

W. S. A.

AGENDA COVER MEMO



DATE: April 19, 2007 (Date of Memo)
May 1, 2007 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department

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

PRESENTED BY: Thom Lanfear, Associate Planner, Land Management Division

AGENDA ITEM TITLE: Order No. 07-_____ In the Matter of Electing Whether or Not to Hear Arguments on an Appeal of a Hearings Official's Decision Affirming a Planning Director Decision Approving a Special Use Permit for a public park within the Exclusive Farm Use (E30) Zone; Approving a Floodplain Development Permit to Construct a Bridge Within the Regulatory Floodway; and Dismissing a Riparian Modification to Construct a Bridge to a Public Park. (files PA 06-5444; PA 99-6047; PA 99-6048 / Willamalane Park & Recreation District)

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 AND TO AFFIRM THE HEARINGS OFFICIAL'S INTERPRETATION OF LANE CODE ON THE RECORD.

II. ISSUE OR PROBLEM

An appeal to the Board contesting a Hearings Official decision has been received by the Director. The decision affirms with modifications the Planning Director decision approving a Special Use Permit for a public park within the Exclusive Farm Use (E30) Zone; affirms with modifications the Planning Director decision approving a Floodplain Development Permit to construct a bridge within the regulatory floodway; and affirms the Planning Director decision dismissing a Riparian Modification to construct a bridge to a public park. 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. The property, hereafter referred to as the "subject property," is located east of North 66th Street, in Springfield, Oregon. It can be identified as tax lot 1502, assessor's map 17-02-27. The subject property is located within the Eugene-Springfield Metropolitan Area General Plan boundary. It is 9.96 acres in size and is zoned Exclusive Farm Use (E-30) on Zoning Plot 470.

LC14.600(2)(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 appellant has raised the following issues in the appeal submittal:

- 1. The Hearing Official Exceeded His Authority and Misinterpreted the Applicable Law By Approving a Use of the Property That Will Force A Significant Change and Significantly Increase the Cost of Farming Practices On Surrounding Lands.***
- 2. The Hearing Official Exceeded His Authority and Misinterpreted the Applicable Law By Approving Decision that Improperly Permits Uses On Exclusive Farm Use Land Without A Goal Exception.***

Each issue was raised before the close of the record at or following the final evidentiary hearing prior to the Planning Director decision.

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 March 16, 2007.

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.

a. The issue is of Countywide significance.

The issues raised in the appeal to the Board relate only to the approval of the Special Use Permit for the public park in the Exclusive Farm Use Zone. While approval or denial of a public park could have an element of Countywide significance, the issues raised in this appeal are limited to site specific compatibility issues. In particular, the appellant alleges that there are significant impacts to existing farm uses on neighboring properties and the conditions imposed are not sufficient to reduce the impacts to a level that is no longer significant.

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

Evaluation of the impacts of proposed uses with existing farm and forest uses under ORS 215.296 occurs with every Special Use Permit in the Exclusive Farm Use Zone, but no policy guidance appears to be necessary. Both the statute and corresponding Lane Code provisions of LC 16.212(10)(f) and (g) are clear: a public park may not be approved if it will force a significant change in practices or significantly increase the costs of accepted farm or forest practices on surrounding lands devoted to farm use. Upon review of the entire record of evidence, the park was approved with conditions intended to reduce the identified impacts to neighboring farm activity to a level that is no longer significant. The appellants disagree with the conclusions of the Planning Director and the Hearings Official that the impacts can be mitigated. While the review of proposal impacts with farm uses will occur with frequency, there does not appear to be a need for policy guidance.

c. The issue involves a unique environmental resource.

No unique environmental resources have been identified in the appeal issues.

d. The Planning Director or Hearings Official recommends review.

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

D. Options

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

E. Recommendation

Option 3 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 for adoption, and notice of a hearing given, as soon as possible.

V. ATTACHMENTS

1. Board Order electing to not hear the appeal, with Exhibits "A" (findings) and "B" (Hearings Official Decision, March 16, 2007 with affirmation of decision, April 3, 2007).
2. Appeal of Hearings Official March 16, 2007 decision, dated March 26, 2007, with arguments.
3. Letter from Applicant's representative dated April 11, 2007
4. Letter from Appellant's representative dated April 16, 2007.
5. Planning Director Decision
6. Map illustrating location of property.

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. 07-_____ (In the Matter of Electing Whether or Not to Hear
(Arguments on an Appeal of a Hearings Official's Decision
(Affirming a Planning Director Decision Approving a
(Special Use Permit for a Public Park Within the Exclusive
(Farm Use (E30) Zone; Approving a Floodplain Development
(Permit to Construct a Bridge Within the Regulatory
(Floodway; and Dismissing a Riparian Modification to
(Construct a Bridge to a Public Park. (files PA 06-5444; PA
(99-6047; PA 99-6048 / Willamalane Park & Recreation
(District)

WHEREAS, the Lane County Hearings Official has made a decision on applications PA 06-5444, PA 99-6047, and PA 99-6048; 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 applications PA 06-5444, PA 99-6047, and PA 99-6048; 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

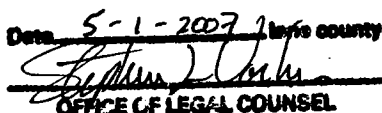
THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds and orders as follows:

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 Board of County Commissioners expressly agrees with the interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision attached as Exhibit "B" and declines further review.
3. That the Lane County Hearings Official decision dated March 16, 2007 is affirmed and adopted by the Board of County Commissioners as its final decision.

DATED this _____ day of May, 2007.

Faye Stewart, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 5-1-2007 in the county of Lane

OFFICE OF LEGAL COUNSEL

FINDINGS IN SUPPORT OF THE ORDER

1. The property, hereafter referred to as the "subject property," is located east of North 66th Street, in Springfield, Oregon. It can be identified as tax lot 1502, assessor's map 17-02-27. The subject property is located within the Eugene-Springfield Metropolitan Area General Plan boundary. It is 9.96 acres in size and is zoned Exclusive Farm Use (E-30) on Zoning Plot 470.
2. In the form of applications PA 99-6047 and PA 99-6048, Willamalane Park and Recreation District submitted applications in July of 1999 to Lane County for a floodplain permit and a riparian modification permit in order to construct a 40-foot long bridge over Cedar Creek for pedestrian and maintenance vehicle access. Application for the Special Use Permit for a public park was submitted on March 17, 2006.
3. The applicant requested that the Planning Director conduct an evidentiary hearing on the proposal in accordance with the criteria of Lane Code 14.110(3)(h) and the Planning Director hearing was held on June 29, 2006. Rural Thurston, a Lane County Chartered Community Organization, attended the hearing but noted that the organization did not receive notice of the application or hearing. The record was left open for three weeks to allow the submittal of additional information and evidence by any party. It was followed by a two week period to allow responses to all material in the record. Final rebuttal by the applicant was allowed until August 10, 2006.
4. The Planning Director decision was issued on September 28, 2006. Two timely appeals were submitted: one by the applicant and one by Rural Thurston, a Community Chartered Organization. A joint hearing on the record with the Hearings Official was held on November 16, 2006 in accordance with Lane Code 14.400.
5. On March 16, 2007, the Hearings Official issued a decision which affirmed with modifications the Planning Director decision approving a Special Use Permit for a public park within the Exclusive Farm Use (E30) Zone; affirmed with modifications the Planning Director decision approving a Floodplain Development Permit to construct a bridge within the regulatory floodway; and affirmed the Planning Director decision dismissing a Riparian Modification to construct a bridge to a public park.
6. A timely appeal of the Hearings Official decision was filed by Rural Thurston, Inc. on March 26, 2007. On April 3, the Hearings Official affirmed his decision.
7. 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.*

8. The Board of Commissioners finds that the appeal involves a set of circumstances and a fact pattern particular to the property. The Board further finds no issues of Countywide significance raised in the appeal.
9. The Board of Commissioners finds that the issues associated with this appeal may reoccur within the County on occasion during the application of Lane Code criteria to requests for uses within the Exclusive Farm Use Zone. However, additional policy guidance from the Board is not necessary in that the Board is satisfied with the reasoning and findings of the Hearings Official with respect to the application of existing Lane Code criteria. No further policy guidance from the Board is necessary at this time.
10. The Board of Commissioners finds that the subject property is not a unique environmental resource.
11. Neither the Planning Director nor the Hearings Official recommends review.
12. 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.
13. The Board has reviewed this matter at its meeting of May 9, 2007 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.

**LANE COUNTY HEARINGS OFFICIAL
REQUEST FOR A SPECIAL USE PERMIT TO ALLOW A PUBLIC PARK WITHIN AN
EFU DISTRICT, AND A FLOODPLAIN DEVELOPMENT PERMIT AND A RIPARIAN
MODIFICATION TO CONSTRUCT A BRIDGE TO THE PUBLIC PARK**

Application Summary

Willamalane Park and Recreation District, 200 South Mill Street, Springfield, OR 97477, has requested three discretionary permits for a public park within the Exclusive Farm Use Zone (E-30/RCP) on tax lot 1502, assessor's map 17-02-27. In July of 1999, Willamalane submitted applications to Lane County for a floodplain permit and a riparian modification permit in order to construct a 40-foot long bridge over Cedar Creek for pedestrian and maintenance vehicle access. Lane County informed Willamalane at the time of application review that a Special Use Permit (SUP) would also be required since public parks are considered special uses on land zoned E-30. In order to undertake the SUP process, Willamalane needed to complete their Park and Recreation Comprehensive Plan and develop a master plan for Ruff Park as required by the Oregon Administrative Rules in effect in 1999. The Park and Recreation Comprehensive Plan for the Willamalane Park and Recreation District was adopted in 2004. Application for the Special Use Permit was submitted on March 17, 2006.

The applicant requested that the Planning Director conduct an evidentiary hearing on the proposal in accordance with the criteria of Lane Code 14.110(3)(h) and the Planning Director hearing was held on June 29, 2006. The record closed on August 10, 2006. The Planning Director decision was issued on September 28, 2006. Two timely appeals were submitted: one by the applicant and one by Rural Thurston, a Community Chartered Organization.

Parties of Record

Willamalane Park & Recreation District
Laurence Thorp

Rural Thurston, Inc.
William Sherlock

Application History

Hearing Date: November 16, 2006

Decision Date: March 16, 2007

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

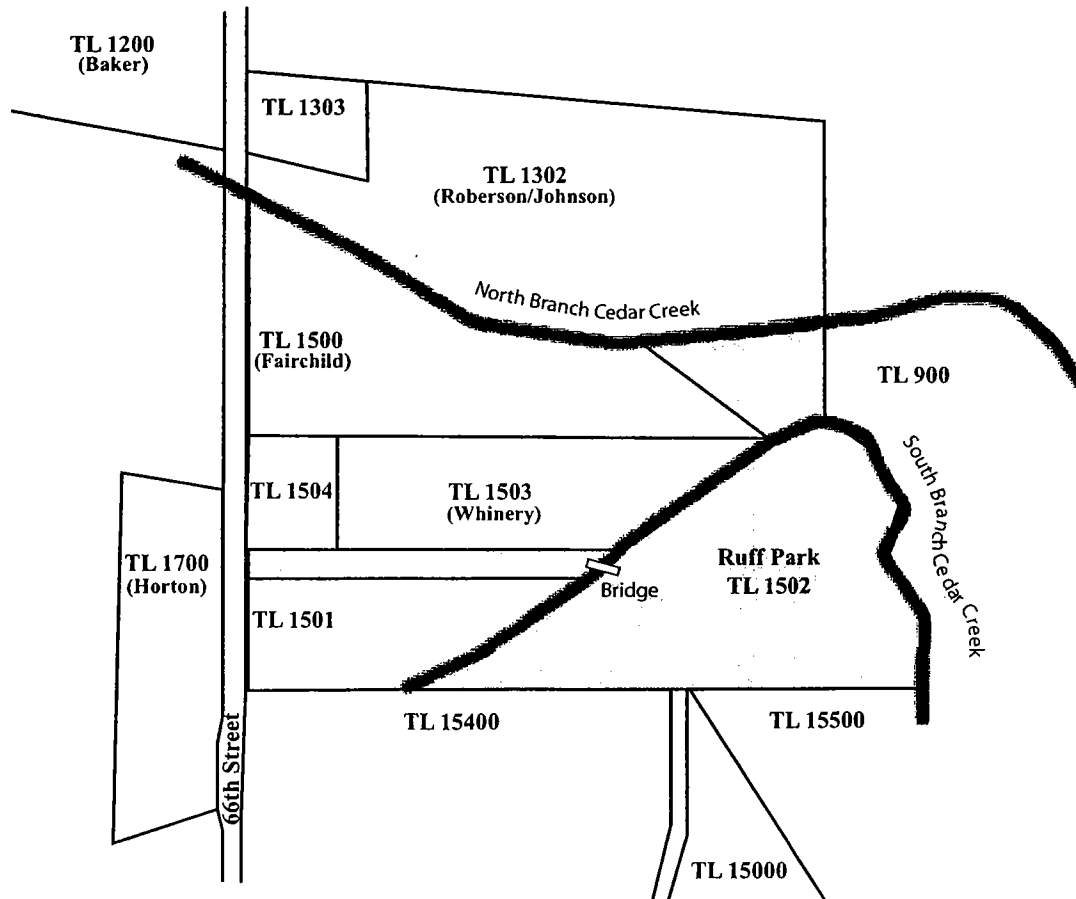
Lane Code 16.212(4)(j)
Lane Code 16.212(10)(a)–(d), (f)–(g)
Lane Code 16.244(7)(c)
Lane Code 16.253(6)

Findings of Fact

1. The property, hereafter referred to as the “subject property,” is located east of North 66th Street, in Springfield, Oregon. It can be identified as tax lot 1502, assessor’s map 17-02-27. The subject property is located within the Eugene-Springfield Metropolitan Area General Plan boundary. It is 9.96 acres in size and is zoned Exclusive Farm Use (E-30) on Zoning Plot 470.
2. The findings of fact of the Planning Director’s September 28, 2006 are adopted by reference into this decision, except where expressly modified.
3. The applicant’s Special Use Permit request is for the development and maintenance of Ruff Park as a Special Use Park on land zoned E-30. Plans for the park include: development of a 40-foot long pedestrian and maintenance vehicle bridge over the south channel of Cedar Creek; maintenance of the existing magnolia arboretum and landscaping/planting beds; maintenance and potential improvement of an existing well; establishment of an ADA-compliant trail system; protection and enhancement of native riparian vegetation; provision of ADA-compliant restroom; provision of outdoor tables and benches; creation of central gathering area with pergola; and consideration of a possible future children’s play area. The master plan proposes 23 parking spaces within the 66th Street panhandle. Twenty-one of those spaces will be standard spaces and 2 spaces will be ADA-accessible spaces. The typical weekend usage is expected to be no more than 8 vehicles, and the peak season usage (when the magnolias are in flower) is expected to be up to 16 vehicles at any one time.
4. Ruff Park is currently improved with approximately 0.4 miles of soft-surface trails, benches, signage, an irrigation pump, doggy bag dispensers, a magnolia arboretum and other landscaping. The Springfield Urban Growth Boundary (UGB) abuts the southern edge of the subject property. The South Fork of Cedar Creek defines much of the east, north and west boundaries of the park. The northern portion of the park property lies between the South Fork and North Fork of Cedar Creek. Cedar Creek is identified as a fish-bearing stream with average annual stream flow less than 1,000 cfs, and designated for riparian vegetation protection by the Eugene-Springfield Metropolitan Area General Plan. The property is located within the 100-year flood hazard area (Zone AE) as shown on Flood Insurance Rate Maps 41039C1166F and 41039C1167F including some areas of floodway (within the banks of Cedar Creek).

Currently, the main park entry is from the south via a 10-foot wide paved pathway from Jacob Lane in the Levi Landing Subdivision. The pathway lies within a 22-foot wide public access easement. The easement allows access by pedestrians, maintenance vehicles and emergency vehicles. Public vehicular access is specifically prohibited. Another park entry is via a gravel drive within a 60-foot wide panhandle from North 66th Street. The panhandle and gravel drive are separated from the main part of the park by the South Fork of Cedar Creek. There is an additional maintenance easement from Simeon Drive, in the Levi Landing Subdivision, to the southeast corner of the park property. This easement is for maintenance access only, and cannot be used by the public. The maintenance easement is currently unimproved. Currently, there is no developed parking area on the site.

Figure 1



5. Figure 1, above, depicts the subject property in the context of nearby parcels. It is bordered on the west (north of the panhandle) by tax lots 1503 and 1504, assessor's map 17-02-27, owned by Eugene and Carol Whinery. Tax lot 1504 is developed with a residence at 1175 66th St. and both parcels are zoned E-30 and are used for cattle grazing. Northwest of the subject property's northern triangle lies tax lot 1500, an E-30-zoned parcel owned by Donald & Elena Fairchild. The property is developed with a residence

at 1235 66th St. Tax lot 1501 to the west (south of the panhandle) is owned by Paul Wellborn Trust and is zoned E-30. This parcel is developed with a residence with an address of 1155 66th St.

The subject property is bordered on the south by tax lots 15400 and 15500, assessor's map 17-02-34-11. Tax lot 15500 is vacant and is zoned E-30 although not currently in farm use. These two properties are identified as Tract "A" and "B" of Levi Landing 2nd Addition.

The subject property is bordered on the north across the north channel of Cedar Creek by tax lot 1302, assessor's map 17-02-27, owned by J.C. Johnson Trust. The parcel is developed with a residence at 1321 66th St., is zoned E-30 and is used for cattle grazing.

The subject property is bordered on the east across Cedar Creek by tax lot 900, assessor's map 17-02-26, owned by Cold Springs LLC. The property is developed with a residence at 1200 Weaver Road, is zoned E-30 and is used for wheat production.

6. The subject property is bordered by properties devoted to farm use on the east, north, and west sides across Cedar Creek, and on the north and south sides of the panhandle access to 66th St. No forest uses have been identified on surrounding lands. The primary farm uses west and north consist of raising cattle. The property to the east is utilized for the growing and harvesting of wheat, and possibly for the growing of container plants. Issues raised in the record regarding existing and potential impacts to existing farm practices include: trespass, vandalism, increased fire hazard, flooding, and traffic.

Because Ruff Park has been operating for several years without the necessary permit approval from the County, the neighbors have experienced "actual" rather than the "potential" impacts from the use of Ruff Park. The evidence in the record from the neighboring property owners indicates a significant problem with animal and human trespassing at the boundaries of the subject property with the properties to the north of the panhandle and east and south of Cedar Creek that can be attributed to the park users. The farm use subjected to impacts is the raising of livestock and the farm practice subjected to increased cost and change are those activities associated with providing for the safety and health of the animals, maintenance of the fencing, and the prevention of trespass.

In specific, Patsy Horton, who lives at 1100 66th Street (tax lot 1700), reported numerous acts of vandalism to her EFU-zoned property that originated from the use of Ruff Park. Burglary, harassment of livestock and fire hazard from fireworks, are some of the impacts that adversely affect the Horton property. Eugene and Carol Whinery, owners of property zoned EFU that is located adjacent to the panhandle right-of-way to Ruff Park, reported livestock harassment by dogs off-leash, vandalism of electric fencing, and the deposit of trash in their pasture. Many neighbors fail to report damage because of the impact on insurance rates or because they do not anticipate a timely response from Lane County Sheriff's Department. Tana Baker's property (tax lot 1200) has an address of

1344 66th Street and is zoned EFU. Ms. Baker routinely transports livestock to auction and parking problems along 66th Street, caused by public events at Ruff Park, have sometimes made transport of livestock difficult. She has had to post notifications of "electric fence" on wires between every other fence post to stop trespass and to protect herself against liability.

Decision

1. THE LANE COUNTY PLANNING DIRECTOR'S DECISION TO APPROVE WILLAMALANE PARK & RECREATION DISTRICT'S REQUEST (PA 06-5444) FOR A SPECIAL USE PERMIT FOR A PUBLIC PARK WITHIN AN EFU DISTRICT IS AFFIRMED SUBJECT TO THE FOLLOWING MODIFICATIONS TO THE CONDITIONS OF APPROVAL CONTAINED WITHIN EXHIBIT A:

Condition of Approval #1 is modified to read:

1. *With the exception of security fencing required by Conditions of Approval #10 and #11, substantial construction of the uses authorized by the special use permit shall be completed within ten (10) years. Reasonable extensions may be granted by the Planning Director prior to the expiration of the special use permit.*

Condition of Approval #10 is modified to read:

10. *The applicant shall construct security fencing (chain link or field fencing) on the east side of Cedar Creek to prevent trespass onto tax lots 1500, 1501, 1503, and south of Cedar Creek to prevent trespass northward onto tax lot 1302. Unless granted a modification to the riparian setback pursuant to Lane Code 15.253(6), the fencing shall be located outside of the 50' riparian corridor. The fencing shall be constructed within one year of this decision being final, and shall be adequate to restrict animals and humans to the subject property. A solid fence is not authorized.*

Condition of Approval #11 is modified to read:

11. *The applicant shall construct security fencing (chain link or field fencing) on the north and south property lines forming the access panhandle to prevent trespass onto tax lots 1501, 1503, and 1504. The fencing shall be constructed within one year of this decision being final, and shall be adequate to restrict animals and humans to the subject property.*

2. THE LANE COUNTY PLANNING DIRECTOR'S DECISION TO APPROVE WILLAMALANE PARK & RECREATION DISTRICT'S REQUEST (PA 99-6047) FOR A FLOODPLAIN DEVELOPMENT PERMIT FOR A BRIDGE WITHIN THE

REGULATORY FLOODWAY IS AFFIRMED, SUBJECT TO THE MODIFICATIONS TO THE CONDITIONS OF APPROVAL IN EXHIBIT A, AS DESCRIBED ABOVE.

3. THE LANE COUNTY PLANNING DIRECTOR'S DECISION TO DISMISS THE WILLAMALANE PARK & RECREATION DISTRICT'S REQUEST (PA 99-6048) FOR A RIPARIAN MODIFICATION FOR A BRIDGE WITHIN AN EFU DISTRICT RIPARIAN SETBACK AREA IS AFFIRMED.

Justification for Decision (Conclusion)

The Planning Director's decisions were appealed by both the applicant and Rural Thurston, Inc. The issues raised are as follows:

Applicant's Appeal

1. Fence Along Cedar Creek.

The applicant alleges that Condition of Approval #10, which requires the Willamalane to construct a security fence along certain portions of Cedar Creek to prevent trespass and to restrict animal access on neighboring properties, is problematic. It argues that the condition is not rational as (1) there is insufficient evidence that alleged trespasses are directly related to Ruff Park and (2) the fence would not be sufficient to contain dogs from accessing neighboring properties.

The underlying issue in several of the applicant's allegation of error concerns the findings made by the Planning Director that trespass, vandalism, and farm animal harassment are associated with Ruff Park. The Planning Director further found that neither signage, which is often ignored or destroyed, nor existing riparian vegetation, is sufficient to reduce the impacts of animal and human trespass on adjacent EFU-zoned parcels. As conditions of approval, the Planning Director required security fencing along the panhandle and a chain link fence, to be constructed outside of the 50-foot wide riparian corridor, on the east side and south sides of Cedar Creek. As the Hearings Official held an "on the record" hearing on this appeal, the findings of the Planning Director must prevail unless "clearly wrong."

In the present case, there was testimony from a number of individuals who reside in the immediate vicinity of the park regarding vandalism associated with park usage. For instance, Patsy Horton, who lives at 1100 66th Street, reported numerous acts of vandalism that originated from people using the park. Burglary, harassment of livestock (the Horton property is zoned EFU), and fire hazard from fireworks, are some of the impacts that adversely affect the Horton property. Eugene and Carol Whinery, owners of property zoned EFU located adjacent to the panhandle right-of-way to Ruff Park, reported livestock harassment by dogs off leash, vandalism of electric fencing, and littering of their pasture. Ms. Whinery reported that often incidents of vandalism and the

like are not reported because of adverse impact on insurance rates and because the Sheriff's Department does not have the staff to vigorously respond to property crimes. Tana Baker, whose property is located at 1344 66th Street and is zoned EFU, routinely transport's livestock to auction. Public events at Ruff Park have caused parking problems along 66th Street that sometimes have made the transport of livestock difficult. She has had to post notifications of "electric fence" on wires between every other fence post to stop trespass and to reduce liability.

The applicant proposed using fences to buffer the proposal from neighboring uses on Page 8 of its submittal under the discussions for "Property #4" and "Property #5". These locations are precisely where the condition requires the fencing to be located. The Planning Director found that the proposed fencing was necessary to minimize the conflicts associated with nuisance trespass of dogs and persons with adjacent farming practices. The applicant is correct in its assertion that this fencing, in isolation, will not succeed in minimizing the conflict. However, combined with Condition of Approval #11, which requires security fencing along the north and south perimeters of the access panhandle, there is a reasonable likelihood that animal and casual human trespass will be eliminated and determined human trespass will be significantly reduced.

The applicant also contests the Planning Director's requirement that the fencing along Cedar Creek be placed at the edge of the 50-foot riparian setback required by LC 16.253(6)(a)(ii) as it would prohibit access to some proposed improvements, such as picnic sites, and existing turf and plant beds, as these facilities would be located between the fence and Cedar Creek. While this is true, Lane Code 16.253(3) provides standards for the modification of the setback in appropriate circumstance.

As the impacts from the use of Ruff Park are currently present, I believe that the timeline for the construction of the security fencing should be moved up. The Planning Director's decision is affirmed with modification to Condition of Approval #10 to require the fencing to be constructed within one year of this decision becoming final. This allegation of error is dismissed.

2. Fence Along Panhandle.

Condition of Approval #11 requires Willamalane to place a security fence along the panhandle to prevent trespass and restrict animals from accessing neighboring property. The applicant argues that this condition is irrational in that it will do little or nothing to prevent animals from intruding on neighboring properties.

As correctly pointed out by the Planning Director, the applicant proposed fencing along the panhandle on Page 6 of its submittal under the heading of "Nuisance." As discussed above, the Hearings Official believes that the combination of fencing along Cedar Creek, as outlined in Condition of Approval #10, and along the panhandle, will sufficiently restrict access to adjacent EFU-zoned properties. Also, it is appropriate to modify

Condition of Approval #11 to require the fencing to be constructed within one year of this decision becoming final. This allegation of error is dismissed.

3. Two- Year Limitation.

The applicant laments that Condition of Approval 1# in the Director's decision requires that WPRD complete all of the proposed improvements within two years of approval and that it's planned improvements will most likely take more than two years. The Planning Director opined that the two-year limitation is necessary to bring this park into compliance after it has been operating for 6 years without the necessary approvals.

The trespass and vandalism incidents pre-existed the application of the application for a special use permit and are associated with the isolated nature of the park itself. In a sense, the situation regarding Ruff Park can be analogized to an attractive nuisance as the Park's accessibility, semi-secluded nature and lack of on-site supervision contribute to its being used as a staging ground for neighborhood trespass and vandalism. The addition of the proposed restrooms, bridge and paved parking lot will only increase the incidence of this type of activity.

It is appropriate that Planning Director's timetable regarding the security fencing be compressed. In this respect, it seems reasonable to require that the security fencing be in place prior to the completion of the parking lot, bridge or restrooms, or one year, whichever is sooner. While I must agree with the applicant regarding the application of a two-year time limitation to the build-out of Ruff Park I do not agree that an open-ended duration for a special use permit is wise. Therefore, I am amending Condition of Approval #1 of the Planning Director's decision to increase the duration of the special use permit to ten years. Reasonable extensions may be granted by the Planning Director.

Rural Thurston Appeal

1. The Decision Improperly Permits Uses On Exclusive Farm Use Land Without A Goal Exception.

The appellant Rural Thurston maintains that a Goal exception is required because the Director found that there was a conflict with farming practices. Although the Planning Director found some conflicts between the proposed use and EFU-activities on nearby properties, the Planning Director also found that the conflicts could be minimized to a level that were not significant if the applicant constructed additional fencing. I agree.

The appellant Rural Thurston maintains that a Goal exception is required because the Ruff Plan has not been adopted. The Planning Director disagreed and I concur. OAR 660-034-0040(1) specifically provides that "local governments are not required to adopt a local park master plan in order to approve a land use decision allowing parks or park uses on agricultural lands under provisions of ORS 215.213 or 215.283..."

OAR 660-034-0035(2) lists the uses that are allowed within state parks and acknowledges that not all of these uses may be allowed on farm or forest lands without an exception. OAR 660-034-0040(4) provides that uses listed in OAR 660-034-0035(2)(a) to (g) that require an exception may nevertheless be allowed within a local park if three criteria are met.

The Planning Director looked at OAR 660-033-0130 to determine whether any of the uses proposed for Ruff Park would require an exception. The Planning Director found that an arboretum, planting beds, a restroom, outdoor tables and benches, a play area, a memorial plaza, and a bridge were passive recreational uses were similar in nature and impact to a campsite which is allowed on agricultural land by OAR 660-033-0130(19). I agree.

The appellant Rural Thurston has suggested that parks permitted on agricultural land by ORS 215.213(2)(e) are only for residents of the "local or rural area." Contrary to this interpretation, the language of requiring "operation primarily by and for residents of the local rural community" clearly modifies community centers owned by governments or nonprofit organizations. Public parks and campgrounds are not under the same constraints.

This allegation of error is dismissed.

2. The Decision Improperly Permits A Use of the Property That Will Force A Significant Change And Significantly Increase the Cost of Farming Practices On Surrounding Lands.

The appellant Rural Thurston questions whether the fencing required by the Planning Director is adequate to prevent trespass on to neighboring properties. The Planning Director's conditions (#10 & #11), however, require fencing of a type that will "prevent trespass" on to those properties. The conditions, as modified by this decision, are adequately stated to require fencing that addresses both human and animal trespass. This allegation of error is dismissed.

3. The Decision Improperly Limits Its Findings With Regard to Farming Practices To Those Use Which Are Currently Occurring On Adjacent Parcels.

The record reflects concern for the actual effects of trespass, vandalism, fire hazard, and traffic on farm use as well as the potential impact from flood hazards. The Planning Director considered these impacts on properties "nearby" to the subject property. In this regard, the Planning Director's inquiry¹ included properties 1,500 feet to the north, 1,000 feet to the west and over 1,600 feet to the east of the subject property. Except for adjacent

¹ Lane County Planning Director Decision in the Matter of PA 06-5444, PA 99-6047, and PA 99-6048, Finding of Fact #6, September 28, 2006, pp 3-4.

tax lot 15500, parcels to the south of the subject property are zoned for residential use. The record further reflects that farm operations within this 'study' area consist of raising cattle, the growing and harvesting of wheat, and possibly the cultivating of container plants. Opponents of the application have not articulated any other significant impacts nor have they identified other farm uses outside of this 'study' area that might be affected by the proposed park. The Planning Director's findings are sufficient.²

As pointed out by the applicant, the Planning Director is not required to identify all potential farm practices that might be employed on nearby properties. The inquiry, as dictated by ORS 215.203(2)(c), is limited to "accepted farm or forest practices." That is, the County's analysis must focus on farm or forest practices of farms of a similar nature that share a common mode of operation. The Planning Director's inquiry conformed to these analytical parameters. This allegation of error is dismissed.

4. The Decision Improperly Ignores Contrary Evidence Related to The Flood Risks Posed By the Proposed Development.

A storm drainage study prepared in 1999 for an adjacent development indicates that the existing base elevation of the McKenzie river floodplain may be between one and five feet higher than shown on FEMA maps.³ This study speculates that an upstream McKenzie River revetment, known as the Gossler revetment, will fail, leading to bridge scour and debris buildup. While I share Rural Thurston's general concern regarding the lack of a current flood analysis of the McKenzie River/Cedar Creek area, Lane Code 16.244(3) makes it clear that Lane County's flood hazard regulations are limited in their application to areas for which a current Flood Insurance Rate Map has been adopted.

Specifically, the regulations of Chapter 16.244 of the Lane Code are exclusive to flood hazard areas and are applied in two situations. The first situation is where areas of flood hazard have been identified by the Federal Emergency Management Administration (FEMA) in a "scientific and engineering report entitled ""THE FLOOD INSURANCE STUDY FOR LANE COUNTY, OREGON UNINCORPORATED AREAS", and for which they have created Flood Insurance Rate Maps and Floodway Maps. The second situation is where the Planning Director may include other land as special flood areas if that land hasn't been mapped by FEMA.

The subject property has been mapped by FEMA and is located within the 100-year flood hazard area (Zone AE) as shown on Flood Insurance Rate Maps 41039C1166F and 41039C1167F including some areas of floodway (within the banks of Cedar Creek). These two maps have been adopted via Lane Manual 11.020(3).

² *Hanna v. Crook County*, 44 Or LUBA 386, 400-401 (2003).

³ *EGR & Associates, Inc., Storm Drainage Study: Levi Landing 1st Addition, 6742 Thurston Road, Springfield, Oregon* (February 15, 1999)

The Planning Director did not ignore the evidence provided by the opponents in the form of the EGR Study. However, the EGR study was prepared for a quite different situation than the one under review in this application and was subject to another jurisdiction's flood hazard regulations. Further, the EGR study has not received a critical review by FEMA and has not been adopted by Lane County. No one disputes that the bridge will be under water during a 100-year flood event but it is the effects of the bridge on the flood event that is the subject of this review in the floodplain permit and there is no analysis of bridge impacts contained in the EGR report.

The applicant's engineer has analyzed and certified that the bridge will not cause a rise in base flood levels during the base flood event. Specifically, the engineer has determined that if the bridge was constructed to current standards, its connections would not likely fail during a flood event, it would not likely alter the course of flood waters in a significant way and would not constitute a scour-critical structure. No certified professional has submitted any contradictory information related to the bridge effect on the base flood event. Accordingly, this allegation of error is dismissed.

5. The Decision Improperly Focuses Its Traffic Inquiry On Existing Levels of Use.

The subject property has access to 66th Street, a County maintained road with a surface of 18' wide. It is a dead end road with no through traffic. The relevant consideration concerns whether the traffic associated with the proposed park use creates a significant impact on farm practices on surrounding lands. The record contains only one reference to an impact associated with the inability to get a horse trailer by the cars parked on the street. This conflict is addressed by the development of parking spaces on the subject property where none exist today.

The Planning Director's conclusion that parking will be adequate is based upon a largely undisputed assumption that the largest gathering of individuals would be about 50. Using the parking standards found in Lane Code 16.250(2) for guidance and assuming that the park can be considered a place of assembly without seats, the Planning Director found that the 23 proposed parking spaces would accommodate 92 persons. Additional cars can park along Jacob Lane, the panhandle access road. The Planning Director's assumptions appear to be reasonable and his conclusion accurate. This allegation of error is dismissed.

6. The Decision Improperly Concludes That A Riparian Setback Modification Is Unnecessary.

The issue is not whether Chapter 16 of the Lane Code applies to lands within the Metropolitan Plan area as it clearly does. The issue is whether there were any streams designated in the Metropolitan Plan to receive protection at the time the applicant applied for a modification to the riparian setback for the proposed bridge (1999). There was no Goal 5 adopted inventory of Class I Streams within the Metro Plan at the time that the

application for Riparian Setback Modification was submitted and Lane Code setback provisions for Class I Streams applied only to streams “designated for protection in the Rural Comprehensive Plan.” ORS 215.427(3)(a) requires that the approval or denial of an application shall be based upon the standards and criteria that were applicable at the time the application was first submitted and the Planning Director was correct in dismissing this application as moot. This allegation of error is dismissed.

7. The placement of a “bridge’ is not the same as a street, road or path, which are exceptions to the Lane Code 16.253(6)(a) prohibition of the placement of structures or impervious surfaces within a riparian area.

This issue is whether the bridge, as an element of special use permit request PA 06-5444, is subject to the limitations on the removal of vegetation within a riparian setback area established by Lane Code 16.253(6)(b). The applicant’s position, endorsed by the Planning Director, is that the bridge should be considered within the category of “streets, roads and paths,” which are exceptions to the general prohibition of Lane Code 16.253(6)(b).

Chapter 15 of the Lane Code concerns “Roads” and Lane Code 15.005 states that the general purpose of Chapter 15 “... is to consolidate and coordinate those rules, regulations and standards relating to the existing and future transportation and access needs of Lane County” and that “[I]t is intended to establish minimum requirements for efficient, safe and attractive vehicular and pedestrian movement throughout the County and usable ingress and egress to properties, ...” As there is no definition for a street, road or path in Lane Code Chapter 16, the Planning Director turned to Chapter 15 of the Lane Code. Lane Code 15.010(35) provides that the terms “road, ” and ”street,” are synonymous and include “tunnels, retaining walls, and bridges.” This is a reasonable interpretation to be applied to Lane Code 16.253(6)(b). This allegation of error is dismissed.


8. Ruff Park is located outside the Willamalane Park & Recreation District and therefore under ORS 266.410(7)(b) it has no authority to make and enforce regulations governing the conduct of park users.

ORS 266.410(7)(b) grants authority to park districts to “make and enforce regulations ... governing the conduct of the users of facilities ... within the district.” The appellant Rural Thurston suggests that this provision limits the authority of a park district to enforce regulations for parks located outside of its district boundaries. This reading of the statute is absurd. ORS 266.410(3) specifically allows park districts to “ ... operate ... parks ... within or without the limits of the district” and if a park district owns property outside of its boundaries it still has the right, as would any property owner, to establish rules for the use of that property. This allegation of error is dismissed.

Conclusion

The Planning Director's decisions, except as modified in PA 06-5444, are affirmed.

Respectfully Submitted,



Gary Darnielle
Lane County Hearing 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

April 3, 2007

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

Re: *Appeal of Hearings Official decisions in Willamalane Park & Recreation (PA 06-5444, 99-6047, 99-6048)*

Dear Mr. Howe:

On March 16, 2007 I issued a decision affirming the Planning Director's decisions, with modifications, to approve the Willamalane Park & Recreation District's requests for a floodplain permit to construct a 40-foot long bridge over Cedar Creek for pedestrian and maintenance vehicle access and a special use permit for a public park on land zoned E-30 and to dismiss a riparian modification permit request. On March 26, 2007 Rural Thurston, Inc. appealed my decision. Upon a review of these appeals, 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 March 16, 2007 decision without further consideration. Please advise interested parties of this decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary L. Darnielle".

Gary L. Darnielle
Lane County Hearings Official

cc: Thom Lanfear (file)

LAND MANAGEMENT DIVISION



APPEAL OF A HEARINGS OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401

Planning: 682-3807 Building: 682-3823 Sanitation: 682-3754

For Office Use Only: FILE # PA 0544C CODE: BCAPEALFEE: \$3,490 mAppellant: Rural Thurston, Inc.Mailing address: 1175 N. 66th Street, Springfield, OR 97478

Phone: _____ Email: _____

Signature: [Signature]Appellant's Representative: William H. Sherlock, Attorney at LawMailing address: 777 High Street, Suite 200, Eugene, OR 97401-2782Phone: 541/935-4578 Email: lsherlock@eugene-law.comSignature: [Signature]

Required submittals. Your appeal application will be rejected if it does not contain all the required information.

PA 06-5444, PA 99-6047,

1. A copy of the decision being appealed, with the department file number. File # PA 99-6048

2. The \$3,490 appeal fee, payable to Lane County. (See the reverse side for important fee information)

3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision) 3-26-07

4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:

☐ I am the owner or contract purchaser of the subject property;☒ I am the applicant for the subject application;☐ Prior to the decision by the Hearings Official, I submitted written testimony into the record☐ I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision for the reasons explained in my letter.

5. A letter that addresses each of the following three standards:

a. The reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;

b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:

- The Hearings Official exceeded his or her authority;
- The Hearings Official failed to follow the procedure applicable to the matter;
- The Hearings Official rendered a decision that is unconstitutional;
- The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.

c. The Hearings Official should reconsider the decision to allow the submittal for additional evidence not in the record that addresses compliance with the applicable standards or criteria.

6. Any additional information in support of your appeal.

EXHIBIT "A"

STATEMENT OF REASONS FOR APPEAL

Rural Thurston Inc.'s Appeal of the Hearing Official's Decision
Approving the Development of Ruff Park
PA 06-5444, PA 99-6047, and PA 99-6048

This is an appeal of an approval granted under Lane Code 16.21, 16.244, and 16.253. Rural Thurston Inc. hereby appeals the Hearing Official's approval of PA 06-5444, PA 99-6047, and PA 99-6048 (Willamalane, Applicant), because the decision was not made in accordance with the applicable procedures, the decision violates the applicable approval criteria, including the comprehensive plan and the zoning ordinance, the applicant failed to meet its burden of showing compliance with the approval standards, the Decision is not supported by substantial evidence in the record and is not supported by adequate findings or reasons, and the Hearings Official exceeded his authority in rendering the Decision. Appellant asks that a hearing to review this decision be held before the Board of Commissioners pursuant to Lane Code 14.400.

1. **The Hearing Official Exceeded His Authority and Misinterpreted the Applicable Law By Approving a Use of the Property That Will Force A Significant Change And Significantly Increase the Cost of Farming Practices On Surrounding Lands.**

The Oregon Revised Statutes prohibit all parks that:

- “(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.” ORS 215.296(1).

The Hearings Official acknowledged substantial evidence in the record of trespass and vandalism on surrounding farm properties. This illicit activity includes the harassment of animals by unrestrained dogs, destruction of signs, animal 'hazing', attempted arson, cutting of fences, discharge of fireworks, and vandalism of farm implements. The decision also recognized that existing levels of use of Ruff Park had already forced a significant change in and significantly increased the costs of farming practices on surrounding properties. The Hearings Official erred, however, by imposing Condition 10 for limited fencing along portions of Cedar Creek and the Panhandle area ostensibly to limit these adverse impacts on surrounding properties. This condition will fail to eliminate the harm.

The failure will occur due to the fact that, unlike parks with dedicated areas for exercising dogs, it does not appear that vaguely identified sections of fence imposed by the condition are continuous or otherwise provide a secure parameter. It is also not clear whether the Condition refers to the North or South Fork of Cedar Creek. Regardless, given the speed at which dogs can run coupled with the relatively small size of the park, there is no rational means for preventing dogs from running around the fence and onto

the surrounding agricultural lands to harass livestock. Accordingly, while the condition may be well intentioned, it is wholly inadequate to solve what the county admits is a significant problem.

In addition, the Decision fails to address the Planning Director's previous finding that trespassing park users have cut fences on neighboring farms and are not above destroying even that signage that Willamalane itself installs. Yet, the Hearings Official fails to explain why trespassing users would not cut the sections of fencing imposed by Condition 10. Thus, it is unlikely that a "security fence" that does not encompass the park and does not even have to be built for an entire year will provide any more of a real physical barrier to humans or animals onto surrounding farm land than Cedar Creek does presently.

2. The Hearing Official Exceeded His Authority and Misinterpreted the Applicable Law By Approving Decision that Improperly Permits Uses On Exclusive Farm Use Land Without A Goal Exception.

The Hearings Official erred by circumventing the Oregon Administrative Rules imposition of a stringent framework for authorizing park uses on EFU land. Only specified uses are permitted within parks. OAR 660-034-0035(2)(a) provides an exclusive list of uses applicable to both state and local parks. A local government may permit these park uses on EFU lands without a Goal exception provided that they are integrated into a "local park master plan" that is adopted as part of a local comprehensive plan applying a procedure comparable to those applied to state parks, and includes findings demonstrating that the uses will not force a significant change or significantly increase the costs of farm practices on surrounding properties. OAR 660-034-0040(4).

As noted above, the Hearings Official's findings indicate that the existing levels of use – even without the proposed expansion – have forced a significant change of and have significantly increased the costs of farming practices on surrounding properties. Because the condition imposed for fencing fails to assure that this adverse impact will be alleviated, a Goal Exception is necessary.

The Hearings Official's conclusion to the contrary is apparently based on the assumption that only the "more intensive types of uses" listed in the Oregon Administrative Rules require a Goal exception. This is error for two reasons. First, as stated above, there is no "local park master plan" authorizing the park uses on Goal 3 land. Hence, all of the proposed uses (regardless of their perceived "intensi[ty]") must be measured against the provisions Goal 3 to determine whether such uses are permitted. The proposed "day use areas" and "recreational trails" are not permitted by ORS 215.213 on EFU lands, nor are the proposed restrooms, children's play area, "central gathering area with pergola," 23 parking spaces, or "40-foot long pedestrian and maintenance vehicle bridge." Uses that are not permitted require a Goal Exception.

Second, the Hearings Official assumes that all of the proposed uses of the park – including a vehicle bridge, the 23 parking spaces, the bathrooms, the central gathering area, encouragement of animal use etc. – are not intensive levels of development. Creating and encouraging a level of use, however, that will attract large numbers of people along

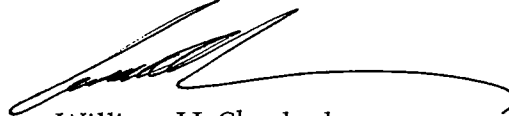
with their dogs and therefore requires extensive, though inadequate, fencing is prima facie evidence that the existing use and proposed expansion is intensive in light of its impact to surrounding properties. Accordingly, Willamalane was required to take a Goal Exception with regard to these uses and the Hearings Officer erred by failing to ensure this occurred.

Conclusion

For all of the foregoing reasons, the decision of the Hearings Official should be reversed by the Board or voluntarily remanded by the Hearings Officer for reconsideration, particularly with regard to how the segments of fencing imposed by Condition 10 will in fact prevent the adverse encroachment of dogs and humans onto surrounding farm uses.

DATED this 26th of March, 2007.

HUTCHINSON, COX, COONS,
DuPRIEST, ORR & SHERLOCK, P.C.

A handwritten signature in black ink, appearing to read 'William H. Sherlock', with a long, sweeping horizontal stroke extending to the right.

William H. Sherlock

April 11, 2007

ATTACHMENT 3
1011 HARLOW ROAD, SUITE 300
SPRINGFIELD, OREGON 97477
PHONE: (541) 747-3354
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E-MAIL ADDRESS:
lthorp@thorp-purdy.com

MARVIN O. SANDERS (1912-1977)
JACK B. LIVELY (1923-1979)
JILL E. GOLDEN (1951-1991)

Sent via E-mail to: Thom.lanfear@co.lane.or.us
And Regular First Class Mail

Thom Lanfear
Lane County Planning Department
125 E. 8th Avenue
Eugene, OR 97401

Re: **Ruff Park Appeal**
Our File No. 6223-85
County Files PA 06-5444; PA 99-6047; and PA 99-6048

Dear Mr. Lanfear:

These comments are submitted on behalf of Willamalane Park and Recreation District in support of the Board of County Commissioners declining to hear Rural Thurston, Inc.'s (the Opponents) appeal pursuant to LC 14.600(3). Please place these comments with the official record that goes before the Board. Concurrently with this transmission, I am submitting a copy to William Sherlock, attorney for the Opponents.

As you know, Board policy, codified in LC 14.600(3) provides that the Board will hear only appeals which meet one of the criteria in that section. The Opponents have made no showing that the criteria in LC 14.600(3) are satisfied. In fact the appeal does not meet any of those criteria. As a result, the Board should decline to hear the Opponents' appeal. The criteria, and a brief application to the present case, is as follows:

1. **The issue is of Countywide significance.** There is no countywide significance to the Opponents' first alleged error. The Opponents identify alleged isolated incidents, such as fireworks, arson, vandalism, etc., and argue that these incidents will increase the cost of farming practices on surrounding lands and the Hearings Official's decision does not adequately mitigate against these harms. However, the Opponents do not identify any ways in which this issue will have significance beyond the immediate area around the park. The Opponents' second allegation claims that the specific uses planned for Ruff Park (day use areas, recreational trails, etc.), requires a Goal exception. This allegation is limited to the specific uses at one small park, Ruff Park. There is no countywide significance in this issue.

2. **The issue will reoccur with frequency and there is need for policy guidance.** The factors identified in support of the Opponents' first alleged error are unique and specific only to Ruff Park (e.g., isolated vandalism, dogs running through a relatively small park, etc.). The Opponents' second alleged error is limited to the specific uses identified in Willamalane's plan for Ruff Park. Accordingly, there is a very low likelihood of reoccurrence, and there is no need for policy guidance from the Board.

3. **The issue involves a unique environmental resource.** For both of their alleged errors, the Opponents have not identified, and Willamalane is not aware of, any unique environmental resource related to the subject applications.

4. **The Planning Director or Hearings Official recommends review.** The Opponents' appeal does not indicate that the Planning Director or the Hearings Official recommended review in this matter. Willamalane is not aware of such recommendation. In the absence of such a recommendation, this criteria has not been satisfied.

None of the criteria identified in LC 14.600(3) have been satisfied. Accordingly, the Board of County Commissioners should decline to review the Opponents' appeal in this matter.

Respectfully submitted,

THORP, PURDY, JEWETT,
URNESS & WILKINSON, P.C.



Laurence E. Thorp and
Barry D. Smith
of Attorneys for
Willamalane Park and Recreation District

BDS:pdp

cc: Client
William Sherlock

(140582)

04-16-07 10:04:04

April 16, 2007

HAND DELIVERED

**Attorneys and
Counselors at Law**
Established 1970

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Lane County Land Management Division
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Eugene, OR 97401

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Thomas M. Orr

William H. Sherlock

Patrick L. Stevens

Mark M. Williams

Re: **Appeal of PA 06-5444, PA 99-6047, and PA 99-6048**
Our Clients: Rural Thurston, Inc.
Our File No: 5480/10270

Dear Mr. Lanfear:

This letter explains why the Board of Commissioners should hear Rural Thurston's appeal under the criteria set forth at Lane Code 14.600(3), and responds to a few of the issues raised by Willamalane on this issue in its letter of April 11, 2007. Please include this letter in the record of these proceedings and provide us with notice of the County's decision on this issue.

A. Decision Criteria.

Lane Code section 14.600(3) states:

"Decision Criteria. A decision by the Board to hear an 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."

Under the standard set forth above, the Rural Thurston need only establish that its issues on appeal could have been and were raised below, and that it satisfies one of the four additional conditions (a)-(d).

The issues raised by Rural Thurston in its appeal were raised below, and are "of countywide significance" and are also likely to reoccur with frequency raising a need for policy guidance. Accordingly, these issues are ripe for review under Lane Code sections 14.600(3)(a) & (b).

B. Issues of Countywide Significance.

First, Rural Thurston raises two issues of countywide significance in its appeal:

1. Whether the County can permit a land use on EFU land when it has already found that the use is forcing a significant change in, and significantly increasing the costs of farming practices on surrounding properties, but it has failed to adequately mitigate those existing impacts
2. Whether a Goal Exception is necessary when a County decision permits the expansion of an existing use of EFU land where the existing levels of use already exceed permissible limits.

C. Existing Levels of Use Have Forced A Significant Change in And Significantly Increased the Costs of Farming Practices on Surrounding Parcels.

With regard to the first issue, park uses cannot be permitted on EFU if they force a significant change in or significantly increase the costs of farm practices on surrounding lands devoted to farm use. ORS 215.296; LC 16.212(10)(f)-(g).

Both the County Planning Director and Hearings Official found that Ruff Park users have already forced a significant change in and significantly increased the costs of agricultural practices on surrounding EFU lands. The Planning Director:

"As described in the record by the opponents and the applicant, the subject property is bordered by properties devoted to farm use on the east, north, and west sides across Cedar Creek, and on the north and south sides of the panhandle access to 66th St....The primary farm uses west and north consist of raising cattle. The property to the east is growing and harvesting wheat, and possibly growing container plants. Issues raised in the record regarding existing and potential impacts to existing farm practices include: trespassing vandalism, increased fire hazard, flooding and traffic.

TRESPASS & VANDALISM

The property owners raising livestock on nearby properties have experienced problems associated with trespass and vandalism including the harassment of animals by unrestrained dogs, destruction of signs, animal "hazing," attempted arson, cutting of

fences, discharge of fireworks, and vandalism to farm implements. Since the park has apparently been operating for several years without the necessary permit approval from the County, the neighbors have experienced firsthand that "actual" rather than the "potential" impacts to be expected from the granting of the permit for the park. The level and consistency of the evidence in the record from the neighboring property owners indicates a significant problem with animal and human trespassing at the boundaries of the subject property with the properties to the north and west that is attributed to the park users. For the purposes of these criteria, the farm use subjected to impacts is the raising of livestock. The farm practice subjected to increased cost and change are those activities associated with providing for the safety and health of the animals, maintenance of the fencing, and the prevention of trespass. The testimony and evidence in the record leads the Planning Director to conclude that the time and energy expended for these practices has increased significantly since the operation of the park has begun. The Director finds that this represents a significant change in farm practice and increase in costs on nearby lands devoted to farm use." Planning Director's Decision, p. 5-6 (Emphasis added).

Likewise, the Hearings Official likewise found:

"Because Ruff Park has been operating for several years without necessary permit approval from the County, the neighbors have experienced "actual" rather than the "potential" impacts from the use of Ruff Park. The evidence in the record from neighboring property owners *indicates a significant problem with animal and human trespassing at the boundaries of the subject property with the properties to the north of the panhandle and east and south of Cedar Creek that can be attributed to the park users.* The farm use subjected to increased cost and change are those activities associated with providing for the safety and health of animals, maintenance of the fencing, and the prevention of trespass." *Hearings Officials Findings*, p. 4, Finding 6 (Emphasis added).¹

¹ Willamalane has referred to these significant impacts as "alleged isolated incidents" in its April 11, 2007 letter to the Board. However, neither the Planning Director nor the Hearings Official found that these incidents were "isolated." In fact, both determined that the activities of Willamalane's parks users had forced a significant change in and significantly increased the costs of agricultural practices on surrounding properties. Willamalane does not challenge these findings. Accordingly, the findings of the Planning Director and Hearings Official that park users are already forcing a significant change in and significantly increasing the costs of farm uses is not at issue, notwithstanding Willamalane's attempt to downplay or avoid these findings.

Willamalane does not challenge these findings on appeal. Hence, it cannot be disputed that the existing park activities have caused a significant change in and significantly increased the costs of accepted farming practices on surrounding properties contrary to both the Oregon Revised Statutes and the Lane Code. *See* ORS 215.296; LC 16.212(f)-(g).

The County's decision purports to address these issues through the imposition of conditions. However, the conditions are inadequate to address the existing levels of park use and are not sufficiently crafted to address the proposed levels of use. Hence, the decision continues to allow levels of use on EFU land that would force a significant change in and significantly increase the costs of farming practices on surrounding properties, and is contrary to state and local law.

The only meaningful that the County has endorsed thus far is partial fencing of the property within a year of the County's approval. There are a number of problems with this proposal.

First, as pointed out by Willamalane itself, partial fencing is not adequate to prevent impacts on surrounding property owners. Willamalane states:

*"(1) Fence Along Cedar Creek. Condition 10 of approval requires [Willamalane] to construct a security fence along certain portions of Cedar Creek to prevent trespass and to restrict animal access on neighboring properties. This condition is problematic. **The fence would not be sufficient to contain dogs from accessing neighboring properties. Thus, this condition is not rational.***

*(2) Fence Along Panhandle. Condition 11 requires [Willamalane] to place a security fence along the panhandle to prevent trespass and restrict animals from accessing neighboring property. **Again this condition is irrational in that it will do little or nothing to prevent animals from intruding on neighboring properties.**" October 9, 2006, Appeal of Director's Decision, p. 1 (Emphasis added).*

Appellants agree. The proposal to fence part of the boundary of the proposed park is not adequate to prevent continuing adverse impacts to surrounding agricultural users.

1. Proposed Fencing Condition is Too Ambiguous To Ensure Compliance with the Applicable Standard.

First, the conditions are unclear. The decision makes reference to fencing "on the east side of Cedar Creek" and "south of Cedar Creek." *See*

Decision, p. 5, Condition 10. However, as depicted on the Hearings Official's own Figure 1, attached, there are two branches of Cedar Creek in the immediate vicinity of the proposed park - the North Branch of Cedar Creek (which abuts a portion of the park adjacent to tax lots 1302, 1500, and 900), and the South Branch of Cedar Creek (which encompasses most of the park and abuts 1500, 1503, 1501, 900, 15400 and 15500). It is not clear from the Hearings Official's decision which branch of the Creek he is referring to, or if the condition may be referring to both branches. Hence, at the very least the condition is too vague to support approval, and the decision should be reversed.

2. Proposed Partial Fencing of the Property Will Not Protect Neighboring Agricultural Users.

Secondly, the condition does not provide for fencing that actually bars access onto neighboring properties, because the fences do not encircle the park. In particular, it appears that the decision would permit a gap in the fencing along the common boundary between the Ruff Park and the Fairchild property (tax lot 1500), because it only requires fencing south of (presumably, the North Branch of) Cedar Creek to prevent trespass onto 1302, and fencing east of the South Branch (which does not abut 1500 along its length). Hence, the decision appears to permit a substantial gap along the western park boundary where it abuts lot 1500. This gap would provide dogs access to the livestock grazing areas on lots 1503, 1504, and 1302,² all of which adjoin lot 1500, and would provide trespassers with continued access to these agricultural properties as well. Moreover, it would effectively bar the Fairchild's from making agricultural use of their property as well (particularly for livestock use). Hence, the conditions are inadequate to prevent the identified costs and adverse impacts on surrounding farming practice.

Indeed, at most, the Decision would only provide fencing on two sides of the park property - the west and north (with a large gap on the western boundary as set forth above), this would provide would-be trespassers with access to surrounding agricultural properties via the east and south sides of the park. Indeed, tax lot 900, east of the park property, which is currently used for wheat production, has no security fencing to protect it from the vandalism, trespassing and attempted arson found by the Planning Director. Nor does the decision account for how the livestock on 1302 will be protected from dogs that passing through tax lot 900. Again, the conditions do not adequately protect surrounding agricultural practices, and, hence, application should not have been approved.

² Tax lot 1302 is separated from tax lot 1500 by the North Branch of Cedar Creek. However, as found by the planning director "[t]he existing riparian vegetation along Cedar Creek does not appear to act as a suitable barrier to restrict dogs and humans from entering the neighboring farm parcels." *Planning Director's Decision*, p. 6.

3. The One-Year Delay on Providing Fencing Is Not Adequate to Protect Neighboring Agricultural Users.

Additionally, the decision permits Willamalane to delay the construction of its partial fencing for an entire year. Thus, even if the partial fencing were sufficient to keep trespassers and dogs off of surrounding properties, and it clearly is not, neighbors will be left exposed to the adverse impacts of the proposed park for a year. This is clearly contrary to state and local law. Neither state statute nor the Lane Code provide that a use on EFU land may continue to force a significant change in or significantly increase the costs of surrounding farming practices as long as it is for not longer than a year. Instead, both bar uses that force a significant change in and significantly increase the costs of accepted farming practices. It does not take a year to construct a fence. If Willamalane cannot bar immediately its adverse impacts on accepted farming practices as a condition of approval it should not be granted.

4. The Proposed "Security Fencing" Is Not Sufficiently Described Nor Has It Been Demonstrated to Protect Neighboring Agricultural Users.

Finally, there is no indication in the decision what "security fencing" consists of, and whether it will be effective to restrict humans and dogs. Instead, the decision generally refers to "security fencing" as "(chain link or field fencing)" and requires that it "restrict animals and humans to the subject property." *Decision*, p. 5. This is not an adequate condition.

First, as already found by both the planning director and hearings officials, park users cut fences on surrounding agricultural properties – so much so that the costs of the necessary repairs of these vandalized fences are deemed significant. Thus, it is highly doubtful that fencing (especially field fencing) would be sufficient to protect neighboring agricultural properties.

Second, the condition is too vague to be adequately enforced. Willamalane has already stated that it does not believe that fencing will protect neighboring property owners. Thus, it has no incentive to select a high-grade security fence. Yet, under the existing condition, Willamalane would appear to be able to construct any height or type of open fencing, and then claim that it is adequate. Since the condition is too vague to ensure compliance with the applicable standard the decision should be reversed.

5. A Goal Exception Should Be Required.

The County's decision is geared toward preventing further impacts from the existing and unlawful levels of trespass and vandalism that are already occurring on neighboring farm properties as the result of Willamalane's

unauthorized park. However, what the decision fails to account for is the fact that Willamalane is proposing to expand its existing (unlawful) levels of use through the construction of a variety of improvements to attract more park users. No park can be permitted on EFU land that forces a significant change in or significantly increases the costs of surrounding farm uses on surrounding properties without a goal exception.

Yet, the County's decision would permit not only the existing (unlawful) levels of use on the park property to continue without ensuring that agricultural users on neighboring properties are protected, but would permit an expansion of this use. The Hearings Official denies that a Goal Exception must be taken by concluding that a number of the uses are not sufficiently intensive to warrant a Goal Exception. However, the County has failed to demonstrate that these uses are permitted uses under Goal 3.³ See ORS 215.213(1)(listing permitted uses on EFU land in addition to farming). Moreover, as demonstrated above, the County has failed to ensure that existing levels of park use do not force a significant change in or significantly increase the costs of farming practices on surrounding lands. Hence, its decision to permit an expansion of this park use without adequate mitigation, is contrary to Goal 3 and therefore requires a Goal Exception.

Thus, since this appeal presents the broad question of whether a park use on EFU land that adversely affects neighboring agricultural practices can be permitted (and expanded) without adequate conditions, the question is of Countywide significance, and the Board of Commissioners should hear the appeal of the Hearings Official's decision. LC 14.600(3)(a)

D. The Issue Will Reoccur With Frequency And There Is A Need For Policy Guidance.

There is a growing need for recreational opportunities in urban Lane County that corresponds to the growing population in its urban centers. Given the expense of locating these amenities in developed areas, it is highly likely that these uses – and more of these uses - will be sited on less expensive agricultural lands at the fringe of developed urban and suburban areas. This increasing development pressure will place greater demands on Lane County to make important policy judgments about how much interference with existing agricultural uses it will permit, and how much expansion of these recreational uses it will permit without requiring the applicant to unequivocally mitigate its impacts, or seek a Goal Exception.

³ A number of park uses are permitted without a Goal Exception if a local park master plan is adopted by the planning authority. OAR 660-034-0040(4). However, Lane County has not adopted such a master plan for Ruff Park. Hence, this alternative path is not permitted.

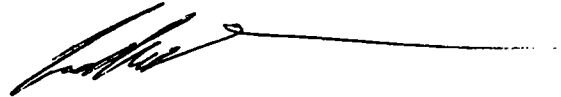
This case clearly presents an opportunity for the County to provide important policy guidance on these issues. Accordingly, the County should review its Hearings Official's decision in this case.

Conclusion

For all the foregoing reasons, the County should review the decision of its Hearings Official.

Very truly yours,

HUTCHINSON, COX, COONS,
DuPRIEST, ORR & SHERLOCK, P.C.

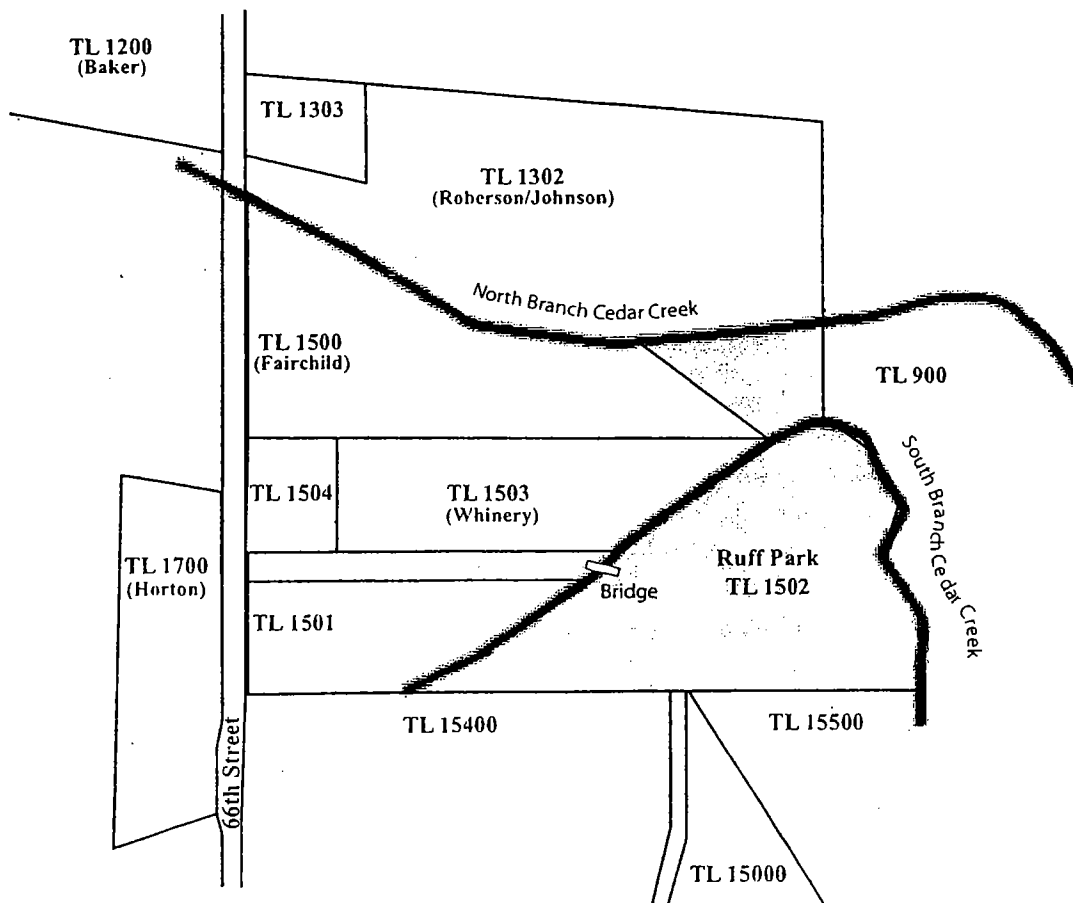
A handwritten signature in black ink, appearing to read 'William H. Sherlock', followed by a long horizontal line extending to the right.

William H. Sherlock

WHS/pm
cc: Client
Enclosure

Currently, the main park entry is from the south via a 10-foot wide paved pathway from Jacob Lane in the Levi Landing Subdivision. The pathway lies within a 22-foot wide public access easement. The easement allows access by pedestrians, maintenance vehicles and emergency vehicles. Public vehicular access is specifically prohibited. Another park entry is via a gravel drive within a 60-foot wide panhandle from North 66th Street. The panhandle and gravel drive are separated from the main part of the park by the South Fork of Cedar Creek. There is an additional maintenance easement from Simeon Drive, in the Levi Landing Subdivision, to the southeast corner of the park property. This easement is for maintenance access only, and cannot be used by the public. The maintenance easement is currently unimproved. Currently, there is no developed parking area on the site.

Figure 1



5. Figure 1, above, depicts the subject property in the context of nearby parcels. It is bordered on the west (north of the panhandle) by tax lots 1503 and 1504, assessor's map 17-02-27, owned by Eugene and Carol Whinery. Tax lot 1504 is developed with a residence at 1175 66th St. and both parcels are zoned E-30 and are used for cattle grazing. Northwest of the subject property's northern triangle lies tax lot 1500, an E-30-zoned parcel owned by Donald & Elena Fairchild. The property is developed with a residence

LANE COUNTY PLANNING DIRECTOR

SPECIAL USE PERMIT FLOODPLAIN DEVELOPMENT PERMIT RIPARIAN SETBACK MODIFICATION



Applications Summary

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

Willamalane Park and Recreation District. Taxlot 1502, assessor's map 17-02-27.

1. PA 06-5444: Special Use Permit for a public park within the Exclusive Farm Use (E30) Zone as provided by Lane Code 16.212(4)(j) and LC 16.212(10)(a)-(d), (f)-(g);
2. PA 99-6047: Floodplain Development Permit to construct a bridge within the regulatory floodway as provided by Lane Code 16.244(7)(c);
3. PA 99-6048: Riparian Modification to construct a bridge to a public park as provided by Lane Code 16.253(6).

In July of 1999, Willamalane Park and Recreation District submitted applications to Lane County for a floodplain permit and a riparian modification permit in order to construct a 40-foot long bridge over Cedar Creek for pedestrian and maintenance vehicle access. Lane County informed Willamalane at the time of application review that a Special Use Permit (SUP) would also be required since public parks are considered special uses on land zoned E-30. In order to undertake the SUP process, Willamalane needed to complete their Park and Recreation Comprehensive Plan and develop a master plan for Ruff Park as required by the Oregon Administrative Rules in effect in 1999. The Park and Recreation Comprehensive Plan for the Willamalane Park and Recreation District was adopted in 2004. Application for the Special Use Permit was submitted on March 17, 2006.

The applicant requested that the Planning Director conduct an evidentiary hearing on the proposal in accordance with the criteria of Lane Code 14.110(3)(h) and the Planning Director hearing was held on June 29, 2006. Rural Thurston, a Lane County Chartered Community Organization, attended the hearing but noted that the organization did not receive notice of the application or hearing. The record was left open for three weeks to allow the submittal of additional information and evidence by any party. It was followed by a two week period to allow responses to all material in the record. Final rebuttal by the applicant was allowed until August 10, 2006.

Parties of Record

Willamalane Park District
Mike Whitney
Rural Thurston Community Organization
Gene & Carol Whinery
Harold Horton
Patsy Horton
Blake Hastings
Mary Davidson
Roy Burling
Karen Burling
Tana Baker

George Grier
Rural Thurston, Inc.
William Sherlock
Laurence Thorp
Brenda Leavitt
Roy Ridge
Del Titus
Paul Wellborn
Judy Bonn
Ray Henderson
Georgia Barton

Application History

Hearing Date: June 29, 2006
(Record held open until August 10, 2006)

Decision Date: September 28, 2006

Appeal Deadline: October 9, 2006 to Lane County Hearings Official

Statement of Criteria

Lane Code 16.212(4)(j) and
Lane Code 16.212(10)(a)-(d), (f)-(g).
Lane Code 16.244(7)(b) & (c)
Lane Code 16.253(6).
Oregon Revised Statutes 195.120
Oregon Administrative Rules 660-034-0035

Findings of Fact

1. The property (hereafter referred to as the "subject property") is identified as Map 17-02-27 Taxlot 1502. The property is located within the Eugene-Springfield Metropolitan Area General Plan boundary. The subject property is 9.96 acres in size and zoned Exclusive Farm Use (E-30) on Zoning Plot 470. Cedar Creek is identified as a fish-bearing stream with average annual stream flow less than 1,000 cfs, and designated for riparian vegetation protection by the Eugene-Springfield Metropolitan Area General Plan. The property is located within the 100-year flood hazard area (Zone AE) as shown on Flood Insurance Rate Maps 41039C1166F and 41039C1167F including some areas of floodway (within the banks of Cedar Creek).
2. Ruff Park is currently improved with approximately 0.4 miles of soft-surface trails, benches, signage, an irrigation pump, doggy bag dispensers, a magnolia arboretum and other landscaping. The Springfield Urban Growth Boundary (UGB) abuts the southern edge of the subject property. The South Fork of Cedar Creek defines much of the east, north and west boundaries of the park. The northern portion of the park property lies between the South Fork and North Fork of Cedar Creek.

Currently, the main park entry is from the south via a 10-foot wide paved pathway from Jacob Lane in the Levi Landing Subdivision. The pathway lies within a 22-foot wide public access easement. The easement allows access by pedestrians, maintenance vehicles and emergency vehicles. Public vehicular access is specifically prohibited. Another park entry is via a gravel drive within a 60-foot wide panhandle from North 66th Street. The panhandle and gravel drive are separated from the main part of the park by the South Fork of Cedar Creek. There is an additional maintenance easement from Simeon Drive, in the Levi Landing Subdivision, to the southeast corner of the park property. This easement is for maintenance access only, and cannot be used by the public. The maintenance easement is currently unimproved. Currently, there is no developed parking area on the site.

3. The applicant, Willamalane Park and Recreation District (Willamalane), is requesting Special Use Permit approval to develop and maintain Ruff Park as a Special Use Park on land zoned E-30. Plans for the park include: development of a 40-foot long pedestrian and maintenance vehicle bridge over the south channel of Cedar Creek; maintenance of the existing magnolia arboretum and landscaping/planting beds; maintenance and potential improvement of an existing well;

establishment of an ADA-compliant trail system; protection and enhancement of native riparian vegetation; provision of ADA-compliant restroom; provision of outdoor tables and benches; creation of central gathering area with pergola; and consideration of a possible future children's play area. The master plan proposes 23 parking spaces within the 66th Street panhandle. Twenty-one of those spaces will be standard spaces and 2 spaces will be ADA-accessible spaces. The typical weekend usage is expected to be no more than 8 vehicles, and the peak season usage (when the magnolias are in flower) is expected to be up to 16 vehicles at any one time.

4. Access to the property is provided in three locations. The panhandle of the subject property has a 60 foot wide frontage onto North 66th St., a County Road with a functional classification of Rural Local Road. Pedestrian and non-motorized ingress and egress from Jacob Lane is provided by a 22 foot wide easement recorded in Instrument 2001-057998. The easement is currently developed with a 10-foot wide paved surface. Private vehicular access for maintenance access from Simeon Lane is provided by a 12 foot wide easement recorded in Instrument 2001-058000. The easement is unimproved.
5. Fire protection is provided to the property by the McKenzie Rural Fire Protection District. Police services are provided by State Police and the Lane County Sheriff. Water is obtained from an existing well. Water for irrigation is proposed to be obtained as a water right from the Oregon Department of Water Resources.
6. The subject property is bordered on the west (north of the panhandle) by Map 17-02-27 Taxlots 1503 and 1504, owned by Eugene and Carol Whinery. The parcel is developed with a residence at 1175 66th St. and used for cattle grazing. West of the subject property's northern triangle lies taxlot 1500 owned by Donald & Elena Fairchild. The property is developed with a residence at 1235 66th St.. Property to the west (south of the panhandle) is identified as taxlot 1501, owned by Paul Wellborn Trust. The parcel is developed with a residence at 1155 66th St.

The subject property is bordered on the south by Map 17-02-34-11 Taxlots 15400 and 15500. Taxlot 15500 is vacant and not currently in farm use. These two properties are identified as Tract "A" and "B" of Levi Landing 2nd Addition.

The subject property is bordered on the north across the north channel of Cedar Creek by Map 17-02-27 Taxlot 1302, owned by J.C. Johnson Trust. The parcel is developed with a residence at 1321 66th St. and is used for cattle grazing.

The subject property is bordered on the east across Cedar Creek by Map 17-02-26 #900, owned by Cold Springs LLC. The property is developed with a residence at 1200 Weaver Road and used for wheat production.

Decision

THE WILLAMALANE PARK & RECREATION DISTRICT REQUEST FOR:

1. A SPECIAL USE PERMIT (PA 06-5444) FOR A PUBLIC PARK WITHIN THE EXCLUSIVE FARM USE (E30) ZONE IS APPROVED SUBJECT TO THE CONDITIONS CONTAINED WITHIN EXHIBIT "A" ATTACHED;
2. A FLOODPLAIN DEVELOPMENT PERMIT (PA 99-6047) TO CONSTRUCT A BRIDGE WITHIN THE REGULATORY FLOODWAY IS APPROVED SUBJECT TO THE CONDITIONS CONTAINED WITHIN EXHIBIT "A" ATTACHED;
3. A RIPARIAN SETBACK MODIFICATION (PA 99-6048) TO CONSTRUCT A BRIDGE IS DISMISSED.

Justification for the Decisions (Conclusions)

1. SPECIAL USE PERMIT PA 06-5444: Special Use Permit for a public park within the Exclusive Farm Use (E30) Zone as provided by Lane Code 16.212(4)(j) and LC 16.212(10)(a)-(d), (f)-(g)

Lane Code 16.212(4) Special Uses - Director Approval. These uses are allowed after submittal of an application pursuant to LC 14.050 and after review and approval of the application pursuant to LC 14.100 with the options for the Director to elect to conduct a hearing or to provide written notice of the decision and an opportunity for appeal.

Lane Code 16.212(4)(j): Publicly owned parks and playgrounds that comply with these requirements:

(i) LC 16.212(10)(f) through (g) below;

(ii) Public parks shall include only those uses specified under OAR 660-034-0035 ; and

(iii) A public park may be established consistently with ORS 195.120 .

The subject property is under the ownership of Willamalane Park & Recreation District and proposed to be used for a public park. For the sake of clarity in addressing the relevant criteria, the findings shall first address the general enabling provision for public parks found in ORS 195.120, then the uses allowed in the park under OAR 660-034-0035, before review for compatibility of the proposal with adjacent and nearby resource uses under LC 16.212(10)(f) and (g), and setbacks under LC 16.212(10)(a) – (d).

ORS 195.120(2) directs the Land Conservation and Development Commission (LCDC) to adopt rules for local parks.¹ LCDC has adopted administrative rules as directed by this statute. Public parks are listed in Oregon Administrative Rules 660-033-0120 as a use that may be approved within the Exclusive Farm Use Zone, after required review which requires notice and the opportunity for a hearing. Minimum standards for public parks include OAR 660-033-0130(31) “Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.” OAR 660-034-0035 contains provisions for State Parks and OAR 660-034-0040 contains provisions for local parks.

Effective May 7, 2004, OAR 660-034-0040 authorized local governments to approve a land use decision allowing a park without the adoption of a local park master plan.² The list of allowable uses identified in OAR 660-034-0035 include some uses that require an exception, however, those uses may be allowed without an exception if the uses are described and authorized in a local park master plan.³ The

¹ ORS 195.120(2) The Land Conservation and Development Commission, in cooperation with the State Parks and Recreation Commission and representatives of local government, shall adopt rules and land use planning goal amendments as necessary to provide for:

(a) Allowable uses in state and local parks that have adopted master plans

² OAR 660-034-0040(1) ... Local governments are not required to adopt a local park master plan in order to approve a land use decision allowing parks or park uses on agricultural lands under provisions of ORS 215.213 or 215.283 or on forestlands under provisions of OAR 660-006-0025(4), as further addressed in Sections (3) and (4) of this rule.

³ OAR 660-034-0040(4) Although some of the uses listed in OAR 660-034-0035(2)(a) through 660-034-0035(2)(g) are not allowed on agricultural or forest land without an exception to Statewide Planning Goals 3 or 4, a local government is not required to take an exception to Goals 3 or 4 to allow such uses on land within a local park provided such uses, alone or in combination, meet all other statewide goals and are described and authorized in a local park master plan that:

(a) Is adopted as part of the local comprehensive plan in conformance with Section (1) of this rule and consistent with all statewide goals;

(b) Is prepared and adopted applying criteria comparable to those required for uses in state parks under OAR 736, division 18; and

(c) Includes findings demonstrating compliance with ORS 215.296 for all uses and activities proposed on or adjacent to land zoned for farm or forest use.

Administrative Rules do not specify which uses from the list are those that require an exception or be contained within a local parks master plan to be approved.

A review of the list of allowable uses⁴ reveals a variety of uses that range from open space uses, such as walking and hiking, to intensively developed uses, such as visitor lodging and retail stores. The specific uses that require an exception presumably include the more intensive types of uses that irrevocably commit the property to a use other than farm uses such as: laundry facilities; recreation shops; snack shops; fuel stations, administrative offices, staff lodging; museums, retail stores; and visitor lodging. The proposed park development includes a magnolia arboretum, landscaping/planting beds, an ADA-compliant trail system and restroom, outdoor tables and benches, central gathering area with pergola, informational kiosk, memorial plaza, and a children's play area. These uses appear to fall within the range of uses allowed under OAR 660-034-0035 that can be authorized without an exception because of the passive recreational nature of the uses and their similarity to uses allowed under separate OAR provisions within the Exclusive Farm Use Zone. The pergola, restrooms, bridge and information kiosk are clearly similar to those components found in campgrounds allowed under OAR 660-033-0130. The adoption of a local parks master plan is not necessary in this instance since it appears to be only required if any of the proposed uses are ones that require an exception.

Lane Code 16.212(f) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use.

Lane Code 16.212 (g) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

As described in the record by the opponents and the applicant, the subject property is bordered by properties devoted to farm use on the east, north, and west sides across Cedar Creek, and on the north and south sides of the panhandle access to 66th St. No forest uses have been identified on surrounding lands. The primary farm uses west and north consist of raising cattle. The property to the east is growing and harvesting wheat, and possibly growing container plants. Issues raised in the record regarding existing and potential impacts to existing farm practices include: trespassing, vandalism, increased fire hazard, flooding, and traffic.

⁴ OAR 660-034-0035(2)(a) Campground areas: recreational vehicle sites; tent sites; camper cabins; yurts; teepees; covered wagons; group shelters; campfire program areas; camp stores;
(b) Day use areas: picnic shelters, barbecue areas, swimming areas (not swimming pools), open play fields, play structures;
(c) Recreational trails: walking, hiking, biking, horse, or motorized off-road vehicle trails; trail staging areas;
(d) Boating and fishing facilities: launch ramps and landings, docks, moorage facilities, small boat storage, boating fuel stations, fish cleaning stations, boat sewage pumpout stations;
(e) Amenities related to park use intended only for park visitors and employees: laundry facilities; recreation shops; snack shops not exceeding 1500 square feet of floor area;
(f) Support facilities serving only the park lands wherein the facility is located: water supply facilities, sewage collection and treatment facilities, storm water management facilities, electrical and communication facilities, restrooms and showers, recycling and trash collection facilities, registration buildings, roads and bridges, parking areas and walkways;
(g) Park Maintenance and Management Facilities located within a park: maintenance shops and yards, fuel stations for park vehicles, storage for park equipment and supplies, administrative offices, staff lodging;
(h) Natural and cultural resource interpretative, educational and informational facilities in state parks: interpretative centers, information/orientation centers, self-supporting interpretative and informational kiosks, natural history or cultural resource museums, natural history or cultural educational facilities, reconstructed historic structures for cultural resource interpretation, retail stores not exceeding 1500 square feet for sale of books and other materials that support park resource interpretation and education;
(i) Visitor lodging and retreat facilities in state parks: historic lodges, houses or inns and the following associated uses in a state park retreat area only:
(A) Meeting halls not exceeding 2000 square feet of floor area;
(B) Dining halls (not restaurants).

TRESPASS & VANDALISM

The property owners raising livestock on nearby properties have experienced problems associated with trespass and vandalism including the harassment of animals by unrestrained dogs, destruction of signs, animal “hazing”, attempted arson, cutting of fences, discharge of fireworks, and vandalism to farm implements. Since the park has apparently been operating for several years without the necessary permit approval from the County, the neighbors have experienced firsthand the “actual” rather than the “potential” impacts to be expected from the granting of the permit for the park. The level and consistency of the evidence in the record from the neighboring property owners indicates a significant problem with animal and human trespassing at the boundaries of the subject property with the properties to the north and west that is attributed to the park users. For purposes of these criteria, the farm use subjected to impacts is the raising of livestock. The farm practice subjected to increased cost and change are those activities associated with providing for the safety and health of the animals, maintenance of the fencing, and the prevention of trespass. The testimony and evidence in the record leads the Planning Director to conclude that the time and energy expended for these practices has increased significantly since the operation of the park has begun. The Director finds that this represents a significant change in farm practice and increase in costs on nearby lands devoted to farm use.

The applicant proposes to minimize these impacts through a combination of security fencing, vegetative plantings, signage, and the provision of parking spaces within the panhandle. ORS 266.410(3) grants the district the power to construct, operate and maintain the park outside the limits of the district. Signage is being destroyed or ignored and appears to be insufficient to control the activity without the use of physical barriers. The existing riparian vegetation along Cedar Creek does not appear to be sufficient to act as a suitable barrier to restrict dogs and humans from entering the neighboring farm parcels. The Planning Director finds that it is feasible to reduce the impacts associated with animal and human trespass to a level that is no longer significant by the measures proposed by the applicant if combined with additional fencing along the western and northern boundaries of the property. In addition to the security fencing proposed for the panhandle, a chain link fence is required to be constructed outside of the riparian corridor on the east side of Cedar Creek to prevent trespass onto taxlots 1500, 1501, 1503, and south of Cedar Creek to prevent trespass northward onto taxlot 1302.

FLOODING

Nearby property owners raise concerns that the bridge development will divert flood waters during a flood event causing impacts to farming in the area. The concerns rely upon a flood study by EGR and Associates (Exhibit 65B) performed for the Levi Landing project that has not received a critical technical review by FEMA and has not been adopted by the Board of Commissioners or FEMA, speculate that the upstream Gossler revetment on the McKenzie River will fail, and bridge scour and debris buildup will cause the bridge to fail and become lodged against another bridge downstream at 66th Street. There is no credible evidence presented regarding the potential failure of the Gossler revetment. The most reliable information in the record regarding flooding impacts that may be associated with the bridge are found in the submittals by Jerome Lane of OBEC Consulting Engineers (Exhibits 3, 70A). The certification provided by the applicant’s engineer states that the bridge will not increase in flood waters during the base flood event. The applicant’s registered professional engineer has reviewed the proposal (Exhibit 70A) and determined that the bridge connections are not likely to fail during a flood event if the bridge is built to current standards of construction; the bridge is not likely to alter the course of flood waters in any significant way; and the single-span, pile-supported bridge is not a scour critical structure.

WATER FOR IRRIGATION

The applicant has applied for water rights to use water from the existing well for irrigation purposes. No issues were raised with regards to availability of water for farm purposes in the area. The applicant must secure the appropriate water rights prior to appropriating the water for use on the property.

INCREASED FIRE HAZARD

There have apparently been incidents of fireworks being discharged in the park although there has been no clear indication in the record of a significant impact to a farm practice resulting from the discharge of fireworks on the property. The McKenzie RFPD has visited the park location and determined that the 22 foot wide easement from Jacob Lane allows adequate access for the fire and rescue apparatus.

TRAFFIC

Concern has been raised by a property owner on the west side of 66th Street north of the panhandle regarding the movement of a livestock trailer on 66th St. Apparently parked cars limited the available width of roadway for passage of the trailer. The applicant's proposal to create parking area within the panhandle access will eliminate the need for people to park within the right-of-way of 66th Street. The record indicates that the largest gathering of individuals occurs when the work party meets on site, numbering around 50 persons. While not specified explicitly in the Lane Code, guidance for the determination of adequate parking spaces can be found in Lane Code 16.250(2) which requires places of assembly to have one maintained parking space for every four seats and 50 percent of the required spaces may be supplied off site. Considering the park as a place of assembly without seats, it appears that the proposed 23 parking spaces would accommodate 92 persons while an additional number of vehicles could be parked on Jacob Lane in the public right-of-way. The Planning Director finds that there is adequate parking available on site to reduce any conflict with farm vehicles to an insignificant level.

Lane Code 16.212(10)(a)

Lane Code 16.212(10)(a)⁵ is applicable only to the siting of dwellings. No dwelling is proposed as part of the park development.

Lane Code 16.212(10)(b) Property Line Setbacks. No structure other than a fence or sign shall be located closer than: (i) 20 feet from the right-of-way of a State road, County road or a local access public road specified in LC Chapter 15; and (ii) 10 feet from all other property lines except as provided below.

The proposed development of the park complies with these setback requirements. 66th Street is a County Road classified as a Rural Local Road with a 50' right-of-way for setback purposes. All proposed structures are located greater than 45 feet from centerline of the road. No structure other than a sign or fence is proposed within 10 feet of any other property line.

⁵ Lane Code 16.212(10)(a) For approval of a use or activity allowed by LC 16.212(4) through (9) above that requires notice and the opportunity for appeal or a hearing, the Approval Authority shall balance the setback requirements of LC 16.212(10)(a) below with the applicable special use approval requirements in LC 16.212(4) through (9) in order to minimize adverse impacts upon nearby farm and forest uses or to assure optimal siting of proposed dwellings to minimize adverse impacts on nearby farm and forest lands. (i) Dwellings to be sited upon tracts located within an area designated by the Department of Fish and Wildlife Habitat Maps as "Major" shall be sited as follows: (aa) Near dwellings on other tracts. (bb) With minimal intrusion into forest areas undeveloped by non-forest uses. (cc) Where possible, when considering LC 16.212(10)(a) (i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU. (ii) Dwellings to be sited upon all other tracts shall be sited as follows: (aa) Where possible, in consideration of the dimensions and topography of the tract, at least 500 feet from adjoining lines of property zoned F-1 and 100 feet from adjoining lines of property zoned F-2 or EFU. (bb) On the least valuable farm or forest areas of the tract or located near dwellings on other tracts.

Lane Code 16.212(10)(c) Riparian Setback Area.

This provision directs the use of Lane Code 16.253(6) to determine the setback requirements for structures within the riparian corridor of a stream designated for protection within the Metro Plan. The project has been reviewed for conformance with these requirements under application PA 99-6068 below. The only structure proposed within the corridor is the bridge across the south fork of Cedar Creek.

Lane Code 16.212(10)(d) Maintenance, Removal and Replacement of Indigenous Vegetation within the Riparian Setback Area. Maintenance, removal and replacement of indigenous vegetation within the riparian setback area designated for riparian vegetation protection by the comprehensive plan must comply with the provisions of LC 16.253(2) or LC 16.253(6), as applicable.

Lane Code 16.253(6) contains the applicable provisions for the vegetation standards within the Metro Plan. With the exception of the bridge, no removal of existing riparian vegetation or permanent alteration by grading, placement of structures, or impervious surfaces is proposed for the park.

2. FLOODPLAIN DEVELOPMENT PERMIT PA 99-6047: Floodplain Development Permit to construct a bridge within the regulatory floodway as provided by Lane Code 16.244(7)(c)

FLOODPLAIN COMBINING ZONE / LC 16.244:

(5) Development Subject to Director Approval. Approval shall be obtained before construction or development begins within any area of special flood hazard. Approval shall be required for all structures, manufactured homes, and "development" as this term is defined in LC 16.090. Application for approval shall be filed with the Department pursuant to LC 14.050.

Lane Code 16.244(7)(c) Floodways. Located within areas of special flood hazard established in LC 16.244(3) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions apply:

(i) Prohibit encroachments, including fill, new construction, substantial improvements and other development unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

LC 16.244(5) requires the applicant to obtain approval from the Planning Director for the proposed bridge crossing over the south fork of Cedar Creek within the panhandle leading from the park area to 66th St. Since FEMA has designated a floodway along Cedar Creek on the adopted FIRM Panels 41039C1166F and 41039C1167F effective June 2, 1999, the applicant must demonstrate that the development of the bridge will not cause a rise in flood waters during the base flood event, commonly referred to as the 100-year flood.

As part of the National Flood Insurance Program, the County relies on flood studies reviewed and adopted by FEMA for implementation of the program. Flood Studies for Lane County are required by Lane Code 16.244(3)⁶ to be adopted by Board Order and incorporated into Lane Manual.⁷ To address the

⁶ Lane Code 16.244(3) ... Flood hazard areas shall be adopted by Board Order, made a part of Lane Manual (LM 11.020) and filed in the office of the Department. Such studies shall form the basis for the administration and implementation of this section.

⁷ Lane Manual 11.020 Flood Hazard Studies. The following is a list of flood hazard information studies which will form the basis for the administration and implementation of the Flood Hazard Areas requirements of LC 11.500 and the Floodplain Combining District/Zone requirements of LC 10.271 and LC 16.244.

“no-rise” certification requirement, the applicant has provided a hydraulic analysis of the flood hazard area performed by an Oregon registered professional engineer, Patrick S. Freeman, P.E. of OBEC Consulting Engineers. Based upon the use of the adopted flood data obtained from Michael Baker, Map Coordination Contractor for the Federal Emergency Management Agency (FEMA), the engineer has certified that the proposed bridge will not result in any increase in flood levels during the occurrence of the base flood discharge provided that the minimum soffit elevation of the 40’ single span bridge is at or above 503.76’ mean sea level.

Additional issues were raised during the course of the review for this permit application. These issues include: accuracy of existing flood study, impact to existing downstream bridge crossing, failure of nearby revetment, and flood erosion (scouring) at bridge.

ACCURACY OF FLOOD STUDY

The opponents to the project have submitted evidence that the existing flood study may be incorrect. The opponents have entered into the record a report by EGR & Associates entitled a “Storm Drainage Study, Levi Landing 1st Addition” (Exhibit 65B) that assesses the flooding potential in the area. The conclusion of the study found on page 8 of 17 is that the resulting change to base flood elevations on the Levi Landing Site “varies from nearly no net change on the eastern portion of the site to an approximate one foot increase on the western side of the site.” Although the conclusions of the study illustrate a potential error in the study, the study has not been adopted by FEMA or Lane County for use in floodplain management as required by Lane Code 16.244(3). ORS 215.427(3)(a) requires the application to be reviewed under the standards and criteria in effect on the date that the application was submitted. In addition, there has not been any evidence or analysis submitted by a professional engineer that applies the information in the Levi Landing study to the proposed bridge project. The opponents issue regarding the active floodway of the McKenzie River is also addressed in a similar manner. The subject property is not located within the adopted floodway boundaries of the McKenzie River, therefore no floodway analysis of the McKenzie River is required under Lane Code 16.244(7)(c). There also is no credible supporting data in the record that allows the consideration of a potential dike failure upstream from the subject property. The Planning Director finds that the certification provided by the applicant’s engineer adequately addresses the relevant criteria for approval based upon the adopted flood study in Lane Manual and is the most credible and reliable information in the record.

SCOUR EFFECTS

The opponents maintain that the proposed bridge structure will be subject to scour during a flood event. They have submitted a Bridge Scour Assessment prepared for ODOT for the bridge located on 66th St. approximately .18 miles from Thurston Road which identifies that bridge as scour critical. The opponents maintain that the proposed Ruff Park Bridge will fail and drift downstream blocking the bridge opening. This concern however is not supported by any technical evidence. The applicant’s engineer from OBEC has reviewed the concerns and determined that the bridge is not a scour critical structure and the bridge connections are not likely to fail. The Planning Director finds the engineer’s statements to be credible in support a finding that scouring of the bridge will not contribute to increased flood levels in the area.

(1) Flood Information Library. - Documented High Water Marks - Flood Photos Department of Public Works, Land Management Division, Lane County, Oregon.

(2) Flood Insurance Study Lane County, Oregon and Incorporated Areas Volumes 1, 2, and 3 June 2, 1999 Federal Emergency Management Agency Community Number - 415591

(3) Flood Insurance Rate Maps (FIRM) Lane County, Oregon and Incorporated Areas Effective Date: June 2, 1999 Panel Numbers...1166F, 1167F, ...Federal Emergency Management Agency (Revised by Order No. 99-6-30-7, Effective 6.30.99)

Lane Code 16.244(7)(c)(iii) If LC 16.244(7)(c)(i) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of LC 16.244(7)(b).

The applicable flood hazard reduction provisions of Lane Code 16.244(7)(b)(ii), (iv), (v), and (vii) apply to the development of the restrooms. It is feasible to meet these requirements by the appropriate design and construction of the building as regulated by the Building Permit process. These standards have been included in the conditions of approval.

The applicable flood hazard reduction provision of Lane Code 16.244(7)(b)(viii)(bb) applies to the access road. The provision states: "No road surface of any new street, road or access road shall be at an elevation less than one foot below the base flood height." The opponents maintain that the elevation of the road surface within the panhandle is less than one foot below the base flood height. The applicant has had a survey performed by Pacific Surveying, Inc. and determined that the elevation of the panhandle access road is not less than one foot below the base flood elevation as calculated based upon the current adopted flood study maps. The opponent's objections are not supported by any technical survey data. The opponents base their conclusions on the above-referenced flood study by EGR and Associates which has not been adopted by FEMA or Lane County for floodplain management.

3. RIPARIAN SETBACK MODIFICATION PA 99-6048: Riparian Setback Modification to construct a bridge to a public park as provided by Lane Code 16.253(6)

Application was made for the bridge development in July of 1999. The provisions of Lane Code 16.212(8)(c)⁸ applied only to streams designated for protection in the Rural Comprehensive Plan. The subject property is not located within the boundary of the Rural Comprehensive Plan but rather is located within the Eugene-Springfield Metropolitan General Plan Boundary (Metro Plan) where no setbacks restrictions applied. The setback provisions for streams within the Metro Plan were adopted into the Lane Code 16.212(10)(c) by Ordinance 5-04 effective July 1, 2004 and subsequent to the submittal of the application for approval of the bridge. As directed by ORS 215.427(3)(a), approval or denial of the application must be based upon the standards applicable at the time of application.⁹ The application was submitted to Lane County on July 27, 1999 and deemed complete by letter dated August 27, 1999. Both the Rural Comprehensive Plan and the Metro Plan were acknowledged at the time of application, therefore the application for a riparian setback modification was unnecessary. The application is dismissed.

The following analysis is provided in the event that, upon appeal, a subsequent decision should determine that the bridge project is subject to the July 1, 2004 provisions of Lane Code 16.212(10)(c)¹⁰ which refers the setback determination to Lane Code 16.253(6) below.

⁸ LC 16.212(8)(c) Class I Stream Riparian Setback Area. The riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) are met.

⁹ ORS 215.427(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

¹⁰ Lane Code 16.212(10)(c) Riparian Setback Area. Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6)...

Lane Code 16.253(6) Riparian Setback Regulations for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries.

- (a) Setback Area.** For property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, the riparian setback area shall be as follows:
- (ii) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, as designated for riparian vegetation protection by the Eugene-Springfield Metropolitan Area General Plan, the riparian corridor boundary shall be 50 feet from the top of bank.**

The stream flow for Cedar Creek is less than 1000 cfs, the stream is located between the Metro Plan Boundary and the Urban Growth Boundary of Springfield, and the stream is designated for riparian vegetation protection. The boundary of the riparian corridor is 50 feet from the top of bank. The proposed bridge is located within 50 feet of the top of bank.

- (b) Removal of Vegetation Within the Riparian Setback Area.** The standards of LC 16.253(2) above, shall apply to the maintenance, removal, destruction and replacement of indigenous vegetation within the riparian setback area along streams designated for riparian vegetation protection by the Eugene-Springfield Metropolitan Area General Plan for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries. The permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces is prohibited, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:
- (i) Streets, roads, and paths;**
(ii) Drainage facilities, utilities, and irrigation pumps;
(iii) Water-related and water-dependent uses; and
(iv) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

The applicant has taken the position in the application submittal that the bridge falls within the exceptions to the setback requirement granted to "streets, roads, and paths." While no definition of these terms is contained with Lane Code Chapter 16, there is a definition of "road" within Lane Code 15.010(35)(c) which includes "bridges". Lane Code 16.095 provides the linkage to road provisions found in LC Chapter 15: "Development subject to the provisions of this chapter shall comply with LC Chapter 15, Roads." The interpretation of the LC Chapter 16 provision to include "bridges" as one of the items excepted out from the setback requirement is consistent with LC Chapter 15. The limitation of width of the bridge to 8 feet to allow the passage of a single vehicle and the alignment of the bridge perpendicular to the stream flow is in conformance with the requirement for the facility to be designed and constructed to minimize intrusion into the riparian area. A narrower bridge would not allow the passage of a vehicle. Because the bridge is considered to fall within the category of uses that are exempt from the setback requirements, the application for Riparian Setback Modification is not necessary. The application is dismissed.

EXHIBIT A

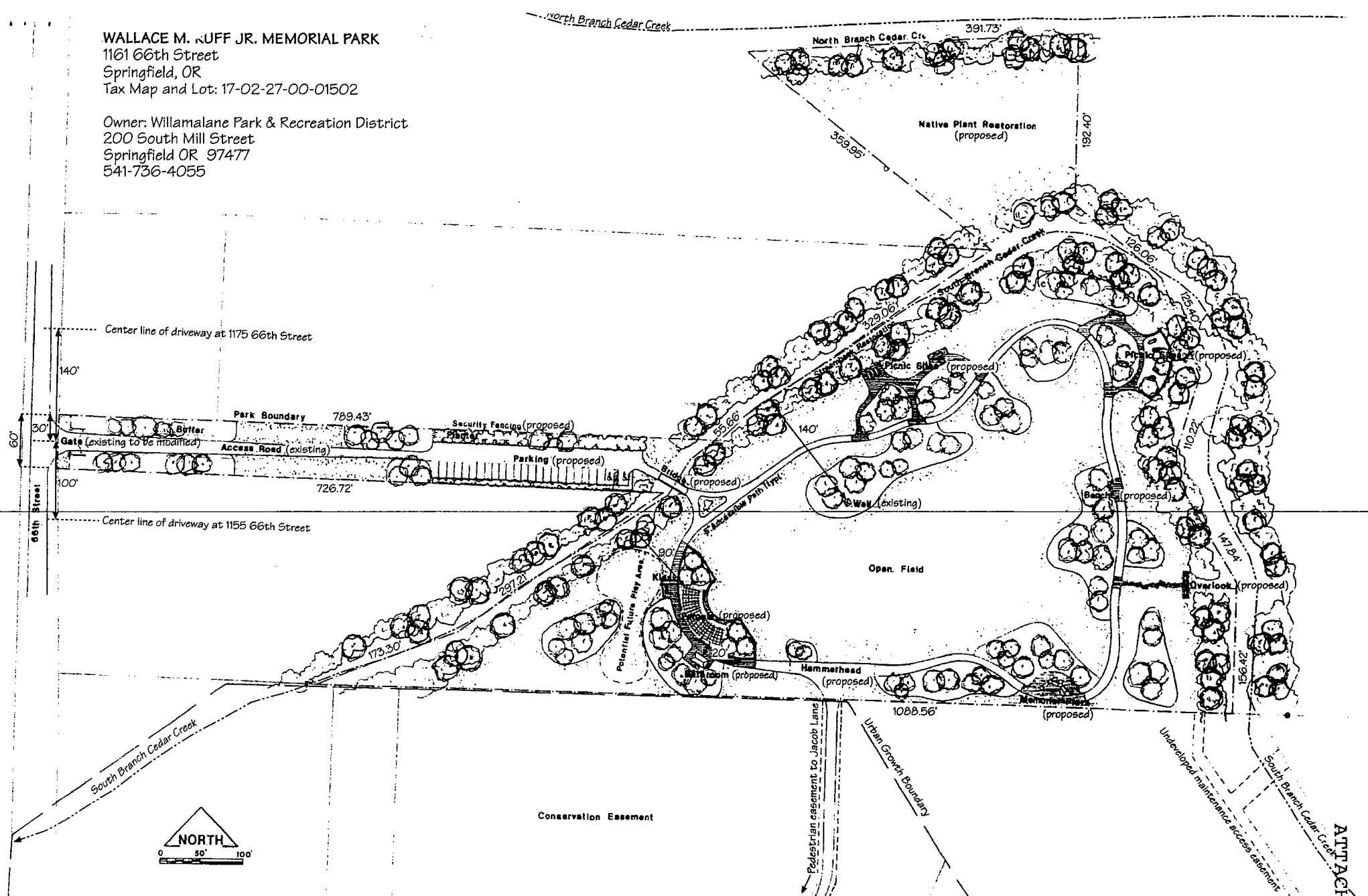
CONDITIONS OF APPROVAL

1. The conditions of approval must be implemented (i.e. substantial construction completed) within two years from the date that this approval becomes final.
2. The improvement locations and operation of the park shall be as represented by the applicant in the written submittal and approved plot plan unless modified by the Planning Director. Any significant modification may be subject to new notice and opportunity to comment, and may require an application to Modify Planning Director Conditions of Approval with the required processing fee at the discretion of the Planning Director.
3. The bridge, pergola, and restrooms shall comply with all applicable Lane County Building Program and On-Site Sewage Program requirements.
4. The restrooms shall be setback from the property line a minimum distance of 10 feet.
5. Development of the restrooms shall comply with the floodplain requirements of Lane Code 16.244(7)(b).
6. The 8' x 40' single span prefabricated timber bridge shall maintain a minimum soffit elevation of 503.76. Certification of the minimum soffit elevation by an Oregon registered professional Land Surveyor or Engineer shall be provided to the Land Management Division prior to final building inspection.
7. The applicant shall obtain water rights from the Oregon Department of Water Resources to appropriate irrigation water. Documentation of the water right shall be submitted to the Land Management Division.
8. The applicant shall obtain a Facility Permit from Lane County Right-of-Way Management, for all necessary improvements associated with access to 66th St.. The applicant shall construct any driveway improvements required by the approved Facility Permits.
9. The applicant shall develop and maintain 23 parking spaces in the location identified on the approved plot plan dated September 27, 2006.
10. The applicant shall construct security fencing (chain link or field fencing) outside of the 50' riparian corridor on the east side of Cedar Creek to prevent trespass onto taxlots 1500, 1501, 1503, and south of Cedar Creek to prevent trespass northward onto taxlot 1302. The fencing shall be adequate to restrict animals to the subject property. A solid fence is not authorized.
11. The applicant shall construct security fencing (chain link or field fencing) on the north and south property lines forming the access panhandle to prevent trespass onto taxlots 1501, 1503, and 1504. The fencing shall be adequate to restrict animals to the subject property.
12. The applicant shall obtain all necessary permits from the Division of State Lands and Army Corps of Engineers for development of the bridge.

13. Issuance of this approval does not ensure the applicant's proposed actions comply with the federal Endangered Species Act (ESA), nor does it release the applicant from responsibilities under the provisions of the ESA.

1161 66th Street
Springfield, OR
Tax Map and Lot: 17-02-27-00-01502

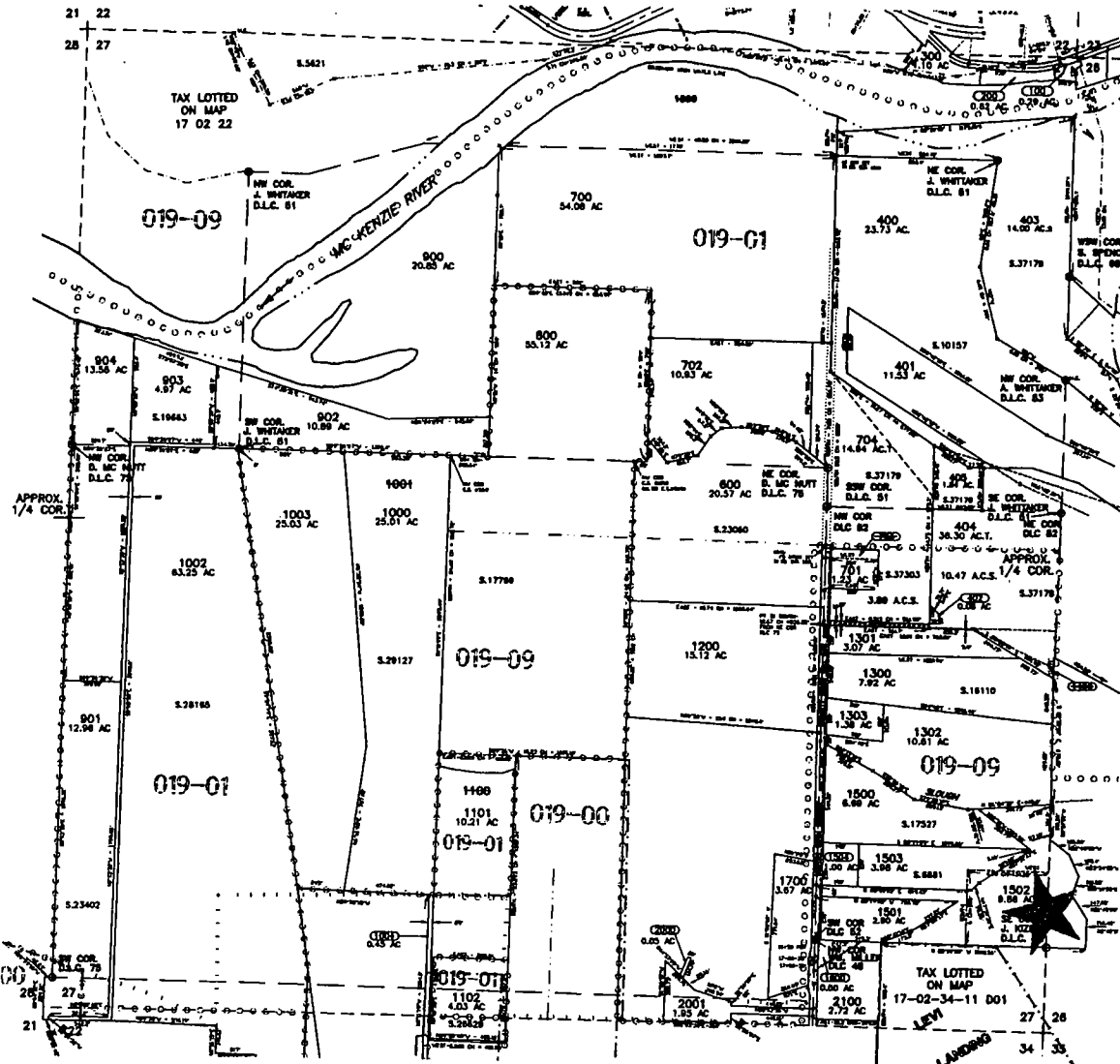
Owner: Willamalane Park & Recreation District
200 South Mill Street
Springfield OR 97477
541-736-4055



DATE	REVISION	APPROVED
10/1/91	REVISED TO SHOW TAX LOTS	10/1/91
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17 02 27
SPRINGFIELD
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SEE MAP 17 02 22



CANCELLED
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1001
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SPRINGFIELD