parcels with 2.09, 2.07 and 2.04 acres each.

Evidence was presented by John Heller, that the subdivision and partitioning ordinance requires the precise and unchanging location of the boundary line to be included in the preliminary plat. Mr. Heller argued that Section 710 of the Subdivision and Partitioning Ordinance applies to the application for a preliminary plat. The Board of Commissioners disagrees. The Board finds that the requirements listed in Section 710 relates only to information required for a Final Plat, as indicated in the title. The Board is not being asked to approve a final plat. Mr. Heller also argued that ORS 209.250 and ORS 92.050 apply to this determination. The Board again disagrees. Section 710(A) requires that “No subdivider shall submit a plat of a partition for record until all of the requirements of ORS 209.250 and the plat requirement of the partition have been met.” The Board has already determined that Section 710(A), incorporating the survey requirements of ORS 209.250, does not apply to these preliminary plats. Furthermore, while ORS 92.050 does specify accuracy requirements for partition plats, the statute refers to final plats “submitted for record.” The Applicant is not submitting the preliminary partition plat for record. Finally, Mr. Heller argued that there is no credibility behind the Dewey Survey because he is also the County Surveyor and therefore has a conflict. The Board finds that when the County Surveyor does private work that must also be approved by the County Surveyor, the work is sent to the Clatsop County Surveyor to avoid any conflict. Mr. Heller questioned whether the work has been approved by the Clatsop County Surveyor. Mr. Dewey indicated that it has not because the County Surveyor does not check and approve a partition plat until the Land Development Services Department has signed the final plat, and then the plat is recorded. Though Mr. Heller questioned whether the plat would be checked, he offered no

evidence which would suggest that the final plat will not be sent to the Clatsop County surveyor for approval. The Board finds no reason why the Dewey Survey should not be considered credible.

2. John Heller made several additional arguments in opposition of the applications. The first argument was that because the Hellers dispute the location of the westerly boundary line which separates their property from the Morton property, the Board of County Commissioners may not make a decision on the applications. The Board disagrees. The Board finds that the subdivision and partitioning ordinance clearly sets out that a preliminary plat requires only "tentative" and "approximate" information regarding the location of the boundary lines. The Board found, in Supplemental Finding 1, above, that such information was provided. Mr. Heller presented no legal basis under which the Board could conclude that the Board cannot make a decision on a preliminary plat map when there is a dispute regarding a boundary line. It appeared that Mr. Heller made this conclusion based on ORS 197.015 which relates to land use decisions. Mr. Heller did not present to the Board how ORS 197.015 is related to the Board's ability to make a decision in this case. Therefore, the Board finds that this argument was not sufficiently stated so as to give the Board and the applicant an opportunity to respond to the argument. In addition to the clear language requiring tentative and approximate information regarding the boundary lines, common sense and Oregon law requires that the Board make a decision on the proposed partition plat. According to Mr. Heller's theory, the Board would be restricted from making a decision on the preliminary plat indefinitely, until the two adjacent property owners came to an agreement, or a court otherwise settled the location of the property line. If the Board were to agree with Mr. Heller, any property owner could prohibit a partition on their neighbor's property simply by declaring disagreement with a common boundary line. Such a result would be inconsistent with ORS 215.428 which requires the County to issue a final decision within 120 or 150 days after the application was complete. Based on that statute, the Board cannot simply decline to make a decision.<sup>1</sup>

Mr. Heller also argued that even if the Board could make a decision in this case, the Board should deny the applications because the Duncanson survey shows the correct line, and according to that line there is insufficient acreage in each of the lots after partitioning to meet the 2 acre minimum requirement for RR-2 zoned lands. The Board finds that the Subdivision and Partitioning Ordinance requires that each of the parcels resulting from a partition in the RR-2 zone must consist of at least 2 acres. Phil Dewey, the Applicant's surveyor, presented evidence to the Board explaining why his survey line correctly shows the boundary line. According to Mr. Dewey indicated that he based the survey line on the original boundary based on deeds and the original governmental description. The original map was in metes and bounds, and the other surveyor did not do enough research to establish the line. He indicated that the other survey was not based on the original boundary line. The Hellers did not present any evidence to the Board that tended to contradict Mr. Dewey's

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<sup>1</sup>The Board notes that in this case, Mr. Morton waived his right to a decision within 150 days.

explanation about the boundary line except to say that they think the Duncanson boundary line is correct. The Board finds that the Applicant has provided substantial evidence to fix the tentative boundary line on the preliminary plat map according to the Dewey Survey. However, the Applicants have agreed to use the Duncanson line on the preliminary plat map in order to appease the Hellers.

Even if Mr. Heller had provided evidence showing that the Duncanson boundary line is the proper boundary line, there is substantial evidence in the record that tends to prove that even if the Duncanson Boundary line is ultimately used, there would be sufficient acreage in each resulting parcel to meet the minimum lot size requirements. Doug Morton testified that the acreage of each resulting parcel was increased beyond the minimum acreage in anticipation of a boundary dispute with the Hellers so that even if the Duncanson line needed to be used, each of the resulting parcels would meet the acreage requirements. During the hearing, the original survey map was included in the record which showed the proposed acreage based on the tentative boundary line. The Applicant then produced an amended tentative partition plat which used the Duncanson boundary line as the shared boundary line.

The partition map, as amended to show the Duncanson Boundary line, indicates that there is adequate acreage in each parcel resulting from the partitions to meet the 2 acre minimum requirement for acreage. Mr. Dewey provided evidence (See Exhibits 7-9), into the record which calculated the acreage in each parcel resulting from the partitions if the Board were to use the boundary line as shown in the Duncanson Survey. According to these calculations, it was shown that even if the Boundary line is ultimately shown to be further west onto the Morton's property, each resulting parcel would still meet the two acre minimum requirement. Exhibits 8 and 9 show the resulting acreage after Dewey used a computer program to calculate acreage given the different line. The printouts show that the North Partition (MP 01-09) would result in three parcels. Parcel 1 having 2.0000 acres; Parcel 2 having 2.000038 acres, and Parcel 3 having 2.0000 acres. Exhibit 9 similarly shows that the South Parcel (MP 01-09), Parcel 2 (which shares the common boundary) would result in 2.00020 acres using the Duncanson line. Mr. Dewey also reminded the Board that the survey must be checked for accuracy by the Clatsop County Surveyor before the final plat can be recorded.

Mr. Heller presented some evidence to the Board that there would not be enough acreage in each parcel to meet the minimum requirements if the Duncanson Survey is used. Mr. Heller performed several calculations. Mr. Heller calculated that there are 4 proposed parcels which will abut the contested property line (MP 01-09, Parcels 1, 2 and 3) and MP 01-08 (Parcel 2). He then calculated the excess acreage over the 2 acre minimum for each of these Parcels according to the Dewey survey as follows:

- MP 01-09** Parcel 1- 2.09 acres, .09 acre excess = 3,920 square feet
- Parcel 2- 2.07 acres, .07 acre excess = 3, 049 square feet
- Parcel 3- 2.04 acres, .04 acres excess = 1,742.4 square feet
- MP 01-08** Parcel 2- 2.10 acres, .10 acres excess= 4,356 square feet.

According to Mr. Heller, the total excess acreage is 13,067.6 and the square footage of the entire area in dispute is between 13,202.6 square feet and 13,511.650 square feet, concluding

that there is not enough excess acreage to make up for the additional property removed by the Duncanson Boundary Line. The Board finds that this evidence is not compelling for two reasons. The Board finds that no explanation was given as to how Mr. Heller calculated the square footage of the area in dispute. The Board presumes that Mr. Heller is not an expert in calculating square footage. No evidence was presented to the contrary. Furthermore, Mr. Heller presented a range of over 300 square feet. This wide range leads the Board to believe that Mr. Heller does not actually know with any certainty what the area of the disputed area is. Without some information as to how the area was calculated, the Board cannot infer its reliability. Similarly, the Board finds that although Mr. Heller calculated the excess acreage for each of the 4 parcels, he did not indicate which of the parcels he believes would exceed the minimum acreage. Nor, did he indicate which partition application should be denied based on his calculations. The Board finds that given the strong evidence presented by Mr. Dewey, a licensed surveyor, weighed against the questionable evidence presented by Mr. Heller, that there is substantial evidence in the record that all 5 proposed parcels would meet the minimum lot requirements.

3. To the extent that Mr. Heller argued that the Board must determine which of the surveys show the actual boundary line in order to make a decision to approve these preliminary plats, the Board disagrees. The Board has not attempted to make a decision as to which of the dueling surveys is correct. That task should be left to the parties, and ultimately to the judicial system if the parties cannot agree. The Board's task, on the other hand, is to make a decision regarding the two proposed partitions. The Board considers the location of the boundary only in the context of the criteria applicable to the partitions. As set forth in Supplemental Finding 1, the Applicant has submitted the required information. In addition, as set forth in Supplemental Finding 2, the Board found substantial evidence in the record that regardless of which boundary line is ultimately found to be the correct boundary line, each of the resulting parcels will meet the 2 acre minimum requirement. In addition, if for some reason it is determined within the next year that the resulting parcels will not meet the 2 acre minimum, then the final plat will not be approved.
4. Mr. Heller made an argument to the Board that the wetland delineation done by the Applicant was fatally flawed because it assumed that there was an easement to the Heller's property. However, the argument was not sufficient to allow the Board and the other parties an opportunity to respond to it. The Board specifically asked Mr. Heller for an explanation of how his comments about the easement relate to these two applications. Mr. Heller did not add any clarifying evidence or testimony into the record.
5. Mr. Heller also challenged the approval of the two applications based on his assertion that no one knows who owns a 30 foot strip of land running along the south side of Parcel 1 and Parcel 2 (MP 01-08). The Board finds that the strip of land referenced is part of Parcel 1 on Partition Plat No. 1994-2. The Board finds that Parcel 1 on Partition Plat No. 1994-2 is not currently being subdivided, and therefore the question of who owns the 30 foot strip is inconsequential to the decision before the Board.