

W. T. C.

AGENDA COVER MEMO

DATE: November 19, 2003 (Date of Memo)
December 3, 2003 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department

PRESENTED BY: Jerry Kendall, ^{JK} Land Management Division

AGENDA ITEM TITLE: Order /IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR ARGUMENTS ON AN APPEAL OF A HEARINGS OFFICIAL'S DECISION AFFIRMING THE PLANNING DIRECTOR'S DENIAL OF AN APPLICATION FOR A PRIVATE PARK IN THE IMPACTED FOREST LANDS AND EXCLUSIVE FARM USE ZONES (PA 03-5104/Gillette)

I. MOTION

MOVE TO ADOPT THE ORDER ESTABLISHING THE BOARD'S ELECTION TO NOT HEAR ARGUMENTS IN AN APPEAL OF THE HEARINGS OFFICIAL'S DECISION AFFIRMING THE PLANNING DIRECTOR'S DENIAL OF A PRIVATE PARK AND TO AFFIRM THE HEARINGS OFFICIAL'S INTERPRETATION OF LANE CODE, AND APPLICABLE STATE LAW, ON THE RECORD.

II. ISSUE OR PROBLEM

The Director has received an appeal to the Board, contesting a Hearings Official's decision affirming an earlier decision by the Planning Director, denying a private park proposal. Pursuant to Lane Code 14.600, the Board must now decide whether or not to hear the appeal by applying criteria set forth in the Code.

III. DISCUSSION

A. Background

1. Property involved in this action is identified as tax lots 3900, 4004, and 4007, assessor's map 18-04-14; and tax lots 100 and 202, assessor's map 18-04-23, located at 86430 Needham Road, Eugene. This subject property is 400 acres in size. The property is designated E-40/Exclusive Farm Use, and F-2/Impacted Forest Lands.
2. In the form of application PA 03-5104, the property owner in February, 2003 requested Planning Director approval of a Special Use Permit for a private park in the F-2/Impacted Forest Lands and the E-40/Exclusive Farm Use Zones pursuant to Lane Code 16.211(3)(c), (5) & (8), and Lane Code 16.212(4)(k), respectively. The proposed uses consisted primarily of All Terrain Vehicle Training and recreational use, and paintball activities. Other proposed uses included training by branches of the armed forces (orienteeing, small tactical and field exercises, map reading, firearms practice, etc.), scouting activities (wilderness survival, weather forecasting, surveying, archery, astronomy,

bird study, signaling, soil and water conservation, photography, pigeon raising, botany, radio, emergency preparedness, environmental science, wildlife management, etc.), hiking, mountain biking, picnicking, horse riding, and track & field training.

3. A Planning Director evidentiary hearing was held on May 29, 2003.
4. On August 13, 2003, the Planning Director denied the proposal.
5. A timely appeal of the Planning Director's decision was filed by the applicant on August 25, 2003. The Director accepted the appeal, affirmed his decision on August 29, 2003.
6. An "on the record" appeal hearing before the Lane County Hearings Official was held on September 18, 2003.
7. On October 28, 2003, the Hearings Official issued a decision, affirming the Planning Director's denial of the private park proposal.
8. The applicant filed a timely appeal of the Hearings Official decision on November 7, 2003; the appeal was accepted by the Director and forwarded to the Hearings Official.
9. On November 14, 2003, the Hearings Official affirmed the decision denying the request.

B. Elective Board Review Procedure

The Elective Board Review Procedure in Lane Code 14.600(2)(c) and (d) provides the Board with three options:

- To hear the appeal on-the-record,
- To not hear the appeal and to remain silent on the Hearings Official's decision, or
- To not hear argument in the appeal but to expressly agree with any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed and affirm the Hearings Official's decision.

The applicable subsections are:

(c) The Board shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for the appeal, the Board order shall also specify the tentative date for the hearing on the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.

(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

If the Board's decision is to hear arguments on the appeal, then the Board must adopt an Order and findings specifying the tentative date for a hearing and the parties who qualify to participate in a hearing on the record for the appeal. Such an Order is not attached here and will need to be produced if the Board elects to hear.

In order for the Board to hear the appeal, the Decision Criteria of LC 14.600(3) requires that one or more of the four criteria cited below, be satisfied:

(3) ***Decision Criteria.*** A decision by the Board to hear the appeal on the record must conclude the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing and must comply with one or more of the following criteria:

- a) *The issue is of Countywide significance.*
- b) *The issue will reoccur with frequency and there is a need for policy guidance.*
- c) *The issue involves a unique environmental resource.*
- d) *The Planning Director or Hearings Official recommends review.*

C. **Analysis**

Character of the Appeal.

The applicant/appellant, Mr. Gillette, cites four assignments of error.

Assignment #1:

The appellant maintains that the Hearings Official erred in his conclusion that no reservoirs exist on the subject property as so required in the E-40 zone standards for a park.

Lane Code 16.212(4)(k): allows parks, in part, subject to the following:

- (k) *Private parks, playgrounds and campgrounds that comply with these requirements:*
 - (ii) *Except on a lot or parcel contiguous to a lake or reservoir, uses described in LC 16.212(4)(k) above are not permitted within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4;*

The record is undisputed that the subject property is within three miles of Eugene's Urban Growth Boundary. Therefore, according to the above provision, a reservoir must be on the property in order to qualify for a park use.

In the on the record appeal hearing, the Hearings Official relied on a video taken by staff during a July 11, 2003 site visit, during which Mr. Gillette showed the location of two of his "reservoirs". One was egg shaped, approximately 70' x 30' x 3' deep, and dry. The other was 60' x 30' x 4' deep (at center), and full of water.

In the decisions, the Planning Director, and in turn the Hearings Official, first observed that the term "reservoir" is not defined in Lane Code or state law. Secondly, that the context in which the term is found did not offer any guidance. Third, the Planning Director and the Hearings Official turned to the legislative history concerning the formulation of this provision concerning reservoirs.

During the formulation of the state rule in Spring of 1998, DLCD had originally intended to exclude new parks and campgrounds within three miles of a UGB. In his August 13, 2003 decision, the Planning Director (Attachment #2, p.12), noted that LMD Sr. Planner Jim Mann had specifically requested DLCD to include language allowing parks and campgrounds within three miles of a UGB provided that they have a reservoir. In a memo dated April 1, 1998, Mr. Mann stated:

"We wanted this language in the rule to recognize that Lane County, and other counties as well, has properties adjacent to lakes or reservoirs that are ideal locations for recreational parks or campgrounds but that are also within three miles of urban growth boundaries. The examples I gave at the March 6 hearing were: Fern Ridge Reservoir within three miles of the Veneta urban growth boundary, Cottage Grove Reservoir within three miles of the Cottage Grove urban growth boundary, and our coastal lake areas within three miles of the UGB's of Florence and Dunes City".

The Planning Director further noted that (p.12):

"It is evident that the code language does not recognize the pond on the applicant's property as being a natural attraction on a level approaching other reservoirs in the county".

In his October 28, 2003 decision (Attachment #1, p.5), the Hearings Official concurs with the Director's reasoning, stating:

"The Planning Director's interpretation of the term 'reservoir' is sound and his application of this interpretation to the present application is reasonable. Clearly the applicant's ponds are too small and insignificant to be characterized as bodies of water that can serve as a recreational 'anchor' for a park."

The Hearings Official further notes (Attachment #1, p.4) that where ambiguity over a term exists, it is appropriate to utilize legislative history as described above. He cites the legal authority to do so per *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993).

In light of the above discussion, the appellants sub assignment of error concerning the proposition that an empty "reservoir" is still a reservoir is moot.

Assignment #2

In the second assignment of error, the appellant maintains that, regarding the F-2 zoned portions of the property, the Hearings Official erred by denying any campground activity based an absence of reservoirs by using the same logic as used for the E-40 zoned land (as described above). This assignment is not valid for the same reasons listed above for the E-40 zone.

The appellant also notes that the Hearings Official erred in his ruling concerning campgrounds in the F-2 zone, because no campground use was proposed. While there is no harm in the Hearings Official's ruling on a use that allegedly was not proposed, the application is rife with confusing directives (see Hearings Official's Finding of Fact #1, p.1, of Attachment #1). There is no prejudice or harm to the appellant in ruling on a use that may not have been included in the proposal.

Assignment #3

The appellant maintains that the Hearings Official erred in his finding that the proposal would result in a significant change in farm and forest operations conducted on nearby lands, or the cost thereof. Mr. Gillette states that unauthorized trespassers over which he had no control caused such alleged impacts. He also questions the substantive nature of the testimony in the record.

In regards to trespass, the Planning Director and the Hearings Official relied on testimony from two primary sources. These were letters and testimony from two neighboring property owners who conducted forest and farm operations on their lands. One, Ms. Kulus, testified that trespassers from the applicant's property cut fences and allowed her livestock to escape. This cost Ms. Kulus money for fence repair, cattle recovery, and some replacements. Further impacts were caused by ATV noise, which affected grazing cattle. Another neighbor, Mr. Meisen, testified that he was forced to construct a ditch to discourage trespass by ATV's, motorcycles, and mountain bikers coming from the Gillette property (see p.6 of Attachment #1).

The Hearings Official also found that the applicant had not met his burden of proof in demonstrating control over trespass. These factors included lack of perimeter fencing, inability to monitor a large tract of land, and the "...large and disparate number of activities that are proposed for the subject property". The Hearings Official also noted that the applicant's fences were to serve as boundary markers rather than barriers, refused to designate permanent trails for ATV use, and failed to provide sufficient information regarding the number of park users, operation times, and type of events, making a conclusive finding of compliance with the standards problematic (pages 6-7, Attachment #1). As to the substantive nature of the testimony, LUBA has given preference to the local government's selection of which evidence to believe is reasonable (*Donnel v. Union County*, 40 Or LUBA 455 (2001)).

Assignment #4

The appellant maintains that there is no substantial evidence in the record showing that the proposal will result in significant fire hazard impacts as per LC 16.211(3), and that to the contrary the record contains evidence that conversion to a park will decrease the fire danger. The applicant also requests the opportunity to submit new evidence into the record in this regard, and to dispute previous testimony provided by parties of record.

Lane Code 16.211(3) allows a park provided, in part, that it "...will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel". In this regard, the record contains a letter from the RFPD Deputy Fire Chief testifying that the access road (Needham Rd.) "...limits access for fire suppression apparatus and ambulances to one-way travel" and "...impacts our ability to respond resources in a timely manner...". The record also contains mention of fire equipment access difficulty because of topographic reasons. Testimony concerning tall dry grass, brush piles, and the potential for ignition by motorized vehicles coupled with lack of water are on record. Testimony as to the presence of cigarette butts found on neighboring land and heavy timber cover (fuel source) is also on record. As such, and lacking sufficient prevention planning by the applicant, the Hearings Official found this standard not to be met (pp. 7-8, Attachment #1).

If, pursuant to Lane Code 14.600(2)(d), the Board agrees with the Hearings Official's decision and affirmation of his decision, it is then appropriate not to hear arguments on the appeal and to adopt the attached Order affirming and adopting the Hearings Official's justification for the decision, findings of fact, and conclusions of law as written in his decision of October 28, 2003.

If on the other hand the Board concludes that further interpretation of issues raised in the appeal is necessary, then it is appropriate to schedule an on the record hearing as authorized by Lane Code 14.600(2)(c) and conducted pursuant to Lane Code 14.600. A new Order with Findings will be needed in lieu of the attached Order.

Analysis of Election to Hear Criteria.

Each Lane Code 14.600(3)(a)-(d) election-to-hear criterion is presented below with the Director's analysis.

1. The issue is of Countywide significance.

The portion of the appeal concerning lack of substantive evidence is a process item specific to this application and is not of countywide significance.

Other issues raised in the appeal, such as what constitutes a "reservoir" and whether or not the presence of one is required for a park in the Exclusive Farm Use Zone was adequately addressed by the Hearings Official following established legal protocol. These issues are not countywide in significance, as the provision of LC 16.212(4)(k)(ii) applies only to lands within three miles of an Urban Growth Boundary.

2. The issue will reoccur with frequency and there is a need for policy guidance.

Requests for review of private park proposals on resource zoned land within three miles of an Urban Growth Boundary do not occur with frequency.

There is no need for policy guidance if the Board agrees with the Hearings Official's interpretation of what constitutes a reservoir as it relates to LC 16.212(4)(k)(ii) and OAR 660-033-130(19)(a).

3. The issue involves a unique environmental resource.

No unique or rare environmental resources on the property have been identified in the record.

4. *The Planning Director or Hearings Official recommends review.*

Neither the Planning Director nor the Hearings Official recommends review of this appeal.

D. Options

1. To hear the appeal on the record;
2. To not hear arguments on the appeal, affirm the Hearings Official's decision, and to expressly agree with his interpretation of reservoirs in LC 16.212(4)(k)(ii) and OAR 660-033-130(19)(a) in the decision being appealed; or
3. To not hear arguments on the appeal and to remain silent on the Hearings Official's decision and interpretations.

E. Recommendation

Option 2 is recommended.

F. Timing

If the Board elects to hear the appeal, a date for an on-the-record hearing will need to be established following adoption of an Order electing to hear.

IV. IMPLEMENTATION/FOLLOW-UP

Notify the parties of the Board decision to adopt the attached Order; or

If the Board elects to hear the appeal, a new Order and Findings will need to be prepared and adopted, and notice of a hearing given, as soon as possible.

ATTACHMENTS

1. Board Order electing to not hear the appeal, with Exhibits "A" (findings) and "B" (Hearings Official Decision, October 28, 2003 with Affirmation of decision, November 14, 2003).
2. August 13, 2003 original decisions by the Planning Director.
3. August 25, 2003 appeal by Mr. Gillette of the Planning Director's decision.
4. November 7, 2003 appeal by Mr. Gillette of the Hearings Official's decision.

More background information can be supplied if needed. If an on-the-record appeal hearing is scheduled, a complete copy of the record with all evidence will be made available to the Board.

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.) IN THE MATTER OF ELECTING WHETHER OR NOT TO
) HEAR ARGUMENTS ON AN APPEAL OF A HEARINGS
) OFFICIAL'S DECISION AFFIRMING THE PLANNING
) DIRECTOR'S DENIAL OF AN APPLICATION FOR A
) PRIVATE PARK IN THE IMPACTED FOREST LANDS
) AND EXCLUSIVE FARM USE ZONES (PA 03-5104/Gillette)

WHEREAS, the Lane County Hearings Official has made a decision affirming the Planning Director's denial of a Special Use Permit for a private Park in the Impacted Forest Lands and Exclusive Farm Use Zones, PA 03-5104; and

WHEREAS, the Lane County Planning Director has accepted an appeal of the Hearings Official's decision to the Board of County Commissioners pursuant to LC 14.515; and

WHEREAS, the Lane County Hearings Official has affirmed his decision on application PA 03-5104; and

WHEREAS, Lane Code 14.600 provides the procedure and criteria which the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

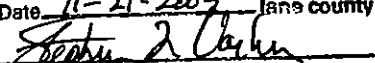
WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board; NOW

THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds and orders as follows:

1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A".
2. That the Lane County Hearings Official decision dated October 28, interpreting applicable provisions of Lane Code 16.212(4)(k)(ii) and OAR 660-033-130(19)(a), attached as Exhibit "B", is affirmed and adopted by the Board of County Commissioners as its own interpretation in reaching a final decision on this application.

DATED this _____ day of December, 2003.

APPROVED AS TO FORM

Date 11-21-2003 Lane county

OFFICE OF LEGAL COUNSEL

Peter Sorenson, Chair
Lane County Board of Commissioners

Order Exhibit "A"

FINDINGS IN SUPPORT OF THE ORDER

1. Property involved in this action is identified as tax lots 3900, 4004, and 4007, assessor's map 18-04-14; and tax lots 100 and 202, assessor's map 18-04-23, located at 86430 Needham Road, Eugene. This subject property is 400 acres in size. The property is designated E-40/Exclusive Farm Use, and F-2/Impacted Forest Lands.
2. In the form of application PA 03-5104, the property owner in February, 2003 requested Planning Director approval of a Special Use Permit for a private park in the F-2/Impacted Forest Lands and the E-40/Exclusive Farm Use Zones pursuant to Lane Code 16.211(3)(c), (5) & (8), and Lane Code 16.212(4)(k), respectively. The proposed uses consisted primarily of All Terrain Vehicle Training and recreational use, and paintball activities. Other proposed uses included training by branches of the armed forces (orienteeing, small tactical and field exercises, map reading, firearms practice, etc.), scouting activities (wilderness survival, weather forecasting, surveying, archery, astronomy, bird study, signaling, soil and water conservation, photography, pigeon raising, botany, radio, emergency preparedness, environmental science, wildlife management, etc.), hiking, mountain biking, picnicking, horse riding, and track & field training.
3. A Planning Director evidentiary hearing was held on May 29, 2003.
4. On August 13, 2003, the Planning Director denied the proposal.
5. A timely appeal of the Planning Director's decision was filed by the applicant on August 25, 2003. The Director accepted the appeal, affirmed his decision on August 29, 2003.
6. An "on the record" appeal hearing before the Lane County Hearings Official was held on September 18, 2003.
7. On October 28, 2003, the Hearings Official issued a decision, affirming the Planning Director's denial of the private park proposal.
8. The applicant filed a timely appeal of the Hearings Official decision on November 7, 2003; the appeal was accepted by the Director and forwarded to the Hearings Official.
9. On November 14, 2003, the Hearings Official affirmed the decision denying the request.
10. The appeal states that the Hearings Official misinterpreted the Lane Code and State Law, and that the Board should elect to hear the matter in order to allow the submittal of additional evidence not currently in the record.
11. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - *The issue is of Countywide significance.*
 - *The issue will reoccur with frequency and there is a need for policy guidance.*
 - *The issue involves a unique environmental resource.*
 - *The Planning Director or Hearings Official recommends review.*
12. The issues raised on appeal do not appear to be of countywide significance. The portion of the appeal concerning lack of substantive evidence is a process item specific to this application and is not of countywide significance. Other issues raised in the appeal, such as what constitutes a "reservoir" and whether or not the presence of one is required for a park

in the Exclusive Farm Use Zone was adequately addressed by the Hearings Official following established legal protocol. These issues are not countywide in significance, as the provision of LC 16.212(4)(k)(ii) applies only to lands within three miles of an Urban Growth Boundary.

13. The issue is not expected to reoccur, as requests for review of private park proposals on resource zoned land within three miles of an Urban Growth Boundary do not occur with frequency.

There is no need for policy guidance, as the Board agrees with the Hearings Official's interpretation of what constitutes a reservoir as it relates to LC 16.212(4)(k)(ii) and OAR 660-033-130(19)(a).

14. No unique or rare environmental resources on the property have been identified in the record.
15. Neither the Planning Director nor the Hearings Official recommended review of this appeal.
16. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.
17. The Board has reviewed this matter at its meeting of December 3, 2003 and finds that the appeal does not comply with the criteria of Lane Code Chapter 16.600(3), and elects to not hold an on the record hearing.
18. The Board expressly agrees with the October 28, 2003 decision of the Lane County Hearings Official interpreting Lane Code 16.212(4)(k)(ii) and OAR 660-033-130(19)(a), attached here as Exhibit "B". The Hearings Official's decision and interpretations are affirmed and adopted by the Board of County Commissioners as its own interpretation.

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR'S DENIAL OF A REQUEST FOR A PRIVATE
PARK ON PROPERTY ZONED E-40 AND F-2**

Application Summary

James Gillette, 86430 Needham Road, Eugene, OR 97405, requests approval for a private park on tax lots 3900, 4004, and 4007, assessor's map 18-04-14; and tax lots 100 and 202, assessor's map 18-04-23. The Planning Director held an evidentiary hearing on the matter on May 29, 2003 and subsequently denied the request on August 13, 2003. The applicant filed a timely appeal. The Hearings Official held an "on the record" appeal on September 18, 2003.

Application History

Hearing Date: September 18, 2003

Decision Date: October 28, 2003

Appeal Deadline

An appeal must be filed within 10 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.211(3)(c), (5) & (8)

Lane Code 16.212(4)(k)

Findings of Fact

1. The property subject to this application, hereinafter referred to as "the subject property," can be identified as tax lots 3900, 4004, and 4007, assessor's map 18-04-14; and tax lots 100 and 202, assessor's map 18-04-23 and is located at 86430 Needham Road, Eugene, OR. The subject property is about 400 acres in size

The applicant submitted this proposal in February of 2003. That proposal was deemed incomplete by the Planning Director and a second submission was tendered by the applicant in April. The first submission covered a large number of activities, including all-terrain vehicle (ATV) use, training activities by branches of the armed forces (orienteering, small unit tactical and field exercises, map reading, firearms practice, etc.), scouting activities (wilderness survival, weather forecasting, surveying, archery,

astronomy, bird study, signaling, soil and water conservation, photography, pigeon raising, botany, radio, emergency preparedness, environmental science, wildlife management, etc.), paintball, hiking, mountain biking, picnicking, horse riding, and track & field training. The applicant's April submission described the proposal as consisting primarily of ATV training and recreational use although he advised the Planning Director to use both proposals but to rely upon the latter where conflicts arise between the listed activities.

2. The subject property is bordered on the west by property zoned F-2 (tax lots 3504, 3802, 3800, 300, 600, 700 and 201) and on the southeast (tax lots 200 and 204). The subject property is bordered by EFU-zoned land (E-40) on the west (tax lot 400) and on the east (tax lot 3800). Property zoned Marginal Land, 160 acres of which is subject to forest tax deferral and is involved in native Oak Savanna restoration, is located adjacent to the east.
3. The primary access to the subject property is Needham Road. Needham Road is a private road that is zoned RR-5. Parks are allowed on rural residential lands subject to a conditional use permit. The first 800 feet from where Needham Road accesses Blanton Road is paved. The remainder, about three-quarters of its length, is in poor condition and generates a substantial amount of dust from the vehicles driving to and from the subject property. Its paved width starts at 17 feet and diminishes to about 12 feet at the end of the pavement. The remainder is from 12 to 14 feet in width without turnouts. Dust from this activity has made the pasture owned by Veronica Dean almost ungrazable and the spraying of fruit trees ineffective. The paving was done in July of 1998 for a cost of about \$4,000. The cost was relatively low because a paving crew was already in the area and this portion of the road did not need extensive reconstruction prior to the paving. It is estimated that paving the remainder of the road, up to the subject property, may cost in excess of \$100,000 because of the extensive reconstruction of the road bed necessary prior to paving. (Testimony of Jerry Strand) It has been shown that placement of biodegradable oil will not mitigate dust problems as the extensive use of the road wears out this surface in a matter of weeks.
4. The subject property contains two ponds. At the time of the Planning Director's July 11, 2003 site view, one pond was completely dry. This pond, which is egg-shaped and is roughly 70 x 30 feet in dimension and about three feet deep, is not accessible to fire trucks. The second pond was about 60 x 30 feet in size and about four feet deep at its center. This pond was full. There were no other water sources on the subject property as two creek beds on the property were dry.

At the time of the site view, grass was waist-high and dry on tax lot 4009. Because of the tall grass, trails in the area were not obvious and hidden rocks represented serious concern for vehicular access for those not intimately familiar with the location of the path.

5. Trespass from the subject property has occurred on tax lot 401, to the west, and to tax lots 3800 and 3801, to the east. Evidence of trespass included cut fence lines, ATV, motorcycle and bicycle tracks and cigarette butts. Damage has included cut fence lines, crushed tree seedlings, and lost cattle.

Decision

THE PLANNING DIRECTOR'S DENIAL OF THE GILLETTE REQUEST (PA 03-5104) FOR SPECIAL USE APPROVAL TO ALLOW A PRIVATE PARK ON LAND ZONED E-40 AND F-2 IS AFFIRMED.

Justification for the Decision (Conclusion)

This appeal has been reviewed "on the record." I have listened to the cassette tapes of the May 29, 2003 hearing, and have reviewed the videotape of the July 11, 2003 site view and the written materials in the record. In the applicant's reasons for appeal he generally alleges the following:

1. *The Director did not remember or review testimony, or ignored it. He misinterpreted the facts to defeat the proposal.*
2. *The Director used his personal opinions instead of being fair.*
3. *The Director believed all of the testimony against the proposal even though much of it was untrue, thereby making all of it suspect.*
4. *The Director was incorrect on his definition of "reservoir" and the need for such a facility.*
5. *The Director was biased.*

I will address what I believe to be the gist of the applicant's appeal and determine whether there is sufficient evidence in the record to support the Planning Director's denial. Distilled to its essence, the applicant's appeal appears to be based upon three theories. First, that the Planning Director was biased. Second, the Planning Director, as a matter of law, was incorrect on his interpretation of the term "reservoir" as it is used in Lane Code 16.212(4)(k)(ii). Third, the Planning Director committed reversible error on matters of fact. In addition to these three allegations, I will address several other issues raised by the Planning Director and others that can arguably support a denial of the proposed private park.

It must be remembered that because a permit applicant has the burden of demonstrating compliance with each approval criterion, when a challenged decision denies development

approval, the county need only adopt findings, supported by substantial evidence, demonstrating that one approval standard is not met.¹ Further, there is no general requirement that a local government *must* apply conditions to modify a proposal so that applicable standards are met, rather than deny the application.²

1. **Bias.** The applicant has the burden of showing that actual bias existed in the Planning Director's decision.³ This burden requires him to show that the Planning Director was incapable of making a decision based on the evidence and arguments or that the application was prejudged and the decision was not reached by applying the appropriate standards.⁴ In the present case, the applicant has not demonstrated in a clear and unmistakable manner that actual bias has existed. At the most, he has alleged that the Planning Director has chosen to believe the testimony of those speaking in opposition over that of his own. The alleged bias was, in fact, a determination based upon the evaluation of credibility and consequential weighing of the evidence. Because the May 29 hearing was not video taped, I must defer to the Planning Director's determination of the demeanor and truthfulness of those who testified before him unless that determination is not supported by substantial evidence in the record. This allegation of error is dismissed.
2. **Interpretation of the term "reservoir."** A portion of the subject property is zoned E-40 Exclusive Farm Land. Lane Code 16.212(4)(k) provides that private parks are allowed on land zoned exclusive farm land unless they are located on high value farm land or, if they are located within three miles of an urban growth boundary, they are on a lot or parcel contiguous to a lake or reservoir. The term "reservoir" is not defined in the Lane Code nor is defined in ORS 215.213 or OAR Chapter 660, Division 033. Webster's Dictionary defines reservoir as an artificial lake where water is impounded for various uses.⁵

It is appropriate to interpret legislation where there is ambiguity⁶ and a statute may be considered ambiguous if it is susceptible to more than one reasonable interpretation.⁷ In the present instance, the nature and size of a body of water that constitutes a reservoir is unspecified; thus inviting a variety of opinions about what constitutes such a facility. In clarifying an ambiguity, a three-step analysis is employed.⁸ The first step in the analysis is to look at the text and context of the legislation being examined. Neither the text nor the context of the term "reservoir" aids in defining that term. The code merely replicates the language of DLCD administrative rule 660-033-0130(19) that states that the lot or parcel must be contiguous to such a body of water or to a lake. The second step is to examine

¹ *Sandgren v. Clackamas County*, 29 Or LUBA 454 (1995)

² *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994)

³ *Rath v. Hood River Co.*, 23 Or LUBA 200, 203 (1992)

⁴ *Richards-Kreitzberg v. Marion Co.*, 32 Or LUBA 76, 79 (1996)

⁵ *Webster's Third New International Dictionary of the English Language*, Unabridged, Copyright 1981, Principal Copyright 1961, pg 1931.

⁶ *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 218, 843 P2d 992 (1992)

⁷ *Koitzsch v. Liberty Northwest Ins. Corp.*, 125 Or App 666, 669, 866 P2d 514 (1994)

⁸ *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993)

the legislative history of the legislation being examined. In this regard, the Planning Director relied upon the legislative history surrounding the adoption of OAR 660-033-0130(19)(a), from which Lane Code 16.212(4)(k)(ii) was derived. This legislative history strongly suggests that the term "reservoir" was intended to describe a body of water that was of sufficient size to justify a campground or park. The Planning Director's interpretation is consistent with this history as well as his prior administrative decision in PA 00-5312. The applicant's ponds cannot be considered as "reservoirs" or lakes as those terms are intended by Lane Code 16.212(4)(k) and OAR 660-033-0130(19)(a). This allegation of error is dismissed.

3. Errors of evidence as it is applied to the approval criteria

The subject property is zoned E-40 and F-2 and the Planning Director made findings of fact regarding the applicant's compliance with the approval standards associated with each of these zoning districts.

Compliance with EFU Approval Criteria

Tax lots 4007, 4004 and 4009, assessor's map 18-04-14 and tax lot 100, assessor's map 18-04-23 are zoned E-40. Lane Code 16.212(4)(k) allows private parks and campgrounds on EFU-zoned land subject to several exceptions. One exception, found in Lane Code 16.212(4)(k)(ii), is that the private park or campground must not be located within three miles of an urban growth boundary unless it is adjacent to a lake or reservoir or if an exception pursuant to ORS 197.732 is approved.

The Planning Director has found that the subject property lies within three miles of the Eugene Urban Growth Boundary. He also found that there were no lakes or reservoirs on or adjacent to the subject property. In specific, he found that the two ponds on the subject property, both of which were viewed during the July 11 site view, not to be reservoirs. One of the ponds, located near the BPA power lines on tax lot 3900, was completely dry. The other pond, located south of the BPA lines, was estimated to be 60 feet long and 30 feet wide and to be generally one to two feet in depth.

The Planning Director's interpretation of the term "reservoir" is sound and his application of this interpretation to the present application is reasonable. Clearly the applicant's ponds are too small and insignificant to be characterized as bodies of water that can serve as a recreational "anchor" for a park. As the applicant has not acquired an exception pursuant to ORS 197.732, the Planning Director's denial, as it pertains to those portions of the subject property that are zoned EFU, must be affirmed.

Compliance with F-2 Impacted Forest Lands Approval Criteria

Tax lot 202, assessor's map 18-04-23, which constitutes approximately the southern one-quarter of the subject property, is zoned F-2 Impacted Forest Lands. This portion of the subject property has an unimproved access to Isaac Walton Road, to the south, and is bordered by E-40 property on the northwest and F-2 land on the west and east. Lane Code 16.211(3)(c) allows private parks and campgrounds on Impacted Forest Lands, subject to discretionary standards.

One standard, found in Lane Code 16.211(3)(c)(i), is that a campground may not be sited within three miles of an urban growth boundary unless it is contiguous to a lake or reservoir or unless an exception pursuant to ORS 197.732 has been approved. As determined above, the applicant's ponds cannot be characterized as reservoirs or lakes and therefore no aspect of the applicant's proposal that can be defined as a "campground" may be approved on the F-2 zoned portion of the subject property.

Lane Code 16.211(3) provides that a private park may be allowed in an Impacted Forest Lands District if it "*will not force a significant change in, or significantly increase the cost of, accepted farming practices or forest practices on agricultural or forest lands.*" The Planning Director also found the applicant's proposal to be deficient in regard to this criterion.

The Planning Director found the testimony of Ms. Lydia Kulus, owner of adjacent tax lot 401, to be particularly convincing. Ms. Kulus testified that trespassers from the subject property cut down the fence separating the two properties and allowed some livestock to escape. Not only did Ms. Kulus incur the expense of repairing the fence but also of the cost of recovery of some cattle and the replacement of others. Further costs include the loss of a portion of her property to grazing because of the potential negative impact from ATV noise on cattle. Ms. Kulus also testified to other incidents of trespass onto her property from the subject property.

The applicant voice strong disapproval of the trespass and his sincerity on this issue is not questioned. However, the record is replete with testimony of trespass from his property onto adjacent lands. For instance, Mr. Meisen, owner of sensitive forest land to the east (Native Oak Savanna restoration project), was forced to construct a ditch on his property to discourage trespass by ATVs, motorcycles and mountain bicycles onto his land.

The essence of the Planning Director's ruling on this issue was that the record did not support a conclusion that the applicant would be able to control trespass. Factors that contributed to this position was the current ineffectiveness of perimeter fencing, the applicant's inability to monitor the large amount of land included in the proposal, and the

large and disparate number of activities that are proposed for the subject property. The applicant has refused to designate permanent trails associated with the ATV and mountain bike use of the proposed private park and has also indicated that the fencing he intended to erect would be intended that it serve as a perimeter marker not a physical barrier. Finally, the applicant has not provided the County with sufficient information regarding the number of users of the park, the times when the park would likely be used, or the type of events that would be conducted in the park. Without such detail, it is impossible to assess the adequacy of parking, the type of anti-trespass measures that must be required, and the adequacy of access to the subject property. This information is also critical in assessing fire hazard and the impact on the rural residential properties that are adjacent Needham Road.

In the final analysis, the Planning Director found the testimony of Ms. Kulus and Mr. Meisen to be credible and persuasive. He likewise found that the applicant's assurances to be less credible. One issue that reflects upon the credibility of the applicant's assurances relates to the grant from the Oregon Parks Division. The applicant places great importance on this grant in regard to making necessary improvements on the subject property. However, information in the record concerning the cost of fencing and paving Needham Road make it highly doubtful that this \$40,000 grant (plus \$10,000 in-kind commitment from the applicant) will be anywhere sufficient to accomplish both tasks. There is substantial evidence in the record supporting the Planning Director's evidentiary determination and findings.

Lane Code 16.211(3) also provides that a private park may be allowed in an Impacted Forest Lands District if it "*will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.*" The Planning Director concluded that the applicant had not satisfied this criterion. This conclusion was supported by and based upon the following findings:

1. Evidence that the upper portion of Needham Road, the primary access to the subject property, was narrow and unimproved, and does not meet Uniform Fire Code standards for width. The Deputy Fire chief of the rural fire protection district that services the subject property testified that Needham Road "...limits access for fire suppression apparatus and ambulances to one-way travel" and "...impacts our ability to respond resources in a timely manner..." The record also indicates that the topography of the subject property makes a substantial portion of it inaccessible to ground-based fire suppression equipment.
2. The site view demonstrated that areas of the subject property contained tall, dry grass and that these areas were subject to the use of motorized equipment. At least eight piles of dry and presumably flammable brush were noted. No water sources were evident in many of these areas.

3. Mr. Meisen and Ms. Kulus testified to finding cigarette butts from trespassers on their property.
4. Many of the adjacent properties are heavily timbered and are at risk from forest fire. The native Oak Savana restoration project to the east is one example of a forest ecosystem that is particularly susceptible to activities such as trespass by motorized vehicles that will increase forest fire hazard.

The applicant's proposal lacks sufficient detail to address the issues of emergency access or to assure a decision-maker that fire hazard from trespassers will not be significant. In addition, the condition of the subject property at the time of the site view does not appear to support a conclusion that the recommendations of the applicant's forester have been met.

There is sufficient evidence in the record to prevent a reasonable person from concluding that, given the condition of the subject property and the broadly described scope of activities, the proposed park will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

This allegation of error is dismissed.

4. Other Issues

The opposition has correctly pointed out that not all activities that might be reasonably be included within the scope of a private park are appropriate on forest lands. LUBA, however, has expressly found that a low-intensity OHV trail system, dispersed over 200 acres, to be an appropriate recreational activity within a forest environment. *Utsey v. Coos County*, 38 Or LUBA 516 (2000). Such a determination must be made on a case-by-case basis but because there is so little information regarding the scope of the proposed use of the park (ATVs, motorcycles, mountain bicycles, etc.), it is impossible to say that the intensity of the use will be consistent with a forest environment.

The applicant has proposed that Needham Road will be used as primary access to the subject property. A parcel providing access to a use is considered to be accessory to that use and, as such, is subject to an evaluation of the zoning that applies to that parcel. *Roth v. Jackson County*, 38 Or LUBA 8894, 905 (2000) The properties abutting Needham Road are largely rural residential in zoning. The primary approval criterion for rural residential parcels, found in Lane Code 16.290(5)(a), is that the use "shall not create significant adverse impacts on existing uses on adjacent and nearby lands and other uses permitted in the zone in which the subject property is located." The record contains

allegations of adverse impacts on adjacent properties from the use of Needham Road by users of the subject property. These impacts include inadequate access by emergency vehicles, damage to the road surface, and dust impacts to farm operations. As noted by the Planning Director, the applicant has not addressed this criterion nor the allegations of impact. While the applicant has pointed out two potential access roads in addition to Needham Road, neither of these alternative routes is improved and the record does not contain sufficient information to address the feasibility of using them as primary access to the subject property.

Conclusion

In the final analysis, the applicant's proposal fails to meet the requirement of Lane Code 16.212(4)(k) regarding the siting of a park on EFU-zoned land and has provided too little specificity regarding the type and intensity of the uses to allow a determination of whether it is consistent with the approval criteria of Lane Code 16.211(3).

Respectfully Submitted,



Gary Darnielle

Lane County Hearings Official



Lane Council of Governments

99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

November 14, 2003

Mr. Kent Howe, Director of Planning
Lane County Land Management Division
125 E. 8Th Ave.
Eugene, OR 97401

Re: *Appeal of Hearings Official decision in Gillette (PA 03-5104)*

Dear Mr. Howe:

On November 10, 2003, the Applicant appealed my October 28, 2003 decision in PA 03-5104 involving a request for a private park on land zoned EFU and F-2.

Upon my review of this appeal, I find that the allegations of error have been adequately addressed in my decision and that a reconsideration of that decision is not warranted. Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my October 28, 2003 decision without further consideration. Please advise interested parties of this decision.

Sincerely,

Gary L. Darnielle
Lane County Hearings Official

**NOTICE OF PENDING LAND USE DECISION
DENIAL BY THE LANE COUNTY PLANNING DIRECTOR**



LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Mailing Date: August 13, 2003
File: PA 03-5104
Report Date: August 11, 2003
Property Owner: James Gillette
Applicant/Agent: Same as above
Location: 86340 Needham Rd., Eugene
Subject property: 18-04-14, tax lots 3900, 4004, 4007, 4009, 4005 & Map
18-04-23, tax lots 202 and 100
Contiguously Owned Property: Map 18-04-14, tax lots 3400 and 4000
Base Zone: Impacted Forestland (F-2), Exclusive Farm Use (E-40),
Rural Residential (RR)
Combining Zone(s): None
Comprehensive Plan: Lane County Rural Comprehensive Plan (/RCP)
Contact Planner: Jerry Kendall, 541/682-4057

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for **Denial** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information, and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: Planning Director Review for a Private Park, primarily for the purpose of offering training courses for All Terrain Vehicles (ATV), Paintball, and assorted recreational uses of same, pursuant to LC 16.211(3)(c) and LC 16.212(4)(k). The standards under which this proposal is being evaluated are found in LC 16.211(3), (3)(c), (8), and LC 16.212(4)(k).

BCC ATTCH. 2 (19 pp total)



Enclosed is a site plan and vicinity map of the subject property and surrounding properties.

The proposed use(s) that would have been authorized IF this land use application had been approved:

Private Park with uses specific above.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact **Jerry Kendall** and the telephone number where more information can be obtained is **541/682-4057**.

This decision will become final at 5 P.M. on 8/25/03 unless before this time a completed **APPLICATION FOR AN APPEAL OF AN EVIDENTIARY DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision.**

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: J. Kendall
Jerry Kendall, Associate Planner

Date: 8-11-03

Authorized by: Kent Howe
Kent Howe/Planning Director

Date: 11 Aug 03

LANE COUNTY PLANNING DIRECTOR
EVIDENTIARY HEARING DECISION



LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Report Date: August 11, 2003

File No: PA 03-5104

I. PROPOSAL DESCRIPTION

A. Applicant/Owner/Agent:

James F. Gillette
86340 Needham Rd.
Eugene, Or. 97405

- B. Proposal:** Planning Director Review for a Private Park, primarily for the purpose of offering training courses for All Terrain Vehicles (ATV), Paintball, and assorted recreational uses of same, pursuant to LC 16.211(3)(c) and LC 16.212(4)(k). The standards under which this proposal is being evaluated are found in LC 16.211(3), (3)(c), (8), and LC 16.212(4)(k).

II. BACKGROUND AND SITE INFORMATION

A. The Proposal

The applicant submitted a similar proposal in 2002 via PA 02-5379. That application was later withdrawn and "retooled" in the form of the present application, PA 03-5104. PA 03-5104 was submitted on February 3, 2003, and was subsequently deemed incomplete by staff. In the "incomplete" notification letter, staff advised the applicant that PA 02-5379 was considered to be superceded by PA 03-5104. A comparison of the two parts (February and April of 2003 submittals) of PA 03-5104 reveals discrepancies. For example, the April submittal describes the proposal as largely for ATV training and recreational use, whereas the original (February) submittal described a gamut of activities, including, in addition to the ATV use, training activities by the Oregon National Guard and other branches of the armed forces (orienteering, small unit tactical and field exercises, map reading, etc.), Scouting activities (wilderness survival, weather forecasting, surveying, archery, astronomy, bird study, signaling, soil and water conservation, photography, pigeon raising, botany, radio, emergency preparedness, environmental science, wildlife management, "firemanship", etc.), paintball, hiking, mountain biking, picnicking, horse riding, high school and university level track training (for hammer throw, discus, and javelin). Clients



would also include the general public and church groups engaging in the above listed activities. When asked which of the two conflicting proposals was to be evaluated, the applicant instructed staff to use both, and to incorporate the contents of PA 02-5379 into the record for PA 03-5104. When asked by staff how to resolve discrepancies in the (now) three-part submittal, the applicant advised "...use the 2002 pa with the 2003, if any conflicts arises [sic] use the 2003."¹ Phone conversations with the applicant also included direction to use the longer list of proposed activities found in the original, February submittal of PA 03-5104.

Due to a high level of interest in the application, the Planning Director held an evidentiary hearing on May 29, 2003. After the hearing, the Director left the record open in the following manner:

- Until June 5 for any party to submit written comments on any aspect of the proposal.
- Until June 19 for any party to submit written comments only on the materials submitted during the period above.
- Until June 26 for the applicant's final rebuttal.

The Planning Director, through notice to all parties, then re-opened the record in order to conduct a field visit of the property on July 11. The field visit included Jerry Kendall on behalf of the Planning Director, Bryan Lessley as a representative of the opposition, and Mr. Gillette. Parties were afforded a week to review the videotape and staff notes from that visit and to submit comments; the applicant was provided an additional week for final rebuttal. The record closed on August 1.

The vast majority of the applicant's testimony focused on the ATV, mountain bike, and paintball aspects of the proposal.

It is noted that the LMD Code Enforcement Officer notified Mr. Gillette on April 16, 2003, that the activities by the National Guard, which included machine gun fire and explosive devices, would require a "firearms training facility" application and approval per LC 16.211(3)(cc). No application for such activity has been submitted. The Planning Director therefore excludes that activity from this proposal.

As discussed in the evaluation section below, the primary set of standards for evaluating the proposed park use is for the applicant to demonstrate that no significant impacts to farm/forest operations on nearby lands occurs; that the cost of conducting such operations is not significantly changed; that there is no significant increase in fire hazard; and no significant increase in risk to fire suppression personnel. Most applications come before the Planning Director before they are established. Such is not the case here, as in the words of the applicant, the "[P]roperty has been used as a park since 1981 and still is and always will be" (Letter from Mr. Gillette dated 6-5-03). While future use of the property is unknown

¹ Via email dated 5-20-03; see file record for copy.

until all appeals are exhausted, past and present use of the land has established a "track record" of impacts to neighboring lands. This history was helpful to the Director in the analysis of this request.

The term "park" is not defined in the code. Because the primary standards for evaluation of park use involves impacts on farm and forest lands and practices, the Planning Director will initially assume for purposes of that evaluation that at least some of the uses listed by the applicant might be considered park uses. If the applicant carries his burden as to the issue of impacts, then it will be necessary to examine whether the proposed uses would be considered park use. If the applicant does not carry his burden as to impacts, it will not be necessary to decide which, if any, of the uses identified by the applicant would qualify as park uses.

B. Site Description:

Property requested by the applicant to be included in this proposal includes Map 18-04-14, tax lots 3900, 4004, 4007, 4009, 4005 and Map 18-04-23, tax lots 202 and 100.

Contiguous property under Mr. Gillette's ownership but not included by him as part of this proposal include Map 18-04-14, tax lots 3400, and 4000.

Tax lot 4000 of Map 18-04-14 is a long, narrow tax lot which connects Mr. Gillette's property to Blanton Road. This tax lot was not raised by Mr. Gillette until the May 29 evidentiary hearing. Since it was not originally listed by the owner, no mention of it was made in the hearing notice sent to neighbors. The late inclusion of tax lot 4000 into this proposal is procedurally flawed. It is excluded from this proposal.

The total acreage, per the applicant, is approximately 400 acres. Three zones are found within the entire contiguous ownership: F-2 (Impacted Forest Lands), E-40 (Exclusive Farm Use), and RR-5 (Rural Residential).

The subject property is traversed by two powerlines, and slopes from a high point of approximately 800' msl, southward and westward. Two small stream(s) are found on the property. Spencer Creek traverses the property in a east to west manner, as shown on the applicant's submitted plot plan (attachment #1). Another creek is found in the northwest quadrant of tax lot 3900. Both creeks were not flowing as observed by staff on July 11, with only a few small pools of water remaining. These pools would be expected to dry up by the end of an average summer.

C. Surrounding Zoning

The lands owned by Mr. Gillette are surrounded by land zoned RR-5, ML (Marginal Lands), F-2, and E-40. Refer to the "Official Zoning Map", Plot 320, attachment #2 of this report.

D. Services

Power: Lane Electric Coop

Sewer: On site septic for existing structures; unknown for park users

Water: On site well

School: Eugene 4J

Fire: Bailey Spencer RFPD

Access: Needham Rd. (primary access)

E. Referral Responses

No updated referral responses were received from any agency since the May 29 evidentiary hearing.

III. APPROVAL CRITERIA AND ANALYSIS

A. Conformity with the Applicable Lane Code & State Provisions:

The applicant has chosen to apply under the "parks" provision found in LC 16.211(3)(c) for the Forest Zone, and LC 16.212(4)(k) in the Farm Zone. Pertinent portions of the code follow. in *boldface italics*.

For the F-2/Impacted Forest Lands Zone/LC 16.211:

Tax lots 3900 and 4005 of Map 18-04-14, as well as tax lot 202 of Map 18-04-23 of Mr. Gillette's property are zoned F-2. Parks may be allowed under LC 16.211(3)(c).

LC 16.211(3) allows a park, if the use:

"... will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands..."

Planning Director Response & Finding of Fact:

Persons who own adjacent resource zoned land and who are engaged in farm and forest practices have testified as to significant changes in their operations and the cost of engaging in such practices as a result of the uses on the Gillette property..

Mr. Ed Meisen owns Marginal Land zoned property to the east of the subject property, specifically at Map 18-04-13, tax lots 3800 and 3801, as well as Map 18-04-24, tax lots 200 and 201. Per his letter dated 5-16-03, and as additionally voiced at the May 29 evidentiary hearing, Mr. Meisen has stated that he owns 160 acres of forest deferred land. He is also involved with native Oak Savanna restoration. He has testified that trespassers from Mr. Gillette's property have run over tree seedlings with pickup trucks and motorcycles. Subsequently, Mr. Meisen has spent "several thousand dollars" constructing 6' deep "tank-trap" ditches to deter such trespass. In addition, he has worked with the BPA, whose power line easements traverse both his and Mr. Gillette's property, in erecting four new gates. One of the gates has been destroyed after being rammed with a vehicle, according to Mr. Meisen.

Mr. Meisen has stressed that the applicant has cooperated in efforts to end such trespass, and Mr. Gillette has stated that the trespassers were also trespassing on his land. The fact remains that such practice occurs, and could only be expected to increase if the property is "opened up" to park use. Mr. Meisen adds that the renters near the powerlines and on the applicant's property have served as caretakers, watching for trespass situations. The continued presence of the renters living in unauthorized dwellings observed on the property during the staff site visit of July 11 is subject to code enforcement efforts; their continued presence cannot be counted on to minimize trespass. Mr. Meisen stated the need for supervision, blockage of existing roads between the two properties, and extensive signage. The applicant has provided little if any detail on such mitigating efforts.

Lydia Kulus owns 197 acres of E-40 (Exclusive Farm Use/Map 18-04-23, tax lot 401) zoned land adjacent to the southwest portion of the subject property. In her letter dated 5-12-03, and at the evidentiary hearing, Ms. Kulus stated that she engages in both farm and forest practices on her land. She has a 50+-year-old stand of timber, and leases a portion of her property for cattle. She testified that the cattle are raised with minimal use of motorized vehicles, and would be easily "spooked" by A TV noise. She stated that her leesee would quit the lease if he was aware of the situation. Ms. Kulus also testified that the fences between her property and Mr. Gillette's have been cut by mountain bike users, requiring repair.

The above two instances on major tracts near the subject property demonstrate that the users of the applicant's property have significantly impacted resource operators, both in the manner in which such practices are conducted and in the increase in cost of such operations.

The applicant has failed to provide the information necessary to prove that this standard has been met.

In addition, Veronica Dean, owner of property located at 86388 Needham Road, has expressed objection to high traffic volumes on Needham Road from users of the applicant's property, raising dust, interfering with the pasture and orchard use of her property. However difficult this situation might be, it does not appear that this particular provision offers her property protection, as the standard is directed to "...*practices on agriculture or forest lands...*". The Dean property is zoned for Rural Residential use.

LC 16.211(3) also allows the use:

“... if it will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel”.

Planning Director Response & Finding of Fact:

The Bailey-Spencer Rural Fire Protection District services the subject property. This district contracts out for services with the Eugene Fire & Emergency Medical Services Department. The file record contains a letter received on 5-27-03 from the Board President of the Bailey Spencer RFPD, and four other Board members. The letter states that Measure 50 limits the District in tax monies that can be procured for fire services. The District's fire contract with the City of Eugene has increased 6%-8% over the last two years, while property assessments have risen by 3%. The letter reports that the proposed 2003/2004 contract “is on the verge of exceeding our income”. In negotiating the contract, the District argues that their relatively low population density, which translates to a reduction in man-made fires, warrants a price reduction. The Board attaches a letter from Deputy Fire Chief Randy Groves of the city. Chief Groves states that he has reviewed the application submittal, including the foresters report from Mr. Simonet. Chief Groves states concerns over the existing access and impact of increased traffic by users of the applicant's property. Needham Road is described as “...a narrow gravel lane that already limits access for fire suppression apparatus and ambulances to one way travel”. Chief Groves states that “[T]his restricted access impacts our ability to respond resources in a timely manner into and out of the area during an emergency”. The Uniform Fire Code is cited as requiring a minimum unobstructed width of not less than 20', whereas Needham Road is “...significantly less”. Chief Groves also discusses the presence of power equipment that the users of the applicant's property utilize, placing “... multiple heat/ignition sources within an area already containing a substantial fuel load”. “This fuel load and its connectivity with surrounding forest lands and properties create exposure problems that can facilitate the rapid spread of fire to a much larger area”. He notes that no inspection program is provided for assuring that the “Forest Service Approved Spark arrestors” will be required on all ATV's and trial bikes, or enforcement consequences. The letter recalls the recommendations made by Mr. Simonet to develop and maintain all-weather road and trail system to all points of the property; thin out fuel loads over the next 20 years; and control dry grass and brush through spraying, mowing, or grazing. Chief Groves applauds these directives, yet sees no detailed plan for its implementation. Insufficient user data/volumes are also noted.

Chief Groves' letter recalls four fire incidents on the subject property since November of 2000, two involving vehicles and two structural fires. The latest incident, on May 9 of this year, destroyed an illegally placed mobile home. The Chief recalls, “...our crews experienced access and delay problems due to the width and poor quality of the access road” while responding to the two structural fires. The Chief closes by noting that while the agency does not oppose the proposal, the need for more specificity from the applicant as to plans for brush removal, and controls over ignition sources.

In his defense, Mr. Gillette submitted responses on June 5. This includes a memo dated 5-20-03 from the consultant Forester, Mr. Simonet. Mr. Simonet reiterates his recommendations from two years earlier, and reports back that such recommendations have been met. These include that “[A]ll brush, dead tree limbs, dead tress and other fuels along ATV roads and trails and in paintball areas have been

cleared to fire proof the area and allow easy access to fire-fighting equipment". This is contrary to what LMD staff and Brian Lessley observed during the field visit on July 11. To quote from Mr. Lessley's report on that visit, "[O]n one trail, which I believe was in his lot 3900, I noticed about eight brush piles in about 150 meters, which looked to me to be very dry. Mr. Gillette said he had cleared that trail more than [sic] year ago and left those piles there. I believe the term "cleared" here refers to maintenance and not creation-that is, the trails in question were older than one year, but had been maintained by Mr. Gillette the previous year. In this total of eight brush piles I am not counting others in the vicinity of the power line which Mr. Gillette said had been left there recently by BPA crews". Of course time would not allow an examination of all the numerous ATV trails on the property. While some were observed to be well maintained, these two and others were not. These brush piles were video taped and are in the file record video from July 11.

The Simonet memo also mentions the need to control dry grass. As affirmed in the Letter from Mr. Lessley (of July 23), staff drove a 4-wheel Jeep on trails, which had beated down grass, "...with Mr. Gillette repeatedly looking back to make sure the exhaust system from our vehicle did not start any fires". We also drove through areas of high dry grass with no established trails. These areas contained rocks, which could create, sparks if hit with steel from a motorbike or ATV. No water sources were apparent in these areas, and access was sometimes difficult even for the Jeep. Staff notes that Mt. Pisquah and the entire Buford Park area was closed due to fire danger since August 3, and that a grass fire had started in the park due to a delivery trucks' catalytic converter while backing out of a dead end road which had no turnaround (personal communication with County Parks Director Rich Fay on 8-1-03).

The Simonet letter states, "[M]any new fire roads have been developed to provide easy fire equipment access". Staff observed one main road, which was graveled and would appear to meet fire department requirements. That road was the "main" interior road from the applicant's dwelling to the paintball area. Mr. Gillette submitted a map of "all fire roads, all weather and fire season only", on June 5. The color coded maps and accompanying text offer no specifications as to road construction, surfacing, or compliance with the road standards of LC 16.211(8), below. The availability of money for such road improvements is questionable, both in terms of actual availability and the applicant's willingness to appropriate it.

Mr. Gillette states (June 5 letter) that if the proposal is approved and State Park grant money (\$50,000) is gained, the money will be used to improve Needham Road and to fence the property. Proposed fencing, shown in red on a map submitted, appears to encompass approximately 50% of the 400-acre property.

Mr. Gillette has provided the easement for his use of the portion of Needham road which is private. The easement (#8023465) cites that "[A]ll parties using the roadway above described shall share the cost of normal maintenance and repair of such roadway and any construction or improvements of such roadway, and shall bear that proportion of the cost thereof as their use shall bear to the total usage of such roadway" (emphasis added). Mr. Harrang, a neighbor sharing access onto Needham Road, testified on May 29 that road users formed the "Needham Road Association" in order to maintain the road. The annual cost of maintenance was approximately \$1500. Despite Mr. Harrangs estimate that 95% of the traffic on Needham Road is generated by the users of the applicant's property, Mr. Gillette

has refused to pay his \$873 share of the annual maintenance cost. Mr. Strand, another Needham Road user and property owner also testified at the May 29 as to the history of Needham Road maintenance. He stated that oil had been used to keep dust down on the road, later using biodegradable oil as required by regulations. This effort was abandoned after 2-3 years, as it could not control the dust generated by the high volume of the ATV and paintball users accessing Mr. Gillette's land. The road situation deteriorated to the point, Mr. Strand stated, that the post office threatened not to deliver mail to the Needham neighborhood. Originally the neighbors thought to relocate their mailboxes to the corner of Needham and Blanton Roads, but abandoned this effort because an elderly couple would have a long way to walk to the boxes. The Needham Road Association was thus formed to resolve the issue of road upkeep. This association lasted two years, until 1995, disbanded in part because Mr. Gillette would not contribute to the road upkeep, according to Mr. Strand. Mr. Strand estimated traffic due to activities on the Gillette property at 75 cars during a two-hour period.

During the realignment and paving work on Lorane Highway, Mr. Strand took advantage of a fortuitous opportunity to have upper Needham Road paved by the contractors who were finishing their work near Blanton Road. Mr. Strand had received previous estimated of \$10,000 to pave a section of Needham north of the Gillette property, but the contractor, with materials at the site, did it for \$4,000 (Strand testimony of May 29). The lower portion nearest to the Gillette property was in poorer shape, and in need of extensive roadwork before pavement could be laid, per the contractor. Based on previous estimates for the section of the road in better shape, Mr. Strand estimates that it would cost approximately \$100,000 to grade and pave the section of Needham nearest Mr. Gillette's property. This amount is beyond the \$50,000 State Parks grant, assuming all of the grant money would be devoted to Needham Road, questionable in light of the applicants failure to carry his portion of road maintenance costs. The submittal contains no breakdown on how grant money would be spent, no inventory of timelines or phasing of work of interior fire roads, interior access roads, fencing, or needed Needham Road repairs. No specifics are offered as to fire truck turnouts or location, no estimates for performing the work have been submitted. No coordination with any fire department by the applicant is in evidence.

Previous testimony from adjacent resource landowners, Mr. Meisen and Ms. Kulus, has been described under the prior standard. Both have testified as to finding cigarette butts on their property, from trespassers. This illustrates the increased risk of fire and cost of its suppression caused by users of the applicant's property.

From the discussion above it is apparent that expenditures are necessary to reduce the risk to fire suppression personnel. Continued use of Needham Road and the interior roads of the Gillette property will result in further deterioration, increasing the risk to fire suppression personnel and increasing the District's contract costs for fire coverage.

The applicant has failed to demonstrate that this standard has been met.

In addition, LC 16.211(3) allows a park, if:

“... a written statement (is) recorded with the deed or written contract with Lane County is obtained from the landowner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules.

Planning Director Response & Finding of Fact:

This requirement has historically been imposed as a condition of approval, if approval of the use is granted.

Also applicable to the proposed use are the “siting standards” found in LC 16.211(8). Although most of the provisions under subsection (8) are directive for structural issues, uses are also subject to some of these standards. As noted in the heading section of (8), these standards are “...*designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands*”.

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not less than 500 feet. Turnarounds shall comply with these design and construction standards:

- (aa) Hammerhead Turnarounds.** Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or
- (bb) Cul-de-sac Turnarounds.** Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and
- (cc) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.**
- (iii) Bridges and Culverts.** Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.
- (iv) Road and Driveway Grades.** Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.
- (v) Identification.** Roads shall be named and addressed in compliance with LC 15.305 through 15.335.
- (vi) Driveway Vehicle Passage Turnouts.** Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.
- (vii) Modifications and Alternatives.** The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination.

Planning Director Response & Finding of Fact:

The applicant has submitted a map showing the location of "all weather and fire season only" roads (June 5 submittal). No mention is made of meeting the standards above. No evidence of compliance or intended compliance with the above standards has been submitted or discussed by the applicant. Other than mention of strategic placement of shovels so that the (untrained) users of the applicant's property

can fight any fire that arises, no objective information about fire fighting equipment, physical nature of access routes, or nature of proposed improvements have been entered into the record. No communication with the fire district or a fire consultant is in evidence. No description of cul de sac or hammerhead turnaround design has been offered, or alternatives in the areas of steep slope. No information on road grades, planned surfacing type, depth, and width, or modifications of any of these standards through consultation with local fire authorities is in evidence.

The applicant has failed to carry his burden of proof in regards to these siting standards.

For the Exclusive Farm Use Zone (E-40)/LC 16.212:

Tax lots 4007, 4004, and 4009 of Map 18-04-14 and tax lot 100 of Map 18-04-23 of Mr. Gillette's property are zoned E-40, Exclusive Farm Use. LC 16.212(4)(k) allows parks, provided:

"... (they) are not permitted on high value farm land..."

Planning Director Response & Finding of Fact:

The applicant has provided soils information as part of PA 02-5379, and maintains that his land is predominantly non-high value soils. The Planning Director has performed his own analysis, utilizing RLID soils data, and concurs.

Also, LC 16.212(4)(k)(ii), states:

"Except on a lot or parcel contiguous to a lake or reservoir, uses described in LC 16.212(4)(k) above are not permitted within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4".

Planning Director Response & Finding of Fact:

This provision of Lane Code as adopted is more restrictive than state law (OAR 660-033-130(19)). The file record is undisputed in that the subject property is within three miles of the Eugene Urban Growth Boundary. Lane Code requires a showing that the subject property be contiguous to a lake or reservoir. No exception pursuant to ORS 197.732 and OAR 660-004 has been proposed.

The record is undisputed in that no contiguous or on site lakes exist. However, the applicant has argued that two ponds on the property qualify as "reservoirs". Staff witnessed these two "reservoirs" during the site visit of July 11. One of the ponds, located near the BPA power lines on tax lot 3900, was completely dry. The other, also located south of the BPA lines and near an illegally built structure marked as a "cabin" on the applicant's plot plan, was estimated at 60' long x 30' wide, and purported to be 4' deep, although staff's observation were that the majority of the pond's area was 1-2' deep.

This issue of ponds versus reservoirs came up during another planning application, PA 00-5312, a campground application south of Florence. The ponds in that case were approximately 2 surface acres in size and 10' deep, larger than Mr. Gillette's ponds. Those ponds were ruled not to be reservoirs by the Planning Director. As part of that reasoning, staff relied upon an April 1, 1998 memo from (retired) Sr. Planner Jim Mann to Ron Eber of DLCD. The memo's comments on the State's pending Rule changes for parks and campgrounds. The memo documents Mr. Mann's lobbying on behalf of Lane County for language changes to the rule. Lane County specifically requested, and obtained, the added language "except on a lot or parcel contiguous to a lake or reservoir". Quoting the rationale for the added language from the memo:

"We wanted this language in the rule to recognize that Lane County, and other counties as well, has properties adjacent to lakes or reservoirs that are ideal locations for recreational parks or campgrounds but that are also within three miles of urban growth boundaries. The examples I gave at the March 6 hearing were: Fern Ridge Reservoir within three miles of the Veneta urban growth boundary, Cottage Grove Reservoir within three miles of the Cottage Grove urban growth boundary, and our coastal lake areas within three miles of the UGBs of Florence and Dunes City".

It is evident that the code language concerning lakes and reservoirs was added to recognize natural and man made attractions which pull people towards an area with the resultant need for campgrounds or parks next to such attractions. The pond on Mr. Gillette's property is simply not in the same category as the aforementioned water bodies and does not serve as a special attraction to the subject property.

The Planning Director does not recognize the pond on the applicant's property as being a natural attraction on a level approaching other reservoirs in the county. This criterion is not met because a park is not permitted in Lane County within three miles of a UGB on Farm zoned land.

And, LC 16.212(4)(k)(iii) requires that LC 16.212(10)(f) through (g) are met:

(f) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use.

Planning Director Response & Finding of Fact:

As stated earlier in this report, the Meisen and Kulus properties are engaged in resource use and have testified to the change in their practices. Those comments are incorporated by reference herein.

This criterion is not met because it has been demonstrated that the users of the applicant's property have significantly impacted resource operators management practices.

(g) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

Planning Director Response & Finding of Fact:

Again, the previous comments concerning the Meisen and Kulus properties and their incurred costs because of the park activities are incorporated by reference herein.

This criterion has not been met because it has been demonstrated that there has been a significant increase in the cost of farm and forest practices on lands zoned for such use.

Access through Rural Residential Lands:

Testimony has been submitted by Mr. Strand and Veronica Dean concerning the easement through the private portion of Needham Road. This testimony includes evidence that the traveled route does not match the metes & bounds description, and that the easement is "disjointed" at a point, resulting in only a 10' wide route at one section. This situation does not appear to relate with the approval criteria, at least in a substantial manner. However, the Planning Director takes note that a portion of Needham Road used by the applicant is zoned Rural Residential. Past LUBA cases, specifically *Roth v. Jackson County* (LUBA No. 2000-083, 10-27-00) have ruled a parcel providing access to a use is considered an accessory to that use, and that such access is subject to appropriate evaluation for the use under that zone. The applicant has provided no analysis under any provision of the Rural Residential ordinance, LC 16.290.

B. Conclusion

The applicant has failed to carry his burden of proof in relation to adequately addressing the approval standards. No realistic, detailed plans have been entered into the record demonstrating how the applicant will successfully implement and maintain a proposed park use which will not significantly impact resource practices or significantly increase the cost of accepted farm or forest practices on agricultural or forest lands, or significantly increase risks to fire suppression personell or the cost of fire suppression.

V. ATTACHMENTS

1. Applicant's plot plan -1p.
2. Zone plot map #320 -1p.
3. Area map-1p
4. Comparison plot plan 1996/2003, with footnotes-1p.

Report prepared by:

Jerry Kendall/Associate Planner on 8-11-03

J. Kendall

PLOT PLAN SUBMITTAL FORM

Use this sheet for your drawings

OWNER NAME: Jessie McCallister
 OWNER PHONE #: 521-484-0717

OWNER ADDRESS: 86340 Meadow Lane Rd.
 Eugene, Or 97405

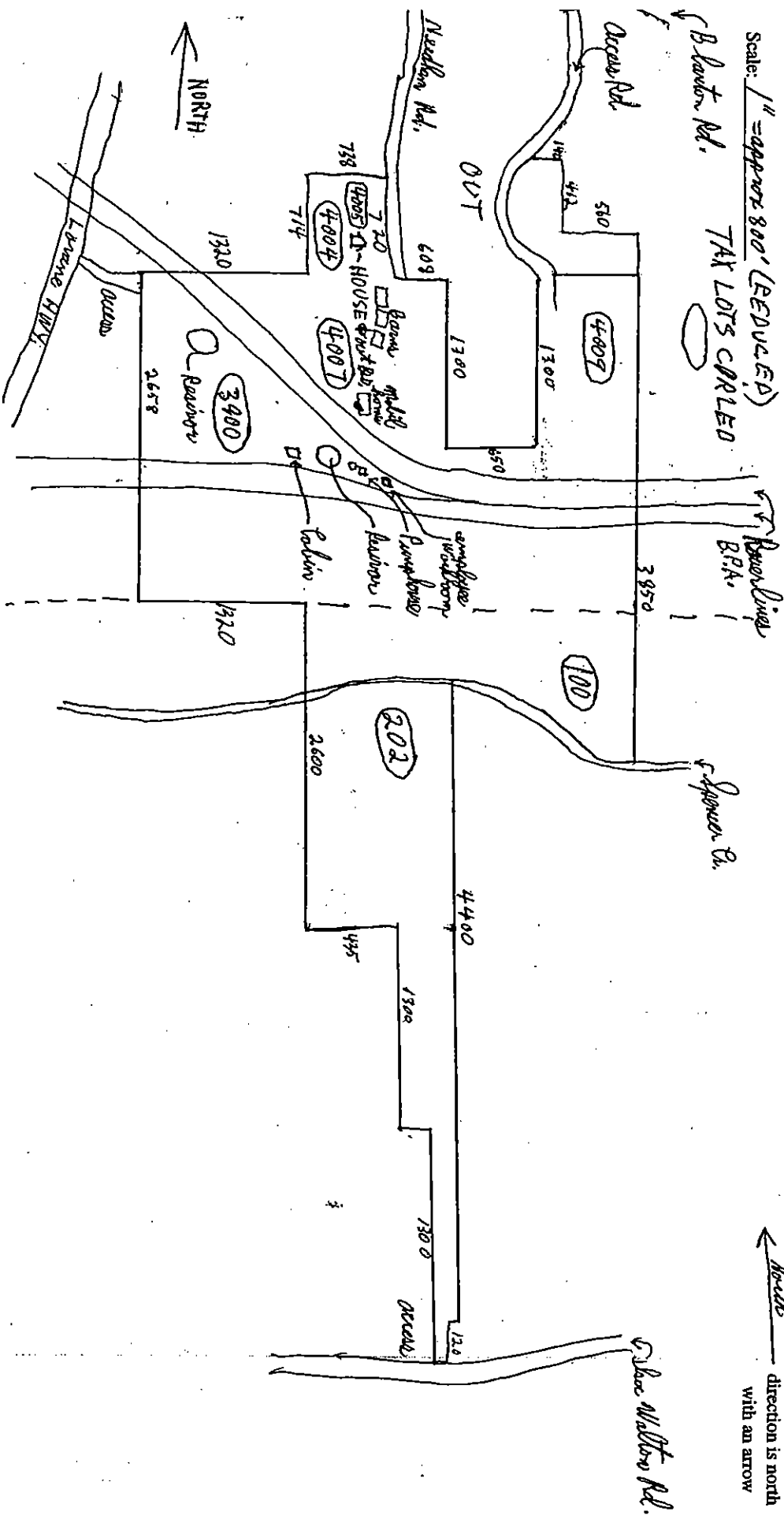
APPLICANT NAME: Jessie McCallister
 APPLICANT PHONE #: 484-0717

APPLICANT ADDRESS: 86340 Meadow Lane Rd.
 Eugene, Or 97405

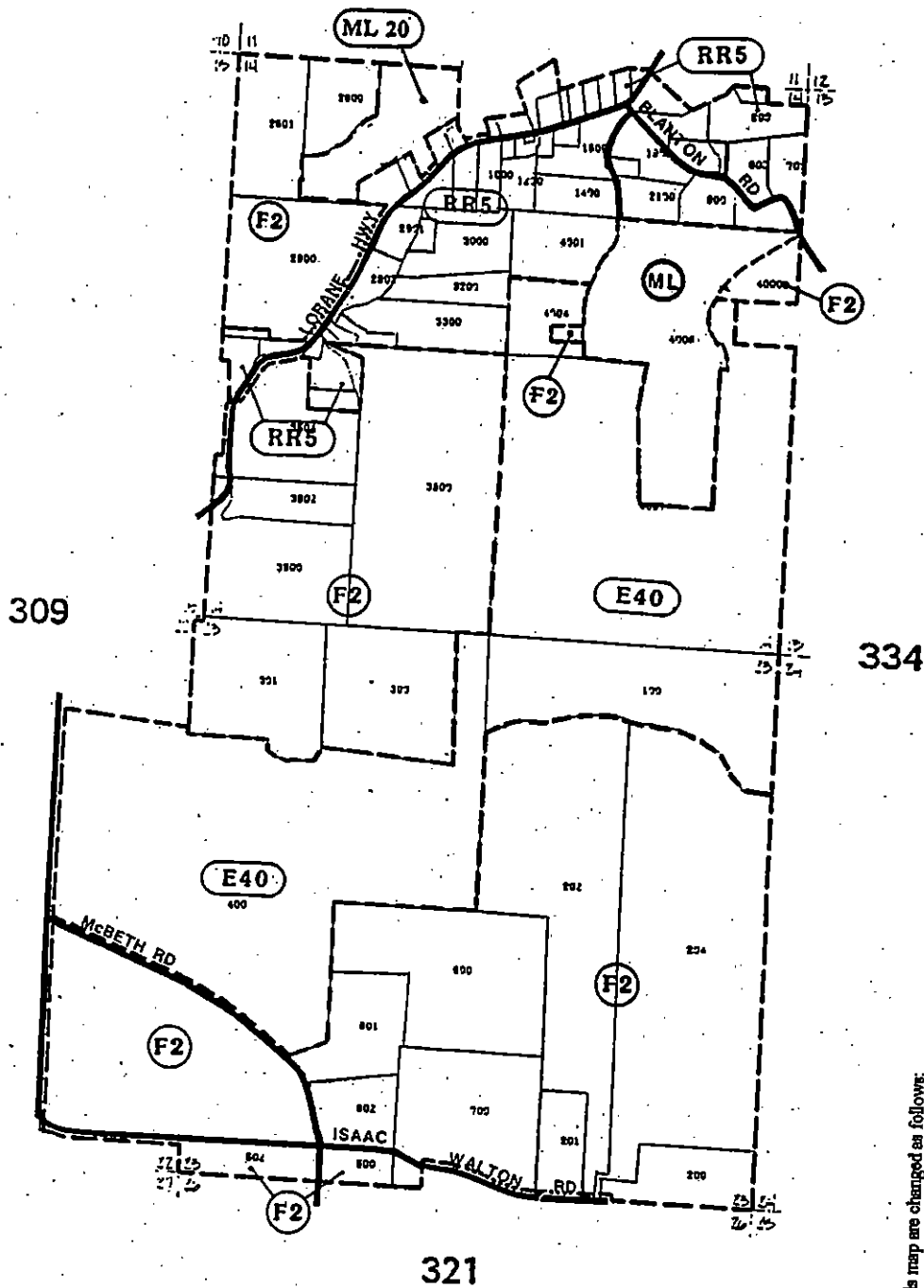
Map and Taxlot #: 18-04-14
18-04-23

18-04-14
18-04-23

Indicate which direction is north with an arrow



319



The RR zones on this map are changed as follows:
 FROM: RR LC 16.231 TO: RR LC 16.290
 The RR zone parcel size remains the same.

The zones on this map are changed as follows:
 From: RG, RA To: RR2
 From: CR, C1, C2, & C3 To: RC Rural Commercial
 From: M1, M2, & M3 To: R1 Rural Industrial
 From: PF To: RPF Rural Public Facility
 From: PR To: RPR Rural Park & Recreation.



- PA03-5104 #2

the county



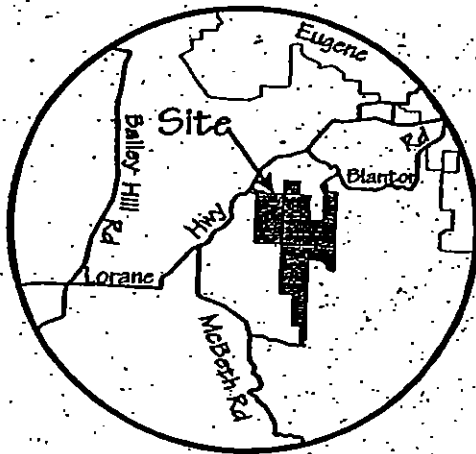
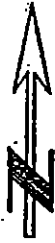
OFFICIAL ZONING MAP

PLOT # 320

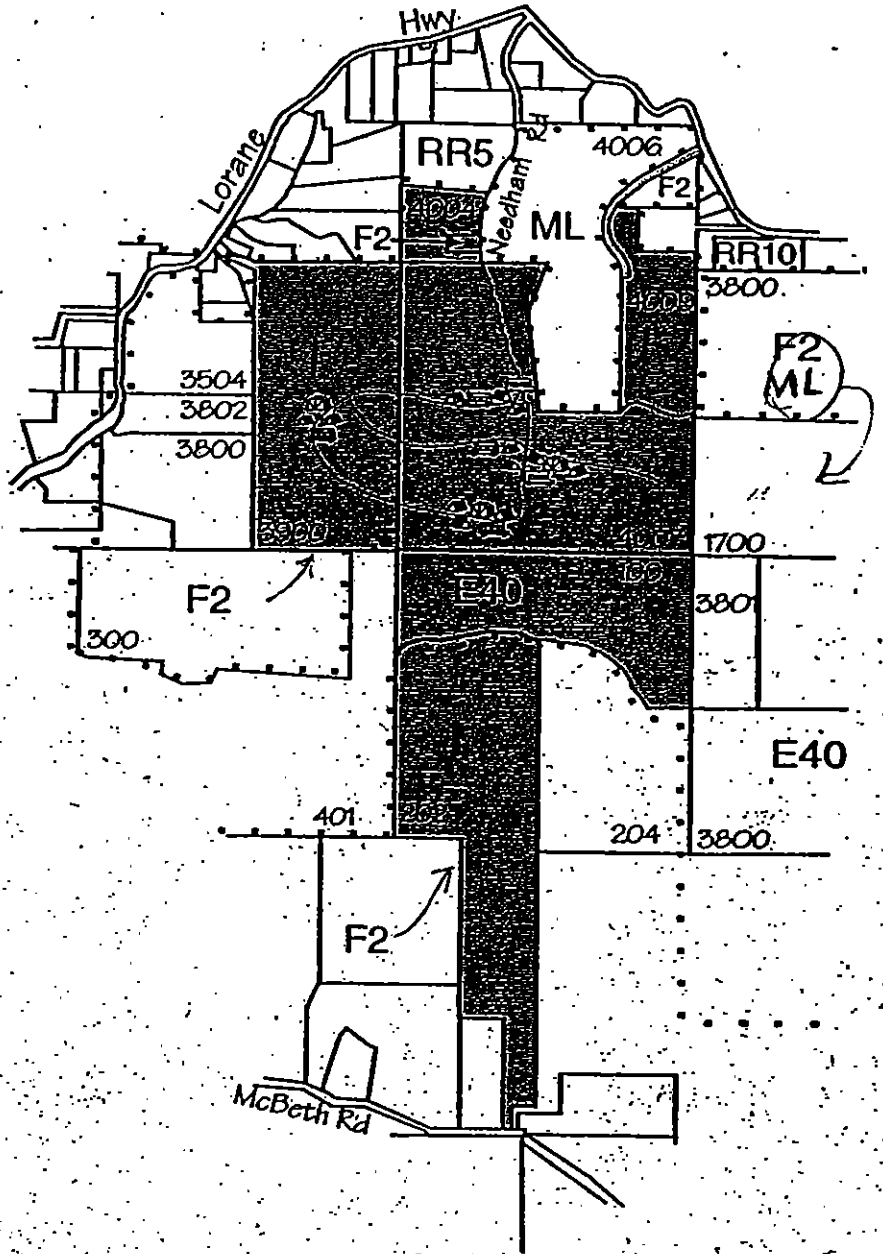
Township Range Section	
18 04 14	18 04 23

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE # _____
 REVISION # 1 APP # DA 011

Site of Request



Vicinity Map
No Scale



NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

FOR INFORMATION ON THE PROPOSAL CONTACT LNUAD MGT. DIVISION / COURTHOUSE PUBLIC SERVICE BUILDING / 125 E. 8TH AVENUE / EUGENE, OR 97401 / PHONE (541) 687-3807

- PA 03-5104 # 3 -

of your entire parcel, regardless of size. You do not need to do this drawing if your lot or parcel is less than one acre. Your Development Plan, to be drawn on the other side of this sheet (Side 1), will serve as your Parcel Plan.

UNFOLD
this sheet.

Use it for your Drawings.

Fill in the Property Information box. Select a drawing scale that will let your parcel be completely shown on this sheet (see examples below the Checklist). Use the Checklist to make sure you have everything you need on your drawing. Draw in black ink or #2 pencil. Refer to Development Guide No. 6.1 for sample drawings.

Development
Plan shows driveway
location only, if
it is less than one
acre.

MD File No. PA 1234-96

Property Information

Owner Name
Mr. G. R. RITE

Owner Address
66340 WILSON RD
EDGEHURST
91405

Owner Phone No.
484-6517

Parcel Map and Tax Lot No.
18-04-14-4004
4005, 4007, 4008

Size of Parcel in Acres

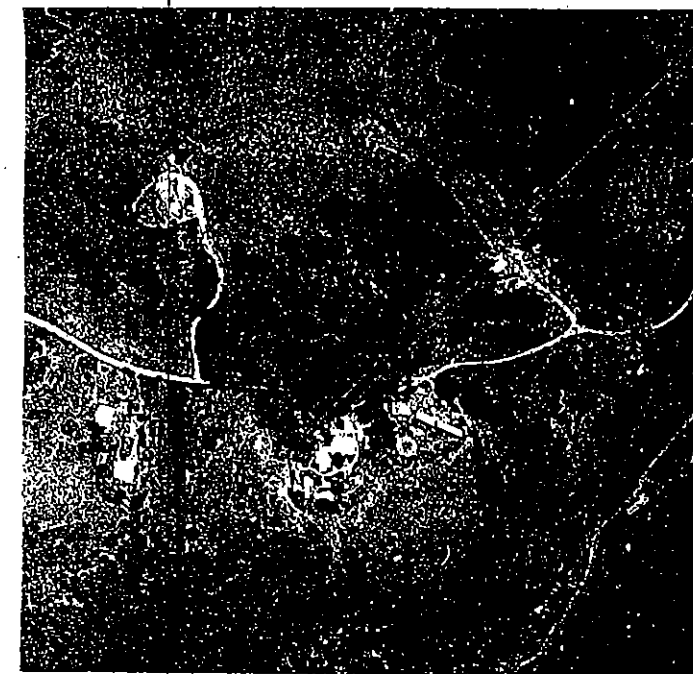
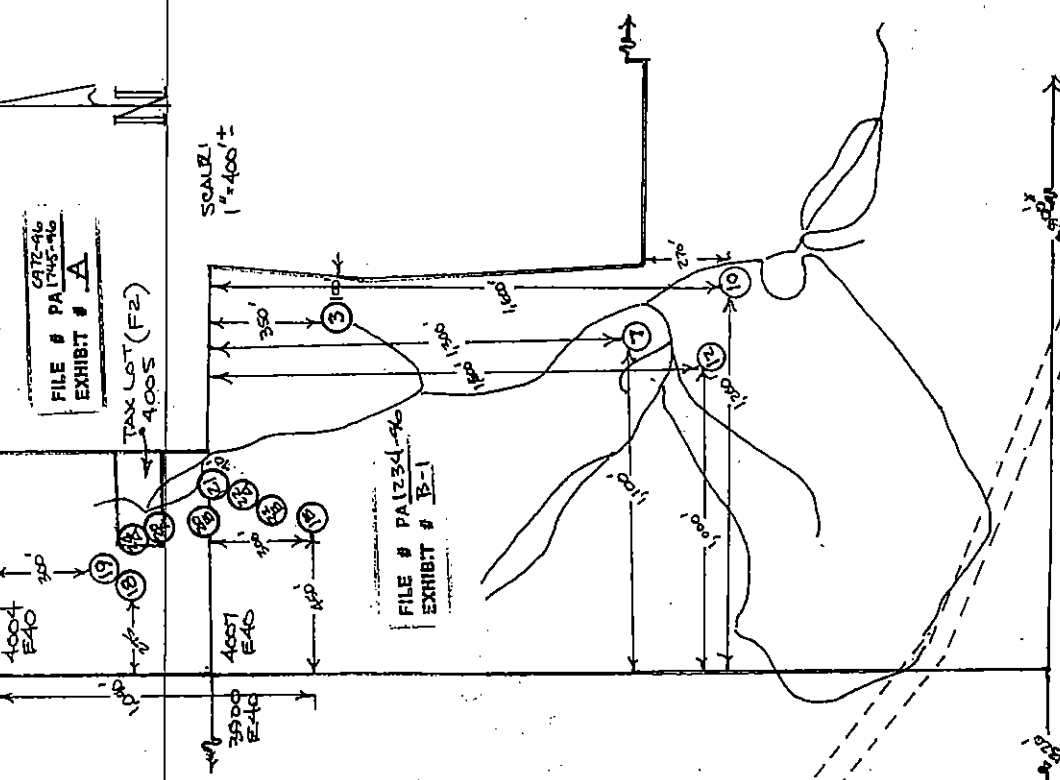
Parcel Plan Checklist

Be sure to draw or list:

- 1. An arrow pointing North
- 2. Accurate shape of parcel
- 3. Lengths of all property lines
- 4. Natural features like creeks or woodlands
- 5. All streets or roads along or into property, by name
- 6. Location of all structures, with distances to property lines
- 7. Driveway access
- 8. Powerlines or other easements across property
- 9. Area of Development Plan (Side 1 of this form)

Suggested Scales for Drawing:

1/4 inch = 100 feet
1/8 inch = 500 feet



FOOTNOTES

AERIAL PHOTOGRAPH
SCALE 1"=400 FT

- Structures:
- # 1B Mobile Home 10' x 50' - #1 #7 Mobile Home 10' x 55' - #3
 - # 3 Mobile Home 12' x 60' - #2 #12 Accessory dwelling (Gillette) - #1
 - # 10 Pump House 8' x 8' - #1
 - # 18 Mobile Home 12' x 64' - #1
 - # 19 Mobile Home 14' x 70' - #1
 - # 20B Storage Shed - #4
 - # 21 Agricultural Building (Stable) - #1
 - # 22A Agricultural Building (Barn) - #1
 - # 22B Agricultural Building (Stable) - #1
 - # 24A Single Family Dwelling - #1

KEY: NOTES FOR FIELD VISIT

- #1 - PRESENT ON LAND ON 7-11-03
- #2 - BURNT DOWN
- #3 - UNKNOWN. BAVA NH SHOWN IN VIDEO AT 2:22 (SEE SITE VISIT)
- #4 - UNKNOWN STATUS

PA 03-5104 # 4
Lane County Land Management Division, 125 E. 5th

Turn this sheet sideways and draw on it lengthwise if you need more drawing space.

**APPLICATION FOR AN APPEAL OF A
DECISION BY THE PLANNING DIRECTOR**

(Thoroughly Complete by Typing or Printing)

1. Name of Appellant Jim Gillette Phone 484-0517
Mailing Address 86340 Needham Rd Eugene, Or, 97405
(Street) (State) (Zip)
Appellant's Representative _____ Phone _____
Mailing Address _____
(Street) (State) (Zip)

2. Attach a copy of the decision being appealed. The Dept. File No. for the decision being appealed is: PA 03-5104

3. Attach the \$1810 appeal fee, payable to Lane Co.

4. The deadline date by which this appeal must be submitted to and received by the Lane County Land Management Division is: 5PM 8-25-03. (This deadline date is stated in Director's decision.)

5. Check one of the boxes below to identify your party status with the right to appeal the Director's decision:

- a. I am the owner or contract purchaser of the subject property;
- b. I am the applicant for the subject application;
- c. Prior to the decision by the Director, I submitted written testimony into the record of the subject application;
- d. I am not one of the persons mentioned above in 5a.-c. but wish to appeal the Director's decision for the reasons explained in my letter which is attached to this appeal application form.

6. Attach to this appeal application form a letter that includes an explanation that addresses each of the following three standards:

- a. an explanation of the reasons why you believe the Director's decision was in error or why you believe the Director should reconsider the decision;
- b. an identification of one or more of the following general reasons for the appeal or request for reconsideration:
- (i) The Director exceeded his or her jurisdiction;
 - (ii) The Director failed to follow the procedure applicable to the matter;
 - (iii) The Director rendered a decision that is unconstitutional;
 - (iv) The Director misinterpreted the Lane Code or Manual, State Law or other applicable criteria; or
 - (v) The Director should reconsider the decision in order to allow the submittal of additional evidence not available in the record and addressing compliance with the applicable standards or criteria; and
- c. detailed information in support of your explanations.

Your appeal shall be rejected by the Director if it does not contain the above mentioned information.

Signature of Appellant or Appellant's Representative Jim Gillette

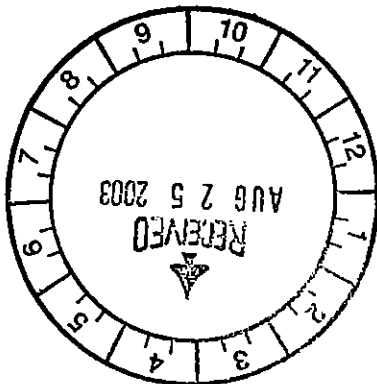
Date 8-25-03

BCC ATTCH. 3 (2 pp.)

PA03-5104

Jim Gillette Reasons for appeal

6. (A) Director did not remember or review testimony, or ignored it. Used misinterpretation of facts as often as he could to defeat proposal.
- (B) (i) used his personal opinions instead of being fair.
(ii) Believing all testimony against proposal even though much of it was untrue, thereby making all of it suspect.
(iv) on definition of resistor, and on need for such.
- (C) all my testimony supports my reason for appeal. Most of the Director's opinions are so biased, or have no merit or truth that any neutral person would be flabbergasted. All who have seen this decision agree very strongly with me on this.



Sincerely

Jim Gillette

APPLICATION FOR AN APPEAL OF A
DECISION BY THE HEARINGS OFFICIAL
(Thoroughly Complete by Typing or Printing)

PA 03-5104B

1. Name of Appellant Jim Gillette Phone 484-0517
Mailing Address 86340 Needham Rd. Eugene, Or. 97405
(Street) (State) (Zip)

Appellant's Representative _____
Mailing Address _____
(Street) (State) (Zip)

2. Attach a copy of the decision being appeal. DEPARTMENT FILE NO: PA 03-5104

3. Attach one check for \$3,010 covering the appeal fees, payable to LANE COUNTY. (See reverse side for important fee information).

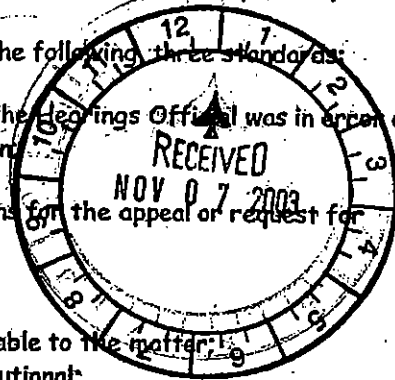
4. The deadline date by which this appeal must be submitted to and received by the Lane County Land Management Division is: 11/06/03. (This deadline date stated in Hearings Official decision).

5. Check one of the boxes below to identify your party status with the right to appeal the Hearings Official decision:

- a. I am the owner or contract purchaser of the subject property;
- b. I am the applicant for the subject application;
- c. I made an 'appearance' in the proceeding by submitting oral or written testimony into the record. (An appearance does not include a name or address on the petition).

6. Attach to this form a written explanation that addresses each of the following three standards:

1. An explanation of the reasons why you believe the decision of the Hearings Official was in error or why you believe the Hearings Official should reconsider the decision.
2. An identification of one or more of the following general reasons for the appeal or request for reconsideration:
 - a. the Hearings Official exceeded his or her jurisdiction;
 - b. the Hearings Official failed to follow the procedure applicable to the matter;
 - c. the Hearings Official rendered a decision that is unconstitutional;
 - d. the Hearings Official misinterpreted the Lane Code or Manual, State Law or other applicable criteria; or
 - e. the Hearings Official should reconsider the decision in order to allow the submittal of additional evidence not available in the record and addressing compliance with the applicable standards or criteria; and
3. Detailed information in support of your explanations.



Your appeal shall be rejected by the Director if it does not include all required fees and above mentioned information.

Jim Gillette
Signature of Appellant or Appellant's Representative

11-07-03
Date

BCC ATTCH. 4 (5pp. TT.D)

Jim Gillette
96340 Needham Rd.
Eugene, OR 97405
(541) 484-0517

1

11.07.07

Re: Appeal statement of Jim Gillette; - PA 03-510A

I am appealing the October 28, 2007 decision of the Lane County Hearing Official in denying my request for a private park on my rural zoned E-40 F-2, for the reasons set forth below:

First assignment of Error

The hearings official erred in finding that the ponds located on my property were not reservoirs per Lane code 16.212(4)(k). In particular, the Hearings Official found that this undefined term did not apply to any body of water which was not a recreational park, or which was temporarily not filled with water. See Hearing Official decision at pg. 5. However, there is no requirement or provision in the Lane code which limits a reservoir in this manner, and the fact that an artificial body of water is not full of water does not alter the status of a reservoir. For example, if a reservoir such as Fern Ridge or Fall Creek reservoirs may be drained of water at times does not change their status as a reservoir. Further, there is no requirement that a body of water must be a recreational anchor for a park in order to be a reservoir under Lane code or State law. Contrary to the Hearing Official decision, there is no evidence in the record in this matter which demonstrates that the legislative history for State law or Oar 660-033-0130(19)(a), intended to limit reservoirs to the standards required by the Hearings Official decision.

Second Assignment of Error

The Hearings Official also erred in finding this application should be denied based upon the similar reservoir requirement for land zoned F-2 in Lane code 16.211(3)(c)(i), both for the reasons set forth in the First Assignment of Error previously discussed, and also because Lane Code 16.211(3)(c)(i) only applies to a application "campground" and it is not disputed that the present application that is not for a campground facility, and therefore the reservoir requirement does not apply to this land use application.

Third Assignment of Error

The Hearings Official also erred in improperly finding this application does not meet Lane code 16.211(3) by suggesting impacts to forest practices or agricultural activity of adjacent property based upon the unauthorized actions of trespassers. The Hearings Official misinterpreted Lane Code, and made a decision not supported by substantial evidence in the record on this issue, as there was no substantial evidence that any of these trespass problems were caused by any acts or failure to act by the applicant. There is also no substantial evidence in the record indicating my proposed park use would in any respect relate to or contribute to any adverse impacts to farming or timber practicing of my neighbors, and that all concerns in this respect were from unauthorized parties actions which should not be regarded as impacting the approval criteria for my land use application as a result of these third parties actions.

Fourth Assignment of Error

The Hearings Official also erred by also finding this land use application did not comply with Lane Code 16.211 (3) requirements to prevent significant fire hazard impacts. In fact, there is not substantial evidence in the record to suggest significant fire hazard impacts, and in fact, the evidence strongly suggests there will be a decrease in fire hazard in this property from the present application to convert this property to private park status. In the appeal hearing in this matter, appellant will explain why all of the alleged evidence concerning fire hazard issues is not supported by any material or reliable evidence presented in the proceeding below.

The Hearings official should also reconsider the decision, both in order address the issues above, and also to allow the submittal additional evidence, bearing directly upon applicable approval criteria which was not available of the times preceding below. For example, I now have new evidence which demonstrates the actual cost of making road repairs on the subject property, which differ from and are significantly less expensive than those figures presented by a neighbor, and relied upon by the planning department and Hearings Official.

In addition, new evidence and testimony should also be allowed to be received in the record, which was not available at the time of the hearing below, which help to explain the specific nature of the alleged trespass concerns, and which show the applicant is not responsible for causing the impacts associated with these trespass actions.

Conclusion

Therefore, for all of the reasons set above, the board of commissioners should either reverse or remand this decision back to the hearings official, or open the record for additional evidence to redress all of the issues and legal errors presented above.

Respectfully,

Jim Gillette