

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of an Application by Richard)
Recht for Columbia Hills Development Co.)
for a Comprehensive Plan Amendment and Zone) ORDINANCE NO. 2002-08
Change from Rural Residential (RR-5) to)
Community Service-Utility (CS-U))

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 2002-08.

SECTION 2. AUTHORITY.

This Ordinance is adopted pursuant to ORS 203.035, 215.050, 215.060, 215.223, and 197.610 to 197.615.

SECTION 3. PURPOSE.

The purpose of this Ordinance is to approve the application of the Columbia Hills Development Co. for a Comprehensive Plan Map Amendment and Zone Change from Rural Residential (RR-5) to Community Service-Utility (CS-U), on two lots totaling approximately .5 acres, and having tax account numbers 3222-011-09100 (Lot 78), and 3222-031-05600 (Lot 8), in Block 4, and Block 42 of the Hillcrest Subdivision outside of the City of Scappoose.

The Major Map Amendment would amend the Comprehensive Plan Map designation for the subject .5 acres from Rural Residential to Community Service, and amend the Zoning Map designation for the subject .5 acres from Rural Residential (RR-5) to Community Service-Utility (CS-U), in order to site a water treatment and storage facility on the two lots to service the Columbia Hills Subdivision.

SECTION 4. HISTORY

On May 7, 2002, Dick Recht, on behalf of Columbia Hills Development Co., applied for an amendment of the Columbia County Comprehensive Plan Map from Rural Residential to Community Service; and a Zoning Map amendment from Rural Residential (RR-5) to Community Service-Utility (CS-U) on two lots in the Hillcrest Subdivision, totaling .5 acres. On May 15, 2002, the application was deemed complete. The Columbia County Planning Commission held a hearing on the application on July 1, 2002, to determine whether to

recommend approval of the application to the Board of County Commissioners. After hearing testimony, receiving evidence, and deliberating, the Columbia County Planning Commission voted to recommend approval of the application to the Board of County Commissioners. On July 9, 2002, Jeff VanNatta, Planning Commission Chair, signed Final Order PA 02-03, recommending approval of the application.

On September 18, 2002, the Board of County Commissioners held a hearing on the application. At the hearing, the Board voted to accept additional evidence and testimony into the record. At that hearing, Todd Dugdale, Director, Land Development Services Department, read the staff report into the record which listed criteria to be considered and contained the Department's proposed findings, conclusions and recommendations. During the hearing, Legal Counsel's file was entered into the record as Exhibit "1." A list of documents included in Exhibit "1," is attached hereto as Attachment A, and is incorporated herein by this reference. A letter from Dan Dieter dated September 18, 2002, was also received into the record and was marked as Exhibit "2".

Thereafter, the Board of Commissioners closed the hearing, leaving the record open for additional written evidence and testimony until October 8, 2002, and for rebuttal testimony until October 15, 2002, and continued the matter for deliberations until October 22, 2002. On October 8, 2002, the Board received two documents, the first being a petition submitted by Mike Sheehan which was marked as Exhibit 3, and the second being a letter with exhibits, submitted by Tim Ramis for the Applicant, which was marked as Exhibit 4. On October 15, 2002, the Board received rebuttal testimony from Tim Ramis, which was marked as Exhibit 5. Thereafter, the Record was closed. On October 22, 2002, the Board of County Commissioners continued the matter for deliberations until November 13, 2002. On November 13, 2002, the Board of County Commissioners again continued the deliberations in the matter to December 4, 2002, and reopened the record for additional written testimony from Todd Dugdale, Columbia County Planning Director until November 20, 2002, and for written rebuttal evidence and testimony until November 27, 2002. On November 19, 2002, the Board received additional written testimony from Todd Dugdale, which was marked as Exhibit 6. On November 27, 2002, the Board received a letter from Tim Ramis which was marked as Exhibit 7, as well as a letter from Mike Sheehan which was marked as Exhibit 8.

On December 4, 2002, the Board of County Commissioners opened the hearing for deliberations. After considering the evidence and testimony, the Board voted to approve the application.

SECTION 5. FINDINGS.

The Board of County Commissioners adopts as its findings, the findings of fact and conclusions of law contained in the Staff Report of the Department of Land Development Services to the Board of County Commissioners, dated September 12, 2002, a copy of which is attached hereto as Attachment B, and is incorporated herein by this reference. The Board also adopts Supplemental Findings which are attached hereto as Attachment C, and are incorporated herein by this reference.

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SECTION 6. AMENDMENT AND AUTHORIZATION.

A. The official Comprehensive Plan Map designation for Block 4, Lot 78 and Block 42, Lot 8 of the Hillcrest subdivision, also described as tax account numbers 3222-011-09100 and 3222-031-05600, shall be changed from Rural Residential to Community Service.

B. The official the Zoning Ordinance Map designation for Block 4, Lot 78 and Block 42, Lot 8 of the Hillcrest Subdivision, also described as tax account numbers 3222-011-09100 and 3222-031-05600, shall be changed from Rural Residential (RR-5) to Community Service-Utility (CS-U).

C. Approval of this Plan Amendment and Zone Change is contingent upon approval and successful completion of all conditions of Site Design Review for water facilities.

D. Approval of this Plan Amendment and Zone Change is conditioned upon the preparation and implementation of a monitoring program under the supervision of the Oregon Water Resources Department which, in addition to measurement of on-site wells, shall include measurement of adjacent wells and upper tributary surface waters of Raymond and Jackson Creeks for any fluctuations which would trigger review by the Water Resources Department and limitations on the Applicant's use of water. The monitoring plan shall be prepared and/or implemented by a professional permitted under Oregon law to prepare and implement groundwater monitoring plans. The Applicant shall comply with all OWRD rules and regulations.

DATED this 31st day of December, 2002.

Approved as to Form

By: Sarah Tyson
Office of County Counsel

Recording Secretary
By: Jan Greenhalgh
Jan Greenhalgh, Recording Secretary

First Reading: 12-4-2002
Second Reading: 12-31-2002
Effective Date: 3-31-2003

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Chair

By: [Signature]
Commissioner

By: [Signature]
Commissioner

ATTACHMENT B

PA 02-03

CHDC & CHHA

COLUMBIA COUNTY BOARD OF COMMISSIONERS

STAFF REPORT

9/12/02

Plan Amendment & Zone Change

FILE NUMBER: PA 02-03

APPLICANT: Columbia Hills Development Co.
% Dick Recht
830 Woodside Road #4
Redwood City, California 94061

PROPERTY LOCATION: Block 4, Lot 78; and Block 42, Lot 8 of the Hillcrest Subdivision

REQUEST: Plan Amendment of the Comprehensive Plan Designation Map from Rural Residential to Community Service and Re-zone of the Official Zoning Ordinance Map From RR-5 to CS-U.

TAX LOTS: 3222-011-09100 (Lot 78)
3222-031-05600 (Lot 8)

PRESENT COMP PLAN DESIGNATION: Rural Residential

PROPOSED COMP PLAN DESIGNATION: Community Service

PRESENT ZONING: Rural Residential (RR-5)

PROPOSED ZONING: Community Service - Utility (CS-U)

BACKGROUND:

The applicant proposes to amend the Official Comprehensive Plan Map designation from Rural Residential to Community Service and to change the Official Zoning Ordinance Map on .27 Acre (Lot 78) and .23 acre (Lot 8) lots from Rural Residential - 5 (RR-5) to Community Service - Utility (CS-U). Partitioning of the subject property will not be necessary since the lot size lends itself well to the proposed use. Both the Columbia Hills Development Company (CHDC) and the Columbia Hills Homeowners Association (CHHA) shall hereinafter be referred to as the "applicant" within this staff report.

With approval of this plan amendment and zone change and accompanying site design review application (see

DR 02-15) the applicant proposes to site the water treatment and storage facilities on the re-zoned property to serve up to 140 homes (See Agreement between Michael Sheehan, Richard Recht, and Arthur Nelson on page 2) in the Hillcrest Subdivision in the RR-5 zone pursuant to the County's Design Review standards and approval by the Planning Department. The applicant states, "This application is for rezoning of lot 78, block 47 and lot 8, block 42 from RR-5 to CS-U." ... "The first lot is the site of Phase 1 water treatment and, potentially storage facilities. The second is a possible site for the Phase 2 improvements, the main water treatment, storage and pumping facilities." Review of the proposed Site Design Review accompanying this application (See accompanying DR 02-15) is technically an administrative action but will be sent to the Planning Commission together with this application for a Plan Amendment and Zone Change.

The application states, "The first phase improvements would be built adjacent to Callahan Road in the vicinity of the five existing homes. They will have the capacity to treat and store a water supply for up to 25 homes. It is unknown at this time whether this phase will be permanent or whether it will eventually be retired and the nearby homes served by phase II main facilities." ... "It is planned that the main water facilities will be constructed near Mt. Hillcrest, in the western portion of the subdivision and its highest point. The facilities are planned to include a tank with a capacity between 100,000 and 200,000 gallons, water treatment capacity for up to 130 homes, and pumps to supply water pressure for the system."

A development agreement resulted from Circuit Court Case No. 99-2347 which is relevant to this application and follows:

AGREEMENT

"The Plaintiffs (Richard Recht & Arthur Nelson) as indicated by their signature below and Mike Sheehan hereby agree as follows:

1. The plaintiffs agree to a cap of 140 dwellings in the entire Hillcrest Subdivision, including the woodlot buffer area and other lands located in the Hillcrest Subdivision owned by other owners, with the potential homesites in the area of the Hillcrest Subdivision now identified as the RR-5 zone identified in a development plan showing the location and size of each site.
2. The plaintiffs agree to be bound by that plan and agree to bind their successors in interest similarly by proper written and recorded instruments.
3. Mike Sheehan agrees not to object to a zone change from RR-5 to CSU to implement their community water system storage facilities.
4. The plaintiffs agree that a development plan for the RR-5 area will be submitted with the application for the zone change; and further agree that the 140-home site cap will include any home sites that are developed by other property owners in the entire Hillcrest Subdivision, and that each home site so developed with reduce the number of home sites that can be developed by plaintiffs.

5. Mike Sheehan agrees not to contest the total number of 140, under the conditions set forth above.”

The agreement was then signed by Michael F. Sheehan, Richard Recht, and Arthur Nelson.

FINDINGS:

This request is being processed under Section 1605 of the Zoning Ordinance. The pertinent sections of the ordinance are as follows:

1605 Zone Change - Major Map Amendment: The hearing for a major map amendment shall follow the procedure established in Sections 1502, 1502.1, 1502.1A and 1502.1B. This hearing cannot result in the approval of a major map amendment. The Commission may make a recommendation to the Board of Commissioners that such a zone change be granted. Approval by the majority of the Commission is necessary in order to make recommendation to the Board of Commissioners. The Board of Commissioners hearing on the proposed zone change - major map amendment will be on the record unless a majority of the Board votes to allow the admission of new evidence.

1502 Zone Changes (Map Amendments): There are two types of Zone Changes which will be considered by the Commission: Major Map Amendments and Minor Map Amendments.

- .1 Major Map Amendments are defined as a Zone Change which requires the Comprehensive Plan Map to be amended in order to allow the proposed Zone Change to conform with the Comprehensive Plan. The approval of this type of Zone Change is a two step process:
 - A. The Commission shall hold a hearing on the proposed Zone Change, either concurrently or following a hearing, on the proposed amendment to the Comprehensive Plan which is necessary to allow the proposed zoning to conform with the Comprehensive Plan. The Commission may recommend approval of a Major Map Amendment to the Board of Commissioners provided they find adequate evidence has been presented at the hearing substantiating the following:
 1. The proposed Zone Change is consistent with the policies of the Comprehensive Plan;
 2. The proposed Zone Change is consistent with the Statewide Planning Goals (ORS 197); and
 3. The property and affected area is presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.
 - B. Final approval of a Major Map Amendment may be given by the Board of Commissioners. The Commissioners shall hold a hearing on the proposed Zone Change either

concurrently or following a hearing on the proposed Comprehensive Plan Amendment which is necessary to allow the proposed zoning to conform with the Comprehensive Plan. The Board may approve a Major Map Amendment provided they find adequate evidence has been presented substantiating the following:

1. The proposed Zone Change is consistent with the policies of the Comprehensive Plan;
 2. The proposed Zone Change is consistent with the Statewide Planning Goals (ORS 197); and
 3. The property and affected area is presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.
- .2 Minor Map Amendments are defined as a Zone Change which does not require an amendment to the Comprehensive Plan. The Commission may grant a Minor Map Amendment provided they find adequate evidence has been presented at a hearing substantiating the following:
- A. The Zone Change is consistent with the Comprehensive Plan; and
 - B. The property and affected area is presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

FINDING 1: This proposal is being processed as a Major Map Amendment, since the zone change requires the official Comprehensive Plan Map to be amended in order for the official Zoning Map and the Comprehensive Plan to be in agreement. The Planning Commission shall make a recommendation to the Board of County Commissioners who will then find that adequate evidence was submitted to make a decision upon whether or not approval criteria are met.

Section 1502.1.A.1 requires the Planning Commission to find adequate evidence substantiating that:

1. The proposed Zone Change is consistent with the policies of the Comprehensive Plan;

POLICIES: Applicable policies of the Comprehensive Plan include those for Rural Residential, Housing, and Public Facilities and Services.

RURAL RESIDENTIAL Goal: It is the goal of the County to provide for the continuation and needed expansion of Rural Residential uses on those resource lands where a valid exception can be, or has been shown to be, justified.” p 53

RURAL RESIDENTIAL

“It shall be a policy of the County to:

5. Encourage the in-filling of existing built and committed lands for new residential development.” p 53

HOUSING

“It shall be a policy of the County to:

1. Encourage an adequate housing supply by providing adequate opportunity for the development of new housing units and supporting the rehabilitation of the existing housing units when feasible. p 52

PUBLIC FACILITIES AND SERVICES

“It shall be County policy to:

1. Require that adequate types and levels of public facilities and services be provided in advance of or concurrent with development.
2. Require that the level of facilities and services be appropriate for, but limited to, the needs and requirements of the area(s) to be served. The types and level of public facilities allowed within Rural Residential are:
 - A. Public or community water systems.” p 202
4. Encourage new development on lands within urban growth boundaries or built and committed exception areas.” p 202
18. Designate parcels supporting public and private facilities and services as Community Service in the Comprehensive Plan and implement this plan designation through the use of three (3) zoning designations:
 - A. Community Service Utility - CSU...
19. Designate as Community Service Utility (CSU) those lands that;...
 - B. Are needed to support public and private utility facilities...” p 203

FINDING 2: The applicant states, “The re-zoning of lot 78, block 4 and lot 8, block 42 to CS-U is necessary for the development of a community water system to serve homes to be constructed in the Hillcrest Subdivision, a built and committed exception area.” The CS-U designation and zone will support the proposed utility facilities and meets the intent of the above Comprehensive Plan Policies for Rural Residential, Housing, and Public Facilities and Services .

Section 1502.1(A)2 requires the Planning Commission to find that:

2. The proposed Zone Change is consistent with the Statewide Planning Goals (ORS 197);

FINDING 3: The applicant states, “Columbia County’s Comprehensive Plan and zoning ordinances have been acknowledged as consistent with Statewide Planning Goals. The Rural Residential section of the Plan, in particular, has been recently re-acknowledged following periodic review.

The Hillcrest Subdivision was found to be built and committed and designated as an exception area. Both upon the Plan's initial adoption and in periodic review.

Continuing with Zoning Ordinance Section 1502.1:

"B. Final approval of a Major Map Amendment may be given by the Board of Commissioners. The Commissioners shall hold a hearing on the proposed Zone Change either concurrently or following a hearing on the proposed Comprehensive Plan Amendment which is necessary to allow the proposed zoning to conform with the Comprehensive Plan. The Board may approve a Major Map Amendment provided they find adequate evidence has been presented substantiating the following:

1. The proposed Zone Change is consistent with the policies of the Comprehensive Plan;
2. The proposed Zone Change is consistent with the Statewide Planning Goals (ORS 197); and
3. The property and affected area is presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property."

FINDING 4: The proposed zone change is consistent with the policies of the Comprehensive Plan.

"1608 Contents of Notice: Notice of a quasi judicial hearing shall contain the following information:

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

FINDING 5: All of the above shall have been included in the Notice of Public Hearing published twice in the

Chronicle and Spotlight newspapers not less than 10 days prior to the hearing.

COMMENTS:

1. The Scappoose CPAC recommends approval of this application with a condition added that, "A certified independent hydrological engineer shall be retained to assess the possible negative impacts on surrounding homes and properties from draw down of the aquifer."

FINDING 6: The Oregon Department of Water Resources, Groundwater Section is the responsible agency for determining if an "additional certified independent hydrological engineer" should be retained.

2. The District 18 Watermaster commented, "A water right from the Oregon Water Resources Department is required for a community system of this size. A review of the application will be made by the groundwater section to determine possible infrastructure. Based upon the outcome of this and other reviews a permit may or may not be issued."
3. The Oregon Department of Water Resources, Water Rights Section Manager commented, "Water rights issuance is not assured at this time. Issuance of a proposed final order will start a 45 day proposed comment and protest period."
4. The Scappoose Fire District states, "The Scappoose Fire District does not object to the rezoning or site design for a community water system on property located in Columbia Hills Development. The structures will be located less than 100 feet from the road so emergency apparatus turnarounds will not be required."
5. The County Roadmaster has reviewed the application and has no objection to its approval as submitted.
6. The County Building Official has reviewed the application and has no objection to its approval as submitted.

No other comments have been received from nearby or adjacent property owners or government agencies as of the date of this staff report (June 17, 2002).

CONCLUSIONS AND RECOMMENDATIONS:

Based on the above findings in the staff report (PA 02-03), the Planning Commission forwards its

Recommendation of **APPROVAL** to the Board of Commissioners for the proposed Plan Amendment and Zone Change as follows:

1. The Official Comprehensive Plan Map designation shall be changed from Rural Residential to Community Service on the subject property only and described as 3222-011-09100 & 3222-031-05600.
2. The Official Zoning Ordinance Map shall be changed from Rural Residential - 5 (RR-5) to Community Service - Utility (CS-U) on the subject property only and described as 3222-011-09100 & 3222-031-05600.
3. Approval of this Plan Amendment and Zone Change is contingent upon approval and successful completion of all conditions of Site Design Review for water facilities.

ATTACHMENT C

SUPPLEMENTAL FINDINGS

1. The Board of Commissioners finds that the Applicant requested a Water Right Permit for the proposed Community Water System from the Oregon Water Resources Department (OWRD) in December of 2001. The application requested .48 CFS, being .01 CFS from Well 1, .02 CFS from Well 2, .07 from Well 4, .11 from Well 6, and .09 CFS each from Wells 7, F1 and F2. The OWRD is the state agency with authority to review requests to use underground water supplies, and is charged with the task of protecting other users of the water source from possible depletion of the resource. The Agency has reviewed the Applicant's request for a Community Water System, and has issued a proposed final order (G-15665) which will soon become final. The Proposed Order and Draft Water Use Permit, while not a final permit approval, nonetheless provides substantial evidence that the OWRD staff has determined that the water supply will be adequate to serve 130 residential lots in the Columbia Hills Subdivision, without harming the water supply for other residents. The proposed OWRD final order makes several findings of facts and lists several conditions of approval of the permit. The proposed conditions include requiring Columbia Hills to submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86, within three years of permit issuance. The proposed conditions also require Columbia Hills to develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted wells. The proposed conditions require that if a well displays a total static water-level decline of 25 feet or more, compared to the reference level, Columbia Hills shall discontinue use of, or reduce the rate or volume of withdrawal from the wells until the water level recovers to above the 25 foot decline levels or until the Department determines that no action is necessary because the aquifer can sustain the declines without adversely impacting the resource or senior water rights. Finally, the proposed order limits the amount of total water usage for all the wells to .27 CFS. The Board finds that based on testimony of the Land Development Services Director that senior water rights status is given both to well users who have obtained a permit prior to the date of the Columbia Hills application and to legal well users.
2. The Board finds that approval of the proposed Comprehensive Plan Map amendment and Zone Change conforms with the goals and policies of the Columbia County Comprehensive Plan. Testimony was presented to the Board during the hearing and in additional written testimony received after the close of the record to oral testimony arguing that approval of the requested map amendment and zone change would not comply with specific language of the County Public Facilities and Services Goal. Mike Sheehan, for the Scappoose CPAC, argued that approval of the application would not conform with the background language of the

Goal.¹ The background paragraph says that “plans for public facilities and services in urban areas should be provided at levels that are necessary and suitable. Facilities and services for rural areas should be provided at levels for rural use only and should not support urban uses.” The Board finds that this background language was considered in drafting the Public Facilities and Services Goal and Policies, and is not in and of itself, criteria to be met. The Goal is to “plan and develop a timely, orderly, and efficient arrangement of public services as a framework for urban and rural development.” Policy 1 requires that adequate types and levels of public facilities and services be provided in advance of or concurrent with development.

To the extent that Sheehan argues that the amount of water allocated to the proposed wells by OWRD does not comply with the Goal and Policy, the Board disagrees. The Board finds that the Goal and Policy does not directly apply to this application because they require that before development can be approved, there must be adequate levels of public facilities to serve the development, or planned to serve the development concurrently. Here the applicant is not requesting approval of a development.

However, even if the Goal and Policy did apply directly to this application, the Board finds that the Goal and Policy are satisfied. The Board finds that the Applicant is attempting to satisfy these development requirements by obtaining water rights to have a community water system to serve a subdivision in advance of development. Without the water rights, the public facilities and services goal would not be met for the subdivision development, and there would not be a timely, orderly or efficient arrangement for public water services. There is substantial evidence in the record from OWRD that the allocated water usage for the community water system is adequate to serve the subdivision.

3. Sheehan also argued that the application does not conform to Policy 2 of the Public Facilities and Services Goal because OWRD has allocated too much water for the Applicant’s use which, he argues, may impair surrounding well users’ water as well as surface waters of the Raymond and Jackson Creek tributaries. Policy 2 requires that “the levels of facilities and services provided be appropriate for, but limited to, the needs and requirements of the area(s) to be served. The types and level of public facilities allowed within Rural Residential, Rural Center, Existing Commercial, and Rural Industrial Areas are: (A) Public or community water systems...*” The Board finds that this Policy does not apply to this application for a Comprehensive Plan Amendment and Zone Change. Rather the Policy is meant to apply during consideration of an application for development. The Policy would require a developer to provide appropriate levels of services according to the needs of the development as a condition of the development.

However, even if Policy 2 were applicable to this Plan Amendment and Zone Change, the Board finds that the Policy is met. Sheehan argues that according to a letter to OWRD from John Vlastelicia, a neighboring property owner, .27 CFS, or 1340 to 2380 gallons/household/day, appears to be very excessive for the proposed 130 households. Mr.

¹Mr. Sheehan cited page 196 of the Comprehensive Plan. The correct page number for the background language is p. 225.

Vlastelicia bases his comments on the fact that the City of Scappoose indicates that it plans municipal water sources to accommodate 175 to 200 gallons per day per household, and then asks the OWRD why they propose the higher allocation. OWRD made findings in the proposed final order that there is sufficient water for the proposed use following the statutory presumption in ORS 537.621. The Board finds that OWRD made a reasoned decision based on information and expertise of the Department's staff that .27 CFS is an appropriate water allocation for a 130 dwelling subdivision, reducing the amount from the requested allocation of .48 CFS, a 44% reduction. While there is evidence that Scappoose plans for a lower allocation per household, there is no evidence in the record that the lower number is more appropriate than the number determined by OWRD. Mr. Vlastelicia did not present any evidence to OWRD which tended to prove to OWRD that their numbers are incorrect, but only inquired of the agency to provide additional information as to the allocation amount. Similarly, by introducing Mr. Vlastelicia's letter, Mr. Sheehan has not provided any evidence to the Board that the proposed allocation is excessive, but only that Mr. Vlastelicia had concerns and questions about the allocation because of a perceived decline in local water levels. Therefore, the Board finds that no evidence was presented which would lead the Board to conclude that OWRD's proposed allocation is actually excessive. The Board finds that in the absence of any compelling evidence to the contrary, the Board is entitled to rely on the water rights allocation determination of the OWRD, which is the appropriate agency for reviewing water rights applications. OWRD has statutory authority to protect the water supply of adjacent landowners, through the water use permit process (ORS 537.153), provisions for withdrawing areas of critical groundwater shortage from further water rights permits (ORS 537.730), and permit enforcement in the event of "overdrawing groundwater supplies" or other related conflict problems (ORS 537.525(9)). It is clear to the Board that OWRD has expertise, statutory responsibility and enforcement powers in this area. The Board finds that the level of community water services is appropriate for and limited to the needs and requirements of the areas to be served.

4. Mr. Sheehan based his argument on a letter that John Vlastelicia wrote to the OWRD prior to issuance of the proposed order. Mr. Vlastelicia also submitted a letter to the Columbia County Planning Commission dated July 1, 2002. This submission was well before the September, 2002, release of the OWRD proposed final order and draft permit. He also submitted a copy of the comments he sent to OWRD in March of 2002, during the water rights application comment period. Mr. Vlastelicia did not appear in person before the Board. It is clear to the Board that the issues raised by Mr. Vlastelicia before this Board are the same issues that he raised during the OWRD permit process.

The Board finds it significant that Vlastelicia's letter to the Planning Commission predates the proposed order, and that the proposed final order was apparently not challenged. The Board finds that OWRD addressed the issues Mr. Vlastelicia raised. In response to Mr. Vlastelicia's request for a groundwater evaluation to determine whether groundwater is available for the water right without eventually injuring other water rights, OWRD, said,

"The Department's Groundwater/Hydrology section reviewed the

Comments submitted by John Vlastelicia and assessed groundwater availability and continues to determine that the proposed use of groundwater will, if properly conditioned, avoid injury to existing Rights and the resource....” (Proposed Final Order, Page 3.)

The Board further notes that Mr. Vlastelicia did not request that the County require a hydrological study in his letter to the Planning Commission. The letter requests the following:

1. That the County cooperate with OWSRD to help them assure that ORS 537.153(2) is first satisfied by appropriate technical evaluation prior to issuing a justified water right;
2. That the proposed (Columbia Hills) public water system be competently designed for withdrawal and sufficient reservoir capacity to store and use only the minimum water volumes/rates required for justified public need;
3. That (Columbia Hills) help assure that their proposed water withdrawals do not injure existing water rights and surface waters by providing a designed reliable on-going monitoring and reporting program of local surface and groundwater conditions most likely to be affected by the withdrawals; and
4. That a schedule of future progressive development be conditioned upon successful continued demonstration that water is available and that other water rights and surface waters are not injured by the development.

ODWR’s proposed final order includes several conditions that respond to the issues raised by Mr. Vlastelicia. (See Supplemental Finding 1). With regard to the minimum water volumes needed, the proposed order requires a water management plan and monitoring plan, and limits water usage in the event of interference with surface or groundwater. In addition to the monitoring plan, OWRD has indicated that it may be appropriate for the County to make the monitoring plan more specific by requiring that Columbia Hills monitor adjacent wells and surface water as a part of the required monitoring plan, in order to verify that the community water system is not interfering with other water rights. OWRD indicated that the agency would enforce that requirement, as it is consistent with the required monitoring plan. By placing such a monitoring requirement on the Applicant, the Board is not intending to supercede OWRD’s supervisory and enforcement authority of matters pertaining to water rights. The regulation of water rights should stay in the hands of OWRD’s expert staff rather than fall into the County’s jurisdiction.

With regard to storage capacity, storage capacity is not addressed in the OWRD draft permit, but such capacity is not directly related to the water right determination. Nor is storage capacity directly related to this Plan Amendment/Zone Change application. Storage capacity is a matter for design review. With regard to future development, the OWRD draft limits an eventual storage capacity of between 100,000 and 200,000 gallons, water treatment capacity for up to 130 homes. Phase II will be subject to another water use to .27 CFS for up to 140 houses. DR 02-15 approves only Phase 1 of the development (25 houses).

According to the design review application, the Applicant does not anticipate Phase II improvements for another 3-10 years during which time the monitoring and reporting plan will be up and running. For these reasons, the Board finds that the OWRD proposed final order contains adequate protection for existing water users upon future development in the subdivision.

5. Based on the letter written by Mr. Vlastelicia to OWRD and surrounding property owners' concern that excessive water has been allocated by OWRD, Mr. Sheehan argued that the Board needs to require the applicant to do a hydrological study to determine if adjacent landowners would be negatively impacted by the proposed water allocation in order to demonstrate that the Public Facilities and Services Goal and Policies are met. The Board does not agree that requiring a hydrological study would be an appropriate condition of this application. At the outset, the Board finds that Mr. Sheehan did not present evidence that a hydrological study is necessary to satisfy the Goal and Policies. Even if the Goal and Policies specifically mentioned apply to this review, the focus of the Public Facilities and Services Goal and Policies is on assuring adequate facilities are required in advance of or concurrent with the development. The focus is on the development and not on whether surrounding properties will be effected. While the Board certainly does not want to see adverse consequences to neighboring wells due to the Hillcrest development, the Board is not the appropriate body to determine whether the water allocation is excessive. Therefore, the Board does not agree that a condition requiring a hydrological study would satisfy the Goal and Policies.

In addition, Mr. Sheehan does not indicate what the consequence would be if a hydrological study indicates that neighboring wells may be negatively effected. Presumably, the study would come to the County for review. However, the County does not have the authority to amend OWRD's final order allocating water rights. OWRD must follow its statutory process to amend water rights. The County cannot circumvent that process. It appears to the Board that requiring hydrological information to be presented to the Board would not be helpful to the surrounding property owners. Rather, Mr. Sheehan should make these arguments to OWRD. If there is sufficient evidence of a negative impact on adjacent wells under OWRD's statutory and regulatory process, then OWRD will take the necessary steps to remedy the situation.

6. The zone change application would allow the establishment of a Community Water System in the RR-5 area of the Hillcrest Subdivision. The purpose of the community water system is to serve between 113 and 130 homesites in the RR-5 area of the Hillcrest Subdivision. Mike Sheehan agreed to a cap of 140 dwellings in the entire Hillcrest Subdivision with a Community Water System. The proposed Community Water system will serve between 113 and 130 homes in the RR-5 area of the Hillcrest Subdivision. Both the water use permit application and the zone change under consideration are necessary in order for the applicants to construct the 130 homesites in the RR-5 area. The applicants have limited the number of homesites to 130 with the understanding that they are entitled to construct the 130 homesites with a community water system under the current State and County laws.