

Department of Community Services
Land Use Planning Division
www.multco.us/landuse



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HEARINGS OFFICER DECISION

For Metro's

Community Service, Design Review, Significant Environmental Concern, Variance, & Exception to
Secondary Fire Safety Zone Application (T3-2015-3903)

Applicants: Rodney Wojtanik & Gary Shepherd
Metro

Owners: Metro, State of Oregon, USA

Date: December 16, 2015

Location: 3010 SE Oxbow Parkway
Township 1 South , Range 4 East, WM. Sections 10, 11, 14 and 15
Alternate Account #s R994100580, R994100050, R994150020, R994150340,
R994110350, R994110070, R994030180, R994030700, R994030740, R994100030,
R994100570, R994100170, R994100070, R994100180, R994100480, R994110130,
R994110380, R994110370, R994110390, R994110430, R994110340, R994140200,
R994140300, R994140190, R994150240, R994150440, R994110360, R994100590, and
R994150230

Summary: An application for a Community Service Conditional Use, Design Review, Significant Environmental Concern, Variance, and Secondary Fire Safety Zone permit for Oxbow Regional Park in the Commercial Forest Use District.

Base Zone: Commercial Forest Use (CFU) and Commercial Forest Use – 2 (CFU-2)

Overlay Zones: Significant Environmental Concern (SEC) for wildlife habitat (SEC-h), streams (SEC-s), water resources (SEC-wr) & scenic waterways (SEC-sw), Hillside Development (HD)

Summary of Decision: APPROVED WITH CONDITIONS

Applicable Approval Criteria: Multnomah County Code (MCC), West of Sandy River Rural Area (WSR), East of Sandy River Rural Area (ESR), Multnomah County Road Rule (MCRR):

Commercial Forest Use (CFU & CFU-4) Districts	MCC 36.2030(A)(9)(b), MCC 36.2045, MCC 36.2050, MCC 36.2056, MCC 36.2061, MCC 36.2075, MCC 36.2085, MCC 36.2095, MCC
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	36.2110 (WSR) MCC 35.2230(A)(9)(b), MCC 35.2245, MCC 35.2250, MCC 35.2256, MCC 35.2261, MCC 35.2275, MCC 35.2285, MCC 35.2310 (ESR)
Community Service Conditional Use	MCC 36.6005, MCC 36.6010(A) - (H), through MCC 36.6020 (WSR) MCC 35.6005, MCC 35.6010(A) - (H), through MCC 36.6020 (ESR)
Design Review	MCC 36.7000 through MCC 36.7060, MCC 36.4105 through MCC 36.4205 (WSR) MCC 35.7000 through MCC 35.7060, MCC 35.4105 through MCC 35.4205 (ESR)
Significant Environmental Concern	
For Wildlife Habitat	MCC 36.4510, MCC 36.4515, MCC 36.4525, MCC 36.4540, MCC 36.4550, MCC 36.4560 (WSR)
For General	MCC 35.4510, MCC 35.4520, MCC 35.4555 (ESR)
For Streams	MCC 35.4510, MCC 35.4520, MCC 35.4575 (ESR)
For Water Resources	MCC 36.4510, MCC 36.4515, MCC 36.4525, MCC 36.4540, MCC 36.4550, MCC 36.4555 (WSR)
For Scenic Waterways	MCC 36.4510, MCC 36.4515, MCC 36.4525, MCC 36.4540, MCC 36.4545 (WSR)
Hillside Development	MCC 36.5500 through MCC 36.5525 (WSR) MCC 35.5500 through MCC 35.5525 (ESR)
Nonconforming Use	MCC 36.7200 through MCC 36.7214 (WSR) MCC 35.7200 through MCC 35.7214 (ESR)
Oregon Administrative Rules	OAR 660-034-0040
Transportation Planning	MCRR 4.00 through 6.100

Written findings are contained herein. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. The decision of the hearings officer adopts and incorporates the findings referenced as ‘Staff’ with minor edits, and except for those findings marked ‘**Hearings Officer**’.

Project Description:

Staff: Metro is seeking Community Service Conditional Use approval for the existing Oxbow Park along with adding additional territory to it boundaries. In addition, Metro seeks approval of the Park’s 1997 Master Plan elements. As part of the review, Metro seeks approval to construct the following three projects:

A new office building, improve access and parking and make operation area improvements near the park entrance and related improvements (Exhibit A.50, page 1);

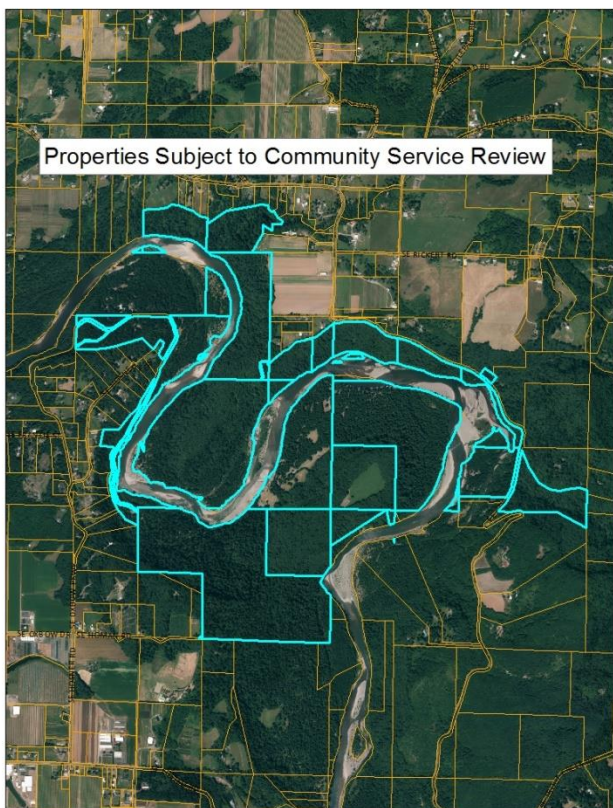
Construct 20 new individual campsites (nine of which were lost to Sandy River flooding), replace the campground’s access road in a new location, and add a self-contained vault toilet facility for a total of 77 individual campsites and two group campsites; and

Relocate and replace two playground structures near the day use and campground area.

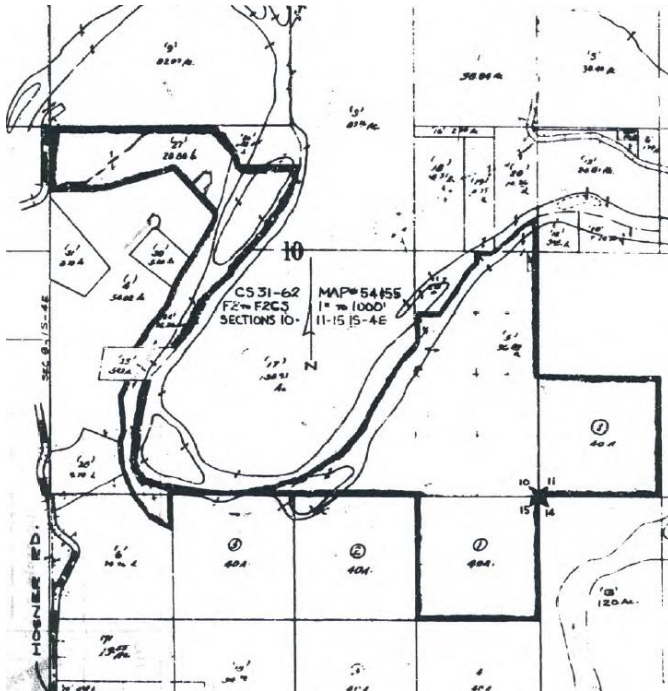
Hearings Officer: As staff notes and the applicant requests, the intent of this land use application is to review and acknowledge all structures and site uses that have been added to the site since the park use was established and make the use conforming to present day zoning codes. This includes the addition of park lands over time, some of which received approvals and some of which may not have or for which records do not exist. It also is intended to resolve outstanding issues and provide clarity and a framework for future land use applications.

Project Description and History.

Staff: Tax lots on the east side of the Sandy River are zoned Commercial Forest Use – 4 (CFU-4) and are governed by Chapter 35 East of Sandy River Zoning Ordinance. Tax lots on the west side of the Sandy River are zoned Commercial Forest Use (CFU) and are governed by Chapter 36 West of Sandy River Zoning Ordinance. The proposed physical improvements are located all within the CFU zone. The expansion of park lands includes both CFU and CFU-4 zoned properties. While the two zoning ordinances are very similar, there are some differences throughout the code. Chief among these differences are the Lot of Record provisions. Where differences occur in the code and both zones are triggered, both codes will be referenced.

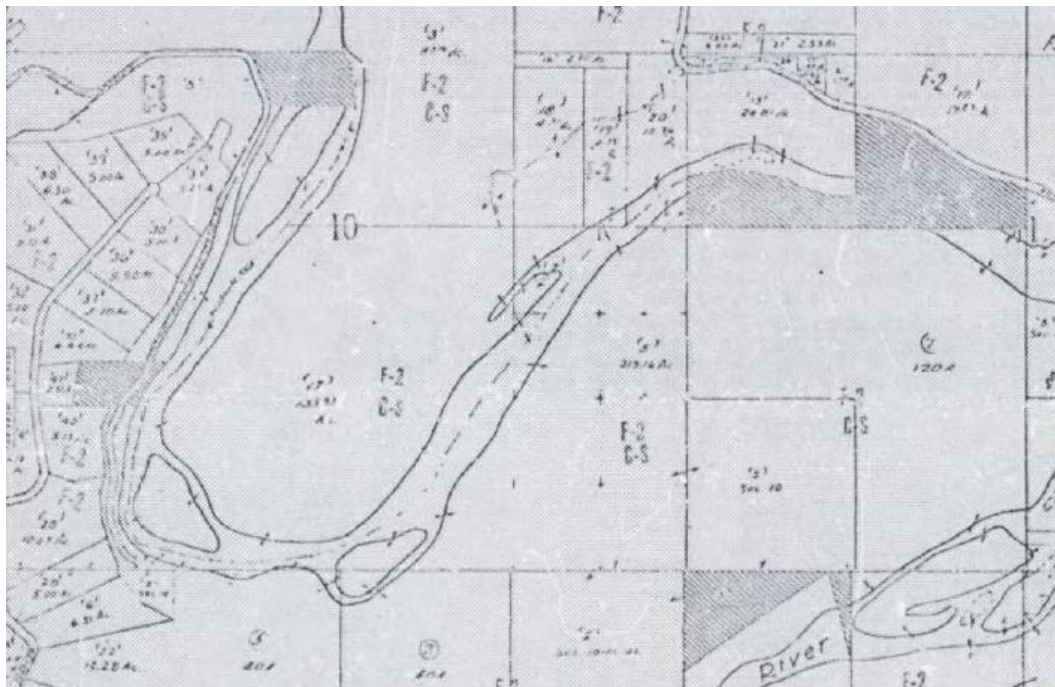


In 1962, a community service designation was granted for the creation of Oxbow Park. CS 31-62 (Exhibit A.23.a.) authorized park and recreational use of the following properties:

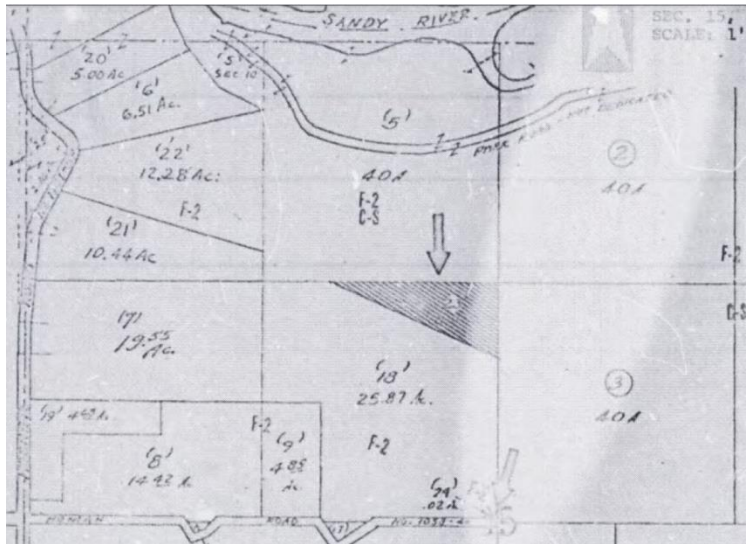


In 1966, additional CS designations were added over lands purchased by Multnomah County.

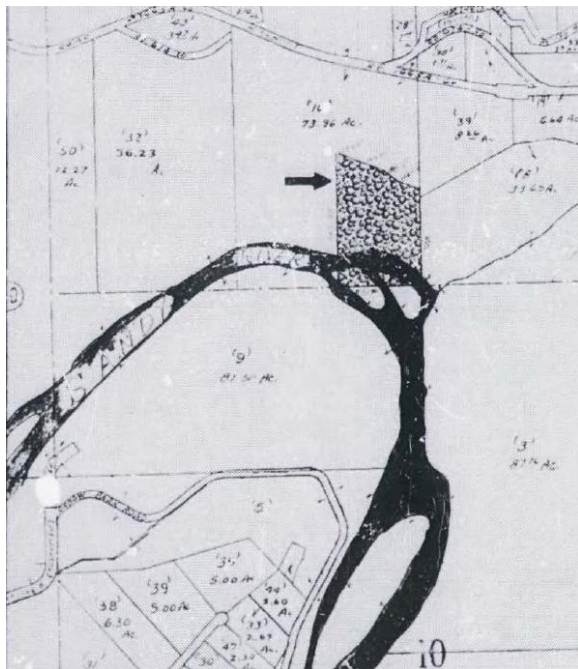
CS 15-66 added four areas to the park.



CS 16-66 added two units of land of land to the park.



CS 30 – 69 added a single property to the park.



In October 1997, Metro adopted the Oxbow Regional Park Master Plan (Exhibit A.32). The Plan was developed to guide future management and development of Oxbow Regional Park. It outlines various improvements to be made to the park for picnicking, campsites, restroom facilities, upgrading of roadways, etc. In 1998-1999, Metro began implementing the physical improvements part of the Master Plan.

Design Review 4-99 (DR 4-99) granted approval to upgrade the existing water treatment system and the installation of two vault toilets within an existing campground area to replace four existing pit toilets. The planner found that these improvements were accessory to the

“Park” use and that the replacement of these amenities did not constitute a new use or expansion of an existing use, so only a Design Review application was necessary.

Design Review 6-99 (DR 6-99) was Phase II in the Master Plan. Phase II involved various campground improvements which included a minor roadway re-alignment and campsite improvements; installation of two restroom/shower buildings, twenty-two individual campsites and installation of a Waste Water System.

T2-01-065 granted approval to replace 8 pit toilets with 8 vault toilets.

T2-02-079 authorized three picnic shelters and two restrooms. The two of the three picnic shelters replaced existing old shelters. The restrooms replaced defunct pit toilets.

Hearings Officer: The applicant’s August 27, submittal also lists numerous approvals/land use decisions relating to various lots constituting Oxbow Park. There appears to be a degree of uncertainty regarding the scope and effect of some of the approvals including whether some were “community service” approvals.

Hearing:

Hearings Officer: At the commencement of the hearing, I noted that I had had no ex parte contacts and no financial interest in the application or applicant. Although I have been to Oxbow Park many times, I did not conduct a site visit for this application. I offered an opportunity for procedural or other objections but none were received.

Testifying for the applicant were: Gary Shepherd, Asst. Metro Attorney; Justin Patterson, Metro Director of Visitor Services; Kendra Carrillo, Lead Park Ranger; and Rod Wojtanik, Interim Planning Manager for Parks and Trail. No opposition testimony or written comments in opposition were received.

A partial staff report was issued August 21, 2015. A supplement was issued August 28, 2015. There was no objection to timeline of these submittals, but at the applicant’s request the record was left open to permit the applicant to respond and for additional applicant and staff submittals.

The applicant submitted a response to the initial staff report on August 27 and a September 17, response to the supplemental staff report. During the open record period, it is my understanding that staff and the applicant continued to work to clarify and address issues relating to the proposal. On October 2, 2015 staff submitted a response to the applicant’s Sept. 17 memo ((Ex. I-3), and the applicant submitted final argument on October 8, 2015. There were no objections to any of the submittals and all are received.

Prior to issuing this decision, the parties consented to reopening the record at my request solely for purposes of commenting on a draft decision as to whether I missed any significant issues or clarification was needed. No new evidence or argument was permitted. Given the complexity of the record and issues, I appreciate the comments received.

Hearings Officer: It is first necessary to resolve some underlying issues as the findings on those issues impact application of certain Code standards to the proposal.

Status of existing uses, activities, structures and improvements.

As noted above, there is a long, complex and uncertain history regarding the uses, activities, structures and improvements in existence on the date that Metro acquired Oxbow Park from Multnomah County. It appears that not all records relating to the permits/approvals are available, and some are lost in time. Questions have been raised as to whether Multnomah County formally obtained all requisite land use approvals, building permits and so forth at for some of the work done during its tenure.

Many of the approvals date back to at least the 1960's, long before the advent of the current land use decision making standards and procedures. Some of those approvals either should have, or implicitly did, address conformance of the existing structures with applicable standards. The approvals granted are final and may not be collaterally challenged. There is a presumption that Multnomah County, as both the owner and regulatory body, complied with the law in obtaining approvals and constructing improvements in conformance with its codes. Oxbow Park, presumably including its structures and configuration, is recognized in the County's comprehensive plan. Staff correctly raised initial concerns about the legal status of the uses, improvements, activities and structures existing on the date of transfer of Oxbow Park to Metro. Subsequently, in consultation with legal counsel, staff has concluded that they should be deemed to lawfully exist on that date. Given the state of the record, I concur. I find that all of the structures, improvements, uses and activities in place on date of transfer to Metro, as inventoried in the application, are legally established and lawful. Accordingly, they need not be addressed as unlawful or non-conforming.

Status of Oxbow Park Road

Application of the requested secondary fire safety setback exception and the SEC-h standards, and perhaps others, is dependent on whether the roadway should be deemed a public or private road for purposes of the relevant standards. A portion of Oxbow Park Road (also referenced as Oxbow Parkway) is within public right of way, so unquestionably is a public road.

The balance of the roadway, which includes the proposed relocation and new campground access roads, has never been dedicated to the public. As staff notes, the proposed roadway will not be on a separate lot from the properties it serves, nor will each lot served have an undivided interest in the road. Accordingly, as proposed the roadway does not meet the definition of a private road in MCC 36.005. Presumably the proposal could be significantly modified to conform the road to this definition, but that has implications for compliance with other standards.

MCC 36.005 defines a "public road" as a "road over which the public has a right of use that is a matter of public record." Examples listed include federal roads and local access roads. As the applicant notes, Oxbow Park Road is owned by the government throughout its length. The road serving Oxbow Regional Park crosses through multiple properties owned by multiple governments. The road is maintained by the County up to the point at which it

enters BLM property, where it then crosses the length of the BLM property, then through the length of Metro property, and again through and serving BLM property. The road is maintained for and is open for public use. All roadway maintenance, repairs, and replacement work is done with public money. It never crosses or serves private property. The road was constructed and maintained by Multnomah County for decades. Access to Metro property is found in deed restrictions, which requires public access to forever be provided. Public right of access is also found in the County's Comprehensive Plan which depicts Oxbow Park Road as providing local access to the public park. Public access is also confirmed and promoted in the 1997 Oxbow Park Master Plan. Additionally, the BLM land is managed by Metro pursuant to a Recreation and Public Purposes Lease, as designated and pursuant to the Oxbow Park Master Plan and the express condition to maintain open public access. Also, the road is identified on official County tax maps as "Oxbow Park Road."

It appears to me that the definition goes beyond roads that are dedicated to the public. Dedication is not referenced in the definition, only that it be of record. My understanding is that federal roads are not dedicated to the public, at least not in the same manner as roads subject to county or city jurisdiction. It appears that Oxbow Parkway will serve the same functions and is substantially similar to BLM, Forest Service and such other roads. Accordingly, I find that the portion of Oxbow Park Road existing or proposed not dedicated to the public nevertheless is a "public road" for purposes of the Code sections at issue. It is important to stress, however, that this is based in significant part on the unique nature of the use and function of this road. It may be that other "roads" owned by government entities, such as one leading to a restricted facility and not generally open to the public, would not qualify. Nor is it a local access road subject to County road jurisdiction. Metro is solely responsible for maintenance and the safety of users.

Metro Oxbow Regional Park Master Plan

In its August 27, submittal, the applicant requests "tentative approval of the Oxbow Regional Park Master Plan to act as a guiding document for future land use and park activities."

No Multnomah County Code section is cited authorizing such approval. OAR 660-034-0040 provides that local governments may amend acknowledged comprehensive plans and zoning ordinances to implement park plans adopt local park master plans. As this is not a plan or zone amendment proceeding, I find that I do not have authority to grant the request. As provided in the administrative rule, however, this does not preclude consideration of the other requests for approval as discussed in this decision.

As discussed in more detail below, however, this decision does approve applicant's request for a park community service and conditional use approval for uses allowed in a local park as afforded by OAR 660-034-0040 and county code. Accordingly, future development requests for uses allowed in a local park as regulated by OAR 660-034-0040, need not re-obtain community service or conditional use approval, but instead must demonstrate compliance with design review, SEC, forest setbacks, fire breaks, floodplain and other applicable standards or obtain exceptions/variances thereto.

§ 36.2030/§ 35.2230 CONDITIONAL USESS.

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

(A) The following Community Service Uses pursuant to all applicable approval criteria, including but not limited to the provisions of MCC 36.2045, 36.2050, 36.2056, 36.2061, and 36.6000 through 36.6020. The applicable criteria of 36.6010 shall be limited to (A) through (H) for uses in this section.

(9) State and Local Parks.

(b) Uses allowed in a Local Park are those specified in OAR 660-034-0040. A Local Park is a public area intended for open space and outdoor recreation use that is owned and managed by a city, county, regional government, or park district and that is designated as a public park in the applicable comprehensive plan and zoning ordinance [OAR 660-034-0010(8)].

Hearings Officer: Oxbow Park is an existing community service use, as recognized by prior approvals, and as further addressed herein. As addressed in the applicant's Community Service and Design Review Application, Ex. A.50, pages 41-45, the modifications to the existing lawful park facility appear to be permissible under this standard and there is no evidence to the contrary. There appears to have been a concern raised initially about whether OAR 660-033-0130 (2) (a) may be applicable. Without deciding whether it otherwise would be applicable generally, or to a preexisting lawful park facility, the applicant has demonstrated that none of the structures have design capacity greater than 100 persons. This criterion is met.

§ 36.2045 USE COMPATIBILITY STANDARDS.

Specified uses of MCC 36.2025 (D) and (E) and MCC 36.2030 (A), (B) and (C) 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;

§ 35.2245 USE COMPATIBILITY STANDARDS

(A) Specified uses of MCC 35.2225 (D) and (E) and MCC 35.2230 (A), (B), and (C) may be allowed upon a finding that 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;

Staff: Multnomah County Land Use Planning mailed notice of the public hearing to all property owners within 750 feet of the listed parcels. None of these property owners contacted staff to express concerns over effects on farm or forest practices on their properties.

Hearings Officer: No objections or concerns were raised by any property owners in the area. The applicant addressed this standard in Ex. 50 at page 45. There is no evidence that proposal would impact compliance with this standard. Accordingly, this criterion is met.

§ 36.2045(A)

§ 35.2245(A)

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

Staff: Managers of Oxbow Park have developed and implement fire protection measures, and fire suppression plans to reduce the risk of fire and fire suppression. The entire park is served with fire hydrants with permanent signs along the main park road. See applicant's Exhibit A.50 starting on page 48 for additional discussion. Criterion appears to be met.

§ 36.2045 (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.

§ 35.2245(A) (3) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices.

Staff: A condition has been recommended to fulfill this criterion. As conditioned, these criteria can be met.

§ 36.2050 BUILDING HEIGHT REQUIREMENTS

§ 35.2250 BUILDING HEIGHT REQUIREMENTS

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: The proposed office building will be 15 ft., 8 in. tall. The restroom in the campground will be 12 feet tall at the ridgeline with a vent pipe approximately 15 feet from grade. The new kiosk will be 9 ft. to the top of its flat roof. The wood shed will be approximately 15 to 20 feet high. Various other structures are proposed such as the vehicle storage area adjacent to the Garage Building and a drying area adjacent to the Shop/Support Building. Staff recommends a condition of approval be included requiring all new structures meet the above height requirements. As conditioned, this criterion can be met.

§ 36.2075 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

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

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

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

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

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot Size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;

5) February 20, 1990, Lot of Record definition amended, Ord. 643;

(6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;

(7) May 16, 2002, Lot of Record section amended, Ord. 982;

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 36.2073, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(D) The following shall not be deemed a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;
- (2) An area of land created by the foreclosure of a security interest;
- (3) A Mortgage Lot;
- (4) An area of land created by court decree.

§ 35.2275 LOT OF RECORD

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

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

- (a) Which were held under the same ownership on February 20, 1990; and
- (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception, urban, or Columbia River Gorge National Scenic Area zones (e.g. MUA-20, RR, SRC, R-10, GGA-40), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

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

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot Size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(c) Dis-aggregation of a Lot of Record for consideration of a new template or heritage tract dwelling may be allowed subject to the standards in (E) below.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;
- (5) February 20, 1990, Lot of Record definition amended, Ord. 643;
- (6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;
- (7) August 8, 1998, CFU-4 zone applied, Ord. 916 (reenacted by Ord. 997);
- (8) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 35.2273, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(D) The following shall not be deemed a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes.
- (2) An area of land created by the foreclosure of a security interest.
- (3) A Mortgage Lot.
- (4) An area of land created by court decree.

(E) Disaggregation of Lots of Record existing on or before August 8, 1998, being the effective date of Ordinance 916.

(1) A Lot of Record may be dis-aggregated for consideration of a new dwelling under MCC 35.2240 if:

(a) It consists of two legally created, aggregated lots or parcels and:

1. The dis-aggregation occurs along existing lot or parcel lines without creating any new lots or parcels;
2. One of the lots or parcels is currently developed with a legally established dwelling;
3. The lot or parcel on which application will be made for the new dwelling is less than 19 acres; and
4. The lots or parcels constituting the dis-aggregated Lot of Record were in the same ownership prior to January 1, 1985.

(b) It consists of three or more lots or parcels and:

1. Only one lot of less than 19 acres shall be dis-aggregated;
2. The remaining lots or parcels shall be combined into a single lot; and
3. The dis-aggregation occurs along existing lot or parcel lines without creating any new lots or parcels;
4. One of the lots or parcels is currently developed with a legally established dwelling;
5. The lot or parcel on which application will be made for the new dwelling is less than 19 acres; and
6. The lots or parcels constituting the dis-aggregated Lot of Record were in the same ownership prior to January 1, 1985.

(2) A property that was originally a portion of a Lot of Record that would otherwise satisfy the standards of 35.2275(E)(1) above, but has subsequently been legally transferred to another owner, may be developed with a single family dwelling if found to satisfy the standards of MCC 35.2240 (A) or (B).

Hearings Officer: This standard is being addressed “out of order” as it has implications relating to compliance with the various setback and fire safety zone standards. The County’s lot of record provisions are complex. As is evident from the record, the origins and subsequent history of the numerous lots/parcels making up Oxbow Park is complex and confusing. Staff and the applicant have spent many hours tracing these issues, resulting in Revised Exhibit H.5., and have reached agreement on the status of most of the lots. In the

absence of any evidence to the contrary, I concur with those determinations and incorporate Exhibit H.5 herein, with the following clarifications:

1S4E03D-02900 R994030180. Staff indicates that 2900 must be combined with 1700 and 1800 to fulfill PLA 1-99. In its Sept. 17, submittal the applicant included the plat maps and deeds associated with PLA 1-99. The plat appears to show the lot line adjustment reflecting the map in PLA 1-99. The deeds appear to show the remainder of TL18 and 44 being consolidated by deed as conditioned in PLA 1-99. On the record before me, it appears that PLA 1-99 was complied with and I find no basis to conclude that TL2900 is not a lawful parcel.

1S4E10-00400 R994000150. Despite ongoing discussions, as of its Oct. 2, 2015 memo staff indicates that it cannot identify the exact location of the 11 parcels making up this tax lot. It is very irregularly shaped. The applicant asserts that the number of parcels is “around 6”. Further complexity arises from applicant’s references to tax lots. Tax lots are administrative units established to ease administration of the property tax laws. They may or may not be lots or parcels for purposes of land use as defined by state law. They may or may not be lots of record as defined in state law and the Multnomah County Code. In its October 8, submittal the applicant indicates it would not be opposed to consolidation if it does not adversely impact its analysis of the front yard setback for the office complex. As discussed below, that matter is resolved in favor of the applicant. As discussed below, it appears that the proposal meets the applicable forest practice and fire safety zone standards (with the requested exceptions) but confirmation of that at final review would be greatly eased by consolidation. Finally, both the applicant and staff have stressed that one purpose of the applications at issue is to clear up existing confusion and uncertainty to clear the way not only for this project but for future land use applications. Consolidation typically is not difficult to accomplish. Accordingly, I find that a condition of approval requiring consolidation of the various “parcels” making up TL 400 into one is warranted.

§ 36.2056 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Staff: The Forest Practice Setbacks and Fire Safety Zones apply to all buildings and structures. Forest Practice Setbacks provide separation between structures and property lines [MCC 36.0005 Definitions, Forest Practice Setbacks].

Hearings Officer: As discussed above, the existing improvements and structures are deemed lawful. Accordingly, and as I understand it staff concurs, this standard applies only to new or modified structures. Further, Oxbow Park Road is a public road. In response to concerns raised by staff, the applicant provided more detail regarding compliance for the new or modified structures. Due to the confusion regarding TL 400, staff’s analysis and the findings below, assume that TL 400 is consolidated into one lot.

Office complex proposal: Applicant provided plans that show the office complex in relation to the property boundaries in order to verify the forest practices setbacks. The Applicant also submitted a site plan of the office complex which shows the County right of way, which

forms the northern property boundary adjacent to the office complex. The forest practices setback for new structures (ex: the office building and chemical/flammable storage building) is 30 feet from the right of way and 130 from other boundaries. As depicted, the new storage building is located immediately south of the existing maintenance building and the setbacks are met. The kiosk is immediately to the east of the proposed office building as depicted on the plans – making it over 75 feet from the right of way edge and exceeding the 30 foot front setback requirement.

The forest practices setback for modifications to existing structures (ex: the wood shed, and the two maintenance shop/garage buildings) are 30 feet from the right of way and 30 feet from other boundaries. § 36.2056 – Table 1. The wood shed is the furthest south in the office complex and thus the closest building to the southern property line. The existing wood shed is currently substantially more than 30 feet from the southern property boundary. The applicant has proposed to move it to the north, away from the property line.

Campground improvements: As staff concluded, the proposed vault toilet will be 290 feet from the eastern property line and over 600 feet from the western edge of tax lot 1S4E10 - 00800, exceeding the standard.

Playground areas: The Applicant provided additional detailed design review plans to preliminarily document the proposed improvements. The plans demonstrate that forest setback for the kiosk structure of 130 feet from the property boundary is met.

Fire Safety Zones.

Primary Fire Safety Zones.

D) Fire Safety Zones on the Subject Tract

MCC 36.2056 (1) Primary Fire Safety Zone:

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

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

Percent Slope	Distance in Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

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

Staff: The applicant has discussed that the primary fire safety zones can be provided for various improvements (Exhibit A.50, page 52). A separate fire break map for the office complex area and campground improvements have been provided (Exhibit A.45 & A.46). The primary fire safety zone requires 15 feet between the crowns of trees. The crown of a tree includes the branches, leaves and reproductive structures extending from the trunk or main stems. The applicant's site plan (exhibit 36b) does not clearly demonstrate how the requirement that the trees will meet this requirement (Exhibit A.46.a). As the location of the buildings in relation to the tree cover must be reviewed as part of the Significant Environmental Concern for scenic waterways, the exact location of trees in relation to the buildings may become important. A condition of approval is recommended that a plan be required showing the primary and secondary fire safety zones for all buildings and structures except as modified by the granting of the exception for the secondary fire safety zone, as applicable. As conditioned, this criterion can be met.

MCC 36.2056 Secondary Fire Safety Zone:

(2) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of 36.2110

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

(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.

(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: The subject property is managed as a public park. It is not actively being managed pursuant to the Forest Practice Rules as they are not harvesting timber for lumber or managing for the production of wood products. Staff recommends that criterion (4) and (5) be added to the conditions for criterion (2) above.

§ 36.2110 EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES

(A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of 36.2110 (B) when:

(1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or

(2) The dwelling or structure is proposed to be located within 130 feet of the centerline of a public or private road serving two or more properties; or

(3) The proposed dwelling or structure is proposed to be clustered with a legally existing dwelling or structure.

Staff: The applicant has requested an exception to the secondary fire safety zone for the park office and restroom associated with the campground improvements (Exhibit A.50, page 52). The park office is proposed to be located approximately 80 feet from the centerline of Oxbow Parkway (a public right-of-way), which meets MCC 36.2110(A) (2) above.

The proposed tract for Oxbow Park has an average lot width or depth of more than 330 feet.

The proposed restroom within the campground improvement is located 320 feet from the internal access road for Oxbow Park and immediately adjacent to the proposed campground road.

Hearings Officer: The applicant states that it requested a secondary fire safety zone exception for the office complex, campground vault toilet and playground kiosks. In its Sept. 17, submittal, it states that the kiosks are more than 130' from Oxbow Road and that a secondary fire safety zone from the kiosks of 100' can generally be maintained. Exhibit E. It requests that no secondary fire zone be required for the northern and southern playground structures.

Given my determination regarding the public road status of Oxbow Park Road, it appears that the structures may be considered for an exception. The office area structures are clustered, also qualifying for consideration.

Office Complex: The applicant requests that the secondary fire zone be reduced to 50'. The applicant proposes to actively manage fire risks, and apparently historically has done so. The office complex is staffed 24/7. The entire park is served with fire hydrants and signs identifying their locations. The Park has a fire plan and fire precaution class system in place to both reduce the incidence and consequences of a fire. There is a pumper truck on-site and water readily available. The applicant voluntarily is adding fire breaks around the existing structures. The slopes on the site are less than 10%.

Vault toilet: The applicant requests an exception of the secondary zone from 0 to 10'. It notes that the vault toilet will be constructed entirely of non-flammable materials, contains no combustible materials and has no chimney. It is not occupied except during park operating hours when assistance and the fire prevention/control programs discussed above are available.

Playground kiosk: The applicant requests that no secondary zone be required for the northern and southern kiosks. It states that the structure is not occupied and will be surrounded by an ADA compliant surface path of non-combustible materials.

As regards all of the requested exceptions, the applicant proposes to take steps to mitigate fire risk, such as clearing or managing low vegetation and small trees and removing fire fuels, at least annually. It proposes to engage the Gresham Fire Department to review these areas and to follow the Fire Marshall's recommendations.

Staff did not respond beyond the initial staff report and much of that discussion assumed that the roads are private. Oxbow Park is within the Sensitive Environmental Concern overlay. The SEC does not appear to obviate the fire safety standards, but does raise a competing interest in discouraging the type and scope of removal of extensive areas of vegetation that

would otherwise be required by the type of facilities and infrastructure associated with a regional park and campground. It appears that the primary purpose of the fire safety zones is two-fold: reduce the risk of a fire emanating from use of structures and reduce the risk of loss to those structures, including diversion of firefighting resources to their protection. The nature of the structures at issue suggests that neither of these purposes is impaired by granting the requested exceptions. Finally, the level of fire prevention and suppression measures available appears to far exceed those of a more typical use located in the forest.

Further, it is noted that the vegetation removal provisions in the Code are worded as suggestions and not mandatory requirements. MCC 36.2056 (2) Accordingly, I find that the proposed exceptions are warranted and approved, subject to the following conditions of approval:

Prior to construction of the modifications and improvements, the applicant will obtain a review of existing conditions within 100' of all structures proposed to be constructed or modified by the Gresham Fire Marshall. At a minimum any small tree located beneath a large tree and which represents a fire risk to the large tree shall be removed within 40' of the vault toilet and 50' of the kiosks will be removed and new trees not permitted to establish beneath large trees. Further, brush, vegetation and fire fuels will be removed to the satisfaction of the Fire Marshall. At least annually, the applicant will again engage the Fire Marshall to review these areas and will follow his or her recommendations. The applicant also shall annually conduct a review of its overall Park fire prevention and suppression plans and efforts in conjunction with the Fire Marshall and implement his or her recommendations.

Nothing in the exceptions granted herein is intended to otherwise modify the mandatory standards associated with an exception, including:

MCC 36.110 (B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:

- (1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or
- (2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended...

Hearings Officer: Staff suggested that the office building must be constructed to Class 1 standards. The applicant requests that it be constructed to Class 2 standards, "having requested a secondary exception limited to 50 feet around the 30 foot primary safety zone associated with the office building, and with additional fire safety measures." This is not a discretionary standard. If the final site plan/construction plans show the building located to any extent less than 80' from the edge of the right of way of Oxbow Park Road (50' + 30'), it must be built to Class 1 standards. If more than 80' it may be constructed to Class 2 standards.

(3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and

Staff: The applicant states that there will be no combustible fences within 12 feet of the exterior of the park office building (Exhibit A.50, page 59).

6) All accessory structures within the fire safety zone setbacks required by MCC 36.2056, and all accessory structures within 50 feet of a dwelling, shall have a central monitored alarm system.

Staff: MCC 36.0005 Definitions defines a "Structure" as "That which is built or constructed. An edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner." An "Accessory Use" is defined as "A lawful use that is customarily subordinate and incidental to a primary use on a lot." A "Building" is defined as "Any structure used or intended for supporting or sheltering any use or occupancy." The County code does not specifically define an Accessory Structure as a building qualifies as a Structure pursuant to the code. The proposed park office is not the primary use on the property as Office Buildings are not a use allowed in the CFU zone. The primary use is Oxbow Park. The park office building must qualify as an Accessory structure and use or it could not be authorized in the zone.

The park office building is an accessory structure to the primary use of the park. The office building is located approximately 30 feet from the caretaker's residence (a dwelling). The accessory structure is also located within the required fire safety zone setbacks of MCC 36.2056. The building must have a central monitored alarm system. The applicant states under its response to criterion (5) that the proposed office building will have a central station monitored 13D or better sprinkler system. As the sprinkler system will be monitored, it qualifies as a central monitored alarm system. Staff recommends that the hearings officer condition that as part of the plans for building plan check that the sprinkler system plans be included so planning staff can verify compliance.

7) All accessory structures within 50 feet of a building shall have exterior walls constructed with materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.

Staff: The park office building is an accessory structure as discussed above. It is also located within 35 feet of a building (caretaker's residence). The park office must be constructed with materials that meet the above requirements.

(8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban-Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication.

Exception: The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour-rated fire-resistive construction or heavy-timber construction.

Staff: As discussed above, the park office qualifies as an Accessory Structure. The applicant states that the slopes where the building will be located are less than 10%.

Community Service Conditional Use Criteria

§ 36.6005 GENERAL PROVISIONS.

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

(B) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC 36.7000 through 36.7060.

§ 36.6015 USES.

(A) Except as otherwise limited in the EFU, CFU and OR districts, the following Community Service Uses and those of a similar nature, may be permitted in any district when approved at a public hearing by the approval authority

Allowed Community Service Uses in the EFU, CFU and OR districts are limited to those uses listed in each respective district.

(5) Park, playground, sports area, golf course or recreational use of a similar nature.

Staff: The applicant has requested approval of a community service conditional use permit for a regional park.

§ 36.6010 APPROVAL CRITERIA.

In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for transmission towers, which shall meet the approval criteria of MCC 36.6100 through 36.6125, wireless communications facilities, subject to the provisions of MCC 36.6176, and except for regional sanitary landfills which shall comply with MCC 36.6200 through 36.6230.

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

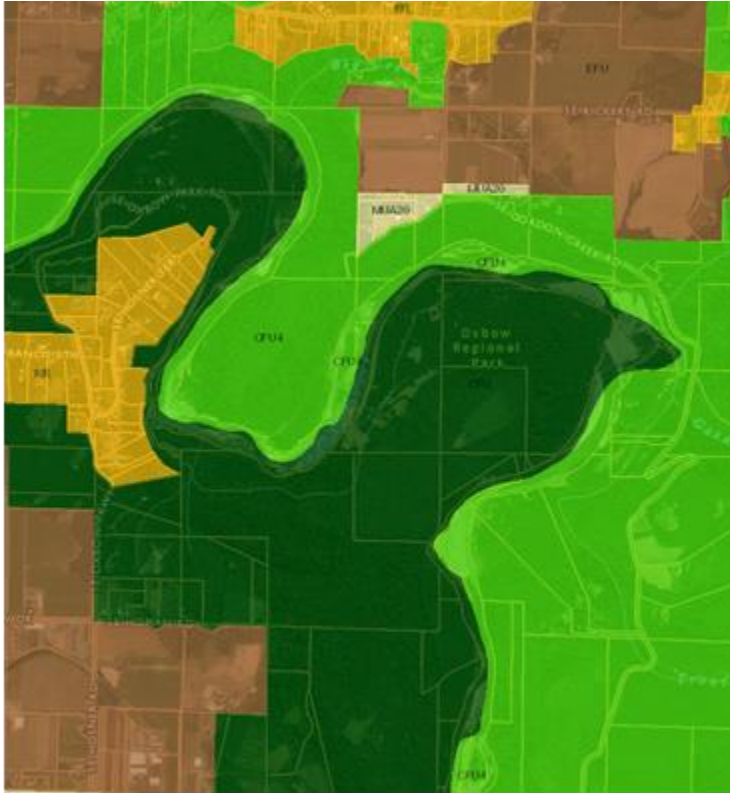
Hearings Officer: Oxbow Park has been part of the East County community since its establishment in the early 1960's. Since its inception, Oxbow Park has had additional tax lots added to it some apparently without public hearings. The park has been zoned commercial forest use since 1993. The boundaries of Oxbow Park are adjacent to lands zoned Rural Residential, Exclusive Farm Use and Multiple Use Agriculture – 20 zones. Oxbow Regional Park provides for a rural campground and outdoor experience related to the forest environment, it would not appear to be inconsistent with surrounding rural land uses as it provides rural recreational opportunities for urban and rural dwellers using the park.

Planning staff reviewed the code compliance section's file and did not find any complaints regarding park operations. During the land use process, only a single property owner contacted staff regarding park operations. Her concern was about the horse equestrian trailhead off of Homan Road. She indicated that after the park closed at night, equestrian riders and other park visitors continued to use the trailhead and contributed noise to the surrounding rural setting. Planning staff reviewed Google maps and noticed that Homan Road had no parking signs along its right-of-way near the trailhead. If no parking is provided for users of the trailhead, staff is uncertain where the additional vehicle parking is occurring. The use of the public right-of-way for parking or as a loading zone, would add to traffic on Homan Road.

The person expressing a concern did not appear at the hearing or submit additional testimony. One concern does not provide sufficient evidence to warrant a finding of incompatibility with the character of the area. I am reluctant to impose a condition of

approval addressing this one concern based on the limited record. The applicant, however, should consider additional signage and enforcement prohibiting after hours use.

Zoning Map:

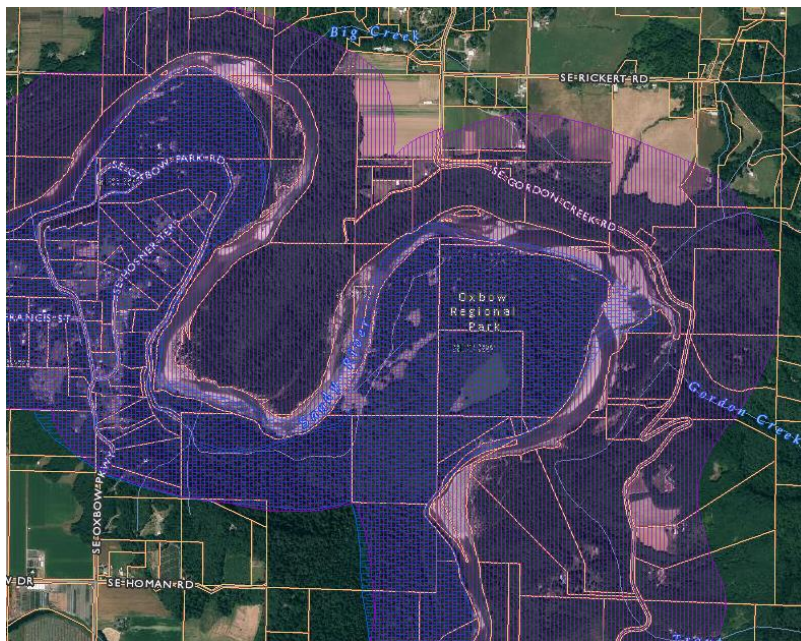


(B) Will not adversely affect natural resources;

Staff: The main natural resource in the area of Oxbow Park is the Sandy River (a National Scenic and Wild River) and its small tributaries.



The SEC-wr (green overlay) (West of Sandy River) and the SEC-s (blue overlay) (East of Sandy River) shown above protect various streams in the area. The SEC overlays require that any development within these overlays mitigate for intrusion into the zone. In addition to the SEC-wr and SEC-s overlays, both sides of the Sandy River are protected with a SEC-sw (Scenic Waterway) overlay. The map below shows the SEC-sw/SEC-g (general) overlay for protection of the scenic quality of the Sandy River. The applicant has applied for the necessary SEC permits for portions of the proposed improvements. Provided the SEC criteria are met, the proposed park use should not adversely affect the existing natural resources in the area.



(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.

Hearings Officer: As discussed above, there is nothing in the record demonstrating any adverse impacts on farm or forest practices in the area and the modifications proposed would not create such impacts.

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

Staff: The proposed park and its improvements have been reviewed by the City of Portland Sanitarian for on-site sewage disposal capacity (Exhibit A.13.a & A.13.e), County Sheriff for law enforcement capacity (Exhibit A.13.d), Gresham Fire for compliance with the Oregon Fire Code (Exhibit A.13.b and A.13.c). None of these agencies indicated a lack of capacity or the requirement to add new services for the use.

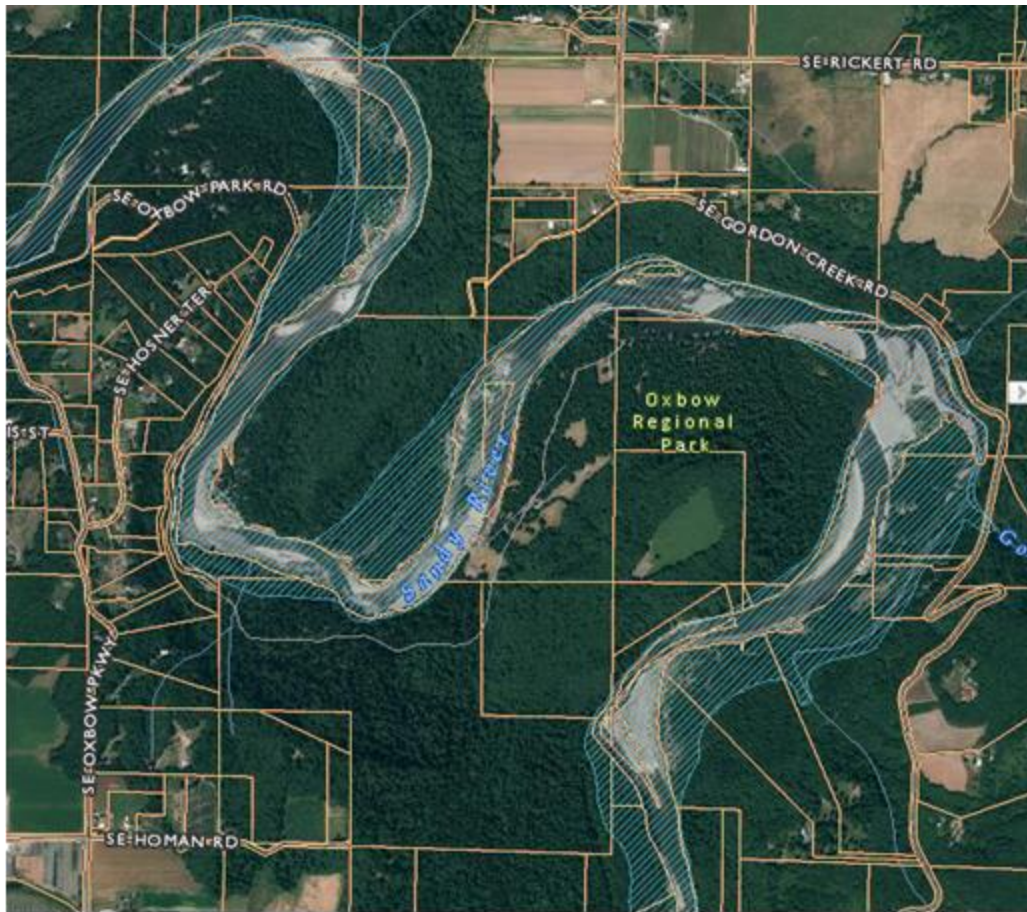
(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

Staff: The subject property is designated as Significant Environmental Concern for wildlife habitat (SEC-h). The wildlife habitat is a broad category and is not specific to big game winter habitat as defined by the Oregon Department of Fish and Wildlife. Current ODFW maps do not show big game winter habitat in this area, though Oxbow Park brochures indicate that Oxbow and protected lands around it offer an ideal home for large animals like elk, black bear and cougar. The preservation of this open space as a park with limited physical improvements will provide protection of the wildlife habitat for these bigger animals. SEC-h Overlay Map:



(F) Will not create hazardous conditions;

Staff: The applicant has identified two hazardous conditions that exist within the Oxbow Park boundaries. The first is 100 year flood plain for the Sandy River. The second is steep slopes. Nine of the 20 proposed campsites are to replace former campsites that have become unsafe due to erosion of the bank along the Sandy River. The applicant has indicated that the new campsites will not be within the 100 year floodplain. FEMA Designated 100-Year Floodplain Map:



The proposed improvements will occur in the flatter areas of the park to reduce the potential for landslides damaging the physical improvements.

Hearings Officer: Staff prudently noted that the risk of forest fire creates a potentially hazardous condition. Oxbow Park is served by a single public road that leads into the park. If a fire was to start during the dry season, emergency responders would need to travel over this same roadway as park visitor's that are trying to depart the area. Oxbow Parkway is a two-lane roadway with a limited paved roadway. Additionally, in areas, vehicle pull-off sites are limited by trees adjacent to the roadway. As discussed elsewhere in this decision, the applicant has extensive fire prevention and suppression measures in place and coordinates carefully with the Fire Marshall. At the hearing there was testimony that the applicant has an evacuation plan in place that is practiced at least annually. Clearings are designated as gathering places for safety and evacuation efforts. Ideally, if we were starting with a clean slate an alternate route might be established, although likely difficult given the location and terrain. But the park exists as a lawful use. Nothing in the proposed modifications, however, worsens the situation. To the contrary, it may be that the proposed traffic circulation improvements marginally help the preexisting situation.

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

Hearings Officer: Oxbow Park is a preexisting lawful use that has received numerous prior land use approvals for various improvements. Staff has not identified any Comprehensive Plan policies directly applicable to the proposal at issue. The applicant notes in Exhibit A.50, pages 34-35, that Oxbow Park is recognized in the West of Sandy River Plan and that County Plan Policy 16 encourages maintenance and upgrading of park facilities consistent with the character of the rural areas in which they are located. It may be prudent for the applicant and County to take steps to formally adopt the Master Plan. Absent any suggestion to the contrary, I find that the proposal satisfies the Comprehensive Plan as implemented through the Code.

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

Hearings Officer: The only additional criteria questioned by staff relates to additional information demonstrating compliance with sign requirements.

§ 36.6020 RESTRICTIONS.

A building or use approved under MCC 36.6015 through 36.6050 shall meet the following requirements:

(A) Minimum yards in EFU, CFU, MUA-20, RR, OCI, OR and PH-RC, 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.

Hearings Officer: Staff initially indicated that it appears that the initial submittals demonstrated compliance with the front and side yard setbacks, but there was some question about the rear yard setbacks. The applicant submitted more detailed maps and aerials. Final plans shall demonstrate compliance. See Exhibits D, E and F to August 27, 2015 memo.

(D) Off-street parking and loading shall be provided as required in MCC 36.4100 through 36.4215.

(E) Signs for Community Service Uses pursuant to the provisions of MCC 36.7400 through 36.7505.

(F) Other restrictions or limitations of use or development not required under this subsection shall be provided in the district.

(G) Other restrictions or limitations of use or development not required under this subsection shall be provided in the district.

Hearings Officer: Off-street parking and loading is discussed below. The applicant submitted photographs of the park's current entry sign and a previous entry sign (Exhibit A.26). At the hearing the applicant clarified the location and age of the sign. The current sign is in the same location as the original sign erected by Multnomah County in the early 1970's. The documentation indicates that the current sign is using the same base and foundation as the original sign, just a new sign face was installed. The applicant seeks sign permits and addressed the sign criteria of .7450 and .7465 at the application narrative pages 106-107. The existing entry sign is a free standing sign, measuring 8 feet high by 2.6 feet wide (20.8 sq. ft.) so is below the 40 sq. ft. maximum. This is the only free standing sign in the area. It does not extend into the right of way. The sign structure is horizontal to the roadway. The edge closes to the roadway measures 14.3 feet from the road. The signs associated with the park are permitted.

Note: If the sign is removed or reconstructed in the future, the replacement must meet design review criteria and other requirements applicable at that time.

Significant Environmental Criteria

Hearings Officer: These criteria were addressed in the supplemental staff report dated August 28, 2015 and in further submittals by the applicant and staff.

§ 36.4515 USES - SEC PERMIT REQUIRED.

(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that development, including but not limited to, the location and design of any use, or change, replacement or alteration of a use, except as provided in MCC 36.4520, shall be subject to an SEC permit.

(D) Applications that are subject to an SEC Permit shall be processed as Type II land use decisions as provided for in MCC Chapter 37, unless the proposed use is subject to another Type II, III or IV decision, in which case the SEC application shall be considered in combination with the other action.

Staff: All physical improvements associated with the proposal are in the West of the Sandy River Rural Plan Area. No physical improvements are located in the East of the Sandy River Rural Plan Area.

§ 36.4525 EXISTING USES.

Uses that legally existed on January 1, 2003, that are not included as Exceptions in section 36.4520, may utilize the provisions of this section. This section is intended to define the circumstances under which existing development can be improved or replaced under limited requirements in recognition of the pre-existing status. The SEC provisions are also not intended to make existing uses non-conforming. However, approval of proposals for alteration of uses that were non-conforming prior to the SEC ordinance, must obtain an SEC permit in addition to demonstrating compliance with the non-conforming use provisions of this Chapter.

(A) Change, expansion, or alteration of existing uses shall require an SEC permit as provided in 36.4500 through 36.4560, except for changes to a structure as described in Sections (1) through (3) below:

(1) In areas subject to the provisions of the SEC-sw, change, or alteration of existing uses which do not require any modification to the exterior of the structure;

(2) Within the SEC-wr and SEC-h - addition of less than 400 square feet of ground coverage to the structure. This provision is intended to allow a maximum of 400 square feet of additional coverage to the structure that existed on the effective date of this ordinance; and

(3) For the SEC-h overlay, alteration or expansion of 400 square feet or less of such driveway.

(B) Replacement or restoration of existing structures, that were unintentionally destroyed by fire or other casualty, or natural disaster within the same foundation lines shall not require an SEC permit. The redevelopment must be commenced within one year from the date of the loss, and may include addition of a maximum 400 square feet of ground coverage. Structures which are expanded up to 400 square feet under this provision, may not subsequently expand under the provision in (A)(2) above.

(C) Within the SEC-wr, lawfully established structures that do not meet the casualty loss provisions of (B) above may be replaced within the same foundation lines or area of ground coverage when the entire remaining vegetated corridor on the project site, or the first 50 feet closest to the stream, or an area equal to the ground coverage of the building and attached structures and paved areas, whichever is less, is enhanced to "good" condition pursuant to Table 2. Replacement shall be processed as a Type II review.

(D) If development under this section is proposed to be located closer to a protected water feature, approval of a permit under the provisions of 36.4540 through 36.4555 shall be obtained.

Staff: A previous Community Service permit approval for the three projects has not been granted. The proposed improvements are subject to SEC review.

§ 36.4540 APPLICATION FOR SEC PERMIT.

A decision on an application for an SEC permit shall be based upon findings of consistency with the purposes of the SEC district and with the applicable criteria for approval specified in MCC 36.4545 through 36.4560. An

application for a use on a property containing more than one protected resource shall address the approval criteria for all of the designated resources on the property. In the case of conflicting criteria, approval shall be based on the ability of the proposed development to comply as nearly as possible with the criteria for all designated resources that would be affected.

(A) General SEC: All applications for SEC permits shall include the information listed in this section in sufficient detail for County staff to evaluate the impacts of the proposal. The applicant is responsible for providing all of the required information. In addition to the information listed in this section, the application shall contain the supplemental information that is listed for the resource area in which the development is proposed.

(1) A written description of the proposed development and how it complies with the requirements applicable to the resource area in which development is proposed as listed in SECsw, SECwr, SECh.

(2) A map of the property drawn to scale showing;

(a) Boundaries, dimensions, and size of the subject parcel;

(b) Location and size of existing and proposed structures;

(c) Contour lines and topographic features such as ravines or ridges;

(d) Location of natural drainageways, springs, seeps, and wetlands on the site. The Planning Director may require the applicant to provide the location of the SEC-wr boundary, topography, or the location of development as determined by a registered professional surveyor or engineer;

(e) Proposed fill, grading, site contouring or other landform changes;

(f) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;

(g) Location and width of existing and proposed roads, driveways, parking and maneuvering areas, and service corridors and utilities.

(3) A scaled drawing of the building design and elevations that show the relationship between the building and existing and finished grades and existing or proposed vegetation.

(4) Application for a flood hazard permit, erosion control permit, and/or other required natural hazards permit for the proposed development;

(B) SEC-Scenic Waterway: In addition to the information in 36.4540(A), an application in the SEC-sw overlay area shall include a letter from the Oregon Parks and Recreation Department which indicates that the proposed development as shown on the site map and scaled drawing required in (A) (2) and (3) above has been reviewed and is, or can be, consistent with the provisions of the Oregon Scenic Waterways Management Plan.

(1) For areas within the SEC-sw overlay, the building design shall also include a description of the exterior materials and proposed exterior colors including roofing.

(C) SEC-Water Resource: In addition to the information requirements listed in MCC 36.4540(A) above, the following information shall be submitted for applications within the SEC-wr overlay.

(1) A topographic map of the development area and adjacent areas of the site at contour intervals of five feet or less showing a delineation of the Water Area or Habitat Area as determined by a documented field survey, the location of all existing and proposed watercourses, drainageways, stormwater facilities, and utility installations;

(2) The location of wetlands;

(3) Information for the site from the adopted West of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, the County Goal 5 Inventory;

(4) Preparation of plans and surveys - Inventories, assessment of existing conditions, and mitigation or restoration plans shall be prepared by a qualified professional such as a fish or wildlife biologist at the discretion of the Planning Director. Wetlands shall be identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual;

(5) The applicant shall provide evidence that when federal or state requirements apply, that the agency has been contacted, and shall provide an assessment of whether the project can meet the requirements based on the agency response;

(6) An assessment of the existing condition of the Water Resource Area in accordance with Table 2 Riparian/Vegetated Corridor Standards;

(7) An inventory of vegetation, including percentage ground and canopy coverage, and location of nuisance plants listed in Table 1;

(8) A detailed Mitigation Plan as described in 36.4555(E), if required;

(9) The location of all existing trees of a caliper greater than six (6) inches in diameter at breast height (DBH);

(10) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods.

(D) SEC Wildlife Habitat: In addition to the information required in MCC 36.4540(A) above, an application to develop in SEC-h areas shall also include:

- (1) An area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:
- (2) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas. For the purposes of this section, a forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.
- (3) Location and width of existing driveways within 200 feet of the subject parcel's boundaries on all adjacent parcels;
- (4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

Hearings Officer: The applicant deemed the application complete in a March 13, 2015 letter. (Ex. A.52) Subsequently, significant additional information was submitted and staff and the applicant worked to address outstanding questions and answers. It appears that sufficient information is in the record to determine whether the applicable standards have been met.

§ 36.4550 GENERAL REQUIREMENTS FOR APPROVAL IN AREAS DESIGNATED AS SEC-WR OR SEC-H.

The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas in addition to the provisions of 36.4555 or 36.4560 as applicable.

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

(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.

(C) The following nuisance plants, in addition to the nuisance plants defined in 36.4510, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone:

Table 1

Nuisance Plant List

Staff: A Grading and Erosion Control (GEC) is required when earth disturbing activities take places within 200-feet of a creek, stream, river, or water course; when the total area of development exceeds 10,000 square feet; and when existing slopes are greater than 10%. Based on these thresholds, a Grading and Erosion Control Permit is required for the project, particularly the creation of a 950 +/-ft. long new road with 20 new camp sites. If natural slopes exceed 25% or occur in areas identified as within a slope hazard area, then a Hillside Development permit would be required. Under either permit, areas of potential erosion will be protected with the issuance of the permit. The applicant has submitted a Grading and Erosion Control Permit (T1-2015-3904), which is a development permit and processed after approval of the land use permits.

Conditions of approval can require any exterior lighting to be shielded and directed downward as well as removal of the listed nuisance plants in the development area.

Criteria met through conditions of approval.

§ 36.4560 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT.

Development within areas designated SEC-h shall comply with the provisions of this section. An application shall not be approved unless it contains the information in 36.4540(A) and (D).

(A) Development standards:

- (1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.
- (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.
- (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.
- (4) Fencing within a required setback from a public road shall meet the following criteria:
 - (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.
 - (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.
 - (c) Cyclone, woven wire, and chain link fences are prohibited.
 - (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.
 - (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.

FIGURE 36.4570A FENCE
EXEMPTION AREA

- (f) Fencing standards do not apply where needed for security of utility facilities.
- (5) The nuisance plants listed in Table 1 shall not be planted as landscaping and shall be controlled within cleared areas of the subject property.

(B) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

- (1) The applicant cannot meet the development standards of Section (A) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or
- (2) The applicant can meet the development standards of Section (A), but demonstrates that the alternative conservation measures exceed the standards of Section (A) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (A).
- (3) The wildlife conservation plan must demonstrate the following:
 - (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

Hearings Officer: As I have determined that the road is a public road, it appears that (2) and (3) are met. Staff and the applicant disagree as to (A). Staff argues that (A) (1) can be met, but the applicant is choosing not to as doing so would not be conducive to the park design and operations. The applicant contends that it cannot meet that standard. On balance, I think that staff's reading is more literally accurate. The standard appears to be absolute in that it does not refer to feasibility or practicality in meeting (A) (1). Accordingly, this triggers (B) (2).

Staff:

Road and Campsites: The applicant has identified the proposed project as requiring 14,333 square feet of new permanent cleared area for the proposed campsites. The road access to the campsites is excluded as it is the access for firefighting purposes. The campsites will be constructed in a way to keep the majority of the existing tree cover and provide the camping amenities necessary for the project.

Replacement office/entry area: The applicant has stated that all proposed development associated with the new office and ancillary buildings is to take place in existing cleared areas. Based on the submitted plans (Exhibit A.27) it appears some trees and vegetation will need to be removed to place the new structures. However, given the existing conditions, sporadic placement of the existing vegetation and the submitted site plan, it appears the tree removal is minimal.

Playground Areas: One of the two playground areas is being moved from adjacent to the Sandy River upland to an existing cleared area (Page 111 of Exhibit A.50). The other playground area is in an existing cleared area and is being moved to a forested area in close proximity to the proposed new road and camp sites (also Page 111, Exhibit A.50). The purpose of the first playground area is to utilize the existing forested area as part of the experience. The playground would take place in roughly 1/3 of an acre but would not remove a significant amount of trees and forest canopy; rather, it would use the trees as part of the experience. It is estimated the playground would only require the clearing of 1,000 square feet of understory brush for the actual equipment. Staff finds this is the minimum necessary and will reduce the impact to the overall forested area.

Staff believes that the applicant has submitted the required wildlife conservation plans, planting plans and mitigations plans for the proposed development which meet the wildlife management plan criteria.

Hearings Officer: I concur. It also is worth noting the overall context in which this criterion is applied. This is a lawful park devoted largely to enhancing the natural resource, including wildlife, attributes of the subject properties. The proposed modifications further this overall purpose. This may be contrasted with other types of development that would be much less likely to be able to demonstrate conformance to the criteria and its purpose. This criterion is met.

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

Staff:

Road and Campsites: The developed area for the road and campsites includes 14,333 square feet. The access road is excluded because it is necessary for fire safety purposes.

Replacement office/entry area: Minimal tree removal will take place for the office and ancillary buildings by cutting sporadic individual trees that are identified as in the footprints of the buildings. The tree removal does not amount to removal of 'forested' areas.

Playground Areas: The first playground area is proposed to take up 15,000 square feet of area with 1,000 being cleared for the structures. The existing tree canopy will be retained as part of the playground experience.

Based on the applicant's narratives, the total cleared area will amount to just over 15,000 square feet – under 1-acre in area. Criterion met.

(c) That no fencing will be built outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.

Staff:

Road and Campsites: No fencing is proposed for the new campsites and the associated access road.

Replacement office/entry area: No fencing is proposed to be associated with the replacement office and ancillary buildings.

Playground Areas: A rail fence is proposed to contain the first playground area. The applicant has stated the fencing would be split rail, would be no more than 42-inches tall, and have a 17-inch gap between the ground and bottom rail. The fencing would satisfy the development standards of MCC 36.4560(A) (4).

Hearings Officer: Staff raised a concern as to whether this standard prohibits the fence. The standard could be read as being internally inconsistent and allow only a fence for agricultural purposes. I find that the better reading, and staff as I understand it now concurs, that a non-agricultural fence is permitted in cleared areas. The applicant is proposing a “wildlife friendly” fence to demarcate the first playground area, entirely within the cleared area for site development. This criterion is met.

(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.

Hearings Officer: Staff originally was unable to confirm compliance, but the applicant later submitted a clearer vegetation planting plan, Ex. I.2. showing that approximately 30,174 sq. ft. will be planted vs clearing 15,537 sq. ft.

Roadside/campgrounds: Staff expresses a concern that, due to use of the area as campsites, the revegetation in these areas likely will be trampled over time and, therefore, a condition should be imposed to recalculate the areas by requiring additional vegetation planting representing the area impacted by “normal use/camper area disturbance.”

The applicant contends that nothing in the standard supports such a condition and, further, the risk of significant disturbance is small for the reasons stated in its October 8, memo. Although staff’s concern is legitimate, I agree with the applicant. The standard does not limit uses within the vegetated area or otherwise provide a basis for discounting the revegetated area.

The applicant, however, has volunteered a condition to at least partially address staff’s concern, so the following will be imposed:

Applicant shall install a low split rail fence adjacent to the rear of the 4 RV campsites to discourage uses of the forest edge.

(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

Staff: No development takes place within 200-feet of the Sandy River so no riparian areas will be disturbed. Criterion met.

(4) For a property meeting (B)(1) above, the applicant may utilize the following mitigation measures for additions instead of providing a separate wildlife conservation plan:

- (a) Each tree removed to construct the proposed development shall be replaced on a one to one ratio with a six foot tall native tree.
- (b) For each 100 square feet of new building area, the property owner shall plant, one, 3-4 foot tall native tree or three native tree seedlings. The trees shall be planted to improve wildlife habitat first within non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas before being placed in forested areas or adjacent to landscaped yards.
- (c) Existing fencing located in the front yard adjacent to a public road shall be consistent with MCC 36.4560(A)(4).
- (d) For non-forested "cleared" areas that require nuisance plant removal pursuant to MCC 36.4560(A)(5), the property owner shall set a specific date for the work to be completed and the area replanted with native vegetation. The time frame must be within two years from the date of the permit.

Hearings Officer: The proposal is subject to (B) (2), so this standard is not applicable.

(5) For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

Staff: The project does not take place in a PAM overlay.

§ 36.4555 CRITERIA FOR APPROVAL OF SEC-WR PERMIT -WATER RESOURCE

Except for the exempt uses listed in MCC 36.4520 and the existing uses pursuant to 36.4525, no development shall be allowed within a Water Resource Area unless the provisions of section (A) or (B) or (C) below are satisfied. An application shall not be approved unless it contains the site analysis information required in 36.4540(A) and (C), and meets the general requirements in 36.4550.

(A) Development on Low Impact Sites - Development on parcels in locations that would have low impacts on Water Resource Areas may be exempt from the Alternatives Analysis in (B) below. Development on sites that meet the following criterion may be allowed pursuant to the other applicable requirements of this district including the Development Standards of (D) and the provisions for Mitigation in (E):

Staff: The applicant argues the SEC-wr was placed over the identified 'thumb' tributary of the Sandy River in error and includes photographs (Exhibit A.44) of the area as evidence. The SEC-wr overlay and code was found by Metro to be compliant with Metro's Title 3 and was legislatively adopted as depicted on the maps provided by Metro by the Board of County Commissioners. Those adopted maps are reflected on the County GIS maps. Only a legislative change to the code can remove areas from within the SEC-wr overlay.

Ground truthing of a protected resource is required for the SEC-wr to determine if the SEC-wr protected buffer needs to be expanded to include areas not originally mapped. The ground truthing is required to include a detailed water resource survey performed by a biologist in accordance with Part I of the West of Sandy River Water Resource Area –SEC-wr Resource Assessments and Mitigation Plan guidelines (Exhibit B.37). The assessment by the biologist is then included on the Water Resource Area Certification Form (Exhibit B.38). The applicant did not provide a water resource survey or assessment.

Given the only proposed new development located near the SEC-wr overlay is the second playground structure (southernmost in Figure 8a on page 113 of Exhibit A.50) and it barely encroaches into the buffer, staff worked in good faith with the applicant and accepted the GIS mapped SEC-wr overlay as the extent of the overlay buffer pending any future SEC-wr permit requests and evaluations. Taking that into account, the proposed playground structure 2 is eligible for review under MCC 36.4555(A).

(1) The development site is at least one hundred (100) feet from top of bank or top of ravine, which ever results in a greater distance from the Protected Water Feature.

Top of ravine is the break in the > 25% slope. Slope should be measured in 25-foot increments away from the water feature until the slope is less than 25% (top of ravine), up to a maximum distance of 200' from the water feature.

Where multiple resources are present (e.g., stream with wetlands along banks), the starting point for measurement should be whichever offers greatest resource protection.

Staff: The only portion of the proposed improvements located within the SEC-wr overlay is the second playground structure. The play area is being relocated from an area entirely within the SEC-wr to a cleared area on the edge of the overly, outside the first 100-feet from the top of ravine of the protected stream. Criterion met.

(B) Alternatives Analysis - Development proposed within a Water Resource Area may be allowed if there is no alternative, when the other requirements of this district including the Development Standards of (D) and the provisions for Mitigation in (E) are met. The applicant shall prepare an alternatives analysis which demonstrates that: ...

(C) Buffer Averaging - Development may be allowed to encroach into the 200' SEC-wr overlay zone or "buffer" when the provisions of (1) through (6) below are satisfied. These provisions are intended to allow development to extend a specific amount into the edges of the overlay zone without an alternatives analysis in exchange for increasing the area of vegetated corridor on the property that is in good condition.

Staff: The applicant has elected to proceed under MCC 36.4555(A) above.

(D) Development Standards- Development within the Water Resource Area shall comply with the following standards:

(1) Development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to minimize impacts on the natural resource while allowing for the enjoyment of the natural resource

Staff: Playground Structure 2 has a small portion located within the SEC-wr. No specific facilities are proposed for the enjoyment of the protected resource. The playground area, identified as Buried Forest Adventure, has a minimal encroachment into the protected buffer as seen in Figure 8.a on page 113of Exhibit A.50. The structures of the playground area are not specifically identified or shown but some example renderings are shown in Exhibit A.7. They include felled trees, rockscapes, and wooden bridges. Criterion met.

(2) Development in areas of dense standing trees shall be designed to minimize the numbers of trees to be cut. No more than 50 percent of mature standing trees (of 6-inch DBH greater) shall be removed without a one-for-one replacement with comparable species. The site plan for the proposed activity shall identify all mature standing trees by type, size, and location, which are proposed for removal, and the location and type of replacement trees.

Staff: The proposed Playground Site 2 is in a cleared area as shown in Exhibit A.44. Criterion met.

(3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, so as to provide a transition between the proposed development and the natural resource, to provide food, water, and cover for wildlife, and to protect the visual amenity values of the natural resource.

Staff: Playground Structure 2 is the only development proposed within the SEC-wr overlay. The proposed development area is currently used as a playfield and does not contain standing trees, shrubs or other natural vegetation. As such, there will be no impact to the listed resources. Criterion met.

(4) The Water Resource Area shall be restored to "good condition" and maintained in accordance with the mitigation plan pursuant to (E) below and the specifications in Table 2.

Staff: Staff requested additional information regarding the location of the playground area adjacent to the mapped water quality resource. The water resource overlay map included on page 113 of the applicant's narrative demonstrates that the southern playground is located on the edge of the mapped water resource. The applicant indicated the resource was ground truthed and there is no an environmental resource within the mapped area.

Nonetheless the overlay must be applied as though a resource exists. When developed, the playground may or may not be within the mapped resource area. The following condition of approval will ensure compliance with this standard.

If the southern playground is to be developed in the mapped water resource area – which shall be specifically mapped and staked at the time of development, applicant shall replant and vegetate the former playground area (located across the road) consistent with Ex. I.1 when the equipment is removed. Further, if the playground is actually located in the water resource overlay as mapped, mitigation is required. The applicant shall mitigate pursuant to Ex. H at 2.

(5) To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment.

Staff: The applicant has not identified the vegetative conditions of the protected Water Resource Area. However, the area for the proposed playground consists of an existing play field with turf vegetation. The establishment of the playground area within the turf will not require tree removal or vegetative removal in the sense this criterion addresses. Criterion met.

(6) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in Table 1, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.

Staff: The proposed Playground Structure 2 will require the removal of turf sod from a playfield, but will not require any natural vegetation removal. Criterion met.

(7) Prior to construction, the Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by this district. Such markings shall be maintained until construction is complete.

Staff: To satisfy this criterion, the water resource area near Playground Structure 2 needs to be surveyed by the required biologist and delineated. Then it can be delineated with construction fencing during construction of the playground area. Criterion not met but could be satisfied once the water resource survey is completed.

(8) Stormwater quantity control and quality control facilities:

(a) Stormwater management shall be conducted in a manner that does not increase the flow of stormwater to the stream above pre-development levels.

(b) The stormwater quantity control and quality control facility may only encroach a maximum of 25 feet into the outside boundary of the Water Resource Area of a primary water feature; and

(c) The area of encroachment must be replaced by adding an area equal in size and with similar functions and values to the Water Resource Area on the subject property.

Staff: Staff concurs that the playground area that encroaches into the water resource area will not increase storm water and will not require a storm water control facilities. Criteria met.

(E) Mitigation - Mitigation shall be required to offset the impacts of development within the SEC-wr. This section establishes how mitigation can occur.

(1) Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated natural resource areas.

(a) When a proposed use or development activity could cause adverse impacts to a natural resource area, the preferred sequence of mitigation as defined in 1. through 5. below shall be followed unless the applicant demonstrates that an overriding public benefit would warrant an exception to this preferred sequence.

1. Avoiding the impact altogether by not taking a certain action or parts of actions on that portion of the site which contains the regulated natural resource area;

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

3. Compensating for the impact by repairing, rehabilitating, or restoring the affected environment;

4. Compensating for the impact by replacing, enhancing or providing substitute resources or environments on-site.

5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments off-site.

(b) When evaluating potential impacts to the natural resource, the County may consider whether there is an overriding public benefit, given:

1. The extent of the public need for the proposed development;

2. The functional values of the Water Resource Area that may be affected by the proposed development;

3. The extent and permanence of the adverse effects of the development on the Water Resource Area, either directly or indirectly;

4. The cumulative adverse effects of past activities on the Water Resource Area, either directly or indirectly; and

5. The uniqueness or scarcity of the Water Resource Area that may be affected.

Hearings Officer: This criterion relates to D (4) above and staff's findings under that criterion and related conditions of approval are applicable here. Mitigation must occur based on the required survey of the water resource if development occurs within the resource.

§ 35.4575 Criteria for Approval of SEC-s Permit –Streams

Hearings Officer: No developments or improvements are proposed within the SEC-s overlay zone, so this section is not applicable.

§ 36.4545 CRITERIA FOR APPROVAL OF SEC-SW PERMIT - SCENIC WATERWAY.

The SEC-sw designation shall apply to those wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. An application shall not be approved unless it contains the information in

36.4540(A) and (B). Any proposed activity or use requiring an SEC-sw permit shall be subject to the following:

Staff: All of the proposed structures and site development takes place in areas designated SEC-sw.

(A) Submittal of a letter from the Oregon Parks and Recreation Department which indicates that the proposed development has been reviewed and is, or can be, consistent with the provisions of the Oregon Scenic Waterways Management Plan.

Hearings Officer: The applicant submitted updated documentation. Ex. I.2. Criterion Met.

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

Staff: The proposed road and camp sites are proposed to connect two existing segments of the campground and roads as demonstrated in the applicant's SEC-h map on Page 111 of their narrative. Because of their connectivity with the two existing roads, there is no alternative to the location. That said, the camp sites have the maximum landscaped area, vegetated corridors and scenic and aesthetic enhancement possible.

The existing play structures are being replaced further inland from the Sandy River as seen in the applicant's SEC-sw map on page 109 of the applicant's narrative. The play structures are ancillary to the camping locations that they will be in proximity with. Since the play structures have been relocated further from the river and closer to the camping areas they support, the locations are appropriate. Each play structure is over 250-feet from the Sandy River with mature forest and vegetation between the use and river. These locations provide the maximum landscaped area, scenic and aesthetic value and vegetation space while still maintaining the play structures relationship to the use they are ancillary with.

The proposed camp office and its ancillary buildings are all proposed just off of the main camp road and surrounded by a heavily forested area. The applicant states, and staff concurs, that the buildings are roughly 380-feet from the Sandy River. Since the office is replacing the original office, it is reasonable to locate the new office in the same vicinity. Based on the location, the office has the maximum vegetated area between the structure and the Sandy River while still utilizing the developed area and complying with the SEC-h development intent of clustering development and locating it near public roads. Criterion met.

(C) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Staff: While Oxbow Park is zoned for forest use, commercial logging or farm use does not take place within the boundaries of the park as it is a regional park visited by the public daily. The proposed improvements are also cluster with existing development which reduced any impact on farm or forest use of the subject site as well as adjacent parcels. Criterion met.

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

Staff: All the proposed development (new road, camp sites, play structures, replacement office and vault toilet) is proposed within close proximity of existing development, balancing the

functional needs of the park and camp sites with the preservation of the scenic value the SEC-sw seeks to protect. Criterion met.

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

Hearings Officer: All of the proposed development is well over 200 ft. from the Sandy River, with some as much as 1000 ft., or more removed. As staff concluded, it is clear that the natural vegetation is protected. Staff suggests that the applicant must enhance vegetation along the river and, accordingly, must submit an enhancement plan. Staff is correct that some sort of enhancement appears to be required. The problem is that this standard provides no guidance as to where, how much or what type of enhancement is required. Much of the park is within the scenic waterway overlay. This could mean that any development within the park would require enhancement of the entire length of the Sandy River through the park. Conversely, one new plant is an “enhancement”. It is not likely that either extreme is intended but no other parameters are provided. One, but perhaps not the only, purpose of the overlay is to implement the Oregon Scenic Waterways Management Plan and the ODPR has approved the proposal. The applicant has proposed enhancement plans occurring within the overlay, (albeit not directly adjacent to the river.) Ex. H. There is no evidence that the riparian area is degraded. Given the lack of guidance in the criteria, I find that I have no choice but to conclude that the applicant has, in fact, proposed enhancement.

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

Staff: Staff has no knowledge of any areas in Oxbow Park containing significant Archeological areas. Criterion met.

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

Staff: There are no known specific areas of concern for erosion potential within the development site. Regardless, a Grading and Erosion Control Permit is required for the construction of the road and camp sites to prevent erosion on site under MCC 29.356. A grading permit has been submitted (T1-2015-3904) and will be processed if the land use permits are approved. Criterion met.

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

Staff: The campground portion of the project will contain a vault toilet structure. The applicant provided a paint chip showing the color as “Toasted Almond” (Exhibit 37.a). The manufacturer’s specifications (Exhibit A.38) it appears the body of the structure will be concrete. There is no description of the roof and the elevation drawings (Exhibit A.5.d and A.5.e) do not list the roofing materials. Concrete is non-reflective and the proposed color is earth tone. Together the body of the structure will be compatible with the SEC-sw protections.

Provided the roof is made of dark-colored composition or architectural shingles, it will be non-reflective. Appropriate colors would be black, charcoal, dark grey, dark brown, dark green. A condition of approval requiring appropriate roofing can satisfy this criterion. The applicant describes the proposed play structures as being made of plants, logs, boulders, trees, hills, sand and water (Exhibit A.7.c). All listed structures are natural, earth toned, and non-reflective. Staff finds the play structure materials are designed to be visually subordinate and to protect the SEC-sw resources.

The applicant discusses the materials and design of the replacement office is on page 126 of Exhibit A.50 and provided elevation drawings in Exhibit A.6.s. The exterior of the proposed office includes wood, cement, and rock siding materials and would be painted grey. Examples of the wood siding are shown in Exhibit A.37.b.

The sides of the structure also feature significant window surface area and little roof overhang. There is a concern the amount of window surface area will allow significant interior light to bleed out of the building and provide significant light pollution. Interior blinds, window coverings or even deep overhangs could be design features the applicant could provide to help eliminate light pollution.

Hearings Officer: There are two unresolved issues related to this criterion. First, the applicant apparently did not provide details regarding exterior lighting. Staff indicated that, if properly shielded and directed downward, the lighting would be compatible and I concur. The application will be conditioned accordingly.

The second issue is the proposed metal roof. The applicant correctly notes that this provision does not expressly prohibit metal roofing. Staff states that the County historically has not approved metal roofing as it is inherently reflective, even when treated or painted. In its October 2, 2015 memo staff notes that although the applicant did not initially demonstrate that the structure is not visible from the river corridor, the later ODPR approval of the project confirmed that the building, as proposed will have no impact on the scenic waterway as “it would not be visible from the river due to topography”. Ex. 7c. Staff correctly notes, however, that a significant change in conditions, such as a fire or other tree removal could change the situation. Accordingly, the following condition of approval is imposed:

If for any reason the office building becomes visible from the river corridor, applicant shall have one year (to accommodate weather conditions) to install non-reflective roofing material on the office building or to obtain any necessary approvals to revegetate the river corridor to ensure that the office building is not visible.

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

Staff: Oxbow Park is not an area the County has identified as having fragile or engendered plant habitat. The area is valued for the forested vegetative features and the applicant has not proposed tree cutting or clearing. The proposed road will remove a minimal amount of trees and the camp sites are proposed to be designed around and with the tree cover. Criterion met.

Variance Criteria

§ 36.7606 Scope

(A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts are prohibited. Additionally, reductions to the fire safety zones in the Commercial Forest Use zones are not allowed under the Adjustment process; and

(2) Reduction of yards and setback requirements within the Hillside Development overlay shall only be reviewed as a Variance; and

(3) Reduction of yards/setback/buffer/re-source protection setback requirements within the Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and

(4) Minor modification of yards and setbacks in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.

(B) Dimensional standards that may be modified under a Variance review are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, building height, sign height, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts; and

(2) Modification of fire safety zone standards given in Commercial Forest Use districts; and

(3) Increase to any billboard height or any other dimensional sign standard.

(C) The dimensional standards listed in (A) and (B) above are the only standards eligible for Adjustment or Variance under these provisions. Adjustments and Variances are not allowed for any other standard including, but not limited to, minimum lot area, modification of a threshold of review (e.g. cubic yards for a Large Fill), modification of a definition (e.g. 30 inches of unobstructed open space in the definition of yard), modification of an allowed density in a Planned Development or houseboat moorage, or to allow a land use that is not allowed by the Zoning District.

Hearings Officer: The applicant states that it is seeking a variance to allow parking (vehicle spaces and temporary bus turnout spaces) and the access drive within the 30 ft. front yard setback. (Ex. 50A, page 95, Ex. I.2) The variance appears to be from MCC 36.4195(A) which otherwise prohibits use of a required yard area from vehicle parking, loading, maneuvering or use as an access drive. The applicant also states it seeks a variance from the landscaping setback /design standards. MCC 36.7055. Both staff and the applicant extensively addressed whether the area north of the office building is the front or side yard. As I understand it, if it is the front yard, the required setback is 30’, if it is the side yard the forest practices setback is 130’. It is not entirely clear to me why it matters as it appears that the standards for a variance are the same whether it is a front yard or a forest practices setback variance. MCC 36.7056(A).

Nevertheless, as the parties consider it significant and in any event it may be for future applications, I will address the front vs. side yard setback. TL 400 is a very irregularly shaped tax lot that looks like a ‘7’ and consists of anywhere from about 6 to 11 lots/parcels. The primary access points to the office complex are to the north to Oxbow Park Road. Oxbow Park Road enters the parcel from the west, which otherwise appears to be mostly undeveloped. MCC 36.0005 Definitions defines “Lot Line (Front)” as “In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot. A minimum front lot line length is a

dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards.”

The lot at issue does not fit squarely within any of these distinctions. It is not a “Lot (Corner) - A lot which occupies an interior angle of less than 136 degrees, formed by the intersection of two streets or a street and an accessway”, as there is no intersection of streets/accessways. The applicant, with little explanation argues it is an interior lot, but since the western edge abuts Hosner/Oxbow Parkway it is not clear to what it is interior. Staff and the applicant agree it is not a flag lot. Frankly, the definition simply does not envision either the lot at issue or its setting. Given this, I think it appropriate to look at the apparent purpose of the front lot standard, which relates to accommodating safe access and reasonable building area. As staff notes in its Oct.2, memo, the applicant is essentially stuck with a meandering roadway, not to mention the Sandy River and the competing policies seeking to protect natural resources. The proposed park office location, orientation and access all appear to be designed to fit within those constraints, to minimize impacts on the forested area and to work with the pre-existing lawful structures not being modified. Ultimately, the only immediate practical impact of determining that the northern are is the “front yard” is to reduce the need to go through the exercise of justifying a bigger side yard/forest practices variance under essentially the same standards as the front yard variance. Accordingly, I find that under the unique circumstances of this application, the area to the north of the proposed office is the front yard.

§ 36.7616 Variance Approval Criteria

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 36.7606 upon finding that all the following standards in (A) through (F) are met:

(A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to:

- (1) The size, shape, natural features and topography of the property, or
 - (2) The location or size of existing physical improvements on the site, or
 - (3) The nature of the use compared to surrounding uses, or
 - (4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district, or
 - (5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.
- (6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

Hearings Officer: Initially, staff correctly questioned whether this standard could be met given that there is another park (Collins) in the area and other properties that are impacted by the natural features, topography and legal constraints associated with the property. In its October 2, memo, however, staff notes several factors that suggest compliance with this standard, including: the unique shape of the parcel, the meandering nature and location of the roadway and the location of existing park uses. It appears that locating the office improvements farther south would require moving the septic field into a forested area, which appears inconsistent with the objectives of the SEC overlay, and the forest use zoning. It is true that the YMCA camp faces many of the same natural and legal constraints, but as the applicant notes in its Sept. 17 memo, that is a very different facility. Oxbow Park is recognized by the County comprehensive plan as a significant regional facility. The programs, number of visitors and mission of a publicly owned regional park are significantly different from a smaller non-profit facility. Further the YMCA

camp is only one nearby property. There is no question that the identified constraints impact Oxbow Park differently and greater than nearby timber land or home sites. Criterion met.

(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

Hearings Officer: As staff notes, the need to replace physical improvements due to age or federal standards is not of the applicant's making. It is true that there may be ways to redesign the improvements to lessen or avoid the need for a variance, but it is evident that such a redesign likely would have significant negative impacts on functionality and be inconsistent with the purpose of the SEC overlay and forest zoning, which is to minimize the impact of this facility on natural resources. The applicant points out that the alternatives it has examined have similar or greater need for a variance, with decreased benefits to the public, including emergency response and access by persons with disabilities. Finally, as the applicant notes in Ex. 50 at page 98, this area historically has been the area encompassing reception, administrative and maintenance functions. Criterion met.

(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

Hearings Officer: The discussion above also addresses this standard. See also, Staff Oct. 2 memo and Ex. A. 50, pages 98-99. Criterion met.

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

Staff: Due to the shape of the subject property, terrain and property ownership, only two property owners could have their property be affected. The first is YMCA for Camp Collins which is north of Oxbow Park and the park office complex. The second is the public in their ownership of the public right-of-way. County staff has not received any written comments or phone calls from the YMCA regarding this project. Multnomah County Transportation is the agent in charge of protecting the public right-of-way for the public. The Transportation Planning section does have concerns regarding the number of driveway entrances proposed without necessary variances and the exact location of the improvements in relation to the public right-of-way.

Hearings Officer: As discussed above, the variance likely will minimize impacts that otherwise might arise from alternative designs. As the applicant notes, this is the last use along the road and is an isolated property. The concerns of the Transportation Planning section are well-take and addressed in a condition of approval. Criterion met, as conditioned.

(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.

Hearings Officer: As discussed above, the requested variance appears to be designed to maximize functionality while minimizing impacts, such as additional removal of forested areas. There may be alternatives with the same or lower impacts that would require a lesser variance, but not in the record before me.

(F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

Hearings Officer: With the exception of the concerns raised by the Transportation Planning Division, which are addressed via a condition of approval, no adverse impacts have been identified. To the contrary, the variance appears to be designed to minimize adverse impacts associated with other design alternatives. See also, Ex.A. 50 at 100. Criterion met as conditioned.

§ 36.7040 FINAL DESIGN REVIEW PLAN.

Prior to land use approval for building permit review or commencement of physical development where no additional permits are necessary, the applicant shall revise the plans to show compliance with the land use approvals granted, all conditions of approval and required modifications. Final design review plan shall contain the following, drawn to scale:

- (A) Site Development and Landscape Plans drawn to scale, indicating the locations and specifications of the items described in MCC 36.7030, as appropriate;
- (B) Architectural drawings, indicating floor plans, sections, and elevations; and
- (C) Approved minor exceptions from yard, parking, and sign requirements.

§ 36.7050 DESIGN REVIEW CRITERIA.

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

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

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

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

(c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.

(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.

(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.

(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.

Hearings Officer: The applicant has retained experts in park design and natural resource issues. The design appears to be consistent with the applicant's long standing Master Plan, which the County has referenced favorably in its comprehensive plan, although not formally adopted. See also, applicant's narrative in Exhibit A.50 at page 135-140.

(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.

Hearings Officer: Concerns were raised by staff regarding the access points and circulation patterns and uses in the right of way. The applicant provided responsive material at the hearing and in its Sept. 17, memo. The applicant clarified, for example, that public access is not permitted past the gate that will separate public uses from maintenance and work areas. Accordingly, visitors wanting to stop at the office must park in front of the office complex. If parking there is full, they will continue into the park to find parking and not circle back across the flow of traffic. The applicant has clarified that the existing toll booth is not being replaced. It appears that there are three preexisting access points so no new accesses are added, but they are modified. Some of the improvements/modifications likely will require right of way encroachment permits and road rules variance(s) also may be required pursuant to the County Design and Construction Manual. Although obtaining such approvals may require some modifications from the proposed design, there is no evidence that it is not feasible to obtain any required approvals; accordingly a condition of approval is appropriate to require encroachment approvals and road variances for access points as necessary.

(6) Drainage - Surface drainage and stormwater systems shall be designed so as not to adversely affect neighboring properties or streets. Systems that insure that surface runoff volume after development is no greater than before development shall be provided on the lot.

(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.

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

Staff: See applicant's narrative in Exhibit A.50, pages 141-142.

(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.

Hearings Officer: At the hearing, the applicant resolved the initial uncertainty and demonstrated that the current park sign is in the same location as the original sign erected by Multnomah County, using the same base and foundation, with simply a new face. Accordingly, this standard is met, with the understanding that removal or replacement in another location or a significant modification may require it to meet current applicable code requirements. See discussion under § 35.6020.

§ 36.7055 REQUIRED MINIMUM STANDARDS.

(C) Required Landscape Areas

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

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

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

(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.

Staff: See applicant's narrative Ex. 50A at 144-145.

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

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

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

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

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

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

(5) Required landscaping shall be continuously maintained.

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

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

Hearings Officer: Staff originally expressed concerns about whether the 10' landscape strip is proposed. The applicant states in its narrative that the design reflects a 10' wide landscape strip in the form of a stormwater basin adjacent to and between the parking area and the developed roadway. My understanding is that staff now has confirmed the existence and size of the strip. Applicant's final design shall include a 10' wide landscape strip separating the temporary but parking from the one-way access drive used to access the visitor parking area adjacent to the office. See also, applicants narrative in Exhibit A. 50, pages 144-148 demonstrating compliance

§ 36.7060 MINOR EXCEPTIONS: YARD, PARKING, SIGN, AND LANDSCAPE REQUIREMENTS.

Staff: As the applicant did not address any of the minor exception criteria, it appears that none is being requested.

Off-Street Parking and Loading

§ 36.4105 GENERAL PROVISIONS.

In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section. For nonconforming uses, the objectives of this section shall be evaluated under the criteria for the Alteration, Modification, and Expansion of Nonconforming Uses.

Staff: The applicant has requested a Community Service Conditional Use for modifications to Oxbow Park. In addition, the applicant has applied for Design Review for three new development projects. The first project is for the construction of a new park office building to replace a smaller office building. The Park Office improvements also redesign the parking areas, add additional area to existing buildings and add new accessory structures. The second project is to construct 20 new campsites towards the center of the park. Nine of the spaces replace campsites that were abandoned over two years ago due to erosion of the Sandy River into the area during a flooding event. The final project is the replacement of two play areas away from the river.

Hearings Officer: Staff comments that initially not enough information was provided regarding the play area and that the playground does include a small building (a kiosk), so access and

parking may be necessary. The applicant presented revised and detailed playground designs at the hearing and included additional exhibits in Exhibits F and G of applicant's 8/27/15 submission. The applicant's original narrative at pages 133 through 147, together applicants 8/27/15 submission at page 20 and Exhibits F and G are adequate to determine compliance with general parking provisions.

Playground 1 makes use of an existing parking area that serves the current playground and acts as additional parking for the boat ramp and water users. It also makes use of an already defined playground area, and fields for access to the new play area. An ADA accessible path will lead from the parking area, to the base camp educational kiosk, and then to the forest edge.

Playground 2 will be relocated southeast of the existing park access road, across the street from the existing structure, moving the play area further from the river. The play area will be relocated between developed group picnic areas E and B and existing structures and utilize existing and ample parking for those facilities.

§ 36.4115 CONTINUING OBLIGATION.

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.

Hearings Officer: The applicant submitted additional details and clarified materials previously submitted. This is a public regional park so there is no question that at least the required minimum parking will be available to the public. Any significant modification of the parking design approved in this decision will require further land use review to ensure that all standards are met. See also the conditions imposed below.

§ 36.4120 PLAN REQUIRED.

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.

Hearings Officer: For the park office complex, there continue to be questions regarding the exact location of the public right-of-way known as Oxbow Parkway. As such a determination as to whether bus parking will be located within the public right-of-way or landscape area cannot be determined. This can be address through final design and through the condition requiring that the applicant obtain approval from the County Transportation Planning division for any encroachments.

§ 36.4125 USE OF SPACE.

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

(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.

- (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.
- (D) Except for residential and local commercial districts, loading areas shall not be used for any purpose other than loading or unloading.
- (E) In any district, it shall be unlawful to store or accumulate equipment, material or goods in a loading space in a manner which would render such loading space temporarily or permanently incapable of immediate use for loading operations.

Staff: Planning staff recommends that the hearings office place the above criteria as conditions of approval for the Design Review application.

§ 36.4130 LOCATION OF PARKING AND LOADING SPACES.

- (A) Parking spaces required by this Section shall be provided on the lot of the use served by such spaces.
- (B) Exception - The Planning Director may authorize the location of required parking spaces other than on the site of the primary use, upon a written finding by the Director that:
 - (1) Parking use of the alternate site is permitted by this Ordinance;
 - (2) The alternate site is within 350 feet of the use;
 - (3) There is a safe and convenient route for pedestrians between the parking area and the use;
 - (4) Location of required parking other than on the site of the use will facilitate satisfaction of one or more purposes or standards or requirements of this Chapter; and,
 - (5) There is assurance in the form of a deed, lease, contract or other similar document that the required spaces will continue to be available for off-street parking use according to the required standards.
- (C) Loading spaces and vehicle maneuvering area shall be located only on or abutting the property served.

Staff: This standard can be met.

§ 36.4135 IMPROVEMENTS REQUIRED.

- (A) Required parking and loading areas shall be improved and placed in condition for use before the grant of a Certificate of Occupancy under MCC 36.0525, or a Performance Bond in favor of Multnomah County equivalent to the cost of completing such improvements shall be filed with the Planning Director.
 - (B) Any such bond shall include the condition that if the improvement has not been completed within one year after issuance of the Certificate of Occupancy, the bond shall be forfeited.
- Any bond filed hereunder shall be subject to the approval of the Planning Director and the County Attorney.

Staff: The applicant has indicated that the installation of the parking and loading spaces can be completed before occupancy for the various uses are granted (Exhibit A.50, page 87). Staff recommends that the hearings officer make this a condition of approval.

§ 36.4140 CHANGE OF USE.

- (A) Any alteration of the use of any land or structure under which an increase in the number of parking or loading spaces is required by this Section shall be unlawful unless the additional spaces are provided.
- (B) In case of enlargement or change of use, the number of parking or loading spaces required shall be based on the total area involved in the enlargement or change in use.

Hearings Officer: The accessory uses have been determined to be lawfully established. The proposed park office project, however, redesigns parking areas and adds significant square footage to these accessory uses. They are reviewed as new uses for purposes of this section.

§ 36.4145 JOINT PARKING OR LOADING FACILITIES.

Staff: No shared parking facilities are proposed.

§ 36.4150 EXISTING SPACES.

Off-street parking or loading spaces existing prior to July 26, 1979 may be included in calculating the number of spaces necessary to meet these requirements in the event of subsequent enlargement of the structure or change of use to which such spaces are accessory. Such spaces shall meet the design and improvement standards of this Section.

Staff: The existing parking areas in the park office complex are being removed and relocated. The new spaces must meet the design and improvement standards listed below.

§ 36.4165 DESIGN STANDARDS: SCOPE.

(A) The design standards of this section shall apply to all parking, loading, and maneuvering areas except those serving a single family dwelling on an individual lot. Any non-residential use approved on a parcel containing a single family dwelling shall meet the design standards of MCC 36.4170 through 36.4200.

(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.

Hearings Officer: Staff indicated that the originally submitted documents do not clearly identify whether the bus turn out area (short term parking) encroaches into the right of way or is entirely on the office complex lot. At the hearing, the testimony was that the current bus parking situation is unsafe for children as they exit into the travelled way and that the proposed design greatly increases safety and minimizes any movement into the travelled area. My notes indicate that at the hearing the bus turnout was described as “immediately adjacent to the roadway.” See also A.50, p.88. But the site plans are less clear and seem to show at least some minimal encroachment of the bus turnout/parking into the right of way (some drawings show it as very minimal, others seem to indicate more of an encroachment). In its Oct 8, final argument the applicant contends that this standard prohibits only backing into the right of way but does not prohibit parking in the right of way. I disagree, it clearly states that “all parking and loading areas shall provide for ...parking of all vehicles on the lot”.

Staff did not address this in its Oct. 2 memo except to suggest that compliance could be ensured by a condition of approval requiring an encroachment permit or road rules variance as necessary. This suggests that the standard may be varied or excepted from under those provisions. It also appears that, to the extent there is a minimal portion of the parking in the right of way, it could be addressed by moving it further into the “front yard” of the office complex given that a front yard variance has been granted. Accordingly, a condition of approval is imposed as follows:

Parking is not permitted in the right of way unless a road rules variance or encroachment permit is issued authorizing such use. In the event that a road rules variance or encroachment permit is not granted, the design must shift the turn out south so that bus parking does not occur in the right of way. This may require that the variances to the front yard, landscaping or related standards previously granted be expanded or modified to accommodate such a shift. I find that such an expansion or modification is warranted to ensure public safety. Accordingly, the findings under this criterion are incorporated into the findings of compliance for the variances and design standards.

§ 36.4170 ACCESS.

(A) Where a parking or loading area does not abut directly on a public street or private street approved under MCC 36.7700 et seq., the Land Division Chapter, there shall be provided an unobstructed driveway not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.

(B) The Approval Authority may permit and authorize a deviation from the dimensional standard in paragraph (A) of this section upon finding that all the following standards in subparagraphs (1) through (4) are met:

(1) The authorized provider of structural fire service protection services verifies that the proposed deviation complies with such provider's fire apparatus access standards, or, if there is no such service provider, the building official verifies that the proposed deviation complies with the Oregon Fire Code;

(2) The County Engineer verifies that the proposed deviation complies with the County Road Rules and the County Design and Construction Manual Standards;

(3) Application of the dimensional standard would present a practical difficulty or would subject the property owner to unnecessary hardship; and

(4) Authorization of the proposed deviation would not:

(a) be materially detrimental to the public welfare;

(b) be injurious to property in the vicinity or the zoning district in which the property is located; or

(c) adversely affect the appropriate development of adjoining properties.

(C) 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.

Hearings Officer: The seven parking spaces located north of the park office building are located on a 14 ft. wide one-way roadway. Its exit maneuvering area appears to go from 15 feet wide to 45 feet wide at its connection point to Oxbow Parkway. Having an internal one-way roadway within a parking area is permitted provided vehicle maneuvering allows cars to circulate in the parking area without re-entering the street. The applicant has clarified and demonstrated that cars entering this area and not finding parking will not be able to circle back, as noted previously. Nevertheless the standard seems to require 20 ft. aisle/drive width notwithstanding that 2-way traffic is not permitted.

It appears, however, that the standards for a deviation are met, subject to a condition of approval. Given the preexisting situation, and the overriding emphasis in the code on minimizing impacts to natural resources a deviation appears warranted. Landscaping and other standards conflict with widening the roadway. Widening also would seem to encourage the cross-flow of traffic by making it easier in comparison to continuing back onto the roadway. The applicant has indicated that the proposal has been approved by the Fire Marshall.

Access to the campground improvement is from an internal roadway that the applicant states is at least 20 feet in width.

This criterion is met with the condition of approval that the proposal meets County Road Rules and Design and Construction Manual Standards or the applicant obtains a road rules variance or other exception as necessary.

§ 36.4175 DIMENSIONAL STANDARDS.

(A) Parking spaces shall meet the following requirements:

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

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

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

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

Staff: The parking spaces for the 14 standard campsites will be 14 ft. wide by 38 ft. long. The two standard ADA campsites will have parking spaces of 16 ft. wide by 38 ft. long. The two standard pull-through campsites will be 12 ft. wide by 60 ft. long. The three ADA pull-through campsites will be 20 ft. wide by 60 ft. long.

In the park office complex parking spaces, seven of the spaces appear that they are planned to be compact spaces. The spaces were designed at 8 ft. in width instead of 8.5 feet in width. The other parking spaces are at least 9 ft. wide. All parking spaces will be 18 feet long.

Hearings Officer: I agree with the applicant that this standard only governs required parking. To the extent the seven spaces are more than what otherwise is required, those spaces may be 8 ft. in width.

(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.

(C) Loading spaces shall meet the following requirements:

(1)

District Minimum Width Minimum Depth

All 12 feet 25 feet

(2) Minimum vertical clearance shall be 13 feet.

Staff: The campground aisle width is 24 feet which complies with above standards for parking that is less than 90 degrees. The restroom parking is 90 degrees to the roadway. The drive aisle must be increased by 1 foot behind the two parking spaces serving the restroom to comply with the above criteria.

For the park office complex, the three parking areas on the western side of the complex do not have the appropriate aisle width for 90 degree parking. The aisle width currently ranges from 20 to 22 feet. It will need to be increased to 25 feet adjacent all 90 degree parking spaces. No loading spaces have been shown for the park office complex facilities.

Hearings Officer: This portion of the standard is not qualified by the term “required” so it appears to apply to all parking, probably because this is considered a safety standard to ensure adequate and safe passage for vehicles and pedestrians. Accordingly, the 12 spaces in the small parking lot, which the applicant concedes has an aisle, must conform to the standard, i.e. less than 90 degrees, or the applicant must construct aisles of 25’ or more adjacent to the 90 degree parking space(s).

Similarly, I agree with staff that the campground loop road, office complex drive and access driveway should be treated as aisles as they, in effect, serve the purpose of a parking lot

aisle. The same safe vehicular and pedestrian access as defined in the standard must be provided. Accordingly, the applicant must construct the parking spots to something less than 90 degrees.

§ 36.4180 IMPROVEMENTS

(A) Surfacing

(1) Except as otherwise provided in this section, all areas used for parking, loading or maneuvering of vehicles, including the driveway, shall be surfaced with at least two inches of blacktop on a four inch crushed rock base or at least six inches of Portland cement, unless a design providing additional load capacity is required by the fire service provider.

(2) The Approval Authority may permit and authorize a deviation from the surfacing standard in paragraph (A)(1) of this section and thereby authorize, alternate surfacing systems that provide a durable dustless surface, including gravel. A deviation under this paragraph may be permitted and authorized only upon finding that each parking area supporting the existing and the proposed development meets the following standards in subparagraphs (a) and (b) and, for parking areas of four or more required parking spaces, also meets the following standards in subparagraphs (c) and (d):

(a) The authorized provider of structural fire protection services verifies that the proposed deviation complies with such provider's fire apparatus access standards, or, if there is no such service provider, the building official verifies that the proposed deviation complies with the Oregon Fire Code;

(b) The County Engineer verifies that the proposed deviation complies with the County Road Rules and the County Design and Construction Manual Standards. Alternative surfacing can be considered for all areas used for parking, loading and maneuvering, including the driveway; however, approaches to paved public right-of-way shall be paved for a minimum of 21 feet from the fog line, or for a greater distance when required by the County Engineer;

(c) Authorization of the proposed deviation would not:

1. be materially detrimental to the public welfare;
2. be injurious to property in the vicinity or zoning district in which the property is located; or
3. adversely affect the appropriate development of adjoining properties; and

(d) Any impacts resulting from the proposed resurfacing are mitigated to the extent practical. Mitigation may include, but is not limited to, such considerations as provision for pervious drainage capability, drainage runoff control and dust control. A dust control plan is required when a dwelling, excluding any dwelling served by the driveway, is located within 200-feet of any portion of the driveway for which gravel or other similar surfacing materials is proposed. Common dust control measures include, but are not limited to, reduced travel speeds, gravel maintenance planning, establishment of windbreaks and use of binder agents.

(3) Notwithstanding paragraph (A)(1) of this section, parking fields for intermittent uses such as special events associated with farm stands and public parks, sporting events, and the like may be surfaced with gravel, grass or both and spaces may be unmarked if the parking of vehicles is supervised. Grass fields used for parking shall be maintained so that grass is kept short and watered to minimize fire risk and reduce dust.

Hearings Officer: Staff initially concluded that all areas must be paved as the applicant did not request a deviation. The applicant has clarified that it did so in its initial narrative at pages 90-92. E. A.50. Beyond that there appears to be a substantial disconnect between staff and the applicant as to what is being proposed. Staff did not respond to the applicant's subsequent submittals in this regard.

The applicant argues that subparagraphs (c) and (d) do not apply because it is not proposing to gravel parking areas of four or more required spots. The applicant states that only 9 spaces are required at the office complex and one space at each campground. Staff does not suggest otherwise, so apparently all other parking being provided is optional and not subject to the required so the applicant appears to be correct. In any event, the applicant has demonstrated compliance with (c) and (d) in Ex. A at 85-92. Accordingly, the proposed parking qualifies

for a deviation provided that the County Engineer verifies compliance with the County Road Rules and Construction Manual Standards.

(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.

Hearings Officer: The applicant suggests that this standard does not apply to what essentially is a turn-out for temporary parking while persons embark and disembark. The standard is not so limited on its face and applies to “loading” which arguably is a similar use. As discussed under MCC 36.145, parking is not permitted in the right of way unless a road rules variance or encroachment permit is issued authorizing such use. In the event that a road rules variance or encroachment permit is not granted, the design must shift the turn out south so that bus parking does not occur in the right of way. This may require that the variances to the front yard, landscaping or related standards previously granted be expanded or modified to accommodate such a shift. I find that such an expansion or modification is warranted to ensure public safety. Accordingly, the findings under this criterion are incorporated into the findings of compliance for the variances and design standards.

(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 except as provided in (3) below.

Staff: The plans for the park office complex do not appear to show the outer boundary of the parking and maneuvering areas being provided with curbing or bumper rail to prevent vehicle parking or maneuvering outside of vehicle travel areas. A similar situation exists for the proposed campground access road (Exhibit A.5.c.).

Hearings Officer: The applicant subsequently addressed these standards by seeking a road rules/right of way encroachment approval and by a condition of approval requiring a bumper rail or wheel stops at least 4” high for individual parking spaces associated with the office complex. As conditioned, this criterion is met.

(C) Marking - All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 36.4120, and such marking shall be continually maintained. Except for development within the PH-RC, OR, or OCI zones, a graveled parking area with fewer than four required parking spaces is exempt from this requirement.

Staff: A condition of approval can be included to require the permanent marking of the parking spaces in the visitor and worker parking areas.

Hearings Officer: The applicant shall mark the paved parking spaces with paint or similar permanent marking. Gravel parking area spaces shall be marked with a bumper rail or wheel stop at least 4 inches height.

(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: While the Storm Water Certificate (Exhibit A.12.b) indicates that a storm water system is not required for the park office complex, it also states under the “Description of Project” that a “stormwater facilities to support the building replacement and parking reorganization” is part of the project.

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

Staff: The projects are located in the CFU zone. No pedestrian covered walkways are proposed.

§ 36.4185 LIGHTING.

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

Hearings Officer: It does not appear that any lighting will be installed in the area of the campground improvements. The park office complex shows new light posts will be added to the site on Exhibit A.6.c. As addressed earlier, all exterior lighting shall be directed downward and shielded.

§ 36.4190 SIGNS.

Signs, pursuant to the provisions of MCC 36.7465.

Hearings Officer: As discussed earlier, only the sign face was modified.

§ 36.4200 LANDSCAPE AND SCREENING REQUIREMENTS.

(A) The landscaped areas requirements of MCC 36.7055 (C) (3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 36.4165 (A).

Hearings Officer: As noted previously, this criterion is met. See findings under MCC 35.7055 (C), applicant’s narrative in Exhibit A.50 pages 144-148.

§ 36.4205 Minimum Required Off-Street Parking Spaces.

(B) Public and Semi-Public Buildings and Uses

(9) Campground – One space for each campsite.

(C) Retail and Office Uses

(3) Bank or Office, including Medical and Dental - One space for each 300 square feet of gross floor area.

(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 campground improvements have at least one parking space per campsite. The proposed park office is 2,554 square feet in size and would require at least 8.51 parking spaces. The other buildings are accessory to the park office but also generate employee parking. As a regional park with associated maintenance facilities this is not a use listed in the parking code, it is an unspecified use. The applicant is proposing 35 regular parking spaces and two or three temporary vehicle parking space. As Metro is more familiar with the amount of parking required for its park staff and visitors, planning staff will defer to their proposal. If more staff parking or visitor parking is required, Metro will need to go through a new Design Review application to allow their construction.

§ 36.4210 MINIMUM REQUIRED OFF-STREET LOADING SPACES.

(A) Commercial, Office or Bank

Square foot of Floor or Land Area Minimum Loading Spaces Required

Under 5,000 0

5,000 - 24,999 1

(D) Public or Semi-Public Use: Treated as mixed uses.

(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: While no specific loading space is shown, there are areas adjacent to the wood shed or garage building where a truck can unload. Criterion met.

Transportation Standards

MCRR 4.000 Access to County Roads

MCRR 4.100 Required Information: Applicants for a new or reconfigured access onto a road under County Jurisdiction may be required to provide all of the following:

A. Site Plan;

B. Traffic Study-completed by a registered traffic engineer;

C. Access Analysis-completed by a registered traffic engineer;

D. Sight Distance Certification from a registered traffic engineer; and

E. Other site-specific information requested by the County Engineer

MCRR 4.200 Number: Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property will be the standard for approval. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system.

MCRR 4.300 Location: All new access points shall be located so as to meet the access spacing standards laid out in the Design and Construction Manual.

MCRR 4.400 Width: Driveway and Accessway widths shall conform to the dimensions laid out in the Design and Construction Manual.

MCRR 4.500 Sight Distance: All new access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the Design and Construction Manual and AASHTO's A Policy on Geometric Design of Highways and Streets.

MCRR 5.000 Transportation Impact

MCRR 5.100 To determine if a Transportation Impact is caused by a proposed development, the County Engineer will determine the number of new trips generated by a site by one of the following methods:

A. Calculations from the most recent edition of the Institute of Transportation Engineers' Trip Generation (ITE); or

B. A site development transportation impact study conducted by a professional engineer registered in the State of Oregon and accepted by the County.

MCRR 5.200 The County Engineer will use the information obtained pursuant to sub-section 5.100 and/or the frontage length of the subject property to determine the pro-rata share of the requirements set forth in Section 6.000.

MCRR 5.300 Except where special circumstances require the County Engineer to make an alternate determination, any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour shall be found to have a Transportation Impact. A minimum increase of 10 new trips per day is required to find a transportation impact.

MCRR 6.000 Improvement Requirements

MCRR 6.100 Site Development: The owner of the site or the applicant for a proposed development, which is found to cause a Transportation Impact will be responsible for improvements to the right-of-way as follows:

- A. Dedication Requirement
- B. Frontage Improvement Requirements

Hearings Officer: The staff report did not propose specific findings relating to the transportation standards. As discussed above, the only modifications proposed are to access points and for right of way encroachments. Nothing in the record suggests that, with those exceptions, there will be any significant transportation impacts as the proposal largely reconfigures and improves the existing use, including circulation, parking and access points internal to the park.

The County Transportation Division strongly recommends that the portion of Oxbow Parkway on TL 400 be vacated, but the record does not support a condition to that effect, although the applicant may wish to consider that there may be future benefits to it in doing so.

Nothing in the record suggests that the Transportation Engineer has found a traffic impact sufficient to warrant conditions requiring dedication of right of way or improvements to the portion of Oxbow Parkway within County jurisdiction.

Accordingly, it appears that the Transportation Standards are met, subject to the condition that the applicant must obtain all encroachment permits and Road Rules variances required to implement the redesign and improvements.

Hearings Officer Decision: The applications are Approved, subject to the following **Conditions of Approval:**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.

2. Pursuant to MCC 37.0690(B), this Type II land use approval to construct the park office improvements, campsite improvements and two playgrounds shall expire as follows:
 - a. When construction has not commenced within two years of the date of the final decision, or
 - b. When the structure has not been completed within four years of the date of commencement of construction.

As used in a., commencement of construction shall mean actual construction of the foundation or frame of the approved structure. As used in b., completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

3. Prior to land use sign off for building plan check, Metro shall record a statement 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. [MCC 36.2045(A) (3) and MCC 35.2245(3)]

4. Prior to land use sign off for building plan check, the applicant shall demonstrate that all new buildings meet the maximum height requirement of MCC 36.2050 & MCC 35.2250 as appropriate to the general district.

5. Prior to land use sign off for building plan check, the site plan used for the building permits shall be modified to show the primary and secondary fire safety zones for all new buildings and structures and new modifications to buildings and structures except as modified by the exceptions for the secondary fire safety zone expressly granted herein. All new buildings and structures and new modifications to existing buildings and structures shall comply with the forest practice setbacks and fire safety zones except as those are modified in this decision.

- a. Prior to the issuance of the Certificate of Occupancy for each of the approved projects, the required Primary and Secondary Fire Safety Zones, as excepted, shall be established for each new building or building addition.

- b. The required Primary and Secondary Fire Safety Zones, as excepted, shall be maintained by the property owner in compliance with the criteria listed in MCC 36.2056(D) (1) and (2).

6. Prior to issuance of the Certificate of Occupancy for each of the proposed projects, if applicable, the proposed improvements shall comply with the Oregon Fire Code as required by Gresham Fire.

7. Prior to the issuance of the Certificate of Occupancy for any of the structures or buildings, the applicant shall place permanent signage along the interior access route leading to the boat ramp at the Sandy River so that fire agencies can utilize this perennial emergency water source via the boat ramp. The permanent signage shall comply with the requirements of Gresham Fire or the Oregon Fire Code as warranted. [MCC 36.2061(B) (3)]

8. Prior to land use sign off for building plan check for the playground building, building elevations shall be submitted showing the roof of the building uses fire retardant materials. [MCC 36.2061(C)]

9. Any and all chimneys in the park shall have a spark arrester installed on it. [MCC 36.2061(C)]

10. If the final site plan/construction plans show any portion of the office building located to any extent less than 80' from the edge of the right of way of Oxbow Park Road (50' + 30'), it must be built to the International Fire Code Institute Urban-Wildlife Interface Class 1 Code Section 504 Class 1 Ignition Resistant Construction requirements. If more than 80' it may be constructed to Class 2 standards.

11. Metro shall submit a lot consolidation application for TL 400 to be consolidated into one lot/parcel prior to the County stamping the improvement plans for building permits for the office building. The consolidation must be completed prior to issuance of occupancy for the office building.

12. Prior to construction of the modifications and improvements, the applicant will obtain a review by the Gresham Fire Marshall of existing conditions within 100' of all new buildings or structures proposed to be constructed or modified and follow Fire Marshall recommendations, unless inconsistent with MCC provisions. The applicant shall establish a primary fire break around the office complex and the proposed vault toilet, subject to the approved fire break exception and consistent with Fire Marshall recommendations. At least annually, the applicant will again engage the Fire Marshall to review the 100' areas these areas and will follow his or her recommendations. The applicant also shall annually conduct a review of its overall Park fire prevention and suppression plans and efforts in conjunction with the Fire Marshall and implement his or her recommendations.

14. All exterior lights shall be shown on the building plans at the time of zoning sign-off for building permits. All exterior lights shall have the bulbs shielded with light directed downward. Manufacturing details shall be provided at the time of zoning sign-off.

15. Nuisance plants listed in Table I of the general provision of the SEC-wr and SEC-h overlays in MCC 36.4550(C) as well as the plants defined in MCC 36.4510 (Metro Nuisance Plant List and the Prohibited Plant List, and those plants listed in the latest edition of the State of Oregon Noxious Weed List) shall be removed from the development sites. The sites shall also be maintained free of the listed and defined nuisance plants.

16. Prior to making available for public use, the applicant shall install a low split rail fence along the border of the RV pull through campsites and the adjacent vegetated area.

17. The building plan check plans for the office shall include the sprinkler system plans be included so the County may verify compliance with planning staff can verify compliance with MCC 36.110 (B) (6).

18. Vegetation between the vault toilets and the Sandy River shall be retained and maintained to ensure the structures will not be seen from the Sandy River. If for any reason the office building becomes visible from the river corridor, applicant shall have one year (to accommodate weather conditions) to install non-reflective roofing material on the office building or to obtain any necessary approvals to revegetate the river corridor to ensure that the office building is not visible.

19. If the southern playground is to be developed in the mapped water resource area – which shall be specifically mapped and staked at the time of development, applicant shall replant and vegetate the former playground area (located across the road) consistent with Ex. H at 2. when the equipment is removed.

20. Prior to encroaching in any right of way or construction of access points, the applicant must obtain approval from the County Transportation Planning Department for any proposed encroachments in the right of way and a road rules variance for access points as determined necessary by the Transportation Planning Department. This may necessitate and authorize minor design modifications from the approved plans. Parking is not permitted in the right of way unless a road rules variance or encroachment permit is issued authorizing such use. In the event that such an exception is not granted, the design must shift the turn out south so that bus parking does not occur in the right of way. To the extent that might require that the front yard variance previously granted needs to be expanded to accommodate such a shift, it is so expanded. MCC 36.4165

21. The applicant shall comply with MCC 36.4125, including appropriate signage.

22. Installation of the parking and loading spaces shall be completed before occupancy for the various uses are granted (Exhibit A.50, page 87). Permanent marking of the parking spaces in the visitor and worker parking areas is required in conformance with MCC 36.4180 (3) (C). The applicant shall mark gravel parking spaces with a bumper rail or wheel stop at least 4 inches high.

23. A bumper rail or wheel stops at least 4” high shall be installed for individual parking spaces associated with the office complex. MCC 36.4180(B) (2).

24. All electrical and other utility lines shall be placed underground.

25. The campground vault toilet shall be built in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class I Ignition Resistant Construction requirements. It shall be made of concrete painted Toasted Almond or similar natural color, and have a dark earthen toned roof, consistent with the specifications in the application.

26. Final design plans for the two playground areas must be submitted to staff in conjunction with future excavation and/or permitting. This will ensure that the final design plan will confirm compliance with primary fire break and secondary exception grant, is consistent with preliminary representations, while allowing slight modifications of trail locations and related

ground alterations if necessary. The proposed play structures shall be made of plants, logs, boulders, trees, hills, sand and water.

Done and dated this 16th day of December, 2015

Dan R Olsen

Dan R. Olsen
Hearings Officer

Note: Application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, Lisa Estrin, at (503) 988-0167 or lisa.m.estrin@multco.us, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. Additional fees will be collected.