



**MULTNOMAH COUNTY**  
**LAND USE PLANNING DIVISION**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
(503) 988-3043 FAX: (503) 988-3389

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**BEFORE THE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON  
FINAL ORDER**

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This Decision consists of Conditions, Findings of Fact and Conclusions.

**August 1, 2005**

**Case File: T3-05-008**      Application for Conditional Use Permit, Willamette River Greenway Permit, Design Review, and Hillside Development Permit to replace the Sauvie Island Bridge connecting Highway 30 to Sauvie Island

**Location:**      Areas surrounding Sauvie Island Bridge in Section 28 of Township 2 North, Range 1 West of the Willamette Meridian

**Zoning Designation:**      Rural Center (RC), Exclusive Farm Use (EFU), Multiple Use Agriculture-20 (MUA-20)

**Applicant:**      Alex Dupey, David Evans and Associates, Inc.  
2100 SW River Parkway, Portland, OR 97201

**Owners:**      1. Multnomah County  
2. K & Hirsch Larson  
14426 NW Larson Rd., Portland, OR 97231  
3. Mary Wolfe  
14037 NW Gillihan Road, Portland, OR 97231  
4. ESCO Corporation  
2N 1 W, 29 TL 400  
5. Kae & Chong Yom  
15005 NW Sauvie Island Road

## PROCEDURAL ISSUES

### 1. Impartiality of the Hearings Officer

- A. Ex parte contacts. As explained below, this is a new application for the above-described permits in relation to replacement of the Sauvie Island Bridge. In the matter of Case File T3-05-003, a hearing was held on an earlier application. I was the hearings officer in the earlier matter and did hear all of the testimony and evidence presented therein. Accordingly, I did declare that an ex parte contact as a result of the earlier hearing did occur. The written evidence submitted at the prior hearing was incorporated into the record herein. I did not have any other ex parte contacts prior to the hearing of this matter.

On the way to this hearing, which was held on July 18, 2005, I drove across the Sauvie Island Bridge. I observed the condition of the bridge and had limited views of the area surrounding the Sauvie Island Bridge. I did not stop the car, or exit the car to conduct a specific site visit of the area. During the course of the hearing I declared the extent of my "site visit" and no one had any questions or objected to my continued participation as hearings officer.

- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

### 2. Jurisdictional Issues

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

### 3. History of Application

The applicant herein had submitted an earlier application in the matter of Case File T3-05-003, related to the proposed replacement of the Sauvie Island Bridge. During the course of the hearing on the original application, which was held on June 10, 2005, an opponent raised procedural questions regarding the County's ability to submit an application, contending that the County could not process or approve the land use application, because it lacked the authorized signature of all property owners or contract owners of record. The opponents represented the owners of Larson's Moorage, hereinafter referred to as the "Larsons". The County indicated that it was in the process of adopting a new ordinance which gave a government agency the authority to initiate an application if it had the power of eminent domain. A question was raised concerning whether the County could retroactively confer jurisdiction on itself when apparently it did not have appropriate approval by owners at the time the application was submitted. Both the County and the attorney for the opponents were going to brief the issue while the record remained open.

Subsequently, the County withdrew the application and submitted a new application, after Ordinance No. 1065 became effective on June 23, 2005. During the hearing, staff corrected several typographical mistakes in the staff report to accurately reflect the date of application submittal, which was June 23, 2005.

At the hearing under the new application, which occurred on July 18, 2005, the written evidence which was submitted at the June 10, 2005 hearing in Case File T3-05-003, was incorporated into the record of Case File T3-05-008.

## **BURDEN OF PROOF**

In this proceeding, the burden of proof is upon the Applicant.

## **FACTS**

### **1. Testimony and Evidence Presented**

- A. Adam Barber, presented the staff report and recommended approval of the application, subject to certain conditions.
- B. Matt Ryan, an attorney for Multnomah County, explained the County's recent amendment to Multnomah County Code Section 37.0550, which gives a government agency with the power of eminent domain, the authority to initiate a land use application.
- C. The applicant indicated that it agreed with staff's presentation and supported the application.
- D. Bruce Hanson, of 19655 NW Sauvie Island Road, spoke in support of the new bridge and requested even more parking adjacent to the bridge.
- E. Jerry Penk, of 22530 NW Gillihan Rd., Sauvie Island, indicated that he was master of the Sauvie Island Grange, and supported the bridge construction and indicated that the replacement of the bridge would be a significant aid to the overall farm community.
- F. Jeff Joslin, of 14700 NW Gillihan Rd., Sauvie Island, spoke in support of the application, but requested refinement of certain design issues.
- G. Ken Larson, of Larson's Moorage, spoke in opposition to certain design elements of the plan, contending that the new entry road would take out the access road to Larson's Moorage. Mr. Larson indicated that he was not opposed to new bridge construction, but rather the proposed location and the County's method of proceeding with the construction. Mr. Larson also submitted a memorandum from his attorney, which raised additional issues.

- E. At the hearing on June 10, 2005, in the matter of T3-05-003, the following exhibits were received by the Hearings Officer and made part of the record of Case File T3-05-008 on July 18, 2005:
- H-1 Diagrams of proposed and existing bridge
  - H-2 Aerial photo of Sauvie Island with bridge project improvements superimposed
  - H-3 Plan showing proposed Sauvie Island parking
  - H-4 Sauvie Island Bridge replacement at Sauvie Island road crossing
  - H-5 E-mail from Phil Rickus, Ecologist at David Evans & Assoc., Inc., concerning wetlands
  - H-6 Letter from Sauvie Island Fire District Chief
  - H-7 Retaining wall plan and profile
  - H-8 Submittal from Jeff Joslin
  - H-9 Article discussing impact of Sauvie Island bridge limitations
  - H-10 Submittal from attorney Richard Allan
  - H-11 & H-11A  
Sign-in sheet for June 10, 2005 hearing
- F. At the hearing on July 18, 2005, all of the written exhibits and materials submitted in support of the original application prior to the hearing in the matter of Case File T3-05-003, were received in support of the current application, Case File T3-05-008.
- G. At the hearing on July 18, 2005, the following exhibits were received by the Hearings Officer:
- I-1 Aerial photo with proposed bridge improvements superimposed
  - I-2 Drawing of proposed bridge and existing bridge
  - I-3 Colored zoning map of the subject area, including designations for Willamette River Greenway and significant wetland areas
  - I-4 Map illustrating proposed parking
  - I-5 Sauvie Island Bridge replacement at Sauvie Island road crossing
  - I-6 E-mail regarding wetlands
  - I-7 Submittal from Jeff Joslin dated July 18, 2005
  - I-8 Memorandum to Larson's Moorage file from Attorney Stephen C. Morasch, submitted in opposition to the application
  - I-9 Sign-in sheet for July 18, 2005 hearing

## **STANDARDS, CRITERIA, ANALYSIS AND FINDINGS OF FACT**

1. The staff report in this matter, dated July 8, 2005, contains a detailed explanation of the project, surrounding area, and the substantive ordinance criteria with a detailed analysis of the evidence submitted in support of each of the four permits sought herein. However, there are several areas where opponents and even some proponents have criticized certain elements of the staff report and/or Multnomah County's actions in this matter. This opinion will focus on the issues and concerns

raised by opponents and other participants at the hearings, which address specific issues.

**3.1 Proof of record ownership of the tract and the representative's authorization must be demonstrated to process any land use application (MCC 37.0590(A) (C)).**

**Staff:** Multnomah County Code 37.0550 states that 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. Ian Cannon, Multnomah County Engineering Services Manager I, has provided written authorization to process this request within Multnomah County owned right-of-way. Since a portion of the project will occur on County owned land, Staff finds adequate consent was provided to initiate land use review of the application.

Multnomah County Code 37.0590 indicates a complete application must contain the information listed in MCC 37.0590(A)-(H), unless specifically waived by the Planning Director. The Planning Director has waived a number of these requirements including the need for a current title report for the subject property(ies) and 10 copies of all reports and plans, for example. The waiver of these requirements was accomplished when Multnomah County deemed the application complete on June 23, 2005. Waiver of certain requirements for a complete application is a standard practice allowed by Multnomah County Code.

Multnomah County Board Resolutions #05-040 and 05-047 authorize condemnation and immediate possession of real property interests for the purposes of constructing the new Sauvie Island Bridge and removing the existing bridge (Exhibit Y to Staff Report). Staff finds that these resolutions provide sufficient authority and clear direction to proceed with the processing of the application.

**Hearings Officer Analysis:** At the hearing on June 10, 2005, Richard Allan, the attorney for opponents Larson, submitted written material in opposition to the application, contending that the County did not have authority from the Larsons to proceed with an application. Mr. Allan also indicated that the Multnomah County Board resolutions which authorize condemnation, still did not give the County the authority to proceed with an application without the written consent of the owners.

On June 17, 2005, Adam Barber, planner for Multnomah County, received a request from Ian Cannon (Multnomah County Bridge Section), to withdraw the Sauvie Island Bridge application. (Case File T3-05-003).

On June 23, 2005, the Multnomah County Board of Commissioners adopted Ordinance No. 1065, which ordinance amended Section 37.0550 of the Multnomah County Code, to read as follows:

### **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, or by a government agency that has the power of eminent domain. PC (legislative) actions may only be initiated by the Board, Planning Commission, or Planning Director.**

The ordinance was adopted with an emergency clause, and became effective on June 23, 2005.

Later in the day, on June 23, 2005, Multnomah County submitted a new land use application to the Land Use Planning Division, regarding a Sauvie Island Bridge replacement matter. The new application was Case File T3-05-008.

MCC 37.0550 as applicable herein, provides that a government agency that has the power of eminent domain may initiate a Type I-IV land use application. Accordingly, I find that the County did have jurisdiction and the authority to make the subject application.

2. The opponents contend that the construction of the new bridge is not permitted pursuant to the provision of ORS 215.283(1) or (2). The opponents further contend that the use and review of the proposed bridge replacement can only be approved pursuant to the provisions of ORS 215.283(3), which require either adoption of an exception to the goal related to agricultural lands or review under ORS 215.296.

The Multnomah County EFU zone provisions which list allowed uses correspond to similar provisions regarding allowed uses in the EFU zone which are set forth in ORS 215.283. The allowed use set forth in ORS 215.283(1) (k) corresponds to MCC 23.2620(F). MCC 34.2620(G) corresponds to ORS 215.283(1)(l).

The Multnomah County Code treats those uses which would be allowed under ORS 215.283(2) as conditional uses. For example, MCC 23.2630(L) corresponds to ORS 215.283(2)(r). Similarly, ORS 215.283(2)(q) corresponds to MCC 34.2630(P).

Thus, I find that the provisions of the Multnomah County Code regarding allowed uses and conditional uses related to transportation facilities are consistent with the provisions of ORS 215.283. If the County application demonstrates compliance with the Multnomah County Code, it will also have complied with the provisions of ORS 215.283. This application for permits necessary to replace a bridge, as proposed in the current application, T3-05-008 relates to improvements that could be constructed as allowed or conditional uses under the County zoning regulations, and are consistent with the provisions of ORS 215.283 and do not require an exception to the goal related to agricultural lands.

3. **Issues Raised by Jeff Joslin.** Mr. Joslin spoke in support of the need to replace the Sauvie Island Bridge, but contended that the County should 1) do more to mitigate possible bicycle and vehicular conflicts; 2) provide more landscape buffering of the parking area; 3) provide better interim parking and bus facilities; 4) alter the form of the railing barrier at the end of the bridge span approaching the ramp and bend onto the island; 5) modify the retaining wall landscaping; and 6) provide porta-pottie screening. Mr. Joslin had previously submitted written testimony in regards to an earlier application in this matter. Between the first and second applications, the County did respond to at least one concern, and altered the design of the crash attenuation indicated in attachment 8 to his first submittal.

Mr. Joslin was a member of the Sauvie Island Bridge design citizen's advisory committee and participated in the planning effort leading to the current design, as a citizen member on the advisory committee. It appears that during the course of the many meetings of the citizen's advisory committee, he presented some of the same issues and concerns as he did in his written submittals in this proceeding. Although I found Mr. Joslin's presentation to be very well written, thoughtfully considered, and well-presented, I am not convinced that his proposed design alternatives are preferable to the plan presented in the County's application.

I do find that the County has effectively addressed the Code criteria.

For the most part, I am adopting the conditions recommended by Staff. I have made several clarifications within the conditions. I will not impose the condition recommended by the County which proposed that "Any structures displaced by construction associated with this project can not be temporarily relocated without proper approval". There is insufficient evidence in the record to support such a condition. If displaced structures need a permit, such a permit would have to be obtained whether or not such a condition existed in the final order. However, I do not want to impose a condition which may have the effect of requiring approval for structures that might not otherwise need approval.

Accordingly, I approve the County's application for a Conditional Use Permit, Willamette River Greenway Permit, Design Review, and Hillside Development Permit, to replace the Sauvie Island Bridge, based on the submitted material. As further findings for this opinion, I adopt the staff report, which is attached hereto as Exhibit "1". Except as specifically modified herein, the findings in the staff report are adopted as findings for this decision. This approval is subject to the conditions of approval which follow:

Conditions of Approval:

1. This approval is based on the submitted material. The proposed construction shall occur in accordance with the design, size, and location shown and described in the application materials submitted by the applicant.
2. The applicant is granted a six (6) year permit approval for portions of the project occurring on Multiple Use Agriculture-20 and Rural Center zoned land (Exhibit U). The applicant is granted a two (2) year permit approval for portions of the project

occurring in Exclusive Farm Use (EFU) zoning as required by Multnomah County Code 37.0690(A). A one year extension may be granted per year for all work occurring within EFU zoned land if the written request for extension is filed prior to permit expiration (MCC 37.0690(A)(6)). The applicant will need to submit the first extension request for all work permitted in the EFU zone within two (2) years of the original permit issuance.

3. Multnomah County must provide for on-going watering of the parking area landscaping when such care is required for tree, shrub and groundcover survival (MCC 34.7055(C)(4)). Multnomah County must provide on-going landscape maintenance of all plantings (MCC 34.7055(C)(5)).
4. The double wide temporary construction trailer and associated portable toilet structure shall meet setbacks of the underlying zone district and shall require a flood development if required (MCC 29.600 – 29.611).
5. All Erosion Control Best Management Practices illustrated in the Erosion Control Plans in Exhibit R, shall be installed prior to ground disturbance, shall be maintained throughout the life of the project, and shall only be removed after all disturbed areas are stabilized with landscaping materials or grass MCC 34.5520(A)(2)(a) & MCC 34.5520(A)(2)(f). Erosion Control Best Management Practices shall be inspected by the contractor immediately after each rainfall event and at least daily during prolonged rainfall. Erosion Control measures proposed on finished slopes need not be installed until after the slope is constructed, unless disturbed slopes will sit inactive for more than 14-days. Erosion control measures shall be installed within 7-days for any disturbed areas within 100-feet of a waterway, as recommended in the Biological Assessment (Exhibit P). Sediment fencing, or similar filtering barriers, shall be installed downhill of all disturbed areas prior to the initiation of ground disturbance. All Erosion Control Best Management Practices illustrated in the Erosion Control Plans in Exhibit R, shall be installed prior to ground disturbance. All BMP's trapping sediment shall be regularly cleaned out and inspected.
6. All stockpiled earth material shall be covered with plastic sheeting of at least 4-millimeter thickness to prevent erosion. Plastic sheeting over the stockpiled material shall be anchored with sandbags or tires to prevent wind from removing the plastic.
7. The County must supplement described erosion control techniques if turbidity or other down slope erosion impacts result from on-site grading work. The Portland Building Bureau (Special Inspections Section), the local Soil and Water Conservation District, or the U.S. Soil Conservation Service can also advise or recommend measures to respond to unanticipated erosion effects.
8. Multnomah County shall maintain best erosion control practices through all phases of development. Multnomah County is responsible for any sedimentation caused by stripping vegetation, regrading or other development. Any sedimentation leaving the site shall be removed by the applicant from all adjoining surfaces and drainage



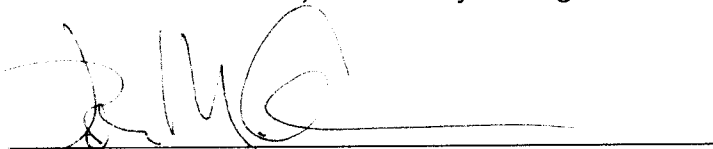
systems before motorized construction equipment leaves the site MCC 34.5520(A)(2)(a) & MCC 34.5520(A)(2)(f).

9. On-site disposal of construction debris is not authorized under this permit. Spoil materials removed off-site shall be taken to a location approved for the disposal of such material by applicable Federal, State and local authorities. This permit does not authorize dumping or disposal of hazardous or toxic materials, synthetics (i.e., tires), petroleum-based materials, or other solid wastes which may cause adverse leachates or other off-site water quality effects.
10. All sediment removed from BMP's including the stormwater facility and behind sediment barriers shall be disposed of at an approved site (MCC 34.5520(A)(2)(l)(2)).
11. If cultural deposits or artifacts are exposed during construction or through other ground disturbing activities in the project area, work in the vicinity of such finds shall immediately cease and the State Historic Preservation Office (SHPO) shall be notified along with a professional archaeologist called in to evaluate the significance of the find and recommend a subsequent course of action in consultation with SHPO and the appropriate Indian Tribes (MCC 34.5855(N)).
12. Observation of construction work required shall be routinely monitored by a Certified Engineering Geologist or Geotechnical Engineer (MCC 34.5515(F)(3)).
13. The County shall not enter private land until such time that the County takes possession of that land or the private land owner consents in writing to such action.
14. The retaining wall at the base of Sauvie Island Road within the parking area shall be tan in color (MCC 35.5855(H)). Landscaping in front of the wall shall be installed as shown on the landscaping plan (Exhibit G).

### **CONCLUSION**

Based upon the staff report, testimony of the applicant, and the substantial evidence submitted by applicant and contained in the staff report, I conclude that this request for Conditional Use Permit, Willamette River Greenway Permit, Design Review, and Hillside Development Permit to replace the Sauvie Island Bridge connecting Highway 30 to Sauvie Island, with a new bridge immediately up-river (to the southeast) of the existing bridge, is hereby approved, subject to the conditions of approval set forth above.

**IT IS SO ORDERED**, this 1<sup>st</sup> day of August, 2005.



**JOAN M. CHAMBERS, Hearings Officer**

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