

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

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<http://www.multco.us/landuse>

HEARINGS OFFICER DECISION AND FINAL ORDER

Case File: T3-2012-2239

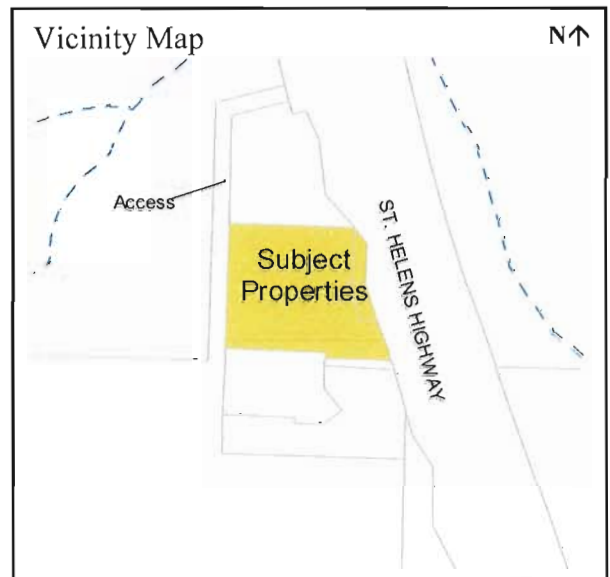
Location: Between 21201 & 21349 NW St.
St. Helens (access from Gallaher Rd.)
Tax Lots 100, 200, 300 & 400, Section 12AB,
Township 2 North, Range 2 West, W.M.;
Alt. Tax Accounts: R972120160, R972120120,
R972120090, & R972120350

Applicant(s): ICOP, Ali Houdroge

Property Old & Young Properties
Owner(s):

Base Zone: Rural Residential

Overlay Significant Environmental Concern
Zones: for Wildlife Habitat, Scenic Views
and Streams

Site Size: 5.5 acres

Summary: The application requests a Community Service Conditional Use Permit to establish a cemetery including Design Review Permit in the Rural Residential (RR) and the Commercial Forest Use – 1 (CFU-1) Zone District. Significant Environmental Concern Permits for Wildlife Habitat, (SEC-h) and Scenic Views, (SEC-v) are also requested, but the SEC permits will be reviewed at a later date.

Decision: The application to establish a cemetery as a Community Service Conditional Use on the 5.5 acre subject site referred to above and the requested Conditional Use Permit and Design Review Permit is approved subject to the conditions set forth in this Decision and Final Order.

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any *ex parte* contacts prior to the hearing of this matter. I did not make a site visit.
- 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.

BURDEN OF PROOF

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

TESTIMONY AND EVIDENCE PRESENTED

1. George Plummer presented the staff report for the County, identified exhibits and described the application materials, the location of the property and the applicable approval criteria.
2. Ryan O'Brien, Planning Consultant and Ali Houdroge presented testimony and evidence in support of the application for the Applicants.
3. Multiple Individuals and members of the Islamic Center of Portland community spoke of the need for a private cemetery to serve the Islamic Community in Portland.
4. Richard Rojeski, an adjacent property owner, to the site proposed for the cemetery, spoke in opposition to the application and expressed concerns about possible contamination of ground water and neighboring wells, traffic and other issues. He also submitted photos showing the surrounding scenery and views from his property.
5. Nicole Pierce and Michele Stofiel, who live close to the subject site, spoke in opposition to the application and also submitted a letter (Exhibit H.6, submitted after the hearing was closed but while the record was still open) in opposition to the application, expressing their concerns about possible ground water contamination, traffic, possible impact on wildlife and its habitat and other issues.

Applicable Approval Criteria: *Multnomah County Code (MCC): MCC 33.3100 et. al: RR Zone, MCC 33.6000-.6020: Community Service Conditional Use, and MCC 33. 7000 et. al: Design Review. ORS 97.460.*

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as '**Staff:**' and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*. The comments and analysis of the Hearings Officer are identified as "**Hearings Officer**". If there is no Hearings Officer comment after a staff comment or finding, the Hearings Officer concurs with the staff comment or finding.

1. PROJECT DESCRIPTION:

Staff: A request for a Community Service Conditional Use Permit to establish a cemetery including Design Review Permits in the Rural Residential (RR) Zone with the access drive located in Commercial Forest Use – 1 Zone and Significant Environmental Concern for Wildlife Habitat (SEC-h) and Scenic Views SEC-v Overlay Zones. The SEC permits will be reviewed at a later date. The applicant's submittal is included as File Exhibits A.1 through A.6.

2. PROPERTY DESCRIPTION

Staff: The subject tract includes three parcels totaling 5.5 acres that is accessed from a private drive along the flag pole of Tax Lot 100 from Gallaher Road, an ODOT road that accesses St. Helens Highway (Exhibits B.2 and B.3, Applicant's Exhibit 8). The private access drive climbs from the ODOT right-of-way with slopes of about 13 percent or less. The property is predominately a shallow sloped, rounded knob on top of a bench that rises up abruptly from the St. Helens Highway. The eastern approximately 50 feet of the tract has relatively steep slopes of 20 to 30 percent dropping down to the highway bench. The eastern steep slope area and the west property line are vegetated with trees.

3. RURAL RESIDENTIAL AND COMMERCIAL FOREST USE -1 ZONE DISTRICTS

3.1. Community Service Conditional Use in the RR Zone

MCC 33.3130: The following uses may be permitted when found by the Hearings Officer to satisfy the applicable Ordinance standards:

(A) Community Service Uses under the provisions of MCC 33.6000 through 33.6230;

Staff: Community Service (CS) Use list under MCC 33.6015(3) includes cemeteries as a use allowed through a CS Conditional Use permit if it meets the provisions of MCC 33.6000 through 33.6230.

3.2. Community Service Conditional Use in the CFU-1 Zone

MCC 33.2030: (A) The following Community Service Uses pursuant to all applicable approval criteria, including but not limited to the provisions of MCC 33.2045, 33.2050, 33.2056, 33.2061, 33.6000 through 33.6010, and 33.6100 through 33.6230:

(2): Cemetery

MCC 33.2045: Use Compatibility Standards - Specified uses of ... MCC 33.2030

(A)... may be allowed upon a finding that:

(A) The use will:

- (1) Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands;**
- (2) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and**

(B) 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.

Staff: There are no farm or forest practices taking place on property directly adjacent to the subject properties. Adjacent to the north and south is residential properties. To the east is the 200 foot wide St. Helens Highway right-of-way. There is a golf course to the west on the adjacent property across the flag pole access drive. To the southeast on Tax Lot 100 there is property managed as forestland. The proposed cemetery use will have a minor amount of intermittent visitors that should result no significant change in, or significantly increase the cost of accepted forestry or farming practices on surrounding forest or agricultural lands. The only possible fire hazard would be from the improper disposal of smoking products. A condition can require a no smoking sign in the parking area. With the condition the proposed use will not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel.

The access drive for the proposed cemetery will be located on an easement in the CFU-1 Zone (Exhibit B.3). The drive is accessory to the use thus is allowed through a Community Service Conditional Use permit. The use must meet the provisions of MCC 33.2045, 33.2050, 33.2056, 33.2061, 33.6000 through 33.6010. MCC 33.2045 is addressed in the next paragraph. The applicable provisions of 33.6100 through 33.6230 are addressed in Section 4 of this staff report. Provisions of MCC 33.2050, 33.2056, and 33.2061 are not applicable for an access drive.

The proposed use located within the CFU-1 Zone is a cemetery access driveway. The driveway currently exists to access existing properties. The proposal will expand the driveway to a twenty foot width. This will improve fire district access should equipment be needed to fight a fire. The drive will not result in a significant change in, or significantly increase the cost of accepted forestry or farming practices on surrounding forest or agricultural lands and will not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel. As previously stated the improved road will provide better access for fire suppression equipment which will reduce risks to fire suppression personnel.

Staff recommends a condition of approval that property owners submit a statement included as Exhibit B.6 for recording with the County 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. *These standards are met through findings in Section 4 and through a condition.*

Hearings Officer: At the hearing, Michele Stofiel objected to the staff testimony that there are no farm practices taking place on property directly adjacent to the subject properties. Ms. Stofiel testified that she operates a small farm on her neighboring parcel in the rural residential zone which parcel is approximately three acres in size. She testified that she grows food for her family and chestnuts for sale. However, it was the Use Compatibility Standards that staff was addressing. The Use Compatibility Standards relate to surrounding forest or agricultural lands which have Farm or Forest Zoning. Staff's analysis primarily addresses the potential effect on the Commercial Forest Use Zone (CFU -1) because the access drive for the proposed cemetery will be located on an easement in the CFU-1 Zone. **I concur with staff's conclusion that these criteria are met through the findings found later in this decision and through the recommended condition of approval.**

3.3 Dimensional Requirements

MCC 33.3155(C): Minimum Yard Dimensions - Front 30 feet, Side 10 feet and Rear 30 feet.

Staff: No buildings are proposed. Minimum yard requirements will need to be met for off-street parking as addressed in the findings for the off-street parking and design review in Sections 5 and 6 of this staff report. *These standards are met.*

3.4. Lot of Record

3.4.1. MCC 33.3170(A): In addition to the Lot of Record definition standards in MCC 33.0005

MCC 33.0005: Definition - Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 33.7785. 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.)**

Staff: The subject tract is made up of three parcels. The largest parcel Tax Lot 400 was created in 1942 through a deed filed with County Records in Book 703 on Page 102 (Exhibit A.6). The two smaller parcels, Tax Lots 200 and 300, were created in 1952 through a deeds filed with County Records in Book 1730 on Page 235 and Book 1538 on Page 346 (Exhibit A.6). There was no land division or zoning requirements for creating these parcels when they were created thus subject properties satisfy the lot of record standards. *The properties are lots of record.*

Hearings Officer: The properties are lots of record.

- 3.4.2. **MCC 33.3170(B): A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 33.3185, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

Staff: Two of the parcels, Tax Lots 200 and 300, are less than the minimum lot size for new parcels but may be occupied with the proposed use given they are lots-of-record.

4. COMMUNITY SERVICE CONDITIONAL USE

4.1. Approval Criteria

4.1.1. MCC 33.6010(A): Is consistent with the character of the area;

Staff: The character of the area is large lot, low density residential, some nearby forested lands and a golf course, with Metro wetland habitat areas across the highway. The area is generally natural landscape open space. The cemetery will be consistent with the low density, natural landscape, open space character of the area. *This criterion is met.*

Hearings Officer: At the hearing in this matter, R.S. Rojeski testified and submitted a written list of reasons why he thought that the proposed cemetery was not consistent with the character of the area. Similarly, some of the concerns raised by Nicole Pierce and Michele Stofiel could also be appropriately addressed here. Mr. Rojeski also contended that the cemetery would have a negative effect on his property values and harm him financially. His contention was supported by his opinion of regarding how an adjacent cemetery would be viewed negatively by potential purchasers of his property. Property values are not protected by the Multnomah County Code. Assertions that a proposed use will adversely affect property values cannot be considered by a Hearings Officer. Other contentions of the Opponents are paraphrased and set forth in bold below and the response by the Hearings Officer follows each assertion by the Opponents.

Opponents Contentions:

1. The proposed use will significantly increase traffic which will not be consistent with the character of the area.

Hearings Officer: All three opponents raised traffic as an issue. However, none of the opponents had conducted traffic studies or cited any statistics regarding the trips per day that would be generated by a small private cemetery. The opponents speculated that because there were no other Islamic cemeteries situated geographically close to the Portland Islamic Community, that the use of the cemetery would be far greater than projected by the applicant. However, the evidence from the applicant demonstrated that there would be less than 10 burials per year and the traffic from loved ones visiting the cemetery would be minimal. There was no evidence that contradicted the applicant's testimony that the ICOP Community is composed of only 150 families. At the Hearing, in rebuttal testimony, the Applicants' planning consultant, Ryan O'Brien testified that the number used by the Oregon Department of Transportation for projected round trips per day generated by Single Family Homes is 10 trips per day and that the traffic generated by the cemetery will be consistent with that generated by a typical single family home.

Finding: The traffic generated by the cemetery will be consistent with the character of the area.

2. The Subject property is located in the midst of rural residential property. The requested use falls outside of the use of the majority of adjacent properties the in the area.

Hearings Officer: A cemetery is a community service conditional use allowed in the Rural Residential Zone. The purpose clause, (MCC 33.6000) of the community service conditional use provisions, provides that the community service conditional use standards allow the approval of the location and development of special uses which, by reason of their public convenience, necessity, unusual character or effect on the neighborhood may be appropriate as specified in each district.

The uses found in the majority of adjacent properties are not a criteria for the siting of a community service use, nor could they be. If consistency with the majority of uses in the adjacent properties was a criteria, it would be virtually impossible to site a community service use. For example, a school is a community service conditional use and is generally sited in an area where the adjacent properties are residential to serve the students in the area. The opponents are asserting that a community service conditional use could only be sited in areas where the majority of adjacent properties have the same use as the proposed use. Under such a standard, schools, churches and cemeteries could only be sited where the majority of adjacent properties were respectively schools, churches and cemeteries.

Finding: The proposed cemetery is a community service use allowed as a conditional use in the RR zone and will be consistent with the character of the area.

3. The requested use will not be low density.

Hearings Officer: Staff stated that the character of the area is large lot, low density residential. Opponents Stofiel and Pierce are taking this comment out of context or simply misunderstanding the reference. "Low density", in the residential context, would be a single-family home. "High density" would be a multi-family dwelling. A cemetery has no living residents and in that context would have zero density. The opponents may be intending to raise a traffic or use generation issue. The opponents also contend that a recommended condition which requires a "flagger" demonstrates that the use is not intermittent. An intermittent use is one that may have higher volumes of use a few times a year and very little use for the rest of the year. The applicants' submittals indicate that there is likely to be only three or four burials a year which will result in increased traffic during the burials and generate the need for the recommended parking conditions. For the rest of the year few trips and little traffic will be generated. The intermittent nature of the use and parking lot improvement requirements are discussed in Section 5.8.1. of this decision.

Finding: The proposed cemetery use will be consistent with the large lot, low density residential, natural landscape and open space character of the area.

4. The requested use would not serve the immediate community.

Hearings Officer: There is no requirement in the standards for a community service conditional use that the special use serve only a limited geographical area. The applicant has presented evidence that the ICOP serves the Shia Islamic Community in the entire Portland Metropolitan Area, including any members that may currently live in proximity to the subject site or may locate in that area in the future.

I find that the proposed use is consistent with the character of the area.

4.1.2. MCC 33.6010(B): Will not adversely affect natural resources;

Staff: The cemetery will need to meet state standards for sanitary burial of human remains ensuring no adverse environmental impacts thus preventing an adverse affect on natural resources. The expansion of the access drive will be required to manage the stormwater on site. There are no other uses that would impact natural resources. *This criterion is met.*

Hearings Officer: Opponents Rojeski, Stofiel and Pierce all contend that ground water contamination would likely result from the siting of a cemetery at the subject site. Such a contention could be construed as an argument that the cemetery might adversely affect natural resources. The Opponents do not submit any studies or statistical evidence in support of their assertion of possible contamination.

At the Hearing, Ryan O'Brien, Planning Consultant, testified that the burials would be in full compliance with state standards and that each body would be buried in a vault and that there would not be any contamination of ground water or neighboring wells.

Applicant, Ali Houdroge, responded to the concern about possible water contamination with multiple submittals.

Exhibit H-7 from Applicant Houdroge included a forwarded e-mail from Paul Elvig, who identified himself as the former Executive Officer of the Washington State Cemetery Board and a former president of the National Cemetery Regulators Association. In that latter role, Mr. Elvig stated that he often heard concerns expressed that a cemetery might contaminate nearby wells. Elvig stated that he had read multiple studies on the issue and did not see any empirical evidence that concluded well water could be compromised by an active cemetery.

In Exhibit H-8, Mr. Houdroge responds to the opponents by stating that there is no evidence that cemetery burial can contaminate ground water. He also stated that the burials will be done in accordance with regulations set by the Oregon Board of Mortuary and that ICOP will be licensed by the Board as soon as it purchases the property.

Houdroge also stated that there is no standing water on the property and because of the slope of the property, the water drains off. He also described renting an auger to test the soil and stated that he found that the soil was dry two feet from the surface even though the test was done on January 8, 2012 when the weather conditions were rainy and wet.

Houdroge also wrote that the burials will be done at a depth of six feet and that bodies will be enclosed in a concrete vault.

Houdroge also submitted a State of Oregon Water Supply Well Report for the Rojeski Property, (Ex. H.9), which shows that the depth of the completed Rojeski well was 218 feet. In addition, Exhibit H.11 includes an e-mail to Houdroge from Daniel Hafley, R.G. (Registered Geologist, State of Oregon). Daniel Hafley identifies himself as a contaminant hydrogeologist with DEQ. He stated that it seems unlikely that human burial activity located near ground surface would impact groundwater being extracted from a groundwater aquifer located approximately 200 feet below ground surface. In reference to the Rojeski Well Report, (Ex. H.9) Mr. Hafley states: "Based on the well log provided, it should be noted that a clay layers is present from 64 to 90 feet below ground surface. Assuming that the layer is laterally continuous, this would impede or prevent the vertical migration of 'contaminants' from near ground surface to the deeper aquifer."

There is substantial evidence that the cemetery will not contaminate groundwater or area wells.

Finding: The proposed use will not adversely affect natural resources.

4.1.3. MCC 33.6010(C): The use will not:

- (1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor**
- (2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

Staff: See detailed finding in Section 3.2 addressing these standards and adopted as part of this finding. The proposed use will not affect any farming or forest practices on surrounding lands nor will the use significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. *This criterion is met.*

Hearings Officer: The proposed cemetery use will have intermittent visitors to the site. The only farming practice in the area is located on the adjacent property to the north where the property owner grows some food for the family and harvests chestnuts for sale. These farming practices will not be impacted by the minor amount of vehicles passing by the property to visit the cemetery or by the gathering of mourners at the cemetery. Additionally, a condition of approval will require that ICOP, after it acquires title to the property, will record a statement that the owners acknowledge the right of nearby property owners to conduct forest practices and accepted farming practices.

4.1.4. MCC 33.6010(D): Will not require public services other than those existing or programmed for the area;

Staff: There are no additional public services needed for a cemetery use on the subject tract. The use will not require any additional public services. *This criterion is met.*

4.1.5 MCC 33.6010(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;

Staff: The property is outside the big game winter habitat area. *This criterion is met.*

4.1.6. MCC 33.6010(F): Will not create hazardous conditions;

Staff: The cemetery will need to meet state standards for sanitary burial of human remains ensuring no adverse environmental impacts thus preventing any hazardous condition related to burial of human remains. The expansion of the access drive will be required to manage the stormwater on site. ODOT has reviewed the proposal and stated no approach permit is needed with no additional concerns regarding the access to the highway (Exhibit A.3, Applicant's Exhibit 17). The proposed use will not create hazardous conditions. *This criterion is met.*

Hearings Officer: Opponents Rojas, Stofiel and Pierce all contend that ground water contamination would likely result from the siting of a cemetery at the subject site. Such a contention could be construed as an argument that the cemetery will create hazardous conditions for neighbors by contamination of groundwater. The Opponents do not submit any studies or statistical evidence in support of their assertion of possible contamination.

At the Hearing, Ryan O'Brien, Planning Consultant, testified that the burials would be in full compliance with state standards and that each body would be buried in a vault and that there would not be any contamination of ground water or neighboring wells.

Applicant, Ali Houdroge, responded to the concern about possible water contamination with multiple submittals.

Exhibit H-7 from Applicant Houdroge included a forwarded e-mail from Paul Elvig, who identified himself as the former Executive Officer of the Washington State Cemetery Board and a former president of the National Cemetery Regulators Association. In that latter role, Mr. Elvig states that he often heard concerns expressed that a cemetery might contaminate nearby wells. Elvig stated that he had read multiple studies on the issue

and did not see any empirical evidence that concluded well water could be compromised by an active cemetery.

In Exhibit H-8, Mr. Houdroge responds to the opponents by stating that there is no evidence that cemetery burial can contaminate ground water. He also stated that the burials will be done in accordance with regulations set by the Oregon Board of Mortuary and that ICOP will be licensed by the Board as soon as it purchases the property.

Houdroge also stated that there is no standing water on the property and that because of the slope of property, the water drains off. He also described renting an auger to test the soil and finding that the soil was dry two feet from the surface even though the test was done on January 8, 2012, when the weather conditions were rainy and wet.

Houdroge also wrote that the burials will be done at a depth of six feet and that bodies will be enclosed in a concrete vault.

Houdroge also submitted a State of Oregon Water Supply Well Report for the Rojas Property, (Ex. H.9), which shows that the depth of the completed Rojas well was 218 feet. In addition, Exhibit H.11 includes an e-mail to Houdroge from Daniel Hafley, R.G. (Registered Geologist, State of Oregon). Daniel Hafley identifies himself as a contaminant hydrogeologist with DEQ. He stated that it seems unlikely that human burial activity located near ground surface would impact groundwater being extracted from a groundwater aquifer located approximately 200 feet below ground surface. In reference to the Rojas Well Report, (Ex. H.9) Mr. Hafley states: "Based on the well log provided, it should be noted that a clay layers is present from 64 to 90 feet below ground surface. Assuming that the layer is laterally continuous, this would impede or prevent the vertical migration of 'contaminants' from near ground surface to the deeper aquifer."

The opponents speculate that the cemetery will contaminate groundwater, but have not submitted any substantial evidence in support of their contention. The Applicant has submitted substantial evidence that the cemetery will not contaminate groundwater or area wells.

Finding: The proposed use will not create hazardous conditions.

4.1.7. MCC 33.6010(G): Will satisfy the applicable policies of the Comprehensive Plan;

Staff: The applicable plan policies for this proposal are *Comprehensive Plan Framework Plan Policies* 37 and 38 addressing the need for fire protection, police protection and for water, sewage disposal, and stormwater when applicable for the use. Fire District Review states the property is within Scappoose Rural Fire District and the district has indicated that the proposed use is in compliance with fire district access standards (Exhibit A.3, Applicant's Exhibit 14). The Sheriff's Department has stated that policing services should be adequate (Exhibit A.3, Applicant's Exhibit 14). There is no sewage disposal use proposed for the property because there will not be any building inhabited or prolonged visitation of the site. There are no impervious surfaces proposed for the property thus no impact to the drainage on site; however the off-street parking code requires paving the access drive to the property. Staff recommends a condition that will require, prior to building the driveway, that the property owner submit a Storm Water Certificate with the drainage system designed by a Oregon Certified Professional Engineer certifying no

increase of stormwater flow of the property for up to a 10 year/ 24 hour storm. *This criterion is met through a condition.*

4.2. Restrictions

A building or use approved under MCC 33.6015 through 33.6050 shall meet the following requirements:

4.2.1. MCC 33.6020(A): Minimum yards in EFU, MUA-20, RR, and BRC, Districts:

- (1) Front yards shall be 30 feet.**
- (2) Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.**
- (3) Rear yards shall be as required in the district.**

Staff: There are no buildings proposed. *The proposed use meets the yard standards.*

4.2.2 MCC 33.6020(B): Minimum yards in other districts shall be as required in the district.

Staff: Addressed in Finding 3.2 of this staff report. Compliance with those standards ensures this criterion is met. *This standard is met.*

* * *

4.2.3. MCC 33.6020(D): Off-street parking and loading shall be provided as required in MCC 33.4100 through 33.4220.

Staff: Off-street parking is addressed in the following section of this staff report. Compliance with those standards ensure this standard will be met. *This standard is met.*

4.2.4. MCC 33.6020(E): Signs for Community Service Uses pursuant to the provisions of MCC 33.7400 through 33.7505.

Staff: The applicant has proposed a sign without submitting a design. A condition will require that the sign meet provisions of MCC 33.7400 through 33.7505. *This standard is met through a condition.*

5. OFF-STREET PARKING AND LOADING

5.1. Continuing Obligation

MCC 33.4115: The provision for and maintenance of off-street parking and loading facilities without charge to users shall be a continuing obligation of the property owner. No building or any other required permit for a structure or use under this or any other applicable rule, ordinance or regulation shall be issued until satisfactory evidence in the form of a site development plan, plans of existing parking and loading improvements, a deed, lease, contract or similar document is presented demonstrating that the property is and will remain available for the designated use as a parking or loading facility.

Staff: Staff recommends a condition of approval that will require that on-site parking be maintained as a continuing obligation. *This standard is met through a condition.*

5.2. Plan Required

MCC 33.4120: A plot plan showing the dimensions, legal description, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit, or for a change of classification to O-P.

Staff: The applicant has submitted sufficient plans for the proposed use (Exhibit A.2). *This standard is met.*

5.3. Use of Space

MCC 33.4125(A): Required parking spaces shall be available for the parking of vehicles of customers, occupants, and employees without charge or other consideration.

MCC 33.4125(B): No parking of trucks, equipment, materials, structures or signs or the conducting of any business activity shall be permitted on any required parking space.

MCC 33.4125(C): A required loading space shall be available for the loading and unloading of vehicles concerned with the transportation of goods or services for the use associated with the loading space.

Staff: Staff recommends a condition of approval that will require parking spaces. For the proposed use, a loading space is not needed because there is no building proposed. A condition will require that the parking area is built prior to establishing the use on the tract. *This standard is met through a condition.*

5.4. Location Of Parking And Loading Spaces

5.4.1. **MCC 33.4130 (A):** Parking spaces required by this Section shall be provided on the lot of the use served by such spaces.

Staff: Staff recommends a condition of approval that will require parking spaces and the maneuvering area on the property. *This standard is met.*

5.5. Design Standards: Scope

MCC 33.4165(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.

MCC 33.4165(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: Staff recommends a condition of approval that will require parking spaces and the maneuvering area on the property. *This standard is met through a condition.*

5.6. Access

- 5.6.1. **MCC 33.4170(A):** Where a parking or loading area does not abut directly on a public street or private street approved under MCC 33.7700 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.

Staff: The parking area to the property does not abut a public street or road (Exhibit A.2 and Exhibit B.3). Staff recommends a condition of approval that requires an unobstructed paved access drive not less than 20 feet in width for two-way traffic, leading to a public street with direction plainly marked. *This standard is met through a condition.*

- 5.6.2. **MCC 33.4170(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.

Staff: Parking has not been approved on St. Helens Highway for this use. Staff recommends a condition of approval that forbids parking on the highway without prior approval of ODOT. *This standard is met through a condition.*

5.7. Dimensional Standards

- 5.7.1. **MCC 33.4175(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.

Staff: The submitted plan shows 20 spaces all meeting the 18 foot by nine foot width requirements (Exhibit A.3, Applicant's Exhibit 4). *These standards are met.*

- 5.7.2. **MCC 33.4175(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.

Staff: The submitted plan shows 90 degree parking and a 25 foot wide aisle. *These standards are met.*

5.8. Improvements

5.8.1. MCC 33.4180(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.

Staff: For the proposed use as represented by the applicant, staff expects the parking area to be used on a very intermittent basis. The applicant projects 3 to 4 burials a year with visitations infrequent, a few times a year per grave. Such a use is intermittent. Give the intermittent use of the parking area and that the cemetery is a large field with the parking area a smaller portion of the field similar to a sports field, staff finds that it can be surfaced with gravel as proposed under subsection (2) above. Staff recommends a condition of approval that allows the spaces to be unmarked, provided the parking of vehicles is supervised during funeral arrivals. *This standard is met through a condition.*

Hearings Officer: Opponents Stofiel and Pierce contend that a recommended condition which requires a “flagger” demonstrates that the use is not intermittent. An intermittent use is one that may have higher volumes of use a few times a year and very little use for the rest of the year. The applicants’ submittals indicate that there is likely to be only three or four burials a year which will result in increased traffic during the burial and generate the need for the parking. For the rest of the year few trips and little traffic will be generated. The standard, that staff is addressing, relates to the type of surface required for the parking lot. If the parking lot were projected to have frequent use, the parking area would need to be surfaced with two inches of blacktop on a four inch crushed rock base. However, because the use is intermittent, a gravel or grass surface may be allowed, “. . . if the parking of vehicles is supervised.” See (2) above. The recommended condition requiring a flagger is to assure compliance with the Code requirement for supervision of the parking of vehicles.

5.8.2. MCC 33.4180(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.

Staff: Staff recommends a condition of approval that the property owner install curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress for the use. *This standard is met through a condition.*

- 5.8.3. MCC 33.4180(C): Marking – All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 33.4120, and such marking shall be continually maintained.**

Staff: For intermittent parking area per MCC 33.4180 (A) marking is not necessary. *The standard is not applicable.*

- 5.8.4. MCC 33.4180(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.**

Staff: Given the proposed parking area is to be a gravel surface, there should be no increased stormwater runoff, however to be certain, a condition can be included that when the stormwater is assessed by the engineer for the paved driveway, the stormwater runoff parking area be included in that assessment. If the engineer determines there will be an increased flow off the property, then a stormwater system will be required to maintain predevelopment flow rate off the property up to the 10year/24 hour standard. *This standard is met through a condition.*

5.9. Lighting

MCC 33.4185: 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: No lighting is proposed. *The standard is not applicable.*

5.10. Signs

MCC 33.4190: Signs, pursuant to the provisions of MCC 33.7465

Staff: The applicant proposed a sign identifying the property as a cemetery but has not submitted a design for review. The sign can be reviewed through the nondiscretionary zoning review for a sign. Staff recommends a condition addressing this standard. *The standard met through a condition.*

5.11. Design Standards: Setbacks

MCC 33.4195(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.

MCC 33.4195(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 front yard abutting the highway is not proposed to be used for parking and will not be paved. *These standards are met.*

5.12. Landscape and Screening Requirements

MCC 33.4200(A): The landscaped areas requirements of MCC 33.7055 (C) (3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 33.4165 (A).

Staff: The landscaped area requirements of MCC 33.7055 (C) (3) to (7) for parking and maneuvering areas are addressed below in the Design Review sections of this staff report. *This standard is met through conditions.*

5.13. Minimum Required Off-Street Parking Spaces

* * *

MCC 33.4205 (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.

Staff: The proposed cemetery is an unspecified use with little chance for off-site impacts given the access is by easement. There is no nearly equivalent use. It is in the applicant's best interest to design a parking area that meets their needs thus we have let the applicant determine the amount of parking to propose. The applicant has proposed 20 spaces. The Planning Director finds that the amount proposed is suitable for the use.

6. DESIGN REVIEW

6.1. Design Review Criteria

MCC 33.7050(A): Approval of a final design review plan shall be based on the following criteria:

Staff: The findings addressing the design review are in the following sections.

6.1.1. MCC 33.7050(A)(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, interrelated, and shall provide spatial variety and order.**

Staff: The proposed cemetery will be very similar to the natural environment. The parking area and widening of the access drive will be the only change. The proposed design will conserve energy in that the area will predominately remain as a natural setting thus there will be no issues with adverse climatic conditions, noise, and air pollution. The stormwater from the access drive will be disposed of on the property. The parking area and the access drive areas the development only element and there will be landscaping required around the parking area. The elements will be on a human scale and provide spatial variety and order with a small 20 vehicle parking area on the 5.5 acre properties.

6.1.2. MCC 33.7050(A)(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.

Staff: The proposed use is to be accessed from an existing access point from St. Helens Highway. ODOT has reviewed the proposal and stated no approach permit is needed with no additional concerns. For privacy, staff recommends a ten foot setback of the use from the property line of the residential properties to the north and south. A small cemetery use as proposed includes in frequent visits to the site thus the setbacks should provide for privacy.

6.1.3. MCC 33.7050(A)(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.

Staff: The proposed use will not result in any special needs of handicapped persons other than designed handicapped parking at the east end of the parking area. The handicap parking will need to be paved for wheel accessibility. Staff recommends a condition of approval requiring a designated handicap paved parking space in the northeast corner of the parking. *This standard is met through a condition.*

6.1.4. MCC 33.7050(A)(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.

Staff: The natural landscape and existing grade will be preserved except for minor grading for the development of the parking area and widening of the access drive. *This standard is met.*

6.1.5 MCC 33.7050(A)(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.

Staff: The proposal includes a small parking area with one access point. Vehicle circulation will be directly to the parking spots with a 25 foot wide aisle that is about 100 feet long. Each parking spot has pedestrian access directly to the lawn area (Exhibit A.3, Applicant's Exhibit 4). *This standard is met.*

6.1.6 MCC 33.7050(A)(6): Drainage – Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.

Staff: The plan does not propose any new impervious surfaces on the subject tract thus the surface drainage should not change on the property, however an engineer's assessment of the drainage from the parking area is recommended as a condition (per Finding 5.8.4). Additionally, the access drive pavement will need to be widened to a

twenty foot wide paved drive. A condition of approval can require the drive be designed by an Oregon Professional Engineer to meet this standard. The flagpole of the property across which the access drive crosses is 60 feet wide and will have sufficient width to feasibly provide drainage systems to meet this code section for the paved drive's stormwater runoff. *This standard is met through a condition of approval.*

6.1.7. MCC 33.7050(A)(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.

Staff: No structures are proposed. The parking area facility is buffered from the adjacent residential properties by a minimum of 120 feet for the closest residential property to the south and a 20 foot setback from the flag pole of the adjacent parcel to the west from which access is gained. Staff recommends a condition of approval requiring that the parking area is screened by shrubs planted around the outer edges of the parking area. *This stand is met through a condition of approval.*

6.1.8. MCC 33.7050(A)(8): Utilities – All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.

Staff: No utilities are proposed to be used. *This stand is not applicable.*

6.1.9. MCC 33.7050(A)(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.

Staff: The applicant states that a small sign to identify the cemetery is proposed. The applicant has not provided a drawing of a sign. Staff recommends a condition of approval that limits the sign to be a wooden sign using natural wood colors or dark grays, greens, browns and/or black colors. The size of the sign is required to be in conformance with the non-discretionary sign code per MCC 33.7450. *This stand is met through a condition of approval.*

6.2. Required Minimum Standards

MCC 33.7055(C): Required Landscape Areas - The following landscape requirements are established for developments subject to design review plan approval:

Staff: The findings addressing the required landscape areas are in the following sections.

6.2.1. MCC 33.7055(C)(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: The minimum 15% landscaped area for the 5.5 acres tract equals 35,937 square feet of landscape area required. This 15% requirement can be met by requiring 10 foot

wide landscape strip areas along the the north, west and south property lines along with a 40 foot wide landscape strip along the front property line (east) of the tract, and landscaping five feet in width around the parking area. The ten foot setback will provide a buffer from neighboring properties as well as meeting the minimum landscaping requirement. Given the steep slopes of the 40 foot area at the front of the tract (east) adjacent to St. Helens Highway, this area is not well suited for a burial area. Additionally it provides a buffer and screening from the highway and has an existing natural tree canopy. Staff recommends a condition that the ten foot landscape strip area along the north, west and east property lines, and 40 feet of landscape area along the east property lines of the tract be maintained as a natural or planted landscaping buffer and not be used for burials. *This standard is met through a condition.*

Hearings Officer: Adjacent property owner Richard Rojeski testified that a visual buffer should be required between his property and the cemetery. The condition recommended by staff requiring 10 foot wide landscape strip areas along the north, west and south property lines along with a 40 foot area at the front of the tract, which is the east property line adjacent to St. Helens Highway will provide a buffer and screening between the subject property and adjacent properties and a buffer and screening from the highway while meeting the landscaping requirements of the Code. Rojeski, Stofiel and Powell were all concerned about the lack of a water source to maintain the landscaping. The applicant will be required to maintain the landscaping with natural or planted landscaping of a drought resistant variety or provide for the watering of the landscaping.

6.2.2. MCC 33.7055(C)(2): All areas subject to the final design review plan and not otherwise improved shall be landscaped.

Staff: This review included the entire tract. *This standard is met.*

6.2.3. MCC 33.7055(C)(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.

Staff: A five foot landscape strip around the parking area exceeds the no less than 25 square foot per parking space standard but helps meet the 15% of the lot area to be

landscaped requirement. The proposed design meets the minimum of ten foot separation from the access drive and exceeds the distance for other property lines. The parking area is not adjacent to a street. The landscape strip of five feet surrounding the parking area can be required by a condition. Staff recommends a condition of approval that a five foot landscaped strip surround the parking area to be planted with low shrubs with spacing to allow pedestrian access to the vehicles. *These standards are met through a condition.*

6.2.4. MCC 33.7055(C)(4): Provision shall be made for watering planting areas where such care is required.

Staff: For shrub plantings around the parking area, a condition can require drought resistant shrubs or that provision be made for watering the plantings. *This standard is met through a condition.*

Hearings Officer: Rojeski, Stofiel and Powell were all concerned about the lack of a water source to maintain the landscaping. The applicant will be required to maintain the landscaping with natural or planted landscaping of a drought resistant variety or provide for the watering of the landscaping.

6.2.5 MCC 33.7055(C)(5) Required landscaping shall be continuously maintained.

Staff: A condition can require the maintenance of the shrubs planted around parking area and the other landscape areas. *This standard is met through a condition.*

6.2.6. MCC 33.7055(C)(6) Maximum height of tree species shall be considered when planting under overhead utility lines.

Staff: A condition of approval can require maximum height of tree species shall be considered when planting under overhead utility lines. *This standard is met through a condition.*

6.2.7. MCC 33.7055(C)(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: A condition of approval can require that the landscape areas be planted with trees. In areas designated as landscape areas that are without existing tree canopy tree saplings can be planted a maximum distance of 25 apart to meet this requirement. Douglas fir is native to this area and thus has the best chance for survival when planted in the fall planting season. Given there are no provisions for water on site, staff recommends a condition that drought resistant shrubs are planted around the parking area. *This standard is met through a condition.*

7. SIGNIFICANT ENVIRONMENTAL CONCERN

7.1. Uses; SEC Permit Required

MCC 33.4510(A): All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and

design of any use, or change or alteration of a use, except as provided in MCC 33.4515, shall be subject to an SEC permit.

Staff: A significant Environmental Concern for Wildlife Habitat (SEC-h), Scenic Views (SEC-v) and Streams (SEC-s) is required for the proposed use on the subject property and the access drive. An SEC permit has been requested; however additional information is required for the SEC-Streams overlay component of the permit review. That area may be impacted due to the widening of the access drive. The applicant has requested that we postpone the review for the SEC permit to provide additional information. We can review the SEC permit request later as Type II administrative decision.

Hearings Officer: Stofiel and Pierce raised a concern for wildlife and habitat. The SEC permit application for Wildlife Habitat (SEC-h) will be reviewed later as a Type II administrative decision.

8. Oregon Revised Statutory Provisions related to Cemeteries

ORS Chapter 97 relates to Cemeteries, Human Bodies and Anatomical Gifts, Property Rights and Transactions and contains General Provisions.

ORS 97.020 exempts religious and eleemosynary corporations, churches, religious societies or denominations or any private cemetery that any such entity controls from most of the provisions of ORS chapter 97.

ICOP is registered as a non-profit religious organization under IRS 503(c)3 and as a religious non-profit corporation with the Oregon Corporation Division and as such qualifies for the exemptions provided under ORS 97.020.

ORS 97.020 does not exempt private religious cemeteries from the provisions of ORS 97.460. The applicable provisions of ORS 97.0460 are set forth as follows:

ORS 97.460 Requirements for establishment of cemetery or burial park.

(1) A person may not lay out, open up or use any property for cemetery or burial park purposes unless the person:

(a) Is the owner of the property;

Hearings Officer: The applicant ICOP qualifies for the exemption from many of the provisions of ORS chapter 97 but is not yet the owner of the subject property. The current property owner does not qualify for the exemption from the other provisions of ORS chapter 97 and would not be able to obtain this approval or develop the cemetery under the conditions set forth in this decision for the ICOP. The conditions of approval will be clarified to indicate that the conditions and approval apply specifically to ICOP, which will not be able to do any work on the property until it has acquired ownership of the property.

(b) Has the written consent of the planning commission of the county or city having jurisdiction under ORS 92.042, or if there is no such commission in such county or city, the governing body of such county or city;

Hearings Officer: Multnomah County has designated Hearings Officers as the approval authority for cemeteries under the Community Service Conditional Use Permit process. This Decision and Final Order will be the written consent required by this ORS section for the opening and use of the cemetery.

- (c) Agrees to maintain records of the disposition of human remains on the property as required by the planning commission or governing body of the county or city having jurisdiction under ORS 92.042; and**

Hearings Officer: Staff stated that Multnomah County does not have requirements related to record keeping for the disposition of human remains. The applicant is expected to comply with the requirements of state standards.

- (d) Agrees to disclose the disposition of human remains upon sale of the property. Failure to disclose the disposition of human remains does not invalidate the sale of the property.**

Hearings Officer: This requirement can be met through the imposition of a condition.

CONCLUSION: Based on the staff testimony and written staff report and the findings and substantial evidence cited or referenced therein and submitted at the hearing and while the record was open, I conclude that, the applicant has carried the burden necessary for approval of the Community Service Conditional Use and Design Review Permits to establish a Cemetery in the Rural Residential Zone. This approval is subject to the conditions of approval set forth below.

CONDITIONS OF APPROVAL:

- 1. Prior to any work on the property, ICOP, after it acquires title to the property, shall provide a copy of its recorded deed to Multnomah County Land Use Planning prior to the issuance of any development permits.**
- 2. Prior to any work on the property, ICOP, after it acquires title to the property, shall record the Notice of Decision including the Conditions of Approval of this decision with the County Recorder. The Notice of Decision shall run with the land and the conditions shall be met by ICOP and any future property owner(s) unless amended through a later decision by an authorized authority. Proof of recording shall be submitted to Multnomah County Land Use Planning prior to the issuance of any development permits. Recording shall be at the applicant's expense. [MCC 37.0670]**
- 3. This land use permit is based on the submitted written narrative and plans (Exhibits A.1 through A.3). No work shall occur under this permit other than that which is specified within these documents or in this decision. It shall be the responsibility of the ICOP after it acquires title to the property to comply with these documents and the limitations of this permit as described herein. [MCC 37.0610]**
- 4. This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690(A) as applicable if actions and improvements required by the conditions have not been completed, these include Condition Numbers 5, 6, 7, 8 and 9. The**

ICOP, after it acquires title to the property, may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period. [MCC 37.0690]

5. The ICOP, after it acquires title to the property, shall record with County Records a statement that the owners 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. [MCC 33.2045(B)]
6. Prior to use of the cemetery, ICOP, after it acquires title to the property, shall construct the parking area as proposed. The off-street parking shall be provided for the visitors to the cemetery without charge as a continuing obligation of the property owners. Parking spaces shall be provided on the cemetery property which provide for the maneuvering and parking of all vehicles on the property. Parking for the use shall be entirely located on the site unless prior approval has been obtained from ODOT to use its right-of-way for parking. The parking area shall be surfaced with gravel with the exception of the handicap parking space, which shall be paved. The outer boundary of a parking area shall be provided with a bumper rail or curbing at least four inches in height. During a funeral arrival at the parking area, the parking of vehicles shall be directed by a flagger. There shall be a handicap parking space with signage labeling the space as handicap parking located at the east end of the parking area. ICOP, after it acquires title to the property, shall install a no smoking sign on the east end of the parking area and viewable from the parking area. [MCC 33.2045, MCC 33.4115, MCC 33.4130 (A), MCC 33.4165(B), MCC 33.4170(B), MCC 33.4180(A), and MCC 33.7050(A)(3)]
7. ICOP, after it acquires title to the property, shall provide an unobstructed paved drive not less than 20 feet in width for two-way traffic, leading to the public street with traffic directions plainly marked at the entrance of the private drive. Prior to building and paving the access drive, the property owner shall submit to County Land Use Planning a Storm Water Certificate with the drainage system designed for the drive by a Oregon Certified Professional Engineer which certifies no increase of stormwater flow off the property for up to a 10 year/ 24 hour storm. The parking area shall be included in the stormwater assessment with the no increase of stormwater flow off the property for up to a 10 year/ 24 hour storm standard met. The stormwater system shall be installed prior to the end of construction of the road and proposed use of the property. [MCC 33.4170(A), MCC 33.6010(G) and MCC 33.4180(D)]
8. ICOP, after it acquires title to the Property, shall screen the parking area with shrubs planted within a five foot wide landscaping strip surrounding the parking area. The shrubs shall be spaced so the pedestrians have access to the vehicles. The shrubs shall either be drought resistant or the property owners shall make provision for the watering of the shrubs. [MCC 33.7050(A)(7) and MCC 33.7055(C)(3)]
9. ICOP, after it acquires title to the property, shall maintain a minimum 15% landscaped area for the 5.5 acre tract through maintaining a 10 foot landscape strip along the north, west, and south property lines along with a 40 foot landscape strip from the front property lines (east) of the tract. A five foot wide landscape strip shall be

installed and maintained around the parking area. No burials shall be placed in the landscape areas to provide a buffer of the use from neighboring properties. To provide for the best possible survival of landscape plantings, ICOP shall plant native Douglas fir saplings along the 10 foot north and south landscape stripes. The trees shall be planted during early fall tree planting season at 25 feet apart with the exception of the power line easement area. The ICOP shall utilize drought resistant plants and maintain of the shrubs planted around the parking area and the other landscape areas. ICOP shall maintain the existing tree canopy density within the east and west landscape areas. Maximum height of tree species shall be considered and easement requirements abided by if planting under overhead utility lines. [MCC 33.7050(A)(2), MCC 33.7055(C)(1), MCC 33.7055(C)(5) and MCC 33.7055(C)(6)]

10. Prior to any work, the ICOP, after it acquires title to the property, shall provide proof to County Land Use Planning of an easement for the access drive along the flag pole of Tax Lot 100 from Gallaher Road to the parking area as shown on Exhibit A.3, Applicant's Exhibit 8. [MCC 37.0550]
11. Prior to placing a sign (other than the handicap parking sign), ICOP, after it acquires title to the property, shall present a design plan for the proposed sign to County Land Use Planning for zoning signoff. The sign shall be composed of wooden materials with natural wood colors, dark grays, greens, browns and/or black. The sign shall be in conformance with the non-discretionary sign code per [MCC 33.6020(E), MCC 337450 and MCC 33.7050(A)(9)]
12. ICOP must disclose that the subject property was a cemetery used for the disposition of human remains upon a sale or transfer of the property by ICOP.

IT IS SO ORDERED, this 27th day of September, 2012.



JOAN M. CHAMBERS, Hearings Officer

EXHIBITS

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Procedural Exhibits

Exhibit #	# of Pages	Description of Applicant's Exhibit	Date Received/ Submitted
A.1	1	Application form	4/5/12
A.2	19	Narrative	4/5/12
A.3	67	Applicant's Exhibits 1 through 17	4/5/12
A.4	12	Preliminary Title Report	4/5/12
A.5	16	Packet of deeds	4/5/12
A.6	46	Packet of maps and deeds for Lot of Records finding	6/5/12
'B'	#	Staff Exhibits	Date
B.1	6	County Assessment Property Information	4/5/12
B.2	1	County Assessment Map with subject properties labeled	7/18/12
B.3	1	2010 Aerial Photo showing subject properties and vicinity	7/18/12
B.4	1	2010 Aerial Photo showing subject properties and access drive located in the SEC-s Overlay	7/24/12
B.5	1	Zoning Map	NA
B.6	1	Statement to be recorded	NA
'C'	#	Administration & Procedures	Date
C.1	2	Incomplete Letter	5/4/12
C.2	1	Applicant's Acceptance of 180 Day Clock	5/8/12
C.3	1	Complete Letter (Day 1)	6/25/12

Hearing Exhibits and Post Hearing Exhibits submitted while the Record was still open:

- H.1 Aerial Photo showing subject properties and vicinity.
- H.2 Photos submitted by Richard Rojeski.
- H.3 Written testimony submitted by Richard Rojeski.
- H.4 Aerial Photo showing subject property.
- H.5 Hearing Sign-In Sheet.
- H.6 Written testimony dated August 17, 2012, submitted by Stofiel and Pierce.
- H.7 E-mail from Ali Houdroge sent to County 8/23/12 at 11:19 p.m.
- H.8 Applicants written response to testimony submitted in Exhibit H.6.
- H.9 Rojeski well report submitted by applicant as attachment to Exhibit H.7.
- H.10 Home Depot Statement.
- H.11 E-mail from Applicant to County submitted 8/23/12 at 11:21 p.m.
- H.12 E-mail from Applicant to County submitted 8/24/12 at 8:34 a.m.