

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of John Crosley)
for a Resource Dwelling in the Primary Forest) FINAL ORDER NO. 74-2011
Zone (Application No. RDF 11-01))

WHEREAS, on February 10, 2011, John Crosley applied for a Resource Dwelling in a Forest Zone (Application No. RDF 11-01) to site a single-family dwelling on an approximately 9.45-acre parcel in the Primary Forest Zone (PF-80). The subject property is identified as Tax Map Identification Number 5532-000-00500 and is located on Keasey Road, approximately 7.5 miles northwest of Vernonia; and

WHEREAS, the application was deemed complete on February 28, 2011; and

WHEREAS, after proper notice, the Columbia County Planning Director reviewed the application and evidence in the record and issued a final order approving the application, subject to conditions; and

WHEREAS, a copy of the Planning Director's Final Order was mailed to the applicant on June 2, 2011; and

WHEREAS, on June 8, 2011, the applicant timely appealed the Planning Director's decision but did not state the basis of the appeal; and

WHEREAS, the Columbia County Board of County Commissioners (the Board) took jurisdiction over the application on June 22, 2011 pursuant to Columbia County Zoning Ordinance (CCZO) Section 1612; and

WHEREAS, following public notice, the Board held a public hearing on the application at its regularly scheduled meeting on July 20, 2011. The Board accepted all written evidence submitted into the record, a list of which is provided in Exhibit 1, attached hereto and incorporated herein by this reference; and

WHEREAS, at the request of the applicant, who waived the 150-day deadline for final action required by ORS 215.427, the Board left the record open for 14 days for additional written evidence and testimony. The Board continued the matter to its regularly scheduled meeting on August 10, 2011, for deliberation; and

WHEREAS, on August 3, 2011, the applicant timely submitted written evidence and

argument, which was entered into the record; and

WHEREAS, the Board deliberated on the matter at its meeting on August 10, 2011. During deliberations, the applicant, through his attorney, objected to County Counsel's response to arguments raised in the applicant's written submittal. At the applicant's request the Board reopened the record for an additional seven days to allow the applicant to submit a final rebuttal, and continued the matter to August 24, 2011; and

WHEREAS, on August 17, 2011, the applicant submitted written rebuttal arguments, which was entered into the record; and

WHEREAS, on August 24, 2011, the Board deliberated on the matter and voted to tentatively approve the application, subject to conditions, as set forth in the Planning Director's final order dated June 2, 2011.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. 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 July 13, 2011, which is attached hereto as Exhibit 2 and incorporated herein by this reference.
- B. The Board of County Commissioners adopts the Supplemental Findings of Fact and Conclusions of Law, which are attached hereto as Exhibit 3 and incorporated herein by this reference.
- C. The Board of County Commissioners adopts and incorporates the above recitals as additional findings in support of its decision.
- D. Based on the foregoing and the whole record in this matter, John Crosley's application for a Resource Dwelling in a Forest Zone (RDF 11-01) is hereby **APPROVED to allow the siting of a dwelling in the forest zone, subject to the following conditions:**
 1. **This Forest Resource Dwelling Permit shall remain valid for four (4) years from the date of the final decision.** This permit shall become void, unless the proposal has commenced in conformance with all conditions and restrictions established herein within the four-year validity period. Extensions of time may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicant is not responsible for failure to develop.
 2. This Forest Resource Dwelling Permit allows a non-forest dwelling on the subject property, which, in turn, enables the applicant(s) to apply for Building Permits and other permits necessary for development. This Forest Resource Dwelling Permit

addresses and allows this land use only and does not guarantee approval of any other permits necessary for the future development of the subject property.

3. Primary and secondary fuel-free fire breaks shall be required for the dwelling allowed by this Conditional Use Permit and all accessory structures pursuant to OAR 660-006-0035 and the March 1991 Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards for Roads, published by the Oregon Department of Forestry (or) Equivalent Fire Buffers approved by Columbia County Board Order No. 239-97. If the Secondary Fire Break cannot be met on the subject property, the applicant shall either construct the dwelling to IR-1 or IR-2 standards or submit a recorded Secondary Fire Break Easement and Maintenance Agreement to Land Development Services.
4. The dwelling allowed by this Forest Resource Dwelling Permit and all accessory structures shall: 1) have a fire retardant roof, 2) not be sited on a slope greater than 40 percent, and 3) have a spark arrester for any and all chimneys.
5. The driveway to the proposed dwelling shall meet County Driveway Standards for Fire Apparatus Access Roads as required by the Vernonia Rural Fire Protection District. The applicant shall submit verification to Land Development Services that the driveway has been approved for access to both the homesite and creek (as required by Condition # 6) prior to the issuance of building permits.
6. The applicant shall work with the Vernonia Rural Fire Protection District to provide access to Rock Creek for fire protection purposes in accordance with Section 510.1 of the Columbia County Zoning Ordinance. The applicant shall also provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Any activities within the riparian corridor of Rock Creek shall comply with Section 1170 of the Columbia County Zoning Ordinance.
7. The applicant shall obtain a new road access permit for the existing driveway from the Columbia County Road Department. Verification of an approved permit shall be submitted to Land Development Services prior to the issuance of building permits.
8. The applicant shall meet the requirements of the applicable agencies regarding installation of power and communication lines, and install utilities underground if feasible.
9. The applicant shall obtain septic authorization to use the existing septic system for the proposed dwelling. The applicant shall obtain authorization and approval of

any improvements or alterations to the septic system completed (if applicable) prior to the issuance of building permits.

10. The applicant shall provide documentation indicating that adequate potable water is available to the site. This documentation shall be submitted to Land Development Services in the form of a well log prior to the submittal of building permits. If a well log cannot be obtained, the applicant shall obtain a new well log for the existing well.
11. It appears that there may be setback concerns associated with the location of the well and septic system in relation to each other and to Rock Creek. The applicant shall submit a revised site plan, drawn to scale (with setback dimensions) identifying the exact location of the well, septic tank, drainfield, and creek. The applicant shall obtain approval of the septic system and well from the County's Sanitarian prior to the submittal of building permits.
12. The existing dwelling shall be relocated on the property to comply with the 50' riparian corridor setbacks (from Rock Creek) of Section 1170 of the Columbia County Zoning Ordinance.
13. The applicant shall relocate the existing dwelling to be in compliance with Big Game Habitat regulation in Section 1190 of the Columbia County Zoning Ordinance.
14. A revised site plan shall be submitted to Land Development Services identifying the relocation of the dwelling. This site plan shall be drawn to scale and shall accurately reflect the dwelling's setbacks from property lines and from the top bank and wetlands of Rock Creek. Primary and secondary fuel-free fire breaks shall also be identified on the revised site plan. *Note: A single site plan may be submitted to meet Conditions # 11 and # 14.*
15. The applicant shall apply for a floodplain development permit. The applicant shall submit required information of the permit and all development shall be designed to conform to the flood development standards of Section 1100 of the Columbia County Zoning Ordinance.
16. The responsibility for protection from wildlife damage on the property shall be assumed by the dwelling's owner and/or occupant.

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17. The applicant shall sign and record in the deed records of Columbia County a WAIVER OF REMONSTRANCE regarding past, current or future accepted farm or forest operations of adjacent and nearby lands.

Dated this 28th day of September, 2011.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: 

Office of County Counsel

By: 

Anthony Hyde, Chair

By: 

Earl Fisher, Commissioner

By: 

Henry Heimuller, Commissioner

Legal Counsel's File -EXHIBIT 1

1. Board Communication from Land Development Services Director Todd Dugdale dated July 18, 2011, with the following attachments:
 - a. Board of County Commissioners Staff Report for RDF 11-01 dated July 13, 2011
 - b. Planning Director Final Order for RDF 11-01 dated June 2, 2011 Notice of Public Hearing (Publication) dated June 30, 2011
2. Notice of Public Hearing (Property Owner Notice) dated June 30, 2011
3. Affidavit of Mailing dated June 30, 2011
4. Affidavit of Publication dated June 30, 2011
5. Board Communication, dated June 22, 2011
6. Letter from Todd Dugdale to Jan Greenhalgh, dated June 17, 2011, with
7. Appeal, dated June 13, 2011
8. Affidavit of Mailing Final Order, dated June 7, 2011
9. Certificate of Mailing, dated June 7, 2011
10. Letter from John Crosley, dated May 26, 2011, with attached Elevation Certificate
11. Letter from John Crosley, dated May 23, 2011, with attached Forest Management Plan
12. Letter from John Crosley, dated May 16, 2011
13. Referral and Acknowledgment, Dave Stewart, ODFW, dated March 8, 2011
14. Referral and Acknowledgment, Lonny Welter, Columbia County Road Department, dated March 7, 2011
15. Referral and Acknowledgment, Earl Dean Smith, Vernonia Fire District, dated March 7, 2011
16. Referral and Acknowledgment, Upper Nehalem CPAC, dated April 12, 2011
17. Referral and Acknowledgment, Erin O'Connell, County Sanitarian, dated February 28, 2011
18. Referral and Acknowledgment, Columbia County Building Official, dated March 1, 2011
19. Maps and Photographs of the site; Tax Assessor printouts
20. Notice of Planning Commission Public Hearing, dated February 2, 2011 and Certificate of Mailing, dated February 2, 2011
21. Letter from Glen Higgins, dated February 28, 2011
22. Email from Deborah Jacob, Planner, dated February 17, 2011
23. Application
24. Land Development Services files for Applicant's Measure 37 and 49 claims
 - a. DLCD Final Order, dated June 7, 2010
 - b. Letter from Todd Dugdale to DLCD with attachments, dated May 12, 2010
 - c. DLCD Preliminary Evaluation, dated March 12, 2010
 - d. Order No. 07-77, dated April 16, 2007
 - e. Recorded partition
 - f. Notice to Measure 37 claimant, dated March 20, 2007 and certificate of mailing
 - g. Comparative Market Analysis, dated November 21, 2006
 - h. Preliminary title report, dated November 1, 2006

COLUMBIA COUNTY BOARD OF COMMISSIONERS

STAFF REPORT

July 13, 2011

Resource Dwelling in the Forest Zone
Appeal of Administrative Decision

HEARING DATE: July 20, 2011

FILE NUMBER: RDF 11-01

APPLICANT/OWNER: John Crosley
3225 Lavina Drive
Forest Grove, OR 97116

PROPERTY LOCATION: The site is located approximately 7 ½ miles northwest of the City of Vernonia, on the west side of Keasey Road.

TAX MAP NUMBER: 5532-000-00500

ZONING: Primary Forest (PF-80)

SIZE: ± 9.45 Acres

REQUEST: To site a single-family dwelling in the PF-80 zone as authorized by both the Template Dwelling Provisions and State Final Order and approval of a Measure 49 Claim.

APPLICATION COMPLETE: 2/28/11

150 DAY DEADLINE: 7/28/11

APPLICABLE REVIEW CRITERIA:

Page

Oregon Revised Statute

ORS 215.130 Application of Ordinances and Comprehensive Plan;
Alteration of Non-Conforming Use

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Oregon Department of Land Conservation and Development
ORS 197.300 to ORS 195.336 (Measure 49) Supplemental Review
of Measure 37 Claim: Home Site Authorization, June 7, 2010

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Soil Survey of Columbia County, Oregon

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Columbia County Zoning Ordinance

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Columbia County Comprehensive Plan

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SUMMARY:

The applicant, John Crosley, applied for a forest resource dwelling permit to continue construction of a single family residence with an old foundation within 18 feet of Rock Creek in the Primary Forest Zone. The applicant's 9.45 acre property located on Keasey Road approximately 7 ½ miles northwest of Vernonia also contains Flood Hazard Overlay, Riparian Corridor Overlay and Big Game Overlay zoning. The applicant's partially completed structure does not comply with many of the requirements of those Overlay zones. However, consistent with template test requirements of Section 506 of the Columbia County Zoning Ordinance and the applicant's approved M-49 claim, a dwelling can be approved on the property in a different location, one that does not conflict with regulations intended to protect public health and safety. The body of this report analyzes approval of a dwelling on the subject property consistent with State Final Order and Home Site Authorization Election No. E133969 and all other applicable state and local land use laws and zoning regulations.

FACTUAL BACKGROUND:

A. Location & Site Characteristics

The applicant, John Crosley, requests approval to continue construction of a single-family dwelling on a ± 9.45 acre, Primary Forest - 80 (PF-80) zoned property. Said property is located on Keasey Road, approximately 7 ½ miles northwest of the City of Vernonia. Rock Creek runs through the subject property, and according to the Clear Creek, OR, Oregon Department of Forestry Stream Classification Map is a large, fishbearing stream. Current zoning regulations, as outlined in Section 1170 of the Columbia County Zoning Ordinance (CCZO), require protective riparian corridor boundaries to be established around lakes, rivers and sloughs. Specifically, a 50 foot riparian corridor boundary shall be maintained for Rock Creek. Said boundary shall be measured from the top bank of the water body, or where wetlands are present from the upland edge of the wetland. The Birkenfeld, Oregon National Wetland Inventory (NWI) Map identifies wetlands in association with the creek. Structures are prohibited from encroaching into this buffer area. Similarly, as per FEMA Flood Insurance Rate Map

(FIRM) No. 41009CO375 D, (almost) the entire property is located in Rock Creek's flood plain and has been classified by FEMA as an area subject to inundation by the 1-percent-annual-chance flood event (Flood Zone A). Any new development within the flood hazard overlay zone is subject to flood management development standards as set forth in Section 1100 of the Columbia County Zoning Ordinance. Finally, in regard to the natural characteristics of the site, the property is generally flat and forested and consists of Eilertsen silt loam (20), McNulty silt loam (32) and Hapludalfs-udifluvents complex (24) soils. The Upper Nehalem Valley CPAC Wildlife Game Habitat Map identifies this area as Peripheral Big Game Habitat. Development standards for this habitat overlay zone are analyzed in the body of this report in accordance with Section 1180 of the County's Zoning Ordinance.

B. Existing Structures

The applicant acquired the property on December 20, 1977, and originally applied to site a dwelling on the property in 1979. Specifically, a septic system permit was approved for the property by the Department of Environmental Quality (DEQ) on September 20, 1978, and a Certificate of Satisfactory Completion (of the system) was issued by DEQ on June 26, 1979. Following septic installation, Land Development Services (LDS) issued a building permit (Permit No. 8195) for development of a one bedroom single-family dwelling on October 18, 1979. The applicant completed a foundation for the dwelling, but an inspection of the property, on April 21, 1981, revealed that all construction beyond that of the foundation had ceased and the original building permit expired. *(Note: Building permits only remain active for a period of six months from the date of the last building inspection of a project. If no activity occurs within said time period, building permits expire.)* The property remained undeveloped, with the exception of the septic system and foundation, and the project was abandoned for more than 25 years. In 2010, the Columbia County Assessor's Real Property Assessment Report identified development of a \pm 1,557 square foot single-family residence on the subject property (see photos pgs. 9-10). Construction of the dwelling was resumed **without** building permits more than 25 years after the expiration date of the 1979 building permit.

The issuance of said (1979) building permit predated Columbia County zoning regulations and, therefore, was not subject to County regulations pertaining to setbacks, fire buffer areas, floodplain development, riparian corridor standards, etc... *(Note: state regulations became effective in 1973 and applied directly to the site)* As such, the original building permit was approved for the location of the dwelling eighteen feet from the top bank of Rock Creek, with an attached deck extending outward from the dwelling an additional 10 feet, to just eight feet from the top bank of Rock Creek.

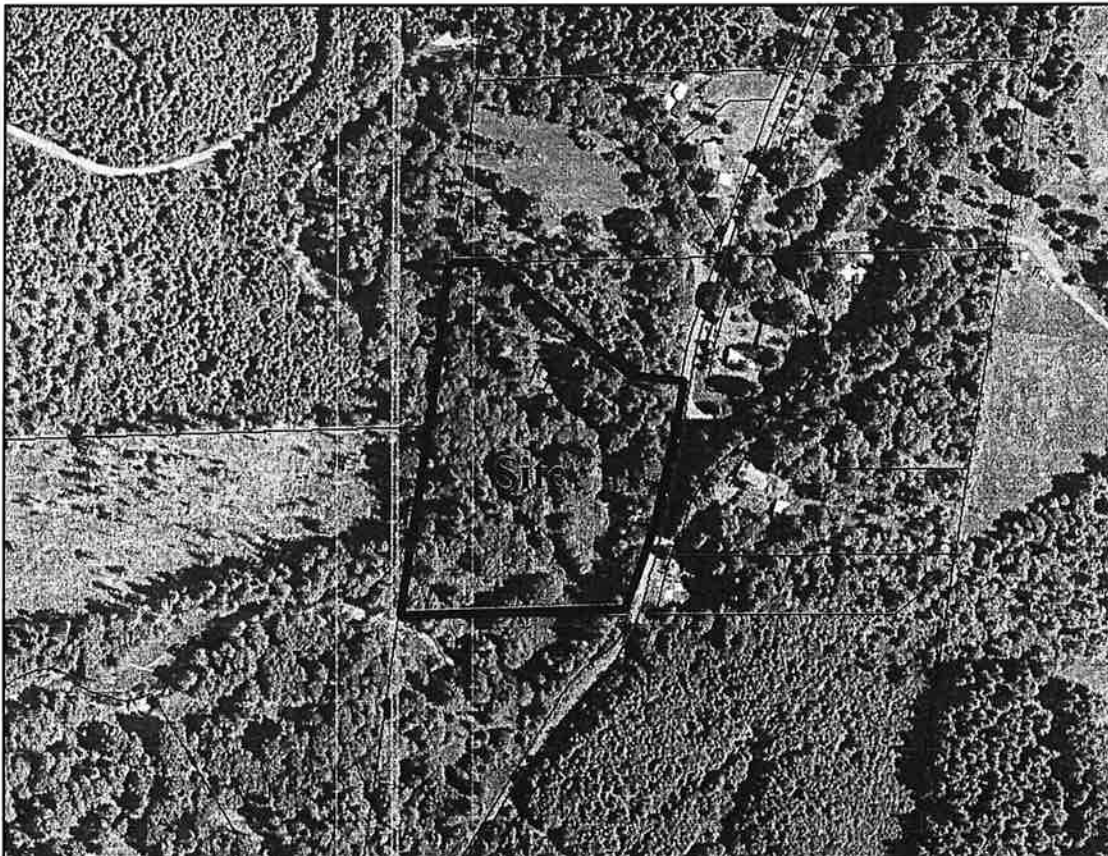
As originally sited, the location of the subject dwelling does not comply with present day zoning requirements. Oregon Revised Statutes (ORS) 215.130(5) and 215.130(7)(a) allow buildings, structures and land lawfully in use at the time of enactment or amendment of any zoning ordinance or regulation to be continued, but prohibits uses from being resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption. Therefore, although a foundation for a dwelling was constructed prior to adoption of the County's Zoning Ordinance in 1984, the project was abandoned for more than 25 years. At the time of resumption, within the last two years, zoning ordinance regulations were effective and construction of the dwelling subject to all applicable standards thereof. Regulations most relevant to the request include requirements for riparian corridor setbacks and elevation requirements for development within the floodplain. The dwelling does not meet said standards as presently constructed and must be brought into conformance with current codes.

Although the dwelling is prohibited from continuing in noncompliance with active zoning regulations related to specific siting criteria, all land use regulations pertaining to the allowance of a dwelling on the subject property have been met. The site passes the template test requirements of Oregon Administrative Rule (OAR) 660-006-0027(1)(f)(C) for the siting of a dwelling in the forest zone and was approved for one single-family residence per a determination made by the State of Oregon through Measure 49 Final Order and Home Site Authorization (Election No. E133969). The State's decision specifically states in its conclusion: "Based on documentation provided by the claimant and information from Columbia County, the Measure 37 claim property includes one lot or parcel and one partially completed dwelling...Therefore, the one home site approval the claimant qualifies for under Section 6 of Measure 49 will authorize the claimant to establish no additional lots or parcels and complete the development of the partially completed dwelling or replace this partial dwelling with a new dwelling on the Measure 37 claim property."

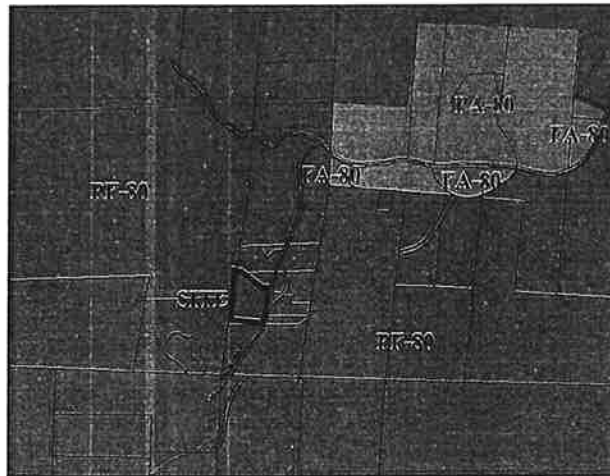
The Final Order goes on to state: "If, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. **Statements in this final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels, or dwellings.**"

In their review of this project, the State presumes that construction of the dwelling had occurred lawfully. As discussed below, the actual dwelling was not lawfully established as it was abandoned then constructed without building permits and may, therefore, not be considered a lawfully existing structure "to be completed" as stated by this Measure 49 determination.

Aerial Photograph - PC Maps (2009)



Zoning Map - PC Maps



REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

Oregon Revised Statute:

Chapter 215 — County Planning; Zoning; Housing Codes

215.130 Application of ordinances and comprehensive plan; alteration of nonconforming use.

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.

(7)(a) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

Finding 1: The applicant originally applied to site a dwelling on the subject property in October of 1979, prior to the adoption of the County's Comprehensive Plan and Zoning Ordinance. As such, the original permit (as shown on the site plan) allowed the dwelling to be located approximately 18 feet from the top bank of Rock Creek and an attached deck to be located approximately eight feet from the top bank of said creek. The applicant completed the foundation for a dwelling in this location soon after the issuance of the building permit, but an inspection of the property on April 21, 1981 revealed that all development had been abandoned and the building permits (which are only active for six months from the date of the last inspection) expired. The property remained undeveloped, with the exception of a septic system and foundation for more than 25 years. In 2010, the Columbia County Assessor's Real Property Assessment Report identified development of a 1,557 square foot single-family residence on the subject property. Said assessment revealed that construction of the dwelling was resumed **without** building permits some time around 2009.

With the adoption of the County's Comprehensive Plan and Zoning Ordinance in 1984, many regulations pertaining, but not limited to setbacks, fire safety requirements, habitat protection zones, floodplain development standards, riparian corridor buffers, etc... were enacted. Specifically, as discussed in Finding 31, a 50' wide riparian corridor buffer shall be maintained along the top bank of Rock Creek and structures within the flood hazard overlay zone shall be constructed in accordance with Section 1109 of the Columbia County Zoning Ordinance. The dwelling encroaches into the riparian buffer and has not been reviewed by the County Planning and Building Departments for compliance with floodplain development standards. Therefore, the location of the dwelling, as originally permitted is noncompliant to present land use requirements. The continuation of non-compliant uses is addressed in OAR 215.130(5) and (7) and prohibits non-conforming uses that have been interrupted or abandoned from being resumed, unless said use is resumed in conformance with the Zoning Ordinance and any other regulations in effect at the time of resumption. Provisions relevant to the Flood Hazard Overlay Zone were adopted into the Zoning Ordinance in 1988 and provisions set forth for the Riparian Corridor Overlay Zone were adopted into the Zoning Ordinance in 2003. Said regulations were in effect at the time that the applicant resumed construction of the dwelling, and must, therefore, be satisfied. Based on the more than 25 year abandonment of the project, the dwelling may not be constructed in the originally permitted location.

Measure 49 Home Site Authorization Criteria:

Oregon Department of Land Conservation and Development
ORS 195.300 to ORS 195.336 (Measure 49) Supplemental Review of Measure 37 Claim
Final Order and Homesite Authorization
State Election Number: E133969

Attached (to this Staff Report) is the State of Oregon Department of Land Conservation and Development (DLCD) Final Order and Home Site Authorization for the above referenced Measure 49 election. Based on the Supplemental Review of the claimant's Measure 37 claim, this Final Order and Home Site Authorization sets forth the DLCDC's decision, provided in part as follows:

IV. Home Site Authorization

Based on the analysis set forth above, this claim is approved, and the claimant qualifies for one home site approval. As explained in Section III above, after taking into account the number of existing lots, parcels, or dwellings, the claimant is authorized for no additional lots or parcels and to complete the development of the partially completed dwelling or replace this partial dwelling with a new dwelling on which the claimant is eligible for Measure 49 relief, subject to the following terms:

1. Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is eligible for Measure 49 relief. The establishment of a land division or dwelling based on this homesite authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.
2. This home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).
4. The number of lots, parcels, or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If, based on the information available to the department,

the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. Statements in this final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels, or dwellings.

Finding 2: The subject ± 9.45 acre, PF-80 zoned property was approved by the DLCDC for one single-family residence. The conclusion, as stated, specifically allows the applicant to “complete the development of the partially completed dwelling or replace the partial dwelling with a new dwelling” subject to certain terms. As described in the background section of this report and as addressed in detail in Finding 1, the applicant is not eligible to complete the partial dwelling in its current location.

Said dwelling was originally permitted in 1979, but was never constructed. Building permits expired and the project was abandoned. Approximately two years ago (2009), the applicant began construction of the dwelling without building permits. Although the original (expired) building permit was issued prior to local zoning regulations, construction of the dwelling began after the 1984 effective date of the County’s Zoning Ordinance and is, therefore, subject to all applicable zoning regulations provided therein. The current location of the structure is in conflict with several provisions of the Zoning Ordinance including Sections 1170 (Riparian Corridor Overlay) and 1100 (Flood Hazard Overlay). Despite these issues, the applicant is eligible for a dwelling and has the option to either move the partially completed dwelling, with building permits, to a location on the property consistent with current zoning regulations or replace said dwelling (altogether) elsewhere on the property (also with building permits in accordance with zoning regulations). Staff finds that although the residence may not continue to exist in its present location, one single-family residence may be located on the subject property.

The State specifically states in their Measure 37/Measure 49 approval that the applicant has the option to complete the partially completed dwelling. Condition # 4 of this approval also states, however, that “if based on the information available to the department, the department has calculated the number of currently existing dwellings to be either greater than or less than the number of dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of dwellings a claimant may establish pursuant to this home site authorization must be adjusted...” The disclaimer goes on to state that “statements in this final order regarding the number of dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those dwellings.” The State’s analysis, that the partially completed dwelling may be completed, was based on an assumption that the existing dwelling was lawfully constructed. As discussed previously, the partially completed dwelling was constructed without building permits, in violation of current zoning regulations, and may, therefore, not be completed in its current location. A dwelling is permitted on the subject property only in conformance with all current land use regulations. Staff finds that the partially completed dwelling may only be completed if moved to a location on the property in conformance with property and riparian corridor setbacks and if constructed in accordance with flood plain development standards.

Oregon Revised Statute:

Chapter 195 — Local Government Planning Coordination

(Note: Measure 49 cannot waive regulations “Restricting or prohibiting activities for the protection of public health and safety” ORS 195.305(3)(b).

Finding 3: As discussed in Finding 2 and as determined by Measure 37/49 Homesite Authorization State Election No. E133969, the applicant is eligible to site one single-family dwelling on his approximate 9.45 acre, Primary Forest - 80 zoned property. The Homesite Authorization specifically states that the claimant is authorized to “complete the partially completed dwelling or replace this partial dwelling with a new dwelling” subject to certain terms. As discussed in Finding 1, the applicant is not eligible to complete the existing dwelling, as it was not lawfully constructed and does not meet current zoning regulations, but may move said dwelling or replace the dwelling elsewhere on the property in accordance with land use and building code requirements.

The partially completed dwelling was constructed without building permits within the 50' riparian corridor of Rock Creek and within the 1-percent-annual-chance flood event flood hazard overlay zone of Rock Creek. Sections 1173.A and B of the Columbia County Zoning Ordinance prohibit the following activities within the riparian corridor boundary: (A) The Alteration of a riparian corridor by grading, placement of fill material, and/or impervious surfaces, including paved or gravel parking areas, or paths, and/or the construction of buildings or other structures which require a building permit under the State of Oregon Uniform Build Code and (B) the removal of riparian trees or vegetation. Additionally, as per Section 1109 of the Columbia County Zoning Ordinance, residential construction within special flood hazard areas shall meet the following requirements:

- New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum of one (1) foot above the base flood elevation.
- Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must exceed the following minimum criteria.
 - A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - The bottom of all openings shall be no higher than one foot above grade.
 - Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

Both the riparian corridor standards and flood hazard development standards are required in part to protect public health and safety. The purpose of the Riparian Corridor Overlay Zone, as stated in the County’s Zoning Ordinance is to *“protect and restore water bodies and their associated riparian corridors, thereby protecting and restoring the hydrological, ecological and land conservation function these areas provide. Specifically, this Section is intended to protect habitat for fish and other aquatic life, protect habitat for wildlife, protect water quality for human uses and aquatic life, control erosion and limit sedimentation, prevent property damage during floods and storms, protect native plant*

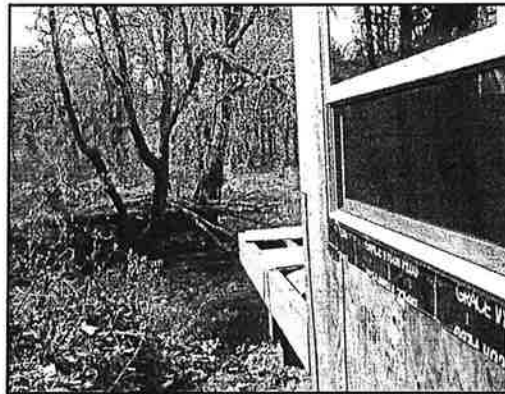
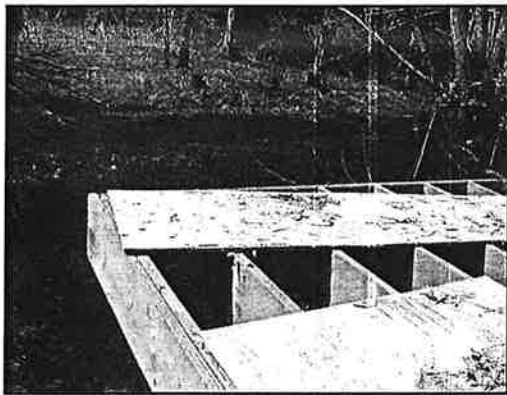
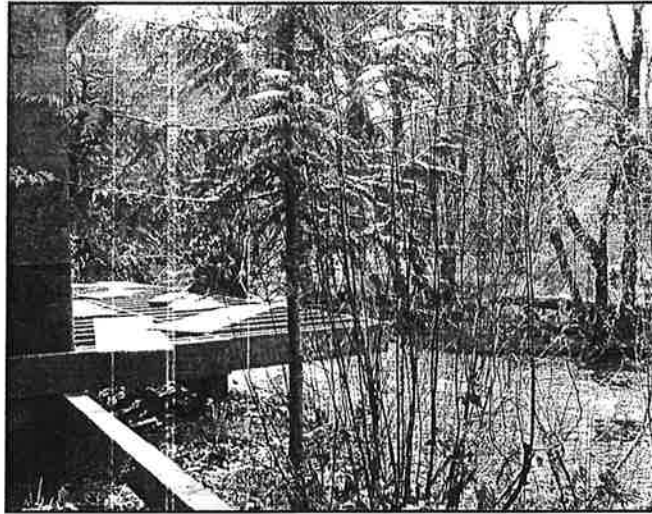
species, and conserve the scenic and recreational values of riparian areas.” Similarly, the purpose of the Flood Hazard Overlay Zone, as stated by the Zoning Ordinance is to “promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed: (1) to protect human life and health; (2) to minimize expenditure of public money and costly flood control projects; (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public; (4) to minimize prolonged business interruptions; (5) to minimize damage to public facilities and utilities such as water and gas mains; electric, telephone, and sewer lines; streets and bridges located in areas of special flood hazard; (6) to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas; (7) to ensure that potential buyers are notified that property is in an area of special flood hazard; and (8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.”

Condition # 2 of the Measure 37/Measure 49 Homesite Authorization specifically states that regardless of the State’s authorization for the establishment of a dwelling, said dwelling may not be sited in violation of a land use regulation that was enacted to restrict or prohibit activities for the protection of public health and safety [ORS 195.305(3)(b)]. As both the riparian corridor overlay and flood hazard overlay zones were established for the protection of public health and safety (as stated in their purposes above), the Measure 37/Measure 49 approval, for one single-family dwelling, does not exempt the dwelling from regulations pertaining to these zones. Furthermore, meeting the requirements of said zones, as documented previously in this finding, does not prohibit the establishment of a residence on the subject property. As constructed, the partially completed dwelling encroaches into the riparian corridor boundary by more than 30 feet, with a deck overhanging the creek bank, and the project has not been formally reviewed to determine compliance with floodplain development standards. There is adequate space on the property to meet riparian corridor standards. Therefore, the partially completed dwelling must be moved and constructed to meet riparian corridor and floodplain development standards. Staff finds that the property is eligible for the siting of one single-family dwelling, but that said dwelling must meet all current flood hazard & riparian corridor zoning regulations.

Dwelling Constructed Without Building Permits



Dwelling's and Deck's Setback from Rock Creek

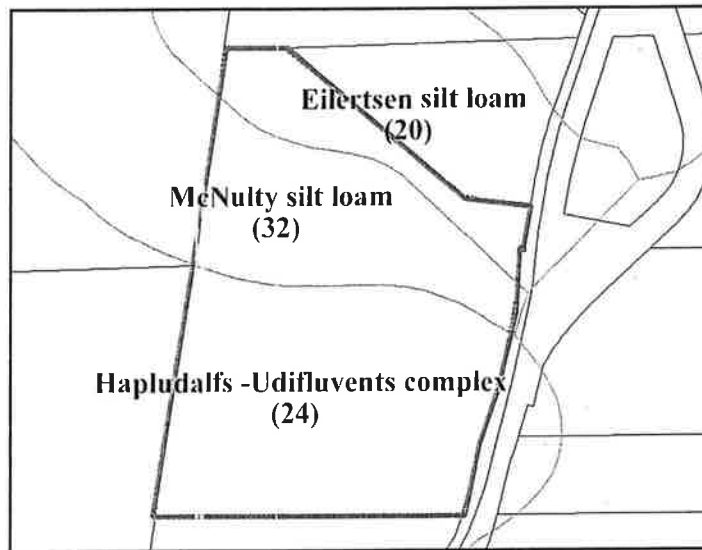


Soil Survey of Columbia County, Oregon:

Soils on the ± 9.45 acre property are as follows:

	Site Index <u>CMAI</u>	Est. % <u>of Area</u>	Ag.Cap. <u>Class</u>
20 - Eilertsen silt loam 0 to 3 % slopes	172	10%	IIc
32 - McNulty silt loam 0 to 3 % slopes	NA	30%	IIw
24 - Hapludalfs - Udifluents complex 0 to 3 % slopes	Variable	60%	VIe

Soil Map - PC Maps



Finding 4: According to the Soil Survey of Columbia County, the ± 9.45 acre property's soils consist of Eilertsen silt loam (20), McNulty silt loam (32) and Hapludalfs - Udifluvents complex (24). As demonstrated on the soil map above, approximately 60% of the site (±5.66 acres) consists of soil type 24, approximately 30% of the site (±2.84 acres) consists of 32 and approximately 10% of the site (±0.95 acres) consists of soil type 20. Said soils are characterized by a 0 to three percent slope, moderate permeability, a slow rate of runoff and a slight to moderate hazard of water erosion. The Soil Survey of Columbia County identifies all soil types as suitable for wildlife habitat; additionally identifies Eilertsen silt loam and McNulty silt loam soils as suitable for hay, pasture, and recreational development; identifies Eilertsen silt loam and Hapludalfs-Udifluvents complex as suitable for timber production; and only Eilertsen silt loam as suitable for homesite development. It appears that the dwelling, as currently sited, is located on the portion of the property composed of Eilertsen silt loam soils.

Although the site is heavily forested (see aerial photograph), soil types present on the subject property do not account for "high-value" forestland. ORS 195.300(11)(a) defines "high-value" forestland as land "that is located in western Oregon and composed predominantly of soils capable of producing more than 120 cubic feet per acre per year of wood fibre and that is capable of producing more than 5,000 cubic feet of commercial tree species." According to the Soil Survey of Columbia County, Eilertsen silt loam soils are capable of producing 172 cubic feet of Douglas-fir wood fibre per acre per year (based on the growth at the culmination of the mean annual increment-CMAI-for 60 year old Douglas-fir trees 1.5 inches or larger in diameter at breast height). McNulty silt loam is not identified as a soil conducive to timber production and Hapludalfs-Udifluvents complex soil has a variable Douglas-fir site index. The overall timber yield of a property is calculated by multiplying the CMAI of a specific soil type by the acreage containing that soil type. As Eilertsen silt loam is the only soil type on the subject property with a documented wood fiber production capability, the timber yield for the ± 9.45 acre property is calculated as follows: $0.95 \text{ acres} \times 172 = 163.4$. Due to the parcel's size and minimal production potential, the applicant shall not be required to submit a Forest Resource Management Plan or Forest Land Assessment.

Finally, although the subject property has been approved for a dwelling through approval of a Measure

37/Measure 49 claim, the site is also eligible for the siting of a dwelling based on the template dwelling criteria of Section 506.4 of the Columbia County Zoning Ordinance. The template dwelling criteria is discussed in Finding 14 of this report - but it is important to note that soil types play a role in determining the number of dwellings and parcels required to be located within a 160 acre square or rectangular area, measured from the center of the subject property, for said property to be eligible for a dwelling.

An analysis of the soil types present on the ± 9.45 acre property indicate that, although there is resource value in the subject property, it is not considered “high-value” forestland (per soil types alone), and based on the soil composition of the subject property, Staff has determined that physical construction of a dwelling (on the site) is feasible. The Soil Survey of Columbia County identifies limitations for development, including the hazard of flooding and rare periods of overflow, on Eilertsen silt loam and McNulty silt loam soils, but said limitations can be overcome through compliance with the County’s floodplain development standards as discussed in Finding 30 of this report.

Beginning with the Columbia County Zoning Ordinance (Sections 501, 502, 504):

Section 500 PRIMARY FOREST ZONE - 80 PF-80

501.1 Purpose: The purpose of this zone is to retain forest land for forest use and to encourage the management of forest land for the growing, harvesting, and processing of forest crops consistent with the Oregon Forest practices Act. Uses in this zone will also provide for other forest uses including watershed protection, soil protection, maintenance of clean air and water, wildlife and fisheries habitat, outdoor recreation activities, open space and scenic preservation, and agricultural activities free from the encroachment of conflicting non-forest uses and influences.

The Primary Forest (PF) Zone is intended to:

- F. Provide for dwellings under prescribed conditions.

502 Table of Authorized Uses & Development. The following uses, activities, and development are authorized in the Primary Forest Zone, subject to review and approval under applicable regulatory standards:

Key

P	Permitted outright.
AR	Subject to administrative review pursuant to Section 1601.
CUP/PC	Subject to Planning Commission review and approval as a conditional use pursuant to Section 1503.

Note: The CCZO Section Column lists only subsections of authorization and specific criteria of this PF-80 zone. Other criteria may apply to a proposed use such as site design review, overlay zoning, special use standards, or conditional use permits.

<u>TABLE OF AUTHORIZED USES & DEVELOPMENT</u>		
SINGLE-FAMILY RESIDENCES	AUTHORIZATION	PF - 80 SECTION

TABLE OF AUTHORIZED USES & DEVELOPMENT

"Template" Forest Land Dwelling	AR	504.1, 506.4, 506.5, 507- 510
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504 Uses Subject to Administrative Review. The following uses are permitted, subject to review and approval under prescriptive standards specified herein and as may otherwise be indicated by federal, state and local permits or regulations using the process contained in Section 1601. All authorized dwellings and permanent structures shall meet the standards listed in Sections 506, 507, 508, 509 and 510 of this Ordinance.

- .1 Single-family dwelling, as authorized under Section 506 of this Ordinance and such accessory buildings and uses as are normally associated with a single-family dwelling.

Finding 5: Sections 501.1 (Purpose of the PF-80 Zone), 502 (Table of Authorized Uses) and 504 (Uses Subject to Administrative Review) of the Columbia County Zoning Ordinance address the allowance of dwellings in the forest (PF-80) zone. The purpose (Section 501.1.F) of the PF-80 Zone acknowledges that dwellings are appropriate in the forest zone under certain conditions, and Sections 502 and 504 specifically identify the land use review process and applicable sections of the Zoning Ordinance that shall be met prior to the siting of a dwelling in the forest zone. The applicant's approval to site a dwelling on the subject property is two-fold. As discussed in Finding 3 of this report, the State of Oregon approved the site for one single-family residence through a Measure 37/Measure 49 claim. Additionally, the subject property passed the template test as described in Section 506.4 of the County's Zoning Ordinance. CCZO Section 506.4 is as follows:

506 Standards for Dwellings. Dwellings are authorized in the Primary Forest Zone subject to standards found in Sections 507, 508, 509, 510 and documentation of meeting either the Small Tract, Large/Multi-Tract, or Template Dwelling criteria as follows.

- .4 Template Dwelling for Tracts Smaller than 80 Acres. A dwelling may be authorized on a tract that satisfies and meets all the following criteria:

- A. The tract is composed of soils that meets one of the following:

- 1. Soils that are capable of annually producing more than 85 cubic feet per acre of wood fibre if:

- a. All or part of at least 11 other lots or parcels that existed on January 1, 1993 and are not within an Urban Growth Area are within a 160 acre square centered on the center of the subject tract. (Note: If the tract abuts a road that existed as of January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road to the maximum extent possible); and

- b. At least three (3) dwellings existed on January 1, 1993

and continue to exist on the other lots or parcels; or

Finding 6: As discussed in Finding 4, the tract contains soils capable of producing more than 85 cubic feet per acre of wood fibre annually, and therefore, shall have at least 11 other lots or parcels, that existed on January 1, 1993 within a 160 acre square or rectangle measured from the center of the subject tract, and at least three dwellings that existed on January 1, 1993 and continue to exist on the other lots or parcels. The subject tract abuts Keasey Road and was therefore eligible to use a rectangular template. This template is a one mile long and one quarter mile wide, 160-acre rectangle that is centered on the center of the subject tract and aligned with the road. The subject property passed the template test with 16 parcels and 11 dwellings.

As such, the site is eligible for a residence through the template test provisions of Section 506.4 of the Columbia County Zoning Ordinance. Notwithstanding other requirements of the Zoning Ordinance as discussed throughout this report, Staff finds that a dwelling may be permitted on the property subject to administrative review.

Continuing with the Columbia County Zoning Ordinance Section 507:

507 Siting of Dwellings and Structures

- .1 All new dwellings and structures are subject to the siting standards in this section. Relevant physical and locational factors including, but not limited to, topography, prevailing winds, proximity to existing roads, access, surrounding land use and source of domestic water shall be used to identify a site which:
 - A. Has the least impact on nearby or adjacent lands zoned for forest or agricultural use;

Finding 7: The subject property is surrounded in every direction by other PF-80 zoned properties employed for forest management and residential use. Properties adjacent to the site to the north, west and south are forested and vacant, whereas properties east of the site, across Keasey Road, are developed with single-family dwellings. As currently sited, the partially completed dwelling is approximately 105 feet from the north property line, approximately 280 feet from the east property line (Keasey Road), more than 500 feet from the south property line and approximately 230 feet from the west property line. The dwelling is located (approximately) in the middle of the site at the north end of the property. The structure's setbacks from property lines, as described, serve to minimize incompatibilities between the proposed residential use and adjacent forest lands. Said setbacks, with the exception of the dwelling's setback to the north property line, are sufficient to accommodate fire buffer areas further reducing the risk of fire hazard to neighboring forest lands (see Finding 29).

As discussed previously in this report and in findings that follow, the applicant will be required to move the partially completed dwelling out of the 50' riparian corridor of Rock Creek. Staff recommends relocating the structure further east on the property, closer to Keasey Road. Movement of the structure closer to Keasey Road would further cluster development along the roadway, increasing the separation between residential development and resource uses.

Finally, development of the site in the form of a building foundation and septic system, began more than 20 years ago. Therefore, infrastructure and utilities to serve a single-family residence, presumably, have already been installed on the property and do not appear to have a significant impact on forest or farm uses in the area. Staff finds that the criterion is met subject to conditions.

- B. Ensures that forest operations and accepted farming practices on the tract will not be curtailed or impeded by locating dwellings and structures as near to each other and to existing developed areas as possible considering topography, water features, required setbacks and firebreaks;

Finding 8: As discussed throughout this report, the applicant shall relocate the dwelling to meet all applicable requirements of the Columbia County Zoning Ordinance - specifically criteria pertaining to riparian corridors and floodplain development. In (re)-siting the dwelling, the applicant shall consider a location on the property that preserves forest/farm operations of the subject tract. Currently, as described earlier, the dwelling is located in the middle of the site at the north end of the property relatively near other dwellings along Keasey Road. Preservation of the site's natural resources could potentially be enhanced by relocating the dwelling closer to Keasey Road, but as long as the dwelling remains at the north end of the site, near existing infrastructure and utilities, forest operations and/or accepted farming practices on the tract will not be curtailed or impeded. Staff finds that the criterion is met subject to conditions.

- C. Minimizes the amount of forest lands used for building sites, road access and service corridors;

Finding 9: According to the applicant, the building site encompasses a footprint of approximately 1700 square feet. The driveway travels west from Keasey Road along the north property line for approximately 280 feet to the existing homesite. The driveway has existed on the property for more than 20 years and, as stated by the applicant, has been used by logging companies to gain access to adjacent properties during timber harvests. Existing development (septic system, well, driveway, partially completed dwelling) is concentrated at the north end of the property and if relocated is anticipated to continue to exist on the north portion of the site. The conversion of forest land to residential land has been minimal due to this clustering of development. The southernmost two-thirds of the property remain undeveloped and forested. Staff finds that the criterion is met subject to conditions.

Existing Driveway



- D. Is consistent with the provisions of Section 510 related to Fire Siting Standards and

minimizes the risk associated with wildfire; and

Finding 10: The proposal is consistent with the fire siting provisions of Section 510 of the Columbia County Zoning Ordinance. Detailed analyses of said standards are included in Finding 37 of this report.

- E. Is consistent with other requirements contained in the Comprehensive Plan or implementing ordinances, including, but not limited to, regulations which apply to flood, steep slopes, and landslide hazard areas, development within the Willamette River Greenway, development in forested areas or development in significant resource and natural areas, such as wetland, riparian and slide-prone areas.

Finding 11: The proposed non-resource related, single-family dwelling complies with certain provisions of the County's Comprehensive Plan, but is in conflict with others. The proposal is consistent with Part IV of the Comprehensive Plan related to Forest Lands and Part VI of the Comprehensive Plan related to Housing. The dwelling, as partially constructed, however, is not consistent with Part XVI, Article X pertaining to Water Resources or Part XIX related to the Flood Plain. Applicable sections of the Columbia County Comprehensive Plan are addressed in Findings 12 - 15 that follow.

Beginning with the Columbia County Comprehensive Plan:

Part IV: Forest Lands of the Comprehensive Plan lists the following Policies:

- .6 Allow residential uses when it can be shown that the proposed use meets one of the three qualifications adopted by the State, known generically as the template test, lot of record dwelling and large tract test; and where it can be shown that siting standards exist that insure compatibility of the proposed residence with adjacent resource uses.
- .7 Limit dwellings to individual lots or parcels where it can be shown that:
 - A. The proposed use will not significantly impact forest uses on adjacent and nearby forest lands;
 - B. The proposed use will not significantly increase the costs of forest management on adjacent and nearby forest lands;
 - C. The dwelling site is limited in size to an area suitable and appropriate only for the needs of the proposed use;
 - D. Where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby forest lands; and,
 - E. The proposed use is consistent with the forest policies contained in the Comprehensive Plan.

Finding 12: The goals and policies of the Comprehensive Plan are supported through specific land use regulations and standards set forth in the Columbia County Zoning Ordinance. Therefore, Policies 6 and 7 of Part IV of the Comprehensive Plan are addressed in detail throughout this report. In summary, the subject property is eligible for a dwelling through the template test provisions discussed in Finding 14 and through State approval of a Measure 37/Measure 49 Claim. The allowance of a dwelling on the subject property, through siting standards addressed by the Zoning Ordinance, will be compatible with resource uses in the area, will not significantly impact forest uses or increase costs of forest management on adjacent lands, and will be limited to the smallest area necessary to feasibly accommodate the residential use. Staff finds that the criterion is met.

Continuing with the Columbia County Comprehensive Plan:

Part VI: Housing of the Comprehensive Plan lists the following Policies:

1. Encourage an adequate housing supply by providing adequate opportunity for the development of new housing units and supporting the rehabilitation of the existing housing units when feasible.
2. Develop land use designations that provide for a wide range of housing units.
4. Encourage development which will provide a range of choices in housing type, densities, price, and rent ranges throughout the County.
9. Allow the siting of mobile homes anywhere a single-family dwelling is allowed.
11. Allow the development of a permitted residential use on a lot of record under single ownership if it meets all the sanitation regulations and all other applicable County codes and ordinances.

Finding 13: The primary goal of the Housing section is to “provide for the housing needs of the citizens of the County by allowing adequate flexibility in housing location, type and density.” The applicant is proposing to construct a non-resource related, single-family dwelling in a rural part of the County zoned primarily for forest use. The site was approved for a dwelling through the template dwelling provisions and by the State of Oregon through Measure 49. The template test recognizes the benefit of allowing people to site dwellings on resource zoned lands that are typically too small to dedicate to large-scale forest management and that are located in areas already significantly developed for rural residential purposes. The template test provides a housing market for those who prefer a rural, low density setting and/or for those that want to live on the land that they work for farm or forest purposes. The allowance of one single-family residence on the subject property will provide housing for a resident of Columbia County. Staff finds that the criterion is met.

Continuing with the Columbia County Comprehensive Plan:

Part XVI, Goal 5; Article X lists the following Goals and Policies:

Goal:

To protect and maintain the quality of water resources in Columbia County.

Policies: It shall be the policy of Columbia County to:

1. Cooperate and coordinate with State and Federal agencies in assuring the maximum beneficial use of all water areas in the County.
3. Protect areas significant for the recharge of groundwater resources such as wetlands and riparian areas.
9. Protect riparian vegetation along streams and lakes by requiring appropriate setbacks for nonwater-dependent uses and standards for removal of riparian vegetation.
11. Require that all development be planned, designed, constructed, and maintained so as to

avoid the probability of accelerated erosion; pollution, contamination, or siltation of lakes, rivers, and streams; damage to vegetation; or injury to fish and wildlife habitats.

12. Minimize the removal of trees and other native vegetation that stabilize hillsides, retain moisture, reduce erosion, siltation and runoff, and preserve their natural scenic character.
17. Protect water quality by applying Riparian Corridor and Wetland Overlay Zones which discourage development in sensitive areas that affect the water resource.

Finding 14: Findings in Columbia County's Comprehensive Plan state:

"Development activities contribute significantly to riparian area degradation. To limit the consequences of conflicting uses and protect the riparian area the County will adopt the 'safe harbor' provisions of State Goal 5, creating a Riparian Corridor Overlay Zone and a Wetland Overlay Zone. The Riparian Corridor Overlay Zone will be applied to all rivers, streams, creeks, lakes and associated wetlands identified in Part XVI, Article X(B)(1) - Definitions, above. The County will also apply storm drainage measures to minimize erosion along and within significant riparian corridors and their associated wetlands. In addition, the County will rely on state and federal programs to help prevent riparian area degradation."

Section 1170 of the County's Zoning Ordinance addresses the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone and establishes specific standards to protect bodies of water. Section 1172.A(2) requires a 50' riparian corridor to be maintained along all fishbearing streams with an average annual stream flow of less than 1,000 cubic feet per second (cfs). Said riparian corridor shall be measured from the top bank of the stream, or where wetlands are present from the upland edge of the wetland.

As discussed previously in this report, Rock Creek runs through the subject property. As per the Clear Creek, OR, Oregon Department of Forestry Stream Classification Map, Rock Creek is a large, fishbearing stream. Additionally, according to the Birkenfeld, OR National Wetland Inventory (NWI) Map, there are Palustrine, Forested, Broad Leaved Deciduous, Intermittently Flooded (PFOIJ) wetlands associated with the creek. As such, a 50' riparian corridor, as described above, must be maintained along the creek bank, and in accordance with Section 1173.A of the County's Zoning Ordinance, construction of buildings/structures is prohibited in this area.

The applicant began construction of an approximately 1700 square foot dwelling just eight feet (including the attached deck) from the top bank of Rock Creek. This development was conducted without building permits and is located in conflict with the riparian corridor regulations described above. Such regulations were implemented to support the goals and policies of the Comprehensive Plan - to protect and maintain the quality of water resources in the County. The partially completed dwelling is sitting within the riparian corridor, and therefore, does not meet Zoning Ordinance or Comprehensive Plan requirements. Staff finds that the criterion is not met. To meet this criterion, the applicant must be required to bring the dwelling into compliance with all applicable regulations pertaining to wetlands and riparian corridors.

Continuing with the Columbia County Comprehensive Plan:

Part XIX, Natural Disasters and Hazards (Floodplain) lists the following Goals and Policies:

Goal:

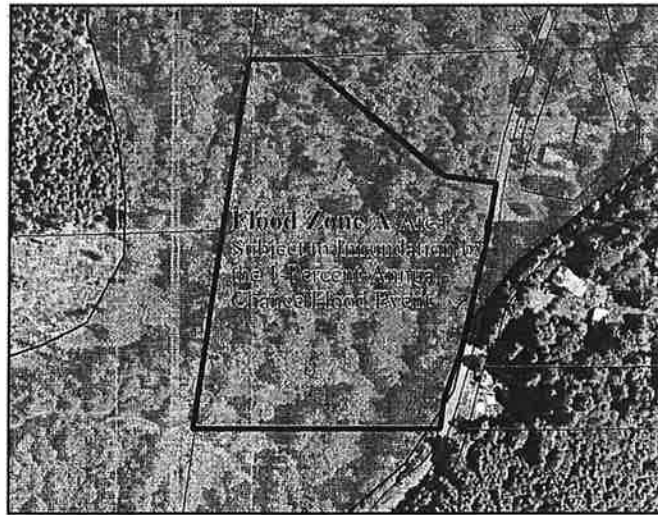
Eliminate or reduce the economic and social costs created by flood-caused damages.

Policies:

1. Columbia County will participate in the National Flood Insurance Program administered by the Federal Emergency Management Agency (FEMA).
2. Any new development within the flood plain shall be designed to avoid damage from flooding and to minimize the damage potential to other developments or properties.
5. Development in areas subject to flooding shall be permitted only in accordance with the provisions of the Flood Hazard (FH) Overlay Zone. The FH Overlay Zone shall be applied to all areas subject to periodic flooding at a frequency estimated to occur once every hundred years or more, as shown on FEMA's most recent Flood Hazard Boundary Maps for Columbia County. Columbia County's Flood Hazard Overlay Zone shall be based on and consistent with the applicable portions of Section 60.3 of FEMA regulations governing the National Flood Insurance Program.
6. Retain and restore natural or other suitable vegetation adjacent to waterways.

Finding 15: Section 1100 of the County's Zoning Ordinance sets forth regulations to address the Flood Hazard Overlay Zone and development therein. The requirements of the Flood Hazard Overlay Zone were established to support the goals and policies of the Comprehensive Plan related to natural disasters and hazards. The subject property is located (almost) entirely within the 1-percent-annual-chance flood event zone (Zone A) as mapped by FEMA on Flood Insurance Rate Map (FIRM) No. 41009CO375 D. Residential development is allowed within the flood hazard area if constructed in accordance with the standards of the Flood Hazard Overlay Zone. Prior to any construction or development in a flood zone, a floodplain development permit must be obtained by the applicant and approved by the Land Development Services Administrator (CCZO Sections 1105 and 1106). This permit verifies that development is elevated one foot above the base flood elevation of the site and that the structure has been designed to withstand flood waters.

Flood Plain Map - PC Maps (2010)



The applicant did not obtain a floodplain development permit prior to the commencement of construction. The applicant did, however, submit a Flood Elevation Certificate (prepared by a licensed Surveyor) as part of this application. Based on the elevation certificate submitted, it appears that the lowest floor, including the basement, is elevated two feet above the base flood elevation. The Base Flood Elevation for the proposed building site is identified as 778.6', and the top of the bottom floor sits at 780.6'. Although it appears that the structure may meet development requirements of the flood hazard overlay zone, the applicant shall formally apply for a floodplain development permit concurrent with building permits for the dwelling. A decision will be made at that time as to the proposal's consistency with the floodplain requirements of the County's Comprehensive Plan and Zoning Ordinance. As a floodplain development permit has not yet been reviewed or approved for this property, Staff finds that the criterion is not met.

Continuing with the Columbia County Zoning Ordinance (Section 507):

- .2 The applicant shall provide evidence consistent with OAR 660-006-0029(3) that domestic water supply is from a source authorized in accordance with the Department of Water Resources' administrative rules for the appropriation of ground water or surface water in OAR Chapter 690 and not from a Class II stream as defined in the Forest Practices Rule in OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the subject property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

Finding 16: According to the applicant and as demonstrated on the site plan, a well already exists on the subject property. Prior to the issuance of building permits, the applicant must submit a well log to Land Development Services verifying the presence of potable water on the site. Staff finds that the criterion is met subject to conditions.

Continuing with the Columbia County Zoning Ordinance (Section 507):

- .3 As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry or the U.S. Bureau of Land management, then the applicant shall provide proof of a long-term road access use

permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

Finding 17: Access to the subject property is obtained directly from Keasey Road. Keasey Road is a public, County roadway and does not require an easement for use. Comments from the County's Transportation Planner indicate, however, that a new road access permit shall be required for use of the existing driveway. The Transportation Planner's comments are as follows: "As the road surface conditions and driveway may have changed, I am requiring a new access permit. As there is an approved 1977 permit, there will be no permit fee." Although an easement for access is not required, permits for access shall be obtained prior to the issuance of building permits. Staff finds that the criterion is met subject to conditions.

Continuing with the Columbia County Zoning Ordinance (Section 507):

- .4 Pursuant to OAR 660-006-0029 (5), approval of a dwelling shall be subject to the following requirements:
 - A. The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in the Department of Forestry administrative rules;
 - B. Land Development Services shall notify the Columbia County Assessor of the above condition at the time the dwelling is approved;
 - C. If the property is over 10 acres the owner shall submit a stocking survey report or a Forest Land Assessment and Stocking Compliance Application to the Columbia County Assessor and the Assessor shall verify that the minimum stocking requirements have been met by the time required by the Department of Forestry administrative rules;
 - D. Upon notification by the Assessor, the Department of Forestry shall determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department determines that the tract does not meet those requirements, the Department shall notify the owner and the Assessor that the land is not being managed as forest land. The Assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose additional tax pursuant to ORS 321.372; and

Finding 18: The applicant shall coordinate with the Oregon Department of Forestry (ODF) and the Columbia County Assessor to meet the requirements of OAR 660-06-0029(5). Such coordination will determine the need (or not) for tree stocking requirements, as well as tax implications resulting from development and/or forest management of the subject property. The applicant shall not be required to submit a Forest Land Assessment and Stocking Compliance Application based on the subject property's lesser than 10 acre lot size. Staff finds that the criterion is met subject to conditions.

Continuing with the Columbia County Zoning Ordinance (Section 507):

- E. A waiver of remonstrance shall be recorded with the County Clerk certifying that the owner will not remonstrate against or begin legal action or suit proceeding to cause or persuade the owner or operator of any farm and forest lands to modify the conduct of legal and accepted farm and forest operations.

Finding 19: As a Condition of Final Approval, the property owner/applicant shall sign and record a Waiver of Remonstrance certifying that he/she will not remonstrate against or begin legal action or suit proceeding to cause or persuade the owner or operator of any farm and forest lands to modify the conduct of legal and accepted farm and forest operations. Staff finds that the criterion is met subject to conditions.

Continuing with the Columbia County Zoning Ordinance (Section 507):

- .5 Dwellings and other structures to be located on a parcel within designated Big Game Habitat areas pursuant to the provisions of Section 1190 are subject to the additional siting criteria contained in Section 1190.

Finding 20: The subject property is located in Peripheral Big Game Habitat. The proposal's consistency with Section 1190 of the Columbia County Zoning Ordinance is discussed in Finding 41 of this Staff Report.

Continuing with the Columbia County Zoning Ordinance (Section 508):

- 508** **General Review Standards** The Planning Director or hearings body shall determine that a use authorized by Sections 504 and 505 meets all of the following requirements:
- .1 The proposed use will not force significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
 - .2 The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel;
 - .3 A waiver of remonstrance shall be recorded with the County Clerk certifying that the owner will not remonstrate against or begin legal action or suit proceeding to cause or persuade the owner or operator of any farm or forest lands to modify the conduct of legal and accepted farm or forest operations; and
 - .4 The proposed use is consistent with requirements contained in the Comprehensive Plan or implementing ordinances, including, but not limited to, regulations which apply to flood hazard areas, development within the Willamette River Greenway, development in forested areas or development in significant resource areas, such as riparian, wetlands or slide-prone areas.

Finding 21: The General Review standards of CCZO Section 508 are addressed thoroughly in other Findings throughout this report. The proposal's impacts to adjacent and nearby forest and agricultural lands are addressed in Findings 7 - 11. The risk of increased fire hazard and measures to minimize said risk as the result of siting a dwelling in the forest zone is addressed in Finding 37. The requirement for a Waiver of Remonstrance is included as a Condition of Approval. Finally, the proposal's consistencies and conflicts with applicable sections of the Comprehensive Plan are addressed in Findings 12 - 15 of this report.

Continuing with the Columbia County Zoning Ordinance (Section 509):

509 Standards of Development

- .1 The minimum average lot or parcel width and minimum average lot or parcel depth shall be 100 feet for all activities except farming or forestry.

Finding 22: Dimensions of the ± 9.45 acre property exceed the 100 foot minimum lot width and depth requirements of CCZO Section 509.1. Staff finds that the criterion is met.

- .2 Access to parcels in this zone shall meet Fire Safety Design Standards for Roads in the County Road Standards and access standards found in Section 510 of the Zoning Ordinance.

Finding 23: The existing driveway providing access from Keasey Road to the proposed home site, shall meet Fire Safety Design Standards for Roads in the County Road Standards and access standards found in Section 510 of the Columbia County Zoning Ordinance. As discussed in Finding 25, the applicant shall be required to obtain a new road access permit from the Columbia County Road Department. Verification of an approved access permit shall be submitted to Land Development Services prior to the issuance of building permits. Likewise, the applicant shall be required to construct the driveway to fire apparatus access standards and submit verification to Land Development Services that the Vernonia Rural Fire Protection District approved the driveway for fire safety (see Finding 37). Staff finds that the criterion is met subject to conditions.

- .3 There shall be no height limitation for forest operation and management- related structures unless otherwise permitted in the Primary Forest Zone. The maximum building height for all non-farm, non-forest structures shall be 50 feet or 2 ½ stories, whichever is less.

Finding 24: Construction of a non-resource related single-family dwelling on the subject property shall not exceed 50 feet or 2 ½ stories, whichever is less. Staff finds that the criterion is met subject to conditions.

- .4 The standards and requirements described in Section 1300 of the Zoning Ordinance shall apply to all signs and name plates in the Primary Forest Zone.

Finding 25: Section 1300 pertaining to signs is not applicable to this request for the siting of a dwelling.

- .5 The Oregon Department of Fish & Wildlife shall be notified and provided with the opportunity to comment on any development within major and peripheral Big Game Habitat.

Finding 26: The Oregon Department of Fish and Wildlife (ODFW) was notified of this request and comments were submitted from Dave Stewart, ODFW Habitat Conservation Biologist. Comments are as follows:

“The project is within the 50' riparian set-back and it appears that the landowner has space to accommodate this ordinance...The Oregon Department of Fish and Wildlife has reviewed a Conditional Use Permit application to build a home on land directly adjacent to Rock Creek near Vernonia, Oregon. Any development within or adjacent to wetlands and waterways could result in a loss of fish and wildlife habitat, and would require that the

impacts be mitigated consistent with current habitat mitigation standards (OAR 635, Division 415).

ODFW recommends that the project be designed to avoid entering County designated riparian setbacks. It appears that the proposed structure is encroaching upon the riparian setback and we request a more detailed description of how the landowner is going to avoid these impacts. The application also discusses dropping trees throughout the creek for fish habitat. Authorization from the Department of State Lands and ODFW is required prior to any placement of Large Woody Debris into streams. Please contact ODFW in order to discuss the proposed activities further and the possibility to conduct a site visit.”

As discussed throughout this report, although the applicant was originally permitted in 1979 to construct a dwelling within the riparian corridor, said permit was both issued and expired prior to the 2003 adoption of riparian corridor standards. No construction, with the exception of a foundation, took place prior to 2003. All construction of the partially completed dwelling began without building permits sometime in 2009. As such, this development is subject to the riparian corridor standards discussed in Finding 39. Protection of the riparian corridor is directly connected and vital to the health of big game habitat.

In an attempt to avoid moving the dwelling out of the 50' riparian corridor of Rock Creek, the applicant submitted a Forest Management Plan, prepared by Karbinus Forest Management Services, that acknowledges a successful coexistence of the creek and the dwelling subject in part to the design of the home, the distance between the structure and the high water line and measures taken (and to be taken) by the applicant to stabilize the riparian area through additional vegetative plantings. The applicant also suggests that he will mitigate impacts to the riparian corridor by following recommendations set forth by the Columbia Soil and Water Conservation District for mitigation measures. The recommendations address the elimination of invasive species on site, dropping trees throughout the creek for enhanced fish habitat and planting additional trees in the area for shading and animal habitat. Such recommendations will enhance the quality of the riparian corridor along Rock Creek in this area, but Columbia County's Zoning Ordinance does not allow for mitigation measures in place of the riparian corridor setback. As such, in order to protect the big game habitat of the subject property, the applicant shall be required to move the dwelling outside of the riparian corridor boundary as suggested and preferred by the Oregon Department of Fish and Wildlife. Following notification and comment, ODFW's recommendations are being considered and implemented. Staff finds that the criterion is met.

.6 Setbacks:

- A. There shall be a minimum setback of 50' for front, side, and rear yards for all development in the Primary Forest Zone.
- B. When this Ordinance or any other ordinance requires a greater or lesser setback than is required by this subsection, the greater setback shall apply.
- C. All structures are subject to any special setbacks when adjacent to arterial or collector streets designated in the County Transportation Systems Plan.
- D. No structure or use shall be established in a manner likely to cause contamination of a stream, lake or other body of water. Riparian and natural hazard setbacks set forth in Sections 1170 and 1182 of the Zoning Ordinance shall apply.

- E. When land divisions create parcels of less than 40 acres for uses listed in Subsection 511.2A., provided those uses have been approved pursuant to this Ordinance, required building setbacks for these parcels will be determined on a case-by-case basis by the Director or the hearings body.
- F. The owner shall provide and maintain primary fuel-free fire break and secondary fire break areas on land surrounding the dwelling and primary fuel-free break areas surrounding accessory structures in the Primary Forest Zone pursuant to the provisions in Subsections 510.2 and .3.

Finding 27: As demonstrated on the site plan and as measured by Staff on an aerial photograph, the dwelling (as sited) meets the 50' front, side and rear yard setbacks from property lines required by the PF-80 Zone. Said zone also requires setbacks to accommodate primary and secondary fuel-free fire breaks. The standard fire break for the PF-80 zoning district consists of a minimum 30-foot primary and a 100-foot secondary fuel-free break for a total of 130 feet, or their equivalents as listed in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991. The applicant has demonstrated on the submitted site plan that primary fire break requirements can and will be satisfied. The setback for the secondary fire break, however, is not met by the dwelling in its current location and has the potential to be further reduced by relocating the dwelling out of the riparian corridor of Rock Creek. Although the primary fire break shall be met, secondary fire breaks may be reduced through the use of alternatives such as easements and ignition resistant construction. These alternatives are detailed in Finding 37 that follows.

Finally, Section 509.6(D) addresses riparian corridor setbacks. This issue is discussed at length throughout the report. See Finding 39 for a detailed analysis of the proposal as it pertains to the setback standards associated with the riparian corridor of Rock Creek.

In summary, Staff finds the following:

The 50' property line setbacks for the zone are met. The 30' primary firebreak setbacks are met. The 100' secondary firebreak setbacks cannot be met and shall either be met by relocating the dwelling to 130' from all property lines or through secondary fire break equivalents. The riparian corridor setbacks of CCZO Section 1170 are not met. The applicant shall submit a revised site plan demonstrating consistency with the setbacks outlined in Section 506.9 of the Columbia County Zoning Ordinance.

Note: Setbacks identified by the applicant, for the dwelling from property lines, are significantly different than the setbacks identified by Staff. It is important for the revised site plan to exactly reflect the dwelling's setbacks from all property lines.

- .7 **Approval Period for Use Permits.** For all uses approved under sections 504 and 505, the approval period shall be valid for four (4) years. At a minimum, a development construction permit must be issued by the Land Development Services within the approval period. If a construction permit is not issued within the approval period, the land use permit expires. An extension of two years on the approval period may be granted by the Director if a written request is received prior to its expiration and the reason for the delay is beyond the control of the owner.

Finding 28: Approval of RDF 11-01 is valid for four years from the date of the final order. If a construction permit has not been issued by Land Development Services within the approval period, the land use permit expires.

Continuing with the Columbia County Zoning Ordinance (Section 510):

510 Fire Siting Standards for Dwellings, Structures and Roads:

The following fire siting standards or their equivalent shall apply to new dwellings in this zone:

- .1 If a water supply is available, suitable and acceptable for fire protection by the fire protection district, such as a swimming pool, pond, stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access to the dwelling and access to the on-site water supply shall accommodate the turnaround of fire fighting equipment during the fire season. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.
- .2 The owner of the dwelling shall establish and maintain a primary fuel-free fire break surrounding the dwelling and accessory structure(s) no less than 30 feet wide in accordance with the provisions in "Protecting Your Home From Wildfire" published by the National Fire Protection Association. The owner may be required to increase the primary fuel-free fire break if the dwelling or structure is located on a 10% or greater slope. The primary fuel-free fire break could include a lawn, low ornamental shrubbery less than 24" in height and/or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All existing tree limbs shall be pruned from the base to at least eight feet in height. Dead fuels shall also be removed.
- .3 A secondary fire break of 100 feet outside the primary fuel-free fire break, or its equivalent allowed by Columbia County Board Order No. 239-97 Firebreak Equivalents, shall also be provided and maintained for the dwelling in accordance with the provisions in "Protecting Your Home From Wildfire" published by the National Fire Protection Association. All existing trees shall be pruned from the base to at least 8 feet in height. Dead fuels shall be removed from the secondary fire break area. If the placement of the proposed dwelling cannot meet the secondary fire break due to physical constraints of the land or parcel size, the applicant may apply to obtain a secondary fire break easement from a neighbor or build the structure to a Class 1 or 2 Ignition Resistance Construction as allowed by Board Order No. 239-97, Firebreak Equivalents.
- .4 All roads in this zone, except private roads and bridges for commercial forest uses, shall be constructed so as to provide adequate access for fire fighting equipment according to the standards provided by the local rural fire protection district, the County Road Department, or the State Department of Forestry.
- .5 No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stove pipe or chimney.
- .6 A dwelling shall meet all of the following requirements:
 - A. The dwelling shall have a fire retardant roof;
 - B. The dwelling shall not be sited on a slope of greater than 40 percent;

- C. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester; and
 - D. The dwelling shall be located upon a parcel within a fire protection district unless the applicant meets the criteria of subsection 510.7.
- .7 If the dwelling is not within a fire protection district, the applicant shall provide written documentation to the County of residential fire protection. The applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the County determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the County and fire protection district may provide an alternative means for protecting the dwelling from fire hazards which may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable given the site conditions.

Finding 29: The project site is located within the Vernonia Rural Fire Protection District. The District was notified of the request and had no objection to its approval as submitted. In order to minimize the risk of fire hazard to the proposed dwelling and surrounding forest lands, the Fire Siting Standards for Dwellings, Structures and Roads as outlined in Section 510 of the Columbia County Zoning Ordinance shall apply to this request. Primary and secondary fuel-free fire breaks, or their equivalents, shall be required for the proposed dwelling and all accessory structures in accordance with Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards for Roads, dated March 1991 and published by the Oregon Department of Forestry (or) Equivalent Fire Buffers approved by Columbia County Board Order No. 239-97.

Although not shown on the submitted site plan, the applicant has stated that a 30 foot primary fire break will be maintained on the subject property. Due to the parcel's size and configuration, however, it appears that the applicant will not be able to maintain a 100 foot secondary fire buffer on site. Therefore, the applicant will be required to obtain a Secondary Fire Break Easement and Maintenance Agreement from the neighboring property owner, or construct the home to ignition resistant standards. When a secondary fire break zone is less than 100 feet, but more than 50 feet the dwelling shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition-Resistance Construction, and when the secondary fire break zone is 50 feet or less, all area shall be maintained as primary fire break zone and the dwelling constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 1 Ignition-Resistance Construction. These buffers and/or increased ignition resistant construction standards should provide adequate fire protection for the new home and nearby timber properties. A revised site plan identifying the primary and secondary fire breaks in conjunction with (either) a secondary fire break easement or building plans indicating IR-1 or IR-2 construction standards shall be submitted prior to the issuance of building permits.

Also, in accordance with CCZO Section 510.1, the Vernonia Rural Fire Protection District is interested in working with the applicant to establish a "Fire Department Draft Site." Rock Creek runs through the subject property and is a suitable water supply for fire protection. The Fire District has commented that the existing driveway could be used to provide access to the creek for fire fighting equipment. Prior to the issuance of any building permits the driveway used to access the site shall be constructed to provide adequate access to the home site and creek for fire fighting equipment according to the standards of the Vernonia Rural Fire Protection District, the County Road Department and the State Department of Forestry. The applicant shall submit verification to Land Development Services that said standards have been satisfied prior to the issuance of a building permit. The applicant shall also provide verification

from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use.

Finally, in accordance with Section 510.6, the dwelling shall have a fire retardant roof, be sited on a slope of less than 40 percent and shall have a spark arrester on the chimney. Staff finds that the criterion is met subject to conditions.

Continuing with the Columbia County Zoning Ordinance (Section 1100):

Section 1100 FLOOD HAZARD OVERLAY FH

1101 Purpose: It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- .1 To protect human life and health;
- .2 To minimize expenditure of public money and costly flood control projects;
- .3 To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- .4 To minimize prolonged business interruptions;
- .5 To minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- .6 To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- .7 To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- .8 To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

1104 Basis for Special Flood Hazard Areas

- .1 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 November 26, 2010, 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.

1105 Development Permit

- .1 A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 1104. The permit shall be for all structures allowed by the underlying zone, including

manufactured homes, as set forth in the "Definitions", and for all development including fill and other activities, also set forth in the "Definitions".

1106 Administration

- .1 The Land Development Services Administrator, or his designee, is appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.
- .2 Duties of the Administrator shall include, but not be limited to, reviewing all development permits to determine:
 - A. That the permit requirements of this ordinance have been satisfied.
 - B. That all necessary permits have been obtained from those Federal, State, or local government agencies from which prior approval is required.
 - C. If the proposed development is located in the floodway, assure that the encroachment provisions of Section 1110 are met.
- .3 When base flood elevation data has not been provided in accordance with Section 1104, Basis for Special Flood Hazard Areas, the Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer Sections 1109 Specific standards, and 1110 Floodways.
- .4 Where base flood elevation data is provided through the Flood Insurance Study or required as in Section 1106.3, the Administrator will obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basements and crawlspaces) of all new or substantially improved structures, and whether or not the structure contains a basement.

1108 General Standards

- .1 Anchoring
 - A. All new construction and substantial improvement shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- .2 Construction Materials and Methods
 - A. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - B. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
 - C. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Sections 1104 or 1106.3, the following provisions are required:

.1 Residential Construction

- A. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum of one (1) foot above the base flood elevation.
- B. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - (1) A Minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (2) The bottom of all openings shall be no higher than one foot above grade.
 - (3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

Finding 30: As discussed in Finding 1 of this report, Measure 49 approval for the siting of a dwelling on the subject property does not exempt the applicant from provisions of the Zoning Ordinance established to protect public health and safety. Columbia County's Flood Hazard Overlay Zone identifies areas in the County that have been mapped by FEMA as being prone to flooding. Specifically, the subject property is identified by FEMA Flood Insurance Rate Map (FIRM) No. 41009CO375 D as being located (almost) entirely within the flood plain of Rock Creek and vulnerable to inundation by the 1-percent-annual-chance flood event. The site is located in Flood Zone A. As stated in Finding 23 of this report, residential development is allowed within the flood hazard area if constructed in accordance with the standards of the Flood Hazard Overlay Zone. Prior to any construction or development in a flood zone, a floodplain development permit shall be obtained by the applicant and approved by the Land Development Services Administrator (CCZO Sections 1105 and 1106). This permit verifies that development is elevated one foot above the base flood elevation of the site and that the structure has been designed to withstand flood waters.

The applicant did not obtain a floodplain development permit prior to the commencement of construction. The applicant did, however, submit a Flood Elevation Certificate (prepared by a licensed Surveyor) as part of this application. Based on the elevation certificate submitted, it appears that the lowest floor, including the basement, is elevated two feet above the base flood elevation. The Base Flood Elevation for the proposed building site is identified as 778.6', and the top of the bottom floor sits at 780.6'. Although it appears that the structure may meet development requirements of the flood hazard overlay zone, the applicant shall formally apply for a floodplain development permit concurrent with building permits for the dwelling. A decision will be made at that time as to the proposal's consistency

with the floodplain requirements of the County's Zoning Ordinance. As a floodplain development permit has not yet been reviewed or approved for this property, Staff finds that the criterion is not met.

Continuing with the Columbia County Zoning Ordinance (Section 1170):

Section 1170 RIPARIAN CORRIDORS, WETLANDS, WATER QUALITY, AND FISH AND WILDLIFE
HABITAT PROTECTION OVERLAY ZONE RP

1171 Purpose.

- A. The purpose of this Section is to protect and restore water bodies and their associated riparian corridors, thereby protecting and restoring the hydrological, ecological and land conservation function these areas provide. Specifically, this Section is intended to protect habitat for fish and other aquatic life, protect habitat for wildlife, protect water quality for human uses and for aquatic life, control erosion and limit sedimentation, prevent property damage during floods and storms, protect native plant species, and conserve the scenic and recreational values of riparian areas.
- B. This section meets the above purpose by prohibiting structures and other development from riparian areas around fish-bearing lakes, rivers and streams and associated wetlands, and by prohibiting vegetation removal and/or other vegetative alterations in riparian corridors. In cases of hardship, the Section provides a procedure to reduce the riparian corridor boundary. Alteration of the riparian corridor boundary in such cases shall be offset by appropriate restoration or mitigation, as stipulated in this Section.
- C. For the purposes of this Section, "development" includes buildings and/or structures which require a building permit under the State of Oregon Uniform Building Code, as amended, or any alteration in the riparian corridor by grading, placement of fill material, construction of an impervious surface, including paved or gravel parking areas or paths, and any land clearing activity such as removal of trees or other vegetation.
- D. This Section does not apply to land legally used for commercial forestry operations or standard farm practices, both of which are exempt from these riparian corridor protection standards. The use of land for commercial forestry is regulated by the Oregon Department of Forestry. The use of land for standard farm practices are regulated by the Oregon Department of Agriculture, with riparian area and water quality issues governed specifically by ORS 568.210 to ORS 568.805.
- E. The provisions of this riparian protection overlay zone do not exempt persons or property from state or federal laws that regulate protected lands, water, wetland, or habitat areas. In addition to the restrictions and requirements of this Section, all proposed development activities within any wetland area may be subject to applicable state and federal agency standards, permits and approval. The applicant shall be responsible for contacting the appropriate state or federal agencies to determine whether all applicable development requirements have been met.

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.
 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 Area Overlay Zone, Columbia County Zoning Ordinance, Section 1180.

1173 Activities Prohibited within the Riparian Corridor Boundary

In addition to the prohibitions in the underlying zone, the following activities are prohibited within a riparian corridor boundary, except as provided for in Sub-sections 1175 and 1176 of this Section:

- A. The alteration of a riparian corridor by grading, placement of fill material, and/or impervious surfaces, including paved or gravel parking areas, or paths, and/or the construction of buildings or other structures which require a building permit under the State of Oregon Uniform Building Code, as amended.
- B. The removal of riparian trees or vegetation.

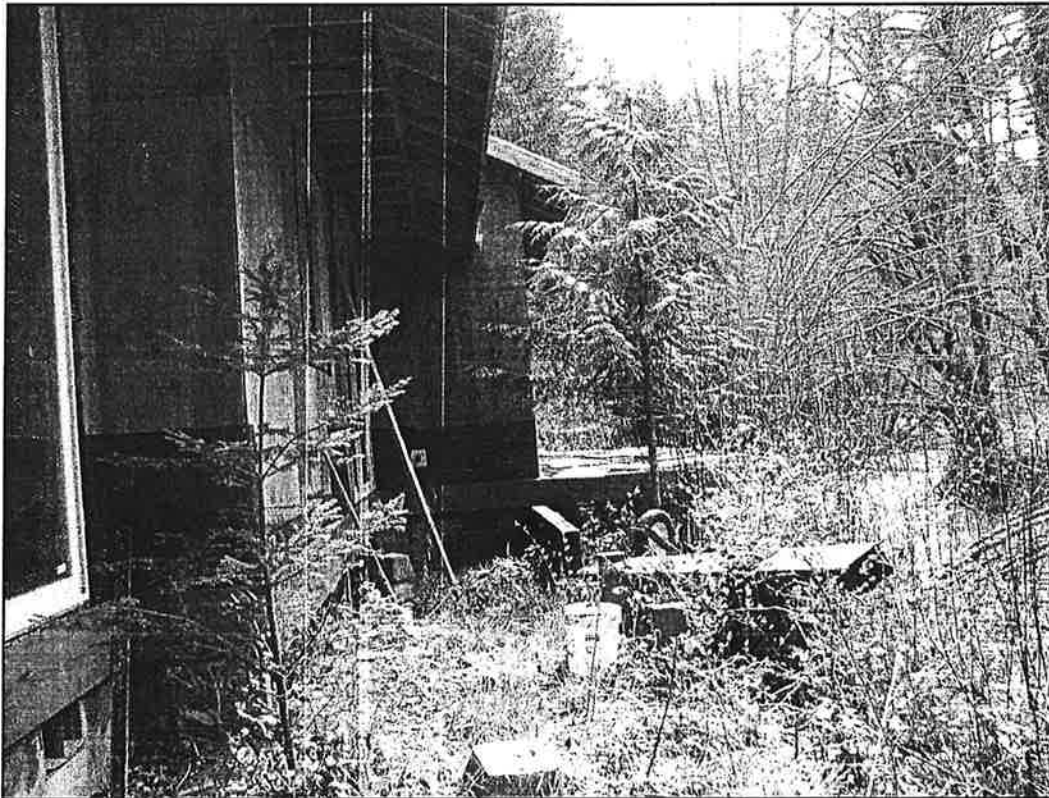
Finding 31: As discussed in Finding 1 of this report, Measure 49 approval for the siting of a dwelling on the subject property, does not exempt the applicant from provisions of the Zoning Ordinance established to protect public health and safety. The Riparian Corridor Overlay Zone protects public health and safety by "protecting water quality for human uses" and by "preventing property damage." Rock Creek, a large fishbearing stream, as identified by the Clear Creek, OR, Oregon Department of Forestry Stream Classification Map runs through the subject property. Section 1170 of the County's Zoning Ordinance addresses the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone and establishes specific standards to protect bodies of water. Section 1172.A(2) requires a 50' riparian corridor to be maintained along all fishbearing streams with an average annual stream flow of less than 1,000 cubic feet per second (cfs). Said riparian corridor shall be measured from the top bank of the stream, or where wetlands are present from the upland edge of the wetland. According to the Birkenfeld, OR National Wetland Inventory (NWI) Map, there are Palustrine, Forested, Broad Leaved Deciduous, Intermittently Flooded (PFOIJ) wetlands associated with the creek. As such, a 50' riparian corridor, as described above, shall be maintained along the creek bank, and in

accordance with Section 1173.A of the County's Zoning Ordinance, construction of buildings/structures shall be prohibited in this area.

As stated in Finding 1 of this report, the applicant began construction of an approximately 1700 square foot dwelling just eight feet (including the attached deck) from the top bank of Rock Creek. This development was conducted without building permits and is located in conflict with the riparian corridor regulations described above. The applicant has proposed measures, described in Finding 34, to mitigate impacts to the wetlands and riparian corridor of Rock Creek if the partially completed dwelling is permitted to remain in its present location. **The Columbia County Zoning Ordinance, however, does not offer provisions for mitigation when properties have sufficient space to accommodate development outside of riparian zones.** The Zoning Ordinance does offer the option for a variance to the riparian corridor setbacks in cases where encroachment into the riparian corridor boundary cannot be avoided, but the variance criterion cannot be met by this request (see Finding 32). The subject ± 9.45 acre property has more than sufficient space to accommodate the siting of a dwelling in conformance with all applicable provisions of the Columbia County Zoning Ordinance.

Riparian corridor regulations were implemented to protect and maintain the quality of water resources in the County. The partially completed dwelling is sitting within the riparian corridor, and therefore, does not meet Zoning Ordinance requirements. Staff finds that the criterion is not met. To meet this criterion the applicant will be required to bring the dwelling into compliance with all applicable regulations pertaining to wetlands and riparian corridors.

Dwelling, Deck and Rock Creek



Continuing with the Columbia County Zoning Ordinance (Section 1178):

1178 Variance Provisions

A. In cases where encroachment into the riparian corridor boundary by activities and development not otherwise allowed by Sub-section 1175, or 1176 cannot be avoided, a property owner may request a Variance to the riparian corridor boundary prohibition. In addition to the criteria found in Section 1504, and the requirements in Sub-section 1177, a variance to the riparian corridor boundary prohibitions shall not be granted unless all of the following criteria are met:

1. The proposed development requires deviation from the riparian corridor standards;
2. Strict adherence to the riparian setback and other applicable standards would effectively preclude a use of the parcel that could be reasonably expected to occur in the zone;
3. Removal of vegetation within the original riparian setback is the minimum necessary to allow the use. Any vegetation removed shall be replaced with native plant species;
4. The encroachment shall not occupy more than 50% of the width of the riparian corridor measured from the upland edge of the corridor;
5. The proposed use shall provide equal or better protection of riparian resources than the current condition;
6. The riparian setback must exceed any other setback on the parcel, and the riparian setback, when combined with other required setbacks, shall result in a building area depth of 30 feet or less, or a building envelop of 800 square feet or less.

C. Variance Limitations.

1. Setback reduction shall be the minimum necessary to create a building area depth of 30-feet or a building envelope of 800 square feet (whichever requires less reduction of the setback).
2. The yard setback opposite the riparian area ("non-riparian" yard) must be reduced up to ½ the standard setback prior to encroachment into the riparian corridor.

Finding 32: Staff explored the option of a riparian corridor variance to allow the partially completed dwelling to remain in its current location, just eight feet from the top bank of Rock Creek. However, the proposal cannot meet the variance criteria outlined above. Specifically, CCZO Section 1178.A(4) prohibits the encroachment from occupying more than 50% of the width of the riparian corridor measured from the upland edge of the corridor. The riparian boundary in this location is 50 feet wide with a more than 75% encroachment by the dwelling. Additionally, CCZO Section 1178.A(6) requires the riparian setback to exceed any other setback on the property. The dwelling footprint is located approximately 18 feet from the top bank of Rock Creek and the deck extends outward from the dwelling to just eight feet from the top bank. Said setbacks are far less than the over 100 foot setbacks from the

dwelling to all other property lines. Finally, CCZO Section 1178.C(2) requires the yard setback opposite the riparian area to be reduced up to ½ the standard setback prior to encroachment into the riparian corridor. To meet this provision, the dwelling could be located only 25 feet from the northeast property line, a long way from the top bank. Staff finds that the proposal does not meet the variance provisions of Section 1178 of the Columbia County Zoning Ordinance.

Continuing with the Columbia County Zoning Ordinance (Section 1190):

Section 1190 BIG GAME HABITAT OVERLAY BGR

- 1191 Purpose: To protect sensitive habitat areas for the Columbian white-tailed deer and other Big Game by limiting uses and development activities that conflict with maintenance of the areas. This section shall apply to all areas identified in the Comprehensive Plan as a major and peripheral big game range or Columbian White-tailed Deer range, as shown on the 1995 Beak Consultant's map, entitled "Wile Game Habitat" in the Comprehensive Plan in Appendix Part XVI, Article VIII(A).
- 1192 Permitted Uses: All uses permitted in the underlying zone either outright or conditionally shall be permitted in the Big Game Range Overlay provided that such use or development is consistent with the maintenance of Big Game and Columbian White-tailed Deer Habitat identified in the Comprehensive Plan.
- 1193 Development Siting Standards:
- All new residential development and uses located in Major and Peripheral Big Game or Columbian White-tailed Deer Habitat shall be subject to the following siting standards:
- A. Dwellings and structures shall be located as near each other and existing developed areas as possible considering topography, water features, required setbacks, and firebreaks.
 - B. Dwellings and structures shall be located to avoid habitat conflicts and utilize least valuable habitat areas.
 - C. Road development shall be minimized to that which is necessary to support the proposed use and the applicant shall utilize existing roads as much as possible.
 - D. The owner/occupant of the resource parcel shall assume responsibility for protection from damage by wildlife.
 - E. Riparian and Wetland areas shall be protected in accordance with Sections 1170 and 1180.
1194. The County shall notify the Oregon Department of Fish and Wildlife (ODFW) of all proposed uses or development activities which require a permit and are located in Major or Peripheral Big Game Habitat. The County will consider the comments and recommendations of ODFW, if any, before making a decision concerning the requested use or activity.
1195. The County shall notify the Oregon Department of Fish and Wildlife (ODFW) and the U.S. Fish and Wildlife (USFW) of all proposed uses or development activities which require a permit and are located in Columbian White-tailed Deer Habitat. The County will consider the comments and recommendations of ODFW and USFW, if any, before

making a decision concerning the requested use or activity.

Finding 33: The subject property is located in an area designated as Peripheral Big Game Range Habitat. As presently sited, the partially completed dwelling does not meet standards set forth by Section 1190 of the Columbia County Zoning Ordinance. Siting standards for dwellings in the Big Game Habitat Overlay Zone require dwellings to be located as near each other and existing developed areas as possible considering water features, setbacks, firebreaks, topography, etc... Provisions further require dwellings to utilize the least valuable habitat areas of a site and to be sited outside of riparian corridors and wetland areas. The dwelling is located just eight feet from the top bank of Rock Creek and as such, is not located on the least valuable habitat area of the site. The dwelling could be sited closer to Keasey Road, increasing the setback from the creek and better clustering the dwelling near other residences located along said roadway. The driveway serving the partially completed dwelling has existed in its current location since the 1970s. Therefore, in relocating the dwelling, the applicant shall consider siting the dwelling in a manner that allows continued use of the existing driveway. Finally, the Oregon Department of Fish and Wildlife was notified of this request and as discussed in Finding 23 of this report, recommended that the dwelling be sited to comply with Section 1170 of the Columbia County Zoning Ordinance. Staff finds that the criterion is not met. The applicant shall relocate the dwelling on the subject property considering the siting standards of the Big Game Habitat Overlay Zone.

Continuing with the Columbia County Zoning Ordinance (Section 1601):

1601 **Staff Approval:** As provided elsewhere in this ordinance, the Director or his designate may approve requested actions which are in conformance with the provisions of this ordinance...

- .1 The applicant shall submit an application and any necessary supplemental information as required by this ordinance to the Planning Department. This application will be reviewed for completeness and the applicant will be informed if the application is incomplete.
- .2 The Director will mail a notice of the proposed action to all adjacent property owners within 250 feet of the subject property and to the members of the CPAC for the specific area. These people who have been notified by mail will have 10 calendar days in which to either submit their comments and objections to the proposed action or request a public hearing on the matter before the Planning Commission or Hearings Officer.
- .3 If no public hearing has been requested, the Director will review the application and all submitted comments and objections to the proposal. Based upon the review of the facts in the case and this ordinance, the Director may approve, deny, or refer the application to the Planning Commission. The Director shall inform the applicant and any affected party who responded as to the nature of his decision. This notice shall be in writing and shall contain the findings of fact which support the Director's decision.
- .4 The Director may attach reasonable conditions to the approval of any application under these provisions.

Finding 34: Current zoning regulations set forth in State law and the Columbia County Zoning Ordinance allow dwellings in the forest zones to be reviewed administratively. The application was considered complete on February 28, 2011. Notification was mailed to property owners within 750 feet and to affected jurisdictions. No agencies or parties requested a hearing. As discussed throughout this report, the structure, as presently sited, is not in compliance with riparian corridor and floodplain development requirements. As such, the structure shall be brought into compliance with all applicable land use regulations prior to the issuance of building permits. The applicant shall also be required to

submit for a septic authorization of the existing septic system. Said authorization must be approved by the County's Sanitarian prior to the issuance of building permits. Finally, the applicant must obtain approval of the existing driveway for access. The applicant must obtain approval from the Road Department for a road access permit and from the Vernonia Rural Fire Protection District for the driveway for fire apparatus access standards. The building permit cannot be released without said approvals. Staff finds that the application meets the applicable criterion, subject to approval of this Forest Resource Dwelling Permit and subsequent obtainment of building, septic and driveway permits.

Continuing with the Columbia County Zoning Ordinance (Section 1602):

1602 **Appeal:** The Director's Decision may be appealed to the Commission by the applicant or any affected property owner in accordance with the provisions of Section 1700.

Finding 35: The Day Law Group P.C. submitted an appeal of the Planning Director's decision on behalf of the applicant, John Crosley, on June 8, 2011. The appeal was filed in the Columbia County Clerk's Office on June 13, 2011 in accordance with the appeal procedures outlined in Section 1701 of the County's Zoning Ordinance. Staff finds that the criterion is met.

Continuing with the Columbia County Zoning Ordinance (Sections 1702 and 1612):

1702 **Appeal of a Planning Director's Action:** Any land use decision by the Director, or Design Review Board may be appealed to the Planning Commission by persons who appeared before the lower decision making body, either in person or in writing. The appeal may concern the approval or denial of an application or any conditions attached to the approval of an application.

1612 **Special Hearings:** The Board of County Commissioners, in its discretion, may order any quasi-judicial land use application or type of quasi-judicial land use application to be heard at a Special Hearing in lieu of a hearing before the Planning Commission or the Board of County Commissioners.

Finding 36: The appeal of a Planning Director's decision is typically heard by the Planning Commission. Due to the unusual development history of the subject property, however, the Board of County Commissioners moved to take original jurisdiction of the appeal on June 22, 2011. Said appeal is scheduled to be heard by the Board of County Commissioners on July 20, 2011. Although the applicant's appeal does not identify a specific reason for appeal, Staff assumes that the appeal concerns Condition of Approval # 12, which states, "The applicant shall relocate the existing dwelling to be in compliance with the 50' riparian corridor setbacks (from Rock Creek) of Section 1170 of the Columbia County Zoning Ordinance."

Continuing with the Columbia County Zoning Ordinance (Sections 1616, 1603 and 1608):

1616 **Procedure for Special Hearings:** The procedure for Special Hearings shall, to the greatest extent practicable, be the same as for other quasi-judicial land use hearings as set forth in the Columbia County Zoning Ordinance, Planning Commission Ordinance, and Subdivision and Partitioning Ordinance, and ORS Chapters 92, 197 and 215...

1603 **Quasijudicial Public Hearings:** As provided elsewhere in this ordinance, the Hearings Officer, Planning Commission, or Board of Commissioners may approve certain actions which are in conformance with the provisions of this ordinance. Zone Changes, Conditional Use Permits, Major Variances, and Temporary Permits shall be reviewed by the appropriate body and may be approved using the following procedures:

2. Once an application is deemed complete, it shall be scheduled for the earliest possible hearing before the Planning Commission or Hearings Officer. The Director will publish a notice of the request in a paper of general circulation not less than 10 calendar days prior to the scheduled public hearing. Notices will also be mailed to adjacent individual property owners in accordance with ORS 197.763.

[Note: ORS 197.763 requires 20 days notice (or 10 days before the first hearing if there will be 2 or more hearings), and that notice be provided to property owners within 100' (inside UGBs), 250' (outside UGBs), or 500' (in farm or forest zones).]

1608 Contents of Notice: Notice of a quasijudicial hearing shall contain the following information:

- .1 The date, time and place of the hearing;
- .2 A description of the subject property, reasonably calculated to give notice as to the actual location, including but not limited to the tax account number assigned to the lot or parcel by the Columbia County Tax Assessor;
- .3 Nature of the proposed action;
- .4 Interested parties may appear and be heard;
- .5 Hearing to be held according to the procedures established in the Zoning Ordinance.

Finding 37: A public hearing (for the submitted appeal) in front of the Board of County Commissioners is scheduled for July 20, 2011. Notice of this hearing was sent to surrounding property owners within 500' of the subject property on June 30, 2011, more than 20 days prior to the July 20th BOC hearing date. Additionally, notice of said hearing was published in *The Chronicle* on July 6, 2011, more than 10 days prior to the July 20th hearing date. Information, as outlined in Section 1608 of the Columbia County Zoning Ordinance, was included in both the notice sent to surrounding property owners and the notice published in the newspaper. The procedures for Special Hearings/Quasi-judicial Public Hearings were followed for this appeal. Staff finds that the criterion is met.

COMMENTS:

Upper Nehalem CPAC: We approve the Conditional Use with conditions: (1) Setback from riparian corridor mitigated through Fish and Wildlife, (2) County approved septic - evaluate current condition of system and bring up to code if necessary, (3) meet all fire break standards, and (4) structure to meet flood hazard standards.

Upper Nehalem Watershed Council: No Comment

Vernonia Rural Fire Protection District: No Objection; Looking forward to driveway inspection; Possibility of installing a "Fire Department Draft site

Oregon Department of Fish and Wildlife: See Finding 34 and attached email and letter dated 3/8/11

County Sanitarian: Application cites no septic existing, but file records do show an approved system being installed that appears consistent with the property. However, a detailed to-scale or with dimensions plot plan is requested regarding the septic system and well. Well construction conflicts with documentation submitted at the time of permit issuance and may pose setback concerns. Also, an Oregon Water Resources Department well log cannot be located showing permitting of the well. This

documentation will also be required to be submitted.

County Roadmaster: No Objection; As the road surface conditions and driveway may have changed, I am requiring a new access permit. As there is an approved 1977 permit there will be no permit fee.

County Assessor: No Comment

County Building Official: No Objection

CONCLUSION, RECOMMENDATION, & CONDITIONS:

Based upon research and the findings in the above staff report for **RDF 11-01**, Staff recommends denial of the applicant's appeal and **APPROVAL** for the siting of a dwelling (outside of the riparian corridor) on the subject ± 9.45 acre, PF-80 zoned property, subject to the following conditions:

CONDITIONS OF APPROVAL:

1. **This Forest Resource Dwelling Permit shall remain valid for four (4) years from the date of the final decision.** This permit shall become void, unless the proposal has commenced in conformance with all conditions and restrictions established herein within the four-year validity period. Extensions of time may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicant is not responsible for failure to develop.
2. This Forest Resource Dwelling Permit allows a non-forest dwelling on the subject property, which, in turn, enables the applicant(s) to apply for Building Permits and other permits necessary for development. This Forest Resource Dwelling Permit addresses and allows this land use only and does not guarantee approval of any other permits necessary for the future development of the subject property.
3. Primary and secondary fuel-free fire breaks shall be required for the dwelling allowed by this Conditional Use Permit and all accessory structures pursuant to OAR 660-006-0035 and the March 1991 Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards for Roads, published by the Oregon Department of Forestry (or) Equivalent Fire Buffers approved by Columbia County Board Order No. 239-97. If the Secondary Fire Break cannot be met on the subject property, the applicant shall either construct the dwelling to IR-1 or IR-2 standards or submit a recorded Secondary Fire Break Easement and Maintenance Agreement to Land Development Services.
4. The dwelling allowed by this Forest Resource Dwelling Permit and all accessory structures shall:
1) have a fire retardant roof, 2) not be sited on a slope greater than 40 percent, and 3) have a spark arrester for any and all chimneys.
5. The driveway to the proposed dwelling shall meet County Driveway Standards for Fire Apparatus Access Roads as required by the Vernonia Rural Fire Protection District. The applicant shall submit verification to Land Development Services that the driveway has been approved for access to both the homesite and creek (as required by Condition # 6) prior to the issuance of building permits.

6. The applicant shall work with the Vernonia Rural Fire Protection District to provide access to Rock Creek for fire protection purposes in accordance with Section 510.1 of the Columbia County Zoning Ordinance. The applicant shall also provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Any activities within the riparian corridor of Rock Creek shall comply with Section 1170 of the Columbia County Zoning Ordinance.
7. The applicant shall obtain a new road access permit for the existing driveway from the Columbia County Road Department. Verification of an approved permit shall be submitted to Land Development Services prior to the issuance of building permits.
8. The applicant shall meet the requirements of the applicable agencies regarding installation of power and communication lines, and install utilities underground if feasible.
9. The applicant shall obtain septic authorization to use the existing septic system for the proposed dwelling. The applicant shall obtain authorization and approval of any improvements or alterations to the septic system completed (if applicable) prior to the issuance of building permits.
10. The applicant shall provide documentation indicating that adequate potable water is available to the site. This documentation shall be submitted to Land Development Services in the form of a well log prior to the submittal of building permits. If a well log cannot be obtained, the applicant shall obtain a new well log for the existing well.
11. It appears that there may be setback concerns associated with the location of the well and septic system in relation to each other and to Rock Creek. The applicant shall submit a revised site plan, drawn to scale (with setback dimensions) identifying the exact location of the well, septic tank, drainfield, and creek. The applicant shall obtain approval of the septic system and well from the County's Sanitarian prior to the submittal of building permits.
12. The existing dwelling shall be relocated on the property to comply with the 50' riparian corridor setbacks (from Rock Creek) of Section 1170 of the Columbia County Zoning Ordinance.
13. The applicant shall relocate the existing dwelling to be in compliance with Big Game Habitat regulation in Section 1190 of the Columbia County Zoning Ordinance.
14. A revised site plan shall be submitted to Land Development Services identifying the relocation of the dwelling. This site plan shall be drawn to scale and shall accurately reflect the dwelling's setbacks from property lines and from the top bank and wetlands of Rock Creek. Primary and secondary fuel-free fire breaks shall also be identified on the revised site plan. *Note: A single site plan may be submitted to meet Conditions # 11 and # 14.*
15. The applicant shall apply for a floodplain development permit. The applicant shall submit required information of the permit and all development shall be designed to conform to the flood development standards of Section 1100 of the Columbia County Zoning Ordinance.
16. The responsibility for protection from wildlife damage on the property shall be assumed by the dwelling's owner and/or occupant.

17. The applicant shall sign and record in the deed records of Columbia County a WAIVER OF REMONSTRANCE regarding past, current or future accepted farm or forest operations of adjacent and nearby lands.

Attachments:

Application

ORS 195.300 to ORS 195.336 (Measure 49) Supplemental Review of Measure 37 Claim, Final Order and Home Site Authorization dated June 7, 2010 - Election Number E133969

ODFW Email and Letter dated March 8, 2011

Template Test (TT 10-13) dated December 15, 2009

Site Plan

Vicinity Map

Address Map

Zoning Map

EXHIBIT 3

Supplemental Findings of Fact and Conclusions of Law for RDF 11-01 (Crosley)

1. The Board of County Commissioners for Columbia County (Board) finds that although the applicant, John Crosley, obtained a permit to construct a dwelling on the approximately 9.45-acre subject property in 1979, construction ceased on October 19, 1979, and the applicant's building permit expired 120 days later.

The record shows that the applicant acquired the subject property on December 20, 1977. Following the approval of a septic permit on September 20, 1978 and completion of a septic system on June 26, 1979, the applicant obtained a building permit from the County on October 18, 1979 to construct a single-family dwelling (Permit No. 8195). Although the applicant completed a foundation for the dwelling, an inspection of the property revealed that by April 21, 1981, the development had been discontinued.¹ The following additional evidence in the record indicates that the development had been discontinued: aerial photographs taken in 2000 and 2005 showing no dwelling; Columbia County Assessment and Taxation printouts dated November 20, 2006 and April 5, 2007, showing the property as vacant land; letter from Todd Dugdale, Columbia County Land Development Services Director, to the Department of Land Conservation and Development, recommending Measure 49 homesite authorization because "no dwelling currently exists on the property"; and the applicant's statement in his application that construction on the house was started, "[b]ut due to economic reasons construction was stopped." As a result, the applicant's building permit expired in April 1980, 120 days after the last recorded date of construction on the permitted development.

2. The Board finds that the applicant resumed construction of a dwelling on the 1979 foundation sometime between 2009 and 2010 – a 30-year lapse – without permits or land use approval. After Building Permit No. 8195 expired in April 1980, no building permits were issued for the property. According to Tax Assessor records, however, an inspection of the property on April 20, 2010 revealed a partially constructed dwelling of approximately 1,557 square feet. The inspector identified the year built as 2009. Photos of the property dated April 14, 2010 confirm the construction of framing and a roof. Photos taken on or after April 5, 2011 show the structure in the same condition.

The applicant claimed that he resumed construction of the dwelling on the belief that his original building permit (No. 8195) remained valid. The Board finds that statement to be

¹ See inspection note dated April 24, 1981 on expired Building Permit No. 8195 stating, "no work after foundation."

not credible. The applicant's building permit application clearly states:

“This permit becomes void if work or construction authorized is not commenced within 120 days, *or if construction or work is suspended or abandoned for a period of 120 days* at any time after work is commenced.” (Emphasis added.)

The Board finds that the applicant's mistaken belief is not objectively reasonable. A reasonable person would not believe that his or her building permit would remain valid for 30 years, especially in light of the expiration language on the permit.

If the applicant had applied for building permits to construct a dwelling on the property in 2009, he would have been informed that the dwelling was subject to the requirements of the Columbia County Zoning Ordinance (CCZO) in effect at the time, including the Primary Forest Zone, Flood Hazard Overlay, Riparian Corridor Overlay, and Big Game Habitat Overlay. But rather than comply with current requirements, the applicant chose to resume construction without permits.

3. The Board finds that the applicant did not seek approval to resume construction of the dwelling until February 10, 2011, when he submitted this application for a forest dwelling in a resource zone. The Board finds that the Director correctly applied the Flood Hazard Overlay, Riparian Corridor Overlay, and Big Game Habitat Overlay criteria in effect on February 10, 2011.
4. The applicant appealed the Director's decision, objecting to the following four conditions of approval: (1) Condition #12 requiring a riparian setback; (2) Condition #13 requiring compliance with the Big Game Habitat Overlay; (3) Condition #14 requiring a site plan of the relocation of the dwelling; and (4) Condition #15 requiring a floodplain development permit.² The applicant argued that pursuant to Measure 49, unless the

² The conditions of approval at issue are provided in full, as follows:

- “12. The existing dwelling shall be relocated on the property to comply with the 50' riparian corridor setbacks (from Rock Creek) of Section 1170 of the Columbia County Zoning Ordinance.
13. The applicant shall relocate the existing dwelling to be in compliance with Big Game Habitat regulation in Section 1190 of the Columbia County Zoning Ordinance.
14. A revised site plan shall be submitted to Land Development Services identifying the relocation of the dwelling. This site plan

requirements of the Riparian Corridor Overlay, Big Game Habitat Overlay, and Flood Hazard Overlay are exempt from Measure 49, those requirements cannot apply to his property.

As an initial matter, the applicant's Measure 49 Home Site Authorization from the Department of Land Conservation and Development (DLCD) authorizes the development of one dwelling on his forest-zoned property.³ The Measure 49 authorization, however, does not waive all land use regulations applicable to the property. Rather, the authorization requires the waiver of only those regulations that would prohibit the dwelling, unless those regulations are exempt from waiver under Measure 49. As the text of Measure 49 states:

(8) Except as provided in section 11, chapter 424, Oregon Laws 2007, if the Department of Land Conservation and Development has issued a final order with a specific number of home site approvals for a property under this section, the claimant may seek other governmental authorizations required by law for the partition or subdivision of the property or for the development of any dwelling authorized, and *a land use regulation enacted by the state or county that has the effect of prohibiting the partition or subdivision, or the dwelling, does not apply to the review of those authorizations.*

Oregon Laws 2007, ch. 424, sec. 5 (emphasis added). In compliance with that provision of Measure 49, DLCD's final order on the applicant's Measure 49 claim states:

"The establishment of a . . . dwelling based on this home site

shall be drawn to scale and shall accurately reflect the dwelling's setbacks from property lines and from the top bank and wetlands of Rock Creek. Primary and secondary fuel-free fire breaks shall also be identified on the revised site plan. *Note: A single site plan may be submitted to meet Conditions # 11 and # 14.*

15. The applicant shall apply for a floodplain development permit. The applicant shall submit required information of the permit and all development shall be designed to conform to the flood development standards of Section 1100 of the Columbia County Zoning Ordinance."

³ Ballot Measure 49 was enacted by the voters in 2007 and is codified at ORS 195.300 *et seq.* Ballot Measure 49 supplanted Measure 37 and modified its remedies for reduction in property value caused by a land use regulation.

authorization *must comply with all applicable standards governing the siting or development of the . . . dwelling*. However, those standards must not be applied in a manner that prohibits the establishment of the . . . dwelling[.]”

Final Order and Home Site Authorization (E133969 - Crosley) 5. As the staff report explains, a dwelling can be sited on the subject property in compliance with the Riparian Corridor Overlay, Big Game Habitat Overlay, and the Flood Hazard Overlay regulations. Those regulations do not prohibit a dwelling on the property, and therefore, they are not subject to waiver under Measure 49.

The applicant argues that he nevertheless complies with the Flood Hazard Overlay Zone regulations. Although staff has never concluded that the applicant complies with the Flood Overlay Zone regulations, staff stated that based on the applicant’s flood elevation certificate, the lowest floor *appears* to be 2 feet above the base flood elevation. Staff further explained that the applicant must apply for a floodplain development permit for staff to determine whether the dwelling complies. Condition #15 requires the applicant to obtain that permit and is therefore appropriate.

5. Even if the Riparian Corridor Overlay and Flood Hazard Overlay regulations were subject to waiver by Measure 49, which they are not for the reasons explained above, Measure 49 expressly exempts from waiver “land use regulations . . . [r]estricting or prohibiting activities for the protection of public health and safety.” ORS 195.305(3)(b). That term is defined in Measure 49, as follows:

“‘Protection of public health and safety’ means a law, rule, ordinance, order, policy, permit or other governmental authorization that restricts a use of property in order *to reduce the risk or consequence of* fire, earthquake, landslide, *flood*, storm, *pollution*, disease, crime or other natural or human disaster *or threat to persons or property* including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.”

ORS 195.300(21) (emphases added). The purpose of the Riparian Corridor Overlay is “to protect habitat for fish and other aquatic life, protect habitat for wildlife, *protect water quality for human uses and aquatic life*, control erosion and limit sedimentation, *prevent property damage during floods and storms*[.]” CCZO § 1170(A) (emphases added). The Riparian Corridor Overlay regulations thus “reduce the risk or consequence of . . . flood [and] pollution” and clearly qualify as regulations for “protection of public health and safety.” Therefore, even if the riparian regulations operated to prohibit a dwelling on the property – and thus be subject to waiver by Measure 49 – they would nevertheless fall under Measure 49’s exemption for regulations for the protection of public health and

safety.

For the same reasons, the Board finds that the Flood Hazard Overlay regulations are exempt from Measure 49. CCZO § 1100 describes the purpose of the Flood Hazard Overlay as, among other things, protecting human life and reducing risk of harm to human life and property due to floods.⁴ As Measure 49's definition of "protection of public health and safety" includes regulations that "reduce the risk or consequence of . . . flood[,]" the County's Flood Hazard Overlay clearly qualifies and is exempt from Measure 49.

The applicant invites the Board to review the legislative history of Measure 37 to

⁴ CCZO § 1100 provides the purpose of the Flood Hazard Overlay, as follows:

"1101 Purpose: It is the purpose of this ordinance to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- .1 To protect human life and health;
- .2 To minimize expenditure of public money and costly flood control projects;
- .3 To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- .4 To minimize prolonged business interruptions;
- .5 To minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- .6 To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- .7 To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
- .8 To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions."

interpret Measure 49's definition of "protection of public health and safety." Measure 37 provided a public health and safety exemption, as follows:

"(3) Subsection (1) of this act shall not apply to land use regulations:

.....

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations[.]"

Former ORS 197.352 (2005), amended by Oregon Laws 2007, ch. 424, sec. 4, renumbered as ORS 195.305 (2007). But Measure 49 supplanted Measure 37, and its textual treatment of "protection of public health and safety" is markedly different from that of Measure 37. As an initial matter, Measure 49 provides a definition of "protection of public health and safety," which was absent in Measure 37. In addition, where the text Measure 37 appears to limit the public health and safety exemption to building and fire codes – as the applicant argues Measure 37's legislative history confirms – Measure 49's new definition expands the exemption.

For example, Measure 37 states that the public health and safety exemption is for regulations "*such as* fire and building codes." Measure 49 on the other hand expressly indicates an intent to broaden the public health and safety exemption beyond building, fire and other public safety codes by changing the scope to: "*including, but not limited to, building and fire codes[.]*" (Emphasis added). Measure 49 also expands the exemption to encompass regulations that "*reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property[.]*" Regulations that "reduce the risk or consequence" of floods and other disasters and threats may not qualify as regulations that "restrict or prohibit activities" for the protection of public health and safety. Yet, Measure 49 includes such regulations within its public health and safety exemption, and Measure 37 did not. Finally, the legislative findings on Measure 49 confirm an intent to broaden, not limit, the public health and safety exemption. The findings state that the purpose of Measure 49 is to amend Measure 37 "to ensure that Oregon law provides just compensation for unfair burdens *while retaining Oregon's protections* for farm and forest uses and *the state's water resources.*" ORS 195.301 (emphasis added).

Because the text of Measure 49 unambiguously expands the application of Measure 37's public health and safety exemption beyond building, fire, and other public health codes, the Board finds the legislative history on the limits of the Measure 37 public health and

safety exemption to be unavailing here.⁵ If anything, the legislative findings on Measure 49 contradict the applicant's position. Accordingly, the Board finds that the Riparian Corridor Overlay and Flood Hazard Overlay regulations are for the protection of public health and safety, as defined by Measure 49, and are exempt from waiver.⁶

6. The applicant argues that his Measure 49 Home Site Authorization from DLCD permits him to construct the dwelling at its current location. The DLCD final order authorizes the applicant "to complete the development of the partially completed dwelling or replace this partially dwelling with a new dwelling on the property[.]" Although DLCD's order suggests that completion of the partial dwelling could constitute the one dwelling authorized by Measure 49, the order is clear that its statements are not based on a determination of the legal status of that partial dwelling. As explained throughout the staff report and in these findings, a foundation had been lawfully constructed in 1979 pursuant to a permit, but because construction was discontinued, the permit expired. Any further construction on the foundation would require a new permit and is subject to the applicable laws and regulations in effect on the date the applicant applies for the new permit. The applicant did not obtain a permit for any construction other than the foundation, and for the reasons explained in these findings and in the staff report, a dwelling on the 1979 foundation would not comply with applicable regulations.
7. The applicant argues that he had a vested right to complete the dwelling. Assuming *arguendo* that the applicant had vested rights in 1979 to continue construction of the dwelling, those vested rights have lapsed.

Vested rights are inchoate nonconforming uses and may be lost by abandonment or discontinuance. *Fountain Village Dev. Co. v. Multnomah County*, 176 Or App 213, 221, 224, 31 P3d 458, *rev den*, 334 Or 411 (2002).⁷ Under CCZO § 1506.4, nonconforming

⁵ In construing a statute, Oregon courts begin their analysis with text and context, followed by a review of legislative history; "[h]owever, the extent of the court's consideration of that history, and the evaluative weight that the court gives it, is for the court to determine." *State v. Gaines*, 346 Or 160, 206 P3d 1042 (2009).

⁶ The Board notes that Measure 49 also exempt from waiver, land use regulations "to the extent the regulation is required to comply with federal law." ORS 195.305(3)(c). Both the Riparian Corridor and Flood Hazard Overlays have been implemented to comply with federal law as directed by the Department of Land Conservation and Development through its statewide planning program.

⁷ As LUBA stated in *Fountain Village Development Co. v. Multnomah County*, 39 Or LUBA 207, 224 (2000):

rights are lost after a 1-year period of discontinuance, as follows:

“Reinstatement of a Discontinued Use: A Non-Conforming Use may be resumed if the discontinuation is for a period less than 1 year. If the discontinuance is for a period greater than 1 year, the building or land shall thereafter be occupied and used only for a conforming use.”

Here, the applicant discontinued construction of the dwelling in 1979 and did not resume construction until 2009 without permits. The applicant’s 30-year discontinuance far exceeds the 1-year lapse allowed by CCZO § 1506.4. The Board therefore finds that any vested right the applicant may have had in 1979 to complete the dwelling has been lost by discontinuance and cannot be reinstated.

8. The applicant asserts that the “[p]roperty has always been used for a single family dwelling” and that he “never abandoned the use of the [p]roperty[.]” (Aff. of Crosley 2). The Board finds that the applicant has mischaracterized the use of the property. A foundation and septic system do not constitute a dwelling, and the record is devoid of any evidence that the property has been used as a residence. Rather, the evidence the record, as described above, shows that the property has been vacant for 30 years, containing essentially a foundation for a dwelling and septic system. Although the applicant may have *intended* to use the property for a single-family dwelling during the 30-year lapse, the Board finds that construction of the dwelling was discontinued at an early stage – the foundation – and the property has never been in residential use.
9. Finally, the applicant objects to Condition #14, which requires him to submit a new site plan for the relocated dwelling. The Board finds that because Conditions #12 (Riparian setback) and #13 (Big Game Habitat Overlay) will remain and will require the dwelling to be relocated, Condition #14 is necessary to ensure compliance those regulations.

“[V]ested rights are subject to the requirement that the holder diligently exercise those rights: *i.e.* that the holder continue development of the nonconforming use and not abandon or discontinue efforts to complete development of the use.”