

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of)	FINAL ORDER NO. 119-2007
Forest and Geraldine Hemeon for a)	
Land Partition in the Primary Agriculture)	FINDINGS AND CONCLUSIONS
(PA-38) Zone)	

WHEREAS, on December 29, 2006, Geraldine and Forest Hemeon applied for a Major Land Partition to create three lots ranging from six acres to 16 acres, from a 32.1 acre parcel off Wallace Road in Mist, Oregon, having tax account number 6514-000-00900; and

WHEREAS, the Application was deemed complete on February 12, 2007; and

WHEREAS, on March 22, 2007, the Hemeons received preliminary plat approval to partition the 32.1 acre parcel into three parcels of 7, 10, and 15.1 acres; and

WHEREAS, Condition No. 2(b) of the approval (MP 07-20) required "All required road improvements shall be completed and approved by the County Road Department. This includes construction of the newly dedicated Wallace Road extension which shall be constructed to Public Road Standards, 26-foot wide graveled. This also includes off-site improvements to Wallace Road (see letter from the County Road Department dated April 10, 2007). In addition, turnouts and a turn-around at the end for emergency vehicles as required by the Mist-Birkenfield RFPD shall be completed and approved"; and

WHEREAS, the Hemeons appeal Final Order MP 07-20 to the Columbia County Planning Commission; and

WHEREAS, the Board of County Commissioners asserted original jurisdiction over the Major Partition and scheduled a hearing on the matter before the Board of County Commissioners during a Special Hearing on June 13, 2007; and

WHEREAS, on June 13, 2007, the Board of County Commissioners held a Special Public Hearing on the application; and

WHEREAS, after hearing testimony and receiving evidence, the Board closed the hearing, deliberated on the matter and voted to tentatively approve the application subject to several conditions of approval;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Board of County Commissioners adopts the Findings of Fact and Conclusions of Law in the Staff Report to the Board of County Commissioners, dated May 30, 2007, which is

attached hereto as Attachment 1, and is incorporated herein by this reference.

2. The Application for Preliminary Plat Approval MP 07-20, is APPROVED subject to the following conditions of approval:
 - A. This Preliminary Land Partition shall remain valid for one (1) year from the date of the final decision. The approved preliminary plat shall become void unless a surveyed final plat is prepared and submitted to Land Development Services within the one-year validity period. This Final Plat shall conform to 1) the approved preliminary plat (as submitted on February 12, 2007) in accordance with the conditions described herein, and 2) the form and content requirements of the Columbia County Subdivision and Partitioning Ordinance and Oregon Revised Statutes. One extension of time of up to six months may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date.
 - B. The following shall be required before the County accepts a final plat for review:
 - i. A Septic System Lot Evaluation shall be conducted and approved on the proposed undeveloped parcel.
 - ii. The following required road improvements shall be completed and approved by the County Road Department and the Mist Birkenfield Fire Department: The Applicant shall dedicate the Wallace Road extension to the public as a public road, and shall construct the Wallace Road extension to private road standards. Turn outs shall be constructed at approximate 600 foot intervals from the bridge to the Wallace Road extension. A turn-around shall be constructed near the end of the Wallace Road extension.
 - C. In addition to all County and State requirements, the following shall be included on the Final Plat:
 - i. All existing and proposed easements. This includes any access easements. In addition, unless each developed parcel will have its own well, an easement to access an existing well shall be included for the developed parcel(s) lacking a water supply.
 - ii. All existing and proposed rights-of-way.
 - iii. An indication of which parcels are not approved for sewage disposal and which parcels do not have a proven adequate potable water supply.
 - iv. Incorporation of Property Line Adjustment PLA 07-16.

- v. Parcel 3 shall maintain 50 feet of frontage on the north and south sides of Wallace Road right-of-way extension.
- vi. No property line shall be closer than 30 feet to an existing structure.
- vii. Base Flood Elevation (BFE) data shall be determined by a licensed professional engineer or surveyor. BFE data and the 100 year flood hazard area as dictated by the BFE data shall be included on the final plat.
- viii. An area 50 feet from the top of the bank of the Nehalem River shall be delineated on the final plat as a "Riparian Corridor Boundary," subject to the development restrictions of the Columbia County Zoning Ordinance.
- ix. The following statement shall be in bold caps and shall be clearly visible, **"THIS PARTITION IS SUBJECT TO THE TERMS AND CONDITIONS OF A MEASURE 37 WAIVER, ORDER NO. 40-2006, AS AMENDED. THE WAIVER IS PERSONAL TO FOREST AND GERALDINE HEMEON, DOES NOT RUN WITH THE LAND, AND IS NOT TRANSFERABLE EXCEPT AS REQUIRED BY LAW. THE COUNTY MAKES NO REPRESENTATIONS ABOUT THE LEGAL EFFECT OF THE WAIVER ON THE SALE OF LOTS RESULTING FROM THIS LAND DIVISION, ON THE RIGHTS OF FUTURE LAND OWNERS TO BUILD OR OTHERWISE, OR ON ANY OTHER PERSON OR PROPERTY OF ANY SORT."**

D. The following shall be required prior to Building Permit issuance to develop any of the parcels created by this Land Partition:

- i. The subject property and all new and/or altered property lines shall be surveyed and filed with the Columbia County Surveyor and the Final Plat shall be recorded with the County Clerk.
- ii. A Septic System Construction Permit shall be applied for the individual property, if applicable.
- iii. Proof shall be provided demonstrating adequate potable water is available.
- iv. A Road Access Permit shall be obtained from the Road Department.
- v. In addition to any County permits, permits/requirements of other applicable agencies (e.g. ODFW & DSL) shall be obtained/met should access be proposed across the intermittent stream in the southern half of the site.

- vi. Any proposed dwelling on the vacant proposed parcel shall be located on the southern portion of the parcel in the foothills and not within the Eilertson prime farmland soils.
 - vii. Conditional Use Permits shall be obtained, when required by the Columbia County Zoning Ordinance.
- E. The responsibility for protection from wildlife damage on the property shall be assumed by the respective parcel's owner and/or occupant.

Dated this 27th day of June, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard
Rita Bernhard, Chair

By: [Signature]
Anthony Hyde, Commissioner

Approved as to form

By: Sarah Huson
Office of the County Counsel

By: [Signature]
Joe Corsiglia, Commissioner

ATTACHMENT 1

COLUMBIA COUNTY BOARD OF COMMISSIONERS

AMENDED STAFF REPORT

May 30, 2007

Major Land Partition

Appealed Staff Decision

HEARING DATE: June 13, 2007

FILE NUMBER: MP 07-20

APPLICANT/OWNER: Forest L. & Geraldine L. Hemeon; 14090 Wallace Road; Mist, OR 97016

SITE LOCATION: Property addressed as 14089 & 14090 Wallace Road

TAX ACCOUNT NO: 6514-000-00900

ZONING: Primary Agriculture - 38 (PA-38)

SITE SIZE: 32.1 acres.

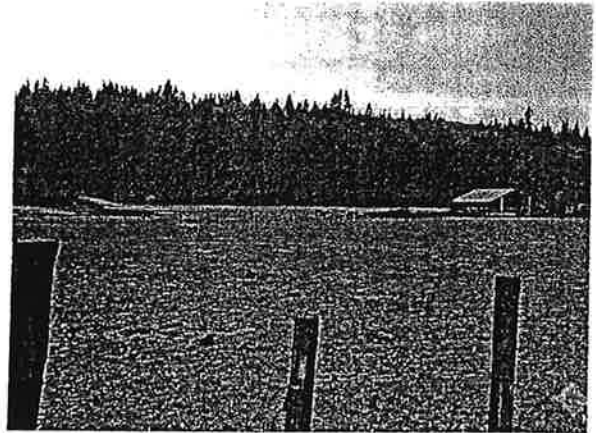
REQUEST: Land Partition to divide property into three parcels. Proposed parcels 1 and 2 will be approximately 10 and 7 acres in size, respectively. The remainder, third proposed parcel approximately 15.1 acres.

REVIEW CRITERIA:

<u>Columbia County Zoning Ordinance</u>		<u>Page</u>
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Section 300	Primary Agriculture - 38 (PA-38)	4
Section 1100	Flood Hazard Overlay (FH)	8
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APPLICATION COMPLETE: February 12, 2007 **150-DAY DEADLINE:** July 12, 2007

The subject property as photographed from Wallace Road facing southwest. The site is mostly flat open field. The south side consists of forested hills as shown here with the Nehalem River on the north side.



BACKGROUND:

The applicant proposes to partition the property into three parcels. The subject property to be partitioned is irregular in shape and does not currently abut any improved road rights-of-way. The Wallace Road right-of-way terminates approximately 400 feet from the northeastern most corner of tax lot 900. At this point, the unimproved Wallace Road right-of-way, takes a 90 degree turn southward and then another 90 degree turn westward, crossing the southern portion of the property. The site is developed with two dwellings—a single-family dwelling built around 1963 and a manufactured home placed around 1980—and an assortment of accessory structures. Access to these structures is provided by a private gravel driveway, which begins at the western terminus of the improved portion of the Wallace Road right-of-way. The dwellings on the site are served by septic systems and a well. The property is also being used to raise cattle and is under farm tax deferral.

The subject property consists of open field/pasture, which is more-or-less flat with forested hills beginning in the southern portion of the site. The Nehalem River abuts the north side of the site, while an intermittent drainage that acts as a tributary to the Nehalem goes through the property at the base of the hills. Based on County data, the river is fish bearing while the stream is not.

Properties immediately surrounding the site are zoned PF-76 and PA-38 to the north, PF-76 to the south and west, and PA-38 to the east. Properties in the area are rural farms in nature and consist of field crops and pasture land.

It appears that there is a 100-year floodplain on the subject property associated with the Nehalem River and the site is within an area designated as peripheral big game habitat.

This Land Partition proposal is being applied for pursuant to a Measure 37 claim (file CL 06-09), Board Order No. 89-2007 waives Section 304.1 (minimum lot size in the PA-38 zone) to the extent necessary to allow division of the property into more or less 10 acre parcels as proposed by the applicants in their Measure 37 claim. In addition, the State waived the applicable provisions of Goal 3, ORS 215 and OAR 660, Division 33.

Applicant submitted a revised preliminary plat on February 12, 2007 for review, replacing the preliminary plat submitted previously on December 29, 2006. The application was complete in its present form on February 12, 2007 and was reviewed according to the revised preliminary plat.

The applicant proposes a Property Line Adjustment (PLA) in conjunction with this Land Partition (File No. PLA 07-16). This proposed PLA involves the eastern boundary line of this proposed Partition, north of the proposed extension of the Wallace Road right-of-way. The revised preliminary plat is based on this PLA proposal. The PLA shall be done simultaneously with the Land Partition.

The original administrative decision approving the Land Partition with conditions was made on March 22, 2007. The applicant appealed the decision, but did not specify conditions being appealed. Staff understands from the appeal documents that the Hemeon's are concerned about the required road improvements contained in Condition 2c in Final Order MP 07-20. The appeal letter also notes concern about Condition 2a requiring that the legality of access shall be demonstrated for the area between Highway 202 and Wallace Road, which includes the bridge spanning the Nehalem River.

Normally, administrative decisions are appealed to the Planning Commission. The Board of County Commissioners has taken jurisdiction for review and decision.

The conditions of this Staff Report have been changed from the original Administrative Review Staff Report in three ways. First, the condition regarding legality of access for the area between Highway 202 and Wallace Road, which includes the bridge spanning the Nehalem River, has been removed as staff has determined that nothing in the record would indicate that public access is restricted across the bridge.

Second, the road improvements as required by the Standards have been updated per a letter from the Road Department dated April 10, 2007 (attached). Third, a condition has been added requiring the location of any proposed dwelling on the vacant parcel be in an area of non prime farmland soils.

SOILS:

<u>Soil on the 32.1 acre consist of</u>	<u>Tree growth Site Index</u>	<u>Est. % of Area</u>	<u>Ag. Cap. Class</u>
20 Eilertson silt loam, slope 0% to 3%	172	90%	II c (prime farmland)
30D Mayger Silt loam, slope 3 to 30%	159	5%	VIe
49E Scaponia-Braun, slope 30 to 60 %	172	5%	VI e

REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

Columbia County Zoning Ordinance
Section 200 General Provisions

- 221 One Principal Use Per Lot: Only one principal use may be placed on each legal lot or parcel.
- 222 One Septic System Per Lot: Only one residential subsurface sewage disposal system may be installed on each legal lot or parcel.

Discussion: There are two dwellings (principal uses) and accompanying septic systems on the subject property. Based on the preliminary plat, proposed parcels 2 and 3 will have one dwelling and associated septic system for each. Currently, this is a nonconforming circumstance, which this Land Partition, if approved, will rectify.

Finding 1: The proposed Land Partition will not result in more than one dwelling or principle use and septic system per parcel.

Continuing with Columbia County Zoning Ordinance
Section 300 Primary Agriculture - 38

- 304 Standards:
- .1 The minimum lot or parcel size for all farm and forest activities shall be 38 acres, except as provided in Section 305 below. The minimum lot or parcel size for all other permitted and conditional uses shall be 20,000 square feet. [Note: State law now requires 80 acres minimum parcel size]
 - .2 The minimum average lot or parcel width shall be 100 feet for all activities except farming or forestry.
 - .3 The minimum average lot or parcel depth shall be 100 feet for all activities except farming or forestry.
 - .4 All parcels and lots permitted by Section 302 shall have a minimum of 50 foot frontage on a public or private right-of-way.
 - .5 All parcels and lots permitted by Section 303 shall have a minimum of 50 foot frontage on a public right-of-way. This is also the minimum width of any lot or parcel.

.6 No structure shall be constructed closer than 30 feet to a property line.

Discussion: CCZO Section 304.1 was waived per Measure 37 claim file CL 06-09 to allow division of the property into “more or less 10 acre parcels” as proposed by the Hemeons in their claim. The average width and length of the proposed parcels exceeds 100-feet. This Land Partition application does not address uses permitted under Section 302. Given extension of the Wallace Road right-of-way in a westerly direction as proposed, all three parcels will have at least 50' of useable frontage on a public right-of-way. Given the “flag pole” portion of parcel 2, which cuts a swath through most of parcel 3, both the north and south portion of parcel three from Wallace Road shall maintain 50-feet of frontage. This appears to be the case on the preliminary plat, but shall be a condition of approval for the final plat. No parcel has a minimum width less than 50-feet. The preliminary plat includes a statement that “all buildings are a minimum of 30' from all property lines as required. However, given the scale (1" = 200') of the preliminary plat, it appears that a barn on parcel 2 and the single-family dwelling on parcel 3 have a setback less than 30-feet. No property line of the final plat shall be closer than 30' to an existing structure.

Finding 2: Pursuant to CL 06-09, the minimum parcel size is waived to allow “more or less” 10 acres. The partition application proposes lots of 7, 10 and 15.1 acres. Staff finds that the proposed parcels sizes do not conform with Section 304.1 as modified by the lot size waiver granted by the Board.

Finding 3: The standards of CCZO Section 304, not modified by CL 06-09, Board Order 89-2007, are met in the proposal or can be met with a condition that no structure shall be closer than 30 feet to a property line.

Continuing with Columbia County Zoning Ordinance
Section 300 Primary Agriculture - 38

305 Partitions:

- .1 Any proposed partition of land that would result in the creation of a farm or forest parcel smaller than 38 acres shall be reviewed in accordance with the requirements of ORS 215.263, Section 305.2 below, and the County Subdivision and Partitioning Ordinance. If all parcels proposed to be created exceed 38 acres, the partition shall be reviewed in accordance with the requirements of the County Subdivision and Partitioning Ordinance.
- .2 The proponent of a partition request for the creation of a parcel or parcels smaller than the prescribed minimum must demonstrate that the parcel is for a non-farm use reviewed and approved under Section 303.13, or that all of the following criteria are satisfied:
 - A. Any newly created parcels will support farm practices as defined by

ORS 215.203 by showing (1) that the parcel will be used in conjunction with other farmland in the area to contribute to a continuation of the existing commercial agricultural enterprise; or (2) the parcel will be used for an alternative commercial farm use of greater intensity (such as a nursery) and that such a use will be consistent with the continuation of existing commercial agriculture in the area; and the proposed parcels are large enough to enable the proposed agricultural use to be practiced as it is on similar commercial enterprises in the region; and

- B. The parcelization will not reduce the existing or potential agricultural productivity of the subject property; and
- C. The addition and location of new structures and improvements, including houses, fences, roads, utilities, wells, etc., will not impose limitations on existing farm practices in the area; and
- D. The parcelization is in conformity with the State Legislature's Agricultural Land Use Policy as set forth in ORS 215.243, which declares that "The preservation of a maximum amount of the limited supply of agricultural land...in large blocks is necessary in maintaining the agricultural economy of the State..."

Finding 4: This proposed partition would create parcels smaller than 38 acres that are not farm parcels in and of themselves. The State waived and will not apply ORS 215.263 for this partition given the Hemeon State Final Order Claim No. 21833. The County waived the minimum lot size of 38 acres in the Primary Agriculture zone to allow parcels sizes of "more or less" 10 acres, far below the minimum lot size for commercial farm use. The lot size waiver effectively, allows only a non-farm use for this property. The proposed partition is for non-farm parcels. Paragraphs 2 A through D above, are not applicable, Therefore the applicant shall demonstrate that a non-farm parcel can be reviewed and approved by meeting the criteria of CCZO Section 303.13.

Continuing with Columbia County Zoning Ordinance
Section 300 Primary Agriculture - 38

303.13 Single family dwellings or mobile homes and their accessory uses, not provided in conjunction with farm use, may be granted conditional approval upon a finding that each such proposed use:

- A. Is compatible with farm uses and is consistent with the intent and purpose set forth in this ordinance relating to farm lands; and
- B. Does not interfere seriously with accepted farming practices on adjacent lands

devoted to farm use; and

- C. Does not materially alter the stability of the overall land use pattern of the area; and
- D. Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.
- E. Any application for a non-farm dwelling in an exclusive farm use zone shall be approved only if the parcel on which the dwelling is to be built has been removed from the farm tax deferral in accordance with the provisions of ORS 215.236.

Discussion: Although Section 303.13 is one of the criteria for a conditional use non-farm dwelling, Section 305 above requires that a proposed partition for a non-farm parcels under 38 acres also meets criteria in Section 303.13. The proposed 7 acre and 15 acre parcels have dwellings located on them. The proposed 10 acre parcel would accommodate another dwelling on the Hemeon farm tract. The overall land use pattern of the area consists of flat pasture and hay crop land nearer the Nehalem River with steeper slopes to the south, forested on non-farm soils. A couple of neighbor dwellings and associated buildings on separate parcels are located near Wallace Road which crosses this flat farmland. But, generally speaking the good farm land is still in farm use. The end of Wallace Road marks the beginning of the older Hemeon farm tract. Three 10 acre parcels were previously divided from the original farm parcel. Two of the three parcels are developed or are being developed by the Hemeons children. All of these 10 acre parcels are being developed with a dwelling located at the southern portion of the property, in the foothills, away from and out of the flat farm lands. The proposed 10 acre property would consist an area of non-farm soils on the southern portion.

Finding 5: As stated by the applicant in their Measure 37 claim, the Hemeon's are trying to maintain their farm as they are getting older by providing dwelling locations for their children, so that each would own approximately 10 acres. The development pattern for the offsprings have been to build their dwellings at the southern end of their property on slopes containing non-farm soils, thereby leaving the flat prime farm soils for farm uses. The proposed division of the vacant 10 acres would meet the purpose of this agricultural zone by preserving the prime farm soils for farm use and stabilize the Hemeon tract for another generation of farming practices. If the location of any proposed dwelling on this proposed 10 acre parcel is required to develop in the southern portion of the parcel where the non-farm soils are located, then, any proposed dwelling would not interfere with accepted farming practices or alter the land use pattern. The proposal meets the criteria of Section 303.13 with the above mentioned condition about any future dwelling location. A condition will be placed if a conditional use permit is granted for a non-resource dwelling on this proposed parcel, that the County Assessor shall be notified to remove it

from farm tax deferral.

Continuing with Columbia County Zoning Ordinance Section 300 Primary Agriculture - 38

309 Land Divisions:

A farm or forest parcel smaller than 38 acres may be created in the PA-38 zone only if the application, investigation, evidence, findings and conclusions show that all of the following conditions exist:

- .1 The proposed parcel is intended for farm use, and is appropriate to the continuation of the existing commercial agricultural economy in the area;
- .2 The proposed parcel will not have a significant adverse impact on identified sensitive fish and wildlife habitats;
- .3 The proposed parcel will be capable of contributing in substantial way to the existing agricultural processors and established farm markets; and
- .4 Such findings shall be based on at least the following factors:
 - A. The proposed division is compatible with the farm use in the area and does not interfere, either in itself or in the location of improvements, with 'current accepted farming practices', as that term is defined in ORS 215.203, which characterizes such use;
 - B. The proposed division is consistent with the agricultural land use policy for the State of Oregon expressed in ORS 215.243;
 - C. The proposed division does not materially alter the stability of the overall land use pattern of the area, nor substantially add to the demand for increased use of roads, ground water during growing seasons, or public facilities and services.
- .5 The proposed division shall create parcels typical of the surrounding agricultural area and be of sufficient size to support production of food or fiber using accepted farm practices as that term is defined in ORS 215.203 after findings have been made with respect to the following:
 - A. Soil types and patterns in the area and typical yields;

- B. Type of crops grown in the area and typical yields;
- C. Potential markets;
- D. Other relevant information included in the agricultural element of the Columbia County Comprehensive Plan; and
- E. Average size of parcels on which commercial agricultural farming is practiced in the area.

In no case shall parcels less than 38 acres be allowed except as provided elsewhere in this zoning ordinance.

Finding 6: The standards of CCZO Section 309 were not waived pursuant to CL 06-09 and Board Order 89-2007. However, the State waived the applicable sections of ORS 215 and OAR to the extent necessary to allow the applicant to create and develop each parcel with a dwelling. The County waived the minimum lot size of a farm parcel (38 acres), Section 304.1 to the extent necessary to divide the property into more or less 10 acre parcels. By doing so the applicant has the right to create farm parcels under 38 acres. The proposed partition would create 7, 10 and 15 acre parcels pursuant to the Measure 37 lot size waiver, well below the minimum size for commercial farm use, however, as noted in Finding 5, the non-farm dwellings will be located on non-agricultural soils and the remainder fo the parcels are intended to remain in farm use by the applicant's children. Although due to the Measure 37 lot size waiver, commercial farm units will not be maintained. Staff finds that the proposed parcels will allow for the continuation of farm use, will not adversely affect sensitive fish and wildlife habitats(See Findings 8-10 below); and will not materially alter the land use pattern in the area.

Continuing with Columbia County Zoning Ordinance
Section 1100 Flood Hazard Overlay

1104 Basis for Special Flood Hazard Areas

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Columbia County, Oregon and Incorporated areas", dated August 16, 1988, with accompanying Flood Insurance maps is hereby adopted by reference and declared to be part of this ordinance. The Flood Insurance Study is on file at the Columbia County Department of Land Development Services office, County Courthouse, St. Helens, Oregon.

Discussion: The northern portion of the site is identified as being within a "ZONE A" area per FEMA FIRM map number 41009C0125 C, effective August 16, 1988. "ZONE A" is a special flood hazard area inundated by 100-year flood, where no base flood elevations have been

determined. In addition to the provisions of the Flood Hazard Overlay, National Flood Insurance Policy (NFIP) applies. NFIP Section 60.3[b][3] requires that all new subdivision proposals (including dividing land into two or more separate parcels) greater than 50 lots or 5 acres, whichever is less, include with such proposals base flood elevation data. BFE data shall be determined by a licensed professional engineer or surveyor and included on the final plat. In addition, the applicant should be aware that any improvements and structures within the identified flood area, shall be subject to County and NFIP regulations.

Finding 7: The applicable provisions of the Flood Hazard Overlay can be met by imposing a condition that the base flood elevation (BFE) pertaining to this site bordering the Nehalem River shall be included on the final plat.

Continuing with Columbia County Zoning Ordinance
Section 1170 Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone

1172 Riparian Corridor Standards:

- A. The inventory of Columbia County streams contained in the Oregon Department of Forestry Stream Classification Maps specifies which streams and lakes are fish-bearing. Fish-bearing lakes are identified on the map entitled, "Lakes of Columbia County." A copy of the most current Stream Classification Maps is attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B) for reference. The map, "Lakes of Columbia County" is attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B), and is incorporated therein. Based upon the stream and lake inventories, the following riparian corridor boundaries shall be established:
 2. Fish-Bearing Streams, Rivers and Sloughs (Less than 1,000 cfs). Along all fish-bearing streams, rivers, and sloughs with an average annual stream flow of less than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 50-feet from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below. Average annual stream flow information shall be provided by the Oregon Water Resources Department.
 4. Other rivers, lakes, streams, and sloughs. Along all other rivers, streams, and sloughs, the riparian corridor boundary shall be 25 feet upland from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below.
 5. Wetlands. Where the riparian corridor includes all or portions of a significant wetland, as identified in the State Wetlands Inventory and

Local Wetlands Inventories, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland. Significant wetlands are also regulated under provisions in the Wetland Overlay Zone, Columbia County Zoning Ordinance, Section 1180.

Discussion: There are streams located on this site. The first is the Nehalem River, which abuts the north side of the site. This is a fish-bearing river with less than 1,000 cfs flow. As such, a 50-foot area from the top bank of the Nehalem River shall be delineated as a riparian corridor boundary on the final plat subject to the County's development restrictions. The second is an intermittent stream towards the south side of the site, which is a tributary to the Nehalem River. This small tributary is not fish bearing and will require a 25-foot area from the top bank on both sides of the stream to be delineated as a riparian corridor boundary on the final plat subject to the County's development restrictions. Based on County records, there does not appear to be other wetlands associated with these streams, which would require the riparian areas to be measured from the upland portion of the wetland rather than the top of bank.

Finding 8: The riparian corridor standards can be met, with conditions that a 50 foot area from the top bank of the Nehalem River be delineated on the final plat as a Riparian Corridor, subject to restrictions of this Section. Also, a 25 foot Riparian Corridor shall be delineated from both banks of the unnamed stream with the same restrictions.

Continuing with Columbia County Zoning Ordinance
Section 1170 Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat
Protection Overlay Zone

1175 Permitted Uses and Activities. Notwithstanding the prohibitions set forth in Subsection 1173 above, the following activities are allowed within the riparian corridor boundary:

B. The following development is allowed within the riparian corridor boundary.

1. Streets, roads, and driveways, if:

a. If it is not possible to locate the street, road or driveway outside of the riparian corridor boundary; and

b. The street, road or driveway is designed to minimize intrusion into the riparian corridor boundary.

1177 Requirements for new activities and development identified in Sub-section 1175 and 1176, above, shall be allowed in the riparian corridor boundary subject to the following requirements:

- A. All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing the use or activity.
- B. For activities and development for which land use permits, building permits, grading permits, variances or stormwater/erosion control permits are required, the County shall provide notification to ODFW of the proposed development activity. The County shall consider the recommendations of ODFW, including any mitigation recommendations, prior to issuance of permits and may condition permit approval on recommended measures to mitigate loss of fish and wildlife habitat pursuant to applicable provisions of OAR Chapter 635, Division 415.

Discussion: This Land Partition and the Measure 37 claim (CL 06-09) will result in new parcels, where one parcel could support another dwelling. The southern portion of the site (i.e. the wooded hill) is a desirable place for homes, and siting homes there would preserve the flat “farmable” area and provide a better view. However, notwithstanding access easements as alternatives, driveways from Wallace Road must cross the intermittent stream and it’s associated riparian area. A driveway is allowable in this Riparian Over-lay Zone. As with any other development that would effect a riparian/wetland area, the County will provide notice of the proposal to ODFW, DSL and any other interested agency before any permit for development is issued. In addition, any permits required by these agencies will be required to be obtained before any building permit for any structure is issued by the County.

Finding 9: Regulations pertaining to development that affects or could potentially affect a riparian area or wetland shall be met with condition that, if the applicant proposes to build an access across the intermittent stream, they shall first seek review and any necessary permit from the applicable State agency .

Continuing with Columbia County Zoning Ordinance
Section 1190 Big Game Range Overlay

1193 Development Siting Standards:

All new development located in Major and Peripheral Big Game Habitat shall implement the following siting standards:

- .1 Dwellings and structures shall be located as near each other and existing developed areas as possible considering topography, water features, required setbacks, and firebreaks.
- .2 Dwellings and structures shall be located to avoid habitat conflicts and utilize

- least valuable habitat areas.
- .3 Road Development shall be minimized to that necessary to support the proposed use and shall utilize existing roads as much as possible.
 - .4 The owner/occupant of the resource parcel assumes responsibility for protection from damage by wildlife.

Discussion: Considering the proposed parcel sizes, existing surrounding properties and development, required setbacks, riparian standards and other development standards, placement of a dwelling and other permitted structures will be restricted by a condition to place any new dwelling in the southern portion of the proposed parcel. This location would place homes close together along the southern fringe in the foothills above the big game feeding areas. With the exception of new driveways, that portion of Wallace Road to be dedicated and improved follows an existing driveway and will not result in a "new" barrier to big game and wildlife.

Finding 10: Given the existing parcelization of the Hemeon tract near the end of Wallace Road, any proposed dwellings or structures on the parcel will be reviewed to determine that they are clustered with other dwellings and will be located away from big game grazing areas. The Wallace Road corridor will be used for access to this development and shared driveways will be utilized as much as possible. This criteria is met. However, a condition should be imposed that the responsibility for protection from wildlife damage on the property shall be assumed by the respective parcel's owner and/or occupant.

Columbia County Subdivision & Partitioning Ordinance
Section 208 Termination of Tentative Partition or Subdivision Approval

208 Termination of Tentative Partition or Subdivision Approval.

Failure by the developer to submit a final plat within one year of the date of the approval, or conditional approval, of the tentative plan, shall terminate all proceedings. Upon application of the developer in writing, an extension of time not exceeding six calendar months may be granted by the Planning Department for partitions, or by the Commission for subdivisions or planned unit developments.

Finding 11: This Preliminary Land Partition plat approval shall remain valid for one (1) year from the date of the final decision. The approved preliminary plat shall become void unless a surveyed final plat is prepared and submitted to Land Development Services within the one-year validity period. The Final Plat shall conform to 1) the approved preliminary plat as submitted in accordance with the conditions described herein, and 2) the form and content requirements of the Columbia County Subdivision and Partitioning Ordinance and Oregon Revised Statutes. One

extension of time of up to six months may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date.

Continuing with Columbia County Subdivision & Partitioning Ordinance
Section 604 Review of Major Partitions

604 Review of Major Partitions

- A. Upon receipt of the application for major partition by the Planning Department, the Director shall determine whether or not the proposed major partition meets the standards of this ordinance. If a variance from the standards of this ordinance is necessary, the provisions as stated in Section 210 of this ordinance shall be followed. The Planning Director shall submit the application for major partition to the Planning Commission for its review and approval, denial or remand.
- B. If the application for major partition is found to meet the specifications of this ordinance, the Planning Director shall review and approve the proposal, provided that he or she finds the application to be in conformance with the Comprehensive Plan, Zoning Ordinance and any other pertinent ordinances.

Discussion: As described herein, the preliminary plat meets the standards of this and other pertinent ordinances or can meet those standards given conditions of approval.

Finding 12: A variance is not warranted for this proposal. The Planning Director reviewed and approved this partition with conditions and the applicant appealed the Director decision to a higher authority.

Continuing with Columbia County Subdivision & Partitioning Ordinance
Section 710 Information on Final Plat

710 Information on Final Plat

- 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]*
- 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.

- 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.

Finding 13: This Land Partition is not exempt from the survey requirements.

Finding 14: All existing and proposed easements shall be included on the Final Plat.

Finding 15: A condition shall be imposed on this preliminary approval that the Final Plat shall identify those parcels not approved for sewage disposal and those parcels that do not have a proven adequate supply of water.

Continuing with Columbia County Subdivision & Partitioning Ordinance
Section 1005 Streets

1005 Streets

- A. General Requirements. Except for private streets within Planned Unit Developments approved pursuant to Section 1200 of the Columbia County Zoning Ordinance, no subdivision or partition shall be approved unless the development has at least 50 feet of frontage on an existing public street and otherwise complies with County Road Standards and Specifications in effect at the time of development or with a more restrictive provision of an applicable Urban Growth Area Management Agreement. *[Amended 4-9-97]*
- B. Existing Streets. Additional street right-of-way shall be dedicated as per the County Road Standards at the time of subdivision or partition when the following conditions exist:
 - (1) The subject property is located within an urban growth boundary and fronts on a County road; or *[Amended 4-9-97]*
 - (2) The subject property is subdivided or partitioned to lots or parcels containing 2 acres or less. *[Amended 4-9-97]*
- C. Street Widths and Roadways. Unless otherwise indicated on the official map, the width of rights-of-way and roadway improvements shall be in compliance with the following:
 - (3) Local. Right-of-way width 50 feet -- this width may be varied by the

Commission to the width in urban areas to meet the requirement of individual cities.

Discussion: The applicant is dedicating the extension of Wallace Road, and all three proposed parcels will have 50-feet or more of frontage along a public right-of-way. New dedicated right-of-way shall be constructed to County Road Standards, approved by the Road Department. Unimproved public right-of-way currently crosses the southern portion of the site. This is not proposed for access. The site is not within an Urban Growth Boundary nor are the proposed parcels 2-acres or less, therefore an increase of road right-of-way width is not warranted at this time. The applicants' proposed extension of the Wallace Road right-of-way is 50' which meets street standards for local designated streets.

Also regarding access, if any dwelling proposed will not access Wallace Road, but rather an existing, shared private driveway, an access easement will be required prior to issuance of the building permit.

Finding 16: The applicable standards of Section 1005 are shown to be met on the preliminary plat, given a 50 foot dedicated extension with improvements to Wallace Road.

Continuing with Columbia County Subdivision & Partitioning Ordinance
Section 1013 Utilities

- B. Sewerage Facilities. The method of sewage disposal for each lot within a subdivision or partitioning shall be in accordance with the requirements and standards for sewage disposal administered by and under the jurisdiction of the following agencies and political subdivisions when applicable: The Oregon State Department of Environmental Quality, the County, other State or Federal agencies which have regulations applicable to septic tank/drainfields, community collection and treatment facilities or other methods of sewage disposal.
- D. Requirements for Rural Areas.
- (1) Water Facilities. If a subdivision or partition proposes to take water from individual wells, the developer must show there is adequate potential for water at the site. This may be done by drilling test wells or by documentation from well drilling logs for the area of the subdivision. If the subdivision will be served by a community water system, the developer must show there is an adequate supply for all dwellings served by the system. Water lines serving the subdivision or partition shall be installed to provide adequate water pressure to serve present and future consumer demand. Materials, sizes and locations of water mains, valves, and hydrants shall be in accordance with the standards of the Fire District, the County, the State and the American Public Works Association.

- (2) Utilities. Underground utilities are not required but are encouraged where the cost of installing underground and above ground utilities are approximately equal. Utilities shall be installed pursuant to the requirements of the utility company. Electric power transmission lines (over 50,000 volts or primary feeder lines), and transformer vaults are exempted from these requirements.

Discussion: The existing dwellings on the subject property are each serviced by their own septic system, though only one well is noted on the preliminary plat. Unless, each parcel will have its own well that services its respective dwelling, an easement or easements will be required. Per the County Sanitarian (see COMMENTS RECEIVED below), Lot Evaluations shall be conducted on the undeveloped parcels to ensure they are “buildable.” This shall be done before the County accepts a final plat and approval of the final plat shall be contingent upon evidence that a septic system is possible on the vacant parcel. Proof that adequate water can be provided to the undeveloped parcel will be required before any Building Permit is issued.

The County Sanitarian ensures a subsurface sewage system meets all applicable local, state and federal standards.

The site is not within a water or sewerage provider service district.

It is encouraged that utilities servicing the parcels be underground.

Finding 17: The provisions of CCS&PO Section 1013 can be met with conditions that the proposed undeveloped parcel have an approved area for a septic system before the final plat will be accepted and that the final plat shall indicate which parcels do not have a proven adequate supply of water.

Columbia County Stormwater and Erosion Control Ordinance
Chapter III Standards Specific to Activities

D. Partitions

1. *Erosion Control*. Erosion control measures and an erosion control plan are not required for partitions.
2. *Long Term Water Quality Protection*.
 - a. A Conceptual Stormwater Plan is required for single-family and duplex parcels. A Preliminary Stormwater Plan is required for partitions of multi-family, commercial, and industrial parcels.
 - b. The preliminary Stormwater Plans shall be prepared by an Engineer. The applicant may prepare Conceptual Stormwater Plans.
 - c. The plan shall describe how the treatment and runoff control measures

- required for future building permits will be achieved.
- d. The plan shall be completed in the format specified in Section IV.
 - e. The plan shall be submitted to the County with the partition application.
 - f. The partition will not be approved until the plan is approved by the County.

Discussion: This Land Partition involves property zoned PA-38, which generally allows farming based uses with other uses such as single-family dwellings, given certain restrictions. However, this property has a Measure 37 waiver (CL 06-09), allowing the creation of smaller parcels. For the purpose of this ordinance, this partition will create “single-family parcels.”

The applicant prepared and submitted a Conceptual Stormwater Plan. It is not required to be completed by an engineer and thus, technical review of the plan by another qualified engineer is not warranted at this time. There are drainage tiles and an intermittent stream on the site. Given manipulation of the land, stormwater management could be a problem, however that is beyond the scope of this Land Partition. There are no impervious surfaces created by this application. If the newly created Wallace Road extension is paved, the applicant shall follow ditching best management techniques and erosion control measures as required by the Road Department. Notwithstanding inappropriate manipulation of the site’s natural drainage, there does not appear to be any stormwater aspect that would be negatively affected by this proposal.

Finding 18: The standards of the Stormwater & Erosion Control Ordinance are met for the purposes of this Land Partition.

Columbia County Road Standards
Chapter I Overview of Road Standards

B. Partitions

Prior to final approval of a partition, access improvements will be required as follows:

- 2. Creation of New Public Roads. New public roads created in conjunction with a partition shall be improved in accordance with the “Creation of New Public Road” standards (Section VI). The entire length of the new public right-of-way shall be improved according to the standards prior to final approval of the partition.

VI. Creation of New Public Roads

B) Submittal Requirements

1) General

Complete plans for all proposed improvements within or affecting public rights of way shall be submitted to the Public Works Director for approval.

Width - Drawing II is a summary of Local Road travel width.

Discussion: The applicant proposes an extension of the Wallace Road right-of-way to meet the parcel frontage requirements on a public road, as explained in Finding 16. This new public road "extension" shall be improved pursuant to County Road Standards, before the County will accept a final plat. Applicant should be aware that this may include but is not limited to submittal and approval of construction plans to the County Roadmaster.

Finding 19: A condition imposed will be that all public road improvements shall be completed for the new dedicated public road extension and approved by the County Road Department before the County's acceptance of the final plat.

Continuing with Columbia County Road Standards
Chapter V. Existing Platted Roads

B) PARTITIONS

All road platted with partitions and subdivisions which are filed after this ordinance is adopted shall be constructed to new road construction standards as required in Section IV and Section VI of this document.

1) DEVELOPMENT OF EXISTING PLATTED PUBLIC RIGHT-OF-WAY

Partitions will not be allowed to access any public road where it is not feasible (as determined by the Public Works Director) to construct that public road to the new road improvement standards required in Section VI of this document, without further order of the Board of County Commissioners or Planning Commission, after considering the report and recommendation from the Public Works Director. If the road improvements are determined to be feasible within the existing right-of-way, the applicant for a partition shall improve the existing road that is adjacent to the subject property, whether or not a new road is created within the partition, to the applicable standard as if new residences were immediately constructed on the new parcels. (i.e. If a partition creates 3 parcels of property and there are 7 other undeveloped potential parcels along the road, the applicant for the partition will be required to construct 3/10 of the required road improvements prior to the final approval of the partition.)

Additional right-of-way will be required to be dedicated as required of the developers of single parcels as described above.

Additional road improvements will be required when application is made for an access permit to build on the property.

See also Section I (B) and I (C) of these standards.

Finding 20: All three proposed parcels of this partition will use Wallace Road for access. Wallace Road is a public, county road, maintained by the County Road Department. The Road Department has reviewed this request and submitted comment letters dated January 29, 2007 and April 10, 2007. It has been determined by the Road Department that the criteria of the existing public road standards can be met with conditions. See April 10, 2007 Road Department letter.

COMMENTS RECEIVED:

Mist Birkenfeld CPAC: (no comment)

West Oregon Electric: W.O.E. co-op will supply electrical service, only if all permits from State and County (or local) [jurisdictions] have been obtained. And they follow all rules and regulations of W.O.E..

DLCD (post Measure 37 claim development): (no comment).

Mist-Birkenfeld Joint RFPD: As per phone conversation on 2-14-2007: turnouts for emergency vehicles will be required to be included and approved along with road improvements.

County Sanitarian: The "new lots" will require approved Lot Evaluations to confirm that they are "buildable" lots.

County Roadmaster: See attached letters dated January 29, 2007 and April 10, 2007.

County Assessor: (no comment)

County Surveyor: Show on plat easements and r/w.

No further comments from agencies, citizens or otherwise have been received regarding this proposal as of the date of this staff report.

CONCLUSION, DECISION & CONDITIONS:

Since the lots sizes in the proposed partition(7, 10, 15.1 acres), as noted in Finding 2 above, are not specifically identified in the Measure 37 lot size waiver granted by the Board(more or less 10 acres), staff recommends one of three actions be taken by the Board to address this inconsistency:

1. Deny the partition. This would require that the applicant either file a new Measure 37 claim specifying the lots sizes proposed, or modify the partition request to conform to the lot sizes authorized by the approved Measure 37 claim.

2. Approve the partition with an additional condition to those recommended by Staff below that the Measure 37 lot size waiver of Section 304.1 be amended to allow the proposed 7, 10 and 15.1 acre lot sizes in the partition.

3. Approve the partition as proposed modifying Finding 2 above to indicate that the proposal is consistent with the "more or less that 10 acres" language in the approved Measure 37 waiver.

Should the Board decide to approve the application, the Planning Director recommends the following conditions:

1. **This Preliminary Land Partition shall remain valid for one (1) year from the date of the final decision.** The approved preliminary plat shall become void unless a surveyed final plat is prepared and submitted to Land Development Services within the one-year validity period. This Final Plat shall conform to 1) the approved preliminary plat (as submitted on February 12, 2007) in accordance with the conditions described herein, and 2) the form and content requirements of the Columbia County Subdivision and Partitioning Ordinance and Oregon Revised Statutes. One extension of time of up to six months may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date.
2. The following shall be required before the County accepts a final plat for review:
 - a. A Septic System Lot Evaluation shall be conducted and approved on the proposed undeveloped parcel.
 - b. All required road improvements shall be completed and approved by the County Road Department. This includes construction of the newly dedicated Wallace Road extension, which shall be constructed to Public Road Standards, 26-foot wide graveled. This also includes off-site improvements to Wallace Road (see letter from the County Road Department dated April 10, 2007). In addition, turnouts and a turn-around at the end for emergency vehicles as required by the Mist-Birkenfeld RFPD shall be completed and approved.
3. In addition to all County and State requirements, the following shall be included on the Final Plat:
 - a. All existing and proposed easements. This includes any access easements. In addition, unless each developed parcel will have its own well, an easement to access an existing well shall be included for the developed parcel(s) lacking a water supply.
 - b. All existing and proposed rights-of-way.
 - c. The final plat shall indicate which parcels are not approved for sewage disposal and which parcels do not have a proven adequate potable water supply.

- d. Incorporation of Property Line Adjustment PLA 07-16 shall be shown.
 - e. Parcel 3 shall maintain 50 feet of frontage on the north *and* south sides of the Wallace Road right-of-way extension.
 - f. No property line shall be closer than 30-feet to an existing structure.
 - g. Base Flood Elevation (BFE) data shall be determined by a licensed professional engineer or surveyor. BFE data and the 100-year flood hazard area as dictated by the BFE data shall be included on the final plat.
 - h. An area 50-feet from the top bank of the Nehalem River shall be delineated on the final plat as a "Riparian Corridor Boundary," subject to the development restrictions of the Columbia County Zoning Ordinance.
 - i. An area 25-feet from the top bank on both sides of the intermittent stream in the southern half of the site, shall be delineated on the final plat as a "Riparian Corridor Boundary," subject to the development restrictions of the Columbia County Zoning Ordinance.
4. The following shall be required prior to Building Permit issuance to develop any of the parcels created by this Land Partition:
- a. The subject property and all new and/or altered property lines shall be surveyed and filed with the County Surveyor and the Final Plat shall be recorded with the County Clerk.
 - b. A Septic System Construction Permit shall be applied for the individual property, if applicable.
 - c. Proof shall be provided demonstrating adequate potable water is available.
 - d. A Road Access Permit shall be obtained from the Road Department.
 - e. In addition to any County permits, permits/requirements of other applicable agencies (e.g. ODFW & DSL) shall be obtained/met should access be proposed across the intermittent stream in the southern half of the site.
 - f. Any proposed dwelling on the vacant proposed parcel shall be located on the southern portion of the parcel in the foothills and not within the Eilertson prime farmland soils.
5. The responsibility for protection from wildlife damage on the property shall be assumed by the respective parcel's owner and/or occupant.

ATTACHMENTS:

Letter from the County Road Department to LDS dated January 29, 2007 (w/ graphic map)
Letter from the County Road Department to LDS dated April 10, 2007
Copy of Preliminary Land Partition Plat stamped "RECEIVED FEB 12, 2007"
Property Line Adjustment Application for PLA 07-16
Appeal Letter from applicant/appellant
Staff Decision and Partition Application with maps.