



## MULTNOMAH COUNTY OREGON

### LAND USE AND TRANSPORTATION PROGRAM

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# Decision of the Hearings Officer

December 21, 2005

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## Conditional Use Permit for a Private Park, Major Variance, Design Review and Significant Environmental Concern Permit

Case File: T3-05-007

Hearing: A public hearing on these applications was held October 14, 2005, before Hearings Officer Christine Cook. The applicant, the applicants' representatives and county staff submitted documentary and oral testimony into the record, which remained open until December 12, 2005.

Hearings Officer Disclosures: The hearings officer disclosed that she had had no *ex parte* contacts with any party regarding the substance of the applications, that she had no financial or other conflicting interest in the outcome of the decision, that she had not made a site visit, and that she thought that she could render a fair decision based on the criteria. There was no objection to the authority of this hearings officer.

Proposal: Establish a private park as a venue for outdoor gatherings, including weddings and receptions. Significant Environmental Concern permit for development in the Sandy River Scenic Waterway overlay zone, Design Review, and a Major Variance to reduce the access road width from 20 feet to 12 feet.

Location: 37525 SE Gordon Creek Road  
TL 700, Sec 11D, T1S, R4E, W.M.  
Tax Account #R99411-0030

Applicant/Owner: Roger & Penelope Dorsey

Site Size: Approx. 21.7 acres

Present Zoning: CFU-4, SEC, Slope Hazard

Approval Criteria: Multnomah County Code (MCC): MCC 35.0005- Definitions: MCC 35.2230 CFU-4 Conditional Uses; MCC 35.2245- Use Compatibility Standards; MCC 35.2305- Development Standards

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for Dwellings and Structures; MCC 35.6000-.6010 Community Service Use Approval Criteria; MCC 35.2275 Lot of Record; MCC 35.7000-.7065- Design Review; MCC 35.4100-.4220 Off Street Parking and Loading; MCC 35.4500-4555 SEC Permit; MCC 35.7600-.7605 Variances; MC Comprehensive Plan Policies 11, 14, 16, 19 37 & 38

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### (Pre-Hearing) Staff Recommendation:

Staff recommended that all four permit applications be denied for failure to comply with applicable criteria listed immediately below:

#### 1. Community Service Use:

- MCC 35.2230(D)(1) - The applicant has not demonstrated that the subject use is a park.
- MCC 35.2305(C) - The applicant has not demonstrated that the existing domestic use well has been approved by the Water Resources Board for use [by] a commercial park

#### 2. Design Review:

- MCC 35.7040, MCC 35.7050 - The applicant has not submitted a final design review plan. As such, there is not sufficient evidence to support findings of compliance with the design review criteria.

#### 3. Major Variance:

- MCC 35.7600(A)(2) - The applicant has not demonstrated that the zoning requirement for which a variance is sought would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district. As such, there is insufficient evidence to support granting the variance.

#### 4. Significant Environmental Concern:

- MCC 35.4555(L) - The applicant has not provided any information regarding the proposed structures, therefore there is insufficient evidence in the record to support findings of compliance with this criterion.

#### 5. Comprehensive Plan Policies

### Hearings Officer's Decision:

**The applications for permits for Community Service Use, Design Review, Major Variance and Significant Environmental Concern in order to develop and operate a private park for outdoor gatherings and events, including weddings, are approved, based upon the evidence in the record and applicable law, pursuant to the following findings and subject to the following conditions of approval.**

### **Conditions of Approval:**

1. This approval is based on the applicants' submitted written narrative(s) and site plan, and the other documents and materials in the county's record of this decision. No development activities shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with this decision and the limitations of approval described herein. (MCC 35.6005(A))
2. Events at the private park that are conducted pursuant to these permits shall occur only during the months of June, July, and August. The park's hours of operation shall conclude no later than 10 p.m. Events shall be conducted as described in the applicants' narrative and testimony: events will be scheduled and shall occur primarily on Friday evenings, Saturdays, and Sundays, although site visits by prospective customers and rehearsals may routinely occur on other days; there shall be no more than 150 persons at an event; there shall be no food preparation or disposal on site; music may be provided only within the noise limitations set forth in condition of approval 11; alcohol use shall be limited to a "champagne toast" in connection with a wedding celebration; no event activities shall occur and no structures shall be constructed except in locations on the property described herein. (MCC 35.6005(A))
3. The applicant shall submit a statement signed by a representative of Fire District 14 that suitable equipment has been installed and will allow the on-site pond to be used as fire fighting water supply. This statement shall be submitted prior to the first event being conducted on-site or within 90 days of the date this decision becomes final, whichever happens first. (MCC 35.2245(A)(2))
4. The applicant shall have on-site parking and traffic attendants at every event to supervise parking and to guide all event-related traffic entering and leaving the site (MCC 35.4180(A)(2)) in the normal course of events at the park, as well as in the case of an emergency. (MCC 35.2245(A)(2), 35.6010(F))
5. The applicant shall submit a copy of the previously signed and recorded farm and forest covenant or shall record a new farm and forest covenant on the form provided by the county, a copy of which is included as Exhibit S9. (MCC 35.2245(A)(3))
6. The applicant shall submit of a revised site plan showing the proposed fire break locations surrounding the newly proposed structures in accordance with the provisions of MCC 35.2305(A)(5)(c). (MCC 35.2305(A)(5)(c)).
7. The fire breaks surrounding the location of the tent canopy structure shall be installed prior to the first event being conducted on-site. (MCC 35.2305(A)(5)(c))
8. The applicant shall obtain a building permit for the canopy structure prior to the installation of the canopy structure. The canopy structure shall be similar to that shown in the post-hearing exhibit H15. (MCC 35.2305(C)).
9. The applicant must construct the proposed parking spaces prior to the commencement of operation of the park. (MCC 35.4135)

10. The use of the on-site domestic water supply shall be limited to the domicile and associated residential use of the property. No water from the existing on-site water supply shall be served to members of the public as part of the proposed park nor shall the on-site domestic water supply be used for any other potable water use (such as dish washing) related to the proposed park. (MCC 35.2305(C)).
11. The use of any loudspeaker or public address system at the proposed event site shall be limited to a maximum of 57 dBA measured at 65 feet from the loudspeaker. (MCC 35.6010(A))
12. Prior to any subsequent approval (such as Design Review or a Hillside Development Permit) the applicant shall submit a revised site plan which shows the required improvements to the access driveway, including (1) a 20-foot wide, paved drive extension, 50 feet in length from the paved edge of Gordon Creek Road; (2) a 93-foot wide and 10-foot long driveway apron at the paved edge of the road; and (3) a paved pull-out area at least 20 feet wide and 40 feet long located midway in the 450-foot long driveway segment between the existing turnout area closest to the parking area and the next downhill, existing turnout area. The revised site plan shall not include an overflow parking area. (MCC 35.2305(A)(4))
13. The applicant shall submit a final design review plan for the proposed improvements. (MCC 35.6005) The applicant shall receive approval of the final plan, without substantial deviation from the plans, documentation, and other testimony already submitted, before the approval of or concurrent with the approval of the required Hillside Development Permit or Grading and Erosion Control Permit.
14. The applicant shall obtain a Hillside Development Permit or a Grading and Erosion Control Permit, whichever is applicable, prior to initiation of earth disturbing activities. (MCC 35.5505, 35.5510, 29.336)
15. The bathroom facilities in the existing residence shall not be made available for use by park guests other than the wedding party at wedding events. (Policy 37, MCC 35.6010(D))
16. On-site portable toilet facilities (porta-potties) shall be provided by the applicant for every event, and shall be similar to those shown in the applicant's exhibit H14. (Policy 37, MCC 35.6010(D)).
17. No parking shall be installed over the existing drainfield nor shall any vehicles be driven over the drainfield. (Policy 37, MCC 35.6010(D))
18. The application for an Hillside Development or Grading and Erosion Control permit, whichever applies, shall clearly show the location and dimensions of the septic tank and sanitary drainfield to ensure that the driveway and parking improvements will not adversely affect the existing drainfield.
19. At least eight weeks prior to the commencement of operation of the park, the applicant shall contact the Multnomah County Sign Shop and pay for the fabrication and installation of a "Driveway Entering Roadway Ahead" warning sign on southbound Gordon Creek Road prior to

the curve just north of the driveway. The sign must be in place prior to commencement of the use. [MCC 35.6010(F)]

20. The applicant must construct the approved parking spaces prior to the commencement of operation of the park. (MCC 35.4135)
21. Prior to obtaining zoning approval of a building permit for the canopy and the commencement of park operation, the applicant shall improve the access drive from Gordon Creek Road to the area where events will be held, as depicted and described in the submittal by applicants' attorney Carrie A. Richer, dated December 2, 2005 by widening and extending the paved driveway at its entrance to Gordon Creek Road, and by constructing a paved pull-out area at least 20 feet wide and at least 40 feet long at approximately the midpoint of the 450-foot long segment of the drive that is located between existing turnaround areas.
22. Prior to obtaining zoning approval of a building permit for the canopy and the commencement of park operations, the applicant shall obtain confirmation from the Oregon Water Resources Department stating that the existing water supply can legally be used as part of a commercial use.

### **Findings of Fact, Analysis and Conclusions of Law:**

**Note:** Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold font**. Written responses by the applicant, demonstrating compliance with code criteria, are preceded by the notation "Applicant". Planning staff comments and analysis may follow applicant responses. Where this occurs, the notation "Staff" precedes such comments. Findings, analysis, and conclusions by the Hearings Officer are preceded by the notation "Hearings Officer." Except as explicitly noted, the Hearings Officer adopts and incorporates as findings and analysis the Staff comments and analysis that are set forth in this decision. For the sake of clarity, certain comments from the Staff Report dated September 26, 2005, may be omitted from this decision.

#### **1. Project Description:**

**Applicant:** The property owners wish to use the site as a venue for weddings and receptions, for a fee. Groups and activities would be limited, as follows:

- Maximum of guests will be limited by available parking. Between 55 and 60 parking spaces will be located along a new loop and extension of the driveway.
- No food preparation on site; food and beverages provided by a catering service
- Use of the landscaped grounds in the vicinity of the existing residence only (no use of existing buildings and no new buildings)
- No music provided by bands to minimize noise; background music may be provided by recording or by a pianist, guitar, string quartet, or similar soft (not loud) music source.
- Alcohol use limited to "champagne toast"
- Hours of operation: primarily events will occur on Friday evenings, Saturday and Sunday, until 10 PM, with rehearsals, site visits by prospective brides, and other activities throughout the week.

The applicant initially thought to prohibit alcohol, but recognized that a "champagne toast" is frequently an important part of a wedding celebration. If authorized, amounts of alcohol could be limited by the food service provider.

No new buildings would be required or proposed, as all activities would take place outdoors. A canopy-type tent might be provided for weather protection, on an existing concrete pad northeast of the residence that was formerly used as a sports court. The canopy will not be permanently installed, and will be removed and stored on the property for the off-season. Members of the wedding party would use the basement bedrooms of the residence as a dressing room.

Parking for approximately 55 to 60 vehicles will be provided alongside the paved driveway, as existing and as extended to form a one-way loop, and an overflow area north of the residence. Spaces will be angled in order to maintain a one-way traffic flow. No specific parking area with aisles or standard parking lot layout is anticipated for the occasional use. All guests will be likely to arrive and leave at approximately the same time, facilitating the one-way traffic direction. The paved driveway will have widened and graveled shoulders to accommodate vehicle parking. Graveled shoulders will terminate with a railroad tie barrier, to define and limit the parking area. No other changes are proposed to the driveway, which will function as a one way access in-bound for arriving guests, then one way out-bound for departing guests. Car-pooling will be encouraged to minimize the number of vehicles on the site and to reduce vehicle miles traveled within the metropolitan area.

Food and beverages would be provided by a catering service. No food preparation would occur on the site, beyond final arrangements prior to serving.

No water would be made available for the use from the on-site water supply that presently serves domestic and irrigation needs for the residence and grounds. Sanitary facilities would be provided by portable units.

The proposal requests designation of the site as a private park, so that the property owners may use the site as a venue for weddings and receptions, for a fee. The applicant limited the scope of the use to minimize any possibility of impacts to the site itself or to adjacent properties or to other properties and uses in the vicinity. On the site, activities are proposed to be restricted to the landscaped area in the vicinity of the residence and will not disturb the forested remainder of the property, except as needed to provide required parking area. The applicant intends to minimize any potential impacts on adjacent properties and uses on surrounding properties by maintaining a low-key use, with limited hours, and restrictions on number of vehicles.

Following discussions with the staff, the applicant wishes to identify additional uses that could occur on the site that would be similar in nature to outdoor weddings. Such uses could include group gatherings (e. g., picnics for family reunions or business retreats) or group activities (e. g. bird watching). All proposed uses would be limited by the hours and number of vehicles allowed on the site. Group gatherings would be limited to the landscaped area around the residence; some group activities might involve use of the surrounding forested area, though no formal pathways are envisioned.

**Staff:** The applicant has proposed a private park for use as a wedding venue. The applicant has indicated that additional uses such as family picnics could be included but has provided no specific

information on how the park would incorporate these uses. The applicant has described the proposal as follows:

*6-17-05: To use the site as a private park, specifically as a venue for weddings and receptions, with a variance to the required width of a driveway between a public street and parking area.*

*7-14-05: To use the site as a private park, specifically as a venue for weddings and receptions, with a variance to the required width of a driveway between a public street and parking area.*

*7-29-05: To use the site as a private park, specifically as a venue for weddings and receptions, with a variance to the required width of a driveway between a public street and parking area.*

*9-6-05: To use the site as a private park, specifically as a venue for weddings and receptions and similar group events, with a variance to the required width of a driveway between a public street and parking area.*

The findings contained in this report are based on the applicant's initial proposal for a site for weddings and receptions. While the applicant has stated additional uses could be made of the property, no tangible evidence has been submitted of how the proposed park would be used for any purpose other than weddings and wedding receptions. The applicant may supplement the information in the record at the hearing to include additional uses. Without this information, staff will limit the analysis to the wedding and reception aspects as proposed by the applicant.

**Hearings Officer:** The applicants' representative Leslie Ann Hauer testified at the public hearing that events other than weddings to be held at the park would be functionally equivalent to weddings. By this, I understand Ms. Hauer to mean that other events will be limited in the same manner as weddings at the park: including, without limitation, the number of guests, hours and dates of events, methods by which food and drink can be provided, use of portable sanitary facilities only, acceptable noise levels, location of event activities and parking, and in all other respects relevant to the impacts that events will have on the forestland on the subject property and on surrounding resource lands. The applicant has explained that these gatherings might include birdwatching, sports and games on the existing sports court, family reunions, group picnics and retreats. Based on these understandings and explanations, the analysis and approvals rendered in this decision do encompass these other gatherings and events, subject to all the limitations and conditions herein

**Staff:** One detail of the proposal that is not included in the applicant's description is the use of the basement floor of the existing dwelling for the wedding party. This will include the use of the existing residential bathrooms for the wedding preparation activities.

The approximately 21 acre property currently contains a lengthy driveway which also provides access to the parcel to the East, a single family home, lawn and landscaped areas as well as a substantial amount of forest. An aerial photo of the property taken in 2002 is included as Exhibit S1. With the exception of the 8 acre parcel directly to the east of the subject property, all contiguous properties are owned by Metro for use as open space.

The subject property is zoned Commercial Forest Use-4 (CFU-4) with the Slope Hazard Overlay covering the entire property. Additionally, the western portion of the property is in the Significant Environmental Concern (SEC) Overlay. Two zoning maps for the subject property are included as Exhibits S10 and S11 which show the SEC and Slope Hazard overlay designations respectively.

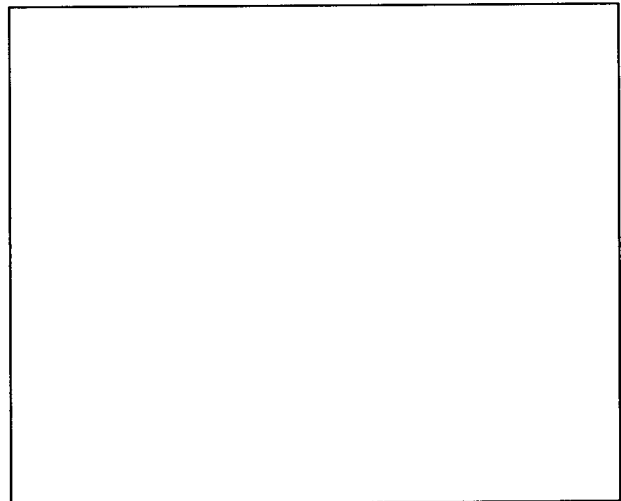
The subject request requires a Community Service Conditional Use Permit, Design Review, and a Significant Environmental Concern permit. Additionally, the applicant is requesting a major variance to allow the use of their existing driveway without modification. The driveway is currently 12 feet wide and approximately 1,600 feet long with occasional turn-outs as shown on the applicant's site plan included as Exhibit A1. The current standard for access to a Community Service Use is 20 feet in width (MCC 35.4170(A)).

### Site and Vicinity Characteristics

**Applicant:** The site is located east of Gordon Creek Road and the Sandy River, adjacent to Oxbow Park.

The residence on the site is located approximately 1,000 ("as the crow flies") from SE Gordon Creek Road. The paved driveway is approximately 1,600 feet long, varying in width from 12 to 20 feet, with three 20 foot wide sections at corners. The house is 200 feet above the road elevation, and is not visible from the Gordon Creek Road or from surrounding properties or the Sandy River, due to grade changes and heavy vegetation.

### **VICINITY MAP**



The site is heavily wooded, except for the immediate vicinity of the residence, which includes a pond, lawn, and ornamental landscaping. Around the residence the site is comparatively level, however much of the site is moderately to steeply sloped. The residence is approximately 200 feet above the elevation of Gordon Creek Road.

Adjacent property is owned by Metro, as part of the "green space" program or is part of Oxbow Park.

Traffic on Gordon Creek Road is relatively light, with about 1000 daily trips (approximately half northbound, half southbound) according to Multnomah County traffic count information.

**Staff:** The subject parcel lies within the Commercial Forest Use- 4 (CFU-4), Significant Environmental Concern (SEC), and Slope Hazard zones of the East of Sandy River Rural Area Plan. The properties fronting Gordon Creek Road to the south contain dwellings as does the property directly to the east of the subject lot. The remainder of the surrounding properties are undeveloped forest land.



Gordon Creek Road is designated as a local street in the County's Transportation System Plan.

**3        Administration and Procedures:**

**3.1      Proof Of Ownership**

**MCC 37.0550 Initiation of Action**

**Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser.**

**Staff:** Multnomah County Assessment and Taxation records show Roger and Penelope J. Dorsey as the owners of the subject property (Exhibit S6). Both Roger and Penelope Dorsey signed the application form authorizing this application.

**Hearings Officer:** Criterion met.

**3.2      Type III Public Noticing Requirements**

**3.2.1      MCC 37.0620 Hearings Notice**

**At least 20 days prior to the hearing, the County shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any County-recognized neighborhood association or identified agency whose territory includes the subject property. The County shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The County shall also publish the notice in a newspaper of general circulation within the County at least 20 days prior to the hearing.**

**Staff:** A Notice of Hearing was mailed to the applicant, property owner, and property owners within 750 feet of the subject property on September 23, 2005. A Notice of Hearing was published in the Oregonian on September 23, 2005.

**Hearings Officer:** Criteria met.

**3.2.2      MCC 37.0630 Posting Notice Requirements**

**MCC 37.0630(A) The County shall supply all of the notices which the applicant is required to post on the subject property, and shall specify the dates the notices are to be posted.**

**MCC 37.0630(B) The applicant must place the notice along the frontage of the subject property. If a property's frontage exceeds 300 feet, the applicant shall post one copy of the notice for each 300 feet or fraction thereof, not to exceed four signs.**

**Notices shall be posted within 10 feet of the right of way and shall be clearly visible to pedestrians and motorists. To the extent practicable, all signs shall be equally spaced. Notices shall not be posted within the public right of way nor on trees. The applicant shall remove all signs within 10 days following the event announced in the notice.**

**Staff:** Notices to be posted on the subject property were provided to the applicant on September 30, 2005, along with instructions on the dates the notices are to be posted and their spacing along the property frontage (Exhibit S3). For the subject property, one notice is to be posted because the property frontage along SE Gordon Creek Road is approximately 50 feet.

**Hearings Officer:** Criterion met.

### **3.3 MCC 37.0560 Code Compliance and Applications**

**Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.**

**Staff:** There are no known land use violations on the property. The existing residence received a building permit on May 17, 1988. (Exhibit S4).

**Hearings Officer:** Criterion met.

## **4 The Subject Property is a Lot of Record pursuant to MCC 35.0005(L)(13) and MCC 35.2275**

### **4.1 MCC 35.0005 Definitions**

#### **MCC 35.0005(L)**

**(13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.**

**(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.**

**(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:**

- 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
- 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**
- 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or**
- 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
- 5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

**(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.**

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**
- 2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

**Staff:** The existing configuration of the subject property was created pursuant to PLA 8-97, which was approved on September 22, 1997. The Property Line Adjustment was recorded with the County in December 1997 (Exhibit S5). Thus, the subject property meets the definition of a Lot of Record under 35.0005(L)(13)(b)(5).

**Hearings Officer:** The subject property is a Lot of Record pursuant to these criteria.

**4.2 MCC 35.2275 CFU-4, Lot of Record**

**MCC 35.2275(A) In addition to the *Lot of Record* definition standards in MCC 35.0005, for the purposes of this district a Lot of Record is either:**

- (1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or**
- (2) A group of contiguous parcels or lots:**

(a) Which were held under the *same ownership* on February 20, 1990;  
and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line, or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

\* \* \*

**Staff:** Based on Multnomah County Assessment and Taxation Records for 1989 and 1990, the subject property was not contiguous to any other parcel or lot under the same ownership on February 20, 1990.

**Hearings Officer:** The subject property is a Lot of Record pursuant to all criteria applicable to these proposals.

- 4.3        **MCC 35.2275(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 35.2290, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**Staff:** The subject property is 21.7 acres in size; less than the 80-acre minimum lot size for new parcels. This Staff Report reviews compliance of the proposed private park with the applicable requirements of this use in a CFU-4 district. See findings in Sections 5, 6, 7 and 8 for findings regarding the CFU-4 district requirements.

5.        **Application for a Private Park as a Community Service Conditional Use in the CFU-4 District.**

5.1        § 35.2230    **CONDITIONAL USES**

**The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:**

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**(D) The following Community Service Uses pursuant to the provisions of MCC 35.2245, 35.2305, 35.6000 through 35.6010, and 35.6100 through 35.6230.**

**Staff:** Of the standards listed above, MCC 35.2245, 35.2305, and 35.6010 are applicable to the subject request. Findings related to each of these standards are found in Sections 6, 7, and 8 respectively.

5.2 (1) **Private park and private campground.** In addition to the approval standards listed in MCC 35.2230(D) above, a private campground shall be subject to the following:

(a) Except on a lot or parcel contiguous to a lake or reservoir, the campground shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4.

(b) The campground shall be an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes.

(c) The campground is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

(d) The campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.

(e) Campsites may be occupied by a tent, travel trailer or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(f) The campground shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

**Applicant (6-17-05):** The application proposes use of the site for an outdoor wedding venue, which appears to be within the broad range of uses included in a "park."<sup>4</sup> No requirement that a park be public is specified in MCC or ORS. No merchandise would be sold on the premises. Noise would be limited to background music accompanying the wedding ceremony and celebration, and a condition of approval could require limitations on noise be included with the contract for use of the site. No live band music likely to create excessive noise would be allowed. An outdoor wedding would not be expected to create odor, smoke, gases, fallout, vibration, heat or glare.

<sup>4</sup> The meaning of the term "Private park" is a key issue in *Utsey vs. Coos County*, LUBA No. 2000-006. LUBA concluded that the term "park" was sufficiently broad to include a variety of uses, was not limited to "public" ownership, and that because uses like schools, churches and golf courses were also listed in ORS 215.283(2), a use involving a gathering of people was not necessarily inconsistent with or too intense to be considered a park.

**Applicant (7-14-05):** The proposal requests designation of the site as a private park, so that the property owners may use the site as a venue for weddings and receptions, for a

5.3 **Is the proposed wedding venue a “park”?**

**Staff:** *Please note that the applicant’s narratives as submitted contained numerous quotations from state law and case law. Not all of these quotations have been reproduced here, though the references have been left intact.*

**Applicant (7-14-05):** “Park” is listed as a permitted use in the CFU-4 zone in the Multnomah County Code (MCC). “Park” is also listed as a use allowed in a forest zone in OAR 660-0025(4). The “general types of uses” are described in part (1), with specific uses listed in following subsections. In subsection (4), “private park” is listed as a use permitted subject to review when consistent with the standards in (5).

\*\*\* (Quotation of OAR 660-006-0025) \*\*\*

Although a “park” is potentially a permitted use, neither statute, regulation, nor MCC provide a definition. Adjudication has not been particularly helpful as noted in the several definitions provided in *Spiering v. Yamhill County*, pp. 11-12.

\*\*\* Quotation of park definitions excerpt from *Spiering*.  
See p.12-13 of this report for the omitted quotation. \*\*\*

From this elucidation we can determine the following :

- A park can be public or private
- A park can include active or passive recreation, or have aesthetic or scenic purposes
- A park can include buildings, or not.

The application requests approval for a park, which will permit the site to be used for outdoor weddings. Nothing in Statute, rules, or MCC, or in the directly applicable case law suggests that a park could not be approved for the primary purpose of holding outdoor weddings.

**Applicant (7-29-05):** The application requests approval for a private park that will allow use of the landscaped portion of the site for outdoor weddings.

After initial discussions with the staff, the applicant has determined that expanding the range of activities on the site to include gatherings like business retreats and family reunions would remain within the scope of the intended use, that is, as a low key, noninvasive, non-permanent, seasonal, and limited way, with a modest capital investment, to make use of the natural features on the property and to share the beauty and serenity with others. At the same time, the applicant sees a potential "Catch 22" in the making: by expanding the proposed range of uses, as has been suggested, there will follow a concomitant increase in concerns that the use will have greater impacts.

A supplemental narrative was submitted in response to the County’s July 8<sup>th</sup> memorandum that included a discussion of Statute, regulation, case law, and Multnomah County Code

(MCC) relevant to a proposal for a private park on forest land. To summarize that analysis: a park, whether public or private, is permissible in a forest zone; there is no requirement that a park include recreational activities, and weddings are commonly allowed in parks.

The relevant rule is OAR 660-006-0025, quoted in part:

*660-006-0025*

*Uses Authorized in Forest Zones*

*(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the Commission has determined that five general types of uses, as set forth in the goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are:*

\*\*\*\*\*

*(b) Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment;*

The provisions of subsection (1) are described as "general types of uses" and the five "types" listed in (1)(a) through (1)(e) are offered more in the nature of descriptions rather than specific uses except (c) which offers "uses such as" and (d) and (e), which refer specifically to "dwellings".

"Park" is not listed subsection (1). Where it is listed, at OAR 660-006-0025(4)(3)(A) as a use permitted with review, it is not presented with any qualification, such as "park for recreational opportunities appropriate in a forest environment" or "park for the preservation of natural features of historic and cultural interest." The listing is simply "private park" with no concomitant requirement that recreational activities, or anything else, be essential to establish the use. Neither the legislature, LCDC, nor the County provided a definition for the term "park" or the phrase "appropriate in a forest environment" so case law utilizes common sense as a guide.

To be approved as a park in Multnomah County, a proposal must satisfy standards and criteria for the CFU-4 zoning district, conditional use, community service use, and design review. For this site, criteria of the SEC overlay district must also be satisfied as the site is within the identified area. The application narrative, supplemental information, and this response to completeness issues, along with the site plan, demonstrate that all applicable criteria and standards are satisfied or can be satisfied through clear and objective conditions of approval.

**Applicant (9-6-05):** The applicant has provided a legal analysis entitled "Supplemental

Information" ("SI), responding to a staff memorandum dated June 8, 2005. The SI analysis explains that there is no provision in county ordinance, state statute or regulation, or case law that requires a recreational component for a use to be classified as a park. The two Land Use Board of Appeals ("LUBA") cases identified in the June 8, 2005 memorandum, and discussed at length in the SI, deal with the relationship of recreational uses to parks because that was the specific issue, i.e. obnoxious uses stretching the boundary of what could reasonably be permitted. The only relevant portion of the case law to this application is LUBA's broad characterization of the term "park" as used in statute and administrative rule.

The applicant has broadened the scope of the permit (7/13/05 RNI, page 2 of 18) to include business retreats, family gatherings, bird watchers, and similar low-key groups, and believes this should be sufficient to serve as a "passive recreation" component.

**Staff:** The question of whether or not the proposal is park is a difficult question since there is no guidance in state or county law and only limited guidance in case law as to what constitutes a "park." Staff will first analyze what is meant by the term "park" as allowed by Goal 4 and then will analyze whether or not the subject proposal is a park.

What does the term "park" mean?

Since there is no single definition of the term "park" staff will analyze the question by analyzing the state laws that authorize the County to approve parks on Goal 4 lands. Goal 4 is the statewide planning goal dealing with forest lands and is codified in OAR 660 Division 6. As the applicant notes above, Goal 4 allows four categories of uses in forest lands as codified in OAR 660-006-0025. These four types of uses are:

- Uses related to and in support of forest operations, such as logging equipment repair and storage. (OAR 660-006-0025(1)(a))
- Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment." (OAR 660-006-0025(1)(b))
- Locationally dependent uses such as mines (OAR 660-006-0025(1)(c))
- Dwellings (OAR 660-006-0025(1)(d) and (e))

Staff asserts that in order to be approved, a use on Goal 4 lands must involve one of the broad categories of uses allowed by Goal 4. The OAR's further elaboration of the above into specific uses with specific tests for how to achieve approval does not mean the above can be ignored. As evidence of this, staff submits a summary of Goal 4 uses from page 8 of the Department of Land Conservation and Development publication entitled "Secondary Lands Backgrounder" issued on February 5, 1999, a copy of which is included as Exhibit S15. This publication lists the four types of uses allowed on forest lands by the Goal and provides examples. Private Parks are listed in this publication under the heading, "Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment."

Staff asserts that on Goal 4 lands, a "park" must include uses to conserve soil, air and water quality and/or to provide for fish and wildlife resources and/or agriculture and/or recreational opportunities appropriate in a forest environment" as required by OAR 660-



006-0025(1)(b).

Is the subject proposal a “park”?

Under OAR 660-006-0025(1)(b), a park may be allowed on Goal 4 lands in order to provide for uses, “to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment.”

A park, then, could conserve soil, air, and water quality and either

- provide for fish and wildlife resources,
- provide for agriculture, or
- provide recreational opportunities.

Staff asserts that Goal 4 does not allow the approval of a park that does not provide one of these three categories of uses. Staff does not agree with the applicant’s assertion that since the term “park” is not defined there are essentially no requirements for what a park is other than the County’s general approval criteria for conditional uses.

The question that then arises is, “Does the proposed private park provide for fish and wildlife resources or agriculture or recreational opportunities?” There is no evidence in the record to support any claims that the proposed use provides for agriculture or for fish and wildlife resources. It is questionable as to whether or not the proposal provides for recreational opportunities.

The original proposal was to use the property for weddings and the associated catered receptions. Subsequent revisions to the applicant’s narrative have stated that they could also seek to provide a venue for other types of group events similar to weddings and for limited amounts of bird watching. No evidence has been submitted into the record that incorporates any additional activities into the proposal in a tangible manner. Evidence such as a business plan explaining how activities other than weddings would be incorporated into the operation of the proposed park or the inclusion physical improvements intended to provide for on-site recreational activities could be included in the application. If such evidence is included in the proposal at the hearing, the analysis presented below may result in a different conclusion than staff’s recommendation for denial.

**Hearings Officer:** No formal business plan is required here, nor do I believe that Staff considered submittal of a business plan the only means by which information about park activities could be provided. The applicants have submitted sufficient written and oral testimony of what and how other outdoor events might occur on the park property for me to reach a conclusion that these other activities may be considered, along with weddings, as part of this application.

**Staff:** The applicant repeatedly states that the proposed use, including the changes, does not include any recreation and repeatedly asserts that no recreation is required. The applicant’s final narrative (September 6, 2005) closes the applicant’s arguments on this issue by stating, “To summarize that analysis: a park, whether public or private, is

permissible in a forest zone; there is no requirement that a park include recreational activities, and weddings are commonly allowed in parks.” Staff concurs that a park may be public or private and may be allowed in a forest zone but staff asserts that Goal 4 specifically requires a park to provide one of the categories of uses allowed by Goal 4. Recreation is one ways of meeting Goal 4 and is the category of use most closely aligned with the common understanding of the word park.

**Hearings Officer:** Although the applicants did argue, in the somewhat complicated procedural history of their application, that no recreational component to their proposals was either present or required, that is no longer the case. Exhibit H4, submitted by the applicants’ attorney, Ms. Richter, makes convincing arguments to the effect that weddings and other sorts of gatherings proposed for the park could be thought of as recreational in nature.

**Staff:** The applicant’s assertion that parks allow weddings is true in some cases but does not mean that every venue that allows weddings is a park. While weddings are activities that sometimes take place in parks, it is usually not the main purpose of a park. The applicant uses Oxbow Regional park as an example of a nearby park subject to Goal 4 that allows weddings. A major difference between Oxbow Regional Park and the subject application is that weddings are secondary to Oxbow Regional Park’s main functions of providing recreational opportunities including camping, fishing, hiking and swimming and providing for fish and wildlife habitat and resource conservation, therefore fulfilling the requirements of Goal 4.

Staff asserts that the applicant’s repeated statement that no recreation will be provided by the proposal can be taken as evidence that no recreation will be provided by the subject use. However, staff does assert that at least a modest analysis of what is meant by the word “recreation” is needed and at least a modest analysis of whether special events such as weddings and business events are “recreation.”

Staff submits two definitions of the term recreation. The first definition is from Merriam Webster’s Collegiate Dictionary, Tenth Edition and reads, “*Restoration to health, to create anew, restore, refresh; refreshment of strength and spirits after work; also a means of refreshment or diversion.*” The American Heritage Dictionary Second College Edition defines recreation as, “*Refreshment of ones mind or body after work through some activity that amuses or stimulates; play.*” These definitions imply an activity that is commonly undertaken after work in order to refresh the mind and body. Examples such as playing a game, running, boating, or socializing with friends and family are commonly thought of as recreation. Special events, such as weddings and similar group events, are generally not in the same category of use as “recreation” and are not intended to provide refreshment of one’s mind or body after work. Weddings are generally considered either a religious sacrament or a binding legal ceremony that are not intended to be undertaken on a regular basis to refresh your mind or body. Special group events such as family reunions or large parties may be recreation or may not be recreation given the nature of the event. These events often are meant to strengthen the ties between individuals through the sharing of food (refreshment) and fun (diversion) in which case they can be considered recreation. Staff asserts that some types of group events may be considered “recreation”.

Staff asserts that weddings are not “recreation.” ...

Staff asserts that while the term “park” is not defined Goal 4 does set parameters on the uses that are allowed on Goal 4 lands. A park on Goal 4 land must provide one of the broad categories of uses allowed by Goal 4. Since the applicant has not documented how the proposal will provide any of the categories of uses allowed on Goal 4 lands, staff recommends denial of the request.

**Hearings Officer:** Multnomah County’s zoning code has been acknowledged, and is effective to govern quasi-judicial applications like this one. MCC Chapter 35 was adopted, in part, to implement Statewide Planning Goal 4, Forest Lands, and the associated state statutes and rules. The zoning code must be construed in a manner that is consistent with the state standards that it implements, and cannot be less protective of forest lands than are those state standards. When searching for the meaning of an undefined zoning code term that implements state law, in which the term is also found, it is appropriate to determine the meaning of the code term by reference to state standards and related case law. Note the similarity between OAR 660-006-0025(4)(e)(A) and MCC 35.2230(D)(1), both of which authorize establishment of a “private park” on land zoned for forest use.

Neither Staff nor the applicants have argued that the term “private park” in MCC chapter 35 should be construed to be more restrictive than is the term as used in state law, and I have found no indication that the term in the county code is intended to refer to fewer land use proposals than do state standards. Staff and the applicants have focused much of their arguments on the proper construction of the Goal 4 rule, OAR Chapter 660, Division 6. I have concluded that if the proposed use could be allowed as a private park on forestland through direct application of the Goal 4 rule, then it would also be permissible as a private park under MCC 35.2230(D)(1). Unfortunately, as noted by the parties and the Oregon Land Use Board of Appeals (LUBA), neither the Goal, statutes and rules, nor the county code define the term “private park” as it is used in the regulation of land zoned for forest use.

The first step in construing a zoning provision is to analyze the text and context of the provision. Staff has concluded that the proposed use would not be a “private park” under the county ordinance because Goal 4 requires that a park in a forest resource zone provide “recreational opportunities appropriate in a forest environment.” OAR 660-006-0025(1)(b). OAR 660-006-0025(1) states in part that the Land Conservation and Development Commission (LCDC) has:

“determined that five general types of uses ... may be allowed in the forest environment. These general types of uses are:”

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“(b) Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational activities appropriate in a forest environment.” (The four general types of uses not repeated here are not relevant to an application for a private park.)

The rule then continues in subsections (2-4) to enumerate the uses that shall be allowed in forest zones, the uses that may be allowed, and the uses that may be allowed subject to review standards in the rule and in local criteria. A private park is one of the review uses.

Staff reasons that the particular uses set forth in OAR 660-006-0025(2)-(4) must also fit within one of the more general categories of "general types of uses" set forth in OAR 660-006-0025(1). Staff finds support for this position in a 1999 "Secondary Lands Backgrounder" that was published by the Department of Land Conservation and Development Commission in the context of evaluating proposed legislation. Exhibit H7. The "Secondary Lands Backgrounder" includes a table that organizes specific forest land uses by listing them under headings that correspond to the subsection (1) general types of uses. Private parks appear in the list under the heading that corresponds to type (1)(b).

Staff then determines, in part based upon the applicants' earlier position, that no form of recreation is contemplated as part of the proposed private park use. Consequently, Staff finds that the applicants' use does not fall within the general types of uses listed in OAR 660-006-0025(1), and the sort of private park that may be permitted by subsection (4) of that rule does not include the applicants' proposal.

The applicants have argued that a private park is a use specifically named in OAR 660-006-0025(4) as one that may be allowed pursuant to local review. Hence, they have claimed, there is no need to consider whether a private park use is also among those authorized within one of the general types of uses in OAR 660-006-0025(1)(b). LCDC made the determination that private park uses could be permitted in the forest zone, and so private parks can be permitted. This is certainly reasonable, but it begs the question of what LCDC understood a private park to be, an issue with which LUBA and the Court of Appeals have struggled over the years. The applicants then state that even if a private park listed as a review use in subsection (4) must be a "recreational activity appropriate in a forest environment" as categorized in subsection (1), the applicant's park does qualify as a recreational use. Exhibit H4.

The "Secondary Lands Backgrounder" relied upon by Staff also supports a reasonable interpretation of OAR 660-006-0025. This interpretation holds that private parks are permitted uses in the zone, but that is only because they are among the general types of uses authorized by the rule in subsection (1). One must therefore look to subsection (1) to see whether a proposed forest use is encompassed within the scope of uses set forth in subsection (4). No evidence in the record indicates that the "Backgrounder" was ever adopted by LCDC, however, nor was it part of context for the rule adoption by LCDC some years earlier. Thus, "The Secondary Lands Backgrounder" is helpful, as a subsequent interpretation of the provision by DLCD, but does not of itself determine the question.

Neither does the case law from LUBA decide what a private park on forest land is. Tice v. Josephine County, 21 Or LUBA 371 (1991); Spiering v. Yamhill County, 25 Or LUBA 695 (1995); and Utsey v. Coos County, 38 Or LUBA 516 (2000), *rev. dismissed*, 176 Or App 524, 32 P3d 933 (2002), all involved activities that the proponents and the decision makers had characterized as recreational. The questions of whether a private park could

support only recreational activities, or what outdoor activities could be thought of as recreational, were not at issue in those cases. In any event, Spiering involved an application for use on EFU land, and so was not governed by a rule or local ordinance implementing Goal 4. Tice and the authorities it cites were decided well before ORS 215.700 was enacted and the current Goal 4 rule was adopted, so although they were context for the rule at its adoption, they apply a different rule.

Utsey did apply the version of OAR 660-006-0025(4)(e) at issue in this application. LUBA had little trouble determining that the recreational activities that the county had approved would not be appropriate on forest land. LUBA also held in Utsey (1) that the limitations on public parks set forth in OAR Chapter 660, Division 34 were not applicable to private parks, and (2) that the requirement that private parks on forest land be appropriate in the forest environment did not mean that private parks on farm land were required to be appropriate in the farm environment. It was this last part of LUBA's ruling – regarding the extent of regulation, specifically, of EFU land - that was appealed to the Court of Appeals. The court dismissed the appeal on jurisdictional grounds unrelated to the substance of the question.

The case law does not answer the questions now before Multnomah County.

The text of MCC 35.2230(D)(1) and that of OAR 660-006-0025(4)(e) do not explicitly require that a private park host recreational activities only. In Utsey, LUBA did not examine 660-006-0025(1) to construe subsection (4). Even though the term "private park" is undefined by the text, however, the context does provide meaning for the term. It would not make sense that LCDC intended that any use denominated a "private park" by its proponent would be permissible, subject to local review requirements. The possibilities could be well-nigh endless, a result that would be grossly inconsistent with other portions of the Goal 4 rule, particularly OAR 660-006-0025(1), which is context for subsection (4).

I therefore agree with Staff that a proposed use that is listed in OAR 660-006-0025(2)-(4) must also be more generally described by subsection (1). The listing in one of the latter sections of the rule reflects LCDC's conclusion that the use is among those set forth in subsection (1). The Dorseys' proposed park is not described by any other portion of 0025(1), and so must be a use "to provide for ... recreational opportunities appropriate in a forest environment" in order to be permissible in the CFU-4 zone.

The next question is whether the Dorseys' proposed private park activities would provide recreational opportunities. The definitions of "recreation" (another term not defined in the code, statute or applicable rule) in the record are varied and broad. They include activities, occurring in leisure time, that refresh, renew, divert, or restore in mind, health or spirit; that amuse or stimulate. Staff agrees that recreation as the term is used by Goal 4 and the county code, includes play and socializing with friends and family. Staff views weddings and receptions as lacking these features, and describes a wedding, instead, as "a religious sacrament or a binding legal ceremony that [is] not intended to be undertaken on a regular basis to refresh [the] mind or body."

Staff's view of the proposed use leads me to conclude that Staff has defined that use more

narrowly than the Goal and rule warrant. The applicants have proposed that their private park be available for wedding receptions as part of the wedding events. Wedding ceremonies and receptions as contemplated by the applicants certainly do include, along with the solemnities, socializing with friends and family, up to 150 individual friends, family members, and caterers, musicians, photographers, and so forth. One should reasonably conclude that some part of this socializing would refresh, renew, divert, amuse, stimulate, or restore in mind, health or spirit the participants. These terms are quite broad, and largely subjective. The applicants have also requested approval of social gatherings for family reunions, picnics, birdwatching, and company retreats that can occur within the limitations imposed on wedding events.

I therefore disagree with Staff on this point. I conclude that all of the proposed outdoor gatherings, including wedding events as described in this decision, are permissible as recreational activities on a private park in the CFU-4 zone, subject to the further requirements of the code.

The criterion (MCC 35.2230(D)(1)) has been met.

**5.4 Is the proposed use "appropriate in a forest environment?"**

**Applicant (7-14-05):** What does "appropriate in a forest environment" mean and how does this provision in Goal 4 and OAR 660-006-0025(1)(b) apply to the proposal?

LUBA discusses the phrase "appropriate in a forest environment" in both *Tice v. Josephine County* and *Utsey v. Coos County*, without explaining the meaning of the phrase. However, "appropriate in a forest environment" is a limitation on "outdoor recreation" in a forest zone and does not necessarily stretch to provide a standard for determining the suitable intensity level of non-recreational activities occurring in parks.

From *Tice v. Josephine County*, p. 16:

*These cases recognize that there is a limit to the types of outdoor recreation activities allowable as an "outdoor recreational activity" as that phrase is used in Goal 4. The limitation on "outdoor recreational activities" under Goal 4 stems from the very purpose that lands designated as forest lands are designed to serve. Proposed recreational uses which dominate and change the character of the forest environment are not considered "outdoor recreational activities" even though such proposed uses do provide, in a broad sense, "outdoor recreation." We do not believe it is a correct interpretation of JCZO 3.020(3), or the identical language in Goal 4, that a motorcycle racetrack is an "outdoor recreational activity." Such an interpretation would not be consistent with the purposes which JCZO 3.010 states the county's FC zone is designed to serve. Further, a motorcycle racetrack, and the proposed accessory structures and activities, certainly do nothing to preserve or protect the land for forest uses under Goal 4, which the FC zone is designed to implement. Additionally, we do not believe that concession stands, ticket booths and portable toilets to support a racetrack are correctly interpreted as 'related support services' to an 'outdoor recreational activity' within the meaning of JCZO 3.020(3) or Goal 4.*

From Utsey v. Coos County, pp. 14-15:

*The reasoning and analytical approaches of Spiering and the line of cases represented by Tice appear, at first glance, to be at odds with each other. The proposed uses in Spiering and Tice were privately owned and operated public recreational facilities on resource land, and would be most accurately characterized under current nomenclature as 'private parks' under ORS 215.283(2)(c) and OAR 660-006-0025(4)(e), respectively. Unless context or evidence of legislative intent to the contrary indicates otherwise, identical terms such as 'private park' in ORS 215.283(2)(c) and OAR 660-006-0025(4)(e) should have the same meaning. However, the difference between the two lines of cases is that, as we recognized in Tice, Goal 4 and OAR 660-006-0025(1)(b) expressly require that recreational activities on forest lands be "appropriate in a forest environment." (See n. 7) Thus, as the line of cases represented by Tice demonstrates, not all recreational activities that might otherwise fall within the scope of "park" or "private park" are appropriate on forest lands. In contrast, as Spiering recognizes, no such express qualification appears to exist in the statutes or rules governing non-farm uses on agricultural land.*

Utsey, p. 17:

*"The definition of park and recreation must be considered in the context of Goal 3. The law, properly interpreted requires counties to consider whether the proposed use is eligible to be considered a park under [ORS] 215.283(2) before balancing the intensity against surrounding uses. \*\*\* Therefore, 'park' should be defined to include only those uses with low impact on the subject property and that are of low intensity--uses that won't dominate or change the forest or farming environment on the subject property. (E. g. uses that do not involve motor vehicles or the erection of physical structures.)" State Agency Brief 5 (footnotes omitted).*

Utsey, p. 26:

*We agree with petitioners, DLCD and amicus that the proposed motocross race track on forest land is substantially similar to that proposed in Tice, and is also inappropriate in a forest environment. Even if the decision had imposed conditions that prohibited head-to-head racing or other intensive types of competition, or conditions that effectively prohibited structures such as those proposed in Tice, we agree with the parties that a motocross race track and any accessory structures are not appropriate on forest lands, and therefore would require an exception to Goal 4.*

The message from these cases is that recreational uses "appropriate in a forest environment" should not dominate or change the forest environment on the subject property and should preserve and protect the land for forest uses, particularly commercial forestry.

Both Tice and Utsey dealt with egregious examples of recreational activities that would invade the forest, a paintball game site and a motocross track that would draw large

groups of people unfortunately, numbers were not specified in either case), involve permanent structures, and a substantial investment in alterations to the site that would fundamentally change the character of the site, i.e. from forest to game/race track venue.

The situation proposed in this application for private park is light years apart from Tice and Utsey. First, the only change to the site is an extension of the driveway that will accommodate parking and which will follow the route of an old logging road. No permanent structures are proposed. No use of the forested area is proposed, except potentially for birdwatchers looking for an ideal observation point. Second, the use has no impact on any surrounding property and minimal impact on the public road system, either from the standpoint of the ability to enjoy open space (Metro owns most of the surrounding land) or ability of other nearby property owners to pursue forest uses.

The proposed park will not affect the potential for future use of the property for commercial forestry. The more significant limitation on resource use of the site is simple economics, as the site is not large enough for sustainable income from forest products or selective logging that would remove only a few mature trees annually. If clear cut to fully utilize the timber, the site would not have another harvestable growth of trees for 50 or more years.

The applicant views the phrase "appropriate in a forest environment" as particularly suitable for the use proposed, a park that will enable the property to be used for outdoor weddings. The idyllic setting, with landscaped grounds, pond and flowing spring, and majestic trees, is particularly appropriate for weddings or other gatherings.

**Staff:** The requirement for the proposed use to be "appropriate in a forest environment" is a restriction placed on recreational activities in OAR 660-006-0025(1)(b). As discussed in finding 5.3, staff contends that a park must provide one of the categories of uses allowed by Goal 4. The only category of use allowed by Goal 4 that the proposal may provide is recreation. As such, the proposal must be "appropriate in a forest environment."

The term "appropriate in a forest environment" is not defined in state law or in the County's code. However, staff asserts that it is possible to determine whether or not a use is "appropriate in a forest environment" by analyzing whether or not the proposal is compatible with the stated purpose of the CFU-4 zone contained in MCC 35.2200 which reads as follows:

#### § 35.2200- PURPOSES

**The purposes of the Commercial Forest Use District are to conserve and protect designated lands for continued commercial growing and harvesting of timber and the production of wood fiber and other forest uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses; to protect scenic values; to provide for agricultural uses; to provide for recreational opportunities and other uses which are compatible with forest use; implement Comprehensive Framework Plan Policy 11, Commercial Forest Land, the Commercial Forest Use**



**policies of the East of Sandy River Rural Area Plan; and to minimize potential hazards or damage from fire, pollution, erosion or urban development.**

The first stated purpose of the CFU-4 zone is to preserve the land for commercial growing and harvesting of timber and the production of wood fiber. This is in compliance with Goal 4 and is underscored as the main purpose of Goal 4 lands by the various cases cited by the applicant. Other purposes of the CFU-4 district include the conservation of watershed and wildlife habitats and the protection of scenic values. Staff asserts that the proposal does meet these three purposes of the CFU-4 district, making the proposal "appropriate in a forest environment."

The subject proposal will primarily use a portion of the existing property that has already been cleared and developed as a single family dwelling and associated accessory uses such as a pond, lawn, and sports court. No new permanent structures are proposed other than a parking area. The parking area will be an expansion of the existing driveway and an exiting logging road. The use is intended to be seasonal in nature and is intended to use the forest setting as a scenic backdrop. The property is clearly visible from the Sandy River, which is a federally designated Wild and Scenic River. The retention of the forest for use as a scenic backdrop will both protect scenic values on the property itself and of the property as seen from the Sandy River. The retention of the majority of the property in an undisturbed forested environment will also conserve wildlife habitat. No fencing, structures, pathways, or noise generating uses are planned outside of the existing developed areas of the property.

The use will not dominate or change the character of the majority of the parcel. Based on the applicant's site plan included as Exhibit A1, the use including the parking areas will occupy an area approximately 528 feet by 276 feet, which is 3.35 acres exclusive of the driveway. This will leave the remaining approximate 18.35 of the 21.7 acres as undisturbed forest. The improvement of the parking area will remove some trees from the property but will allow the balance of the property to remain in timber production. If the use is approved, it is unlikely that the current owners will log the property since the scenic forest environment is the reason why the property is attractive as a special events venue. Removing the forest would remove the scenic quality that would attract people to the site as a special events venue. However, the venue itself would not preclude the growth of trees or the future use of the site for logging for timber or wood fiber.

When analyzing whether a use is appropriate in the forest environment, the impacts on surrounding properties for the primary purpose of forest management to produce forest products must also be reviewed. Findings 6.1 and 6.2 delve into this topic in detail and assert that the proposal will not have a negative affect on forest operations in the vicinity.

While the proposed use is not "recreation," it is "appropriate in a forest environment."

**Hearings Officer:** I concur with staff that the proposed private park use is appropriate in a forest environment, and have previously concluded that the proposed use does encompass any required recreational aspects.

**The Subject Proposal Meets the CFU-4 Use Compatibility Standards of MCC 33.2245.**

**§ 35.2245 USE COMPATIBILITY STANDARDS**

**(A) Specified uses of MCC 35.2225 (C), (D), and (E) and MCC 35.2230 (D), (E), and (F) may be allowed upon a finding that the use will:**

- 6.1 **(1) Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands;**

**Applicant (6-17-05):** There are no farm or forest uses on adjacent properties, which have been purchased by Metro to be maintained as open space. The nearest logging operation is approximately 3/4 mile away, and uses Gordon Creek Road. The nearest farming operation is approximately a mile away, on top of the hill. Both uses are separated from the site by Metro's property.

However, if such uses were in place, there would be no impact because the use is intended to be low intensity to maintain the sylvan and idyllic setting. The proposed use is occasional, occurring only during summer months, primarily from Friday evening through Sunday evening, no later than 10 PM. Traffic generation is likely to be an additional 50 to 60 vehicles, which would not affect the use of Gordon Creek Road.

To the extent this standard applies, inasmuch as there are no adjacent farm or forest uses, the use compatibility standards are satisfied.

Neither ORS 215.296 nor MCC 35.2245 requires speculation. The identical language assumes that there are, in fact, adjacent farm or forest uses, which is not the case here.

**Staff:** Staff submits Exhibit S16, which is a 2002 aerial photo of the existing property and surrounding area with two circles overlain showing a ¼ mile and a ½ mile circle centered on the subject property. As can be seen in this photo, no properties within ½ mile are being used for farm use. All of the properties within ½ mile are heavily forested as shown on the 2002 aerial photo.

The applicant states that none of the surrounding properties are currently employed for active forest operations. Although the adjacent properties may not currently be part of active forest operations, the potential exists for such uses to resume in the future without notice or local review. If forest operations were to resume on nearby properties, it is reasonable to assume that the proposed use would have minimal impacts on those surrounding forest operations given the location of the proposal in the approximate center of the subject property as well as the surrounding terrain. The applicant is providing an effective buffer of multiple acres of property under their own control in all directions surrounding the proposed use. This minimizes the proposed uses' potential to have significant direct affects on nearby forest operations.

A reasonably foreseeable potential impact to surrounding farm and forest uses would be the addition of vehicular traffic on the roads leading to the subject property. This impact is discussed in the finding 8.8. Assuming there could be up to one event on Fridays, and up to two events on the weekend days, there could be an additional 100-120 cars plus delivery trucks/vans on the road during each of the days the wedding venue is operated. This amount of additional traffic would not be expected to significantly increase the cost of accepted farm and forest practices on surrounding lands devoted to farm and forest uses.

Common and accepted forest and farm practices that could occur on adjacent and nearby forest-zone properties include pesticide and herbicide spraying, weed cutting, slash burning, irrigating, field plowing, harvesting, and other accepted farm and forest practices. These practices produce noise, dust, spray residue, smoke, vapor, and other types of visual, odor, or noise pollution. The applicant has stated a covenant was previously signed in which the owner acknowledge the subject property is adjacent to forest-zoned land and, as such, may be subjected to the noise, dust, spray residue, smoke, vapor, and other types of visual, odor, or noise pollution, which the signer of the covenant accepts as normal and necessary farm and forest practice and as part of the risk of having a dwelling in a forest-zoned area (See finding 6.3) Staff asserts that given the location of the proposed use, the covenant is a reasonable measure to ensure the use will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands.

Staff suggests a condition of approval requiring the applicant to submit a copy of the previously signed and record covenant or to record a new covenant on the form provided by the county, a copy of which is included as Exhibit S9.

**Hearings Officer:** With the suggested condition of approval, this criterion is met.

6.2                    **(2) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and**

**Applicant (6-17-05):** The access road will not be altered if the variance to driveway width is approved. The only new driveway will be associated with parking and will be only as wide as necessary to comply with requirements of MCC 35.4100 for parking area development (35.2305(A)(3) and (4)).

The Fire Chief has returned a service provider letter (Exhibit A4) without indicating any concerns with regard to wildfire or emergency access (35.2305(5)).

**Applicant (7-29-05):** All activities related to the proposed park will occur on the landscaped area around the existing dwelling, not within the forested portion of the property except to the extent that individuals or small groups may seek tranquil locations for bird-watching. The local Fire Chief has twice provided letters identifying no concern with potential fire hazards, fire risk, etc. and that, by itself, should be sufficient to meet

this standard.

**Applicant (9-5-05):** The applicant is at a loss as to what additional information would be considered sufficient on this subject: the Fire Chief has reviewed the application two times, and found no concerns. The Fire Chief has visited the site and determined that the pond is a suitable water source if an appropriate connection is provided for a pump.<sup>1</sup> The applicant is willing to install this connection and will likely do so whether or not this permit is approved, as a safety measure for the existing residence.

The application has never envisioned events involving more than approximately 100 people (a few more, most likely less) and has no idea where the figure of gatherings of "240 people" came from (admittedly, the discussion in the ON is general, however please refer to the discussion of Parking at 7/13/05 RNI, page 13 of 18).

The applicant believes that the risk of fire is minimized by the nature of the use, occurring on the non-forested portion of the property, and measures to facilitate fire response, including installation of an appropriate connection at the pond for use by fire fighters and management of traffic flow with an attendant as required for the occasional use parking. The code does not require an emergency plan for a catastrophic occurrence, only reasonable precautions that the use will not create a risk of fire hazard. By maintaining activities on the landscaped portion of the property, and with concurrence of the local fire official, the applicant believes that this concern has been satisfied.

<sup>1</sup> The 7/13/05 RNI, page 7 of 18, incorrectly states that the pond could not be a suitable water source. The pond holds approximately 42,000 gallons and is fed by a spring with a flow of approximately 32 gallons per minute.

**Staff:** This criterion must be viewed in light of the fact that the applicant is requesting a major variance to the access standards which are intended to provide a minimum level of safety and access for emergency vehicles in the forest zones. Please see findings in Section 11 for a detailed discussion of the proposed major variance. The difficulty staff has in determining compliance with this standard relates to the potential danger of having 50-60 cars bearing multiple passengers each plus catering staff and the residents of the property at the top of a one lane driveway in a forested area with rather steep slopes. The applicant has repeatedly stated an unwillingness to specify an upper end cap on the number of attendees they would have at a ceremony. Based on the requested number of parking spaces (55-60) and the assumption that the average car can hold four people comfortably, it is reasonable to assume there could be as many as 240 guests plus catering staff on site at any one time. Please note staff did consider 4 passengers as an average between the SUV's that now constitute a large portion of the vehicle stock which can easily seat more than 4 people, sedans which usually seat 4-5 people, and vehicles such as trucks and sports cars which may only comfortably seat 2 people.

Staff asked for clarification on how people would be evacuated while allowing emergency personnel to access the property in the case of an emergency event.

The fire chief has indeed approved the subject proposal on the service provider form included as Exhibit A4. This form did not provide any details on how emergency access could be accommodated on the existing driveway which does not meet the current minimum standards which require a 20 foot paved width and emergency turnouts. The existing driveway is 12 feet wide with turnouts as explained in finding 11.3. Staff had a telephone conversation with Fire Chief Tom Layton on August 31, 2005 in which Mr. Layton expressed his confidence in the proposal for the following reasons:

- A pond exists on site which could be used for fire fighting water supply with the installation of a "dry hydrant" available for use by a pumping truck.
- If the "dry hydrant" is available, fire trucks would not have to drive back and forth along the driveway to access water. They would only have to get to the top of the driveway and then the cars and people could be evacuated without continued interference with emergency vehicle access.
- Mr. Layton was confident that parking attendants could manage traffic to allow an emergency vehicle to get up the driveway past any cars that may be attempting to leave the site during an emergency event.

These concepts have been incorporated into the applicant's proposal. With conditions of approval requiring the elements outlined above, staff finds the proposal will not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel.

Staff recommends the following conditions of approval:

- The applicant shall submit a statement signed by a representative of Fire District 14 that a "dry hydrant" or similar style pump has been installed and will allow the on-site pond to be used for fire fighting water supply. This statement shall be submitted prior to the first event being conducted on-site or within 90 days of the date this decision becomes final, whichever happens first.
- The applicant shall have on-site parking attendants at every event to guide traffic onto and off of the site in the case of an emergency event.

**Hearings Officer:** With the adopted conditions of approval, this criterion is met. Note that more than one parking attendant is required, which reflects the need to direct a number of vehicles at one time. Also note that the requirement for a "dry hydrant" or pump has been changed as requested to call for suitable equipment instead.

- 6.3            **(3) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices.**

**Applicant (7-29-05):** A statement per sub (3) was signed by the property owners when the building permit for the residence was issued. If determined to be necessary, a second letter will be provided. This is a reasonable measure to specify as a condition of approval, though redundant since such a letter is already on file.

**Staff:** Staff suggests a condition of approval requiring the applicant to submit a copy of the previously signed and recorded covenant or to record a new covenant on the form provided by the county, a copy of which is included as Exhibit S9.

**Hearings Officer:** With the suggested condition of approval, this criterion is met.

7 **Development Standards for Dwellings and Structures.**

§ 35.2305 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES

7.1 **Except as provided for the alteration, replacement or restoration of dwellings under MCC 35.2220 (D) and (E); and 35.2225 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:**

**Applicant (6-17-05):** No new buildings would be required or proposed, as all activities would take place outdoors. A canopy-type tent<sup>1</sup> might be provided for weather protection, on an existing concrete pad northeast of the residence that was formerly used as a sports court. The canopy will not be permanently installed, and will be removed and stored on the property for the off-season. Members of the wedding party would use the basement bedrooms of the residence as a dressing room.

<sup>1</sup>The Code 's definition for structure is very broad:

***3.5.0005(S)(13)Structure -That which is built or constructed An edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.***

One wonders whether the intention really was to construe the term so that it could include temporary structures such as camping tents and tree houses. As used in context of requirements such as found in MCC 35.2305 Development Standards for Dwellings and Structures, provisions are almost nonsensical unless applied to only permanent buildings.

The requirements of this section appear to be intended for permanent structures, especial dwellings. However, to the extent that this section is referenced in MCC 35.2230(D), the following analysis is provided:

**Staff:** The code definition of structure is written broadly and does not give staff the discretion to exempt temporary or seasonal structures from the development standards. In addition to the canopy tent noted above, the applicant is proposing the use of portable toilets for sanitation. As such, the proposed structures (canopy tent and portable toilets) must be reviewed for compliance with this section.

7.2 **(A) The dwelling or structure shall be located such that:**

**(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of 35.2260 (C) through (G);**

**Applicant (6-17-05):** Adjacent properties are not occupied by farm or forest uses.

**Applicant (6-29-05):** Adjacent properties are designated CFU-4, and so are "nearby or adjoining forest or agricultural lands" for purposes of this section. No change to the structure of the dwelling is proposed. Any new structures (non-permanent tent/canopy and porta-potties) would be located in the vicinity of the existing sports court, which is approximately \*\*\* feet from the dwelling and within the developed landscaped area in the vicinity of the dwelling. The site will not be visible from adjacent properties, which in any event are not used for forest or agricultural purposes.<sup>2</sup> The applicant has been able to identify no impacts on any adjoining property generated by the location of proposed structures.

<sup>2</sup> Adjacent property is owned by Metro, purchased with "open space" funds authorized in the mid-1990 's by public vote. While ownership is normally not a factor for land use decisions, in this case the land is in public ownership and has been committed to open space use. This ownership and the circumstances of the ownership mean that it is highly unlikely that the adjacent property will ever be available for forest use.

The setbacks specified in 35.2260(C)through (G) refer to forest practices, which are not proposed with this application.

**Staff:** The applicant proposes a seasonal canopy-style tent to be installed over the existing sports court. Additionally, seasonal portable toilets will be installed in the areas indicated on the site plan included as Exhibit A1. These structures will be more than 130 feet from any property line, satisfying the requirements of 35.2260(C) through (G).

The proposed locations are in the middle of the property, clustered with the existing development. This location provides substantial separation from any nearby agricultural or forest operations. This heavily forested separation and the clustering of new structures near existing structures will result in the proposed structures having the least impact on nearby forest and farm operations.

**Hearings Officer:** Criterion met.

7.3                    **(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

**Applicant (6-17-05):** Adjacent properties are not occupied by farm or forest uses.

**Applicant (6-29-05):** The proposal for use of the landscaped area in the vicinity of the existing dwelling for a park will have no impact on the potential for future forest operations within the wooded portion of the site. However, the primary factor affecting forest use on the site is its size, which is insufficient for sustainable income from

occasional selective logging. The only financially viable forest practice would be to clear cut the entire property, which would leave the site essentially valueless until a new timber crop matured in 50 or 60 years. This is not the present owner's choice, based upon both economics and the desire to maintain a pleasant environment for the residence.

**Staff:** Clustering the proposed new structure near existing structures and using the existing access to gain access to the proposed structures will minimize the adverse impacts on forest and farm practices on the site. No new land clearance for the structures is proposed. The proposed structures are low impact, being seasonal and temporary, and could easily be removed in the future if the site were to be devoted to farming or to engage in more active forest practices.

The temporary, seasonal nature of the structures combined with their proposed location in the existing developed area of the site minimizes the adverse impact on any forest operation or accepted farming practices that may occur on the subject tract.

**Hearings Officer:** Criterion met.

7.4

**(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

**(4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

**Applicant (6-17-05):** No new land clearing is proposed for the proposed structure. The access road will not be altered if the variance to driveway width is approved. The only new driveway will be associated with parking, and will be only as wide as necessary to comply with requirements of MCC 35.4 100 for parking area development (35.2305(A)(3), and(4)).

**Applicant (6-29-05):** The uses associated with the proposed park will be accommodated on the portion of the property that is already developed with landscaping in the vicinity of the existing dwelling. Most of the access driveway, which already exceeds 500 feet in length, is already in place. The extension of the access driveway into a loop will generally follow the contours of the land and an old logging road, to minimize grading, impact on the slope, removal of vegetation, etc. <sup>3</sup> As previously noted, the site is steep and the driveway as shown on the site plan is a conceptual location (i.e. not located with a survey), to be refined with the assistance of a civil engineer if necessary to manage slope issues.

<sup>3</sup> The letter of incompleteness asks for the thought process and reasoning which lead to various choices, e.g. the location of the driveway extension, the location of the reception area, etc. The answer is, quite simply, that the applicant is familiar with the property, where he and his family have lived for nearly 20 years. As the applicant intends to maintain a home on the property, the various elements of the proposal were designed to maintain the livability of the residence and minimize potential impacts to the site by utilizing already



developed area and placing the driveway extension on the flattest part of a sloped site.

**Staff:** The land use to site the structures will be contained within the existing developed and/or landscaped portions of the property that surround the existing home. No forest land will be removed from production in order to site the structures themselves.

The applicant's existing driveway at approximately 1,300 feet long is in excess of 500 feet. The proposed new service corridors (the one-way parking loop and the parking cul-du-sac) appear to have a total proposed additional length of 540 feet. The one-way loop is approximately 360 feet in length and the overflow cul-du-sac is approximately 180 feet in length.

The access road and service corridor will include newly constructed parking areas. As shown on the applicant's site plan included as Exhibit A1, these will include a one-way loop and a cul-du-sac. While the applicant has stated that 55-60 parking spaces will be installed, the site plans shows 41 parking spaces along the loop and 14 along the cul-du-sac for a total of 54. The applicant's narrative has stated the parking along the one-way loop will be installed so as to minimize the need for tree removal. This would mean parking spaces would be placed irregularly in order to accommodate existing trees. The site plan (Exhibit A1) shows all of the parking spaces being adjacent to one another with no provisions for tree retention. Staff assumes the site plan is conceptual and not intended to accurately depict the specific number of parking spaces to be provided by the two parking areas while also accommodating the existing trees.

No dimensions are specified on the site plan so staff has inferred dimensions from the approximate scale of Exhibit 1 and compared the results to the parking requirements of MCC 35.4100-4220. Throughout the applicant's narrative, statements have been made that the parking area center aisles will be 20 feet in width with gravel shoulders to accommodate parked cars. MCC 35.4175 requires a depth of 18 feet for parking spaces. The applicant has not proposed any compact parking spaces. This would result in a cleared loop that is at least 56 feet wide and approximately 360 feet long. This would result in the use of 20,160 square feet or approximately ½ acre of forest land for the one-way loop. The cul-du-sac is shown as having 90 degree parking on only one side. MCC 35.4175 requires a 25 foot wide aisle for 90 degree parking along with an 18 foot depth for parking spaces, meaning the stem of the cul-du-sac would be at least 43 feet wide and is shown as being 120 feet long for an area of 5,160 square feet. The circular portion of the cul-du-sac is shown as having an approximate diameter of 60 feet with an additional 18 feet of parking spaces on half of the perimeter. The circular portion of the cul-du-sac would then require approximately 2,800 square feet ( $3.14 * 30 * 30$ ) and the parking area would require approximately 800 square feet. ( $(3.14 * 48 * 48) / 2 - 2800$ ). The means the cul-du-sac would require an approximate total area of 8,760 square feet, or 1/5 of an acre.

The total area proposed for siting the service corridor is approximately 7/10 of an acre, which is approximately 3 percent of the lot area.

MCC 35.4175(A) requires parking spaces to be 9 feet wide. If half of the requested 55 to 60 parking spaces are provided on each side of the proposed loop, then a minimum area of

270 lineal feet (30 \* 9) would be needed. The applicant is proposing a 360 foot long loop plus additional overflow parking in a cul-du-sac. The applicant intends to intersperse the parking spaces with existing trees in order to minimize the amount of tree removal necessary to install the one way loop. While not specifically stated by the applicant, staff concludes that the additional length is requested in order to allow the spaces to be flexibly sited around the existing trees.

The applicant has stated that the one-way loop will be constructed over an older logging road. This configuration will re-use an existing improvement and will allow the parking to be installed on an area which has previously been graded. The applicant's proposal to space the parking to allow for the retention of trees is a further attempt to minimize the service corridor's impact on the forest land. In order to retain trees along the existing logging road and accommodate the proposed 55-60 parking spaces, a gravel overflow parking area may need to be installed. It is not clear from the materials submitted that this area is needed to accommodate the service corridor or that this configuration uses the minimum amount of forest land required. Without further details regarding the layout and design of the one-way loop, it is not possible to know if the overflow parking area is needed to accommodate the proposed 55-60 parking spaces.

There is sufficient evidence in the record to support that the one-way loop will provide a service corridor that minimizes impacts on forest land. However, there is insufficient information in the record to document that an additional overflow service corridor is required. The length of the loop and overflow [] together exceed 500 feet. As such, the applicant must demonstrate that this length is both the minimum length necessary and that it is needed due to physical limitations unique to the property. Additional evidence may be submitted at the hearing that supports a finding of compliance with this section. Absent additional evidence, staff recommends that the proposal be modified to remove the overflow parking area.

A condition of approval is recommended requiring the applicant to submit a revised site plan that does not contain the overflow parking area.

**Hearings Officer:** With the suggested conditions of approval, this criterion is met.

- 7.5            **(5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

**(a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;**

**Staff:** The subject application does not involve a dwelling, therefore this criterion does not apply.

- 7.6            **(b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC 35.2305 (D) with permanent signs posted along the access route to**

**indicate the location of the emergency water source;**

**Staff:** The applicants have stated they are willing to provide a pump that would allow a tanker truck to use the on-site pond for fire fighting water supply. Staff suggests a condition of approval requiring the submittal of a statement from the fire district that the proposed pump has been installed signed by a representative of Fire District 14 that a “dry hydrant” or similar style pump has been installed and will allow the on-site pond to be used for fire fighting water supply. This statement shall be submitted prior to the first event being conducted on-site or within 90 days of the date this decision becomes final, whichever happens first. *With the suggested condition of approval, this criterion is met.*

7.5

**(c) Maintenance of a primary and a secondary fire safety zone on the subject tract.**

**1. A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**

**2. On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

**Percent Slope  
Distance In Feet**

**Less than 10  
Not required**

**Less than 20  
50**

**Less than 25  
75**

**Less than 40  
100**

**3. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that**

**fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 35.2260 (F) and 35.2310.**

**4. No requirement in 1., 2., or 3. above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and**

**5. Maintenance of a primary and a secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the home owner.**

**(d) The building site must have a slope less than 40 percent.**

**Staff:** The applicants have not indicated whether fire breaks exist on the subject site nor have they indicated the slope of the land surrounding the proposed structures. From the 2002 aerial photo included as Exhibit S1, it appears that a substantial amount of tree cover exists in the vicinity of the existing sports court, which is the area where the tent canopy structure is proposed as the intended location for catered receptions.

Staff recommends a condition of approval requiring the submittal of a revised site plan showing the proposed fire break locations surrounding the proposed structures in accordance with the provisions of this section.

Staff recommends an additional condition of approval requiring the installation of the required fire breaks surrounding the location of the tent canopy structure prior to the first event being conducted on-site.

**Hearings Officer:** As conditioned, this criterion is satisfied.

**7.6 (B) The dwelling or structure shall:**

**(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**

**(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**

**(3) Have a fire retardant roof; and**

**(4) Have a spark arrester on each chimney.**

**Applicant (6-17-05):** Any building codes that apply to a canopy-type tent will be satisfied (35.2305(B)).<sup>6</sup>

<sup>6</sup> Building codes usually are not applied to temporary structure like tents or travel trailers which are licensed as vehicles.

**Applicant (7-29-05):** The City of Gresham advises that a building permit is necessary for a "membrane structure" that remains in place for more than 180 days and a fire permit is required for such a structure that will stand for less than 180 days. An appropriate permit can be obtained for the non-permanent tent/canopy proposed for the reception area on the sports court, with consideration for flame resistance of materials, etc. <sup>4</sup>

<sup>4</sup> Conversation with the City of Gresham's Chief Building Inspector, July 15, 2005.

No new mobile home or chimney is proposed.

**Staff:** The proposed structures will not have chimneys and are not mobile homes. Staff contacted Mark Krenz, a commercial building plans reviewer for the City of Gresham on September 21, 2005 to determine whether or not a building permit may be required for a canopy-type structure. Mr. Krenz verified that the building code does address "membrane structures" and that a "membrane structure" used for a public assembly would require a building permit review to assure structural integrity, correct anchoring for wind load, and for a review of the flammability of the membrane materials.

Staff recommends a condition of approval requiring the applicant to obtain a building permit for the canopy structure prior to the installation of the canopy.

**Hearings Officer:** With the suggested condition of approval, this criterion is met.

7.7      **(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.**

**(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**

**(2) Evidence of a domestic water supply means:**

**(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or**

**(b) A water use permit issued by the Water Resources Department for the**

use described in the application; or

**(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

**Applicant (6-17-05):** The on-site well that provides domestic service for existing residence is an exempt well. No water use is anticipated for the outdoor wedding activities, as port-a-potty units will be utilized for sanitary facilities. (35.2305(C))

**Applicant (7-29-05):** The "Proposal Description" for the application states that no water will be provided for proposed park activities from the on-site well (Application, page 3 of 29). Any water required for park related activities will be provided in bottles by guests or by caterers. No water will be made available from the on-site well.

That said, however, the application does note the possibility of using basement bedrooms and facilities as changing area for a wedding party. This could lead to some use of the on-site well, despite the overall intention that the on-site well will not be made available for any activities relating to the proposed park use.

The average residence uses approximately 100 gallons of water per person per day. The residence on the site is now occupied by two persons, equaling a "rule of thumb" water use of approximately 200 gallons of water per day. If a wedding party uses the indoor facilities, a very small amount of water will be utilized, difficult to estimate, but well under the total amount of water available for an "exempt use" of 5,000 gallons per day.<sup>5</sup>

<sup>5</sup> To put this in perspective, a modern water closet uses less than two gallons per flush, according to product information at the Kohler website.

**Staff:** As evidenced by Exhibit A6, the domestic water supply is from a spring fed well. The Oregon Health Division Drinking Water program requires regular monitoring of a variety of chemical and particles in water that will be served to members of the public. The applicant has stated that the on-site water supply will not be used to provide drinking water as part of the proposed park. Staff suggests a condition of approval requiring that the on-site water supply should not be used for catering clean up, washing dishes, or any other potable water use.

The applicant has stated that the existing residence will be used for the wedding party and that existing bathrooms will be made available to the wedding party. This would include the use of the domestic water supply for commercial purposes. The applicant has not provided any evidence from the Oregon Water Resources Department stating that the existing water supply can legally be used as part of a commercial use.

**Hearings Officer:** A condition of approval prohibits the use of the on-site water supply for any potable use. The applicant has stated willingness to obtain the required evidence

from OWRD, and a condition has been imposed to require that this occur before any work on the property pursuant to this permit commences.

- 7.8        **(D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:**

**Staff:** These standards apply to dwellings only. They do not apply to the subject proposal.

8        **The Subject Proposal is in compliance with the applicable Community Service and Conditional Use Permit Standards of MCC 35.6000-35.6020.**

- 8.1        **Staff:** The provisions of MCC 35.6100 through 35.6230 that are applicable to the subject request are MCC 35.6005- General Provisions and MCC 36.5010- Approval Criteria.

8.2        **§ 35.6005    GENERAL PROVISIONS**

**(A) Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority.**

**(B) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC 35.7000 through 35.7065.**

**(C) A Community Service approval shall not be construed as an amendment of the Zoning Map, although the same may be depicted thereon by appropriate color designation, symbol or short title identification.**

**Staff:** The subject application is a request to use the property at 37525 SE Gordon Creek Road as a private park, specifically as a venue for weddings and receptions. The applicant has indicated that other similar uses could happen on the property but has not submitted any tangible evidence as to the nature and extent of those additional uses. If approved, the use of the property for a private park specifically as a venue for weddings and receptions is the only new use that will be authorized on the property.

The subject request is reviewed for compliance with the Design Review Criteria in section 9 of this report.

8.3        **§ 35.6010    APPROVAL CRITERIA**

**In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for radio and television transmission towers, which shall meet the approval criteria of MCC 35.6100 through 35.6125, wireless communications facilities which shall meet the approval criteria of MCC 35.6175 through 35.6188; and except for regional sanitary landfills which shall comply with MCC 35.6200 through 35.6230.**

**(A) Is consistent with the character of the area;**

**Applicant (6-17-05):** The character of the area is rural, with large lots and scattered residences. The immediately adjacent properties, with the exception of the lot owned by the applicant's son, have been purchased by Metro to be retained as open space rather than used for commercial forest purposes.

The site is a 21.7 acre lot, on a slope rising from the Sandy River and Gordon Creek Road. The site is heavily wooded, with Douglas fir, cedars, and a variety of lower growing trees, shrubs, and plants typical of undisturbed forest land.

The attractive setting, sylvan yet accessible, provides a perfect location for outdoor weddings. The use will be consistent in scale with the residential use existing on the property, with limited guests and car-pooling encouraged. Given the distance from property lines and the Metro-ownership of adjacent properties, impacts on neighbors would be minimal as there are, essentially, no neighbors.

The proposed use of the site as a wedding venue, limited as outlined in the proposal description, will not affect the character of the area because the use is occasional, seasonal, and requires no permanent structures. No permanent changes are proposed to the site that could alter the character of the site, the present residential use, or affect surrounding properties. In fact, Metro's support for the variance hinges on minimal site disturbance to limit impacts on their property and maintenance of the character of the open space. Therefore, this criterion is satisfied.

**Staff:** To address this criterion, Staff looked at the "character" of the area (i.e., its characteristics related to the rural land uses near the property), and then evaluated how the proposal is or is not "consistent" (i.e., compatible and not in conflict) with those land use characteristics. Rural land use characteristics considered include the farm, forest, open space and rural residential uses near the property, the natural resources on or near the property, and the scenic views of the property.

Exhibit S16 is an aerial photograph showing the subject property and the properties within a quarter mile and half mile of the subject site. As shown, it is a heavily forested, rural area with a mix of forest, farm, and single-family residential uses. Also, except for the residence on the adjacent Dorsey property, the properties immediately adjacent to the site are presently used for open space uses.

The proposed wedding and reception venue may be compatible (not conflict) with the rural land uses near the property as long as it is not visible or audible from surrounding properties, and as long as the natural resources and scenic views on the property are protected. The applicant has claimed that the potential impacts to neighbors will be minimal due to the distance between the proposed use and the property lines, and because most of the surrounding properties are owned by Metro and used for open space. The ownership of the surrounding property cannot be taken into account in reviewing consistency with the character of the area. However, the use of the property as open space makes it even more important that the proposed changes to the subject property are



not visible or audible.

The applicant has submitted an analysis of the potential noise impacts of the proposed use prepared by Altermatt Associates, Inc, an acoustics consulting firm, a copy of which is included as Exhibit A8. This analysis states that the proposed activities will not generate noise that is audible at the property lines if the sound level of any loudspeaker used as the proposed event site should be limited to a maximum of 57 dBA measured at 65 feet from the loudspeaker.

Natural resources and scenic views are addressed in detail in findings 8.4.

There is sufficient evidence in the record to suggest that, if approved, the proposed use would be in character with the surrounding area if noise levels are limited. Staff recommends a condition of approval requiring the use of any loudspeaker at the proposed event site to be limited to a maximum of 57 dBA measured at 65 feet from the loudspeaker.

**Hearings Officer:** With the suggested condition of approval, this criterion is met.

**8.4 (B) Will not adversely affect natural resources;**

**Applicant (6-17-05):** The natural resource identified through the SEC overlay is the Sandy River viewshed. The proposed use of the site for a wedding venue will not adversely affect natural resources; in fact, it will likely have no impact on natural resources at all.

The site proposed for the use is in the vicinity of the existing residence, which is on a relatively flat bench-like area that is approximately 200 feet above the elevation of Gordon Creek Road and at greater elevation above the river. The proposed use will only occur on the area in the immediate vicinity of the residence that is already cleared of trees and landscaped. The location intended for parking alongside the existing and extended driveway, will minimize the overall site disturbance. Dense vegetation, including numerous tall conifers, in the 1,000 feet of distance between the residence and road screen all activities from view. Even the new driveway loop and associated parking will not be visible from below, except possibly as an interruption in the tree line which could as easily be caused by topographical features such as a ravine.

The paved driveway area will generate some additional run-off, however the stormwater will be directed to sides of the driveway, where it will infiltrate into the ground. While more than natural run-off conditions, the design of the driveway extension will consider how water is directed most appropriately. No additional structures are proposed that would generate run-off. Given the heavily vegetated nature of the site, it is unlikely that any stormwater will travel more than a few feet from the edge of the pavement. The distance of new pavement from property lines also suggests that impacts on Gordon Creek Road (downhill) would be very unlikely.

This criterion is satisfied, as there will likely be no impact on natural resources.

**Staff:** County staff does not agree with the applicant's conclusion that the proposed use of the site for a wedding venue "will likely have no impact on natural resources at all." The subject site is within the Significant Environmental Concern (SEC) overlay zone for the Sandy River Scenic Waterway, and portions of the development area are within the Hillside Development (HD) overlay zone as shown on Exhibits S10 and S11. These districts are aimed at protecting scenic views, earth resources, and water quality. Therefore, the proposal's potential for impacting natural resources must be reviewed in accordance with the applicable SEC and HD (or Grading and Erosion Control) code criteria.

The proposed new driveway loop, overflow driveway extension, and adjacent parking areas will require the removal of trees and brush, and will involve grading in areas with greater than 25 percent slopes. This will result in a loss of vegetation on the site that could affect scenic views of the property from the Sandy River Scenic Waterway. In addition, the existing dwelling and the new structures (tent, sanitary units, and trailer) could be visible from the waterway if vegetation between the home and the river is removed. The property is also traversed by a small spring fed stream that flows through the pond into Gordon Creek and the Sandy River according to the applicant. This is a natural resource that needs to be addressed under this criterion.

**Scenic Resources.** The subject property is visible from the Sandy River, which is a federally designated Wild and Scenic River. Due to the site's proximity to the Sandy River, the majority of the site is within the County's Significant Environmental Concern (SEC) overlay and is also subject to the regulations enforced by the Oregon Parks and Recreation Department (OPRD) Scenic Waterways Program. The applicant has submitted a letter from OPRD dated 6-17-05 which is included as Exhibit A7. This letter indicated that OPRD has reviewed the proposal including the proposed tree removal and has confirmed that the location meets that agency's criteria for being non-visible under state Scenic Waterway regulations.

Because the proposal would alter the use on the property and it would introduce new structures, driveway improvements, and a parking area onto the property that were not legally existing prior to November 17, 1994, the proposed alterations and structures do require an SEC Permit that assesses compliance with the approval criteria in MCC 35.4555. The criteria that appear most applicable to this proposal consider impacts of the proposed use on stream protection considering proximity of the use and vegetation, erosion, water quality, noise, and character and visual impacts to SEC designated areas. Staff adds that the SEC ordinance states that the criteria are to determine the appropriate siting or scope of a proposed use, but are not to be used to prohibit the use (MCC 35.4525(E)). Findings regarding the SEC permit are included in section 12 of this report.

Staff asserts that there is sufficient evidence in the record to determine that the proposal will not have an adverse affect on scenic resources.

**Earth Resources-Site Work.** Construction of the driveway extension and any other grading associated with the proposal (e.g., terracing for creating a seating area for wedding guests) will either require an HD permit or a Grading and Erosion Control

(GEC) Permit. It will depend on the severity of the slopes in the area to be graded and the amount of grading (MCC 35.5500-35.5525). If the grading is exempt from needing a HD Permit, it will need a GEC Permit because at least part of it will be within 200 feet of a water body (MCC 29.330-29.348). As part of either a HD or GEC Permit, a stormwater analysis will need to be provided that certifies that the additional stormwater attributable to the new paved driveway loop will adequately controlled on the property.

The applicant is requesting a variance to the access standards in order to limit the amount of on-site grading required. The existing driveway is 12 feet wide while MCC 35.4170 requires a 20 foot paved accessway from any parking area to the nearest street. Meeting this standard would require a substantial amount of grading on steep slopes and could involve a substantial amount of tree removal which would additionally affect scenic resources. The applicant's request for a variance is intended to minimize the impact of the proposal on land.

To be able to determine if the proposed use could meet the requirements of a HD or GEC Permit, the amount of potential grading and slopes in the area to be graded was considered by staff. It appears that an area of approximately 30,000 square feet would be involved in the grading for the loop driveway, and part of the loop would traverse areas with slopes of 25 to 35% (see Exhibit S17) (Exhibit 4 from T3-05-002). Therefore, it is likely that a HD Permit will be required for the loop driveway. The HD permit requires a geotechnical assessment of the potential landslide hazards associated with earth disturbing activities, and also contains standards that are equivalent to a grading and erosion control permit. The applicant has not submitted evidence from a qualified professional which indicated the extent of grading needed to carry out the plan. However, if a Hillside Development permit is approved, the standards associated with the permit would assure that site work protects earth resources.

**Water Quality.** The potential impacts to water quality are associated with vegetation in the vicinity of the small creek and erosion of disturbed soils into the creek or other areas of the property. These impacts can be evaluated and controlled or, if necessary, mitigated through application of the approval criteria in the SEC and HD permits. Staff therefore finds that the applicant can obtain permits that protect water quality.

Staff recommends a condition of approval requiring the applicant to obtain a Hillside Development Permit or a Grading and Erosion Control Permit prior to initiation of earth disturbing activities. Compliance with the requirements of these permits will ensure that the project will not affect natural resources and that this criterion will be met.

**Hearings Officer:** With the suggested condition of approval, this criterion is met.

8.5      **(C) Will not conflict with farm or forest uses in the area;**

**Applicant (6-17-05):** The "215.296" test was discussed in response to MCC 35.2345(A). There are no farm or forest uses on adjacent properties or within approximately ¾ mile, all separated from the site by Metro's open space land.

**Staff:** Although the adjacent properties are not currently in active forest operations, the potential exists for such uses to resume in the future. A reasonably foreseeable potential impact to surrounding farm and forest uses would be the addition of vehicular traffic on the roads leading to the subject property. This impact is discussed in detail in finding 8.8 for MCC 35.6010(F). Assuming there could be up to one event on Fridays, and up to two events on the weekend days, there could be an additional 120 cars plus delivery trucks/vans on the road during each of the days the wedding venue is operated. This amount of additional traffic would not be expected to significantly increase the cost of accepted farm and forest practices on surrounding lands devoted to farm and forest uses.

Common and accepted forest and farm practices that could occur on adjacent and nearby forest-zone properties include pesticide and herbicide spraying, weed cutting, slash burning, irrigating, field plowing, harvesting, and other accepted farm and forest practices. These practices produce noise, dust, spray residue, smoke, vapor, and other types of visual, odor, or noise pollution.

Staff suggests a condition of approval requiring the applicant to submit a copy of the previously signed and record covenant or to record a new covenant on the form provided by the county, a copy of which is included as Exhibit S9. (MCC 35.2245(A)(3)) This covenant acknowledges that the subject property is adjacent to forest-zoned land and, as such, may be subjected to the noise, dust, spray residue, smoke, vapor, and other types of visual, odor, or noise pollution, which the signer of the covenant accepts as normal and necessary farm and forest practice and as part of the risk of having a dwelling in a forest-zoned area.

**Hearings Officer:** With this condition of approval, this criterion is met.

**8.6 (D) Will not require public services other than those existing or programmed for the area;**

**Applicant (6-17-05):** The existing residence has a well, which will not be utilized to provide potable water for the use. Water is anticipated to be provided by the caterer, and in any case will be limited to drinking or washing/clean-up, as sanitary needs will be met with portable facilities. Service provider letters confirm that police and fire officials have no concerns.

**Staff:** The Multnomah County Rural Fire Protection District #14 indicated that existing fire-flow and access are adequate to serve the proposed wedding venue if no structures are built (Exhibit A4). The Multnomah County Sheriff's Office indicated that existing law enforcement will be adequate for the proposed wedding venue (Exhibit A5).

**Hearings Officer:** Criterion met.

**8.7 (E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

**Applicant (6-17-05):** The site is not within a big game winter habitat; this standard does not apply.

**Staff:** Staff concurs; the Multnomah County Wildlife Habitat Map shows the subject property is not within a Sensitive Big Game Habitat area (Exhibit S7).

**Hearings Officer:** Criterion does not apply.

8.8      **(F) Will not create hazardous conditions;**

**Applicant (6-17-05):** The only condition that could remotely be considered a potential hazard is increased traffic on SE Gordon Creek Road. However, as noted, traffic averages 1,000 daily trips and new traffic related to the wedding venue will be occasional and limited. Sight distance at the driveway is approximately 400 feet measured to the north and over 1,000 feet to the south. Most vehicles will enter the site from the north, turning left into the driveway, and turning right on exiting to return to the north. Sight distance is somewhat limited to the south by a bank near the edge of the right of way. However, a vehicle can pull forward to a point where visibility is good without being on the Gordon Creek Road. The bank helps to reduce on-street parking to some degree, and the applicant has no plans to remove it. With the previous application, the County Transportation Planner recommended placement of a sign to alert traffic to potential turning movements. This would be acceptable to the applicant as a condition of approval. 8

No hazardous or toxic materials or practices are anticipated.

**Staff:** The addition of approximately 60 trips each way onto Gordon Creek Road during a three- to four-hour-period will increase the average daily traffic on Gordon Creek Road once on Fridays and one or two times on each weekend day. It is assumed that most of the trips would be coming from the metropolitan Portland area, and would therefore affect the roads leading to Gordon Creek Road from the north.

Multnomah County Transportation recommends a minimum sight distance, in feet, of 10 times the posted speed limit, which is 45 mph on this reach of Gordon Creek Road. Therefore, the recommended sight distance is 450 feet. As stated by the applicant, the sight distance to the north is approximately 400 feet and to the south it is approximately 1,000 feet.

Multnomah County Transportation reviewed the sight distance at this location and found that the sight distance to the north is less than that recommended (Exhibit S8). Therefore, they are requiring the installation of a "Driveway Entering Roadway Ahead" warning sign on southbound Gordon Creek Road prior to the curve just north of the driveway (see Recommended Condition of Approval 18). The applicant must contact the Multnomah County Sign Shop at least eight weeks prior to the desired commencement date and pay for the fabrication and installation of the sign.

Although there are turnouts at the curves of the driveway leading to the residence/wedding venue, there may be a potential conflict between emergency vehicles

attempting to enter the property at the same time that the park customers (in about 60 vehicles plus catering staff) are trying to exit the property. Staff recommends a condition of approval requiring the applicant to have on-site parking/traffic attendants at every event to guide traffic onto and off of the site in the case of an emergency event.

**Hearings Officer:** With the recommended conditions, this criterion is met.

8.9            **(G) Will satisfy the applicable policies of the Comprehensive Plan;**

**Applicant (6-17-05):** Comprehensive Plan policies that apply to this proposal are discussed in response to 35.4555-N, criteria for the SEC permit, and will not be repeated here. The discussion of Comprehensive Plan policies demonstrates that the use is consistent with applicable policies. The occasional nature of the proposed use minimizes the potential for incompatible or adverse impacts on the site or area.

**Staff:** The Comprehensive Framework Plan policies that apply to this proposal include: Policy 11 (Commercial Forest Land Area), Policy 14 (Development Limitations), Policy 16 (Natural Resources), Policy 19 (Community Design), Policy 37 (Utilities), and Policy 38 (Facilities). See findings related to each of these policies in section 13 of this report.

8.10           **(H) Will satisfy such other applicable approval criteria as are stated in this Section.**

**Staff:** MCC 35.6005 requires the proposal to be reviewed for compliance with the Design Review criteria of MCC 35.7000-35.7065. Findings for these criteria are in section 9 of this report.

9            **Design Review. The applicant must submit final plans consistent with this decision must be submitted**

9.1        **§ 35.7010    DESIGN REVIEW PLAN APPROVAL REQUIRED**

**No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to this section, nor shall such a use be commenced, enlarged, altered or changed until a final design review plan is approved by the Planning Director, under this ordinance.**

**Staff:** The proposed use is subject to this section pursuant to MCC 35.6005. The use must be approved under the Design Review criteria prior to the issuance of a grading or building permit.

9.2        **§ 35.7020    APPLICATION OF REGULATIONS**

**Except those exempted by MCC 35.7015, the provisions of MCC 35.7000 through 35.7060 shall apply to all conditional and community service uses in any district.**

**Applicant (6-17-05):** New parking area is proposed, therefore design review is required.

Although not articulated, the Design Review section clearly anticipates that projects subject to these standards and criteria will be commercial or multi-family residential developments with buildings, rather than the small scale use involving only seasonal outdoor activities as proposed. The applicant originally chose to request approval as a Type B Home Occupation in part because that category of uses is exempt from Design Review (MCC 35.7015(B)). To the applicant, there was little value in subjecting the proposed outdoor wedding venue to a review intended primarily to regulate uses involving actual site development and buildings, rather than activities with no permanent facilities on site.

To the extent applicable, the following discussion demonstrates that design review criteria are satisfied.

**Staff:** The subject proposal is for a community service use. All community service uses are subject to design review regardless of the scope of improvements associated with the proposed use.

9.3     § 35.7030    DESIGN REVIEW PLAN CONTENTS

**(A) Any preliminary or final design review plan shall be filed on forms provided by the Planning Director and shall be accompanied by such drawings, sketches and descriptions as are necessary to describe the proposed development.**

**(B) Contents:**

**(1) Preliminary Site Development Plan;**

**(2) Preliminary Site Analysis Diagram;**

**(3) Preliminary Architectural Drawings, indicating floor plans and elevations;**

**(4) Preliminary Landscape Plan;**

**(5) Proposed minor exceptions from yard, parking, and sign requirements; and**

**(6) Design Review Application Fee, as required under the applicable fee schedule in effect at time of application;**

**(C) A preliminary site analysis diagram may be in freehand form and shall generally indicate the following characteristics:**

**(1) Relation to adjacent lands;**

**(2) Location and species of trees greater than six inches in diameter at five**

feet;

**(3) Topography;**

**(4) Natural drainage;**

**(5) Significant wildlife habitat;**

**(6) Information about significant climatic variables, including but not limited to, solar potential, wind direction and velocity; and**

**(7) Natural features and structures having a visual or other significant relationship with the site.**

**(D) A preliminary site development plan may be in freehand form and shall generally indicate the following as appropriate to the nature of the use:**

**(1) Access to site from adjacent rights-of-way, streets, and arterials;**

**(2) Parking and circulation areas;**

**(3) Location and design of buildings and signs;**

**(4) Orientation of windows and doors;**

**(5) Entrances and exits;**

**(6) Private and shared outdoor recreation spaces;**

**(7) Pedestrian circulation;**

**(8) Outdoor play areas;**

**(9) Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;**

**(10) Areas to be landscaped;**

**(11) Exterior lighting;**

**(12) Special provisions for handicapped persons; and**

**(13) Other site elements and spaces which will assist in the evaluation of site development.**

**(E) The preliminary landscape plan shall indicate:**



**(1) The size, species, and approximate locations of plant materials to be retained or placed on the site; and**

**(2) Proposed site contouring**

**Applicant (6-17-05):** The site plan submitted is admittedly conceptual, however it shows the key elements and generalized locations of activities and the new driveway loop to accommodate parking. The applicant expects to retain an engineer to provide a more detailed plan and to utilize "Best Management Practices" with respect to minimizing vegetation removal, erosion control, stormwater management, and so on. The applicant felt that the expense of this work was not reasonable without some assurance that the use could be approved.

**Staff:** The site plan submitted by the applicant and included as Exhibit A1 is sufficient to document compliance with the requirements of this section for a preliminary plan. The site plan is a preliminary site analysis diagram and does generally indicate where the proposed improvements will be.

**Hearings Officer:** Criteria met.

**9.4 § 35.7040 FINAL DESIGN REVIEW PLAN**

**A final design review plan shall contain the following, drawn to scale:**

**(A) Site Development and Landscape Plans, indicating the locations and specifications of the items described in MCC 35.7030 (D) and (E), as appropriate;**

**(B) Architectural drawings, indicating floor plans, sections, and elevations;**

**(C) Proposed minor exceptions from yard, parking, and sign requirements; and**

**(D) When the Planning Director determines that immediate execution of any feature of an approved final design review plan is impractical due to climatic conditions, unavailability of materials or other temporary condition, the Director shall, as a precondition to the issuance of a required permit under MCC 35.7010 through 35.7020, require the posting of a performance bond, cash deposit, or other surety, to secure execution of the feature at a time certain.**

**Applicant (7-29-05):** Design review, like the SEC permit, is a process that is required but doesn't seem to fit when applied to non-permanent, seasonal structures, on a part of the site that is not visible from any adjacent street or from the area of significant concern, the Sandy River.

The purpose of design review is to "promote functional, safe, innovative and attractive site development compatible with the natural and man-made environment." <sup>7</sup> MCC 35.7000  
Clearly, reviewing the scope of Section 35.7005 or the required plans in Section 35.7030,

a far larger project is anticipated to achieve the purposes of this chapter than the consideration of a development that involves no permanent components (tent/canopy and porta-potties) that will be in place only part of the year, use of an existing landscaped grounds around an established residence, and as little change to the site as possible to create area for parking.<sup>8</sup>

<sup>7</sup>Ironically, MCC site development, requirements, especially relating to the driveway and parking, appear to work against this purpose by imposing unattractive and incompatible standards that will result in greater loss of existing vegetation (e. g. due to wider driveway, etc.). Development requirements that make sense in a more urban environment only contribute to a loss of natural environment for the type of project and site proposed here.

<sup>8</sup> Surely there is some latitude to recognize that the scale of this proposal does not justify the complete set of plans and documents specified in 35.7030(B), (C), and (D). The applicant has a hard time understanding, for example, the need for detailed architectural plans for a tent and porta-potties, and a complete site analysis for a use that proposes to fit within the existing developed and landscaped setting.

No new landscaping is proposed, and in any case, landscaped and developed area is already established around the existing dwelling.

At this point, no specific type of tent/canopy has been identified for the use. Certainly no architectural plans would be available in any case, as the tent/canopy is not a building. An appropriate tent/canopy will be identified when the permit is approved, in consultation with the City of Gresham's Building Department to assure that any fire and safety codes are satisfied.

On-site uses are shown on the proposed site plan, conceptually located in anticipation of more detailed plans, if needed, following approval. The applicant will obtain the services of a civil engineer to prepare a detailed grading plan for the extension of the driveway if necessary. Storm water will be managed by infiltration as at present from impervious surfaces, as any new pavement (driveway extension) will have graveled shoulders. A specific design for the parking should not be necessary under the "occasional use" provisions, which do not require paving, striping, etc.

The applicant requests design review approval, as there is very little that can be accomplished through further process. If the approval authority determines that additional design review is necessary, the applicant will comply with any such requirement specified as a condition of approval.

**Staff:** The applicant has requested final design review approval at this time.

The applicant has not submitted any drawings that are to-scale. Much of the required information does relate to building orientation and location as well as aspects of building façade construction that are not directly applicable to the proposed porta-potties. The elements of a Design Review plan are listed in MCC 35.7005 and include a detailed plan

of all of the existing and proposed improvements and use areas of the property.

MCC 35.7040(A) requires that the plan show the locations and specification of all of the elements in (D) and (E) of MCC 35.7030 that are present or proposed. The applicant has not submitted any plans with specifications (i.e. dimensions, construction materials, etc...)

Staff cannot recommend approval of the final design because the applicant has not supplied the necessary information. If the proposed park is approved, staff suggests a condition of approval requiring the applicant to make a subsequent Type II land use application for design review.

**Hearings Officer:** I do not agree with the applicants' representatives that the requirement to submit a final design review plan is discretionary. These criteria have not yet been satisfied, but can be met through satisfaction of a condition, which has been imposed.

#### 9.5     § 35.7050     DESIGN REVIEW CRITERIA

**(A) Approval of a final design review plan shall be based on the following criteria:**

**Staff:** No final design review plan has been submitted. However, the applicant did provide written responses to the criteria in this section. Staff has included these responses and provided findings. Staff recommends denial of the Design Review on the basis that no final design review plan has been submitted as discussed in finding 9.4.

**Hearings Officer:** The applicants have submitted preliminary plans and a good deal of other information relevant to design review. Final plans for Design Review have not been submitted. As staff notes, some design review criteria are not applicable. Further, given the state of the applicants' documentation of their planned improvements and use, I conclude that it is feasible for the applicant to meet the requirements for Design Review. This decision imposes a condition of approval requiring approval of Design Review, without substantial deviation from the plans, documentation, and other testimony already submitted. Under the circumstances, this requires submittal and approval of the final plan, which satisfies the criterion.

#### 9.6                   **(1) Relation of Design Review Plan Elements to Environment.**

**(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.**

**(b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.**

**(c) Each element of the design review plan shall effectively, efficiently,**

**and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.**

**Applicant (6-17-05):** No change is proposed to the existing residence. The proposed new structure is temporary and removable. The canopy-type tent will be placed over an existing paved sports court. The point of using the site for an outdoor wedding venue is to maintain the sylvan setting and to minimize the intrusion of any new feature that would detract from the idyllic circumstances.

**Staff:** No design review plan has been submitted. As such, the design review plan cannot be analyzed for compliance with this criterion.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

9.7

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**(2) Safety and Privacy – The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.**

**Applicant (6-17-05):** This criterion does not appear to apply to the proposed use. To the extent that safety is an issue, it is addressed through the condition of approval recommended by the Transportation Planner, previously noted.

**Staff:** No design review plan has been submitted. As such, the design review plan cannot be analyzed for compliance with this criterion.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

9.8

**(3) Special Needs of Handicapped – Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and braille signs.**

**Applicant (6-17-05):** Special parking spaces can be designated for handicapped use. New pathways will be designed to maintain a suitable slope for accessibility. However, the site is sloped and this may present a challenge to some persons and extensive pathways at suitable slope would conflict with the very nature of the proposed use as well as with various requirements and policies that urge minimal site disturbance. As the site is not "public" and not generally open to public use, the special needs of individuals can be managed through personalized attention either by the wedding party or as a service provided as needed. The applicant has considered providing golf cart or similar small vehicle as a shuttle for persons in need of assistance, however has not determined whether this service would be needed.

**Staff:** No design review plan has been submitted. As such, the design review plan cannot be analyzed for compliance with this criterion.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

- 9.9           **(4) Preservation of Natural Landscape – The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.**

**Applicant (6-17-05):** The entire purpose of the proposed use is to preserve the natural landscape, with disturbance only to the extent necessary for the extended driveway loop and parking area.

**Staff:** No design review plan has been submitted. As such, the design review plan cannot be analyzed for compliance with this criterion.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

- 9.10           **(5) Pedestrian and Vehicular circulation and Parking – The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.**

**Applicant (6-17-05):** The only point of access to the site is at the intersection of the existing driveway with SE Gordon Creek Road. An extension of the driveway into a loop configuration, with parking along the driveway loop, will serve for vehicle and pedestrian circulation. The new driveway and parking will be screened to some extent from the wedding ceremony site, to maintain the natural setting.

**Staff:** No design review plan has been submitted. As such, the design review plan cannot be analyzed for compliance with this criterion.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

- 9.11           **(6) Drainage – Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.**

**Applicant (6-17-05):** Owing to the distance from the new driveway and parking to the property line, it is unlikely that any drainage will leave the site. However, as part of the preparation of construction plans, an engineer will be involved to recommend "standard practices "to be utilized.

**Staff:** No design review plan has been submitted. As such, the design review plan cannot

be analyzed for compliance with this criterion.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

- 9.12           **(7) Buffering and Screening – Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.**

**Applicant (6-17-05):** No buffering or screening is proposed in addition to the existing dense vegetation, topography, and distance from SE Gordon Creek Road.

**Staff:** No design review plan has been submitted. As such, the design review plan cannot be analyzed for compliance with this criterion.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

- 9.13           **(8) Utilities – All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.**

**Applicant (6-17-05):** No new utilities or signs are proposed; these requirements to not apply.

**Staff:** No design review plan has been submitted. As such, the design review plan cannot be analyzed for compliance with this criterion.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

- 9.14           **(9) Signs and Graphics – The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.**

**Applicant (6-17-05):** No new utilities or signs are proposed; these requirements to not apply.

**Staff:** No design review plan has been submitted. As such, the design review plan cannot be analyzed for compliance with this criterion.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

- 9.15    § 35.7055    REQUIRED MINIMUM STANDARDS

**(A) Private and Shared Outdoor Recreation Areas in Residential Developments:**

\*\*\*

**(B) Storage**

**Residential Developments – Convenient areas shall be provided in residential developments for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc. These areas shall be entirely enclosed.**

**Staff:** The criteria above regulate residential development. No residential development is proposed, therefore the above criteria do not apply.

9.16 **(C) Required Landscape Areas**

**The following landscape requirements are established for developments subject to design review plan approval:**

**(1) A minimum of 15% of the lot area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.**

**Staff:** While no design review plan has been submitted, it is obvious that the majority of the subject 21.7 acres will remain forested. The forested condition can be considered landscaping and satisfies this criterion.

**Hearings Officer:** Staff's analysis is correct. This criterion is met.

9.17 **(2) All areas subject to the final design review plan and not otherwise improved shall be landscaped.**

**Staff:** The applicant has indicated his intention to retain as much of the existing forest as possible. However, without the submission of a final design review plan, it is not possible to verify the specific plans.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

**Hearings Officer:** The applicants must comply with the plan submittal requirements for Design Review. Until then, this criterion is not met. Satisfaction of the condition of approval will satisfy this requirement.

9.18 **(3) The following landscape requirements shall apply to parking and loading areas:**

**(a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totaling no less than 25 square**

feet per parking space.

(b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.

(c) A landscaped strip separating a parking or loading area from a street shall contain:

1. Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;
2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and
3. Vegetative ground cover.

(d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.

(e) A parking landscape area shall have a width of not less than 5 feet.

(4) Provision shall be made for watering planting areas where such care is required.

(5) Required landscaping shall be continuously maintained.

(6) Maximum height of tree species shall be considered when planting under overhead utility lines.

(7) *Landscaped* means the improvement of land by means such as contouring, planting, and the location of outdoor structures, furniture, walkways and similar features.

**Staff:** The subject request does include parking areas and is therefore subject to this section. No design review plan has been submitted. As such, the design review plan cannot be analyzed for compliance with these criteria.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review in order to ensure compliance with this section.

**Hearings Officer:** The recommended condition has been imposed, and these requirements can be satisfied through compliance with the condition.

10     **The Proposal is subject to the Off-street Parking and Loading Standards of MCC 35.4100-35.4220 and has conceptually proven that the use can**



**meet the standards.**

10.1    **§ 35.4105    GENERAL PROVISIONS**

**In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section.**

**Staff:** The subject request involves a change of use which will result in intensified use by customers. The standards of this section apply.

10.2    **§ 35.4135    IMPROVEMENTS REQUIRED**

**(A) Required parking and loading areas shall be improved and placed in condition for use before the grant of a Certificate of Occupancy under MCC 35.0525, or a Performance Bond in favor of Multnomah County equivalent to the cost of completing such improvements shall be filed with the Planning Director.**

**(B) Any such bond shall include the condition that if the improvement has not been completed within one year after issuance of the Certificate of Occupancy, the bond shall be forfeited.**

**Any bond filed hereunder shall be subject to the approval of the Planning Director and the County Attorney.**

**Staff:** Staff recommends a condition of approval requiring the proposed parking to be installed prior to the commencement of operations of the park. Installation of parking areas will involve grading, which must be conducted under either a Hillside Development Permit or a Grading and Erosion Control Permit. Staff recommends a condition of approval requiring the applicant to obtain either a Hillside Development Permit or Grading and Erosion Control Permit, whichever is applicable, prior to the commencement of ground disturbing activities.

**Hearings Officer:** With the suggested conditions of approval, these criteria are met.

10.3    **§ 35.4165    DESIGN STANDARDS: SCOPE**

**(A) The design standards of this section shall apply to all parking, loading, and maneuvering areas except those serving a single or two-family residential dwelling or mobile home on an individual lot.**

**(B) All parking and loading areas shall provide for the turning, maneuvering and parking of all vehicles on the lot. After July 26, 1979 it shall be unlawful to locate or construct any parking or loading space so that use of the space requires a vehicle to back into the right-of-way of a public street.**

**Staff:** The proposal is for a park, not a single or two-family residential dwelling. The design standards of this section apply.

The site plan submitted by the applicant (Exhibit A1) indicates that all proposed parking areas will be located on the subject property.

**Hearings Officer:** Criteria met.

10.4    **§ 35.4170    ACCESS**

**(A) Where a parking or loading area does not abut directly on a public street or private street approved under MCC 35.7700 et. seq., the Land Division Chapter, there shall be provided an unobstructed paved drive not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.**

**(B) Parking or loading space in a public street shall not be counted in fulfilling the parking and loading requirements of this section. Required spaces may be located in a private street when authorized in the approval of such private street.**

**Applicant (6-17-05):** The area proposed for parking is approximately 1,600 feet from Gordon Creek Road. The existing driveway that provides access to the residence is 12 feet wide, with expanded width to 20 feet for turnouts at three corners. The application proposes to construct additional driveway to form a loop, for on-site circulation and parking. The applicant requests a variance from the requirement for a 20 foot wide driveway, owing to the topography of the site and the nature of the proposed use. Variance criteria will be discussed in a following section of this narrative.

**Staff:** No parking or loading spaces in a public street are proposed to fulfill the requirements of this section.

The applicant has requested a variance to the requirements of this section. Please see Section 11 for findings related to the variance criteria.

10.5    **§ 35.4175    DIMENSIONAL STANDARDS**

**(A) Parking spaces shall meet the following requirements:**

**(1) At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.**

**(2) Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.**

**(3) For parallel parking, the length of the parking space shall be 23 feet.**

**(4) Space dimensions shall be exclusive of access drives, aisles, ramps or columns.**

**(B) Aisle width shall be not less than:**

**(1) 25 feet for 90 degree parking,**

**(2) 20 feet for less than 90 degree parking, and**

**(3) 12 feet for parallel parking.**

**(4) Angle measurements shall be between the center line of the parking space and the center line of the aisle.**

**Applicant (6-17-05):** Marking of spaces is not proposed, as it is inconsistent with the exception for "large parking fields" allowed under 35.4180(A)(2). Parking locations will be indicated by the arrangement of railroad tie bumpers and other site features.

An aisle of no less than 20 feet will be provided where the parking spaces are on both sides of the new driveway loop.

The standards of this section can be satisfied.

**Staff:** While the applicant is proposing the use of the "large parking fields" standard under MCC 35.4180(A)(2) for intermittent uses, this section does still require the parking field to provide enough area to accommodate parking spaces that at least meet the minimum dimensions specified in this section.

No dimensions are specified on the site plan (Exhibit A1) so staff has inferred dimensions from the approximate scale and the parking requirements of MCC 35.4100-4220. Throughout the applicant's narrative, statements have been made that the parking area center aisles will be 20 feet in width with gravel shoulders to accommodate parked cars. MCC 35.4175 requires a depth of 18 feet for parking spaces. The applicant has not proposed any compact parking spaces. This would result in a cleared loop that is at least 56 feet wide and approximately 360 feet long. MCC 35.4175 requires a 25 foot wide aisle for 90 degree parking along with an 18 foot depth for parking spaces, meaning the stem of the cul-du-sac would be at least 43 feet wide and is shown as being 120 feet long. The circular portion of the cul-du-sac is shown as having an approximate diameter of 60 feet with an additional 18 feet of parking spaces on half of the perimeter. The circular portion of the cul-du-sac would then require approximately 2,800 square feet  $(3.14 * 30 * 30)$  and the parking area would require approximately 800 square feet  $((3.14 * 48 * 48) / 2) - 2800$ . This means the cul-du-sac would require an approximate total area of 8,760 square feet, or 1/5 of an acre.

MCC 35.4175(A) requires parking spaces to be 9 feet wide. If half of the requested 55 to

60 parking spaces are provided on each side of the proposed loop, then a minimum area of 270 lineal feet (30 \* 9) would be needed. The applicant is proposing a 360 foot long loop plus additional overflow parking in a cul-du-sac. The applicant intends to intersperse the parking spaces with existing trees in order to minimize the amount of tree removal necessary to install the one way loop. While a specific design with dimensions has not been submitted, staff asserts that it is possible for the proposal to meet the standards above.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review, at which time compliance with this section can be verified on a plan that does contain specific dimensions.

**Hearings Officer:** These criteria are not presently met. Upon compliance with the recommended condition, they will be met.

10.6      **(C) Loading spaces shall meet the following requirements:**

(1)

**District  
Minimum Width  
Minimum Depth**

**All  
12 Feet  
25 Feet**

**(2) Minimum vertical clearance shall be 13 feet.**

**Staff:** No loading spaces are proposed.

**Hearings Officer:** These criteria are inapplicable.

10.7      **§ 35.4180 IMPROVEMENTS**

**(A) Surfacing**

**(1) All areas used for parking, loading or maneuvering of vehicles shall be surfaced with two inches of blacktop on a four inch crushed rock base or six inches of portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds.**

**(2) Large parking fields for intermittent uses such as amusement parks, race tracks, stadiums, and the like may be surfaced with gravel or grass and spaces may be unmarked if the parking of vehicles is supervised.**

**Applicant (6-17-05):** Parking area is proposed for a graveled shoulder area alongside the existing and expansion of the driveway. Parking would be supervised, to ensure that guests are directed to parking spaces and that the number of vehicles is limited to the available area. Therefore, improvements can be limited as provided in MCC 35.4180. A. 2.

**Staff:** The proposed use is a park for the purpose of providing a seasonal venue for weddings and similar receptions. The days of operation are proposed as Friday, Saturday, and Sunday only during the times of year with warm, dry weather. As such, the proposed use is intermittent and may be served by gravel or grass parking spaces. A condition of approval is suggested to require the applicant to have on-site parking/traffic attendants at every event to supervise parking and to guide traffic onto and off of the site in the case of an emergency event. (MCC 35.2245(A)(2), 35.6010(F))

**Hearings Officer:** With the suggested condition of approval, the criteria are met.

10.8 **(B) Curbs and Bumper Rails**

**(1) All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.**

**(2) The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height and at least three feet from the lot line or any required fence.**

**Applicant (6-17-05):** This requirement seems inconsistent with the exception for intermittent uses" in MCC 35.4180. A. 2. However, the applicant is willing to provide a railroad tie barrier at the edge of the graveled area to help identify parking spaces and to limit the area used for parking if required to do so. As is shown on the site plan, proposed parking along the driveway will be approximately 1,000 feet from the nearest public street.

**Staff:** The applicant has indicated a willingness to comply with this section, though no plans have been submitted.

Staff suggests a condition of approval requiring the applicant to apply for a subsequent Type II Design Review, at which time compliance with this section can be verified on a plan that does contain specific information regarding the proposed locations of bumper rails surrounding the parking area.

**Hearings Officer:** Criteria not currently met. The recommended condition has been imposed.

10.9 **(C) Marking – All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 35.4120, and such marking shall be continually maintained.**

**Applicant (6-17-05):** No marking of spaces is proposed, as allowed under 35.4180. A. 2. The graveled shoulder, with railroad tie border, will serve to identify the parking area.

**Staff:** The applicant is applying under the provisions for intermittent uses in MCC 35.4180(B), which exempt the parking area from marking requirements if parking is supervised.

**Hearings Officer:** This standard does not apply.

10.10      **(D) Drainage – All areas for the parking and maneuvering of vehicles shall be graded and drained to provide for the disposal of all surface water on the lot.**

**Applicant:** Run-off from the extension of the paved driveway will be directed to the graveled shoulders, where it will infiltrate into the soil. The new paved driveway area is at a great distance from the property boundaries, and the site is heavily vegetated with mature trees and other forest plants, so no drainage to adjoining properties is likely.

**Staff:** The applicant will be required to obtain either a Hillside Development Permit or a Grading and Erosion Control permit to authorize the construction of the parking area. These permits both require the submission of a plans and a statement stamped and signed by a registered professional engineer that the proposal will retain all storm water generated by impervious surfaces for the 10-year, 24-hour storm (MCC 35.5520(A)(1)(d), 29.345(A)(1)(d)). This criterion can be satisfied through a condition of approval requiring the applicant to obtain the appropriate permit- either Grading and Erosion Control or Hillside Development.

**Hearings Officer:** With the condition of approval, the criteria can be met.

10.11      **(E) Covered Walkways – Covered walkway structures for the shelter of pedestrians only, and consisting solely of roof surfaces and necessary supporting columns, posts and beams, may be located in an O-P district. Such structures shall meet the setback, height and other requirements of the district which apply.**

**Staff:** The applicant is not proposing any covered walkways. *This criterion does not apply.*

10.12      **§ 35.4185    LIGHTING**

**Any artificial lighting which may be provided shall be shielded or deflected so as to not shine into adjoining dwellings or other types of living units, and so as not to create a hazard to the traveling public on any street.**

**Staff:** The applicant is not proposing any lighting. *This criterion does not apply.*

10.13      **§ 35.4190    SIGNS**

**Signs, pursuant to the provisions of MCC 35.7465.**

**Staff:** The applicant is not proposing any signage. *This criterion does not apply.*

10.14    **§ 35.4195    DESIGN STANDARDS: SETBACKS**

**(A) Any required yard which abuts upon a street lot line shall not be used for a parking or loading space, vehicle maneuvering area or access drive other than a drive connecting directly to a street.**

**(B) A required yard which abuts a street lot line shall not be paved, except for walkways which do not exceed 12 feet in total width and not more than two driveways which do not exceed the width of their curb cuts for each 150 feet of street frontage of the lot.**

**Staff:** The required yards in the CFU-4 district are established in MCC 35.2260(C) and are 60 feet from the centerline of the road from which access is gained and 130 feet from any other property line. The applicant's site plan (Exhibit A1) shows that the parking areas will be approximately 180 feet from the nearest property line. No parking areas or paved walkways are proposed in any of the required yards.

**Hearings Officer:** Criteria met.

10.15    **§ 35.4200    LANDSCAPE AND SCREENING REQUIREMENTS**

**(A) The landscaped areas requirements of MCC 35.7055 (C) (3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 35.4165 (A).**

**Staff:** As discussed in finding 9.15 through 9.18, the proposed parking area is within the scope of the design standards stated in MCC 35.4165(A). Insufficient evidence has been submitted into the record to document compliance with these standards. Staff recommends a condition of approval requiring a subsequent Type II Design Review in order to ensure compliance with this section.

10.16    **§ 35.4205    MINIMUM REQUIRED OFF-STREET PARKING SPACES**

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**(E) Unspecified Uses**

**Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.**

**Applicant ( 7-29-05):** The application narrative explains that the MCC provides no parking requirement for "wedding site" or "park" and presents the reasoning used to

justify the size of the area proposed for parking. The application seeks approval for parking is requested pursuant to MCC 35.4180(A)(2), which allows for "occasional" parking areas to be grass or gravel, and "stacked" when an attendant is present. The site plan shows the conceptual layout, with an extension of the existing driveway, with space for parking along each side of the roadway. The applicant believes that the available area will be sufficient for 55 to 60 parking spaces. The area for parking individual vehicles will be supervised, but it will also be obvious how vehicles should be placed from the arrangement of the driveway with graveled shoulders.

The application narrative also explains that the key factor limiting the number of guests is the number of parking spaces. Rather than identify a hard-and-fast number, the applicant proposes to advise prospective clients that a certain number of parking spaces are available and that no more vehicles will be allowed on the site than can be accommodated. That being the case, the applicant expects to limit groups to approximately 100 persons (more or less) by the terms of the user agreement. The applicant prefers not to set a specific maximum number of persons per group. Approximately \*\*\*acres is available around the residence, with a \*\*\*by \*\*\*reception area (sports court). A large group could easily be accommodated, but is not what the applicant intends to allow on the property.

**Staff:** This standard is directed toward determining the number of spaces needed for a use that does not have a designated number of spaces in the code. There is no use listed in MCC 35.4205 which is similar to either a park (public or private) or a private wedding and reception venue.

As shown on the Site Plan, the proposal includes the development of a paved looped driveway and a gravel driveway extension (as needed ) that would accommodate 55-60 parking spaces based on the dimensional standards in MCC 35.4175.

The applicant is proposing to limit the number of attendees to events based on the number of proposed parking spaces, rather than vice versa. Since all events will be scheduled ahead of time and arranged by contact, it is feasible for the applicant to control access to the site in this manner. The proposed 55 to 60 parking spaces will be adequate to serve the use.

**Hearings Officer:** Criteria met.

### **Major Variance pursuant to MCC 35.7600-35.7605.**

#### **11 § 35.7600- VARIANCE APPROVAL CRITERIA**

**(A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall meet criteria (3) and (4).**

**Staff:** As explained in finding 11.5, the subject request is a major variance and therefore must satisfy all the criteria of this section.



**(1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.**

**Applicant (9-6-05):** The request is for a variance to MCC 35.4170(A), which requires a 20 foot wide driveway from a public street to a parking area and, at the behest of the staff, to MCC 35.2305(D), which requires a 20 foot wide driveway when two residences are served, to the extent it applies to an existing situation. The variance request is explained in detail (see ON, pages 25-28 of 28; 7/13/05 RNI, pages 17-18 of 18). The total length of the driveway is 1500 to 1600 feet (both figures are used in the ON and RNI). Dimensions of the parking area and driveway extensions are discussed at 7/13/05 RNI, pages 12-13 of 18.

**Applicant (7-29-05):** The application requests a variance to MCC 35.4170(A), which requires a 20 foot wide driveway from a public street to a parking area. A variance is not needed for development standards of MCC 35.2305(D), which either do not apply, are not determined at this time, or will be satisfied through construction of additional improvements.

Like so much of the MCC that normally applies to a development, the reasonableness and efficacy of requirements are less obvious when applied to a seasonal, occasional, non-permanent use as proposed. The applicant hopes to avoid impacts that alter the character of the site or area, particularly since the site is steeply sloped and heavily wooded, and subject to SEC and HD overlay requirements. This is why the applicant requested approval for parking area as an "occasional use" per 35.4180(A)(2) which allowed grass or gravel surface, only to be advised that the driveway must be 20 feet wide and paved. The applicant's preference would be to gravel the driveway and have less than a 20 foot width, to minimize the overall impact on the site and has only included a 20 foot wide paved driveway to comply with what he has been told was required.

**Applicant (6-17-05- referred to above as ON):** Both the site and the proposed use differ from adjacent properties. First, adjacent lots are owned by Metro, which will retain the properties as open space. No new use will be established on adjacent properties.

The site itself is sloped, and within SEC and HD overlay zones where alterations to a site are carefully scrutinized to assure that new activities do not adversely impact slope stability or the view-shed. The variance best supports the purposes of both overlay zones, and related policies of the Comprehensive Plan, by minimizing the overall impact on the site.

The driveway connecting the residence and grounds where weddings are proposed to occur is approximately 1,500 feet in length from Gordon Creek Road. This distance, and the grade, means that widening a road to accommodate an occasional use is cost prohibitive.

The proposed use, a "park" to allow use of the site for outdoor weddings, is not proposed on adjacent properties. The use is well suited to the proposed site, which is sylvan yet accessible, rural yet on the grounds of an established residence, with landscaping features already in place that can be enhanced to accommodate wedding parties.

The nature of the use allows restrictions on the number of guests, arrival times, activities such as availability of alcohol and types of music, and so on. These restrictions on the use limit the potential impacts to the site and the area, retaining the rural charm and forested beauty that would attract a wedding party in the first place.

Criterion 1 is satisfied because the topographic features of the site, along with the distance of developed area from Gordon Creek Road, and the nature of the proposed use which permits considerable limitation on the way the use is managed.

**Staff:** The applicant is requesting a variance to the requirement for a 20 foot wide paved access to any parking area established in MCC 35.4170(A). The subject property is steep, and the driveway crosses areas which are mapped as slope hazards on the Multnomah County Zoning map. Additionally, most of the driveway on the property is within the SEC overlay due to their proximity to the Sandy River, which is federally designated as a Wild and Scenic River.

The presence of steep slopes and the cost of construction alone are not adequate justification for granting a variance. However, the widening of the driveway would require a significant amount of tree removal in an area that is designated for the preservation of scenic views by the SEC overlay. The subject site is more highly visible than many other lots that are also covered by the scenic designation for the Sandy River because it is surrounded by land in public ownership which is being used for public recreation (ie. Oxbow Regional Park). Oxbow Regional Park is the public park with camping, fishing, hiking, and picnicking in closest proximity to the urban populations of the Portland Metropolitan Area and is heavily used by the public. The applicant has provided a letter dated February 11, 2005 signed by Jim Morgan, Natural Resources Manager for Metro Regional Parks and Greenspaces program, a copy of which is included as Exhibit A10. In this letter, Mr. Morgan expresses concern that the tree removal associated with widening of the driveway would have negative impacts on the park.

The circumstance that applies to the subject property which does not apply generally to other properties in the vicinity is the importance of retaining scenic views not only as part of the SEC overlay and federal Wild and Scenic River designation, but also due to the proximity of the subject site to Oxbow Regional Park.

**Hearings Officer:** Criterion met.

- 11.2      **(2) The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.**

**Applicant (6-17-05):** The zoning requirement would restrict the use of the subject

property to a greater degree than it restricts other properties in the vicinity or district, because of the distance of the residence and wedding venue site from Gordon Creek Road and steepness of the driveway. Further, the requirement for a wider driveway inflicts unnecessary impacts to the slope and the appearance of the property, because the use of the access driveway can be managed during events. The proposed use is not intended to be commercial in scale, but will be limited in scope as outlined in the proposal description. Therefore, requirements that are intended to accommodate flat-land commercial developments should be modified accordingly.

**Staff:** The standard to which the applicant is requesting a variance is MCC 35.4170, which is the access requirement in the Off Street Parking and Loading section. This requires a 20 foot wide paved access between any parking area and the street from which access is taken. Any use which is subject to the Off Street Parking and Loading section would be subject to this same standard. It is worth noting that the 20 foot requirement for access is also the current standard for any residential driveway that accesses more than one house (MCC 35.2305(D)(2)). The proposed commercial park is being held to the same standard as any other use that is subject to the parking standards as well as any new dwelling using a shared access in the CFU-4 district.

The applicant's narrative indicates the length of their driveway and the slope of the surrounding land make this standard more restrictive on their property than on any other property which may be subject to the same standard. No specific information has been provided regarding the slope of the surrounding land or the potential difficulties in installing an accessway that meets the standard. Staff notes that the majority of the land in Multnomah County east of the Sandy River consists of steep hillsides. As evidence of slopes in the surrounding area, staff submits page 2 of Exhibit S11, which is a map of the Slope Hazard Zone for the area surrounding the subject site. This designation is applied to areas that are approximately 25 percent in slope or more or areas that are known landslide hazard areas. As can be seen on this map, the majority of the properties near the subject site are mapped as slope hazard zones. The presence of steep slopes alone is not sufficient to justify a finding that the standard restricts the subject property more than it restricts other property in the vicinity.

There is insufficient evidence in the record to support a finding that this standard restricts the subject property to a greater degree than it restricts other property in the CFU-4 district or the vicinity.

**Hearings Officer:** In a letter for the record dated December 2, 2005, Ms. Richter provided information sufficient for a finding that this standard does restrict the subject property to a greater degree than other property in the vicinity. The letter states in relevant part:

"Criterion 2 asks how the zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.

"The site includes areas of steep slopes, with a bench-like area approximately 200

feet above Gordon Creek Road. Most other properties along Gordon Creek Road have a reasonably flat building site fairly close to the road, making a 1,500 to 1,600 foot long driveway up a hillside unnecessary.

"The 'Sandy quadrangle' USGS map, attached to this letter, shows Gordon Creek Road in the vicinity of the Sandy River and the site. Note that there are relatively flat areas for building sites along most of Gordon Creek Road, the exceptions being the traverse of the slope at the west edge of Section 11, north of the Sandy River, and in the northeast part of Section 14, where Gordon Creek Road rises from river level to higher benches. This map, in combination with the Assessor Map contained in the record and identified as 'T3-05-007 Nearby Uses, Tax Lots' showing property ownership, demonstrate that the Dorsey property is not typical of sites in the vicinity, which all have reasonable building sites much closer to the public road.

"The variance is justified by the distance of improvements where the park use is proposed from Gordon Creek Road and the steep slope that makes widening the existing driveway a difficult undertaking that will have potentially serious impacts on the vegetation and the hillside. The conditions of the site create the need for the variance; or put another way, the variance would not be necessary if conditions on the site were different and a building site was located closer to the road as would be the situation for most of the other properties in the vicinity."

**Hearings Officer:** I find that the evidence described above is sufficient for me to conclude that because of its shape, topography, and location, this property is more restricted by the requirement for 20-foot wide access than are other properties in the vicinity. The applicant has demonstrated compliance with this criterion.

- 11.3      **(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.**

**Applicant (6-17-05):** No impact to adjacent properties has been identified, certainly none that would rise to the level of "materially detrimental" or "injurious." The use will be contained entirely within the property, which is over 20 acres in area. The location is approximately 1,000 feet from Gordon Creek Road, and 200 feet above the road, so any activities will be invisible to the public for practical purposes.

**Applicant (7-29-05):** The existing driveway is no less than 12 feet wide, paved, widened at corners to approximately 20 feet.

The applicant does not have the ability to calculate curve radii, but will be able to verify such measurements with the assistance of a civil engineer who will be engaged to perform other work relating to the driveway extension, upon approval of the permits.

Vertical clearance is available, or will be made available, for the entire length of the driveway.

The applicant does not have the ability to calculate driveway slope, but can provide these calculations if deemed necessary by the approval authority. In any case, the Fire Chief is aware of the situation on the property and has twice provided letters that identify no concerns with access or any other issues relating to the proposed park or proposed uses on the property.

The looping of the driveway will provide a turnaround, enhancing the accessibility for emergency providers.

Turnouts have already been established along the length of the driveway to facilitate vehicle movement, and this has provide satisfactory for meeting the needs of the existing residence.

For the proposed park and related activities, the applicant intends use of the property to be limited by the terms of a contact which will specify arrival and departure times to minimize any potential for conflicting vehicle movements by limiting the direction of travel to incoming or outgoing.

**Applicant (9-6-05):** In reviewing the information on turnout locations (7/13/05 RNI, page 8 of 18), the applicant discovered that one of the column headings might be confusing. "Distance from Gordon Creek Road to mid-point" only refers to the first turnout, with subsequent turnouts separated by the distances noted. The chart should read:

#### Turnout Locations

Distance between turnouts, starting from Gordon Creek Road, measuring mid-point to mid-point  
Length of Turnout  
Length with width of 20 feet or greater  
Comments

350 feet  
120 feet  
45 feet  
Maximum width: 21 feet with shoulders

250 feet  
160 feet  
45 feet  
Maximum width: 22 feet with shoulders

200 feet  
80 feet  
30 feet

Maximum width: 22 feet with little or no ability to extend the length

450 feet (to the "Y")

>40 feet

>40 feet

Maximum width: 25 feet; could be widened but not a good location aesthetically

350 feet to garage doors

Hammerhead turnaround, approximately 100 feet clear from the garage doors

The County's letter of August 12, 2005 notes that standards of MCC 29.012 do not apply to the current request. If these standards do not apply, then they should not be considered "a baseline safety benchmark" or any other sort of standard for evaluation of this variance request. The criteria of MCC 35.7600 apply to a request for variance, which must be weighed against these criteria on a case by case basis.

However, MCC 29.012 does, in fact, give the final authority to the local fire official:

*§ 29.012 Fire Apparatus Means of Approach - Standards For Private Streets and Private Driveways Serving New and Replacement One- And Two-Family Dwellings.*

*(A) Private streets and private driveways shall meet the standards in this section for fire apparatus access to new and replacement one- and two-family dwellings. The purpose of these standards is to establish minimum criteria for evaluating the adequacy of fire apparatus access during the review of building permit applications for proposed one- and two-family dwellings.*

*(1) Review and determination of compliance with the standards in § 29.012, or more stringent standards adopted by the fire protection service provider, shall be made by the Fire Marshal or designated fire official of that service district. If the Fire Marshal, or designee, fails to review and make a determination of compliance, then the building official shall, after consultation with the appropriate fire official, make a determination of compliance. (emphasis added)*

The Fire Chief has visited the site, discussed the proposal with the applicant and identified mitigating measures, and twice provided letters acknowledging no concerns. If weighed under MCC 29.012, the requirements pertaining to management of fire hazard and risk are satisfied.

**Staff:** The proposed access variance has the potential to be a safety problem in the case of an emergency such as a fire. The existing driveway is 12 feet wide with existing turnouts as described by the applicant above. The required accessway width is 20 feet

(MCC 35.4170(A). This is the minimum width needed for two cars to pass or for an emergency vehicle to pass a car coming in the opposite direction. The code does not provide any requirements for commercial developments other than this 20 foot minimum width standard.

In order to judge the potential affects on safety, staff suggests viewing the request in light of the best guidance the code does have to offer on emergency vehicle access, which is the Fire Apparatus Means of Approach section in MCC 29.012. The applicant is correct in stating this code section does not apply to the subject request because it is specifically directed at dwellings. The standards of MCC 29.012 are similar to the access road standards for dwelling in the CFU-4 zone under MCC 35.2305. These are the only codified provisions that indicate minimum access standards for emergency vehicles, so staff will rely on them to analyze whether or not the subject request may be materially detrimental to the public welfare or injurious to property in the vicinity. It is important to note that these standards were intended to provide safe access to a home, where presumably minimal numbers of cars would be attempting to use the driveway at the same time as a fire truck. The subject request is for a commercial event venue, which could result in up to 60 cars plus catering staff plus the residents attempting to use the driveway to exit the property while a fire truck is attempting to enter the property.

The applicant erroneously notes that the Fire Marshall has the authority to waive the access standards of MCC 35.4170(A). The building code does give the Fire Marshall the authority to require more stringent access standards for single family dwellings.

The existing driveway is paved, [and] has a width of 12 feet with turn-outs spaced as described by the applicant. One of the turnouts is spaced further than the current standard of a maximum spacing of 400 feet in MCC 29.012. With this said, MCC 29.012 requires turnouts that are 20 feet width and at least 40 feet long no farther than 400 feet apart. The applicant has reported that the existing turnouts are between 21 and 25 feet wide and between 30 and 45 feet. These are spaced between 200 and 450 feet apart. These turnouts do not all meet the current standard, but are similar enough that it is a reasonable assumption they provide adequate vehicle maneuvering room.

A driveway which may be adequate for a single family home is not necessarily adequate on its own to provide access to events where there may be as many as 240 people on site. Based on the requested number of parking spaces (55-60) and the assumption that the average car can hold four people comfortably, it is reasonable to assume there could be as many as 240 guests plus catering staff on site at any one time. Please note staff did consider 4 passengers as an average between the SUV's that now constitute a large portion of the vehicle stock which can easily seat more than 4 people, sedans which usually seat 4-5 people, and vehicles such as trucks and sports cars which may only comfortably seat 2 people.

The fire chief has approved the subject proposal on the service provider form included as Exhibit A4. This form did not provide any details on how emergency access could be accommodated on the existing driveway which does not meet the current minimum standards. Staff had a telephone conversation with Fire Chief Tom Layton on August 31,

2005 in which Mr. Layton expressed his confidence in the proposal for the following reasons:

- A pond exists on site which could be used for fire fighting water supply with the installation of a "dry hydrant" available for use by a pumping truck.
- If the "dry hydrant" is available, fire trucks would not have to drive back and forth along the driveway to access water. They would only have to get to the top of the driveway and then the cars and people could be evacuated without continued interference with emergency vehicle access.
- Mr. Layton was confident that parking attendants could manage traffic to allow an emergency vehicle to get up the driveway past any cars that may be attempting to leave the site during an emergency event.

These concepts have been incorporated into the applicant's proposal. With conditions of approval requiring the elements outlined above, staff finds the proposed variance will not be materially detrimental to the public welfare or injurious to property in the vicinity.

Staff recommends the following conditions of approval:

- The applicant shall submit a statement signed by a representative of Fire District 14 that a "dry hydrant" or similar style pump has been installed and will allow the on-site pond to be used for fire fighting water supply. This statement shall be submitted prior to the first event being conducted on-site or within 90 days of the date this decision becomes final, whichever happens first.
- The applicant shall have on-site parking attendants at every event to guide traffic onto and off of the site in the case of an emergency event.

**Hearings Officer:** I am concerned about the potential for vehicular conflicts if an emergency were to occur during an event, in the dark or in bad weather, or when prospective customers might be visiting the site (and when parking and traffic attendants would not be present). The potential for conflicts seems particularly high along the steep, 450-foot-long segment of the road noted in the applicants' table, above. Normally, turnouts would be required at a spacing of no greater than every 400 feet on a road of this length. Although I believe that the other variance criteria are satisfied, the potential danger on the steep, narrow roadway is such that the public welfare is at stake.

I am also concerned about the potential for bottleneck and damage where the driveway meets Gordon Creek Road.

I have consequently inquired in a letter dated November 22, 2005, whether construction of one turnaround approximately midway along the one-lane, 450-foot long segment of the driveway would be feasible. I also inquired about the widening and extension of the paved drive at its intersection with Gordon Creek Road.

Ms. Richter replied on behalf of the applicants that a pull-out area approximately 40 feet long and 20 feet wide could be built at the midpoint of the driveway segment in question. A condition of approval has been imposed requiring this construction.



In addition, Ms. Richter submitted a drawing depicting a proposal for widening and extension of the paved driveway within 50 feet from Gordon Creek Road. The condition of approval requires construction of a longer driveway apron, and a 20-foot wide, 50-foot long driveway entrance in accordance with the drawing.

**Hearings Officer:** I find that the applicants, who are very familiar with their property, have presented credible evidence that these conditions can be satisfied. Upon satisfaction of these conditions of approval, including those conditions recommended by staff, the public welfare is protected, and the development will not be injurious to property in the vicinity, including the public road. This criterion is met.

- 11.4        **(4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.**

**Applicant (6-17-05):** The MCC and the Comprehensive Plan, and related ORS and OAR provisions, allow parks on forest lands, therefore granting the variance will not establish a use that is not listed in the underlying zone. Consistency with Comprehensive Plan policies was demonstrated in response to criteria of MCC 35.4555.

Further, policies in the Comprehensive Plan call for preservation of the character of an area, and limiting development in environmentally significant or on steep slopes. These policies would be furthered by approval of the variance, which would limit impacts on the steep slope and minimize potential aesthetic impacts to the site and area.

**Staff:** The proposed park is a use allowed in the zone. The proposed variance will not affect the realization of the comprehensive plan. The subject request is reviewed for compliance with the comprehensive plan in section 13 of this report.

11.5        **§ 35.7605    VARIANCE CLASSIFICATION**

**(A) A Major Variance is one that is in excess of 25 percent of an applicable dimensional requirement. A Major Variance must be found to comply with MCC 35.7600 (A).**

**Staff:** The applicant is requesting a variance of 8 feet to a 20 foot standard, which is 40%. The requested variance is a major variance.

- 11.6        **(1) A Major Variance must be approved at a public hearing except when all owners of record of property within 100 feet of the subject property grant their consent to the variance according to the procedures of MCC 35.7605 (B) (1) and (2).**

**Staff:** The subject variance request is being processed concurrently with the Community Service request and will, therefore, be decided at a public hearing. It is worth noting that the surrounding properties are owned by either Metro or Marcus J. Dorsey, both of which have signed letters of support that were submitted by the applicant. These letters are included as Exhibits A9 and A10.

**Hearings Officer:** Criterion met.

- 11.7      **(B) A Minor Variance is one that is within 25 percent of an applicable dimensional requirement. The approval authority is authorized to grant a Minor Variance in accordance with the following conditions:**

\*\*\*

**Staff:** This section does not apply to the subject Major Variance request.

- 12      **The Proposal is subject to the SEC overlay criteria and contains sufficient evidence to document compliance with the SEC approval requirements in MCC 35.4555.**

- 12.1      **§ 35.4525    APPLICABLE APPROVAL CRITERIA**

**(A) The approval criteria in MCC 35.4555 shall apply to those areas designated SEC on the Multnomah County zoning maps.**

**Applicant (6-17-05):** The site is located within a Multnomah County-designated Significant Environmental Concern overlay due to proximity to the Sandy River.

New structures are proposed that are temporary in nature and used seasonally, including a canopy-type tent over the paved sports court and a small travel trailer that will be used for a changing room for the wedding party. Owing to the site's topography and heavy vegetation, it is unlikely that any structure or activity will be visible from the Sandy River.

<sup>7</sup> Photographs taken from the residence, looking across the area around a pond where the ceremonies will be held, towards the Sandy River, show a view of trees. The Sandy River is not visible from the site and the residence is not visible from the river. The applicant requests that the photographs and other exhibits, including the variance and service provider letters from the previous application (T3-05-002), be incorporated into the record for this application.

The applicant wishes to note the schizophrenic nature of this overlay, which is intended to "protect, conserve, enhance, restore, and maintain significant natural and man-made features... "and yet excepts from requirements farm use and commercial forestry. Clear cutting a site is permitted; less impactful uses are subject to increased scrutiny.

**Staff:** A copy of the Multnomah County zoning map designating the majority of the subject property as SEC is included as Exhibit S10. The criteria of MCC 35.4555 apply to the subject request.

- 12.2      **§ 35.4555    CRITERIA FOR APPROVAL OF SEC PERMIT**

**The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:**

- 12.3      **(A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.**

**Applicant (6-17-05):** The site of the outdoor wedding venue is approximately 1,000 from Gordon Creek Road and the Sandy River is further to the west of Gordon Creek Road. No vegetation will be removed except in the vicinity of the residence, where the new driveway and parking will be located. As explained earlier in this narrative, the site is not visible from the Sandy River, owing to heavy vegetation including numerous tall conifers and topography. The residence is located on a bench, approximately 200 feet above Gordon Creek Road and further above the Sandy River.

**Staff:** The proposed use will be located in the existing clearing adjacent to the existing residence. The proposed parking area will be installed in close proximity to the existing clearing along the path of an existing logging road. This proposal will retain several hundred feet of heavily wooded land between the proposed use and the property boundaries closest to the Sandy River to the West and Gordon Creek to the south. Additionally, the applicant has requested a variance to the access standards in order to minimize the potential impact of the proposed use on scenic resources. The applicant is proposing the maximum possible amount of vegetation between the proposed use and the Sandy River, which is the nearest river, stream, lake or floodwater storage area.

**Hearings Officer:** Criterion met.

- 12.4      **(B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.**

**Applicant (6-17-05):** Neither the site nor adjacent properties are utilized for agricultural or forest purposes. "Park" is a permitted use under both MCC and ORS, so the policy determination regarding the appropriateness of the use has been settled.

**Applicant (7-29-05):** Agricultural land and forest land shall be preserved and maintained for farm and forest use. "Park" is a use that may be permitted in a forest zone, and therefore the essential policy (i. e. whether parks are appropriate in a forest zone) has already been considered and established through OAR 660-006-0025, with similar language included in the MCC.

That said, there is nothing about the proposed park and related uses that affects forest use on the forested remainder of the property, now or in the future.

**Staff:** The subject site does not contain any agricultural land. The applicant's assertion that the site is not forest land is incorrect. The subject site is heavily forested and is

currently receiving forest land tax deferral as demonstrated by the assessment and taxation information included as Exhibit S6.

The site currently contains an access road, residence, and accessory uses such as a sports court. The vast majority of the site is currently heavily wooded as can be seen in the 2002 aerial photo included as Exhibit S1.

The proposal has been reviewed for compliance with the CFU-4 development standards in section 6 of this report. With conditions, please note that the proposal has been determined to meet these standards, the purpose of which is the conserve forest land for forest use.

**Hearings Officer:** With the conditions proposed in section 6, the proposal will conserve forest land for forest uses.

- 12.5      **(C) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.**

**Applicant (6-17-05):** The new structure associated with the outdoor wedding activities will be temporary and removable, and as such will have minimal impact on the site. No areas of environmental significance have been identified; the protected resource in this case is the Sandy River viewshed. As noted, the site is not visible from the Sandy River.

**Staff:** The applicant has proposed a park for weddings and similar receptions to take place on the lawn of the existing house. The parking area is proposed over the alignment of an existing logging road. The applicant is proposing a variance in order to use the existing driveway without widening the driveway. The proposal has located the new use in the same area as the existing house, and proposed the reuse of existing roads in order to minimize the intrusion into the previously undeveloped portions of the lot. The installation of the parking area will require tree removal but the remainder of the proposal will retain the site in its current condition. The applicant has balanced the functional considerations of the proposal with the need to preserve the areas of environmental significance.

**Hearings Officer:** Criterion met.

- 12.6      **(D) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.**

**Applicant (6-17-05):** No public or private recreational activities are proposed.

**Applicant (7-29-05):** As discussed at length in the Supplemental Information previously submitted, there is no necessary connection between "park" and "recreation" in Statute, rule, case law, or MCC. The applicant has no obligation to provide recreational activities, as parks may simply be tracts of land held for aesthetic or scenic purposes. The applicant

hesitates to broaden the scope of the uses considered under the umbrella of "park" for this proposal. The applicant would be willing to make the site available for group gatherings such as business retreats/picnics or family reunions, but has absolutely no intention of establishing a paintball game or motocross track on the property. Precisely because the applicant has considered the carrying capacity of the site, the suitability of the access, and similar issues, the proposal has been limited to a narrow range of uses that are compatible, indeed uniquely suited, to the property.

No areas of environmental significance are identified on this property. There are slopes and vegetation that will affect how the driveway is located, for example, however no problem that cannot be dealt with through standard engineering practices is evident.

The identified resource is the Sandy River viewshed, and the area around the residence is not visible from the river. The only indication that activities are occurring on the site will be an increase of as many as 50 to 60 vehicles arriving and departing for an event.

This criterion does not directly apply to the proposal

**Applicant (9-6-05):** Criterion D does not require recreational use. Rather, Criterion D reads more like a Comprehensive Plan policy and provides a way of evaluating a proposed recreational use (e.g. "in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.").

**Staff:** The subject application is for a park. As discussed at length in Section 5 of this report, staff asserts a park on forest land must provide one of the categories of uses provided in Goal 4. Recreation is the category of use most closely aligned with both the common use of the word park as well as with the applicant's proposal. If the subject proposal is a park which contains recreation, then this criterion applies. The applicant has not provided any evidence to show this criterion has been met.

The applicant has repeatedly stated that no recreation will be provided. As such, staff asserts that the proposal is not a park. Since no recreation is proposed, this criterion does not apply.

**Hearings Officer:** I have concluded above that the Staff view of recreation is too narrow, and that the Applicants' arguments that no recreational component of the use is required are incorrect. This private park would satisfy recreational needs in a manner consistent with the carrying capacity of the land and minimal conflict with environmentally significant areas.

- 12.7      **(E) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

**Applicant (6-17-05):** Access to the site will be restricted to those who contract to use the site and by the gated entry, thereby protecting the property from vandalism and trespass.

**Staff:** The applicant has a gated entry to the site, effectively preventing trespassing and vandalism.

**Hearings Officer:** In addition to the gate, the employment of parking attendants to direct traffic and the construction of the required driveway improvements will also protect the public safety. This criterion is met.

12.8      **(F) Significant fish and wildlife habitats shall be protected.**

**Applicant (6-17-05):** The Sandy River is an important habitat for a variety of fish, including protected salmon. However, nothing proposed with this application will affect the Sandy River's ability to serve as habitat for fish. Run-off from the new driveway, should it manage to travel the heavily vegetated distance of 1,000 feet to Gordon Creek Road, would infiltrate into ditches alongside the road before reaching the river.

**Staff:** The subject property is close proximity to both Gordon Creek and the Sandy River as shown on the map included as Exhibit S10. Both of these water bodies provide significant fish habitat. If the Conditional Use and SEC permits are approved, construction of a parking area will be required. This construction may result in erosion which, given the steep hillsides, could feasibly be carried into Gordon Creek and, through Gordon Creek into the Sandy River. As discussed previously, the construction work would require either a Hillside Development Permit or a Grading and Erosion Control permit. Both of these permit types require substantial information related to on-site erosion and sediment controls. If construction is carried forward under an Erosion Control plan that meets the standards of either the Hillside Development Permit or the Grading and Erosion Control Permit, the construction should provide adequate protection for fish habitats.

Staff recommends a condition of approval requiring the applicant to seek either a Hillside Development Permit or a Grading and Erosion Control permit, whichever is applicable, prior to commencement of construction.

**Hearings Officer:** With the suggested condition of approval, the criterion can be met.

12.9      **(G) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.**

**Applicant (6-17-05):** Vegetation along the Sandy River will not be affected. Any vegetation removed for parking and driveway will be at a distance of over 1,000 feet from the river.

**Staff:** The subject site does not contain any mapped rivers, lakes, wetlands, or streams. However, the property is near enough to the Sandy River to fall within the area designated for scenic protections as noted in the letter provided by Oregon Parks and Recreation. The proposal was reviewed for scenic impacts in finding 8.4. The findings in that section

show that the proposal is adequate to protect significant scenic vegetation.

**Hearings Officer:** Criterion met.

- 12.10      **(H) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.**

**Applicant (6-17-05):** No archaeological area has been identified on the site; this criterion does not apply.

**Staff:** Staff concurs.

**Hearings Officer:** This criterion does not apply.

- 12.11      **(I) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.**

**Applicant (6-17-05):** The site proposed for the outdoor wedding activities is well above annual flood levels for the Sandy River and does not include a wetland.

The spring that originates on the property and flows through the pond will remain in its present condition, as part of the natural environment that makes the site a beautiful place for a wedding.

**Staff:** No mapped areas of annual flooding, floodplains, water areas or wetlands exist on the subject site.

**Hearings Officer:** This criterion does not apply.

- 12.12      **(J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.**

**Applicant (6-17-05):** Construction relating to the extension of the driveway to form a loop and associated graveled parking area may have the potential to create erosion. However, standard and accepted engineering practices, including measures specified in the Multnomah County Code, will be utilized and should be sufficient to minimize water run-off and erosion.

**Staff:** If the Conditional Use and SEC permits are approved, construction of a parking area will be required. This construction may result in erosion which, given the steep hillsides, could feasibly be carried into Gordon Creek and, through Gordon Creek into the Sandy River. As discussed previously, the construction work would require either a Hillside Development Permit or a Grading and Erosion Control permit. Both of these permit types require substantial information related to on-site erosion and sediment

controls. If construction is carried forward under an Erosion Control plan that meets the standards of either the Hillside Development Permit or the Grading and Erosion Control Permit, the construction should provide adequate protection for fish habitats.

Staff recommends a condition of approval requiring the applicant to seek either a Hillside Development Permit or a Grading and Erosion Control permit, whichever is applicable, prior to commencement of construction.

**Hearings Officer:** With the suggested condition of approval, the criterion can be met.

12.13      **(K) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.**

**Applicant (6-17-05):** No noise standard is specified here, however the potential for noise was evaluated to determine compliance with the standard for a home occupation and a letter provided to the record from an acoustical engineer. The applicant is willing to limit sound to the levels specified in the acoustical engineer's recommendations and, in any case, never intended to have live music provided by bands (i. e. loud music) though soft musical accompaniment to the ceremony may be live (pianist, guitarist) or recorded.

**Applicant (7-29-05):** As noted in the narrative, the SEC designation is schizophrenic by design: logging, mining, and resource uses are permitted, which are by nature noisy and disruptive. In addition, a "mass gathering" would be permissible, so a Woodstock-type event could be held on the property with the potential for noise levels equivalent to or greater than a logging operation. The proposed park which is non-permanent, seasonal, and low impact, seems to be held to a higher standard, when clear-cutting of the site would be allowed outright.

The applicant considered noise issues with the previous application for home occupation and hired a noise consultant who confirmed what the applicant knew from experience: modest noise levels will not be audible, or barely audible, beyond the property. The applicant submitted a letter specifying existing sound levels and the degree to which sounds associated with the use should be limited to maintain existing noise levels.<sup>6</sup> The applicant intends to allow only background music, either recorded or provided by a pianist, guitarist, string quartet, or similar soft music source. This provision will be required in any user agreement.

The proposed park will have no impact on the quality of air, water, or land resources, and virtually no impact on noise levels. When considered in light of other permitted uses and uses permitted with review, the proposed park will barely be more noticeable, from a standpoint of impacts, than the already established residential use.

<sup>6</sup> The applicant requested in the narrative that the noise consultant's letter, along with the previous file, be included in the record for this application.

**Staff:** The application has been reviewed for impacts to air, water, land, and noise in finding 8.4. Please refer to that section.



**Hearings Officer:** A condition of approval has been imposed to limit noise levels emanating from the event area. With satisfaction of this condition this criterion will be satisfied.

- 12.14      **(L) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.**

**Applicant (6-17-05):** As noted, the area around the residence where activities will occur is not visible from the Sandy River, therefore there is no impact on the visual quality of the viewshed.

The proposed structures will be a non-permanent tent/canopy and porta-potties. The tent/canopy will be placed over the sports court, as shown on the site plan, and porta-potties will be conveniently located for removal and servicing. No structure will be visible from the Sandy River. No sign is proposed.

**Staff:** The applicant is proposing new structures but has not provided any information to allow the analysis of these structures for compliance with this requirement. Additional evidence may be submitted at the hearing. Without additional evidence, it is not possible for findings to support compliance with this criterion.

**Hearings Officer:** Evidence showing that the event area is not visible from the Sandy River, and depicting the proposed canopy and porta-potties demonstrates that this criterion can be met. Additionally, meeting the requirements for final Design Review approval will show compliance with this criterion. As conditioned, the criterion is met.

- 12.15      **(M) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.**

**Staff:** No such areas exist on the subject property.

**Hearings Officer:** This criterion does not apply

- 12.16      **(N) The applicable policies of the Comprehensive Plan shall be satisfied.**

**Staff:** The Comprehensive Framework Plan policies that apply to this proposal include: Policy 11 (Commercial Forest Land Area), Policy 14 (Development Limitations), Policy 16 (Natural Resources), Policy 19 (Community Design), Policy 37 (Utilities), and Policy 38 (Facilities). See findings related to each of these policies in section 13 of this report.

### **13      Comprehensive Framework Plan Policies**

The Comprehensive Framework Plan policies that apply to this proposal include: Policy 11

(Commercial Forest Land Area), Policy 14 (Development Limitations), Policy 16 (Natural Resources), Policy 19 (Community Design), Policy 37 (Utilities), and Policy 38 (Facilities).

13.1 **Policy 11: Commercial Forest Land Area**

**The purpose of the Commercial Forest Land Area Classification is to conserve forest lands by maintaining the forest land base and to protect the State's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources to provide for recreational opportunities and agriculture.**

**The intent of the Commercial Forest Land Area Classification is to allocate lands which are suitable for commercial forest management including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources, and to provide for recreational opportunities and agriculture**

**Applicant (6-17-05):** The County's policy is to preserve and maintain land suitable for commercial forest use. Forest uses, including harvesting, would still be possible on the land if the proposed wedding venue use is approved.

In addition to maintaining harvestable timber, forest land areas that are necessary for watershed protection or subject to potential for landslides and erosion are protected. The subject site is steeply sloped and located above the Sandy River. Any additional development of structures or paved surfaces on the site could have an impact on the watershed and, depending on the location, could require engineering studies to determine slope stability. Limiting new uses on the site to the area already developed supports this policy by minimizing new impacts.

The proposed "park" use is permitted as a conditional use, under both ORS 215.283(2)(c), OAR 660-006-0025(4)(e)(A), and MCC 35.2330(D). The policy debate about whether a park is an acceptable use in a forest zone has already been settled. Even so, future commercial use of the site is not precluded because the proposed use introduces minimal disturbance to the site.

**Staff:** For the subject property, Policy 11 is implemented through the application of the CFU-4 district. The subject proposal has been reviewed for compliance with the CFU-4 criteria in section 6 of this report.

Please refer to those sections for specific findings related to the proposal's impact on forest resource land.

**Hearings Officer:** This policy is met.

13.2 **Policy 14: Development Limitations**

**The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:**

- A. Slopes exceeding 20%;**
- B. Severe soil erosion potential;**
- C. Land within the 100 year flood plain;**
- D. A high seasonal water table within 0-24 inches of the surface for three or more weeks of the year;**
- E. A fragipan less than 30 inches from the surface;**
- F. Land subject to slumping, earth slides or movement.**

**Applicant:** The County's policy is to restrict development for properties with physical constraints such as excessive slopes, landslide potential, etc. No new structures are proposed, however a variance is requested to the MCC requirement for a 20 foot wide driveway. A paved 12 foot wide driveway has been constructed to serve the existing residence. With management of access (travel restricted to in only and out only), the single lane driveway with turnouts should adequately serve the use without necessitating tree removal and construction activities on the hillside.

**Staff:** Compliance with this policy requires the applicant to show at a minimum that the development limitation can be ameliorated by either changing the location of proposed work or using engineering techniques to meet the objectives here. There is no assessment by a qualified professional which indicates that this is the case.

The map included as Exhibit 11 shows the subject property is in a mapped Slope Hazard area. The majority of the property consists of steep slopes. The area around the existing residence and landscaped yard is the flatter portion of the site and the proposed location for the wedding venue. The property is not within a 100-year floodplain.

The Multnomah County Soil Survey shows the subject property has "Haplumbrepts, very steep (20F)" soil type. This soil type has slight to high erosion potential and is subject to slumping. There are no fragipan or water table restrictions noted in the Soil Survey description of this soil type.

Construction of the driveway extension and any other grading associated with the proposal (e.g., terracing for creating a seating area for wedding guests) will either require an HD permit or a Grading and Erosion Control (GEC) Permit (see recommended Condition of Approval). It will depend on the severity of the slopes in the area to be graded and the amount of grading

(MCC 35.5500-35.5525). If the grading is exempt from needing a HD Permit, it will need a GEC Permit because at least part of it will be within 200 feet of a water body (MCC 29.330-29.348). As part of either a HD or GEC Permit, a stormwater analysis will need to be provided that certifies that the additional stormwater attributable to the new paved driveway loop will be handled on the property.

To be able to determine if the proposed use could meet the requirements of a HD or GEC Permit, the amount of potential grading and slopes in the area to be graded was considered by staff. It appears that an area of approximately 30,000 square feet (7/10 of an acre) would be involved in the grading for the loop driveway, and part of the loop would traverse areas with slopes of 25 to 35% (see Exhibit S17). Therefore, it is likely that a HD Permit will be required for the loop driveway. The HD permit requires a geotechnical assessment of the potential landslide hazards associated with earth disturbing activities, and also contains standards that are equivalent to a grading and erosion control permit.

**Hearings Officer:** With the conditions of approval as imposed, this policy can be met.

13.3

**Policy 16: Natural Resources**

**The purpose of the Natural Resources policy is to implement Statewide Planning Goal 5: "Open Spaces, Scenic and Historic Areas, and Natural Resources". These resources are necessary to ensure the health and well-being of the population, and include such diverse components as mineral and aggregate reserves, significant wetlands, historic sites, and scenic waterways.**

**Applicant (6-17-05):** This set of policies is intended to implement Statewide Goal 5 to protect natural resources. The resource in this case is the Sandy River, both for its aesthetic values as well as its habitat values and the "viewshed."

The residence is not visible from the Sandy River, owing to topography and dense vegetation, so it is reasonable to conclude that new activities in the vicinity of the residence that are associated with outdoor weddings will also not be visible.

The proposed use will not add new impervious area, except for the paved driveway, and will use an existing landscaped area around a residence, across Gordon Creek Road from the Sandy River. No impact on the river or its habitat values is expected from the proposed use.

However, as noted in response to Policy 14, the MCC requires a 20 foot driveway for access between a public road and parking area. If applied to this property, a major construction project and tree removal will be necessary to construct a widened driveway. These activities, if required, would not support Policy 16.

**Staff:** The findings as to whether or not the proposal would "adversely affect natural resources are included in Finding 8.4. Staff recommends that conditions of approval be imposed which require the applicant to obtain an HD or GEC Permit (whichever is required) prior to initiating ground disturbing activities. Compliance with the requirements of these permits will ensure that the project will not affect natural resources and that this policy will be

met.

**Hearings Officer:** Compliance with the imposed conditions of approval will satisfy this criterion.

13.4 **Policy 19: Community Design**

**The County's policy is to maintain a community design process which:**

- A. Evaluates and locates development proposals in terms of scale and related community impacts with the overall purpose being a complementary land use pattern.**
- B. Evaluates individual public and private developments from a functional design perspective, considering such factors as privacy, noise, lights, signing, access, circulation, parking, provisions for the handicapped and crime prevention techniques.**
- C. Maintains a design review process as an administrative procedure with an appeal process, and based on published criteria and guidelines, criteria and guidelines shall be developed specifically for commercial, industrial and residential developments.**
- D. Establishes criteria and standards for pre-existing uses, commensurate with the scale of the new development proposed.**
- E. Evaluates individual public and private development according to design guidelines in the applicable adopted community plan.**

**Applicant (6-17-05);** The community design process evaluates and locates developments based upon scale and community impacts, with the purpose being a complementary land use pattern. No new permanent structures are anticipated, however design review is required for the new parking area (please refer to the specific discussion of MCC 35.7000).

The proposed wedding venue was intended to be a home occupation, that is, a use that is consistent in scale with the residential use of the property and the rural character of the surrounding area. With the re-submission of the application as a "private park," the principle change is to the designation rather than the intensity of the use.

However, in terms of scale and appropriateness of the use for its location: the scale of the use will be limited by controlling the number of guests. The intensity of the use will be controlled by limiting the loudness and character of music and availability of alcohol. All in all, the use will be scaled to fit within the park-like grounds of an existing residence. Except for the frequency of use, the impacts are similar to what might be anticipated from a private party or private wedding party on the site.

**Staff:** This Staff Report addresses each of the topics identified in this policy through the

review of the applicable Multnomah County Code standards.

**Hearings Officer:** This policy is met.

13.5

**Policy 37: Utilities**

**Water and Disposal Systems**

- A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or**
- B. Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
- C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**
- D. Shall have an adequate private water system, and a public sewer with adequate capacity.**

**Applicant (6-17-05):** Water is provided by an on-site well and the residence is provided with an on-site septic system. Potable water for the proposed use will be provided by bottled water supplied by the caterer. Sanitary facilities for the proposed use will be provided by portable units installed temporarily on the property. No public stormwater system is available, and new on-site run-off is anticipated to be minimal and likely to be retained within a few feet of the new paved surface.

No impact on public utilities is anticipated.

**Staff:** Water is provided to the property by an underground spring. There is a 600 gallons per minute holding tank, located approximately 70 feet from the home (Exhibit A6). This water supply is a exempt use domestic supply. This water supply is not tested on a regular basis and is not approved for use by the general public. As discussed in finding 7.7, the applicant has stated that no water will be available to the public from the existing on-site water supply.

Staff recommends a condition of approval that restricts the use of the on-site domestic water supply to the domicile and associated residential use of the property. No water from the existing on-site water supply shall be served to members of the public as part of the proposed park nor shall the on-site domestic water supply be used for any other potable water use (such as dish washing) related to the proposed park.

The City of Portland Sanitarian has indicated that the use of portable toilets for guests would be acceptable, and requires that no parking is allowed over the drainfield (Exhibit A3). Page 2 of Exhibit A3 is an authorization to allow the use of the bathrooms in the existing house for

the wedding party without modification to the existing system. Staff recommends four conditions of approval to implement these requirements. These recommended conditions are:

- Park guests other than the wedding party at wedding events shall not use the bathroom facilities in the existing residence.
- On-site portable toilet facilities (porta-potties) shall be provided by the applicant for every event.
- No parking shall be installed over the existing drainfield nor shall any vehicles be driven over the drainfield.
- The application for an HD or GEC permit, whichever applies, shall clearly show the location and dimensions of the septic tank and sanitary drainfield to ensure that the driveway and parking improvements will not adversely affect the existing drainfield.

The Fire Marshall has also reviewed the proposal and determined that adequate on-site water exists for fire fighting purposes in the form of an on-site pond. This water must be made available to a fire truck through the installation of an on-site pump. In order to ensure the water supply is adequate to provide for fire fighting, staff recommends a condition of approval requiring the applicant to submit a statement signed by a representative of Fire District 14 that a "dry hydrant" or similar style pump has been installed and will allow the on-site pond to be used for fire fighting water supply prior to the first event being conducted on-site or within 90 days of the date this decision becomes final, whichever happens first.

**Hearings Officer:** With the suggested conditions of approval, this policy can be met.

#### **9.5.2 Drainage**

- E. Shall have adequate capacity in the storm water system to handle the run-off; or**
- F. The water run-off shall be handled on the site or adequate provisions shall be made; and**
- G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.**

**Applicant:** No public stormwater system is available, and new on-site run-off is anticipated to be minimal and likely to be retained within a few feet of the new paved surface.

No impact on public utilities is anticipated.

**Staff:** The applicant has provided no evidence of the volume of stormwater that will be generated by the new development or how it can be managed. As part of either a HD or GEC Permit, a stormwater analysis will need to be provided that certifies that the additional stormwater attributable to the new paved driveway loop will be handled on the property. Staff is not aware of a situation where an adequate stormwater system could not be constructed, especially on a parcel of the size of the subject property. Therefore, staff finds that a system can be constructed on the parcel. Staff recommends a condition of approval requiring the

applicant to obtain either a Hillside Development Permit or a Grading and Erosion Control permit, whichever is applicable.

**Hearings Officer:** This policy is satisfied by imposition of the suggested condition of approval.

13.6 **Energy and Communications**

**H. There shall be an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**

**I. Communications facilities are available.**

**Staff:** The existing house has electricity and telephone services.

**Hearings Officer:** This policy is met.

13.7 **Policy 38: Facilities**

**It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:**

**Fire Protection**

**B. There is adequate water pressure and flow for fire fighting purposes; and**

**C. The appropriate fire district has had an opportunity to review and comments on the proposal.**

**Police Protection**

**D. The proposal can receive adequate local Police protection in accordance with the standards of the jurisdiction providing police protection**

**Applicant:** Fire protection and emergencies services will be provided by Fire District #14, in Corbett, and police services are provided by Multnomah County. Attached letters from these providers suggest no difficulties in providing an appropriate level of services to the proposed use.

**Staff:** Exhibit A4 includes the forms signed by the Multnomah County Rural Fire Protection District (RFPD) #14 Fire Chief. He found that the existing access, and fire flow were adequate for the proposed use as long as no new structures are included in the project. Also, the Multnomah County Sheriffs' Office signed a form stating that the level of police service available to the project is adequate (Exhibit A5).

**Hearings Officer:** The RFPD #14 Fire Chief will designate suitable equipment to supply water from the pond for fire suppression, and a condition requires that the applicant install this



equipment. These policies are met.

#### 14. Conclusion

**The applications for permits for Community Service Use, Design Review, Major Variance and Significant Environmental Concern in order to develop and operate a private park for outdoor gatherings and events, including weddings, are approved, based upon the evidence in the record and applicable law, pursuant to the above findings and subject to the conditions of approval herein.**



Christine M. Cook,  
Multnomah County Land Use Hearings Officer

Dated: December 21, 2005

#### 15 Exhibits

Exhibit No.	No. of Pages	Exhibit
<i>Exhibits Submitted by Applicant</i>		
A1	1	Site Plan
A2	1	General Application Form
A3	2	Certification of On-Site Sewage Disposal
A4	2	Fire District Review Forms
A5	1	Police Services Review
A6	1	Certification of Water Service
A7	1	Correspondence from Oregon Parks and Recreation Department Scenic Waterways Program
A8	5	Letter regarding Noise Impacts from Altermatt Associates, Inc.
A9	1	Letter Supporting Variance from Metro
A10	1	Letter Supporting Variance from Marcus Dorsey
<i>Exhibits Provided by County</i>		
S1	1	Aerial Photograph
S2	1	Site Photographs
S3		Instructions for Posting Notice of Public Hearing
S4	2	Building Permit Records for Existing Dwelling
S5	1	Property Line Adjustment Approving Current Lot Configuration
S6	1	Multnomah County Assessment & Taxation Record
S7	1	Multnomah County Wildlife Habitat Big Game Winter

		Range Map
S8	2	Memorandum from Multnomah County Transportation, May 4, 2005
S9	1	Covenant Form Acknowledging Farm & Forest Uses
S10	1	Map Showing Multnomah County SEC Overlay Zone
S11	1	Map Showing Multnomah County Slope Hazard/Hillside Development Overlay Zone
S12	14	Tice V. Josephine Co. (LUBA 91-043)
S13	36	Spiering V. Yamhill Co. (LUBA 93-049)
S14	21	Utsey V. Coos Co. (LUBA 2000-06)
S15	1	Excerpt of Page 8 from "Secondary Lands Backgrounder" DLCD Publication, 2-5-99
S16	1	2002 Air Photo showing ¼ and ½ Mile Radii Around Subject Property
S17	1	Contour Map with Driveway Location- Exhibit 4 from Case T3-05-002
S18	1	Letter to Applicant Regarding Fee Waiver
<b>Exhibit No.</b>	<b>No. of Pages</b>	<b>Exhibit</b>
<i>Exhibits Submitted at the Hearing</i>		
H1	1	Sign-In Sheet
H2	1	2002 Air Photo
H3	1	Nearby Uses showing ¼ mile and ½ mile radii on top of 2002 Air Photo
H4	10	10-12-05 Memo from Carrie Richter
H5	12	10-12-05 Memo from Leslie Ann Hauer
H6	1	Letter from Granberg Logging
H7	30	"Secondary Lands Backgrounder"
H8	6	Prints from Bridal Veil Lakes website
<i>Exhibits Submitted After the Hearing</i>		
H9	2	10-21-05 Memo from Chuck Beasley
H10	11	Notice of Decision from case CS 8-79, Approving Bridal Veil Lakes as a private campground and conference center
H11	2	Statewide Planning Goal 4 effective January 25, 1975
H12	4	Community Service Standards from Multnomah County Zoning Code in effect at time of Bridal Veil Lakes approval

H13	11	10-28-05 Memo from Carrie Richter
H14	1	Sani-John Portable Toilet Elevation Drawing
H15	1	AceCanopy Tent photo and description
H16	1	11-22-05 Letter from Carrie A. Richter to Christine M. Cook
H17	2	11-22-05 Letter from Christine M. Cook to Derrick Tokos and Tammy Boren-King
H18	19	11-23-05 Memo with attachments to Christine M. Cook from Chuck Beasley
H19	8	12-2-05 Letter with attachments from Carrie A. Richter