

JAN 25 1999

MULTNOMAH COUNTY, OREGON DECISION OF LAND USE HEARINGS OFFICER

This decision consists of Conditions, findings of Fact and Conclusions

January 22, 1999

CS 3-98: Application to extend the Wildwood Trail in forest Park, currently approximately 28 miles in length. The total length of the proposed extension of the trail is 9,000 feet through the City of Portland and Multnomah County jurisdictions. The portion of the proposed extension in Multnomah County is approximately 1,350 feet in length from the Bonneville Power Administration (BPA) road to NW Newberry Road. The proposed trail will be 30 inches wide for the entire length of the trail. The Community Service approval is a Conditional use action in the CFU zone. The subject parcel is designated as a Significant Environmental Concern for Streams, Wildlife Habitat, and View (SEC-s, h, v).

Location: 14420 NW Newberry Road

Description of Property: Tax Lot 18, Section 4, T1N R1W, W.M. (R96104-0180)

Property Owner: City of Portland Department of Parks and Recreation
1120 SW 5th Avenue
Portland, OR 97204

Applicant's Representative: Jim Sjulín
Friends of Forest Park
921 SW Morrison Street, Suite 505
Portland, Oregon 97205

Plan Designation: Commercial Forest Use

Zoning Designation: CFU, SEC-s, -h, -v

Site Size: 47.65 acres

Hearings Officer Decision: Approval, with conditions

CONDITIONS OF APPROVAL

1. Approval of this Community Service shall expire two years from the date of issuance of this Hearings Officers' decision (or Board Order if the decision is appealed) unless the subject proposal is completed as approved or "substantial construction" has taken place according to MCC 11.15.7010(C).
2. The applicant shall file and record a statement with the Multnomah County Division of Records ((503) 248-3034) "that the owner and the successors in interest acknowledge the rights of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices" according to MCC 11.15.2053(B).
3. The applicant or property owner shall apply for Design Review according to the Design Review provisions of MCC 11.15.7805 through 11.15.7870 before an construction begins.
4. The applicant shall install the erosion control measures, as proposed in the application, before construction of the trail and those measures shall remain in place until the completion of trail work.
5. The applicant shall replant vegetation, as proposed in the application, within one month of completion of the trail work.
6. No additional land use and/or permit requests shall be accepted, relating to the subject application, until all required fees for the said applications have been paid in full.
7. This approval is based on the material submitted by the applicant. The proposed activities to extend the Wildwood Trail for approximately 1,350 lineal feet shall occur on the site according to the design, size, and location as shown and described in the application materials submitted by the applicant in case file CS 3-98.

PROCEDURAL ISSUES

1. **Impartiality of the Hearings Officer**
 - a) No ex parte contacts. I did not have any ex parte contacts before the hearing on this matter. I did not make a site visit.
 - b) No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding and no family or financial relationship with any of the parties.

2. **Burden of Proof.** In this proceeding, the burden to prove the applicable criteria are satisfied is upon the applicant.
3. **Time line.** The application was filed on October 9, 1998. The Planning Department deemed the application complete on November 20, 1998. A duly noticed public hearing was held on December 16, 1998. The Hearings Officer held the record open for 21 days to receive additional information concerning the possible impact on an easement for water from a spring on the parcel serving property owned by Glenn Hovemann. The final decision on the application is dated January 22, 1999

BACKGROUND

1. Applicant's Proposal

The City of Portland proposes to extend Wildwood Trail a distance of approximately 1,350 feet across the subject parcel. This trail segment will connect to an extension of the Wildwood Trail within the City of Portland. Friends of Forest Park has received City of Portland approval to extend the 28-mile Wildwood Trail 9,000 feet to the city/county boundary from the BPA road. The proposed trail improvement will involve limited clearing of vegetative cover and earth cut and fill. The applicant proposes a small sign 45 feet from the trail's intersection with NW Newberry Road in Multnomah County. The sign would not be visible from NW Newberry Road. No benches, lighting, or other features are proposed. The Forest Park Natural Resources Plan calls for five-foot-wide trails between Firelane #15 and NW Newberry Road, but the proposed trail will be cleared for a 30-inch width, which generally sloughs to 18 inches within a couple of years.

The trail will not be paved or covered with gravel or other material but will be compacted. The applicant expects trail users to arrive by car or on foot because NW Newberry Road is not accessible to bicycles or horses. More accessible, better marked, and identified trails in Forest Park's north management unit receive three to four parked vehicles per day. Therefore, the parking generated along NW Newberry Road is similarly expected to be three to four vehicles per day. There is space along the shoulder of NW Newberry Road for parking for an estimated six vehicles. No parking area is proposed to be created or marked.

2. Site and Vicinity Information

The subject parcel is 47.65 acres in size and owned by the City of Portland. The site is in the CFU (Commercial Forest Use) district and is identified as an area within the Significant Environmental Concern for Streams, Wildlife Habitat, and View (SEC-s, h, v). The subject property is within Forest Park, south of NW Newberry Road

and north of Skyline Boulevard. The topography of the area around the proposed trail ranges from 16 percent to 22 percent. The average trail grade will be 9 percent. The surrounding area is within Forest Park. NW Newberry Road runs through the northwest corner of the parcel.

3. Testimony and Evidence Presented

- a. Tricia Sears, County planner, summarized the staff report.
- b. Chris Cocker, of David Evans & Associates, represented the applicant. He showed slides of the area including NW Newberry Road, visibility of the proposed sign, the terrain, vegetation, lack of visibility of a spring providing water service to an adjacent property and Miller Creek from the trail and the difficulty to get to the spring or the creek. He testified that the trail is 108 horizontal feet from the spring and 40 vertical feet above it. He testified and showed on the slides that the topography and vegetation of the area is not conducive to trail users leaving the trail.
- c. Jim Sjulín, Natural Resources Supervisor for the Portland Parks Bureau, testified for the owner. He testified that the proposed trail does not threaten the spring water supply.
- d. Seth Tane, 13700 NW Newberry Road, a resident in the vicinity, testified in favor of the application. He testified that there is a wide shoulder and ample area for cars to park along the roadside of NW Newberry Road at the road's intersection with the proposed trail. He argued that there can be no question about sedimentation of the spring because the spring is above the creek. He said that the water supply for the spring is ground water. He said the terrain is too steep and the creek too vegetated for trail users to leave the trail and go to the spring site or Miller Creek.
- e. Arnold Rochlin testified in favor of the application. Mr. Rochlin stated that he lives next to the Newton Road Trail and next to Forest Park. He said the Newton Road Trail is a designated trail head and can accommodate 10 to 12 cars. He said that usually no cars are there, but occasionally 3 cars are there. He noted that the trail sign will be 45-feet down the trail from NW Newberry Road and will not be visible from the road. Mr. Rochlin argued that Mr. Hovemann's easement for water supply from the parcel does not prohibit the property owner from using the property consistent with zoning.
- f. Kay Plumb, a resident of the area, testified that she sees no problem with parking along NW Newberry Road. She said that she believes that it is unfair to equate the spring water supply to a well water supply.

- g. Andy Lightcap, a resident of the area, testified in favor of the application. He said his property borders Miller Creek. His concern is parking along NW Newberry Road. He is happy that the intersection of the trail with NW Newberry Road will not be designated as a trail head. He stated that the site has been a problem concerning the dumping of garbage. Use of the parcel as a trail may help hinder the illegal dumping.
- h. Glenn Hovemann, an adjoining property owner, owns the parcel benefitted by a water easement from the spring on the subject parcel. His property is just north of Forest Park on NW Newberry Road. He is concerned that the trail will have adverse effects on his water supply. See Exhibit H2, a letter from Mr. Hovemann to the Hearings Officer dated December 12, 1998.

According to Mr. Hovemann, the home on his property was part of a farm on a bench above Miller Creek. The spring water supply was developed to serve the home on his property when the home was built in approximately 1900. The spring water source is at the southern end of the bench, next to Miller Creek and opposite a steep hill rising up from the creek.

According to Mr. Hovemann, the City of Portland purchased the southern end of the farm, creating the subject parcel, in 1950 as part of its acquisition of lands to create Forest Park. In his December 12, 1998 letter he states that then, "the parties agreed that the rights to the domestic water from the spring remained with the homestead, and to protect that right in perpetuity, the above-mentioned easement was granted in 1950.

Mr. Hovemann stated that the base of the spring is 6- to 8-feet above Miller Creek. He said that a plastic pipe imbedded in the spring obtains water from the spring, and transmits the water approximately 100 feet to a converted garbage can located on the top of a log which serves as a settling tank. An above ground plastic pipe runs down hill from the settling tank across the subject parcel to his property. The pipe ends at a partially buried cement tank where the water is pumped to the house and barn on Mr. Hovemann's property. The spring water system is the domestic water supply for the home.

Mr. Hovemann no longer lives in the house served by the spring water source. It is currently rented. He said that during the 5 years that he lived in the house his water supply was interrupted 3 to 4 times. These interruptions were caused by a freeze, an electrical failure and once the pipe was vandalized when someone cut the pipe near the spring and settling tank.

Mr. Hovemann testified that there are generally very few people in the woods on the subject parcel because there are no trail or parking facility. The proposed trail parallels Miller Creek near the spring. He believes that the

extension of Wildwood Trail will bring thousands of people into the woods on the parcel. He argues that some people will leave the trail to explore Miller Creek, thereby exposing his domestic water system to vandalism, contamination or perhaps poisoning. He urged that this is particularly true because springs and creeks are attractive and that trail users will wish to linger near Miller Creek. He stated that there is only one other perennial stream along the entire 28-mile length of Wildwood Trail, Balch Creek, which is located at the opposite end of the trail. He predicts those trail users will leave the trail to go to Miller Creek. In going to Miller Creek they will travel past the area where his spring is. In so doing, the water supply system will be within sight and trail users will walk on top of the spring.

According to Mr. Hovemann, walking on the spring will be harmful to it. He said that it is extremely soft, delicate ground. Much walking over it would quickly reduce it to a mud hole. He emphasized that the water system is above ground and vulnerable to vandalism.

Mr. Hovemann argued that the City of Portland's use of its property for a trail will foreseeably disrupt his water supply. He argued that his easement rights include the right to the undisturbed right to use the spring water. Historically, the sole protection of the water has been the isolation of the water source and supply system. Mr. Hovemann argued that because the City proposes to change the isolation of the water system by opening the area to the public, it is the City's responsibility to rectify foreseeable disruption of the water system. Mr. Hovemann requested the Hearings Officer to either deny the application or impose a condition of approval that would protect his water supply.

In his letter (Exhibit H2), Mr. Hovemann explored alternatives that might protect his water system. He concludes that the alternative of fencing the system is not viable because Miller Creek would have to be crossed and would have to fence-in hundreds of feet along the pipe. He rejects the alternative of fencing only the spring area and burying the pipe because to bury the pipe would require machinery access and would be too disruptive to the forest environment. He suggested a condition of approval should be included requiring that the City of Portland should either provide him with a well or purchase his water rights.

- I. Bob VanBrocklin, attorney, representing Glenn Hovemann testified that the City of Portland obtained the lot in 1950 and at that time had the opportunity to acquire the water rights to the spring easement on the parcel, but the City did not. He said that the City of Portland granted the water easement to Mr. Hovemann's predecessor in 1976. He argued that the City of Portland, the grantor of the easement, cannot unreasonably interfere with the easement. The Hearings Officer asked Mr. VanBrocklin what applicable decision-making

criteria would provide a basis for imposing Mr. Hovemann's requested condition of approval. Mr. VanBrocklin suggested 1) the effect on natural resources, 2) Comprehensive Plan Policy #13 to protect water quality, and 3) Comprehensive Plan Policy #31J to minimize adverse impacts on adjacent properties.

Mr. Hovemann and Mr. VanBrocklin requested that the hearing be continued to allow them an opportunity to discuss their water system concerns with the City of Portland and provide additional information to the Hearings Officer. The applicant and the City of Portland stated that they did not oppose keeping the record open for 21 days.

- J. While the record was open Jim Sjulín submitted a letter to the Hearings Officer dated December 23, 1998. He stated that he and a City attorney discussed matters related to the domestic water supply rights with Mr. Hovemann and Mr. Robert VanBrocklin. He said:

"At the present time the City continues to believe that the trail project will have no negative impact on Mr. Hovemann's domestic water supply. The City will continue to respect Mr. Hovemann's right to a water supply under the existing easement. The City also notes that Mr. Hovemann's right include[s] the right to go on to City property to protect his water supply.

"The City believes that it is premature to discuss corrective measures because the City doesn't know what problems, if any, will develop, where they might develop, and what would be needed to correct such problems. Notwithstanding this fact, the City is willing to discuss and to consider with Mr. Hovemann any reasonable proposal that would provide additional protection to his water source.

"The City has discussed these matters with Mr. Hovemann and Mr. VanBrocklin, and the City expects to hear further from the.

"The City believes that the land use application should be approved now, and that after approval we will continue to work with Mr. Hovemann toward a mutually satisfactory resolution of his concerns."

Mr. Hovemann provided no additional evidence or argument during the open record period.

STANDARDS AND CRITERIA, ANALYSIS AND FINDINGS OF FACT

1. MULTNOMAH COUNTY CODE (ZONING ORDINANCE)

K. Commercial Forest Use

11.15.2042 Purposes

The purposes of the Commercial Forest Use District are to conserve and protect designated lands for continued commercial growing and harvesting of timber and the production of wood fiber and other forest uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses; to protect scenic values; to provide for agricultural uses; to provide for recreational opportunities and other uses which are compatible with forest use; implement Comprehensive Framework Plan Policy 11, Commercial Forest Land, the Commercial Forest Use policies of the West Hills Rural Area plan, and to minimize potential hazards or damage from fire, pollution, erosion or urban development.

11.15.2044 Area Affected

MCC .2042 through .2075 shall apply to those lands designated CFU on the Multnomah County Zoning Map.

Findings and Conclusions. Multnomah County maps show the subject parcel is zoned Commercial Forest Use (CFU) and designated as an area of Significant Environmental Concern for Streams, Wildlife Habitat, and View (SEC-s, -h, -v). Exhibit A#4.

11.15.2046 Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2048 through .2056.

Findings and Conclusions. This application for a Community Service Permit is for the use of the site as a park. The applicant proposes to extend an existing trail, Wildwood Trail, through Forest Park. The subject parcel is within Multnomah County's jurisdiction. The proposed trail is not a use permitted outright in the Commercial Forest Use district. Therefore, the property owner is required to obtain County land use approval.

11.15.2050 Conditional Uses

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

* * *

- (D) The following Community Service Uses pursuant to the provisions of MCC .2053, .2074, .7005 through .7015, and .7035 through .7072.

* * *

- (9) Park, including a public or private wildlife and fisheries resources conservation area with accessory structures for educational or instructional use.

Findings and Conclusions. The applicant has requested approval for the CS application for construction of the trail and use of the site as a park. The proposed trail is intended for recreational use and is contained completely within Forest Park. The proposed extension for the trail is approximately 1,350 feet long and 30 inches wide on the subject parcel. The site plan, Exhibit A#1, illustrates the location of the proposed trail extension. The proposed use may be conditionally permitted as a Community Service Use in the CFU District upon demonstration of compliance with all applicable approval criteria. The applicable approval criteria in the Zoning Code are those listed in this subsection, except the provisions in .7035 through .7072 are not applicable

11.15.2053 Use Compatibility Standards

Specified uses of MCC .2050(C) and (D) and .2056 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;

Findings and Conclusions. The proposed trail is contained within Forest Park. No lands used for commercial forest or agriculture are next to the proposed trail location or located east of NW Newberry Road near the site. Approximately 3,375 square feet (.08 of an acre) of the total 47.65 acres will be used for the trail. The proposed extension of the Wildwood Trail is not a significant change in the use of the land. Consequently it will not have a significant effect on forestry or farming practices on surrounding lands. The application meets the criterion.

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

Findings and Conclusions. The applicant has provided a completed Fire Service Provider form. The Portland Fire Bureau official wrote: "Because of the use of the site, availability of water to [the] site is not an issue." The proposed extension of the Wildwood Trail will

not significantly increase fire hazards, fire suppression costs, or risks to fire suppression personnel. The application meets the criterion.

- (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.

Findings and Conclusions. Condition of Approval #2 requires the applicant or property owner to file the above required statement with the Division of Records. This criterion can be met.

11.15.2054 Accessory Uses

The following structures or uses may be authorized in this district provided they are customarily accessory or incidental to a permitted use:

- (A) Signs, pursuant to the provisions of MCC 11.15.7902 - .7982:

Findings and Conclusions. The applicant proposes one sign, not visible from NW Newberry Road or adjacent properties, 45 feet from the trail's intersection with NW Newberry Road. The site plan, Exhibit A1, illustrates the location of the sign. The applicant submitted two drawings for a standard City of Portland trail signpost, Exhibit A8. The proposed sign will have two cross arms. The upper cross arm will say "Wildwood Trail" and the lower one will say "Pedestrians Only." The sign is made of plywood and painted moss green with white letters.

The proposed sign is exempt from the sign ordinance requirements under Section .7912(A) which states: "[s]igns not oriented or intended to be legible from a right-of-way, private road or other private property" are exempt. No land use or building permit is required for the proposed sign, if they construct the sign as shown within the application materials and approved by this decision, CS 3-98.

- (B) Off-street parking and loading as required by MCC .6100 through .6148;

Findings and Conclusions. John Dorst, Engineering Services Administrator, met with the applicant at the site on April 22, 1998. Mr. Dorst determined that the sight distances at the proposed trail's intersection with NW Newberry Road were not adequate for a parking facility. The applicant does not proposed to establish a designated parking area along NW Newberry. Users of the trail are expected to arrive at this segment of the trail from other parts of the trail, having parked at designated trail heads. The trail at NW Newberry Road will not be designated as a trail head or shown as such on any Forest Park trail information. The sign marking the trail is located 45-feet from the road and is not visible from it, so trail user's are not invited to park on NW Newberry Road to use the trail. However, if trail users should park on the road to use the trail, the evidence is that the shoulder of

Newberry Road provides adequate parking and maneuvering space for six vehicles, although the sight distance is inadequate for a parking facility. The applicant expects no more than two or three cars to park along NW Newberry Road at any given time. The Hearings Officer concluded above that the proposed trail extension is not a significant change in the use of the land. Therefore, the Off-Street Parking and Loading requirements of Section .6100 - .6148 are not applicable.

- (C) **Type A home occupations pursuant to the definition and restrictions of MCC .0010 and .2053. Home occupations as defined by MCC .0010 do not allow the level of activity defined in ORS 215.448; and**

Findings and Conclusions. No home occupation is proposed. This subsection does not apply.

- (D) **Other structures or uses determined by the Planning Director to be customarily accessory or incidental to any use permitted or approved in this district.**

Findings and Conclusions. The applicant does not propose any other accessory uses. The trail and the trail sign are the only improvements proposed for the site. The trail is the proposed primary use. The sign, an accessory use, is addressed by subsection (A). This subsection does not apply.

11.15.2058 Dimensional Requirements

- (A) **Except as provided in MCC .2060, .2061, .2062, and 2064, the minimum lot size shall be 80 acres.**
- (B) **That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.**

Findings and Conclusions. Assessment and Taxation records at Multnomah County list the subject parcel at 47.65 acres. The applicant did not provide a parcel size calculation that includes part of the adjacent street, NW Newberry Road, should the street be vacated. Nonetheless, the parcel is a Lot of Record under Section .2062(A)(2). A lot of record is "a parcel of land for which a deed or other instrument creating the parcel was recorded . . . or was in recordable form prior to February 20, 1990." The applicant submitted a copy of a deed for the subject parcel on November 20, 1998. In this deed, the former owner granted the property to the City of Portland on January 17, 1976, and noted an existing easement for a domestic water supply which the grantors had previously granted. The deed was recorded on January 27, 1976. The parcel qualifies as a lot of record exception to the minimum 80-acre parcel size.

- (C) **Minimum Yard dimensions - Feet:**

<u>Frontage on County Main tained Road</u>	<u>Other</u>	<u>Side</u>	<u>Rear</u>
60 from centerline	130	130	130

Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet

Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 11.WH.2075, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by the MCC 11.WH.2074(A)(5)(c)(ii).

*** * ***

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

Findings and Conclusions. The only site improvements proposed are construction of a trail and installation of a trail sign 45-feet down the trail from NW Newberry Road. The applicant does not propose any buildings. The parcel has more than 60 feet of street frontage along NW Newberry Road. The rear lot line contains 867.9 feet and the side yard lines contain 2,640 feet. All exceed the minimum yard dimension requirements.

11.15.2062 Lot of Record

- (A) For the purposes of this district, a Lot of Record is**

- (2) A parcel of land:**

- (a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;**
- (b) Which satisfied all applicable laws when the parcel was created;**
- (c) Does not meet the minimum lot size requirements of MCC .2058; and**

- (d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or

Findings and Conclusions. These lot of record provisions are discussed under subsection 11.15.2058. The Hearings Officer concluded that the parcel meets the lot of record requirements.

(B) For the purposes of this subsection:

- (1) Contiguous refers to parcels of land which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way;
- (2) Substandard Parcel refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2058; and
- (3) Same Ownership refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.

(C) A Lot of Record which has less than the front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

Findings and Conclusions. The subject parcel is bisected by NW Newberry Road. The entire tract comprises the lot of record. The parcel meets the minimum street frontage distance required by Section .2058(C). Forest practices setback requirements are not applicable to this proposed development. The application meets the criteria.

11.15.2066 Off-Street Parking and Loading

Off-street parking and loading permitted as an accessory use shall be provided as required by MCC .6100 through .6148.

Findings and Conclusions. The Hearings Officer has concluded the off-street parking loading requirements do not apply. See discussion above under MCC 11.15.2054(B).

11.15.2074 Development Standards for Dwellings and Structures

Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048(D), .2048(E) and .2049(B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

Findings and Conclusions. The applicant does not propose any dwelling or structure except the exempt sign. Therefore, criteria under section 11.15.2074 do not apply.

B. Significant Environmental Concern (SEC)

11.15.6400 Purposes

The purposes of the Significant Environmental Concern subdistrict are to protect, conserve, enhance, restore, and maintain significant natural and man-made features which are of public value, including among other things, river corridors, streams, lakes and islands, domestic water supply watersheds, flood water storage areas, natural shorelines and unique vegetation, wetlands, wildlife and fish habitats, significant geological features, tourist attractions, archaeological features and sites, and scenic views and vistas, and to establish criteria, standards, and procedures for the development, change of use, or alteration of such features or of the lands adjacent thereto.

11.15.6402 Area Affected

Except as otherwise provided in MCC .6404 or MCC .6406, this subsection shall apply to those lands designated SEC on the Multnomah County Zoning Map.

Findings and Conclusions. The subject parcel is part of the area designated as a Significant Environmental Concern for Streams, Wildlife Habitat, and View on the Multnomah County SEC map, page 92. See Exhibit A4. The applicant requested an exception from the SEC requirements. The exception is discussed below.

11.15.6406 Exceptions

* * *

- (D) The placing, by a public agency, of signs, markers, aids, etc., to serve the public;

Findings and Conclusions. The City of Portland Parks Bureau proposes to place a small sign on the proposed trail 45-feet from NW Newberry Road to identify the trail. It would not be visible from NE Newberry Road or adjacent properties, but would aid trail users in finding the trail. The application meets this exception provision concerning placement of the sign because the sign is to be placed by a public agency and the sign is to serve the public..

- (E) Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses on public lands;

Findings and Conclusions. The proposed trail would enhance public recreational use by extending the existing Wildwood Trail in Forest Park to NW Newberry Road. The proposed trail is on lands owned by the City of Portland. The application meets this exception provision concerning the enhancement of public recreational uses on public lands. Therefore, the proposed trail use is exempt from SEC review.

C. Hillside Development Permit (HDP)

11.15.6700 Purposes

The purposes of the Hillside Development and Erosion Control subdistrict are to promote the public health, safety and general welfare, and minimize public and private losses due to earth movement hazards in specified areas and minimize erosion and related environmental damage in unincorporated Multnomah County, all in accordance with the ORS 215, LCDC Statewide Planning Goal No. 7 and OAR 340-41-455 for the Tualatin River Basin, and the Multnomah County Comprehensive Framework Plan Policy No. 14. This subdistrict is intended to:

- (A) Protect human life;
- (B) Protect property and structures;
- (C) Minimize expenditures for rescue and relief efforts associated with earth movement failures;
- (D) Control erosion, production and transport of sediment; and
- (E) Regulate land development actions including excavation and fills, drainage controls and protect exposed soil surfaces from erosive forces; and
- (F) Control stormwater discharges and protect streams, ponds, and wetlands within the Tualatin River and Balch Creek Drainage Basins.

11.15.6710 Permits Required

- (A) Hillside Development Permit: All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC .6715.

Findings and Conclusions. The application involves trail construction and associated site clearing. The parcel is identified on the Slope Hazard Map (Exhibit 5) as a hazard area. The natural slopes on the parcel range from approximately 16 percent to 22 percent. A Hillside development Permit is required unless specifically exempted. MCC 11.15.6715(B) exempts lands outside the Tualatin River and Balch Creek Drainage Basins if they meet the criteria in .6715(B). The subject parcel is outside the Tualatin River and Balch Creek Drainage Basins. The parcel is exempt from the Hillside Development Permit requirement and the special provisions under MCC 11.15.6715 are met. These provisions are discussed below. As discussed, the application meets the requirements below for General Exemptions for Exempt Land Use or Activity under Section .6715 —

11.15.6715 Exempt Land Uses and Activities

The following are exempt from the provisions of this Chapter:

* * *

- (B) **General Exemptions - Outside the Tualatin River and Balch Creek Drainage Basins, all land-disturbing activities outlined below shall be undertaken in a manner designed to minimize earth movement hazards, surface runoff, erosion, and sedimentation and to safeguard life, limb, property, and the public welfare. A person performing such activities need not apply for a permit pursuant to this subdistrict, if:**

Findings and Conclusions. The subject site is outside the Tualatin River and Balch Creek drainage basins. The applicant proposes to limit earth movement to the minimum amount of cut and fill necessary to create a relatively flat 30-inch wide area for trail use. The trail will be compacted, no impervious surface is proposed. The applicant proposes to revegetate the area around the trail to prevent erosion.

The applicant originally proposed to place silt fences on both sides of the cut and fill areas along the trail to prevent erosion. In a November 19, 1998 letter to Tricia Sears, Chris Cocker, the applicant's representative, stated that "[t]he silt fence above the cut area is not necessary. Fred Nilsen with the City of Portland is an arboriculturist for the Hoyt Arboretum and Forest Park with years of experience building trails for the city[. He] indicates that the silt fence will be placed above the spring location only and that bio-bags will [be] utilized where a drainage swale crosses. Fred also indicates that the sword fern plants that naturally cover the hillside work as well or better than the silt fences. He also pointed out that the construction of the trail will not occur until the dry season (May 15th 1999 or later)." Thus the applicant proposes to place silt fences below areas of the cut and fill and above areas of fill and to place bio-bags where the drainage swale crosses the proposed trail. These measures are designed to minimize hazards of earth movement, surface runoff, erosion and sedimentation.

The site plan, Exhibit A1, illustrates the location and type of proposed erosion control measures to be installed and used by the applicant. The applicant's proposed activity, to extend the Wildwood Trail for a distance of 1,350 feet with a trail width of 30 inches, meets the requirements noted below for an Exempt Land Use or Activity under Section .6715. The proposed trail project is exempt from the Hillside Development and Erosion Control HD requirements because it meets the following criteria.

- (1) **Natural and finished slopes will be less than 25%; and,**

Findings and Conclusions. The applicant has provided a site plan that illustrates the contour lines of the subject parcel. Natural slopes range from approximately 16 percent to 22 percent. The finished trail grade will average 9 percent grade. The natural and finished slopes will be less than 25% as required by this subsection.

- (2) **The disturbed or filled area is 20,000 square feet or less; and,**

Findings and Conclusions. According to the applicant, the disturbed area will be approximately 8,100 square feet. The amount of area to be disturbed by the proposed trail construction is less than 20,000 square feet. This criterion is met.

- (3) **The volume of soil or earth materials to be stored is 50 cubic yards or less; and,**

Findings and Conclusions. The applicant does not propose to store any soil or earth materials. This criterion is met.

- (4) **Rainwater runoff is diverted, either during or after construction, from an area smaller than 10,000 square feet; and,**

Findings and Conclusions. The applicant proposes only minor diversion of drainage as showed by the trail section on the Exhibit Map. The diversion arch is approximately 1350 square feet (1 x 1350 lineal feet). The applicant's proposed amount of diversion area is less than 10,000 square feet. The application meets the criterion.

- (5) **Impervious surfaces, if any, of less than 10,000 square feet are to be created; and,**

Findings and Conclusions. The applicant does not propose to pave or cover the trail with gravel or other material. The applicant proposes to compact the soil and recompact it annually during Forest Park maintenance. The applicant does not propose to create impervious surface on the site. The application meets the criterion.

- (6) **No drainageway is to be blocked or have its stormwater carrying capacities or characteristics modified.**

Findings and Conclusions. The applicant does not propose to block or to modify the storm water carrying capacity of the drainage way of Miller Creek. This criterion is met.

The applicant meets the exemption requirements of MCC 11.15.6715(B). Therefore, the applicant is not required to apply for a Hillside Development and Erosion Control Permit.

D. Community Service (CS)

11.15.7005 Purpose

MCC .7005 through .7041 provides for the review and approval of the location and development of special uses which, by reason of their public convenience, necessity, unusual character or effect on the neighborhood, may be appropriate in any district, but not suitable for listing within the other sections of this Chapter.

11.15.7010 General Provisions

- (A) Application for approval of a Community Service use shall be made in the manner provided in MCC .8205 through .8280.**

Findings and Conclusions. The applicant applied for a Community Service Permit as required by this subsection.

- (B) Except as provided in MCC .7022(F) and (G), the Approval Authority shall hold a public hearing on each application for a Community Service Use, modification thereof, or time extension.**

Findings and Conclusions. The Hearings Officer held a public hearing the application for a Community Service Use as required by this subsection.

- (C) The approval of a Community Service Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless:**

- (1) The project is completed as approved, or**
- (2) The Approval Authority establishes an expiration date in excess of the two year period, or**
- (3) The Planning Director determines that substantial construction or development has taken place. . .**

Findings and Conclusions. Condition of approval #1 provides that this Community Service approval shall expire two years from the date of this Hearings Officer Decision (or from the

date of issuance of the Board's Order if the Hearings Officers' decision is appealed) unless the approved trail project is completed as approved or substantial construction has taken place.

- (D) 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. Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing.

Findings and Conclusions. This Community Service approval is for the approved trail use of the parcel with the conditions of approval in this decision. Any change of use or modification of limitations or conditions are subject to approval authority approval after a public hearing.

- (E) In granting approval of a Community Service Use, the approval authority may attach limitations or conditions to the development, operation or maintenance of such use including but not limited to setbacks, screening and landscaping, off-street parking and loading, access, performance bonds, noise or illumination controls, structure height and location limits, construction standards, periods of operation and expiration dates of approval.

Findings and Conclusions. Glenn Hovemann, owner of the parcel benefitted by the water easement on the parcel (the dominant estate) requested that the Hearings Officer include a condition of approval to require the City of Portland, (owner of subservient estate) to either provide an alternate water supply (a well) or purchase Mr. Hovemann's water rights. Mr. Hovemann requested this condition because the users of the proposed a trail may potentially damage his water easement.

Mr. Hovemann's concern for possible vandalism of his water system does not arise from the City's proposed development of a trail on its land. It results from possible behavior of people that the City invites on to its land to use the trail.

The Hearings Officer provided additional time after the public hearing for Mr. Hovemann to discuss his concerns with the City, provide additional evidence and show the Hearings Officer what criteria applicable to the proposal would support one of the conditions he requested. Jim Sjulín, representing the City, submitted a letter dated December 23, 1998 in which he stated that the Portland staff had discussed the matter with Mr. Hovemann. He stated that Portland continues to believe the trail will have no negative effect on the water system. Mr. Sjulín pointed out that Mr. Hovemann has the right to go on to the City property to protect his water supply. The City believes that it is premature to address corrective measures because it is unknown what problems will develop if any. Mr. Hovemann did not press his concern further while the record was open.

The Hearings Officer agrees that a condition of approval to address potential activities of trail users is unnecessary because the problems are too speculative and Mr. Hovemann has the right to protect his water supply. The photos shown at the hearing show that the spring site is not visible from the trail. They also show that the area between the trail and the spring and creek is steep and heavily vegetated. It is not clear that trail users will leave the trail at this location and harm the spring or water system.

The Hearings Officer has imposed conditions to assure that certain zoning code criteria are met.

- (F) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC .7805 through .7865.

Findings and Conclusions. The recreation uses authorized by a Community Service use are subject to Design Review approval under MCC 11.15.7805 through .7865. Condition of approval #3 requires the applicant to apply for design review before any construction begins.

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

Findings and Conclusions. This provision is not a decision approval criterion. This provision simply provides notice that the approval is not a zoning amendment though the community service use approval may be depicted on the zoning map.

11.15.7015 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 .7035, and except for regional sanitary landfills which shall comply with MCC .7045 through .7070.

Findings and Conclusions. The proposed project for the proposed use of the site as a park and the proposed activity to extend the Wildwood Trail through the subject parcel includes neither a transmission tower nor a regional sanitary landfill. The applicant has addressed the approval criteria of Section .7015 below and has shown that the proposal meets the approval criteria in MCC .7035. The application meets this criterion.

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

Findings and Conclusions. The City of Portland has granted approval for the trail extension on parcels within the city of Portland. Adjacent lands are within Forest Park, a natural

wilderness park. The proposed trail, which would be contained completely within Forest Park, is consistent with the character of the area. The application meets the criterion.

(B) Will not adversely affect natural resources;

Findings and Conclusions. The site plan, Exhibit A1, illustrates the topography of the site, the location and type of erosion control measures the applicant proposes to install on the site, and the location of the trail. The subject site is not near bald eagle roosts, osprey nests, sensitive waterfowl areas, or sensitive big game wintering area, according to the Multnomah County Wildlife Habitat map. The subject parcel is designated as an area of Significant Environmental Concern for Streams, Wildlife Habitat, and View. Exhibit A4 is page 92 of the SEC Map. The applicant proposes a minimum amount of disturbance to the site to accommodate the building of the trail. The proposed construction to extend Wildwood Trail for approximately 1,350 feet at a width of 30 inches, on the subject parcel would be a minimum of 20 feet from the centerline of Miller Creek. The construction is far enough away from Miller Creek that it will not adversely affect Miller Creek when done with the proposed erosion control measures. The application meets this criterion.

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

Findings and Conclusions. The surrounding forested land are not used for commercial purposes. The area surrounding the trail is contained within Forest Park, which the applicant uses for recreation. Recreation activity on the site will be confined to hiking on the trail. Farm uses are not found next to the parcel. The proposed trail would have no effects on any farm or forest uses. The application meets this criterion.

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

Findings and Conclusions. The proposed trail does not require water, sanitary sewer, or other public services. The trail is expected to generate no more than two or three cars a day, which will not affect the capacities of NW Newberry Road. The applicant has provided completed Service Provider forms which do not indicate any additional public services are needed. The application meets this criterion.

(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;

Findings and Conclusions. The subject site is outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife. The application meets the criterion.

(F) Will not create hazardous conditions; and

Findings and Conclusions. According to the site visit by John Dorst, the County Engineering Service Administrator (see 11.15.2054(B) above), the proposed trail will not create hazardous conditions. Further discussion of topography and soils can be found in the response to Comprehensive Plan Policy #14.

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

Findings and Conclusions. The applicant has addressed the Comprehensive Plan policies and shown they are satisfied. The Comprehensive Plan policies are discussed below.

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

Findings and Conclusions. The proposed trail project will meet the standards of this section as shown within this decision.

11.15.7025 Restrictions

A building or use approved under MCC .7020 through .7030 shall meet the following requirements:

(A) Minimum yards in EFU, CFU, F-2, MUA-20, MUF, RR, RC, UF-20, UF-10, LR-40, LR-30, LR-20, LR-10, R-40, R-30, R-20, and R-10 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.

Findings and Conclusions. No building is proposed. The only structure proposed is a small trail side sign that includes the words "Wildwood Trail" and "Pedestrians Only." The sign is not subject to sign code provisions because it is exempt under Section .7912(A). The minimum yard requirements of this section do not apply to the proposed trail.

(C) Minimum yards in other districts shall be as required in the district.

Findings and Conclusions. This subsection does not apply because the minimum yard requirements in the CFU district are contained in MCC .7025(A).

(D) Minimum Site Size;

- (1) A day nursery or kindergarten shall provide not less than 100 square feet per child, of outdoor play area located other than a required front yard.
- (2) Primary (kindergarten through fourth grade), private and parochial schools shall be on sites of one acre for each 90 pupils or one acre for each three classrooms, whichever is greater.
- (3) Elementary public schools shall be on sites of one acre for each 75 pupils or one acre for each two and one-half classrooms, whichever is greater.
- (4) Churches shall be on site of 15,000 square feet.

Findings and Conclusions. The applicant proposes to extend the Wildwood Trail through the subject parcel. The proposed use is not for child care, a school, or a church. The minimum site size requirements in Section .7025 are not applicable.

- (E) Off-street parking and loading shall be provided as required in MCC .6100 through .6148.

Findings and Conclusions. The Hearings Officer has concluded that the off-street parking and loading requirements do not apply. See discussion above under MCC 11.15.2054(B).

- (F) Signs for Community Service Uses located in districts in MCC .2002 - .2966 pursuant to the provisions of MCC .7902 - .7982.

Findings and Conclusions. The CFU district is covered by MCC .2042 through .2074. Thus, it is within the districts covered by this subsection. Section .7912(A) states, "Signs not oriented or intended to be legible from a right-of-way, private road or other private property" are considered "exempt Signs." The applicant proposes one sign to mark the trail as illustrated in Exhibit A8. This sign is proposed to be placed 45 feet down the trail from its intersection with NW Newberry Road. The sign would not be visible from NW Newberry Road, or any private road or private property. It would be visible only to trail users. Under Section .7912, the proposed sign is exempt from the sign code provisions. Therefore, the sign is exempt according to 11.15.7912(A) Exempt Signs.

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

Findings and Conclusions. The trail use and development would meet the standards of the district section. They propose no bus passenger shelter. They propose no radio or transmission tower. They propose no communications facilities. They propose no landfill.

The applicant has addressed the appropriate criteria. Limitations and restrictions of use are provided within this document and the Conditions of Approval.

E. Design Review

11.15.7805 Purposes

MCC .7895 through .7865 provides for the review and administrative approval of the design of certain development and improvements in order to promote functional, safe, innovative and attractive site development compatible with the natural and man-made environment.

11.15.7810. Elements of Design Review Plan

The elements of a design Review Plan are: The layout and design of all existing and proposed improvements, including but not limited to, buildings, structures, parking and circulation areas, outdoor storage areas landscape areas, service and delivery area, outdoor recreation areas, retaining walls, signs and graphics, cut and fill actions, accessways, pedestrian walkways, buffering and screening measures.

11.15.7820 Application of Regulations

The provisions of MCC .7805 through .7856 shall apply to all conditional and community service uses . . .

11.15.15.7825 Compliance

- (A) Noncompliance with a final approved design review plan, as approved, shall be a violation of this chapter.
- (B) The Board of County Commissioners, Planning Commission, and Hearings Officer may, as a condition of approval of an action, as defined in MCC .8205, require that design review plan approval be obtained prior to issuance of a required permit.

* * *

Findings and Conclusions. Condition of approval #3 requires the owner or the applicant to apply for Design Review before any construction begins.

II. MULTNOMAH COUNTY COMPREHENSIVE PLAN POLICIES

Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision are addressed as follows:

1. **Policy No. 2, off-site Effects:** The County's policy is to apply conditions to its approval of land use actions where it is necessary to:

F. **Protect the public from the potentially deleterious effects of the proposed use; or**

G. **Fulfill the need for public service demands created by the proposed use.**

Findings and Conclusions. The only potentially deleterious effect of the proposed trail identified in the record is potential vandalism by trail users on the water system serving Glenn Hovemann's property under a water easement on the subject parcel. This potentially deleterious effect is on Mr. Hovemann's interests as a private property owner, not as a member of the public. This policy does not require the application of a condition of approval to protect Mr. Hovemann's private property interest. The record contains no evidence that there is a need for public services created by the proposed use.

2. **Policy No. 11: Commercial Forest Land.**

The County's policy is to designate and maintain as commercial forest land, areas which are:

- (A) **Predominantly in forest cubic foot site class I, II and III, for douglas fir as classified by the U.S. Soil Conservation Service.**
- (B) **Suitable for commercial forest use and small woodlot management;**
- (C) **Potential reforestation areas, but not at the present used for commercial forestry;**
- (D) **Not impacted by urban services; and**
- (E) **Cohesive forest areas; or**
- (F) **Other areas which are:**
 - 1. **Necessary for watershed protection or are subject to landslides, erosion or slumping; or**
 - 2. **Wildlife and fishery habitat areas, potential recreation areas or of scenic significance.**

The County's policy is to allow forest management with related and compatible uses, but to restrict incompatible uses from the commercial forest land area, recognizing that the intent is to preserve forest lands from inappropriate and incompatible development.

Findings and Conclusions. The proposed public recreational trail maintains as commercial forest land an area which is a recreation area as specified in policy 11(F)2. There is no evidence in the record that the proposed trail is inconsistent with Policy 11. The proposed project will not negatively affect soil, air, water, fish or wildlife resources.

3. **Policy No. 13, Air, Water and Noise Quality: Multnomah County, . . . Supports efforts to improve air and water quality and to reduce noise levels . . . Furthermore, it is the County's policy . . . to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to Air Quality, Water Quality, and Noise Levels. If the proposal is a noise-sensitive use and is located in a noise-impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan:**

1. **Building placement on the site in an area having minimal noise level disruptions.**
2. **Landscaping or other techniques to lessen noise generation to levels compatible with surrounding land uses.**
3. **Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.**

Findings and Conclusions. Because the trail will be composed of compacted soil, which is water-permeable and vegetation will be replaced on each side of the trail to prevent erosion, there would be no effect on Miller Creek. The expected use of the trail is low and the surrounding area is within Forest Park, therefore there would be little noise generated and no noise impact. A private spring is located over 80 horizontal feet away from the 30 vertical feet below the proposed trail. The terrain is steep and the vegetation between the trail and the spring and the creek is dense. Trail users are unlikely to go to those areas. The proposed trail is not expected to affect the water quality or use of the spring.

4. **Policy No. 14, Development Limitations. The County's Policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:**

- A. **Slopes exceeding 20%;**

Findings and Conclusions. The proposed trail is in areas of slopes ranging from 16 percent to approximately 22 percent. The slopes exceed 20% in some parts of the site. The subject parcel is on the Multnomah County Slope Hazard Map, page 7. The soil types, illustrated by the Soils map on file at Multnomah County and described by the Soil Survey

of Multnomah County, indicate the following soil types occur on the subject parcel:
Cascade silt loam, 15 to 30 percent slopes, Goble silt loam, 15 to 30 percent slopes.

The site plan illustrates the type and location of erosion control measures proposed by the applicant to mitigate any adverse effects of the proposed trail.

B. Severe soil erosion potential;

Findings and Conclusions. The applicant proposes to disturb (cut/fill) approximately 8,100 square feet, 1,350 lineal feet x 6 feet. All four of the soil types on the subject parcel have a high potential for erosion according to the Soil Survey of Multnomah County. The site plan illustrates the location and type of erosion control measures to be installed on the subject parcel. The site plan also provides a typical trail section illustrating the proposed work along the trail. The applicant will reseed and replant the area with native plant materials.

The applicant revised the site plan to show the areas and type of erosion control measures that will be placed along specific portions of the trail during construction. The original application showed that silt fences would be placed on both sides of the cut and fill areas along the trail. The silt fence above the cut area is not necessary. Fred Nilsen with the City of Portland, an arboriculturist for the Hoyt Arboretum and Forest Park with years of experience building trails for the city, shows on the updated site plan that the silt fence will be placed above the spring location only and that they will use bio-bags where the trail crosses a drainage swale. Fred says that the sword fern plants that normally cover the hillside work as well as or better than silt fences. He also points out that the construction of the trail will not occur until the dry season (May 15th 1999 or later).

C. Land within the 100 year flood plan;

Findings and Conclusions. The subject site is on FEMA panel 410183-0015C, dated October 19, 1982. The subject site is in Zone C, Areas of Minimal Flooding. The subject site is located at elevations between 430 feet to 860 feet on a hillside whose peak is approximately 1,000 feet in elevation. Therefore, the parcel is not subject to flooding. The subject parcel is not within the 100-year flood plain.

D. A high seasonal water table within 0-24 inches of the surface for more than 3 or more weeks of the year;

Findings and Conclusions. The subject site area is mapped in the Soil Survey of Multnomah County as Cascade silt loam, Goble silt loam, and possibly Wauld very gravelly loam. Most of the proposed trail extension lies on Cascade silt loam. Only Cascade silt loam may have a high seasonal water table within 1 to 24 inches for more than three weeks per year. This soil type has a seasonal high water table at depths of 18 to 30 inches from December through April. Goble silt loam has a seasonal high water table at 30 to 48 inches. The Wauld series is not associated with a high seasonal water table.

The high seasonal water table associated with the Cascade series would not affect the proposed trail because most trail use would be between May and October, outside the high water table season. Based on the City's experience with the existing 26 miles of the Wildwood Trail, the City expects any damage to the trail caused by the winter water table would be minor and not affect any adjacent properties. The applicant proposes to maintain the unpaved trail annually.

E. A fragipan less than 30 inches from the surface; and

Findings and Conclusions. The Cascade silt loam soil description says that this soil type typically has a fragipan between 27 inches and up to 50 inches or more below the surface. The fragipan may be 20 to 30 inches deep. The Goble soil description says that this soil type typically has a fragipan layer between 37 inches and up to 60 inches or more below the surface. The fragipan may be 30 to 45 inches deep. The Wauld series is not associated with a fragipan layer. Only the trail areas in the Cascade series may have a fragipan less than 30 inches from the surface, and the fragipan may be much lower. The proposed trail extension will continue the same use as the rest of Forest Park. No problems have resulted from the presence of a fragipan less than 30 inches from the surface.

F. Lands subject to slumping, earth slides or movement.

Findings and Conclusions. Earth movement depends on geologic/geomorphic factors, soil properties, hydrologic factors, and seismicity. Weak and highly weathered rock, steep slopes, saturated materials, unvegetated areas, and seismic activities are characteristics that promote earth movement processes. The proposed trail extension is on a site with some steep slopes, weak and seasonally saturated soils, and high potential for seismic activity.

The Geologic and Slope Hazard Maps for Unincorporated Multnomah County (Shannon and Wilson, September 30, 1978) show the area including the proposed trail site to be in "areas of known or potential slope hazards." However, the map is "intended for planning purposes," and recommends that "more detailed topography be used."

The trail site is underlain by Columbia River Basalts mantled with more than five feet of loess. Columbia River Basalts can develop a thick weathering mantle composed of clay which is prone to earth movement. At slopes greater than 35 percent, weathered basalt can be unstable. However, the slopes along the trail range from 16 to 22 percent. The loess deposits are very prone to landslides when saturated and are a significant earthquake-induced hazard. Very seasonal precipitation patterns concentrate rainfall from October through March and define the time of year when slides are most common. Relative earthquake hazard maps show that most of the site is Zone B (medium-high hazard) and Zone A (highest hazard). The Portland Hills are associated with a northwest trending, range-bounding fault located on the west side.

Most of the trail will be on Cascade series soils. The Soil Survey of Multnomah County shows moderate development limitations for paths and trails on Cascade series soils, due to slopes and wetness. Portions of the trail will be in areas with Goble and Wauld soils. Severe developmental limitations, due to slopes and small stones, are indicated for Goble and Wauld soils. But the trail would cross only small portions of these soils. According to the Soil Survey of Multnomah County "slumping is possible in areas of cut and fill" for Cascade silt loam and the Goble silt loams (7D, 17D, 17E). Wauld very gravelly loam "has severe limitations for homesites and other uses."

— Average slopes along the trail area range from 16 to 22 percent. The average trail grade is 9 percent. The proposed trail would be in areas without the steepest slopes. Trail use will be most frequent during dry periods of the year. The proposed trail avoids the steepest areas and the soils with the most severe development limitations to the extent possible. The trail is designed to be only 30-inches wide to minimize the area disturbed. The trail also follows the natural terrain to minimize the area disturbed. The applicant has used design and construction techniques to mitigate effects of the construction including silt-fencing, bio-bags and revegetation.

5. Policy 16-A: Open Space

It is the County's policy to conserve open space resources and protect open spaces from incompatible and conflicting land uses.

Strategies

- 1. Designate agricultural and forest lands with large lot zones to conserve the open character of such areas.**
- 2. Apply SEC, WRG, FW and FF overlays along rivers and other water features, as appropriate, to restrict and control the character of development in these areas to enhance open spaces.**
- 3. Review uses conditionally allowed in farm or forest zones to insure that open space resources are conserved and enhanced.**

Findings and Conclusions. The subject site is designated SEC for Streams, Wildlife Habitat, and View. The proposed use is conditionally permissible in the Commercial Forest Use zone.

The proposed use of the site as a park by extending the Wildwood Trail through the subject parcel are in keeping with the County's stated intent of Comprehensive Plan Policy #16A. The proposed trail will enhance the open space resources of Forest Park by making the park more accessible to users.

6. **Policy No. 22, Energy Conservation:** The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. The County shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:
- A. The development of energy-efficient land uses and practices;
 - B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreation centers;
 - C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
 - D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.
 - E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.

Findings and Conclusions. Subsections A through D are directed at urban developments. This site is outside the regional urban growth boundary and these policies do not apply. Subsection E relates to the development and use of renewable energy resources. That policy does not apply because no development or use of renewable energy resources is proposed. The proposed project would not affect energy-efficiency, density and intensity of development, the transportation system, lotting patterns, or energy resources.

7. **Policy 31 Community Facilities and Uses**

The County's Policy is to:

- A. Support the siting and development of a full range of community facilities and services by supporting the location and scaling of community facilities and uses meeting the needs of the community and reinforcing community identity.
- B. Encourage community facilities siting and expansion at locations reinforcing orderly and timely development and efficient provision of all public services and facilities.
- C. Encourage land use development which support the efficient use of existing and planned community facilities
- D. Support the development of a unified approach to long range community facilities planning and capital investment programming in Multnomah County.

Findings and Conclusions. Wildwood Trail is a community facility and the Friends of Forest Park has concluded the community needs the facility to be extended. Forest park is an important community facility that requires orderly and timely development to continue to serve the needs of the region. The proposed trail would extend the existing Wildwood Trail so that this portion of the park would be connected to the trail system.

The applicant's proposed activity to extend the existing Wildwood Trail supports the efficient use of existing and planned community facilities. The applicant's approach to the proposed development appears unified, orderly, and timely. The trail is a recreational facility that serves the metropolitan area.

E. Classify Community facilities according to their function and scale of operations.

<u>SCALE</u>	<u>TYPE OF FACILITIES</u>
* * *	
Minor Regional	Cemeteries Regional Parks Boat Launches Marinas Recycling Center Half-way Houses General Aviation Airports
* * *	

Findings and Conclusions. Forest park, and therefore the proposed trail within it, is classified as a minor regional facility.

F. Locate community facilities on sites with average site grades consistent with a project's scale and impacts, site slope requirements by scale are:

<u>SCALE</u>	<u>SLOPE STANDARD</u>
* * *	
Minor Regional	6%
* * *	

For sites with average slopes steeper than the standard the developer must be able to demonstrate that through engineering techniques all limitations to development and the provision of services can be mitigated.

Findings and Conclusions. The average grade of the proposed trail is 9 percent, the slopes of the parcel in the area of the proposed trail ranges between 16 and 22 percent, steeper than the standard. The method of creating the trail with some cut and fill on each side is a standard engineering technique that is safely implemented for numerous trails with similar average slopes. The technique is well proven in Forest Park and other parks in the Metro area. The technique proposed anticipates some minimal sloughing to ultimate trail widths.

The applicant has demonstrated that the limitations to development can be mitigated. The site plan shows a trail section showing how the work will be done to create the trail and to protect the site.

- G. Support the location of community facilities on existing transportation systems with volume capacities and modal splits available and appropriate to serve present and future scales of operation. Vehicular access requirements by scale of facility are:

SCALE

VEHICULAR ACCESS STANDARDS

* * *

Minor Regional

Direct access to a collector street and no routing of traffic through local neighborhood streets.
Public transit available within 1/4 mile.

* * *

Findings and Conclusions. Access to the trail from the nearest public road is NW Newberry Road. NW Newberry is classified as a Local Street. Access to the proposed trail would be mostly from within Forest Park. The applicant expects no more than two to three cars per day to approach from NW Newberry Road, the capacity of NW Newberry Road.

The Land Use Location Policies of the Comprehensive Framework Plan (Policies 24-31) provide flexibility in the application of the Comprehensive Framework Plan provisions in relationship to a proposed action. The Plan states, "It is intended that these locational criteria be construed in a flexible manner, in the interest of accommodating those proposals which, though not strictly in conformance with the applicable criteria, are found to be in the public interest and capable of harmonious integration into the community. The burden of proving conformance of a proposal to the Plan should vary with the degree of change and impact on the community: the more drastic the change and the greater the impact, the more strictly the criteria should be construed (page 30-1 and 30-2)." The degree of change to the site to accommodate the trail is minimal and the impact of the trail on the

community is minimal. The proposed action is a project that is in keeping with the public interest and is capable of harmonious integration into the community. Therefore, this plan policy is met.

H. Restrict the siting of community facilities in locations where site access would cause dangerous intersections or traffic congestion considering the following:

- 1. Roadway capacities.**
- 2. Existing and projected traffic counts.**
- 3. Speed limits.**
- 4. Number of turning points.**

Findings and Conclusions. During an April 22, 1998 site visit John Dorst, Engineering Services Administrator, met with the applicant. He determined there was inadequate sight distance for a parking facility at the site even though the shoulder of NW Newberry Road would provide adequate parking and maneuvering space for six vehicles. The applicant expects no more than two or three cars to park at the trail at any given time.

Access to the trail extension is expected to be by foot from the trail within the City of Portland. The proposed trail is not expected to cause a dangerous intersection or traffic congestion.

I. Support community facilities siting and development at sites of a size which can accommodate the present and future uses and is of a shape which allows for a site layout in a manner which maximizes user convenience, energy conservation, and pedestrian and bicycle access to and within the site.

Findings and Conclusions. The proposed trail is for pedestrians only. The proposed trail will not adversely affect the size, shape, and layout of Forest Park. The use of the site as a public recreation area will accommodate present and future uses of the park.

J. Promote compatible development and minimize adverse impacts of site development on adjacent properties and the community through the application of design review standards codified in MCC 11.15.7804 - 11.15.7865.

Findings and Conclusions. Upon approval of this Community Service Use Permit, the applicant is required by condition of approval #3 to apply for design review. The proposed trail is compatible with the use of the adjacent property as part of Forest Park.

- K. Provide for the siting and expansion of community facilities in a manner which accords with the other applicable policies of this plan.

Findings and Conclusions. The proposed use of the parcel as a park and the proposed extension of Wildwood Trail through the subject parcel will accommodate present and future uses of the site as a public recreation area. The evidence in the record does not indicate any conflict with policies of the Multnomah County Comprehensive Plan.

8. Policy No. 37, Utilities: The County's policy is to require a finding prior to approval of a legislative hearing or quasi-judicial action that:

WATER DISPOSAL SYSTEM:

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

Findings and Conclusions. Water and sewer facilities are not required for the proposed park use of the site as an extension of Wildwood Trail through the subject parcel.

DRAINAGE:

- E. There is adequate capacity in the storm water system to handle the increased run-off; or
- F. The water run-off can be handled on the site or adequate provisions can be made; and
- G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjacent lands.

Findings and Conclusions. The proposed trail would be created by compacting the soil; no impervious surfaces will be created. No additional storm water run-off is created by the proposed trail. Minimal storm water diversion is proposed (see Trail Section on Exhibit Map). The surrounding area is vegetated; therefore the storm run-off would not be an

issue. The proposed trail would be a minimum 20 feet from the drainage way and would have negligible impact on it.

ENERGY AND COMMUNICATIONS:

- H. There is an adequate energy supply to handle levels projected by the plan;
and
- I. Communications facilities are available.

Findings and Conclusions. Neither communication or energy facilities are necessary for the proposed nature trail.

9. Policy No. 38, Facilities: The County's Policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

- A. The appropriate School District has had an opportunity to review and comment on the proposal.

Findings and Conclusions. The use of the subject property as a trail within a park has no impact on schools. This criterion is not applicable.

- B. There is adequate water pressure and flow for fire fighting purposes; and
- C. The appropriate fire district has had an opportunity to review and comment on the proposal.

Findings and Conclusions. The applicant has provided a completed Fire Service Provider form from the Portland Fire Bureau. The fire service provider indicated that service is adequate. The application meets the criterion.

- D. The proposal can receive adequate local police protection with the standards of the jurisdiction providing police protection.

Findings and Conclusions. The applicant provided a completed Policy Service Provider form from the Multnomah County Sheriff's Department. The application meets the criteria.

10. Policy No. 40, Development Requirements: The County's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

- A. Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.

Findings and Conclusions. The proposed section of trail extension furthers the policy to encourage a connected park and recreation system. The proposed trail is intended for pedestrian use only. The applicant's proposed activity to extend the existing Wildwood Trail through the subject parcel is a pedestrian connection as described within this subsection. The trail, as stated by the applicant, is not for bicycle use.

- B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**

Findings and Conclusions. The proposed trail and Forest Park are community service facilities. This criterion is not applicable because the proposed development is not commercial, industrial or multiple family.

- C. Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

Findings and Conclusions. The proposed trail is intended for pedestrian use only. Therefore bicycle parking is not necessary. There has been no identified need for pedestrian and bicycle path connections from this area to parks, recreation areas or community facilities. There is no bicycle corridor crossing the site designated on the capital improvements program and map. This criterion does not apply.

CONCLUSION

1. The applications either complies or can be made to comply through conditions of approval, with all applicable criteria.
2. The Hillside Development Permit (HDP) Code provisions include the grading and erosion control provisions. The applicant's proposal qualified for an exemption from the HDP under the provisions in Section .6715, Exempt Land Uses and Activities, subsection (B).
3. The applicant's proposed activities qualify for exemptions in the Significant environmental Concern (SEC) Code provisions in Section .6406, Exceptions, subsections (D) and (E).
4. The applicant is not required to obtain a land use or building permits for the proposed sign, illustrated in Exhibit A#8, as long as the sign is constructed as shown within the application materials and approved by this decision document, CS 3-98.

The Hearings Officer hereby approves CS 3-98, subject to the conditions contained in this decision, to allow the use of the site as a park and construction of the extension of Wildwood Trail on Commercial Forest Use (CFU-2) zoned property.

IT IS SO ORDERED, THIS 22rd DAY OF JANUARY, 1999



Deniece B. Won, Land Use Hearings Officer

LIST OF EXHIBITS

List A: Staff/Applicant Exhibits:

- A1. Applicant site plan.
- A2. Forest Park Wildwood Trail Extension Concept Plan.
- A3. Forest Park Trails map.
- A4. Multnomah County Significant Environmental Concern Map, page 92.
- A5. Multnomah County Slope Hazard Map, page 7.
- A6. West Hills Reconciliation Report, Newberry Creek Stream Profile (3 pages).
- A7. Multnomah County Sensitive Big Game Wintering Areas map.
- A8. Trail sign elevations provided by the Portland Parks and Recreation department (2 pages).

List B: Notification Information:

- B1. "Complete application" Letter, 1 page.
- B2. Notice of Hearing, 4 pages.

List C: Multnomah County Documents

- C1: Staff Report - December 9, 1998

List H: Documents receiving during hearing process

- H1. Miller Creek Stream Profile dated May 13, 1994
- H2. Letter from Glenn Hovemann, dated December 12, 1998
- H3. Affidavit of Posting
- H4. Letter from Jim Sjulín, Portland Parks and Recreation, dated December 23, 1998

Appeal to the Board of County Commissioners

The Hearings Officer decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An Appeal requires a completed "Notice of Review" form and a fee of \$500.00 plus a \$3.50 - per - minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the Multnomah County Land Use Planning Office at 2115 SE Morrison Street in Portland, or you may call 503-248-3043 for additional instructions.