

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of Michael and)
Denise Werner for Approval of LUCS 12-13 for) FINAL ORDER NO. 38-2012
the Repair of the Deer Pointe Mobile Home Park)
Wastewater Treatment Facility)

WHEREAS, on November 3, 2011, Columbia County Land Development Services administratively authorized a Department of Environmental Quality (DEQ) Land Use Compatibility Statement (LUCS) that was submitted by Michael and Denise Werner (Applicant) for a major repair of the on-site wastewater treatment facility at Mason's Deer Pointe Mobile Home Park, located at 25231 Alderbark Road, Rainier, Oregon; and

WHEREAS, on November 10, 2011, notice of the administrative decision was mailed to neighboring property owners within 250 feet of the subject property in accordance with ORS 197.763; and

WHEREAS, the decision was timely appealed by Don Campbell (Appellant) on November 10, 2011; and

WHEREAS, shortly thereafter, the Board of County Commissioners (Board) took jurisdiction over the application pursuant to Columbia County Zoning Ordinance (CCZO) Section 1612; and

WHEREAS, the Board then scheduled a public hearing on the application to be held at its regular meeting time on January 25, 2012. Notice was sent on January 4, 2012 and published in *The Chronicle* on January 11, 2012; and

WHEREAS, January 24, 2012, the Applicant waived the 150-day deadline for final action required by ORS 215.427; and

WHEREAS, on January 25, 2012, at the request of both the Applicant and the Appellant, the Board set the hearing over to March 7, 2012; and

WHEREAS, on February 15, 2012, the County staff issued its Staff Report and Recommendation on LUCS 12-13; and

WHEREAS, in response to information received following the staff report, staff issued a Supplemental Staff Report and Revised Recommendation, dated March 5, 2012; and

WHEREAS, on March 7, 2012, at the request of the applicant and consent from the appellant for additional time to explore settlement, the Board set the hearing over to March 21, 2012; and

WHEREAS, on March 21, 2012, the Board held a public hearing on LUCS 12-13. The Board accepted all written evidence submitted into the record prior to the issuance of the staff report, a list of which was entered into the record as Exhibit 1, as well as evidence submitted after the staff report and before the close of the hearing, which was entered into the record as Exhibits 2 through 6. The Board left the record open for new evidence and rebuttal evidence and continued deliberations to April 25, 2012; and

WHEREAS, staff issued a Second Supplemental Staff Report on March 29, 2012, to respond to questions raised at the hearing regarding the date at which the onsite wastewater system was established on tax lot 2400; and

WHEREAS, new evidence was timely received from the Appellant, Applicant, and other interested parties on or before April 4, 2012. The Applicant's rebuttal was timely received on or before April 18, 2012; and

WHEREAS, on April 25, 2012, in response to the appellant's request to reopen the record to respond to new evidence submitted in the applicant's rebuttal, the Board reopened the record and continued its deliberations to May 23, 2012; and

WHEREAS, the Appellant then timely submitted evidence in response to the Applicant's rebuttal on May 2, 2012. The Applicant timely submitted a second rebuttal on May 9, 2012; and

WHEREAS, on May 16, 2012, the Board reopened the record for the third time, at the Appellant's request to allow the Appellant to respond to new evidence submitted in the Applicant's second rebuttal. The Board continued its deliberations to June 20, 2012; and

WHEREAS, the Appellant timely submitted evidence in response to the second rebuttal on May 23, 2012. The Applicant timely submitted a third rebuttal on May 30, 2012, and its final argument on June 6, 2012; and

WHEREAS, on June 20, 2012, the Board continued its deliberations to June 27, 2012. The Board deliberated on the matter on June 27th, and voted to tentatively approve the application, subject to conditions, as set forth in the Supplemental Staff Report, dated March 5, 2012.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. The Board of County Commissioners adopts the following findings in support of its decision:

1. The Findings of Fact and Conclusions of Law, attached hereto as Attachment A and incorporated herein by this reference;
 2. The findings and conclusions in the Staff Report to the Board of County Commissioners dated February 15, 2012, which is attached hereto as Attachment B and incorporated herein by this reference;
 3. The findings and conclusions in the Supplemental Staff Report and Revised Recommendation dated March 5, 2012, which is attached hereto as Attachment C and incorporated herein by this reference; and
 4. The findings and conclusions in the Second Supplemental Staff Report dated March 29, 2012, which is attached hereto as Attachment D and incorporated herein by this reference; and
- B. The Board of County Commissioners adopts and incorporates the above recitals as additional findings in support of its decision.
- C. Based on the foregoing and the whole record in this matter, the Board of County Commissioners **approves LUCS 12-13** to allow for the repair of Mason's Deer Pointe Meadows Mobile Home Park wastewater treatment facility, subject to the following conditions:
1. The northernmost drainfield on tax lot 7315-020-01900 shall be used only as necessary to comply with health and safety regulations or to maintain the use of existing structures associated with the mobile home park. Consistent with the approved DEQ WPCF permit, the use of the northernmost drainfield shall not result in an increase in wastewater flow or pollutant concentration limits. All operation and maintenance activities shall be limited to the scope of approval of the DEQ WPCF permit.

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2. It shall be the responsibility of the Facility's Certified Maintenance Provider to document operation and maintenance procedures regarding the above condition as directed in Schedule B, Schedule D, and Schedule F of the approved WPCF permit.

Dated this 1st day of August, 2012.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: 

Office of County Counsel

By: Not present

Anthony Hyde, Chair

By: 

Earl Fisher, Commissioner

By: 

Henry Heimuller, Commissioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Introduction

The Board of County Commissioners adopts the following findings of fact and conclusions of law in support of its decision on LUCS 12-13, In the Matter of the Application of Michael and Denise Werner for Approval of LUCS 12-13 for the Repair of the Deer Pointe Meadows Mobile Home Park Wastewater Treatment Facility:

II. Findings of Fact and Conclusions of Law

A. Whether the system repairs comply with wastewater regulations is beyond the scope of the LUCS approval.

As an initial matter, the record here has been inundated with evidence and testimony on the adequacy of the proposed repairs¹ to the wastewater treatment system at the Deer Pointe Meadows Mobile Park (Deer Pointe MHP). However, the County lacks jurisdiction to review whether the proposed repairs meet DEQ wastewater treatment rules and regulations. The DEQ permit at issue here is a WPCF permit pursuant to OAR 340-071-01300(15)(b)(A) because sewage flow capacity is greater than 2,500 gallons per day. According to the park's WPCF Permit Schedule A, the park's sewage flow capacity is 8,025 gallons per day. Furthermore, under OAR 340-071-0120(1) DEQ retains jurisdiction over WPCF permits even in counties with permitting authority.

Rather, the County's approval of the LUCS is limited to whether the use associated with the DEQ permit and the activity proposed by the DEQ permit comply with the County's land use regulations. As explained, below, the use associated with the permit is a nonconforming use, and the activity allowed by the permit is a repair of a nonconforming use that is necessary to comply with state health and safety regulations.

B. The Mobile Home Park associated with the DEQ permit is a nonconforming use.

Deer Pointe MHP is a nonconforming use. The site consists of two tax lots: tax lot 1900, which contains 46 mobile home units, and tax lot 2400, which contains open space, natural features, and a portion of the park's septic system, but no mobile home units. Although the site's current RR-5 zoning (Rural Residential - 5 acres) prohibits mobile home parks, the park was established in 1965 with 33 mobile home units prior to the County's application of zoning in

¹ The repairs referenced in the LUCS at issue here have been built. However, at the time the LUCS application was submitted to the County, the repairs were proposed. As such, these findings refer to the repairs as "proposed repairs."

1984. In 1996, the County approved NCU 3-94/38-96,² which recognized the park as a nonconforming use and allowed an expansion of 13 units. NCU 3-94/38-96 was subject to conditions, which included among others a restriction limiting the maximum number of units to 46 units, and a requirement that any failing septic system be repaired and certified operational by DEQ. DEQ issued a permit for the repair of the park's septic system in 1996.

It is undisputed that the portion of the mobile home park on tax lot 1900 is a nonconforming use.³ The County and the appellant differ, however, on the nonconforming status of tax lot 2400. The appellant argues that because tax lot 2400 was not referenced in NCU 3-94/38-96, it was not part of that approval and therefore, lacks nonconforming use status. The Board disagrees with the appellant and finds that evidence in the record demonstrates that a portion of the park's septic system existed on tax lot 2400 prior to 1984, when the County's prohibitive zoning regulations became effective. This evidence includes, but is not limited to:

- Septic permits issued before 1984 and documents associated with the permits;
- Photos of the premises that demonstrate the system operates on lot 2400;
- Statements by persons familiar with the premises that septic operated before 1984

Evidence submitted by opponents does not undermine this evidence. For instance, analysis of the septic permits submitted by opponents accept that the system operated before 1984 (though questions the date operations actually began). This does not undermine the lawful nonconforming status of the Park use on lot 2400. The Board concludes that presence of septic on lot 2400 constitutes necessary activity supportive of the Park use, thus lot 2400 was being used for Park purposes before 1984; it is lawfully nonconforming on that basis.

C. The Park's status as a lawful nonconforming use on lot 2400 is not undermined by appellant's suggestions that the Park use is unlawful there for other reasons.

As the Board has elsewhere found, the County determined in 1996 that the Park, including its septic system, which is an integral part of the park, was a lawful nonconforming use. Even if a park opponent wished to challenge the legality of the Park, the opportunity for that was in 1996 and the time for challenges has passed. Still, in this case, the appellant also points out that the Statewide Planning Goals became effective on January 28, 1975 and would have applied to an expansion of the mobile home park onto tax lot 2400. The appellant argues that the

² NCU 3-94 refers to the Planning Commission's final order number. That decision was appealed to the Board of Commissioners. NCU 38-96 is the Board of Commissioners' final order number for the same case.

³ It is also undisputed that an onsite septic system is not a separate and distinct use of land under the zoning code, but rather an accessory recognized as an integral support for the use associated with it.

park's septic system was expanded onto tax lot 2400 in the summer of 1975 in violation of the Goals. Accordingly, as the appellant argues, even if the septic system was established before 1984, the record fails to show that the mobile home park use was lawfully established on tax lot 2400 prior to 1975, and therefore, tax lot 2400 is not entitled to nonconforming use status, notwithstanding its vintage.

In addition to the challenge being untimely, the Board disagrees for two reasons: (1) based on the most reasonable inference that can be drawn from the facts in the record, the septic system existed on tax lot 2400 prior to 1975; and (2) even if the septic system expansion occurred in 1975 after the effective date of the Goals, which the Board finds unlikely, the septic system expansion was installed pursuant to a permit, the validity of which appellant cannot attack now, over 30 years later. Either way, the Board concludes the Park use of lot 2400 is lawful.

1. The most reasonable inference that can be drawn from the evidence in the record is that tax lot 2400 was part of the mobile home park prior to 1975.

On June 13, 1975, the County issued a permit (for the septic repair/expansion onto tax lot 2400). The permit includes a plot plan that depicts an "existing drainfield" on the other side of a fence line. The plot plan does not show property lines *per se*, but shows measurements documenting the distance between the drainfield and the fence line, which are consistent with the distance between the drainfield and the property line of tax lot 2400. The Board finds that the fence line on the plot plan is a very close approximation of the property line between tax lots 1900 and 2400, and therefore, the park's septic system was already in existence on tax lot 2400 when the County issued the permit in June 1975.

Although it is conceivable that the "existing drainfield" referenced in the permit was installed after the Statewide Planning Goals became effective on January 28, 1975, but before June of 1975 when the County issued the septic permit, the Board finds that it is unlikely. The record contains numerous field notes from the Sanitarian documenting visits to the site as early as March of 1975. None of the notes references a newly installed system or repair. Given the number of field notes, if the "existing drainfield" had been installed between February and June of 1975, it is unlikely that such a fact would go unmentioned in the field notes. In addition, even if the 1975 permit did not identify tax lot 2400, it described the site size as 16 acres. The combination of tax lots 1900 and 2400 is approximately 16 acres. Finally, as the applicant argues and the Board agrees, the general practice is to construct septic systems in the drier months, and accordingly, the system would have been installed no later than the summer of 1974. Based on the most reasonable inference that can be drawn from the above evidence, tax lot 2400 contained part of the park's septic system prior to 1975 and thus shares the park's nonconforming use status.

2. Even if the septic system had not been in place on tax lot 2400 prior to 1975, its expansion onto tax lot 2400 was approved by permit in 1975.

The septic system was likely installed on tax lot 2400 as part of the park's original permit #1594, dated May 25, 1966, even though the park owners did not own tax lot 2400 until 1967. But even if the portion on tax lot 2400 had not been included in the 1966 permit, the County issued another permit in 1975 to allow the septic system expansion onto tax lot 2400. The appellant cannot attack that 1975 permit now, more than 30 years after the system has been constructed.

D. The proposed repairs are an alteration of a nonconforming use allowed by ORS 215.130(5) and therefore comply with the County's land use regulations that allow normal maintenance and repair of nonconforming uses.

The County must also determine whether the activity proposed by the permit – in this case, the repair and modification of an existing septic system – complies with the County's land use regulations. It is worth emphasizing that this is not a determination of whether the repair complies with wastewater regulations. As mentioned, DEQ retains jurisdiction over the system's compliance with DEQ rules and regulations, not the County.

As explained in the Supplemental Staff Report dated March 5, 2012, ORS 215.130(5) protects nonconforming uses and requires approval of alterations to nonconforming uses that are necessary to comply with state or local health or safety requirements, as long as those alterations are of no greater adverse impact to the neighborhood. The Board finds that the modifications to the septic system here are repairs. Such repairs are alterations that are necessary to comply with state health and safety requirements, namely DEQ wastewater treatment regulations. A failing septic system is a threat to public health, and as DEQ stated in its letter dated February 17, 2012, that the repairs are necessary to address "a public health hazard."

The Board also finds that the repaired system will create no greater adverse impact to the neighborhood. Rather, the repairs will mitigate the effects of the failing system. To ensure that the repaired system creates no greater adverse impact, the Board's approval contains conditions to limit the use of the north drainfield and to cap the amount of wastewater flow or pollutant concentration.

The repair and maintenance nature of the proposed activities also satisfies the County code pertaining to nonconforming use maintenance. Under CCZO Section 1506.2(A), normal maintenance and repairs are allowed under the following rule:

"Normal maintenance of a Non-Conforming Use is permitted, including structural alterations to the bearing walls, foundations, columns, beams, or girders, provided that no change in the basic use of the building occurs that would make the use less conforming to the district."

Here, the proposed changes do not relate to a building, thus the repairs are acceptable if they are normal maintenance of a use. It is a normal part of septic maintenance to both construct repair drainfields, and to periodically install more technologically advanced equipment within a system. Repairs such as these comprise the proposed activity. The activity thus satisfies state statutes for alterations of a nonconforming use. Highly pertinent, too, is that the activity will not result in expanding the number of homesites to be served by the apparatus. Thus, the Board concludes the repairs comply with the CCZO rules for maintaining nonconforming uses.

E. OAR 660-011-0060 does not supply additional standards that the County must evaluate in this case

The staff report incorporated into the Board's Order establishes that the above-cited administrative rule (relating to extension of city sewers into rural areas) does not constitute a criterion for this decision. In addition to those grounds, the Board concludes that the proposed repairs are not a "sewer system" because they do not residences to the Park and thus do not increase residential density in this rural area. This is especially the case because conditions of approval prohibit the system from serving more than the 46 currently-approved mobile home spaces at the Park.

III. Summary

In sum, the mobile home park is a nonconforming use that encompasses both tax lots 1900 and 2400. The repairs to the septic system are an allowed alteration to a nonconforming use. Subject to the Board's conditions of approval, the proposed repairs therefore comply with the County's land use regulations.

**COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
BOARD OF COUNTY COMMISSIONERS STAFF REPORT**

February 15, 2012

Appeal of Land Use Compatibility Statement (LUCS) 12-13

FILE NUMBER: LUCS 12-13

PROPERTY OWNERS: Michael and Denise Werner
16505 SE First Street
Vancouver, WA 98684

PROPERTY LOCATION: The subject property is located approximately four miles west of the City of Rainier, south and east of Price Road, at 25231 Alderbark Road.

TAX ACCT. NUMBER: 7315-020-01900 and 7315-020-02400

ZONING: Rural Residential-5 (RR-5)

SIZE: ± 16.09 Acres (Tax Lot 1900, ± 10.26 Acres; Tax Lot 2400, ± 5.83 Acres)

REQUEST: To allow DEQ to permit the Major Repair of a failing septic system in Mason's Deer Pointe Meadows Mobile Home Park on tax lots 7315-020-01900 and 7315-020-02400 through approval of a DEQ Land Use Compatibility Statement (LUCS). Approval of said LUCS is based on the Non-Conforming Use criteria set forth in Section 1506 of the County's Zoning Ordinance.

REVIEW CRITERIA:

| | <u>Pages</u> |
|---|--------------|
| Arguments of Appeal | 5 - 12 |
| <u>Columbia County Zoning Ordinance</u> Section 1506 - Non-Conforming Uses | 12 - 15 |

BACKGROUND:

On November 3, 2011, Columbia County Land Development Services Staff provided signature authorization of an Oregon Department of Environmental Quality (DEQ) Land Use Compatibility Statement (LUCS 12-13) for the Major Repair of a portion of a septic system serving 13 spaces within the Mason's Deer Pointe Meadows Mobile Home Park. Deer Pointe Meadows Mobile Home Park is located at 25231 Alderbark Road, approximately four miles west of the City of Rainier. Currently, the park consists of 46 mobile home/RV spaces and a laundry room (located on tax lot 1900) and a wastewater treatment facility, consisting of three septic systems, covered under a single Water Pollution Control Facilities (WPCF) Permit # 101436 (located on tax lots 1900 and 2400).

The Issue

The failure and repair of the northernmost drainfield (referred to in septic permits as System # 3) is the subject of this report. In April of 2010, DEQ and Columbia County's Sanitarian received a complaint that sewage was being indirectly discharged from the mobile home park onto neighboring properties. A site visit by Gary Artman of DEQ was conducted on April 19, 2010 to investigate the complaint. Said visit did not confirm sewage discharging to the ground's surface from the north drainfield, but did show signs that areas within the drainfield were experiencing periodic hydraulic overload because of wastewater flows and surface water running over the area. Mr. Artman sent the owners of the mobile home park, Michael and Denise Werner, a letter ("Warning Letter with Opportunity to Correct") on April 30, 2010 suggesting that the park owners initiate contact with a system designer to start considering system upgrades and to address permit reporting requirements that were not being met. On July 9, 2010, a second inspection of the mobile home park was conducted by DEQ and the western drainfield cell of the north drainfield was observed to be completely failing by discharging sewage onto the ground surface. A Pre-Enforcement Notice was mailed to Michael and Denise Werner informing them that they were in violation of their WPCF Permit and Oregon Administrative Rule (OAR) 340-071-0130(3) which "prohibits the discharge of untreated or partially treated sewage or septic tank effluent directly or indirectly onto the ground surface or into surface waters." Between July of 2010 and October of 2011, short term maintenance solutions to fix the failing drainfield were pursued and found to be ineffective. On October 18, 2011 a "Mutual Agreement and Final Order issued for a Civil Penalty Assessment" required the property owners of the mobile home park to "discontinue occupancy of the necessary number of mobile home hookups to the wastewater system, if there was untreated or partially treated sewage on the ground surface, so as to correct and prevent such sewage from reaching the ground surface at the property until a new wastewater treatment system was installed and operational." Michael and Denise Werner hired Smits and Associates, Inc., an Environmental Consulting Firm, to redesign the failing system.

Basis for Appeal

The WPCF Permit currently in effect for the site's wastewater treatment facility was issued by the Department of Environmental Quality in 1996 and was renewed by DEQ in 2004. DEQ required the existing WPCF permit to be modified to repair the failing system. Prior to approving and issuing the modified permit, DEQ requested verification from Columbia County, in the form of a Land Use Compatibility Statement (LUCS), that the use served by the system (the mobile home park) was an allowed use in accordance with local land use regulations. The County verified that the mobile home use was allowed as per Section 1506 (Non-Conforming Uses) of the Columbia County Zoning Ordinance and signed the LUCS. Since issuance of the LUCS, the WPCF Permit Modification was approved by DEQ and improvements to the system were completed.

On November 10, 2011, Don Campbell, a neighboring property owner, residing at 75735 Price Road, appealed the County's authorization of the LUCS. The appeal is based primarily on the following arguments by the appellant: "The County issued the LUCS unlawfully because the existing non-conforming use located on tax lot 1900 is not allowed to expand onto tax lot 2400," and "The park owners plan to add additional septic drainfields on tax lot 2400 constitutes an unlawful expansion of the mobile home park." The County's response to this appeal is documented through findings in the body of this Staff Report.

History of the Mobile Home Park as a Non-Conforming Use

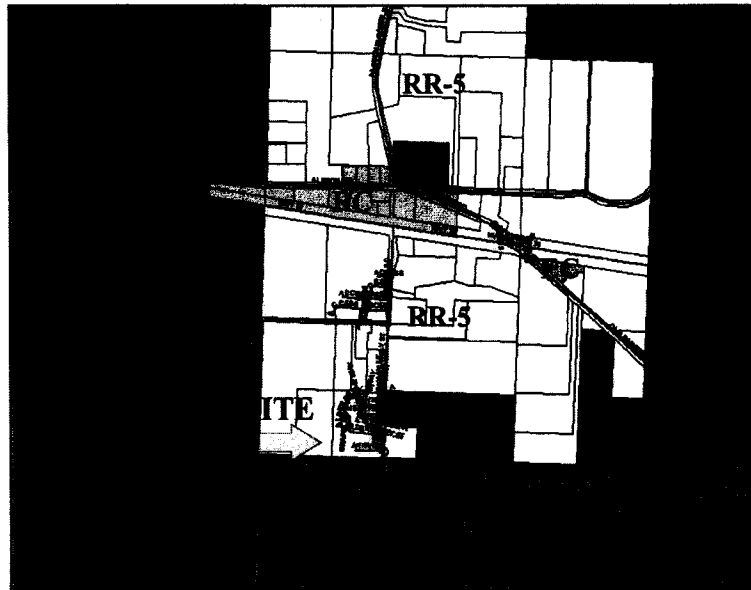
Mason's Deer Pointe Meadows Mobile Home Park has existed on the subject property since 1965. Columbia County's Comprehensive Plan and Zoning Ordinance (the documents that set forth land use regulations for the County) were not adopted until 1984. With the adoption of these documents, the property containing Deer Pointe Meadows Mobile Home Park was zoned Rural Residential-5 (RR-5). Mobile home parks are not a permitted use in the RR-5 Zone, but Section 1506.1 of the Columbia County Zoning Ordinance allows uses that existed prior to the adoption of land use regulations, to be continued, even if they do not conform with regulations enacted with the adoption of zoning, as legal "non-conforming" uses. Additionally, Section 1506.2 allows for the "normal maintenance and repair" of non-conforming uses.

Historical septic permits indicate that the original (1965) mobile home park (known as Homeaway Mobile Home Park) was authorized for 33 mobile home spaces. In 1994, the mobile home park was approved by Columbia County for a one-time expansion in accordance with Section 1506.9 of the County's Zoning Ordinance. CCZO Section 1506.9 states: "A non-conforming use may be expanded one time only. This expansion shall not exceed 40% of the square footage on the ground level of the existing structure, pursuant to Section 1506.5." The Staff Report for the Non-Conforming Use Expansion (NCU 3-94) concluded that a 40% expansion of the park could result in 13 additional mobile home spaces, for a total of 46 spaces. The mobile home park is currently developed to its maximum potential.

Aerial Photograph: PC Maps (2009)



Zoning Map



Subject Property and Appellant's Property



REVIEW CRITERIA:

This Staff Report is organized with a response to the appellant's argument presented first, followed by findings on the Columbia County Zoning Ordinance criteria not already covered.

APPELLANT'S ARGUMENT:

- "1. A "LUCS" is both a Land Use Decision under ORS 197.015(11) and a "Permit" under ORS 215.402.

Land use compatibility statements are generally considered to be statutory land use decisions, unless applicable exceptions apply. *Woffgram v. Douglas County*, 52 Or LUBA 536 (2006). *Farrell v. Jackson County*, 39 Or LUBA 149 (2000); *Hudson v. City of Baker*, 15 Or LUBA 650 (1987).

In this case, the County's determination that the septic drainfields located on Tax Lot 2400 are part of the non-conforming park use is a determination that involves factual, legal, and policy judgement and does not therefore fall within any exception to the statutory definition of land use decision...

2. The LUCS Requires Notice to Affected LandOwners and an Opportunity for a De Novo Local Appeal.

As a statutory land use decision, the County is generally required to give notice and provide an opportunity to be heard. The failure to provide such notice precludes the opportunity of neighbors, such as Mr. Campbell, to be heard, and therefore, may constitute an error that requires a remand.

Under State law, it is possible to process a land use decision without providing a notice and comment period. ORS 215.416(11). Such decisions require a *de novo* local appeal to the Planning Commission. Issues that can be raised are not limited to those issues raised in the notice of appeal. Based on my conversation with the Assistant County Counsel, it is my understanding that the LUCS is being processed under ORS 215.416(11)."

COUNTY RESPONSE:

Finding 1: LUCS 12-13 has been processed in accordance with Oregon Revised Statutes (ORS) 215.416(11). ORS 215.416(11) allows governing bodies to approve or deny an application for a permit without a hearing if notice of the decision is provided to persons who may be adversely affected or aggrieved by the decision. The opportunity to file an appeal of the decision shall be provided to any such persons that may be so affected.

The applicant submitted an application for a Land Use Compatibility Statement from the Department of Environmental Quality for septic system improvements for the Mason's Deer Pointe Meadows Mobile Home Park on November 3, 2011. Planning Staff did not object to the application to repair an existing drainfield serving 13 spaces within the mobile home park. On November 10, 2011, notice of this administrative decision was mailed to neighboring property owners within 250 feet of the subject property in accordance with ORS 197.763. Said notice described the nature of the decision and provided an opportunity for those notified to appeal the decision within 12 calendar days of the notification date. The

decision was appealed by Don Campbell (75735 Price Road, Rainier, OR 92048) on November 10, 2011.

Section 1701.4 of the County's Zoning Ordinance states the following:

"When a notice of appeal is properly and timely filed in compliance with this Section, and timely payment of the filing fee is made, a de novo appeal hearing shall be scheduled at the earliest opportunity. Notice of the hearing shall be scheduled at the earliest opportunity. Notice of the hearing shall be mailed to the appellant, the applicant, the property owner, if different from the applicant, and any other persons who requested notice of the appeal hearing in writing. Notice of the appeal hearing shall be published in a newspaper which covers the property subject to the appeal. Notice of the appeal hearing shall be mailed to the parties and distributed to the newspapers no later than 7 days prior to the scheduled hearing date."

Although administrative decisions are typically appealed to the Planning Commission, the Columbia County Board of Commissioners took jurisdiction of this case. A de novo public hearing will be held by the Board of County Commissioners on March 7, 2012. Originally, the hearing was scheduled for January 25, 2012, but at the request of the applicant was postponed to early March. As such, notice of the hearing was first mailed to the appellant, the property owners, and surrounding property owners on January 4, 2012. Notice of the hearing was published in *The Chronicle* on January 11, 2012. As a courtesy, notice of the revised March 7, 2012 hearing date was sent to the appellant, property owners, and surrounding property owners. Notification of the administrative decision and of the hearing for the appeal were conducted in accordance with the requirements of Columbia County's Zoning Ordinance and ORS 215.416(11). The hearing will also be held in accordance with the procedures established in the Zoning Ordinance and by ORS 215.416(11).

Continuing with the APPELLANT'S ARGUMENT:

- "3. The County issued the LUCS Unlawfully, because the Existing Non-Conforming Use Located on Tax Lot 1900 is not Allowed to Expand onto Tax Lot 2400.

The park owner has, to our knowledge, never obtained *land use* approval to operate a community septic system on Tax Lot 2400 in conjunction with its mobile home park located on TL 1900. We have evidence that demonstrates that the original non-conforming septic system (i.e. the system that pre-dated zoning regulations) was not installed on Tax Lot 2400. Rather, an illegal expansion of that system onto tax lot 2400 occurred in 1991. Because no land use permits were obtained for the 1991 expansion, it is not a lawful part of the non-conforming use.

The nonconforming use is governed by County Order 38-96 (dated 21 Feb. 1996). The notice of Public Hearing identified the subject property as tax lots 1900 and 2501. Tax Lot 2400 was not mentioned. Order 38-96 accomplished a number of things including:

- Establishing that the nonconforming use originally consisted of 33 lawful units.
- The original MHP was limited to Tax lot 1900, with one lawful non- MHP dwelling existing on 2501.
- The Order allowed a one-time 40% expansion, to 46 units. The expansion is limited to Tax Lot 1900.
- The Order required the applicant to repair failing septic systems "on the property." (i.e. TL 1900).

Pursuant to State law existing at that time, a non-conforming use is not allowed to expand onto a new lot or parcel of land...("We believe the lawful use of an improvement as a permitted non-conforming use is inextricably tied to the land where the improvement is located.")

In an unrelated case, Columbia County previously found a septic system was an integral part of a non-conforming use, such that the replacement of a septic system was sufficient to "commence" replacement of the burned-down clubhouse within one year, under ORS 215.130(6) and CCZO 1506.6. *Jordan v. Columbia County*, 42 Or. LUBA 341 (2002). Thus, it follows that the septic systems in Deer Pointe Meadows MHP are a part of the non-conforming use and are subject to all of the same limitations set forth in Order 38-96, including the limitation that the nonconforming use be restricted to TL 1900.

4. The Park Owners Plan to Add Additional Septic Drainfields on Tax Lot 2400 Constitutes and Unlawful Expansion of the Mobile Home Park.

In order to be a lawful part of the non-conforming use, the Park Owner has the burden to show that he obtained land use approval to expand the park onto a new lot...(Not enough to show that a use of land existed when the zoning law was first enacted; it must have existed as a lawful use at the time the law changed.) In this case, the park owner will not be able to show that he obtained land use approval to expand the septic system to TL 2400 in 1991. The expansion is therefore, unlawful and cannot be considered to a lawful part of the nonconforming use. ORS 215.130(5).

The Columbia County Zoning Code only allows one expansion of the park. Because the landowner already was granted that one-time expansion, no further expansions are allowed."

► COUNTY RESPONSE:

Finding 2: The appellant's argument that the proposed use shall not be allowed to expand onto tax lot 2400 is inaccurate for several reasons.

1. First, the appellant claims that the original non-conforming wastewater treatment facility (the facility that pre-dated zoning regulations) was not installed on tax lot 2400, but that it was illegally installed on tax lot 2400 after the adoption of zoning in 1991. Research conducted by Erin O'Connell, Columbia County's Sanitarian, indicates that tax lot 2400 has been used by the mobile home park for its wastewater treatment facility since 1975. A Chronology documenting the use of tax lot 2400 for mobile home park sewage disposal since 1975 is as follows:

- **5/30/1975** - Site consult performed with Sanitarians, Dan Bush and Steve Dreiling, park owner, Mr. Hallaran, and Installers, Warren and Lonnie Thompson. Auger excavations were made and general site observations to determine feasibility of repair. Space restrictions prompted the park owner to comment on the availability of space on the other land he owned which was not 285' x 660' as stated previously, but 385' x 660'. (Note: A current tax lot map has been included in the chronology with this document showing the dimensions of Map/tax lot identification 7315-020-02400 as being 385' x 660'). *Memo to File, dated May 30, 1975, from the Columbia County Health Department Field Sanitarian, Steve Dreiling, regarding a May 23, 1975 Site Consult.*
- **6/13/1975** - Permit No. 05-5713 is issued for the repair of STS # 2. Application, Soil notes, Map, Proposed and As-built drawings, Inspection reports and Certificate

of Satisfactory Completion are included. As built shows STS # 2 as being located on Tax lot(s) 1900 and 2400, or on the east and west side of the "Fence" which Staff finds to be consistent with representing the current property line based on property descriptions. Additionally, Permit No. 05-05713 identifies the subject property as approximately 16 acres in size. Tax lots 1900 and 2400 together are \pm 16.09 acres. This is consistent with current plans of the park's system. The Application Map also shows what is currently Tax lot(s) 1900 and 2400 in bold indicating the property associated with the permit. *Columbia County Planning/Building and Sanitation Permit Application for Permit No. 05-5713.*

- **11/13/1984** - Existing System Review letter regarding findings per request to evaluate the three septic systems serving Hallaran's Homeaway MHP located on tax account numbers **7315-020-01900 and 7315-020-02400**. Systems were found to be functioning and are described as "being installed in 1975 to replace the previous failing systems." Application and tax lot map included. *Letter, dated November 13, 1984, from Columbia County Sanitarian, Anne Cox, to L.B. Zurcher.*

A full "Onsite Septic System Historical Chronology" of the Mason's Deer Pointe Meadows Mobile Home Park, from 1965 to the present, is included as an attachment to this report. As can be seen by the permits outlined above, tax lot 2400 has contained components of the wastewater treatment facility serving the mobile home park since June of 1975. This 1975 date pre-dates the 1984 adoption of zoning regulations. A System Review Letter from 1984 further confirms that sewage treatment and disposal facilities were permitted on tax lot 2400 in 1975 and continued to exist in the same location after the adoption of zoning in 1984.

2. Second, the appellant argues that because tax lot 2400 was not identified as part of the mobile home park in the land use permit granting the expansion of the mobile home park in 1994 (NCU 3-94), that tax lot 2400 cannot be used for the proposed septic system repair without constituting an expansion onto a separate lot or parcel not affiliated with the park. As discussed in #1 of this finding, tax lot 2400 has been associated with the mobile home park for purposes of sewage disposal since 1975. It was not necessary to mention tax lot 2400 in the report for the 1994 non-conforming use expansion because it was not applicable to the request at the time. The expansion was specific to an increase in the number of mobile home spaces; tax lot 2400 has never and was not proposed to house mobile home units. As such, mention of tax lot 2400 in the Staff Report for NCU 3-94 was not relevant to the request, but does not disassociate tax lot 2400 from the mobile home park for the use of sewage disposal. CCZO 100.69 defines "non-conforming use" as: "A use or structure lawfully existing at the time this Ordinance became effective and which does not conform with the use regulations of the district in which it is located." Components of the wastewater treatment facility on tax lot 2400 were lawfully established by permit to serve the mobile home park long before the CCZO took effect and have remained in continuous use. It is therefore a non-conforming use regardless of whether it was documented in NCU 3-94.

Furthermore, Section 1506.2 of the County's Zoning Ordinance addresses the normal maintenance and repair of non-conforming uses. The criterion states: "Normal maintenance of a Non-Conforming Use is permitted, including structural alterations to the bearing walls, foundation, columns, beams, or girders provided that, (A) No change in the basic use of the building occurs that would make the use less conforming to the district." The Onsite Wastewater Treatment System Rules define "Repair" in Oregon Administrative Rule 340-071-0100(125) as the "installation of

all portions of a system necessary to eliminate a public health hazard or pollution of public waters created by a failing system. Major repair is the replacement of a sand filter, RGF, ATT, or soil absorption system..." Repair of a drainfield often requires relocation of the drainfield out of saturated soils to soils that are capable of handling existing wastewater flows. As defined, relocation of the north drainfield from the north end of tax lot 1900 to the west side of tax lot 1900 and the east side of tax lot 2400 constitutes a "Major Repair." Because both tax lots 1900 and 2400 have housed components of the wastewater treatment facility for the mobile home park since prior to land use regulations, repair of the system may occur on any portion of either tax.

3. Third, the appellant contests that the septic system is an integral part of the non-conforming use and as such, subject to all the same limitations set forth in the Final Order of NCU 3-94, including the limitation that the non-conforming use be restricted to TL 1900. Nowhere in the Staff Report or Final Order of NCU 3-94 are septic improvements for the mobile home park limited to tax lot 1900. Mobile home park *spaces* are limited to tax lot 1900 and further development of tax lot 1900 is prohibited based on the "one-time 40% expansion" limitation of non-conforming uses, but this limitation pertains exclusively to the *number of mobile home units* located on the property.

Specifically, the appellant challenges three conditions of approval of the NCU 3-94 Final Order:

- Condition # 1 states that "the maximum number of *units*, including mobile homes, travel trailers and recreational vehicles, shall not exceed 46 at any time in the park on 1900..."(Emphasis added.) However, this condition does not address the septic system. It simply addresses the location of mobile home units, limiting their location to tax lot 1900. All mobile home spaces are located on tax lot 1900. Proposed septic improvements will not increase the number of spaces in the park, nor allow mobile home spaces to be moved onto tax lot 2400.
- Condition # 3 states that "any failing septic systems on the property must be repaired and certified operational by letters from the Oregon Department of Environmental Quality (DEQ)...and the County Sanitarian..." This condition simply requires that the septic system serving the park be operational. It does not limit the system to tax lot 1900. The proposal supports Condition # 3 because the applicant is seeking approval from DEQ and the County.
- Condition # 5 states that "no further expansion of the mobile home park may be approved under these Sections of the Zoning Ordinance. In addition, no further development of either tax lot 1900 or 2501 (a total of 12.76 acres) may occur under the present zoning of the parcels." Repair of the wastewater treatment facility does not constitute an expansion of the mobile home park. Neither the number of spaces in the park, nor the size or capacity of the wastewater treatment facility are being increased. On the contrary, the system is being reduced in size because of an improved design. In 1975, the north drainfield consisted of 2,500 linear feet of drain line. With improvements, linear feet of drain line is reduced to 1,080. Similarly, the capacity of the north system was previously approved for a maximum daily flow of 2,500 gallons per day (gpd). The improved system is approved for a lesser maximum daily flow of 2,275 gpd.

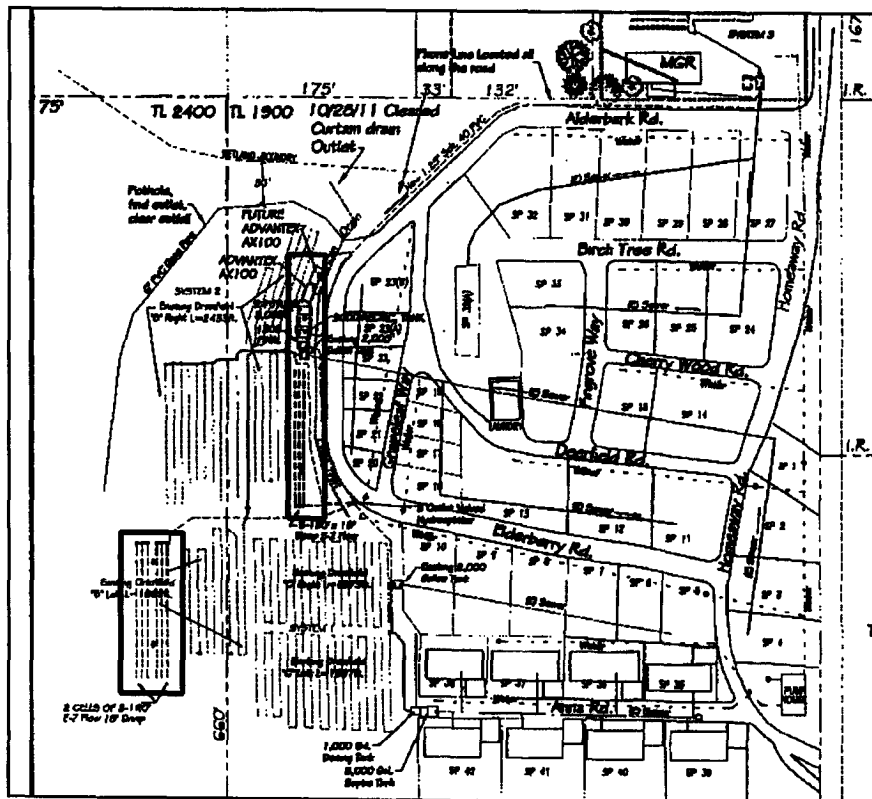
Specifically, the north drainfield on tax lot 1900 has been disconnected from the septic tank through the physical disconnection of the effluent sewer piping feeding the drainfield. A

new pressure effluent sewer pipe has been installed in a pump basin flowing from the existing septic tank to a new treatment unit and new drainfield cells. The repaired system was designed, however, with a mechanism to return (divert) flow back to the north drainfield on tax lot 1900. This design potentially allows the north drainfield to be used as a repair area for the wastewater treatment facility if said area is found to be rehabilitated and suitable for such use.

According to DEQ, such a design provides flexibility in the use of the system to help prevent future failures and is often used in large wastewater treatment operations. Although use of the northernmost drainfield as a repair area does not necessarily constitute an expansion of the capacity of the system, it could be perceived as an expansion of the physical land area of the use based on the circumstances. Therefore, as a Condition of Approval of the LUCS, the north drainfield on tax lot 1900 may only be used if there is no net increase in: 1.) the physical land area being used on tax lots 1900 and 2400 at any one time for the treatment of wastewater and 2.) the permitted design flows of the mobile home park's wastewater treatment facility (consisting of three septic systems). As conditioned, repair of the wastewater treatment facility does not constitute an expansion of the capacity or land area of the system or enable an increase in use or development of the mobile home park. The proposal is not in violation of Condition # 5.

Site Map of Septic System Improvements (Areas of Improvement Outlined)

Note: Full Site Map of Improvements and Site Map of Disconnect included as Attachments to this report



Finally, it is important to note that the County does not issue land use permits for the continued use of a lawfully established non-conforming use. Section 1506.1 outright permits the continuation of non-conforming uses. The County simply acknowledges that the use existed prior to zoning and allows for the continuation of said use. As such, there are no land use permits on file allowing tax lot 2400 to be used for the wastewater treatment facility supporting the Deer Pointe Meadows Mobile Home Park (only septic permits as described above).

Continuing with the APPELLANT'S ARGUMENT:

"5. The County Has Made No Findings of Compliance with OAR 660-011-0060 et seq.

OAR 660-011-0060 sets forth certain criteria governing the extension of sewer systems on rural lands. While these laws do not supersede the County's nonconforming use provisions in the zoning code, they do provide additional standards that must be followed."

► **COUNTY RESPONSE:**

Finding 3: OAR 660-011-0060 is not applicable to the proposal being considered. Oregon Administrative Rule Chapter 660, Division 11 addresses Public Facilities Planning and exists to aid in achieving the requirements of Oregon Statewide Planning Goal 11. It is the purpose of Goal 11 to "plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." In supporting this goal, it is the purpose of OAR 660-011-0000 to "interpret Goal 11 requirements regarding public facilities and services on rural lands..."

OAR 660-011-0060 specifically addresses the establishment of new "sewer systems" or the "extension of existing sewer systems" on rural lands. The Mason's Deer Pointe Meadows Mobile Home Park is not served by a sewer system as defined by this Section. OAR 660-011-0060(1)(f) defines "sewer system" as "a system that serves more than one lot or parcel, or more than one condominium unit or more than one unit within a planned unit development, and includes pipelines or conduits, pump stations, force mains, and all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or for collecting or conducting sewage to an ultimate point for treatment and disposal." OAR 660-011-0060(1)(b) further defines the "extension of a sewer system" as "the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing sewer system in order to provide service to a use, regardless of whether the use is inside the service boundaries of the public or private service provider..."

Rather, Mason's Deer Pointe Meadows Mobile Home Park is served by an "onsite wastewater treatment system." OAR Chapter 340, Division 71 (OAR 340-071-0100) defines "onsite wastewater treatment system" as "any existing or proposed subsurface onsite wastewater treatment and dispersal system including but not limited to a standard subsurface, alternative, experimental, or nonwater-carried sewage system..." The two terms are not interchangeable and are addressed together in OAR 660-011-0060(4)(a)(D), which states that "a local government may allow the establishment of a new sewer system, or the extension of an existing sewer system, to serve land outside urban growth boundaries and unincorporated community boundaries in order to mitigate a public health hazard, provided that the DEQ or the Oregon Health Division determine that there is no practicable alternative to a sewer system in order to abate the public health hazard." OAR 660-011-0060(1)(c) defines "No practicable alternative to a sewer system" as a "determination by the Department of Environmental Quality (DEQ) or the Oregon Health Division pursuant to criteria in OAR chapter 340, division 71, and other applicable rules and laws, that an

existing public health hazard cannot be adequately abated by the repair or maintenance of existing sewer systems or on-site systems or by the installation of new on-site systems as defined in OAR 340-071-0100." If, as described in this definition, an alternative to a "sewer system" is an "onsite wastewater treatment system," then it is obvious that said systems are not one in the same.

The definitions outlined above clearly identify the differences between a sewer system and an onsite wastewater treatment system. The mobile home park is not served by a sewer system as set forth in Oregon Administrative Rule addressing Public Facilities Planning. It is served by an onsite wastewater treatment system. OAR 660-011-0060 prohibits the extension of sewer lines from inside city limits or city urban growth boundaries to lands outside of the city limits or urban growth boundaries unless the extension of the sewer is necessary to alleviate a public health hazard. In this case, the mobile home park is served by an onsite wastewater treatment system that can be repaired as described throughout this report. The protection of public health is not contingent upon the extension of sewer from a local municipality. As such, OAR 660-011-0060 does not apply to this application.

Beginning with the COLUMBIA COUNTY ZONING ORDINANCE:

Section 1506 Non-Conforming Uses:

- .2 Normal Maintenance and Repairs: Normal maintenance of a Non-Conforming Use is permitted, including structural alterations to the bearing walls, foundation, columns, beams, or girders, provided that:
 - A. No change in the basic use of the building occurs that would make the use less conforming to the district.

Finding 4: Tax lots 7315-020-01900 and 7315-020-02400 have housed the septic systems serving Mason's Deer Pointe Meadows Mobile Home Park since 1975 (prior to the adoption of land use regulations). As discussed in Finding # 2 of this report, a non-conforming use is defined by Section 100.69 of the Columbia County Zoning Ordinance as "a use or structure lawfully existing at the time this Ordinance became effective and which does not conform with the use regulations of the district in which it is located." As such, the wastewater treatment facility serving the mobile home park is a part of the non-conforming use (the park). CCZO Section 1506.2 allows for the "normal maintenance and repair" of non-conforming uses.

Repair of the wastewater treatment facility is summarized by DEQ as follows:

- The proposed system is a proprietary Recirculating Fixed Film Media Filter and drainfield system designed for a maximum peak daily flow of 2,275 gallons per day (gpd) and an average daily flow of about 1,140 gpd. This system will replace the failing system previously referred to as either "the north drainfield", "System 3" or "System A". The system is presently connected to 13 manufactured dwellings.
- The existing 3,000 gallon septic tank and external pump vault will collect and pump septic tank effluent to a proposed new 3,000 gallon recirculation/processing tank.
- After treatment the effluent will be collected in a proposed new 1500 gallon drainfield dosing tank and pumped to 1,080 linear feet of proposed new disposal trench constructed in three cells.

The installation of a new recirculation/processing tank, drainfield dosing tank, and new disposal trench constitutes a "Major Repair" as defined by OAR 340-071-0100(125). See Finding # 2 for the Onsite Wastewater Treatment System Rule's definition of "Major Repair." All septic system absorption facilities have a life expectancy dictated by several factors. Because systems use physical and biological properties for the treatment and disposal of wastewater, it is anticipated that eventually soils will lose their ability to treat wastewater effectively, resulting in a failing system. Therefore, the normal maintenance and repair of a wastewater treatment facility often results in partial or complete replacement of the absorption facility.

In the case of the repair of the wastewater treatment facility at the Deer Pointe Meadows Mobile Home Park, the north drainfield is being replaced by a Fixed Film Media Filter and drainfield system. The design of this system incorporates Alternative Treatment Technologies to reduce the physical area of the site dedicated to the drainfield. Alternative Treatment Technologies are described by DEQ as "treatment devices that take wastewater generated from a home or business and improve its quality before sending it to a drainfield for further treatment and dispersal."

Finally, improvements to the system were permitted by DEQ in accordance with OAR 340-071-0215(4)(b) which addresses the criteria for permit issuance for the repair of existing systems. The criteria states: "If the site characteristics or standards in OAR 340-071-0220 cannot be met, the agent may allow a reasonable repair installation to eliminate a public health hazard, including the installation of an alternative system as necessary." New construction installation system permits must meet all conditions and criteria in OAR 340-071-0220 and are not afforded the same flexibility in design as existing system repairs. Repairs are handled through a permit modification process. Conversations with DEQ Staff indicate that an expansion to the system, for a larger design flow, would require a new permit subject to OAR 660-071-0220. As WPCF Permit # 101436 is being modified, and a new permit has not been issued, the improvements constitute a repair as opposed to an expansion. System improvements will not make the use less conforming to the district; on the contrary, system improvements will make the use more conforming because less physical land area will be used to support the repaired system. Finally, there will be no change in the use of the mobile home park. Staff finds that the criterion is met.

Continuing with the COLUMBIA COUNTY ZONING ORDINANCE Section 1506:

{The normal maintenance and repair of a non-conforming use is not subject to the criterion set forth in Section 1506.5 of the Columbia County Zoning Ordinance. Nevertheless, Staff has shown the proposal's consistency with CCZO Section 1506.5 in Findings 5 - 8.}

- .5 **Rebuilding, Change, Moving, or Use Expansion:** A Non-Conforming building or use may be rebuilt, moved, or changed in use to a use of the same restrictive classification or expanded, subject to the provisions outlined herein, if upon review in accordance with Section 1601 the Director finds all the following to exist:

- A. That such modifications are necessary because of practical difficulties or public need;

Finding 5: As documented in the background section of this report, Septic System # 3 of the Mason's Deer Pointe Meadows Mobile Home Park has been failing by discharging sewage onto the ground surface since July of 2010. A Pre-Enforcement Notice from Gary Artman of DEQ to the property owners, Michael and Denise Werner, dated July 14, 2010, stated that the "drainfield was no longer operating as intended and in a way protective of human health and the environment." The notice went on to state:

“The improper discharge of untreated or partially treated sewage onto the ground surface presents a potential public health hazard through direct human contact or through contact with insects or other animals that have been in contact with the sewage. The public are still being exposed to this public health hazard. Sewage is also an environmental threat and a significant pollutant that can harm aquatic life, contaminate drinking waters, and impair recreational, commercial and agricultural uses of water.”

Oregon Administrative Rule (OAR) 340-071-0130(3) and the Park’s WPCF Permit prohibit discharge of untreated or partially treated sewage or septic tank effluent directly or indirectly onto the ground surface or into surface waters. In the pre-Enforcement Notice, DEQ outlined six corrective actions required by the property owners to eliminate the public health threat (described above) of the failing system. The sixth action required the design of a new system to replace and upgrade the existing failing system. On November 11, 2010 another pre-Enforcement Notice was issued by DEQ as a result of another discharge of sewage onto the ground surface indicating that a long term solution had not been implemented. As a result, the property owners were referred for enforcement and a Mutual Agreement and Order (MAO) was issued on October 18, 2011 requiring discontinued use of the failing system.

There are two options for the discontinuation of use of the failing system: (1) abandon the failing system and reduce the number of spaces in the mobile home park by 13 (back to the original 33 spaces), or (2) repair the failing system. In order to avoid the displacement of 13 families or individuals from their homes, the property owners opted to repair the failing system. Repair (by replacement) of the existing wastewater treatment facility is necessary for the protection of public health. Staff finds that the criterion is met.

Continuing with the COLUMBIA COUNTY ZONING ORDINANCE Section 1506.5:

- B. That such modifications are not greater than are necessary to overcome the practical difficulties or meet the public need;

Finding 6: Modifications to the Deer Pointe Meadows Mobile Home Park WPCF Permit are the minimum necessary to repair the system so that it is no longer failing. The existing System # 3 is authorized by DEQ to serve 13 units. The repaired system has also been authorized to serve (only) 13 units. Design flows were established using existing established flows of the system since its repair in 1975. These flows are less than what is required by construction standards today, but were found to be sufficient by DEQ to support the existing use as presented in a “Site Suitability Report.” The maximum daily flow of the previous system was 2,500 gallons per day. The maximum daily flow of the new system is 2,275 gallons per day. Similarly, the system will take up less physical area of the site than the previous system. In 1975, the system consisted of 2,500 linear feet of drainfield. With improvements, linear feet of drainfield is reduced to 1,080.

The recirculation/processing tank and one of the new drainfield cells will be located on tax lot 7315-020-01900. Two drainfield cells will be located on tax lot 7315-020-02400. It is necessary to move the existing drainfield of System # 3, located at the north end of tax lot 7315-020-01900, to the west side of said tax lot and to the east side of tax lot 7315-020-02400 due to the space and soil limitations associated with the remainder of tax lot 7315-020-01900 and to ensure that soils are suitable to support the new system for the long term. Modifications to the system, as proposed, are not greater than are necessary to overcome the practical difficulty of the failing system and/or to meet the public need of eliminating the risks associated with a failing system to public health. Staff finds that the criterion is met.

Continuing with the COLUMBIA COUNTY ZONING ORDINANCE Section 1506.5:

- C. That such modifications will not significantly interfere with the use and enjoyment of other land in the vicinity, nor detract from the property value thereof; and

Finding 7: Modifications, as described in Finding 4, will not significantly interfere with the use and enjoyment of other land in the vicinity, nor detract from the property value thereof. The allowance of repairs to the failing system will eliminate public health risks (described in Finding 5) caused by the presence of untreated or partially treated sewage on the ground's surface. Minor repairs to the system have been unsuccessful in the past. The "Major Repair" with the inclusion of Alternative Treatment Technologies" will significantly reduce the likelihood that the system will fail again in the short term and will improve the quality of effluent being discharged into the ground. DEQ outlines the benefits of Alternative Treatment Technologies (ATT) in their "Septic System Alternative Treatment Technologies Fact Sheet": "Many homeowners are interested in ATTs for their property because of aesthetic reasons. ATTs typically are installed entirely below the ground surface with access lids being the only visible feature...Moreover, due to the modular nature of many ATTs they are typically easy to install and may have a smaller footprint than conventional systems...Many types of ATTs can provide higher levels of treatment and thus be more effective than conventional septic systems in protecting water quality." Wastewater Treatment Facility improvements will be located underground for the most part and should not be an aesthetic nuisance. On the contrary, above-ground areas occupied by the wastewater treatment facility will remain as open space. Finally, the repaired system will be located away from the area that was failing and from existing residential development in the vicinity. An improved system, located a fairly significant distance from other residential development should have no effect on property values in the area. Staff finds that the criterion is met.

Continuing with the COLUMBIA COUNTY ZONING ORDINANCE Section 1506.5:

- D. That such modification will not endanger the public health, safety, and general welfare.

Finding 8: As stated by DEQ on "What You Should Know About Septic Systems," (<http://www.deq.state.or.us>):

A septic system is the most common method of sewage treatment for homes that are not on a public sewer line. A septic system consists of a septic tank, where solids settle and decompose, and a drain field where liquid discharged from the tank is treated by bacteria living in the soil. The septic tank settles out and decomposes solid sewage. The resulting liquid discharge from the tank slowly seeps into the drain field where it receives final treatment from bacteria living in the soil. Properly functioning septic systems treat sewage to prevent ground and surface water pollution. A malfunctioning system is a health hazard to your family and your neighbors, and will harm natural resources.

Lastly, as provided for in Findings 5 through 7, the purpose of repairing the failing wastewater treatment facility is to protect public health, safety and general welfare. Staff finds that the criterion is met.

STAFF RECOMMENDATION:

Based on the facts and findings of this staff report for the Appeal of LUCS 12-13, Staff recommends that the Board of County Commissioners **DENY** the Appeal and **APPROVE** LUCS 12-13 to allow for the repair of Mason's Deer Pointe Meadows Mobile Home Park Wastewater Treatment Facility on tax lots 7315-020-01900 and 7315-020-02400 subject to Conditions of Approval:

CONDITIONS:

- 1.) Future use of the northernmost drainfield on tax lot 7315-020-01900 shall not result in a net increase of:
 - a.) The physical land area being used on tax lots 1900 and 2400 at any one time for the treatment of wastewater as of the date of this report.
 - b.) The permitted design flows of the mobile home park's wastewater treatment facility (consisting of three septic systems) as of the date of this report.
- 2.) It shall be the responsibility of the Facility's Certified Maintenance Provider to document and ensure that manipulation of flows meet the requirements established by Condition # 1, including but not limited to, a mechanism to control and monitor flow proportionally within any one absorption facility.

Attachments:

Approved DEQ Land Use Compatibility Statement

Letter of Appeal

Deer Pointe Meadows Mobile Home Park Onsite Septic System Historical Chronology (permits, etc...available upon request)

1975 Septic System Permit and System As Built showing use of Tax Lot 7315-020-02400 for lawful sewage disposal

NCU 3-94 Final Order

Site Map of Septic System Improvements

Site Map of Septic System # 3 Drainfield Disconnect

Zoning Map

Address Map

Vicinity Map

**Oregon Department of Environmental Quality
LAND USE COMPATIBILITY STATEMENT**



DEQ

State of Oregon
Department of
Environmental
Quality

WHAT IS A LAND USE COMPATIBILITY STATEMENT (LUCS)? A LUCS is a form developed by DEQ to determine whether a DEQ permit or approval will be consistent with local government comprehensive plans and land use regulations.

WHY IS A LUCS REQUIRED? DEQ and other state agencies with permitting or approval activities that affect land use are required by Oregon law to be consistent with local comprehensive plans and have a process for determining consistency. DEQ activities affecting land use and the requirement for a LUCS may be found in Oregon Administrative Rules (OAR) Chapter 340, Division 18.

WHEN IS A LUCS REQUIRED? A LUCS is required for nearly all DEQ permits and certain approvals of plans or related activities that affect land use prior to issuance of a DEQ permit or approval. These permits and activities are listed in section 1.D on p. 2 of this form. A single LUCS can be used if more than one DEQ permit or approval is being applied for concurrently.

Permit modifications or renewals also require a LUCS when any of the following applies:

1. Physical expansion on the property or proposed use of additional land;
2. Alterations, expansions, improvements or changes in method or type of disposal at a solid waste disposal site as described in OAR 340-093-0070(4)(b);
3. A significant increase in discharges to water;
4. A relocation of an outfall outside of the source property; or
5. Any physical change or change of operation of an air pollutant source that results in a net significant emission rate increase as defined in OAR 340-200-0020.

HOW TO COMPLETE A LUCS:

| Step | Who Does It? | What Happens? |
|------|--------------------------------|---|
| 1 | Applicant | Applicant completes Section 1 of the LUCS and submits it to the appropriate city or county planning office. |
| 2 | City or County Planning Office | City or county planning office completes Section 2 of the LUCS to indicate whether the activity or use is compatible with the acknowledged comprehensive plan and land use regulations, attaches written findings supporting the decision of compatibility, and returns the signed and dated LUCS to the applicant. |
| 3 | Applicant | Applicant submits the completed LUCS and any supporting information provided by the city or county to DEQ along with the DEQ permit application or approval request. |

WHERE TO GET HELP: For questions about the LUCS process, contact the DEQ staff responsible for processing the permit or approval. DEQ staff may be reached at 1-800-452-4011 (toll-free, inside Oregon) or 503-229-5630. For general questions, please contact DEQ land use staff listed at: www.deq.state.or.us/pubs/permithandbook/lucs.htm.

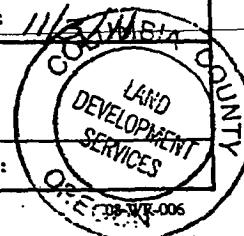
CULTURAL RESOURCES PROTECTION LAWS: Applicants involved in ground-disturbing activities should be aware of federal and state cultural resources protection laws. ORS 358.920 prohibits the excavation, injury, destruction, or alteration of an archeological site or object or removal of archeological objects from public and private lands without an archeological permit issued by the State Historic Preservation Office. 16 USC 470, Section 106, National Historic Preservation Act of 1966 requires a federal agency, prior to any undertaking, to take into account the effect of the undertaking that is included on or eligible for inclusion in the National Register. For further information, contact the State Historic Preservation Office at 503-378-4168, ext. 232.

Oregon Department of Environmental Quality
LAND USE COMPATIBILITY STATEMENT (LUCS)
p. 1 of 2

| SECTION 1 - TO BE COMPLETED BY APPLICANT | |
|---|--|
| A. Applicant Name: Michael J. & Denise L. Werner | B. Project Name: Masons Deer Point Meadows MHP |
| Contact Name: Michael J. Werner | Physical Address: 25231 Alderbark Road |
| Mailing Address: 10009 Evergreen Hwy. | City, State, Zip: Rainier, OR 97048 |
| City, State, Zip: Vancouver, WA 98664 | Tax Lot #: 1900 & 2400 |
| Telephone: (360) 772-2939 or (360) 513-9995 | Township: 7N Range: 3W Section: 15-B0 |
| Tax Account #: 20769 & 20775 | Latitude: 46.0926 |
| | Longitude: 123.0491 |
| C. Describe the project, include the type of development, business, or facility and services or products provided (attach additional information if necessary): Existing mobile home park served by individual wells and septic tanks and drainfields. This Land Use Approval is needed to submit plans to DEQ to repair and upgrade north drainfield system 3 which serves 13 spaces of the mobile home park by upgrading the existing pump basin, installing a new effluent transport pipe running to a new 3,000-gallon concrete processing tank with pumps alternately discharging to an AdvanTex Model AX100 advanced treatment unit with discharge to a 1,500-gallon concrete dosing tank tank having alternating pumps which will discharge to 3 new cells of drainfield through a flow splitting device called a Hydrosplitter. Other minor changes to the existing tanks and drainfields are planned to enable easier monitoring operation and service of the existing components. | |
| D. Check the type of DEQ permit(s) or approval(s) being applied for at this time. | |
| <input type="checkbox"/> Air Quality Notice of Construction <input type="checkbox"/> Air Contaminant Discharge Permit (<i>excludes portable facility permits</i>) <input type="checkbox"/> Air Quality Title V Permit <input type="checkbox"/> Air Quality Indirect Source Permit <input type="checkbox"/> Parking/Traffic Circulation Plan <input type="checkbox"/> Solid Waste Land Disposal Site Permit <input type="checkbox"/> Solid Waste Treatment Facility Permit <input type="checkbox"/> Solid Waste Compost Facility Registration or Permit <input type="checkbox"/> Solid Waste Letter Authorization Permit <input type="checkbox"/> Solid Waste Material Recovery Facility Permit <input type="checkbox"/> Solid Waste Energy Recovery Facility Permit <input type="checkbox"/> Solid Waste Transfer Station Permit <input type="checkbox"/> Waste Tire Storage Site Permit <input type="checkbox"/> Pollution Control Bond Request | <input type="checkbox"/> Hazardous Waste Treatment, Storage, or Disposal Permit <input type="checkbox"/> Clean Water State Revolving Fund Loan Request <input checked="" type="checkbox"/> Wastewater/Sewer Construction Plan/Specifications (<i>includes review of plan changes that require use of new land</i>) <input type="checkbox"/> Water Quality NPDES Individual Permit <input type="checkbox"/> Water Quality WPCF Individual Permit (<i>for onsite construction-installation permits use the DEQ Onsite LUCS form</i>) <input type="checkbox"/> Water Quality NPDES Stormwater General Permit (<i>1200-A, 1200-C, 1200-CA, 1200-COLS, and 1200-Z</i>) <input type="checkbox"/> Water Quality General Permit (<i>all general permits, except 600, 700-PM, 1700-A, and 1700-B when they are mobile.</i>) <input type="checkbox"/> Water Quality 401 Certification for federal permit or license |
| E. This application is for: <input type="checkbox"/> Permit Renewal <input type="checkbox"/> New Permit <input type="checkbox"/> Permit Modification <input checked="" type="checkbox"/> Other: | |
| SECTION 2 - TO BE COMPLETED BY CITY OR COUNTY PLANNING OFFICIAL | |
| Instructions: Written findings of fact for all local decisions are required; written findings from previous actions are acceptable. For uses allowed outright by the acknowledged comprehensive plan, DEQ will accept written findings in the form of a reference to the specific plan policies, criteria, or standards that were relied upon in rendering the decision with an indication of why the decision is justified based on the plan policies, criteria, or standards. | |
| A. The project proposal is located: <input type="checkbox"/> Inside city limits <input type="checkbox"/> Inside UGB <input checked="" type="checkbox"/> Outside UGB | |
| B. Name of the city or county that has land use jurisdiction (the legal entity responsible for land use decisions for the subject property or land use): <div style="text-align: center; font-family: cursive; font-size: 1.2em; margin-top: 5px;">Columbia County</div> | |

Oregon Department of Environmental Quality
LAND USE COMPATIBILITY STATEMENT (LUCS)
p. 2 of 2

| SECTION 2 - TO BE COMPLETED BY CITY OR COUNTY PLANNING OFFICIAL | |
|---|---|
| Applicant Name: <u>Michael Werner</u> | Project Name: <u>Masons Deer Pointe Meadows MHP</u> |
| C. Is the activity or use allowed under Measure 49? <input checked="" type="checkbox"/> No, Measure 49 is not applicable <input type="checkbox"/> Yes; if yes, then check one: | |
| <input type="checkbox"/> Express; approved by DLCD order #: | |
| <input type="checkbox"/> Conditional; approved by DLCD order #: | |
| <input type="checkbox"/> Vested; approved by local government decision or court judgment docket or order #: | |
| D. Is the activity or use compatible with your acknowledged comprehensive plan as required by OAR 660-031? <i>Please complete this form to address the activity or use for which the applicant is seeking approval (see 1.C on the previous page). If the activity or use is to occur in multiple phases, please ensure that your approval addresses the phases described in 1.C. For example, if the applicant's project is described in 1.C as a subdivision and the LUCS indicates that only clearing and grading are allowed outright but does not indicate whether the subdivision is approved, DEQ will delay permit issuance until approval for the subdivision is obtained from the local planning official.</i> | |
| <input type="checkbox"/> The activity or use is not regulated by the acknowledged comprehensive plan; explain: | |
| <input checked="" type="checkbox"/> YES, the activity or use is pre-existing nonconforming use allowed outright by (provide reference for local ordinance): <u>Columbia County Zoning Ordinance Section 1506</u> | |
| <input type="checkbox"/> YES, the activity or use is allowed outright by (provide reference for local ordinance): | |
| <input type="checkbox"/> YES, the activity or use received preliminary approval that includes requirements to fully comply with local requirements; findings are attached. | |
| <input type="checkbox"/> YES, the activity or use is allowed; findings are attached. | |
| <input type="checkbox"/> NO, see 2.C above, activity or use allowed under Measure 49; findings are attached. | |
| <input type="checkbox"/> NO, (complete below or attach findings for noncompliance and identify requirements the applicant must comply with before compatibility can be determined): Relevant specific plan policies, criteria, or standards: Provide the reasons for the decision: | |
| Additional comments (attach additional information as needed): <u>Replacement of failing drainfield for previously authorized (existing) mobile home park. Drainfield will be replaced on tax lot 7315-020-02400 in an area already occupied with existing drainfield and on tax lot 7315-020-01900. No increase in the number of units or spaces is proposed as part of this application.</u> | |
| Planning Official Signature: <u>Erika Owen</u> | Title: <u>Planner II</u> |
| Print Name: <u>Erika Owen</u> | Telephone #: <u>503-397-7216</u> Date: <u>11/3/2016</u> |
| If necessary, depending upon city/county agreement on jurisdiction outside city limits but within UGB: | |
| Planning Official Signature: | Title: |
| Print Name: | Telephone #: Date: |



COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES
Planning Division
COURTHOUSE
220 STRAND
ST. HELENS, OREGON 97051
PHONE: (503) 387-1801 FAX: (503) 388-3902

APPEAL / REFERRAL

NOTE: If this is an appeal, please read the back of this form to determine if you have "Standing"

CIRCLE ONE OF THE FOLLOWING

☒ **APPEAL** or ☐ **REFERRAL**

YOUR NAME: Don Campbell Phone: 503.556.8572

Address: 75735 Price Road City: Rainier OR Zip: 97048

ORIGINAL APPLICATION: Name: Michael J & Denise Werner

File #: N/A **Request:** Appeal of Land Use Compatibility
Statement issued on Nov 3, 2011 for Masonic Deer Point Meadows
MHP (See Attached LUCs)

APPEAL Fee: \$215.00 - Fee \$244
File in the County Clerk's Office

Please check one of the following:

☒ I wish to appeal the decision made by the Land Development Services Department. This appeal is to the Columbia County Planning Commission. (CCZO Section 1702); or

☐ I wish to appeal the decision made by the Columbia County Planning Commission. This appeal is to the Columbia County Board of Commissioners. (CCZO Section 1703)

Original request was: ☒ Approved or ☐ Denied; **Decision Date:** Nov
Appeal Deadline: See ORS 215.416(11)

Reason for appeal (attach additional pages if necessary): See Attached letter from Andrew
H. Stamp, P.C.

REFERRAL Fee: \$215.00

File in the Land Development Services Office

The application is reviewed Administratively without a public hearing, and I wish to refer this application to the Columbia County Planning Commission for a public hearing.

Reason for referral (attach additional pages if necessary):

The foregoing statements are in all respects true and correct to the best of my knowledge and belief

Date: Nov 10, 2011 **Signed:** Donald Campbell

BY COLUMBIA COUNTY CLERK
DEP
NOV 10 1 24 PM '11

FOR CLERK'S OFFICE USE ONLY

Received: 11/10/11 **Received by:** [Signature] **Receipt #** 90032 **Check #** 244.00

Please route copies of this form to: Board of Commissioners (4 copies), Land Development Services (1 copy) and County Counsel (1 copy). Thank you.



ANDREW H. STAMP, P.C.
ATTORNEY AT LAW
Kruse-Mercantile Professional Offices, Suite 16
4248 Galewood St.
Lake Oswego, OR 97035

Admitted in Oregon.

Tele: 503.675.4318
Fax: 503.675.4319
andrewstamp@comcast.net

10 NOVEMBER 2011

VIA EMAIL & U.S. MAIL

Mr. Todd Dugdale, Director, Land Development Services
Mr. Glen Higgins, Planning Division Manager
Columbia County
230 Strand Street
St. Helens, OR 97051

Re: *Mason's Deer Pointe Meadows Mobile Home Park /
Appeal of Issuance of LUCS for an expansion of the Septic Fields onto
Tax Lot 2400*

Dear Mr. Dugdale and Mr. Higgins:

I am a land use attorney representing Don Campbell, who owns property located at 75735 Price Road, Rainier, OR 97048. As you know, the County recently issued a Land Use Compatibility Statement (LUCS) for Deer Pointe Meadows MHP which allows the MHP to expand its septic drainfields onto TL 2400. We believe that the LUCS was issued unlawfully, for the following reasons:

1. A "LUCS" is both a Land Use Decision under ORS 197.015(11) and a "Permit" under ORS 215.402.

Land use compatibility statements are generally considered to be statutory land use decisions, unless applicable exceptions apply. *Wolfgram v. Douglas County*, 52 Or LUBA 536 (2006). *Farrell v. Jackson County*, 39 Or LUBA 149 (2000); *Hudson v. City of Baker*, 15 Or LUBA 650 (1987).

In this case, the County's determination that the septic drainfields located on Tax Lot 2400 are part of the non-conforming park use is a determination that involves factual, legal, and policy judgment and does not therefore fall within any exception to the statutory definition of land use decision. *Hood River Sand v. City of Mosier*, 24 Or LUBA 381, 384 (1993) (application of city's nonconforming use provisions requires significant discretion and is therefore a land use decision).

2. The LUCS Requires Notice to Affected Landowners and an Opportunity for a *De Novo* Local Appeal.

As a statutory land use decision, the County is generally required to give notice and provide an opportunity to be heard. The failure to provide such notice precludes the opportunity of neighbors such as Mr. Campbell to be heard, and therefore, may constitute an error that requires a remand.

Under state law, it is possible to process a land use decision without providing a notice and comment period. ORS 215.416(11).¹ Such decisions require a *de novo* local appeal to the

¹ ORS 215.416(11) provides:

(11)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a *de novo* hearing.

(E) The *de novo* hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the *de novo* hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or \$250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

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10 November 2011
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Planning Commission. Issues that can be raised are not limited to those issues raised in the notice of appeal. Based on my conversation with the Asst County Counsel, it is my understanding that the LUCs is being processed under ORS 215.416(11).

3. The County issued the LUCS Unlawfully, Because the Existing Non-Conforming Use Located on Tax Lot 1900 is not Allowed to Expand onto Tax Lot 2400.

The park owner has, to our knowledge, never obtained *land use* approval to operate a community septic system on Tax Lot 2400 in conjunction with its mobile home park located on TL 1900. We have evidence that demonstrates that the original non-conforming septic system (i.e. the system that pre-date zoning regulations) were not installed on Tax Lot 2400. Rather, an illegal expansion of that system onto tax lot 2400 occurred in 1991. Because no land use permits were obtained for the 1991 expansion, it is not a lawful part of the non-conforming use.

The nonconforming use is governed by County Order 38-96 (dated 21 Feb. 1996). The notice of Public Hearing identified the subject property as tax lots 1900 and 2501. Tax lot 2400 was not mentioned. Order 38-96 accomplished a number of things, including:

- Establishing that the nonconforming use originally consisted of 33 lawful units.
- The original MHP was limited to Tax lot 1900, with one lawful non-MHP dwelling existing on 2501.
- The Order allowed a one-time 40% expansion, to 46 units. The expansion is limited to Tax Lot 1900.
- The Order required the applicant to repair failing septic systems "on the property." (i.e. TL 1900).

Pursuant to state law existing at that time, a non-conforming use is not allowed to expand onto a new lot or parcel of land. *Komning v. Grant County*, 20 Or LUBA 355 (1990) (so stating); *Portland City Temple, Inc. v. Clackamas County*, 11 Or LUBA (1984) ("We believe the lawful use of an improvement as a permitted nonconforming use is inextricably tied to the land where the improvement is located.").

In an unrelated case, Columbia County previously found a septic system was an integral part of a non-conforming use, such that the replacement of a septic system was sufficient to "commence" replacement of the burned-down clubhouse within one year, under ORS 215.130(6) and CCZO 1506.6. *Jordan v. Columbia County*, 42 Or. LUBA 341 (2002). Thus, it follows that the septic systems in Deer Pointe Meadows MHP are a part of the non-conforming use and are subject to all of the same limitations set forth in Order 38-96, including the limitation that the nonconforming use be restricted to TL 1900.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

4. The Park Owner's Plan to Add Additional Septic Drainfields on Tax Lot 2400 Constitutes an Unlawful Expansion of the Mobile Home Park.

In order to be a lawful part of the non-conforming use, the Park Owner has the burden to show that he obtained land use approval to expand the park onto a new lot. *Aquitto v. Washington County*, 49 Or LUBA 364 (2005) (Not enough to show that a use of land existed when the zoning law was first enacted; it must have existed as a lawful use at the time the law changed."). In this case, the Park Owner will not be able to show that he obtained land use approval to expand the septic system to TL 2400 in 1991. The expansion is therefore unlawful and cannot be considered a lawful part of the nonconforming use. ORS 215.130(5).

The Columbia County Zoning Code only allows one expansion of the Park. Because the landowner already was granted that one-time expansion, no further expansions are allowed.

5. The County Has Made No Findings of Compliance with OAR 660-011-0060 *et seq.*

OAR 660-011-0060 sets forth certain criteria governing the extension of sewer systems on rural lands. While these laws do not supersede the County's nonconforming use provisions in the zoning code, they do provide additional standards that must be followed. OAR 660-011-0060(4) & (5) provide:

(4) A local government may allow the establishment of a new sewer system, or the extension of an existing sewer system,² to serve land outside urban growth boundaries and unincorporated community

² OAR 660-011-0060 defines the term "sewer system" as follows:

(f) "Sewer system" means a system that serves more than one lot or parcel, or more than one condominium unit or more than one unit within a planned unit development, and includes pipelines or conduits, pump stations, force mains, and all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or for collecting or conducting sewage to an ultimate point for treatment and disposal. The following are not considered a "sewer system" for purposes of this rule:

(A) A system provided solely for the collection, transfer and/or disposal of storm water runoff;

(B) A system provided solely for the collection, transfer and/or disposal of animal waste from a farm use as defined in ORS 215.303.

OAR 660-011-0060 defines the phrase "extension of a sewer system" as follows:

"Extension of a Sewer System" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing sewer system in order to provide service to a use, regardless of whether the use is inside the service boundaries of the public or private service provider. The sewer service authorized in section (8) of this rule is not an extension of a sewer;

boundaries in order to mitigate a public health hazard,³ provided that the conditions in subsections (a) and (b) of this section are met, as follows:

(a) The DEQ or the Oregon Health Division initially:

(A) Determines that a public health hazard exists in the area;

(B) Determines that the health hazard is caused by sewage from development that existed in the area on July 28, 1998;

(C) Describes the physical location of the identified sources of the sewage contributing to the health hazard; and

(D) Determines that there is no practicable alternative⁴ to a sewer system in order to abate the public health hazard; and

(b) The local government, in response to the determination in subsection (a) of this section, and based on recommendations by DEQ and the Oregon Health Division where appropriate:

(A) Determines the type of sewer system and service to be provided, pursuant to section (5) of this rule;

(B) Determines the boundaries of the sewer system service area, pursuant to section (6) of this rule;

(C) Adopts land use regulations that ensure the sewer system is designed and constructed so that its capacity does not exceed the minimum necessary to serve the area within the boundaries described under paragraph (B) of this subsection, except for urban reserve areas as provided under OAR 660-021-0040(6);

(D) Adopts land use regulations to prohibit the sewer system from serving any uses other than those existing or allowed in the identified service area on the date the sewer system is approved;

³ OAR 660-011-0060 defines the phrase "public health hazard" as follows:

(d) "Public health hazard" means a condition whereby it is probable that the public is exposed to disease-caused physical suffering or illness due to the presence of inadequately treated sewage;

⁴ OAR 660-011-0060 defines the phrase "No practicable alternative to a sewer system" as follows:

(c) "No practicable alternative to a sewer system" means a determination by the Department of Environmental Quality (DEQ) or the Oregon Health Division, pursuant to criteria in OAR chapter 340, division 71, and other applicable rules and laws, that an existing public health hazard cannot be adequately abated by the repair or maintenance of existing sewer systems or on-site systems or by the installation of new on-site systems as defined in OAR 340-071-0100;

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(E) Adopts plan and zone amendments to ensure that only rural land uses are allowed on rural lands in the area to be served by the sewer system, consistent with Goal 14 and OAR 660-004-0018, unless a Goal 14 exception has been acknowledged;

(F) Ensures that land use regulations do not authorize a higher density of residential development than would be authorized without the presence of the sewer system; and

(G) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.

(5) Where the DEQ determines that there is no practicable alternative to a sewer system, the local government, based on recommendations from DEQ, shall determine the most practicable sewer system to abate the health hazard considering the following:

(a) The system must be sufficient to abate the public health hazard pursuant to DEQ requirements applicable to such systems; and

(b) New or expanded sewer systems serving only the health hazard area shall be generally preferred over the extension of a sewer system from an urban growth boundary. However, if the health hazard area is within the service area of a sanitary authority or district, the sewer system operated by the authority or district, if available and sufficient, shall be preferred over other sewer system options.

Sincerely,

ANDREW H. STAMP, P.C.

Andrew H. Stamp

Andrew H. Stamp

AHS:ahs
County Counsel
Client

Deer Pointe Meadows MHP

Onsite Septic System Historical Chronology

Erin O'Connell

Environmental Services Specialist

12/9/2011

5/9/1975- May 7-13 survey of the park conducted in response to routine inspection of the park on May 7, 1975 at which time system (STS) failure was noted. Dye testing of all 3 systems was performed and then monitored during the survey time period. All 3 systems were confirmed to be failing. Reference is made, in the context of performing a repair, to an area of land owned by the park owner, Mr. Hallaran, below the fence by STS #1 that is 285' x 660'.

(1) Memo to file from Columbia County Health Department Field Sanitarian, Steve Dreiling regarding septic tank system failure (Systems #1, 2 and 3) at Homeaway MHP.

****Note:** Map in file (not dated) showing failing septic tank systems park sewage break down.

- STS 1 serving units 1-10 (located West of Park)
- STS 2 serving units 11-23 (located West of Park)
- STS 3 serving units 24-32 (located North of Park)

5/16/1975- Memo to File regarding review of old permit files to obtain sizing and location of existing STS systems. Three permits found from 1965-1967.

5/16/1975- Legal information on the Homeaway MHP acquired from County Assessor's Office. Two description are included labeled: Homeaway MHP Location and Adjoining Parcel.

(2) Memo to file from Columbia County Health Department Field Sanitarian, Steve Dreiling regarding legal descriptions.

****Note:** Included Official Records of Descriptions of Real Properties from Columbia County Assessor. Documents relate the current Map identification numbers with the old Tax account numbering system in place in 1975. Deed Reference No. are also shown.

- Homeaway MHP Location, Tax Account No. 1573-030-003 = 7N-3W-15-020-01900
- Adjoining Parcel, Tax Account No. 1573-026-001= 7N-3W-15-020-02400

5/22/1975- Notice of Violation sent to park owner, Merton P. Hallaran.

5/30/1975- Site consult performed with Sanitarians, Dan Bush and Steve Dreiling, park owner, Mr. Hallaran, and Installers, Warren and Lonnie Thompson. Auger excavations were made and general site observations to determine feasibility of repair. Space restrictions prompted the park owner to comment on the availability of space on the other parcel of land he owned which was not 285' x 660' as stated above (1), but 385' x 660'.

(3) Memo to file from Columbia County Health Department Field Sanitarian, Steve Dreiling regarding May 23, 1975 Site consult.

****Note:** A current tax lot map has been included in the chronology with this document showing the dimensions of Map/tax lot identification 7N-3W-15-020-02400 as being 385' x 660'.

6/13/1975- Permit No. 05-5713 is issued for the repair of STS #2. Application, Soil notes, Map, Proposed and As-built drawings, Inspection reports and Certificate of Satisfactory Completion are included. As built shows STS #2 as being located on Tax lot(s) 1900 and 2400, or on the East and West side of the "Fence" which has been determined to be consistent with representing the current property line. This is consistent with current plans of the park's system. The Application Map also shows what is currently Tax lot(s) 1900 and 2400 in bold indicating the property associated with the permit.

(4) Columbia County Planning/Building and Sanitation Permit Application for Permit No. 05-5713.

6/13/1975- Sanitarians Note to Building Permit File. 05-5713 regarding repair installation as not meeting current standards, but deemed necessary to abate a health hazard. Construction standards are included.

6/19/1975- Memo to file from Field Sanitarian, Dan Bush, regarding waiver by DEQ on 6/13/1975 from requirements for plan review by the department and installer bonding allowing sanitation approval at the local level as an emergency repair. Drainfield sizing requirements are addressed.

6/26/1975- Permit No. 05-5753 is issued for the repair of STS #1. Application, Soil notes, Map, Proposed and As-built drawings and Certificate of Satisfactory Completion are included. As built shows STS #1 as being located on Tax lot 1900, or on the East side of the "Fence" which has been determined to be consistent with representing the current property line. This is consistent with current plans of the park's system.

(5) Columbia County Planning/Building and Sanitation Permit Application for Permit No. 05-5753.

7/14/1975- Permit No. 05-07 is issued for the repair of STS #3. Application, Soil notes, Map, Proposed and As-built drawings, Inspection reports and Certificate of Satisfactory Completion are included. As built shows STS #3 as being located on Tax lot 1900 to the North of the MHP. This is consistent with current plans of the park's system.

(6) Application to the Department of Environmental Quality for Subsurface Sewage Disposal.

8/1/1975- Letter to MHP owner, Mr. Hallaran, acknowledging that due to the repair work performed, the Homeaway MHP is no longer found to be in violation.

9/29/1975- DEQ Interoffice memo to Permit 05-07 from Dan Bush regarding records of STS malfunction.

11/13/1984- Existing System Review letter regarding findings per request to evaluate the three septic systems serving Hallaran's Homeaway MHP located on tax account numbers 7315-000-01900 and 7315-000-02400. Systems were found to be functioning and are described as "being installed in 1975 to replace the previous failing systems". Application and tax lot map included.

(7) Columbia County Land Development Services letterhead to L.B. Zurcher from Anne Cox, Sanitarian.

1/7/1991- Permit 05-5569 issued for an Alteration of System #2. Certificate of Satisfactory

Completion issued 1/31/1991. Review of the As-Built plot as compared to the 1975 STS #2 As-Built (Permit 05-5713) show that the Alteration was performed primarily to change the method of distribution to the existing drainlines. Drop boxes were added throughout the system layout to enhance distribution to the entire drainfield. It does appear that an additional 120 linear feet of drainline was added to the middle cell of the system.

(8) Columbia County Subsurface Sewage Permit No. 05-5569

11/15/1993- MHP site map from building file, subject map 7315-020-02501 added for reference.

1/6/1994- Letter from Columbia County Sanitarian Roy Eastwood to Anne Cox, DEQ, regarding documentation of a failure of the front system (determined to be STS #3) with tracer dye. Facility flows greater than 5,000 gpd trigger DEQ jurisdiction.

1/19/1994- Notice of Non-Compliance sent to park owner, Don Caulpetzer, from Anne Cox at DEQ to initiate a WPCF permit for required repairs.

3/3/1994- Follow-up letter from Anne Cox, DEQ, to park owner. Failure confirmed. Application for WPCF permit submitted 2/15/1994, but found to be incomplete (repair plans not submitted with application). Submission date of 3/15/1994 set.

4/19/1994- Follow-up letter from Anne Cox, DEQ, to park owner. Letter refers to 4/18/1994 telephone conversation with Mrs. Caulpetzer, where a verbal proposal is made to divert flows from the failing east drainfield to the relatively unused west drainfield (both of STS #3) and to convert the "serpentine" layout of the west field to a serial with drop boxes. Anne Cox approves this verbal proposal to facilitate repairs with the conditions that the WPCF application is completed prior to construction, a Licensed installer is used, and that the repair is inspected by Anne Cox.

(9) Oregon Department of Environmental Quality letterhead to Don Caulpetzer from Anne Cox.

5/10/1994- Proposal for repairing System #3 is submitted to DEQ. Proposed solution is to shut off usage of the east side of the system until repairs can be made and to divert flows to the west side of the system in conjunction with installing drop boxes to equalize flows.

7/21/1994- Follow-up letter from Anne Cox, DEQ, to park owner regarding inconsistencies on materials submitted for allowed spaces, tax lots included and projected daily sewage flows/sizing requirements.

10/7/1994- Letter from Anne Cox, DEQ, to Columbia County Planner, Glen Higgins, regarding the incomplete WPCF application. LUCS had not been approved by the county pending zoning violations found existing at the park. WPCF permit application pending.

1/27/1995- Follow-up letter from Anne Cox, DEQ, to park owner regarding the determination that a WPCF permit would no longer be needed for the park. The verbal approval for repairs

(installing drop boxes) given by Anne Cox on 4/19/1994 had corrected discharge problems (confirmed with dye test).

3/30/1995- Letter from Columbia County Sanitarian, Mark Edington, to park owner, Don Caulpetzer, regarding documentation of a failure in the park's North drainfield.

11/20/1995- Plans and specifications submitted to Anne Cox, DEQ, for repair of System #3.

7/2/1996- Letter from Neil Mulaine, DEQ, to park owner regarding receipt of WPCF permit application.

8/26/1996- Letter from Neil Mulaine, DEQ, to park owner regarding review of WPCF permit application and the subsequent proposed WPCF permit drafted. Owner advised to review and comment on draft permit. **Note:** Evaluation report added from DEQ files.

10/23/1996- Interoffice memo to Board of Commissioners from Robert L Weeks.

2/18/1997- Letter from Anne Cox, DEQ, to park owner regarding plan review and permit requirements.

7/11/1997- Follow-up letter from Anne Cox, DEQ, to park owner regarding plan review and permit requirements.

9/11/1997- Letter from Anne Cox, DEQ, to park owner regarding the need for a permit transfer application for the sale of the park and the need for an extension to perform upgrades to the Northermost drainfield (System #3) required to be completed 8/31/1997 (repairs not even began).

6/24/1998- Letter from Anne Cox, DEQ, to Columbia County Land Development Services regarding sale of the park to Gerald Dunn. Permit Transfer still required to be performed. Mr. Dunn to complete required repairs. Mr. Dunn requesting relocation of manager's unit at south end of System #3- no objections from DEQ as long as another unit is removed from the park and setbacks are maintained.

8/12/1998- Copy of drainfield upgrade plan to System #3 and re-siting of manager's unit submitted by Gerald Dunn to Todd Dugdale, Land Development Services.

10/8/1998- Letter from Dan Bush, Septic Technologies, Inc to Anne Cox, DEQ, received by Columbia County regarding completion of the septic repairs to System #3. The construction was inspected and approved by Dan Bush. Letter states that a copy of the final field inspection report an as-built are enclosed, but these documents were not received by this office. **Note:** copy of as-built/inspection report obtained from DEQ files and added to record.

8/24/2000- Site plan for Sanitary Sewer and Drainfield modifications received (submission of

plans appear to be associated with the proposal to relocate 8 mobile home spaces BLD2000-00532). **Note:** Checked DEQ files and appears that a 1,000 gallon dosing tank was added to System #1 with re-location proposal.

1/16/2004- Letter from Anne Cox, DEQ, to park owner, Michael and Denise Werner, regarding applicant review for WPCF permit renewal. Enclosed with this letter is an evaluation report and a draft permit. The evaluation report contains a lot of historical information and some unique operating conditions and problems.

(10) Oregon Department of Environmental Quality letterhead to Michael and Denise Werner from Anne Cox.

2/18/2004- WPCF permit renewal issued.

2/17/2005- Letter from Anne Cox, DEQ, to park owners, Michael & Denise Werner, regarding receipt of monitoring report for the 2004 year and a reminder of the requirement to report sewage spills. Reminder prompted by report of sewage backup from a third party, not the park owners as required in the permit.

4/5/2010- E-mail from Columbia County Land Development Services Sanitarian, Erin O'Connell, to Gary Artman, DEQ, regarding complaint of indirect sewage discharge to neighboring properties recently installed ground water interceptor (GWI).

4/6/2010- Notice from Gary Artman, DEQ, to park owners notifying of alleged pollution complaint.

4/26/2010- Follow-up e-mail from Columbia County Sanitarian, Erin O'Connell, to Gary Artman regarding status of pollution complaint.

5/03/2010- Warning letter with opportunity to correct sent by Gary Artman to park owners. Site visit performed by Artman did not confirm discharging to ground surface of System #3, but did show signs that the drainfield was experiencing periodic hydraulic overloading. It is suggested that park owners initiate contact with a system designer to start considering system upgrades. The letter continues to go on and address permit reporting requirements that have not been being met. Corrective actions are requested.

7/14/2010- Pre-Enforcement Notice (PEN) issued by Gary Artman to park owners. A follow-up site inspection performed 7/9/2010 showed that the west cell of System #3 was completely failing to the ground surface. A Class 1 violation is cited and corrective actions were requested.

11/10/2010- Pre-Enforcement Notice issued by Gary Artman to park owners. Corrective actions requested in the 7/14/2010 PEN were performed and the issued was determined to be resolved. However, a follow-up visit made in response to another complaint performed 11/3/2010 showed that System #3 was still discharging. The short term maintenance solutions pursued were found to be ineffective and more long term solutions are requested.

2/4/2011- Email from Columbia County Sanitarian, Erin O'Connell, to park maintenance person, Mel Snow, regarding requirements listed in the 11/10/2010 PEN and the subsequent Notice of Civil Penalty Assessment (2/2/2011).

10/18/2011- Mutual Agreement and Final Order issued for civil penalty assessment.

11/3/2011- Favorable Land Use Compatibility Statement issued by Columbia County regarding land use approval for an Application to repair the failing System #3.

11/9/2011- Letter from Gary Artman to consultant/designer, John Smits, regarding receipt of plans and application for WPCF permit modification and approval subject to conditions.

11/9/2011- Copy of plans received for proposed Septic Repair and Upgrade.

11/10/2011- Notice of Administrative Decision regarding favorable LUCS and Certificate of Mailing.

11/14/2011- E-mail from John Smits received regarding completion of the first phase of the repair/upgrade (drainfield installation).

11/16/2011- WPCF Permit Modification Draft issued for review and comment by Gary Artman.

11/28/2011- WPCF Permit Modification issued by Gary Artman.

COLUMBIA COUNTY PLANNING, BUILDING DEPARTMENT, COURTHOUSE, S.W. HELENS, OREGON 97051—397-1501
THIS APPLICATION AND PERMIT VOID WITHOUT ATTACHED APPROVED PLOT PLAN

SPECIAL CONDITIONS AND REMARKS: See Sanitarians Note to Building Permit

The requirements of Chapter 340, CAR 71-015 6(a,b) are temporarily waived at this time as per authorization by DBO 6-13-75

NOTICE

This permit becomes null and void if work or construction authorized is not commenced within 60 days, or if construction or work is suspended or abandoned for a period of 120 days at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

By signing this I agree to expressly and unequivocally call for and consent to any and all inspections deemed necessary by the building officials and sanitarians.

Signature of Contractor or Authorized Agent (Date)

Wesley B. Halloran

Signature of Owner (if Owner Builder) _____ (Date) _____

County Census Div. Clatskanie

| PERMIT FEES | | |
|-------------|---------------------------------|----------|
| No. | Type of Fixture or Item | Fee |
| | Land Use | \$ |
| | Land Use Sign | |
| 1 | Septic System REPAIR | 15.00 |
| | Plan Checking | |
| | Construction | |
| | One Bath Single Family Dwelling | |
| | Additional Bath(s) | |
| | Additional Fixture(s) | |
| | Mobile Home Space | |
| | Miscellaneous | |
| | Surcharge | |
| TOTAL FEE | | \$ 15.00 |

RECEIPT NO. 3921

PERMIT NO. 05-5713

COLUMBIA COUNTY BUILDING AND SANITATION DEPARTMENT

Room 112, Courthouse — Telephone 397-2262

St. Helens, Oregon 97051

\$15.00 FEE

REQUEST FOR BUILDING SITE LOT INSPECTION

RECEIPT NO. NO FEE

(Planning, Sewage Disposal and Water Supply Review)

NOTE: For Seller's Preliminary Only. Submit Two Vicinity Maps, Showing Location of Test Hole(s)

APPLICANT: Hallaran's Homeaway Address: Rt. 1 Box 424-B
Telephone: 556-9207 Rainier, Ore. 97048
Owner: M. P. Hallaran Consent:

LOT LEGAL DESCRIPTION: (See Assessor's office or tax receipt).

Township 7 N, Range 3 W, Sect. 15 (Include 1/4 or 1/16 sect. map letter or no.)
Tax Account No. 1573-30-3 Lot Size (this site) Apprx. 16 Acres (width by depth and/or area)
Part of a tax lot? or whole tax lot? whole
Subdivision Block Lot
Name of legal access road R. V. Price P-152 County or City of
Zoning district

PLANNED USE: Dwelling, single ☐ Other Mobile Home Park Total bedrooms 13 Spaces Plus Wash House
Commercial or industrial (specify) Employees (daily)
Other (specify type and waste load indication)
Building height: Setbacks, front back sides

WATER SUPPLY: Public Individual ☐ Community (two users-up) ☐
2 Well: Drilled ☒ Driven ☐ Dug ☐ Depth Casing depth and diameter
Spring (construction and location) Stream ☐

MISCELLANEOUS COMMENTS:

REQUEST DATE: 6-13-75 SITE READY DATE: (soil test hole, flag, etc.) 6-13-75

SEPTIC TANK SYSTEM: *Repair only* (For Sanitarian Staff use only)

Lot Approved: ☒ Yes ☐ No
Soil Rating: 300 sq. ft./100 gal. waste
Recommended Pattern:
No. Trenches 26
Length 123 ft. *> 3250 sq. ft. min. ft.*
Min. Specifications:
Septic Tank: 2000 gal. *existing*
Daily waste flow: 3200 gal.
Total Absorption Area Required: 7600 sq. ft.
Trench width 2 ft.
Max. trench depth 24 in.
Earth backfill 12 in.

OTHER CONDITIONS: *Serial distribution*

SANITARIAN'S FIELD NOTES:

Test site No. Test site No. Test site No. Test site No.

INSPECTION DATE

SANITARIAN

RE-INSPECTION

SANITARIAN

Site Evaluation Sheet

Local Description T7 R3 Seals : Act No 1573-38-03 Code 32-03 Inspection Date 6-10-75
8 1573-26-01 Code 32-03 Reinspection Date _____
 Name Halloran Martin

Soil Profile: Homeaway Mobile Home Park

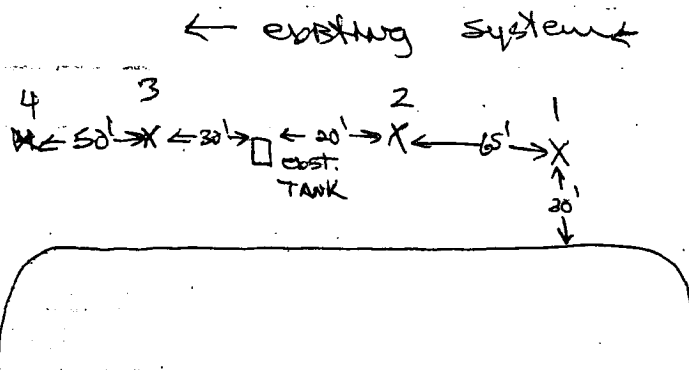
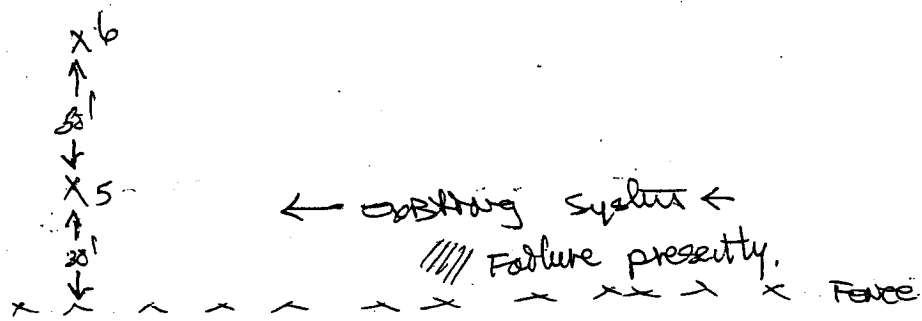
| Depth | Soil Description | Test Hole # | Depth | Soil Description | Test Hole # |
|--------|--------------------------------|-------------|--------|-------------------|-------------|
| 0-25" | silt loam | 1 | 0-22" | silt loam | 2 |
| 25-37" | mottled silty clay loam, light | | 22-31" | mottled silt loam | |
| 37" | restriction | | 31" | restriction | |
| | | | | | |
| | | | | | |

| Depth | Soil Description | Test Hole # | Depth | Soil Description | Test Hole # |
|--------|-------------------|-------------|--------|-------------------|-------------|
| 0-18" | silt loam | 3 | 0-19" | silt loam | 4 |
| 18-26" | mottled silt loam | | 19-27" | mottled silt loam | |
| 26" | restriction | | 27" | restriction, damp | |
| 32" | standing water | | | | |
| | | | | | |

| Depth | Soil Description | Test Hole # | Depth | Soil Description | Test Hole # |
|-------|------------------------|-------------|-------|-------------------|-------------|
| | full of sewage from | 5 | 0-28" | mottled silt loam | 6 |
| | existing septic system | | 28" | pen, restriction | |
| | - no analysis | | 28" | blue clay present | |
| | | | | | |
| | | | | | |

Comments 13 mobile home units plus laundry bldg.

SEE REVERSE SIDE FOR PLOT AND SLOPE PLAN Sanitarian D. Bush, J. Schult



BUILDING & SANITATION DEPARTMENT PLOT PLAN

COLUMBIA COUNTY BUILDING & SANITATION DEPT., ROOM 112, COURTHOUSE, ST. HELENS, ORE. 97051—397-5040, 397-2262

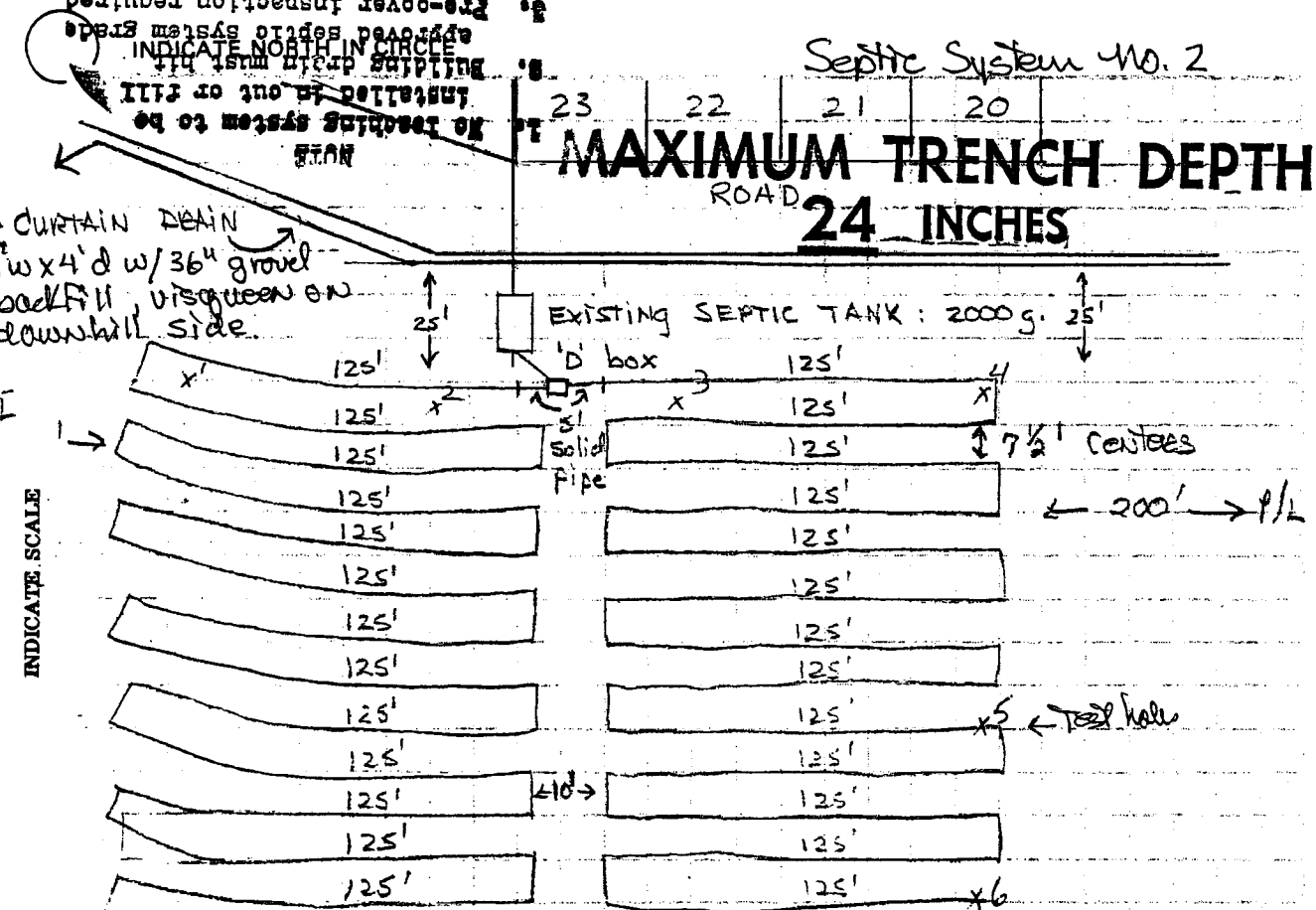
PLOT PLAN MUST ACCOMPANY BUILDING & SANITATION PERMIT APPLICATION

| | | | | | | | |
|-------------|---------------|---------|-------------|-------|-----|-------|---|
| LEGAL DESC. | TAX ACCT. NO. | SECTION | SUBDIVISION | BLOCK | LOT | TRACT | SEE ATTACHED SHEET <input type="checkbox"/> |
| 1573-030-03 | 7-3 | 15 | | | | | |

SITE OR LOT AREA 16 acres Sq. Ft. AREA OF SITE OCCUPIED BY BUILDINGS _____ Sq. Ft.

PLOT PLAN MUST INCLUDE:

1. Property dimensions
2. All roads (existing and proposed)
3. Driveways (existing and proposed)
4. Location of structures
5. Location of water source
6. Direction of slope
7. Location of trees
8. Proposed location of septic tank and drainfield and repair area
9. Dimension and spacing of lines
10. Distance from system to property lines



COLUMBIA COUNTY ENVIRONMENTAL HEALTH

SEWAGE SYSTEM PLOT PLAN APPROVED Date 6/13/75

NOTE: Installation of this system shall conform to this plot plan unless all proposed changes are approved in writing by this department prior to installation. Failure to secure approval for changes may result in disapproval of the system. In any event, the system shall meet all applicable statutes, rules, ordinances and standards of this department and the State of Oregon.

Sanitarian Don Beck

I/We certify that the proposed construction will conform to the dimensions and uses shown above and that no changes will be made without first obtaining approval.

APPLICANT SIGNATURE Merton J. Hellman

APPROVED AS NOTED

DATE

PERMIT NO. _____

SANITATION USE ONLY
Septic tank 2000 gal. Trenches: No. 26 Length 125' - 3250 Total Lin. Ft.
Width 2 ft. Max. depth 24" Earth cover 12 in.
Ttl. req. 7500 sq. ft.

OWNER: Horneauway Mobile Home Park
JOB ADDRESS: Price Rd 1, Klamath

COLUMBIA COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL SANITATION DIVISION

Room 112, Courthouse, St. Helens, Oregon 97051 Telephone 397-2262

Septic Tank-Leaching System Installation Inspection Report

Date and Hour Requested July 2, 1975
Planned Use: REPAIR - Septic Tank Building Permit No. 215-57

Owner: Home Army Mobile Home Park Builder: M.P.

Plumber: REPAIR Installer: Thompson

Loc. (Road): REPAIR Address: 7212 R. 3, Sec. 15, A.M. 1573-30-3

Legal Description: 7212 R. 3, Sec. 15, A.M. 1573-30-3

NOTE: NO STRUCTURE OCCUPANCY OR SYSTEM USE IS PERMITTED PRIOR TO APPROVAL OF THIS SYSTEM.

This septic tank ☐ leaching system ☐ (specify type: _____) installation, complies with County and State laws, rules, regulations, and requirements and is approved. Permission to backfill all excavations used in its construction and installation is hereby granted, and use of this system is approved.

- ☐ System does not comply and is disapproved. See comments.
☐ Reinspection required following corrections. See Comments.

Comments: Septic tank repaired and approved.

Sanitarian: J. Thompson Date: 7-2-75 Hour: 3

COLUMBIA COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL SANITATION DIVISION

Room 112, Courthouse, St. Helens, Oregon 97051 Telephone 397-2262

Septic Tank-Leaching System Installation Inspection Report

Date and Hour Requested June 20, 1975, 8:40 a.m.
Planned Use: Repair - 13sp. + Wash House Building Permit No. 5713

Owner: Halloran's Mobile Home Park

Plumber: _____ Installer: Warren Thompson

Loc. (Road): R.V. Price Address: _____

Legal Description: T7, R3, Sec. 15, A.M. 1573-30-3

NOTE: NO STRUCTURE OCCUPANCY OR SYSTEM USE IS PERMITTED PRIOR TO APPROVAL OF THIS SYSTEM.

This septic tank ☐ leaching system ☐ (specify type: _____) installation, complies with County and State laws, rules, regulations, and requirements and is approved. Permission to backfill all excavations used in its construction and installation is hereby granted, and use of this system is approved.

- ☐ System does not comply and is disapproved. See comments.
☐ Reinspection required following corrections. See Comments.

Comments: Septic tank repaired and approved.

Sanitarian: Warren Thompson Date: 6-20-75 Hour: 8:40

OK to use house 112 - 7212 R. 3, Sec. 15, A.M. 1573-30-3
18 Sept 75 - E. Curdson draw.

**COLUMBIA COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL SANITATION DIVISION**

Room 112, Courthouse, St. Helens, Oregon 97051 Telephone 397-2262

Septic Tank-Leaching System Installation Inspection Report

Date and Hour Requested 7-16-75
Planned Use: SEPTIC #2 Building Permit No. 5713
Owner: HOLLARAN, M.P. Builder: —
Plumber: — Installer: THOMPSON
Loc. (Road): PRICE RD Address: —
Legal Description: T7 R3 Sec 15 AN-1573 30-3

NOTE: NO STRUCTURE OCCUPANCY OR SYSTEM USE IS PERMITTED PRIOR TO APPROVAL OF THIS SYSTEM.

This septic tank ☒ leaching system ☒ (specify type: SERIAL)
installation, complies with County and State laws, rules, regulations, and requirements and is approved. Permission to backfill all excavations used in its construction and installation is hereby granted, and use of this system is approved.

- ☐ System does not comply and is disapproved. See comments.
☐ Reinspection required following corrections. See Comments.

Comments: Full Final Approval - repair
Septic system No. 2 OK for use

Sanitarian — Date 7/17/75 Hour 10

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

CERTIFICATE OF SATISFACTORY COMPLETION

SUBSURFACE SEWAGE SYSTEM

OWNER MERTON P. HOLLARAN PERMIT No. 05-5713
LOCATION T7N R3W Sec. 15 AN. 1573-30-3 Columbia Co.
SEPTIC SYSTEM REPAIR NO. 2 - HOMEAWAY MOBILE HOME RD.

In accordance with 1973 Oregon Laws Chapter 835, Section 214 this certificate is issued as evidence of satisfactory completion of a subsurface sewage disposal system at the above location.

This system granted approval on the basis of Rules adopted June 21, 1974 by the EQC. This System may not meet all present construction requirements and therefore may not operate satisfactorily. If failure occurs and necessary repair can not be made in accordance with current rules of the commission the System may have to be abandoned.

Don Bush DEQ
Sanitarian
Columbia County

7-17-75
Date

COLUMBIA COUNTY BUILDING & SANITATION DEPT., ROOM 112, COURTHOUSE, ST. HELENS, ORE. 97051—397-5040, 397-2262

| | | | | | | | |
|----------------|------------------------------|--|-------------|-------|-----|-------|--|
| LEGAL DESC. | TAX ACCT. NO. 1573-630-63 | T <u>7</u> N. <u>3</u> W. SECTION <u>15</u> | SUBDIVISION | BLOCK | LOT | TRACT | SEE ATTACHED SHEET. <input type="checkbox"/> |
|----------------|------------------------------|--|-------------|-------|-----|-------|--|

PLOT PLAN MUST INCLUDE:

1. Property dimensions
2. All roads (existing and proposed)
3. Driveways (existing and proposed)
4. Location of structure(s) on property
5. Location of water source
6. Location of proposed septic tank and drainfield
7. Location of trees
8. Proposed location of septic tank and drainfield and repair area
9. Dimension and spacing of lines
10. Distance from system to property lines
- Items 3, 4, 8, 9, 10 not needed for land transfer only

30' Soil
CURTAIN DRAIN
No Leaching system to be installed in out of fill
Building drain must fit
INDICATE NORTH IN CIRCLE
Pre-1960-1962 inspection required
Septic System
D. Bush
24 INCHES
ROAD
MAXIMUM TRENCH DEPTH
20 21 22 23

COLUMBIA COUNTY ENVIRONMENTAL HEALTH

SEWAGE! SYSTEM PLOT PLAN APPROVED Date. 6/13/13

NOTE: Installation of this system shall conform to this plot plan unless all proposed changes are approved in writing by this department prior to installation. Failure to secure approval for changes may result in disapproval of the system. In any event, the system shall meet all applicable statutes, rules, ordinances and standards of this department and the State of Oregon.

1/We certify that the proposed construction will conform to the dimensions and uses shown above and that no changes will be made without first obtaining approval.

x Mentor P. Helloran
APPLICANT SIGNATURE

↑
250'
↓
P/L

SANITARIANS NOTE

1. Both Drainfields must be equal in size & capacity
1625 total lineal feet each
= 3250 total lineal feet.
2. Several distribution
3. $7\frac{1}{2}$ centers

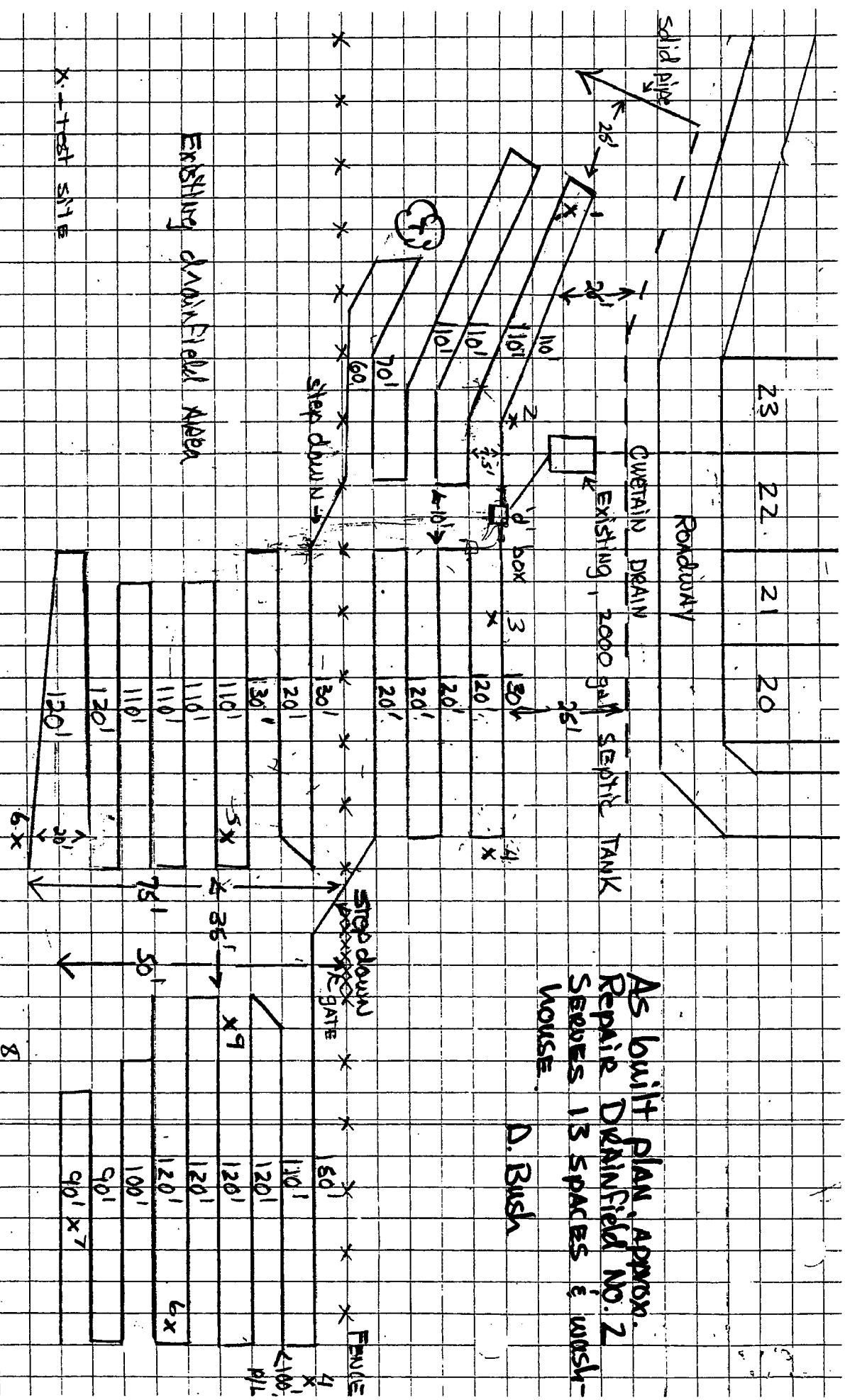
APPROVED
AS NOTED.

DATE _____

PERMIT NO. _____

OWNER: Homebrewery Machine & Service
JOB ADDRESS: 7111 E. 1st Ave. (Keweenaw)

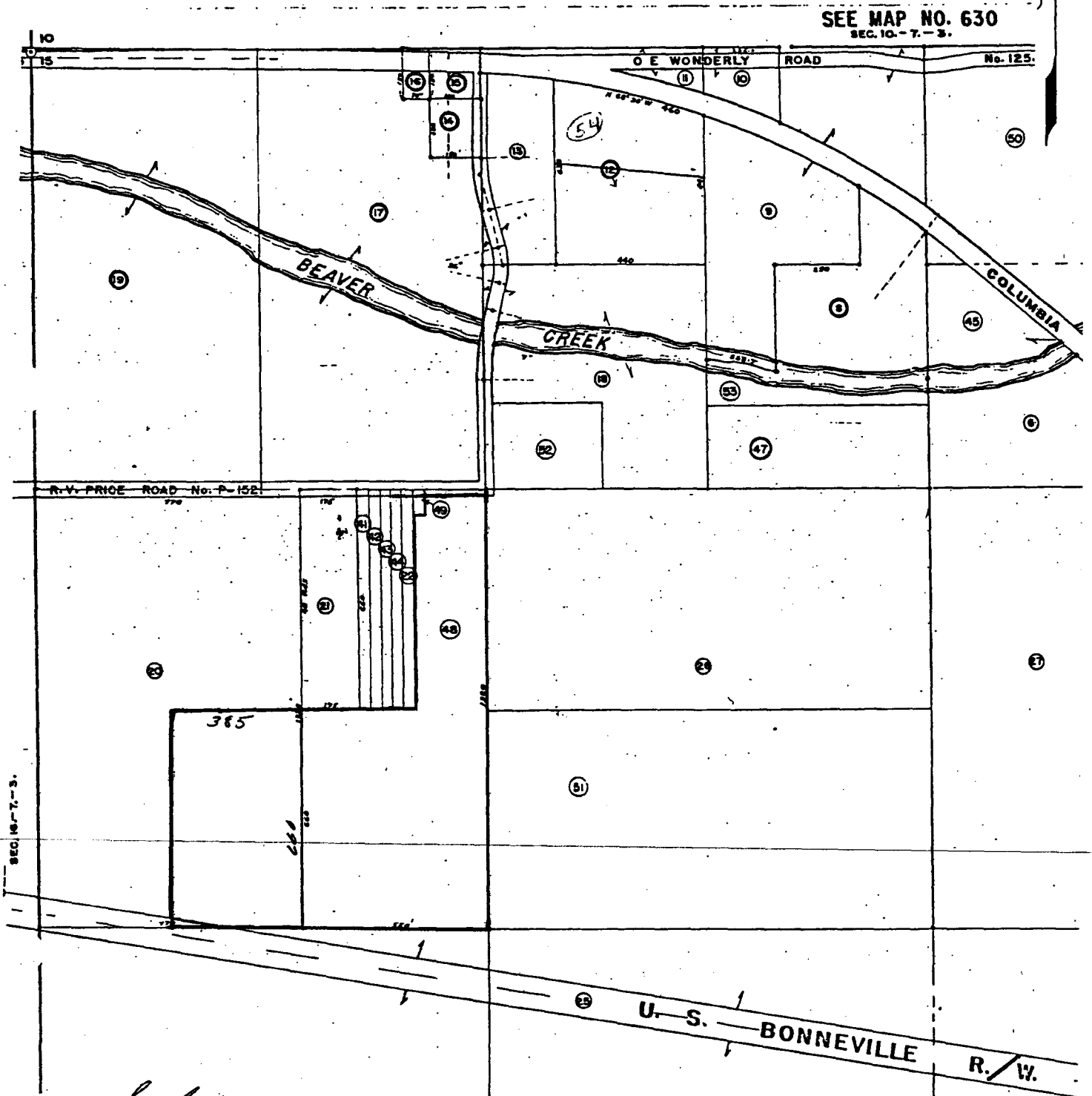
Septic tank 2000 gal. Trenches: No. 2 Length 15 ft. 3250 70 ft 1 in.
width 2 ft. Max. depth 20 ft. Earth cover 12 in.
Ttl. req. 7200 sq. ft.



The sketch below is made solely for the purpose of assisting in locating said premises and the Company assumes no liability for variations, if any, in dimensions and location ascertained by actual survey.

Pioneer National Title Insurance Company
Title and Trust Division

Tax Acc. No. 1573-030-03



BEFORE THE PLANNING COMMISSION
COLUMBIA COUNTY, STATE OF OREGON

Non-conforming Use Expansion NCU 3-94

In the Matter of the Application of Don Caulpetzer)
for an expansion of a Non-conforming Use)
in the Rural Residential RR-5 Zone)

Final Order NCU 3-94

This matter came before the Columbia County Planning Commission on the application of Don Caulpetzer for an expansion of a Non-conforming Use to allow the placement of more mobile homes or travel trailers or recreational vehicles on a total of 12.76 acres in the Rural Residential RR-5 zone.

The subject property is located off Price Road and is described on the Assessor's records as Tax Account Numbers 7315-020-01900 (10.26 acres) and 7315-020-02501 (2.50 acres).

The hearing was held on December 4, 1995. The Planning Commission heard testimony from the applicant's attorney and all interested parties, and considered all written materials submitted and the Planning Commission staff report.

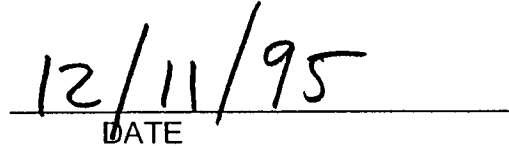
The Planning Commission hereby orders this application for a Conditional Use Permit APPROVED with the following conditions:

1. The maximum number of units, including mobile homes, travel trailers and recreational vehicles, shall not exceed 46 at any time in the park on tax lot 1900. If there are more than 46 units now on tax lot 1900, the excess units must be removed within 3 months of the final date of approval of this application.
2. The five illegal RVs on Tax lot 2501 must be removed within 4 months of the final date of approval of this application.
3. Any failing septic systems on the property must be repaired and certified operational by letters from the Oregon Department of Environmental Quality (DEQ) (contact Anne Cox, Environmental Specialist) and the County Sanitarian. Any Water Pollution Control Facility required by the state must be installed and approved in writing by DEQ.
4. All existing wells in use on the property must be tested and the park water system certified in writing by the Oregon Health Department and/or the County Sanitarian that it is up to state standards.
5. No further expansion of the mobile home park may be approved under these sections of the Zoning Ordinance. In addition, no further development of either tax lot 1900 or 2501 (a total of 12.76 acres) may occur under the present zoning of the parcels.

- 7.
6. The ownership, legal status and characteristics of the easement(s) being used for access to the property from Price Road must be provided to the Land Development Services department for evaluation by County Counsel. This Non-Conforming Use expansion shall be contingent on applicants having sufficient legal access as approved by County Counsel.
 7. Applicant must provide a letter from the Watermaster, District 1, that either a water right is not required for the proposed 46 unit park or a water right has been issued by the Oregon Water Resources Department.
 8. The access road to the mobile home park from Price Road shall be improved to the satisfaction of the County Public Works Director and approved in writing.

COLUMBIA COUNTY PLANNING COMMISSION


JEFFREY VANNATTA, CHAIRMAN


DATE

Zoning Map

BEAVER

701

J & M
Mobile
Home
Court

1201
4.28 Ac.

LLA 29-92

LLA 29-92

PLR 99-18

CS# 1628
CS# 3791

1200

0.52 Ac.

1300

2.05 Ac.

LLA 29-92

3-06

PRICE CO. RD.

T. NO. 152

1700

2200
2.57 Ac.

2000
1.00 Ac. 12.5'

1901
1.11 Ac.

CS# B-229

1800

15.54 Ac.

1900
10.26 Ac.

2100
1.48 Ac.

1800

2400
5.83 Ac.

1900

NCU 3-94
TP 29-94

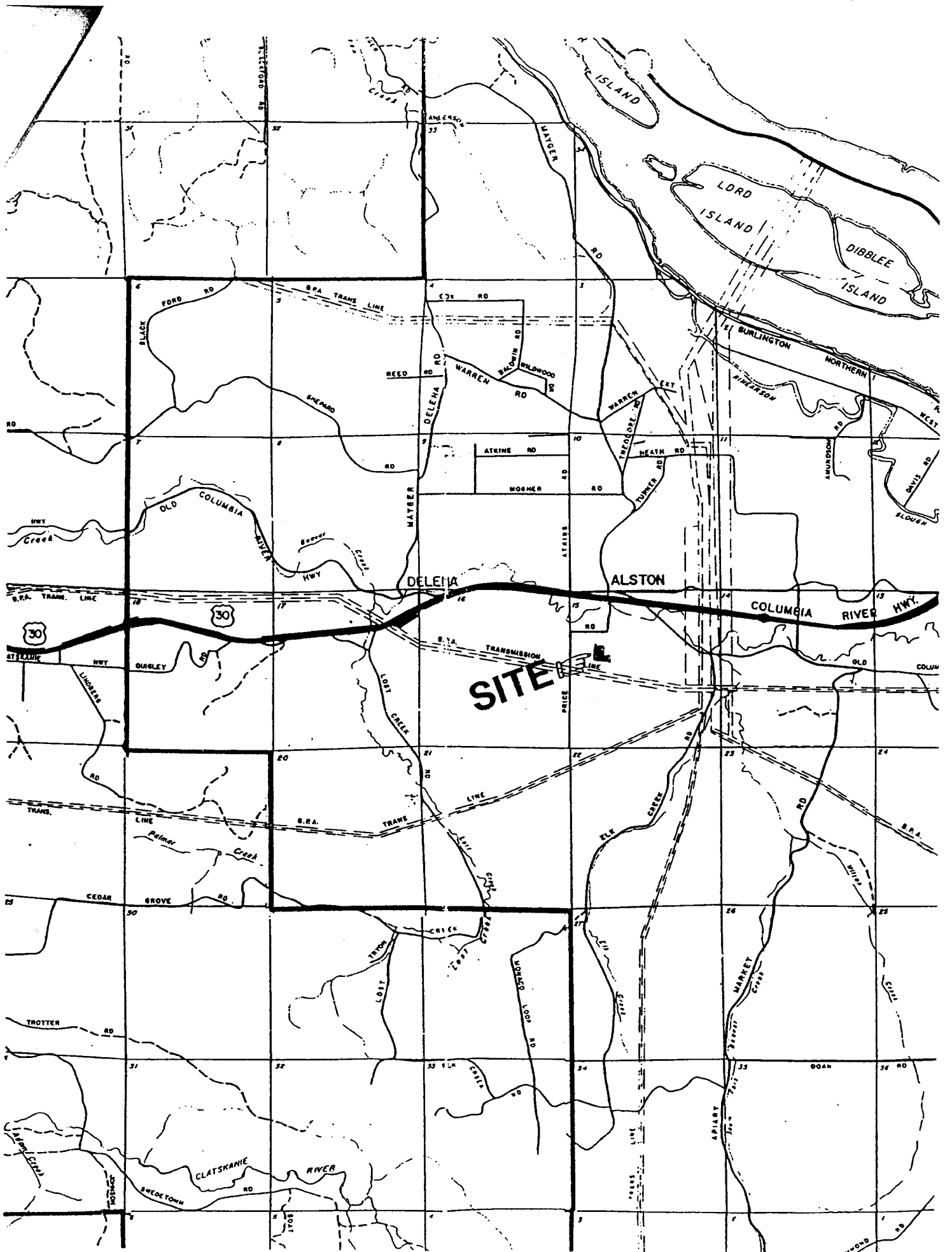
2500
17.52 Ac.

2501
2.50 Ac.

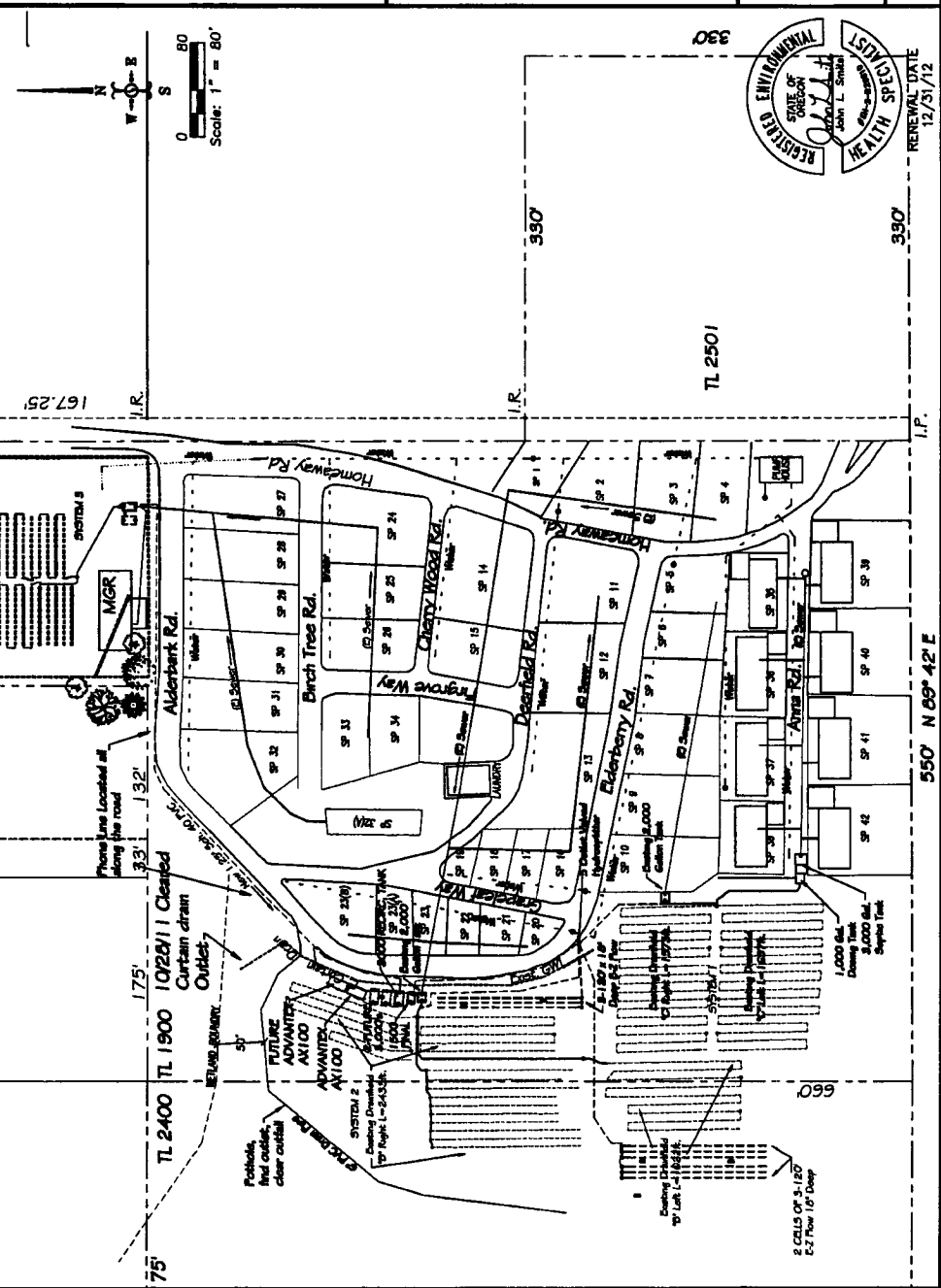
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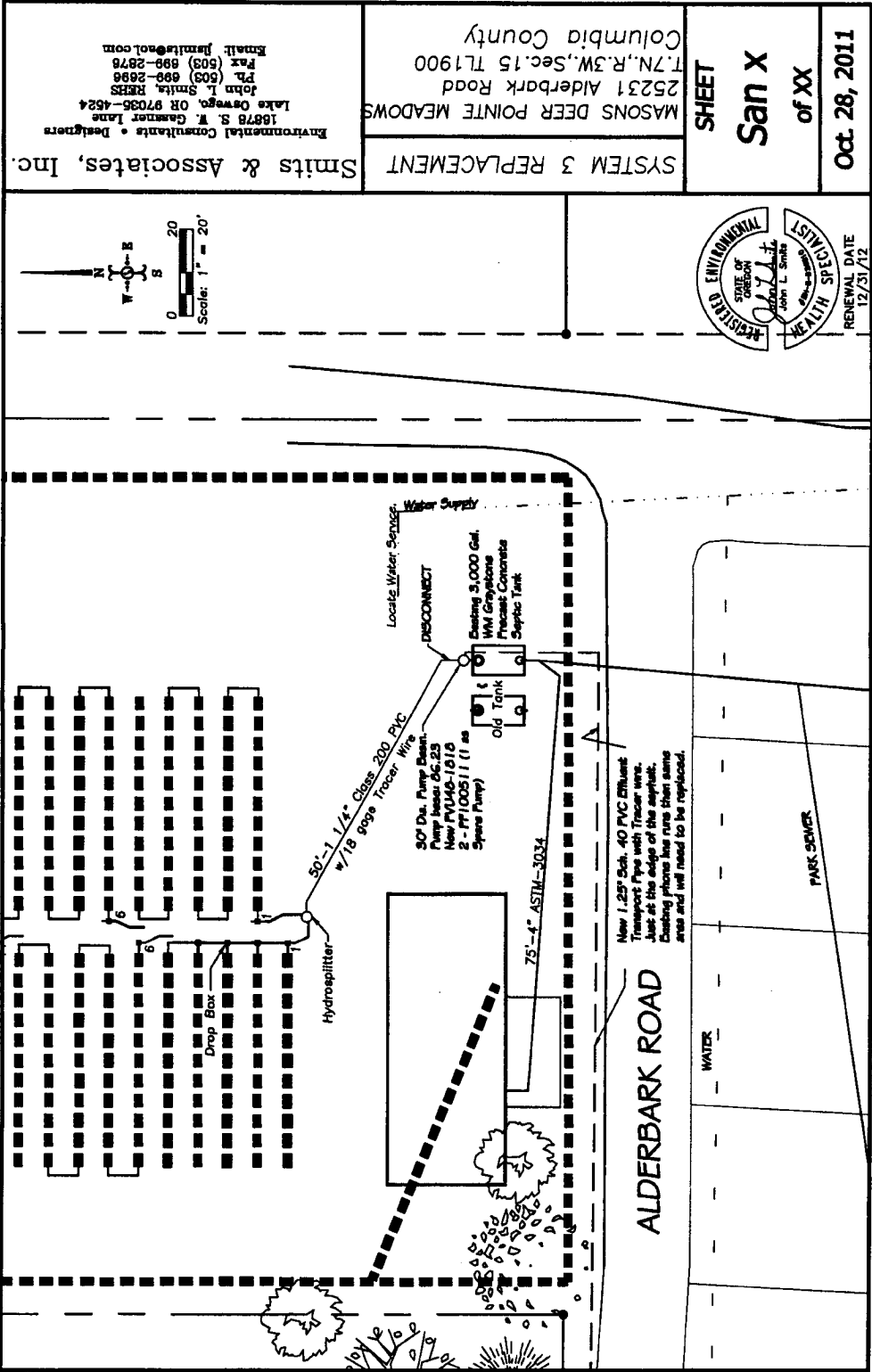
DR 00-16

FORMER ST. JOHNS - ASTOR LINE EASE.



| | | | |
|-------|-------|-------|---------------|
| SHEET | San X | of XX | Oct. 28, 2011 |
|-------|-------|-------|---------------|





| | | |
|---|---|-----------------------|
| Smits & Associates, Inc. Environmental Consultants • Designers 16878 S. W. Gannett Lane Lake Oswego, OR 97036-4524 John L. Smits, PE PH (503) 688-2686 Fax (503) 688-2876 Email: jsmits@aol.com | SYSTEM 3 REPLACEMENT | San x of XX |
| | MASONS DEER POINTE MEADOWS 25231 Alderbark Road T.7N., R.3W., Sec.15 TL1900 Columbia County | SHEET |

REGISTERED ENVIRONMENTAL ENGINEER
STATE OF OREGON
John L. Smits
No. 12345
Exp. 12/31/12

REGISTERED HEALTH SPECIALIST
STATE OF OREGON
John L. Smits
No. 12345
Exp. 12/31/12

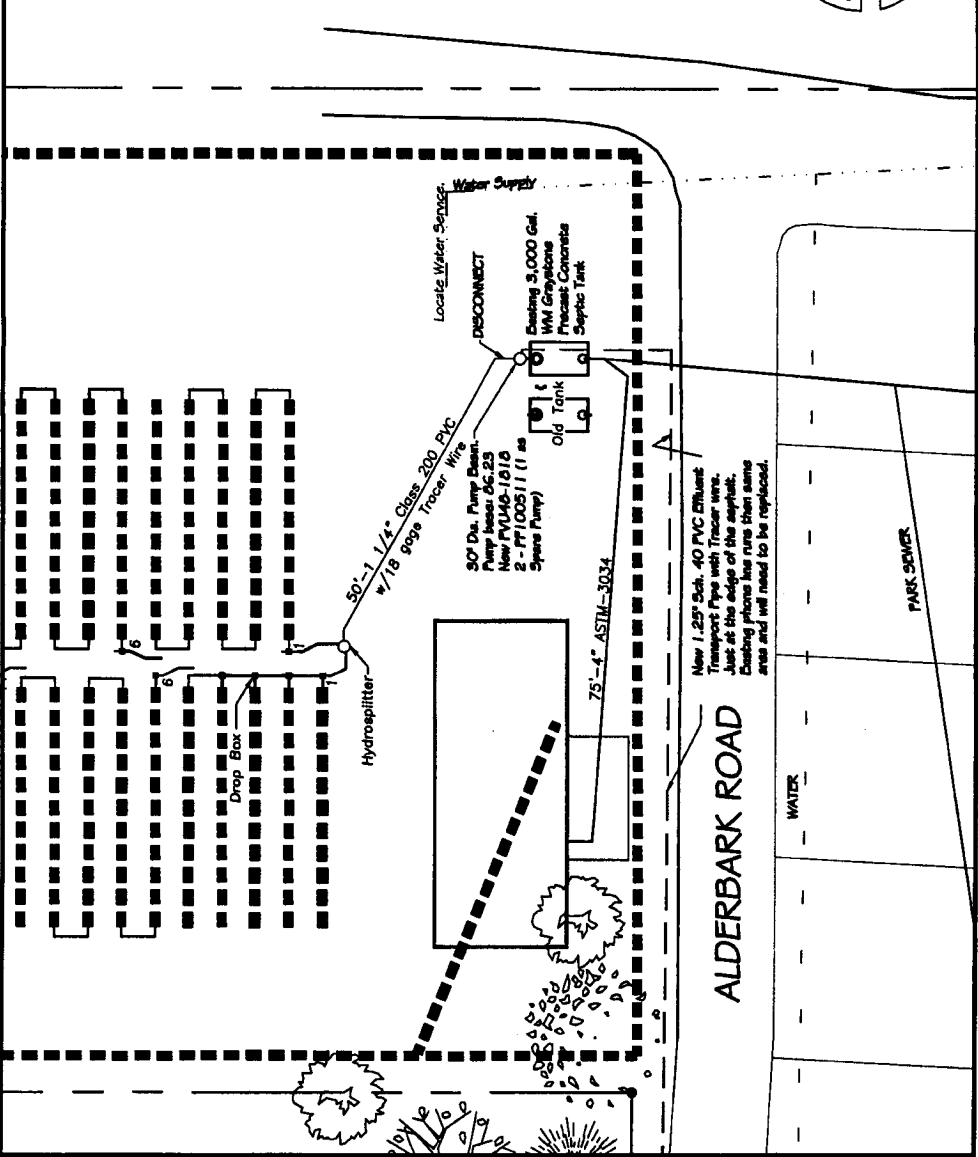
RENEWAL DATE
12/31/12

Scale: 1" = 20'

0 20

N

W E S



COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

**BOARD OF COUNTY COMMISSIONERS
SUPPLEMENTAL STAFF REPORT AND
REVISED RECOMMENDATION
March 5, 2012**

Appeal of Land Use Compatibility Statement (LUCS) 12-13

Staff submits this supplemental staff report and revised recommendation in response to comments received following the publication of the original staff report, dated February 15, 2012.

COMMENTS RECEIVED AFTER PUBLICATION OF STAFF REPORT:

Gary Artman, Department of Environmental Quality (DEQ), submitted written comments dated February 17, 2012, addressing the scope of DEQ's approval of the applicant's Water Pollution Control Facilities permit. Artman explained that the permit was modified to address a public health hazard and does not authorize any increase in wastewater flow or pollutant concentration limits. He further explained that consistent with DEQ rules, DEQ approved a change to the proposed system to allow a connection to the north drainfield, which could be used in the future if the other system fails.

Don Campbell, appellant, notified the County on or about February 27, 2012, of the installation of an additional tank that presumably was not part of the WPCF permit.

Michael Kucinski, DEQ, submitted written comments by email, dated March 1, 2012. Kucinski's comments, which respond to questions from staff in an email dated February 29, 2012, explain that the installation of the additional tank is part of DEQ's plan approval. He further explained that "adjustment to the plans are very common as the project moves forward because the designer learns new things in the field."

Michael Kucinski, DEQ, submitted an e-mail, dated March 5, 2012, transmitting a copy of the Inspection and Certification of Proper Construction documentation of the installation of an additional tank which is a part of DEQ's plan approval that was referenced in his March 1, 2012 e-mail.

SUPPLEMENTAL FINDINGS AND CONCLUSIONS

Although staff found that repair of the wastewater treatment facility does not constitute an expansion of the nonconforming use, staff provides the following additional findings and a revised recommendation in light of the ongoing adjustments to the approved permit plans:

Applicable Criteria

ORS 215.130(5) provides:

"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 215.215,¹ 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.” (Emphasis added.)

ORS 215.130(9), in turn, states that “alteration” of a nonconforming use includes:

“(a) A change in the use of no greater adverse impact to the neighborhood; and

(b) *A change in the structure or physical improvements of no greater adverse impact to the neighborhood.*” (Emphasis added.)

Finally, ORS 215.130(8) provides that alterations necessary to comply with a lawful requirement are not subject to the land use permit requirements of ORS 215.416, as follows:

“Any proposal for the verification or alteration of a use under subsection (5) of this section, *except an alteration necessary to comply with a lawful requirement*, for the restoration or replacement of a use under subsection (6) of this section or for the resumption of a use under subsection (7) of this section shall be subject to the provisions of ORS 215.416. An initial decision by the county or its designate on a proposal for the alteration of a use described in subsection (5) of this section shall be made as an administrative decision without public hearing in the manner provided in ORS 215.416 (11).”

Supplemental Finding 1:

The modifications described in the staff report and the recent adjustments to the approved plans – *i.e.*, the connection to the north drainfield as a repair drainfield and the additional tank – are “alterations” under ORS 215.130(9). They are physical improvements, and for the reasons set forth in Finding 7 of the staff report and the written comments from DEQ, they will have no greater adverse impact to the surrounding area. They neither authorize expansion of the number of units in the mobile home park nor authorize any increase in wastewater flow or pollutant concentration limits. Rather, the modifications and subsequent adjustments will ensure the best

¹ ORS 215.215 provides for the reestablishment of a nonfarm use in an exclusive farm use zone, which is not applicable here.

treatment of the wastewater from the existing mobile home park.

Supplemental Finding 2:

The modifications and subsequent adjustments are repairs that are necessary to comply with state health and safety requirements and to maintain in good repair the existing structures associated with the mobile home park use. According to DEQ, the “construction was required” to replace the north drainfield, which “ was failing and creating a public health hazard[.]” Moreover, as Gary Artman, DEQ, explained, “one of the considerations for construction is to set aside sufficient drainfield area for future use as a repair drainfield should the one being used fail.”² DEQ’s Michael Kucinski, DEQ, also explained, DEQ “authorized the [additional] tank based on the recommendation of the treatment system manufacturer . . . to ensure best treatment of the wastewater.”³ Based on DEQ’s description of the purpose for the originally approved modifications and the subsequent adjustments, staff finds that those modifications and adjustments are necessary to comply with state health and safety requirements. Accordingly, under ORS 215.130(8), they are not subject to the land use permit provisions of ORS 215.416.⁴

Supplemental Finding 3:

To be consistent with ORS 215.130(5), staff finds that it is appropriate to clarify through a condition of approval that the north drainfield shall be used only as a repair drainfield as necessary to comply with health and safety requirements or to maintain the use of existing structures associated with the use.

REVISED RECOMMENDATION

Based on the findings of fact in the staff report dated February 15, 2012 and the Supplemental Findings herein, Staff recommends that the Board of County Commissioners **DENY** the Appeal and **APPROVE** LUCS 12-13 to allow for the repair of Mason’s Deer Pointe Meadows Mobile Home Park Wastewater Treatment Facility on tax lots 7315-020-01900 and 7315-020-02400, subject to the following conditions:

² While replacement systems are required for any new construction-installation process, the DEQ rules support their use for major repairs as well. For example, OAR 340-071-0150(3)(c) and (4)(a)(A) require site evaluations that include initial *and replacement* systems. OAR 340-071-0162(2) requires a site evaluation reports for WPCF permits, which is the type of permit at issue here.

³ OAR 340-071-0130(20) requires installation in accordance with manufacturer’s specifications.

⁴ To clarify, staff’s approval of the LUCS at issue here is a land use decision subject to ORS 215.416. However, the scope of the approval is limited to confirmation that the use *served by* the wastewater facility is compatible with the County’s land use regulations, not whether the wastewater facility itself is compatible with land use regulations. In this case, staff confirmed that the mobile home park use is a pre-existing nonconforming use. That decision is subject to the land use permit process in ORS 215.416.

- 1) The northernmost drainfield on tax lot 7315-020-01900 shall be used only as necessary to comply with health and safety regulations or to maintain the use of existing structures associated with the mobile home park. Consistent with the approved DEQ WPCF permit, the use of the northernmost drainfield shall not result in an increase in wastewater flow or pollutant concentration limits. All operation and maintenance activities shall be limited to the scope of approval of the DEQ WPCF permit.
- 2) It shall be the responsibility of the Facility's Certified Maintenance Provider to document operation and maintenance procedures regarding the above condition as directed in Schedule B, Schedule D, and Schedule F of the approved WPCF permit.

interoffice

MEMORANDUM

to: 7N-3W-15-020-01900 Septic File; Robin McIntyre
from: Erin O'Connell, Sanitarian
subject: Septic System records pre-1975
date: 3/28/2012

In response to the Appellant's argument, the Septic File for the Deer Pointe Meadows MHP (already submitted into the record) contains various documents that contradict assertions claiming that the septic system did not exist on Tax lot 2400 prior to the implementation of Oregon Land Use Goals. These documents are cited by date in the Onsite Septic System Historical Chronology prepared by staff on 12/9/2011, however the chronology was presented more as an overview and does not address specific information found in each document. Please find attached for easy reference the specific documents addressing the existence of the park's septic system(s) originally permitted in 1965-1967 and the location thereof. Within the context of the entire file, staff believes that it can be reasonably determined that the park's septic system(s) have always existed on both tax lots 1900 and 2400 (pre and post 1975).

Specifically, the following documents are attached:

1. Copies of two of the three 1960's permits found during current record research to establish a permitted activity;
2. (5/16/1975) Memo to File from Field Sanitarian Steve Dreiling, regarding the original construction permits for the park- all three permits are cited- and the fact that no corresponding plot plans were provided with the permits (to prove or disprove location);
3. (5/9/1975) Memo to File from Field Sanitarian Steve Dreiling, regarding the septic tank system (STS) failures of systems #1, 2, and 3 discovered during a survey of the park. The memo describes the actions performed and events leading up to the determination that the park's systems were failing:
 - a. On page 2, reference is made to observations and pictures taken showing the failure of STS #2 taken on 5/8/1975. "Exposure #1- 3:20 p.m. - *Shows general view of failure from back of property facing the park*". The location of this area, as shown on various plot plans to present, is located on the West side of Tax lot 1900 and the East side of Tax lot 2400. This particular exposure is in the file and is clearly taken on the East side of the fence (or Tax lot 2400) looking up at the park. This fence was determined to be consistent with representing the property line between Tax lots 1900

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and 2400 (See permit 05-5713 and the 6/13/1975 Chronology reference already introduced into the record).

- b. On Page 3, reference is made to observations and pictures taken showing the failure of STS #2 taken on 5/9/1975. "Exposure #7- 10:23 a.m.- General view of surfacing effluent from *back of fenced area*". This exposure is not in the file, but in referencing the above picture, the location is determined to be consistent with being on Tax lot 2400.
 - c. On Page 5, reference is made to observations and pictures taken showing the failure of STS #1 taken on 5/13/1975. "Exposure #15, #16, and #17- 3:10, 3:11, and 3:12 p.m. respectively- Sewage on the surface of the ground in pools just below the lateral of the septic tank system *below the fence*". These exposures are not in the file, but in review of all 1975 permit plot plans there is only one fence in this area. Again, this fence has been determined to be consistent with representing the property line between Tax lot 1900 and 2400.
4. (6/13/1975) Permit No. 05-5713 for the repair of STS #2. This entire permit has already been submitted into record. Field note's and the As built plan (specifically) are being attached to point out the Sanitarian's notes regarding the location of the existing system and the failure thereof. Field notes show the existing system above and below, with the failure below, the "Fence". As cited above, this fence has been determined to be consistent with the property line between tax lots 1900 and 2400. This has not been disputed by the Appellant. The As Built plan also references the area of the "Existing Drainfield Area" as being below the fence.

Erin O'Connell
Environmental Services Specialist