

1600 SE 190th Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

DECISION OF HEARINGS OFFICER

Case File: T3-2019-11682

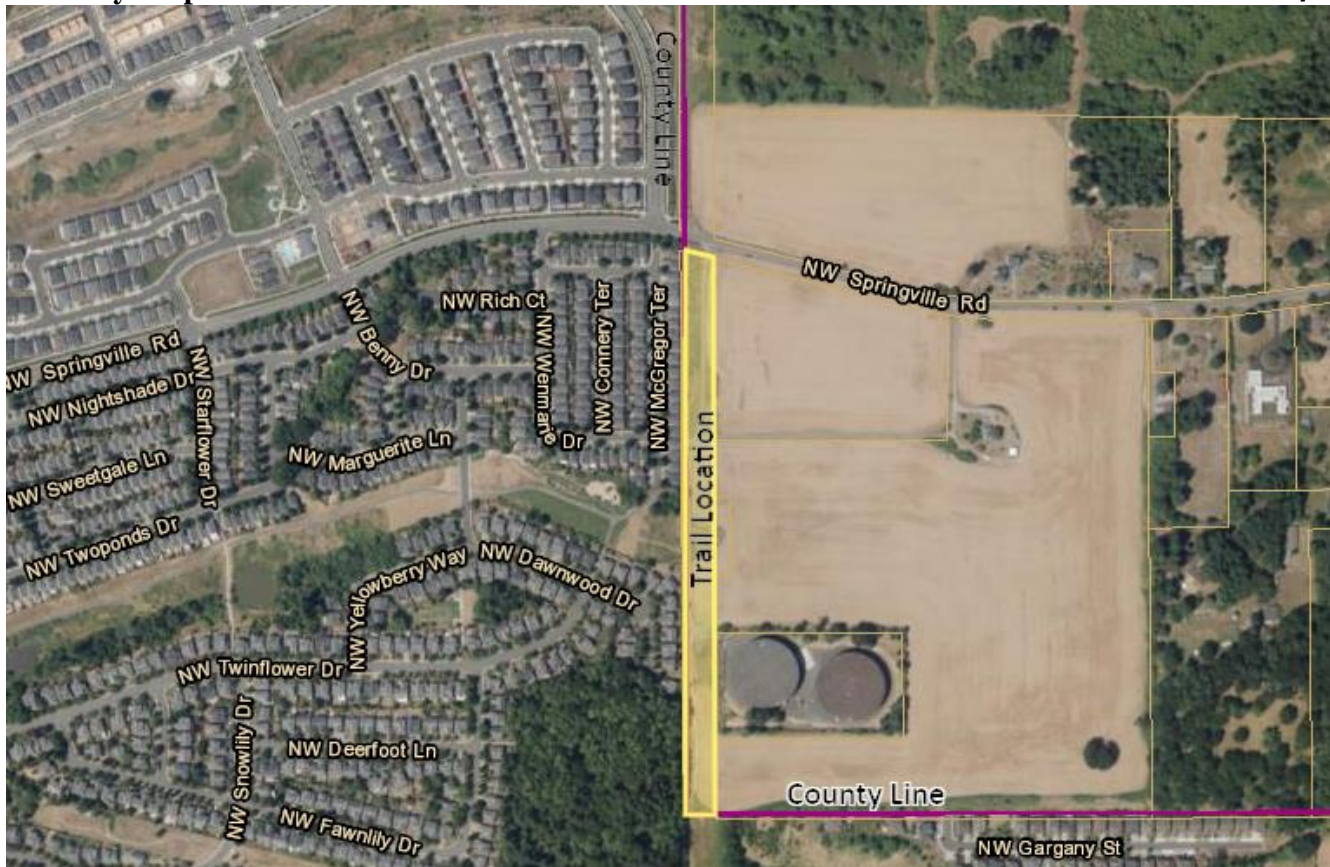
Hearing Date, Time, and Place: The hearing was opened at 10:30 a.m. on **Friday, August 23, 2019**, in Room 103 at the Land Use Planning Division office located at 1600 SE 190th Avenue, Portland, OR 97233, and was closed at 12:35 p.m. At the conclusion of the hearing, the record was held open until 4:00 p.m. September 13, 2019.

Permits: Conditional Use Permit, Significant Environmental Concern for Wildlife Habitat (SEC-h), Design Review and Lot of Record Verification

Location: Bonneville Power Administration Property between Washington County to the west and 14344 NW Springville Road, Portland to the east
Adjacent to Tax Lot 2800, Section 16C, Township 1 North, Range 1 West, W.M.
Adjacent to Alternate Tax Account #R961160340 or Property ID #R324317

Vicinity Map

North ↑



Base Zone: Exclusive Farm Use (EFU)

Area Involved: 4.21+/- Acres

Applicant: WH Pacific, Inc. c/o David Bantz

Property Owner: Bonneville Power Administration (“BPA”)

Summary: The applicant is proposing to construct a public trail that will extend from the existing Rock Creek Greenway Trail in the Washington County urban area to NW Springville Road in Multnomah County, within the EFU zone. At NW Springville Road, the proposed trail will turn west back into urban Washington County and cross NW Springville Road within Washington County’s jurisdiction. Trail length within Multnomah County will be approximately 1,832 feet.

Testified at the Hearing: Lisa Estrin, County Planner
Joanna Valencia, County Transportation Planner
Gary Kek, Tualatin Hills Parks and Recreation District (“THPRD”) Development Manager
Daniel Bantz, applicant’s planner
Kelly Hossaini, applicant’s attorney
John Champlin, applicant’s landscape architect
Sam Scheerens, Chair of THPRD Nature and Trails Advisory Committee
Andrew Holtz, member of the Multnomah County Bicycle/Pedestrian Committee
Greg Olson, area resident
Wendy Kroger, THPRD Board Member
Carol Chesarek, President of the Forest Park Neighborhood Assoc.

Multnomah County Code (MCC) Applicable Approval Criteria:

General Provisions:

MCC 39.2000 Definitions
MCC 39.3005 Lot of Record – Generally
MCC 39. 3070 Lot of Record – EFU
MCC 39.6850 Dark Sky Lighting Standards

Administration and Procedures

MCC 39.1515 Code Compliance and Applications

Exclusive Farm Use (EFU) Zone:

MCC 39.4230(R) Conditional Uses – Transportation facilities
MCC 39.4245 Dimensional Requirements and Development Standards

Significant Environmental Concern for Wildlife Habitat (SEC)

MCC 39.5510 Uses; SEC Permit Required
MCC 39.5520 Application for SEC Permit
MCC 39.5545 Definitions
MCC 39.5580 Nuisance Plant List
MCC 39.5850 – 39.5860 Criteria for Approval of SEC-H Permit

Conditional Uses

MCC 39.7000 – MCC 39.7035 Conditional Uses

Parking, Loading, Circulation and Access

MCC 39.6500 – MCC 39.6600 Parking, Loading, Circulation and Access

Design Review

MCC 39.8005 – MCC 39.8050 Design Review

MCC 39.6700 – MCC 39.6820 Signs

Comprehensive Plan Policies

Exclusive Farm Use Policy 3.8 and 3.10

Comprehensive Plan Introduction, Community Facilities Strategy 2.45,

Park and Recreation Planning Strategies 8.1, 8.2, 8.3, 8.5, 8.7, and 8.8, and

Bicycle Plan Objective #1.

Multnomah County Road Rules (MCRR) Approval Criteria:

MCRR 4.000 Access to County Roads

MCRR 5.000 Transportation Impact

MCRR 6.000 Improvement Requirements

MCRR 7.000 Transportation Impact Studies

MCRR 8.000 Off-site Improvement Requirements

MCRR 9.000 Compliance Method

MCRR 17.000 Appeals

MCRR 18.000 Right-of-Way Use Permits

MCRR 26.000 Stormwater and Drainage

DECISION: The request for Conditional Use (CU), Significant Environmental Concern for Wildlife Habitat (SEC-h), Design Review Permit (DR Permit), and Lot of Record Verification, for the Bethany Creek Trail within the BPA right-of-way west of 14344 NW Springville Road is **Approved** subject to the conditions of approval included in this Final Order.

CONDITIONS OF APPROVAL:

A. Land Use Planning Conditions

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(s) to comply with these documents and the limitations of approval described herein. [MCC 39.7010, MCC 39.1170]
2. This land use permit expires as follows:
 - a. When construction has not commenced within two years of the date of the final decision. Commencement of construction shall mean ground disturbing activities establishing the Trail.
 - b. When the development has not been completed within four years of the date of commencement of construction. Completion of the development shall mean completion of the physical improvements and compliance with all conditions of approval in the land use approval. [MCC 39.1185(B)]

Note: The applicant may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. On the occasions where Tualatin Valley Water District, Bonneville Power Administration or Tualatin Hills Park and Recreation Department are utilizing motorized vehicles on the Trail, the vehicles shall be limited to a maximum speed of 10 mph. [MCC 39.7015(A)(6)]
4. Tualatin Hills Park and Recreation Department shall post permanent warning signs at both ends of the Trail to alert users that they are entering an active farming area where farming activities may generate dust, odors, and other impacts on and near the Trail. [MCC 39.7015(A)(3)]
5. When a farmer notifies Tualatin Hills Park and Recreation Department (THPRD) that spraying or dust generating activities will occur adjacent to the east property line of the BPA property that could affect trail users, THPRD shall post temporary signs at all entry points to the Trail advising of the farming activity and potential impacts on trail users. [MCC 39.7015(A)(3)]
6. Tualatin Hills Park and Recreation Department (THPRD) shall regularly clean up litter from the Trail vicinity to prevent litter from entering the farmland to the east. At a minimum, the THPRD shall pick up any existing litter on the Trail twice a week, with more clean ups scheduled as necessary. [MCC 39.7015(A)(3)]
7. Prior to commencement of construction or use of the Trail by the public, Washington County Transportation shall approve the proposed signalized crosswalk across NW Springville Road. If the proposed crosswalk design is not approved by Washington County, the alternative crosswalk design shall be brought back to the Hearings Officer for formal review to ensure compliance with MCC 39.7015(A)(6).
8. Tualatin Hills Park and Recreation Department (THPRD) shall remove and keep removed any nuisance plants from all cleared areas within the trail easement area of the BPA property. [MCC 39.5860(B)(7)]
9. Prior to commencement of construction, the applicant shall obtain County approval of a detailed habitat mitigation planting plan to mitigate habitat impacts within the 36,640+/- square foot disturbance area. The mitigation area shall be located within or immediately adjacent to the SEC-h overlay within THPRD's Banister Creek Greenway site. If the mitigation planting area is located outside of the SEC-h overlay, the applicant shall execute and record a deed restriction, such as a restrictive covenant protecting and persevering the mitigation plantings. The plan shall be submitted as part of the final project permitting and preparation of construction drawings. [MCC 39.5860(C)(5)(d)]. If staff are unable to approve the wildlife conservation plan, the plan shall be brought back to the Hearings Officer for formal review to ensure compliance with the wildlife habitat mitigation requirements of MCC 39.5860(C)(5). [MCC 39.5860(C)(5)]
10. Any required mitigation trees, shrubs and ground cover shall be native and selected from Metro's native plant list. [MCC 39.5860(C)]
11. Only one freestanding sign may be constructed on the BPA property for the Trail use. The applicant shall either redesign one of the proposed freestanding signs to qualify as a directional sign or remove the additional signs completely from the BPA property. [MCC 39.6745(A)]
12. Prior to undertaking any ground disturbing activities on the site, the applicant shall obtain County approval of a Type 1 non-discretionary Ground Disturbing Activity and Stormwater

permit or demonstrate the project qualifies as an exempt activity pursuant to MCC 39.6200 through MCC 39.6235. [MCC 39.6200]

B. Transportation Planning Conditions

1. Obtain a county right-of-way permit to complete frontage improvements as required under MCRR 6.100B, including: signage, driveway improvements, and stormwater facilities. Reimburse Multnomah County for the installation of signage to warn of upcoming crossing ahead. [MCRR 6.100, 8.000, and 18.000]
2. Sight distance shall be maintained at the Trail crossing and NW Springville Road trail to meet AASHTO standards. [MCRR 8.000, 16.225]
3. Crossing and trail use shall be maintained in order to ensure that crossing occurs at the designated location. [MCRR 6.100 and 8.000]
4. No parking will be allowed on NW Springville Road for trail use [MCRR 5.000 and 8.000]

Dated this 3rd day of October 2019



Joe Turner, Esq., AICP
Multnomah County Land Use Hearings Officer

This Decision is final when mailed. Appeals may be filed with the Oregon Land Use Board of Appeals within the time frames allowed by State law.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Code sections that have been shortened or had non-applicable sections removed will show * * * to identify that modification. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusory statement in *italic*. Staff findings have been accepted as findings by the Hearings Officer except where noted otherwise. Additional findings written by the Hearings Officer are preceded by the words “**Hearings Officer:**”

1.0 Project Description:

Staff: The applicant is requesting a conditional use permit to establish a transportation facility that serves local travel needs as listed in MCC 39.4230(R). The proposed public trail segment within Multnomah County is approximately 1,832 feet long and occupies a 4.21 acre portion of a larger parcel owned by the BPA. The subject area has been delineated on the vicinity map on page 1 of this Final Order and will be referred to as the “BPA property” or the “site.” The Trail will be used for pedestrian, bicycle and other non-motorized vehicle purposes and will serve as a connector between various public trails located in Washington County. Motorized vehicles will use the paved Trail on occasion as access for maintenance of the BPA lines and Tualatin Valley Water District (“TVWD”) water reservoirs located south of NW Springville Road (Exhibit A.10 and A.51). In addition to the conditional use permit, the applicant has applied for Design Review for the finished trail design, a

Significant Environmental Concern permit for wildlife habitat, and a Lot of Record Verification for the BPA property and IN1W16C - 02800.

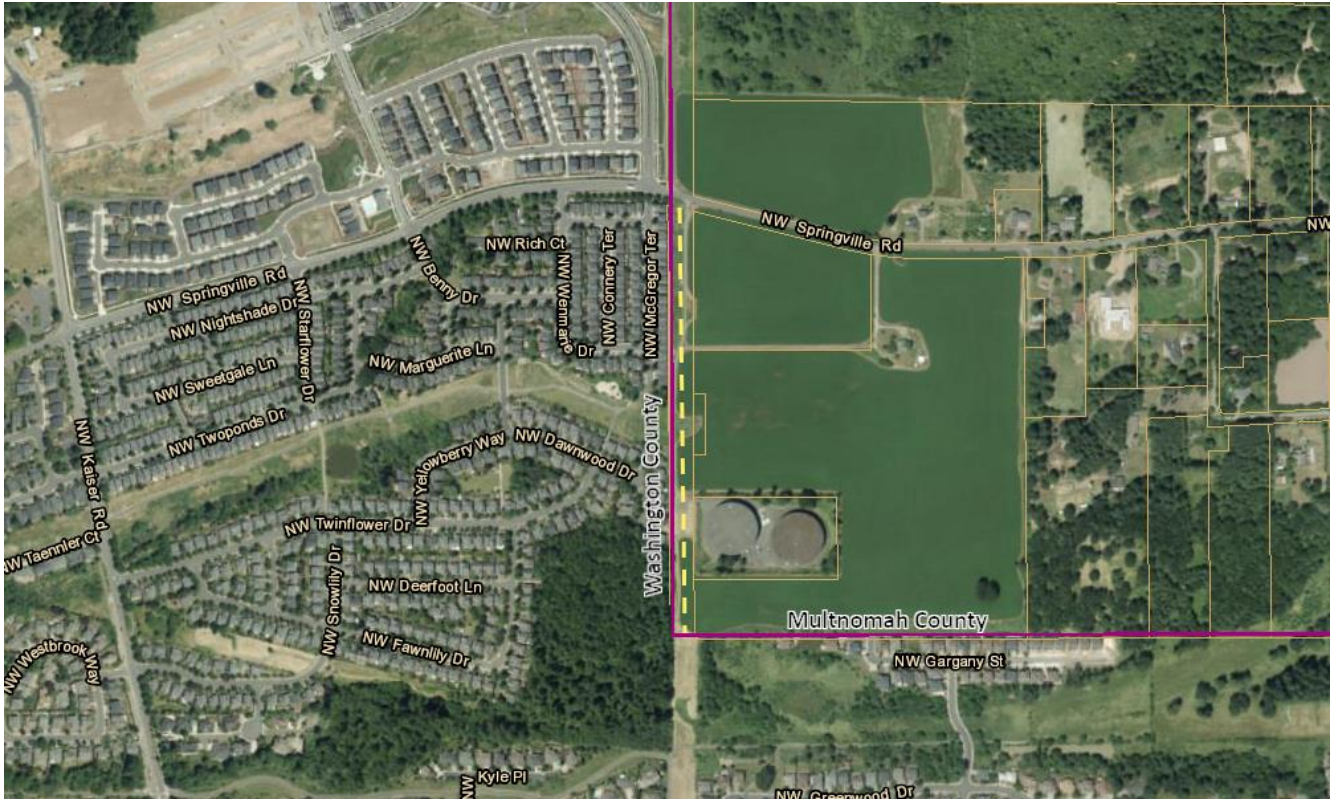
The proposal includes construction of a ten-foot wide paved trail with a two-foot wide gravel strip for storm water infiltration on each side of the Trail. The proposed Trail segment will connect to four existing trails located in urban Washington County and then turn west along NW Springville Road and reconnect to an existing trail to the north of NW Springville Road in urban Washington County. A split-rail fence is proposed to be built along most of length of the Trail to establish a boundary between the Trail and the agricultural use on the BPA property and the separate EFU zoned parcels to the east. The Trail will be open from dawn to dusk. The hours of operation will be posted at all Trail entry points. No gates are proposed to restrict access during non-operational hours (Exhibit A.46).

The applicant's mitigation planting area for the Significant Environmental Concern for wildlife habitat permit is shown on Sheet L1.05 and is proposed within Washington County to the rear of an adjacent urban housing tract and NW Snowlily Drive. The area is approximately 1,147 feet from the southwest of the corner of the Washington and Multnomah County boundary (southwest corner of Section 16, 1 North, 1 West). However, as discussed in Section 7.20, the applicant will be required to utilize an alternative mitigation planting area in THPRD's Banister Creek Greenway site, within or adjacent to the SEC-h overlay.

The applicant has provided four alternative trail alignments and the preferred alignment as part of the submittal. The hearings officer has considered the Preferred Alignment for most of the findings listed below. The alternative trail alignments are reviewed under MCC 39.7020 as required for new Transportation Improvements on EFU zoned lands.

2.0 Property Description and Surrounding Land Uses:

Staff: The proposed public trail is to be built within an existing BPA owned property within Multnomah County's EFU zone. Other properties to the immediate north and east are also designated EFU. The Trail is proposed on BPA property located outside of the Urban Growth Boundary which separates Washington from Multnomah County and runs along the BPA's western property line (mauve colored line in the aerial photo below). The land to be devoted to the Trail is currently used for the BPA power lines and service corridor, an access road to the TVWD tank site, a farm equipment access route, and the edges of farm fields. The applicant will construct the majority of the Trail segment (yellow dashed line below) on top of the existing driveway/access road for TVWD and BPA. Vehicles from these two agencies will use the Trail when necessary to access their improvements (Exhibit A.46).



The project will provide a trail segment to connect with a number of existing public trails within Washington County that have been developed and are maintained by the Tualatin Hills Park and Recreation District (“THPRD”). THPRD’s district boundaries are within Washington County. The existing developed trails are contained within the urban area with routes serving various destinations as shown on the Trail map (Exhibit A.40).

To the east of the BPA property are the TVWD’s reservoirs and large farm fields. These properties are zoned EFU. The County approved the reservoir site in 2008 (Exhibit H.7) and the fence around the reservoir site was found to be a nonconforming use in 2009 (Exhibit B.3). The fields to the east of the BPA property are being actively farmed by a tenant farmer (hereafter referred to as “The Farmer”) (Exhibit B.15 and B.16). The Farmer also farms portions of the BPA property and uses it for farm equipment movements based on County aerials (Exhibit B.8). One of the farm properties contains a single family dwelling. To the north of NW Springville Road are additional farmed fields zoned EFU. Further east, the properties are zoned Multiple Use Agriculture – 20. Most of these properties are occupied by single family dwellings. Properties in the area are served by NW Springville Road, a rural collector. The section of NW Springville Road within Multnomah County is a two lane road with no paved shoulders for off-road travel by bicyclists or pedestrians. The road is rural in character.

A detailed map of the Tualatin Hills Park & Recreation District. The map shows a network of green trails, including the Rock Creek Trail, Waterhouse Trail, and Sunset Trail. Various parks are labeled, such as Northwest Park, Rock Creek Landing Park, Rock Creek North Soccer Fields, Rock Creek Lake Park, Rock Creek Park, Somerset West Swim Center/Park, Bronson Creek Park, Autumn Ridge Park, Willow Creek Park, Kaiser Woods Park, Kaiser Village, Bannister Creek Greenway, Bonny Slope Park, The Bluffs Park, Terra Linda Park, Joak House, Jackie Hussey Park, Cedar Mill Park, Roger Tilbury Memorial Park, Mitchell Park, Foege Park, Timberland Park, Pioneer Park, H.M. Terpening Recreation Complex, and Sunset Swim Center Park. Other features include soccer fields, elementary schools, and landmarks like the PCC Recreation Center. Major roads shown include Hwy 26 (Sunset Hwy), Evergreen Pkwy, and various local streets like Cornwell Rd, Walker Rd, and Skyview Rd. A logo for the district is in the top right corner, along with the website address www.thprd.org.

MCC 39.1515 CODE COMPLIANCE AND APPLICATIONS.

* * *

4.0 Lot of Record Verification

MCC 39.3005- LOT OF RECORD – GENERALLY.

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700.

Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

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

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

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

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

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

Staff: This code criteria requires the property to have 1) satisfied all applicable zoning laws and 2) satisfied all applicable land division laws, when created or reconfigured. Properties created before County zoning and land division codes were established in 1955 are presumed to have met this standard. The applicant has requested a Lot of Record determination for the BPA property and tax lot 1N1W16C – 02800. Tax lot 1N1W16C – 002800 may be part of the lot of record.

The applicant has provided deed information for the creation of the BPA property. The deed information is described as “Judgement on the Declaration of Taking” dated March 16, 1939 (Exhibit A.20) and allowed the Federal Government to utilize eminent domain to purchase various land segments from individual property owners at the time. As the County had not commenced zoning as of that date, the recorded judgement with legal description would have created the parcel. The BPA property shown on the vicinity map on page 1 of this Final Order is a 4.21-acre portion of the parcel created through eminent domain, which is a larger and much longer unit of land than the project site (Exhibit B.3, Page 10). The BPA property was established prior to zoning and land division

regulations and has not been reconfigured since its creation. Based on the declaration of taking (Exhibit A.20) the project area is part of a larger legal parcel.

The applicant in their Exhibit A.5, Page A-2 lists tax lot 1S1W16C – 02800 as part of the legal description in their application. Tax lot 1S1W16 is not an area within Multnomah County. The applicant has clarified that they meant tax lot 1N1W16C – 02800 which is in the County’s jurisdiction (Exhibit A.47). The BPA owns Tax lot 1N1W16C and the tax assessor lists its size as 0.29 acres. Tax lot 1N1W16C – 02800 is being reviewed as part of this application as it is potentially a portion of the Lot of Record. Information in the record (Exhibit B.4) shows this tax lot was created in 1947. The County did not commence zoning until the mid-1950’s. Tax lot 1N1W16C-02800 was established prior to zoning and land division regulations and has not been reconfigured since its creation. Therefore tax lot 1N1W16C – 02800 is a lot of record.

MCC 39.3070 LOT OF RECORD – EFU (EFU).

(A) In addition to the standards in MCC 39.3005, for the purposes of the EFU 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 in Figure 1 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, SRC, BRC, 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) Exception to the standards of (A)(2) above:

(a) 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, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 and 116;**
- (3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 and 149;**
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties. Ord. 236 and 238;**
- (5) February 20, 1990, lot of record definition amended, Ord. 643;**
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;**
- (7) 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 39.4260 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.**

Staff: MCC 39.3070 requires lots/parcels/units of land less than 19 acres in size in the same ownership as of February 20, 1990, to be aggregated with adjacent parcels in the CFU-2 (Commercial Forest Use) and EFU resource zones.

The BPA property and tax lot 1N1W16C-02800 were both owned by the BPA on February 20, 1990, and are adjacent to each other. Neither property was created by a plat on or after February 20, 1990. The BPA property is significantly larger than 19 acres in size (Exhibit A.19). Since tax lot 1N1W16C – 02800 is only 0.29 acres, it is aggregated with the BPA property. Tax lot 1N1W16C-02800 and the BPA right-of-way are aggregated as a single Lot of Record.

5.0 EFU Approval Criteria

5.1 MCC 39.4230 CONDITIONAL USES.

The following uses may be permitted when found by the approval authority to satisfy the applicable provisions in MCC 39.7000 to 39.7035 and the criteria listed for the use:

*** * ***

(R) Transportation facilities, services and improvements that serve local travel needs, and which:

(1) Are not otherwise listed as a use in this EFU base zone or in OAR 660-012-0065 “Transportation Improvements on Rural Lands;” and

(2) Satisfy the approval criteria in MCC 39.7015 and MCC 39.7020.

Hearings Officer: The applicant is proposing to construct a public trail that will extend from the Washington County border in the NW Springville Road right-of-way southward to the Multnomah and Washington County boundary within the BPA property as show in the graphic included above in Section 2.0.

The BPA property does not currently contain any public transportation facilities (highway, street, road, sidewalk, etc.). Planning staff considered various transportation uses listed in the EFU zone under Allowed Uses (MCC 39.4220) and Review Uses (MCC 39.4225) and did not find the construction of a new transportation facility listed within those sections (Exhibit B.12). The above conditional use provision allows for new transportation facilities (bike/pedestrian trail) that serve local travel needs provided it satisfies the approval criteria listed in MCC 39.7015 and MCC 39.7020. If the proposed Trail is not granted an approval through the Conditional Use Permit process it is not allowed in the zone.

The hearings officer has considered the applicant’s submittal and makes the following findings for the approval criteria listed in MCC 39.7015 which can be found in Sections 6.03 through 6.10 and MCC 39.7020 in Section 6.12 below.

5.2 MCC 39.4245 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.

(A) Except as provided in MCC 39.3070, the minimum lot size for new parcels shall be 80 acres in the EFU base zone.

(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.

Staff: The subject property is a Lot of Record pursuant to MCC 39.3070. No new parcels are being created as part of the proposed application. *These criteria are not applicable.*

5.3 (C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

(1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall.

(2) An Accessory Structure may encroach up to 40 percent into any required Yard subject to the following:

(a) The Yard being modified is not contiguous to a road.

(b) The Accessory Structure does not exceed five feet in height or exceed a footprint of ten square feet, and

(c) The applicant demonstrates the proposal complies with the fire code as administered by the applicable fire service agency.

(3) A Variance is required for any Accessory Structure that encroaches more than 40 percent into any required Yard.

(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.

Staff: The NW Springville Road right-of-way is currently 60 feet wide. The roadway has sufficient right-of-way width for its classification. The Minimum Yard Dimensions of (C) do not need to be increased for future expansion of this roadway.

The BPA property is 100 feet wide at its junction with NW Springville Road. The minimum front lot line length of 50 feet has been provided. The County Yard requirements apply to structures over 30-inches in height (See MCC 39.2000 – Yard for definition). The BPA property line separating the lot from a street (NW Springville Road) qualifies as the Front Lot Line pursuant to MCC 39.2000 Definitions. The western and eastern BPA property lines are Side Yards and the southernmost line at the boundary between Multnomah County and Washington County would be the Rear Yard. Staff has identified only two types of structures on the applicant’s plans (Exhibit A.14 and A.47) that would exceed 30-inches in height. They are the fence along the eastern edge of the Trail and signs.

The applicant states in their narrative that the fence is less than six feet in height. The Split Rail Fence, detail 3 on Sheet C5.02 (Exhibit A.14), shows the fence at three feet, six inches at the top of the post (Exhibit A.14.a and A.47). The proposed Split Rail Fence may be located in the Yards as specified in MCC 39.4245(C)(1). *The Fence meets the Minimum Yard Dimensions criteria.*

5.4 (E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.

Staff: The applicant has not proposed structures over 35 feet in height. *Criterion not applicable.*

5.5 (F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the Lot of Record.

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: No physical improvements are proposed that would require an On-Site Sewage Disposal System. The proposed trail will be paved with impervious asphalt. The applicant has proposed gravel infiltration areas on both sides of the Trail that will collect the newly created stormwater from the Trail and dispose of it via infiltration (Exhibit A.45). A Storm Water Certificate (Exhibit A.31 and A.38) was completed by Engineer Daniel Boultinghouse, PE indicating that a stormwater disposal system is not required, but will be provided. A Drainage Report (Exhibit A.38) has been provided considering the soils, amount of water to be generated, etc. for the Trail. *Criterion met.*

5.6 (G) Agricultural structures and equine facilities such as barns, stables, silos, farm equipment sheds, greenhouses or similar structures that do not exceed the maximum height requirement may have a reduced minimum rear yard of less than 30 feet, to a minimum of 10 feet, if:

(1) The structure is located at least 60 feet from any existing dwelling, other than the dwelling(s) on the same tract, where the rear property line is also the rear property line of the adjacent tract, or

(2) The structure is located at least 40 feet from any existing dwelling, other than the dwelling(s) on the same tract, where the rear property line is also the side property line of the adjacent tract.

(3) Placement of an agricultural related structure under these provisions in (F) do not change the minimum yard requirements for future dwellings on adjacent property.

Staff: The applicant is proposing a trail. *Criterion not applicable.*

5.7 (H) All exterior lighting shall comply with MCC 39.6850.

Staff: The applicant has stated that no exterior lighting is being requested (Exhibit A.36, page 8). *Criterion is not applicable.*

6.0 Conditional Use Approval Criteria

6.01 MCC 39.7005 GENERAL PROVISIONS.

(A) Application for approval of a Conditional Use shall be subject to the provisions for Type III decisions in MCC 39.1105 through 39.1240.

(B) A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the Approval Authority.

(C) The findings and conclusions made by the approval authority and the conditions, modifications or restrictions of approval, if any, shall specifically address the relationships between the proposal and the approval criteria listed in MCC 39.7015 and in the base zone or use provisions.

Hearings Officer: The subject application has been processed through the County's Type III procedures. This approval is limited to the specific use proposed in the application. This Final Order includes findings and conclusions addressing the relationships between the proposal and the approval criteria listed in MCC 39.7015 and in the base zone or use provisions. The conditions of approval reference the applicable approval criteria from which they were derived.

6.02 MCC 39.7010 CONDITIONS AND RESTRICTIONS.

The approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, parking, loading, circulation, access, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

Hearings Officer: The hearings officer imposed conditions of approval under this authority.

6.03 MCC 39.7015 CONDITIONAL USE APPROVAL CRITERIA.

(A) A Conditional Use shall be governed by the approval criteria listed in the base zone under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

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

Hearings Officer: The EFU Conditional Use code states that the application must satisfy the applicable provisions in MCC 39.7000 to MCC 39.7035.

The proposed Trail must be found to be consistent with the “character of the area”. The Hearings Officer needs to define the area to be considered before considering whether the project is consistent with that area.

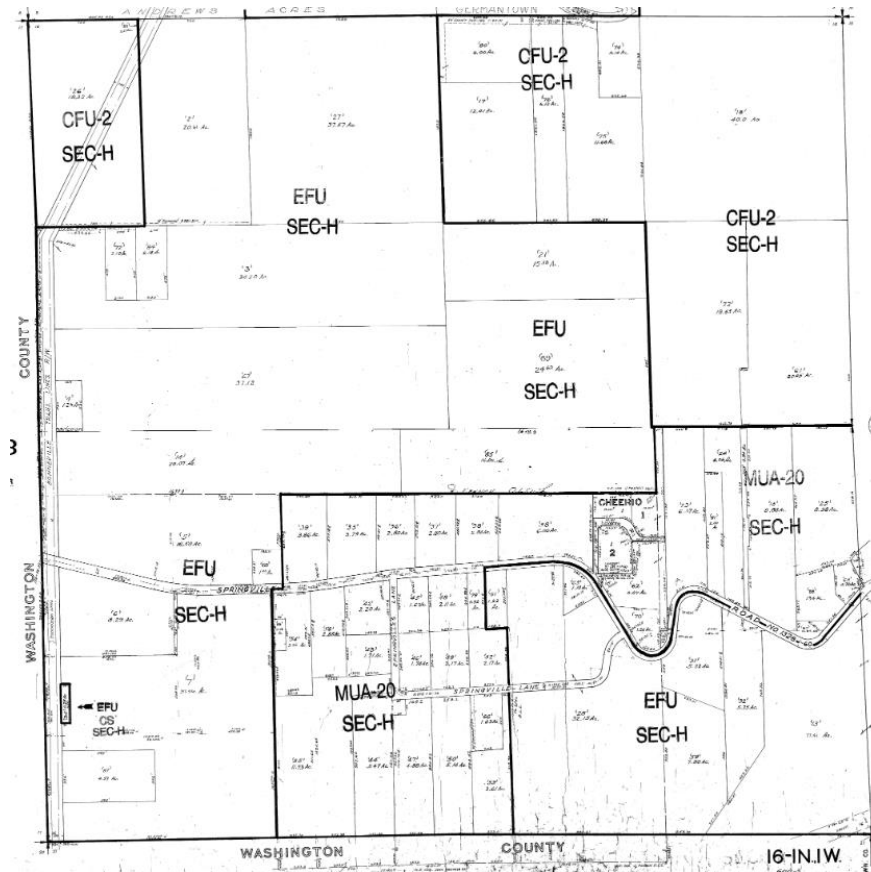
Defining the Area

The applicant includes a “Background” description of the subject property including the surrounding Washington County area, and the immediate properties to the east of the BPA property within Multnomah County (Exhibit A.36, Page 33 and 34). In addition, the applicant’s response to this criterion is as follows:

While the subject property is considered rural, and outside of the Urban Growth Boundary (UGB), it is immediately adjacent to urban density property that is inside the UGB. And, the subject property is impacted by the BPA transmission lines, a PGE easement, and adjacent to two Tualatin Valley Water District reservoirs, which serve the urban development within the area.

The project site is located immediately outside of the urban growth boundary at the transition point between urban residential subdivision type development patterns to the west and south and rural farmland and rural residential development patterns to the east and north. The adjacent farmland uses are chiefly grass, grains, seeds and clover production. One intent of the Urban Growth Boundary is to separate urbanized lands and their uses from rural uses to help protect rural farm and forest operations from encroachment by urban uses.

The BPA property is immediately adjacent to the Washington County line and the Urban Growth Boundary (“UGB”) along the west and southern boundary of the project site. The lands within Multnomah County in the project vicinity are zoned EFU (Statewide Planning Goal 3 protected), Multiple Use Agriculture – 20 (rural exception lands) and Commercial Forest Use – 2 (Statewide Planning Goal 4 protected). These lands are outside of the UGB, within a Rural Reserve, and are not subject to urbanization for a minimum of 50-years.



For purposes of defining the area, staff believes the analysis should be limited to local rural Multnomah County lands one mile to the east and one mile to the north of the subject property. This area has been selected to provide a representative sampling of rural zoning districts, public road classifications, development patterns and landforms ranging from open farmland, to timbered forestland and small lot rural residential development. Staff does not believe that the area to be considered for this criterion should extend to lands inside the urban growth boundary within Washington County, arguing that such an approach would result in an inaccurate analysis given the intent of the standard to assure a proposal is consistent with the local character of lands within Multnomah County’s jurisdiction. In this case, qualifying lands are local rural county properties.

The hearings officer disagrees with staff’s interpretation. The language of the Code is clear and unambiguous. Therefore, it is not subject to interpretation. *PGE v. BOLI*, 317 Or 606, 611, 859 P2d 1143 (1993) (If the intent is clear from the text and context, further inquiry is unnecessary). The code requires a finding that the use be “consistent with the character of the area.” The Code does not include any qualifying words or language limiting the term “area” to the rural area outside of the UGB or areas within Multnomah County. The hearings officer finds that any analysis of the “character of the area” must consider all existing uses and

activities in the area, including those within the adjacent UGB. If the Board had intended to limit the “area” to be considered to only the rural area, it would have said so.

The County and other opponents argue that this interpretation is inconsistent with the purpose of the UGB, to separate urban and rural uses and activities. Including the urban area in the analysis will overwhelm and dilute the rural area. However, these types of policy arguments are not relevant here, where the language of the Code is clear and unambiguous. The “area” from which the “character is determined must include all lands within a one-mile radius of the site.

The character of the area should be defined based on a number of factors, including (a) physical characteristics of the land, such as lot sizes, topography, terrain and vegetation; (b) the local development patterns including the type and density of structures; and (c) neighboring land uses, including the nature, intensity and scope of those uses. These factors should be weighed in aggregate with no one factor being considered more important than any other. However, a finding of inconsistency with one factor should be sufficient to determine a proposal is inconsistent with the character of the area.

Examining Consistency of the Area

(Physical characteristics of the land)

Properties in the rural area to the east and north of the site are outside of the UGB and range in size from nearly 40-acres (farmland) to lots as small as roughly 1-acre (rural residential development). Topography in the immediate vicinity of the subject property and including the farm property to the east is level to gently sloping (0-10-percent slopes on average) with terrain increasing in pitch towards the north and east side of the area as farmland transitions into forestland (generally 10-25-percent) with localized areas exceeding 25-percent slope. Properties in the urban area to the south and west of the site are located within the UGB and developed with a variety of urban lot sizes. There is no evidence in the record regarding the topography within the UGB.

Vehicular access through the rural area is served primarily by NW Springville Road which is designated as a Rural Collector and runs generally east-west at the north end of the subject property. NW Springville Lane, NW 132nd Avenue and NW Cheerio Drive provide local access to the east-northeast of the subject property. Vehicles, bicyclists, pedestrians, and farm vehicles and equipment share the public roads to move through the area. At present, there are no known public Trails that exist within this rural area. Vehicular access through the urban area is provided by numerous interconnected roadways, ranging from local residential streets to urban arterials, including NW Kaiser Road, NW Bethany Boulevard, and NW Laidlaw Road. Urban roads generally include sidewalks for pedestrian travel. Higher classification roadways include bicycle lanes. There are existing regional trails immediately south of the site and additional community trails are planned to the north of the site (See Exhibits A. 29, A.40, and A.41).

The proposed Trail segment travels 1,832 feet through Multnomah County and will be paved ten feet wide with asphalt. The Trail will connect to existing or planned trails to the north and south of the site. Gravel shoulders for stormwater infiltration will flank both sides of the Trail and a split rail wood fence will be installed along the eastern edge of the Trail alignment, with the occasional information sign posted along the Trail to guide users. The water tank maintenance access road (estimated through aerial photo measurements at roughly 1,256 feet long) runs roughly 70-percent of the full length of the subject property. The existing access road is currently gravel surfaced and roughly the same width as the proposed Trail. The

applicant states that the BPA property is currently being used by members of the public as a “de facto link between two ends of the existing trail.” The submitted plans and aerial photos show four existing trails that lead from Washington County into the property without barriers or any other obstructions.

The proposed trail will be constructed at grade and will mimic and undulate with the natural gently sloping ground topography. It does not appear from the information in the record that any measurable cuts, fills or retaining walls will be required to either elevate the Trail above, or cut down through any terrain barriers. To the casual observer, the Trail will likely not look much different than the existing maintenance access road. The hearings officer finds the Trail structure itself will be consistent with the physical characteristics of the land in the area.

(Local development patterns)

The subject property is currently used for BPA electrical transmission lines, growing of crops, vehicular access to the farmland east of the property, maintenance vehicle access for the TVWD Reservoirs located immediately east of the site, and for BPA maintenance of its towers and electrical lines (Exhibit A.10 and A.46). The 2018 Aerial photo above shows the locations of these improvements, with the reservoirs visible near the southern boundary of the two counties. The county approved the TVWD reservoirs in 2008 (Exhibit H.7). They are not nonconforming uses as stated in the Staff Report (Estrin testimony). Development in the rural area is typically one dwelling with associated, detached accessory structures, fences, and roadway signs. Development in the urban area includes dense suburban residential development (single-family and multi-family), schools, churches, parks and commercial uses (See aerial photos of site and surrounding area).

Above ground structures proposed as part of the Trail include a split rail fence and informational signs. Plan sheet detail 3 on Sheet C5.02 (Exhibit A.14) shows the split rail fence at roughly 3.5 feet tall with large openings between wooden rails, which will avoid the creation of a visual barrier or view obstruction. The hearings officer finds the fence will be low lying, and the rustic open air materials and designs complimentary of the rural area setting where fencing delineating a farm edge would not be uncommon. The informational signage proposed is not uncommon in size or numbers in comparison to local rural road transportation signs. The hearings officer finds the physical above ground development proposed is consistent with the local development patterns.

(Neighboring land uses)

Any impacts associated with the proposed use of the development must also be evaluated against neighboring land uses, including the nature, intensity and scope of the uses. Permitted uses of the site are currently limited to the BPA transmission lines, vehicle access for BPA and the TVWD infrastructure maintenance, and agricultural activities extending onto the site from the adjacent property to the east. Although not a permitted use, the site is currently being used as an informal pedestrian/bicycle trail.

The applicant states that they expect a potential usage of 366 trails users a day (an average of 36 users/hour, assuming a ten hour day) (Exhibit A.36, Page 39). This is not inconsistent with the current use of the site as an informal trail. The applicant counted between seven and 54 pedestrian or bicycle trips per hour on the site (Exhibit A.56, page 43 and Exhibit I.7, Attachment 4). The FPNA noted fewer trips (roughly three to six trips/hour) when Ms. Chesarek visited the Trail (Exhibit H.17, p. 4 and Exhibit I.5 p. 3). Staff argued that this existing use should not be considered, as it is not currently permitted. However, the hearings

officer finds that this trail use is occurring and should not be ignored; it is part of the existing character of the area and is likely to continue even if the proposed trail is not constructed.

Trail users will not congregate in the area. They will use the Trail to travel through the area. No points of public congregation are proposed which need to be considered from an impact standpoint such as parking areas, restrooms, etc. Sustained or notable noise impacts are not anticipated since trail users will be prohibited from using motorized vehicles and trail hours are limited from dawn to dusk. Users may be walking or biking alone or in groups and there is no evidence in the record to suggest noise will be expected to exceed conversational levels. The hearings officer foresees no direct impacts from the users that could be considered inconsistent with the neighboring land uses. The Trail may increase the number of people using the site to travel through the area, but similar traffic volumes already existing on the informal trail on the site as well as on the existing trails to the north and south of the site and on streets and sidewalks within the adjacent urban area. Therefore, the hearing officer finds that the proposed use is consistent with the existing character of the area, on the edge of the UGB.

6.04 (2) Will not adversely affect natural resources;

Hearings Officer: The applicant will need to demonstrate that the proposed Trail will not adversely affect natural resources.

The applicant's response to this criteria is "There are no natural resources present within the subject property, other than the farmland, and since the preferred alignment follows an existing driveway, any adverse effects, is [sic] minimized."

The county Ground Disturbing Activity and Stormwater regulations protect local soils from erosion and sedimentation, preserve local water quality, and mitigate the impacts of improper storm water disposal. The applicant states that the amount of ground disturbance to construct the Trail will be limited. The applicant will need to demonstrate compliance with the County's Type 1 non-discretionary Ground Disturbing Activity and Stormwater requirements of MCC 39.6200 through MCC 39.6235, or demonstrate the project qualifies as an exempt activity. At present, the applicant has not requested this permit as part of this application. A condition of approval is warranted to that effect.

The BPA property is not adjacent to any watercourse or wetlands and does not contain any riparian areas. It is not within the County's Significant Environmental Concern for views/scenic views. The site has no existing trees to protect and it is not within a wilderness area. The subject property and the surrounding Multnomah County area are subject to a zoning overlay for wildlife habitat protection. Based on the findings below in Section 7.0, the applicant has demonstrated compliance with the Significant Environmental Concern for wildlife habitat criteria and the Wildlife Conservation Plan requirements. Therefore, the hearings officer finds that the proposal will not adverse effect natural resources.

As conditioned, this standard is met.

6.05 (3) The use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Hearings Officer: The 2018 aerial below shows the BPA property and how it is being used.



T.L. = Tax Lot

The 2017 aerial below shows continuity of use for the BPA property:



The two aerial photos above and the aerial photos contained in Exhibit B.6, B.7, and B.8 show that the BPA property has been used for farming in the past and present. As previously discussed, the subject property has also been used by the public as an informal walking/biking path. Portions of the BPA property are used by the Farmer to the east for growing crops and for vehicle movement (Exhibit A.6). In order to farm crops to the western property line on tax lot 2301 and beyond into the BPA property, it appears from the aerial photos that the Farmer uses the BPA property for tractor/farm equipment maneuvering while cultivating, planting, etc. Planning staff reviewed historic aerals and identified visual textures and patterns consistent with cultivated crops within the BPA property since 1977 (Exhibit B.6, B.7, and B.8). As shown in the aerial photo above, the existing BPA/TVWD access road within the BPA property limits the areas within the BPA property that can be cultivated for crops.

The applicant has provided an extensive narrative regarding the “Significant Impacts Test” in (Exhibit A.36, page 34 – 36). To summarize this report, the applicant asserts the only farmland that may be affected by the proposed trail segment under review in this application are the two parcels to the east of the site (T.L. 2301 and T.L. 2500).

The applicant has provided a letter from the owner of T.L. 2301 (Tri-County Investments, Inc.) stating that they do not believe the proposed use will impact the farm use (Exhibit A.25). The applicant states they also had conversations with the Farmer of both tax lots and that he is not opposed to the development of the public trail and he does not believe it will significantly impact his farming activities. A letter from the Farmer addressing these issues has not been submitted into the record. Based on County tax information (Exhibit B.15 and B.16) and the applicant’s narrative, staff believes the Farmer referenced by the applicant is a tenant farmer who rents farm land from the owner providing the letter in Exhibit A.25.

Evidence has been placed in the record of a 2009 letter from the Farmer to the Washington County Board of Commissioners discussing the need for an adequate buffer between farming and urban uses and discusses an incident that occurred on T.L. 2301 (Exhibit B.5). The applicant did not submit Exhibit B.5 into the record for this application. The FPNA submitted the letter (Chesarek testimony). The applicant testified that the Farmer supports the current application with a fence between the Trail and the agricultural fields (Bantz testimony and Exhibit H.15 p. 3).

The applicant has indicated:

- The Farmer grows grass crops for seed and clover;
- That dust is occasionally generated;
- Annual harvesting by combine generally takes about a day;
- The Farmer sprays for weeds three to four times a year and over a two hour period; and
- He fertilizes twice a year.

The applicant identified the potential negative impacts that could occur from these activities including: trespass onto farmland, littering, complaints about spray drift and dust, and restrictions on access to the area being farmed, but that the impacts are not significant enough to meet the “Significant Impact Test.”

- For trespass, THPRD has proposed a split rail fence to delineate the fields from the Trail (See Exhibits A.10 and A.45.).
- For litter, the split rail fence will keep people away from the field and THPRD will pick-up trash in the vicinity of the Trail at least twice a week, more if needed.
- For complaints regarding spray drift, the Farmer has agreed to notify THPRD prior to spraying so THPRD can post signs warning of the proposed spraying.
- For dust, the Farmer has agreed to notify THPRD prior to engaging in activities creating dust so THPRD can post signs warning about potential dust.
- For access the Farmer uses both the home driveway from NW Springville Road and the existing TVWD access road (proposed paved Trail). The Farmer can use the paved Trail for access. Farmer has not expressed concern with the proposed Trail interfering with his access to the farm.

Trespass and litter

The hearings officer finds that the proposed fence adequately addresses any concerns with unintentional public trespass, since one would need to knowingly climb over the fence or pass through one of the gaps providing driveway access to the TVWD reservoirs in order to enter the adjacent farmland from the Trail. The FPNA argues that trail users will intentionally trespass onto the adjacent farmland and unleashed dogs will also enter the farmland. However, such trespass activities would be illegal and THPRD regulations require dogs to be leashed while on the Trail. The hearings officer must assume that trail users will comply with the law by keeping their dogs leashed and remaining within the clearly trail demarcated boundaries.

The applicant states that the split-rail fence will hinder litter from entering the farmland. Although some improperly disposed of litter or trash may pass through the fence in windy conditions, requiring frequent litter clean up in the vicinity of the Trail as proposed by the applicant seems a reasonable approach to assure litter will not significantly impact farmland.

Spray drift and dust

Staff discussed this topic with the Oregon Department of Agriculture and learned farmers using chemicals in Oregon are not permitted to allow spray drift to leave the farmed property and are not required to provide notification to neighbors prior to spraying. Staff also learned that recent changes to state and federal laws strengthen these requirements and in certain circumstances, people are not permitted to pass through a buffer zone setback during and shortly after spraying has occurred when certain chemicals are used. The Oregon Department of Agriculture (DOA) provided a handout and a video regarding increased setbacks for certain chemicals involved in farming (Exhibits B.20 and B.21). It is possible that a buffer zone (beyond the spray drift extent) could extend off-site when spraying with certain chemicals near property lines. Therefore, impacts of agricultural spraying on Trail users should be considered.

THPRD states that the Farmer has agreed to notify them when spraying and when dust creating activities will be occurring so that THPRD can consider either posting trail notifications or possibly temporarily closing the Trail to protect the public. From the applicant's description, spraying is anticipated to occur three to four times a year. However, the applicant has not provided information estimating how often dust from the farming operation could become a concern for Trail users justifying the need to notify THPRD.

Farmers in the EFU zone are not required to provide notice of or delay routine farming practices in Oregon and such a steps exceed what is an accepted farm practice. However, this does not appear to be an unreasonable burden in this case considering that the applicant and farmer have agreed to this approach. The hearings officer finds that although this could be considered a change in accepted farming practices, it is not a significant change. No evidence in the record suggests the notification approach proposed by the applicant will significantly increase the cost of accepted farming practices.

Requiring a farmer to notify THPRD is not a condition the County can impose or enforce, as the Farmer is not a party to this application. Therefore, the hearings officer finds that the applicant should be required to install permanent signs at both ends of the Trail informing trail users that the farming activities on the adjacent property may generate dust and other impacts. Such permanent signs would ensure that Trail users are informed of the potential impacts even if the Farmer fails to contact THPRD prior to undertaking activities that may

result in impacts to the Trail. Such a condition would help inform trail users of potential impacts, and help minimize the occurrence of any situation where a trail user could be affected by routine farming practices and challenge the Farmer's ability to conduct those routine practices. Some trail users may ignore these signs and therefore will be unaware of potential dust or spray impacts. However, the farming activities occurring on the adjacent property will be obvious and trail users can choose to avoid this section of trail during the limited periods such activities occur.

The hearings officer finds that closure of the Trail is not warranted unless spraying on the site requires an Application Exclusion Zone as discussed in Exhibit B.20 that extends beyond the boundaries of the farmed property. The required permanent signs will warn trail users of potential impacts and farming activities that could impact the Trail will be obvious to trail users when they are occurring; farm equipment operating on the adjacent property will be visible and audible and dust generated by such activities will be visible to trail users on the infrequent occasions that such impacts occur. As noted above, trail users can choose to avoid this section of trail when such activities are occurring.

The FPNA argued that various other farming activities could occur on the adjacent property in the future, which would be subject to greater impacts from Trail users (Exhibit H.17, p 6-7). However, these potential future uses and impacts are speculative. Based on the aerial photos in the record, the adjacent property has been used for row crops, grass seed, and similar uses for many years. There is no evidence that it is likely to be used for livestock or poultry in the future, especially given the farms location abutting urban development within the UGB, where urban development and activities may interfere with these types of agricultural operations.

Access

The applicant has stated that the Farmer can continue to use the Trail for any necessary farming access.

This criteria can be met with a condition.

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

Staff: This standard requires an evaluation of availability for all ancillary public services required to support a proposed use. The applicant's response to this criterion is as follows:

This approval criterion requires that the proposed use not require public services other than those that are existing or have already been planned for the area. The proposed use is a public trail. The proposed trail does not require any public services such as water, sanitary sewer or additional road access. Further, both the Multnomah County Sheriff and Tualatin Valley Fire and Rescue have stated they are able to provide the necessary level of service for the proposed use. See Appendix 4 and 5 in Section D. Therefore, the public trail will not require any public services that are not existing or otherwise programmed for the area.

[Staff Note: Applicant's Appendix 4 and 5 in Section D have been labeled as Exhibit A.22 and A.23].

Staff concurs.

Criterion met.

6.07 (5) 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 zoned Significant Environmental Concern for wildlife habitat. It is not designated as big game winter habitat by Oregon Department of Fish and Wildlife (as shown on Exhibit B.9).

Criterion met.

6.08 (6) Will not create hazardous conditions; and

Hearings Officer: The subject property currently has an access road used by the BPA to maintain the power lines on the property and by TVWD to maintain the two water reservoirs to the east of the BPA property. Based on the site plans (Exhibit A.10 and A.45), the Trail will overlay this access road, except where the road connects to NW Springville Road, the reservoir site, and farm fields. This means that on occasion bicyclists and pedestrians will be met by a motor vehicle. Hazardous conditions could be created during these occasional interactions unless precautions are put into place such as warning signs, speed limits or other measures, such as THPRD closing the Trail at agreed upon times. In the land use case, T2-08-068 the finding states that “Typically one or two maintenance employees may visit the site only once or twice a week in a single vehicle.” (Exhibit B.3, page 20).

The applicant states in a clarifying email (Exhibit A.51) regarding the sharing of the Trail segment with BPA/TVWD vehicles that vehicle conflicts would be approximately once to twice a year for each user. They go on to say:

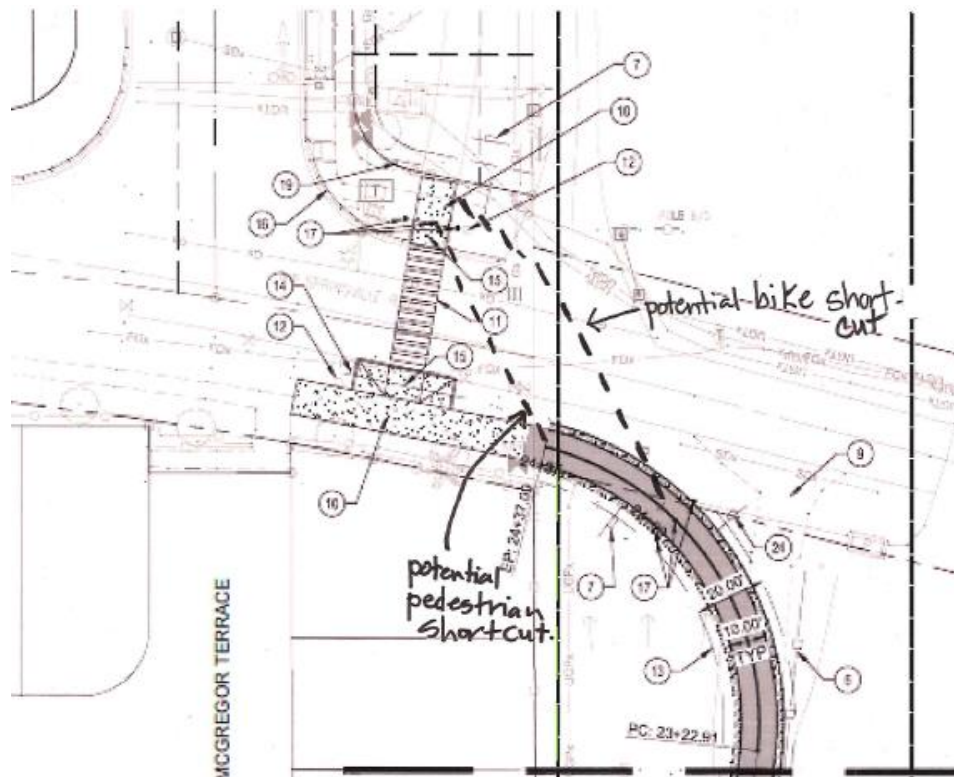
Public safety is paramount in all cases where THPRD partners with land owners or utility providers to provide public access. When using a public trail for access, BPA and other utility providers are required to engage public safety standards and avoid conflict with trail uses. Right of way is typically given to trail users, especially bicycles, unless otherwise warranted and safe alternative access is available along the Trail such as a widened gravel shoulder or clear, level area. Utility vehicles are either slow moving or parked, and if parked typically do so off-trail so pedestrians and bicycles have clear right of way. During maintenance activities along the Trail, signs are typically posted around the work area and safety watchers are present to observe and protect public safety.

It is clear from the applicant’s email that TVWD has an access easement of approximately 600 feet on the BPA property. No evidence has been provided from BPA or TVWD as to the level of use of the access route. As discussed by the applicant TVWD may need to drive off of or out of their easement area as Trail users are given the right-of-way. There does not seem to be any documented agreement provided between the parties as that Trail users are to be given the right of way and if necessary TVWD may exit their access easement so that vehicles do not block the Trail users. In addition, if THPRD maintenance vehicles are to exit the 20-foot wide Trail easement so that Trail users have the right of passage, no evidence has been provided that this is acceptable to the BPA.

The hearings officer finds that it is unnecessary to shut down the trail when utility vehicles are using it for access. Given the straight and flat alignment of the trail utility vehicles will be obvious to oncoming pedestrians and cyclists and pedestrians and cyclists traffic will be obvious to the vehicle drivers. In the hearings officer’s experience, utility, park, and law enforcement vehicles are not uncommon on recreational trails in the region and drivers,

pedestrians, and cyclists are able to maneuver around each other without creating a hazard. Vehicles on the trail should be limited to a maximum speed limit of 10 mph in order to ensure drivers have the ability to maneuver or stop if necessary to avoid oncoming pedestrian or bicycle traffic.

Staff argued that a second potential hazard could occur at the Trail's intersection with NW Springville Road if trail users continue straight across NW Springville Road, rather than following the paved trail west to the proposed signalized crossing in Washington County. The graphic below helps to illustrate the potential hazard.



Documentation that Washington County Engineering has considered this issue as part of the crossing design has not been presented (Exhibit A.32).

The hearings officer finds that the majority of trail users will utilize the signalized crossing, as it provides the safest legal route across NW Springville Road. The crosswalk and signal will be clearly visible to trail users approaching NW Springville Road from the south. Trail users using the shortcut noted by staff and cutting in front of oncoming vehicles above would be violating the law. ORS 814.040 requires that pedestrians yield to vehicles when crossing a street outside of a marked crosswalk. Reasonably prudent trail users will obey the law, yield to vehicles, and utilize the signalized crossing. Unfortunately not trail users are prudent. However there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent persons. The hearings officer finds that the Trail alignment proposed in this application will not create a significant hazard warranting additional mitigation.

The applicant has identified the local spraying of agricultural chemicals and the creation of dusty or unsafe conditions as a potential hazards for users of the Trail (Exhibit A.6 and A.36,

page 36). This issue is addressed in finding 6.05, along with conditions of approval to assure a hazardous condition is not created.

The hazardous conditions discussed can be corrected through conditions of approval.

6.09 (7) Will satisfy the applicable policies of the Comprehensive Plan.

Planning staff identified to the applicant during the Pre-application Conference that the EFU zone Comprehensive Plan Policies 3.8 and 3.10 were applicable to the land use application (Exhibit A.21).

EFU Zones Comprehensive Plan Policies:

Policy 3.8: Maximize retention of the agricultural land base by maintaining EFU designated areas as farm lands with agriculture as the primary allowed use.

Applicant's response;

The proposed Bethany Creek Trail Conditional Use does not propose removing the EFU designation from the subject property, and would only impact a minimal amount of land currently being available for farming. That impact is limited to the widening of the existing driveway, and the installation of a fence along the eastern edge of the driveway. The farmer using the affected property has not expressed a concern with the proposed trail or the installation of the fence suggested by the Multnomah County Planner reviewing our proposal.

Staff: The proposed Trail segment is a conditional use within the EFU zone. Portions of land on the 100-foot wide BPA property to the east of the maintenance road are currently being farmed according to review of recent aerial photos. The Trail is proposed to essentially overlay the existing maintenance road along the majority of the Trail alignment, maximizing the retention of land dedicated to agricultural uses on the subject property. Towards the north end of the project area a strip of land roughly 60 to 70 feet wide lies between the access road and the Urban Growth Boundary. This land is not currently being farmed and is unlikely to be farmed in the future, given the narrow width, the presence of a maintenance road on the east, and medium density urban development within Washington County to the west. Staff finds the Trail will not measurably impact the amount of agricultural land base in the county.

Policy 3.8 has been met.

Policy 3.10: Allow non-agricultural uses, such as residences, on EFU Lands as permitted by Oregon Statutes and Administrative Rules, with additional development standards and lot aggregation requirements to ensure protection of agricultural lands and natural and environmental resources. Limit new non-agricultural uses, and expansion of existing non-agricultural uses. This will result in a farm protection program for the County that is more restrictive than what state statutes and rules require.

Applicant's response: "The proposed Bethany Creek Trail is a use anticipated by ORS 215.296, and is to be reviewed as a Transportation Facility under that Statute. Our proposal meets the standards of ORS 215.296, as well as the more restrictive standards imposed by Multnomah County."

Hearings Officer: The proposed Trail segment can be authorized in the EFU zone as a non-agricultural use provided it meets all development standards. Based in the findings in this Final Order all approval criteria have been met.

Policy 3.10 has been met.

Additional Comprehensive Plan Strategies

Staff: The applicant has addressed various Strategies within the County's Comprehensive Plan. No one strategy overrides all approval criteria included in this report. While the Comprehensive Plan includes policies and strategies that discuss recreational uses, parks, trails, etc. they also indicate that impacts to farmland and residents in the rural area must be minimized. The application must comply with all relevant Comprehensive Plan policies. The applicant has addressed various sections of the Comprehensive Plan in their submitted narrative (Exhibit A.6 and A.36) that staff did not identify as applicable.

The applicant responds "The Multnomah County Comprehensive Plan includes many Policies which support our request." Policies cited by the applicant include:

Introduction

- **We value the ability to travel by a variety of modes and a transportation system that provides choices for rural residents, while minimizing adverse impacts on residents and natural resources.**
- **We seek fairness, equity and balance in finding creative solutions that build community as well as benefit the public.**

The applicant response states:

The proposed trail will provide a trail that minimized the impacts on residents and natural resources of the community while also providing a safe transportation choice for rural residents. And, it will provide a creative solution that will benefit the public. Denial of our request would not remove a driveway that is being used as a neighborhood trail, but would result in the Trail not being monitored, any trash not being picked up and there not being a fence installed along the edge of the existing driveway to help contain the walkers and bicyclists.

Staff: The applicant cites a small portion of the Introduction to the County's Comprehensive Plan. These are not policies. They are the values adopted by the County to appropriately lay the foundation to its Comprehensive Plan document.

Community Facilities, Strategy 2.45 states, "Support the siting and development of community facilities and services appropriate to the needs of the rural areas while avoiding adverse impacts on farms and forest practices, wildlife, and natural and environmental resources including view of important landscape features."

Hearings Officer: As staff repeatedly notes in the Staff Report, the proposed trail is a transportation facility, not a community service facility. State or regional trails for which a master plan that is consistent with OAR Division 34 State and Local Park are allowed as a community service use in some zones. *See e.g.*, MCC 364620(B)(4). However, such uses are not allowed in the EFU zone. The proposed trail is only allowed as a transportation facility in the EFU zone. Therefore, this provision is inapplicable.

Parks and Recreation Planning, Strategy 8.1 states, "Support efforts of the Intertwine Alliance, Metro and other organizations in establishing a coordinated approach to create and maintain a strong, interconnected regional network of parks, trails, and natural areas."

The applicant's statement regarding this Strategy can be found in Exhibits A.6 and A.36, page 37 and says "The proposed Bethany Creek Trail will complete a segment of planned off-

street multi-use trail adopted by Metro on their Regional Trails System Plan and also shown on their Westside Trail Master Plan.” The complete statement can be found in Exhibit A.36.

Staff: Multnomah County supports the efforts of various entities to develop a strong, interconnected regional network of parks, trails, and natural areas meeting all applicable zoning regulations and comprehensive plan policies. The County has adopted a Transportation System Plan with a Pedestrian and Bicycle Element (Exhibit B.18) that includes proposed bikeways, existing on-street bike facilities, proposed off-street bikeways and shared roadways that connect to other jurisdictions systems. The County balances all policies and goals of its Comprehensive Plan.

Parks and Recreation Planning, Strategy 8.2 states, “**Encourage the development of recreational opportunities by public agencies and private entities consistent with wildlife habitat and wildlife corridor protection**”

The applicant’s response is as follows: “The proposed Bethany Creek Trail meets this strategy, as it is a recreational opportunity being proposed by a public agency. In addition, a Wildlife Conservation Plan has been prepared that provided the wildlife habitat and corridor protection found within this Strategy.”

Hearings Officer: The applicant has applied for a transportation improvement under MCC 39.4230(R). rather than a public park under MCC 39.4230(C). However, the Comprehensive Plan acknowledges that transportation facilities, including trails and roads, can also be used for recreation (p 8-4 of the Comprehensive Plan). The subject property is within the County’s Significant Environmental Concern for wildlife habitat (SEC-h) overlay. Based on the findings in Section 7.00 below, the application will comply with the SEC-h criteria.

Parks and Recreation Planning Strategy 8.3 states, “**Coordinate with other agencies in strategically siting new public recreational facilities to take advantage of existing infrastructure that allows for multi-modal access opportunities and shared parking. An example would be joint use of park and school facilities locating them adjacent, or close, to each other.**”

The applicant’s response is as follows: “The proposed Bethany Creek Trail connects to NW Springville Road and utilizes an existing Bonneville Power Administration (BPA) power line corridor to provide off-street multi-modal access to existing parks, natural areas, schools and an extensive regional trail system.”

Hearings Officer: Strategy 8.3 is for Multnomah County Land Use and Transportation Planning sections to coordinate with other agencies when siting new public recreational facilities. It is not applicable to this application.

Parks and Recreation Planning, Strategy 8.5 states, “**Consider the impacts of proposed recreation facilities on nearby private properties and require applicants to avoid and minimize significant adverse impacts to nearby properties**”

Staff has summarized the applicant’s response in the following sentences. Their complete response can be found in Exhibit A.6 and A.36, page 38. The applicant indicates that there does not appear to be any measurable negative impacts on nearby private property. The opposition during their public process was only from a neighborhood association in Multnomah County and they do not live close by. Surrounding owners support the proposal. One letter of support has been submitted (Exhibit A.25). Mitigation measures have been proposed and there are trail rules, signage, monitoring and maintenance proposed, etc.

Hearings Officer: The subject project is within the boundaries of the Forest Park Neighborhood Association's (FPNA) (Exhibit B.11). The FPNA represents numerous rural residents within this area. The FPNA has a land use committee that reviews planning cases within this area and provides input to various government agencies that propose development. The FPNA submitted oral and written testimony regarding this application (Chesarek testimony and Exhibits B.5, H.3, H.17, I.5, and I.8). The concerns raised by the FPNA regarding impacts to adjacent farmland are addressed above in Sections 6.05 and 6.09 of this Final Order.

Parks and Recreation Planning, West Hills Policies and Strategies, Strategy 8.7 states, **"Support the natural systems and recreational values of Forest Park and adjacent areas in concert with the City of Portland, Metro, and other agencies."**

The applicant states, "As previously noted, Metro has adopted the proposed segment on their Regional Trails System Plan. And, allowing this segment of the Trail to be constructed will help support the recreational values of the area."

Hearings Officer: Multnomah County supports balancing environmental and resource protections with the need for parks and other recreational values. However, the proposed trail is not located in or adjacent to Forest Park.

Parks and Recreation Planning, West Hills Policies and Strategies, Strategy 8.8 states, **"Support only those recreational activities within the West Hills area that are consistent with, and do not cause significant negative impacts on, natural and environmental resources that are identified in Goal 5."**

The applicant states:

The proposed trail meets this policy of the West Hills areas, as it will not cause significant negative impacts to the natural or environmental resources. Any impact will be insignificant, and will be lessened by the mitigation measures previously mentioned. If having people walk and ride bikes on the existing driveway is seen as causing a negative impact, that will be lessened by allowing those mitigation measures to be implemented as part of the Trail improvements.

Hearings Officer: The applicant has demonstrated that the proposed mitigation measures meet the Goal 5 resource protection regulations for wildlife habitat. See Section 7.00 below for additional findings on wildlife habitat.

Multnomah County Bicycle Master Plan, Objective #1 states, **"Develop and maintain an extensive network of bicycle transportation facilities that provide safe, efficient and enjoyable bicycle travel."**

Implementation Strategies: **"Identify opportunities and develop implementation means to provide bikeways outside of public rights-of-way. Such potential future bikeway facilities as utility corridors, greenways, railroad rights-of-way, levees and dikes, public and private land developments, and joint development projects are incorporated into the Bikeway Plan Map..."**

The applicant states:

The proposed trail meets the Objective #1 above by allowing a bicycle and pedestrian trail to be improved that will be part of an extensive network of bicycle transportation facilities, and provide a safe and efficient and enjoyable bicycle experience. In addition, the proposed trail is meeting this Objective by being located outside of a

public right-of-way, is [sic] within a utility corridor, and is being proposed by a government agency.

Staff: The County's Bicycle Master Plan supplements and does not supersede other goals, policies and strategies of the Comprehensive Plan. The County's TSP Pedestrian and Bicycle Element does not identify the proposed Trail. The Pedestrian and Bicycle Element states that "Pedestrian needs within the rural areas are primarily addressed through the addition of shoulders that serve pedestrians and bicyclists or through shared use paths. In rural areas, the shoulders are the primary facility available to pedestrians." (Exhibit B.18).

The FPNA cited Comprehensive Plan Policy 1.10 (Chesarek testimony), which provides:

Except as otherwise provided by law, new electrical substations and water system storage tanks or reservoirs intended to solely serve uses within the urban growth boundary shall not be located outside the urban growth boundary unless it can be demonstrated that there is no practical alternative site within the urban growth boundary that can reasonably accommodate the use.

Hearings Officer: No electrical substations, water system storage tanks, or reservoirs are proposed with this application. Therefore, this policy is inapplicable. The hearings officer has no authority to review the existing TVWD facilities on the adjacent property.

6.10 (8) The use is limited in type and scale to primarily serve the needs of the rural area.

The applicant's full narrative response is contained in Exhibit A.6 and A.36, starting at page 39. The applicant indicates that the proposed trail is low impact, limited in type and scale and does not evoke an urban facility. It will not contain restrooms, parking areas, lighting or new site furnishing which may be found in an urban setting. The Trail is not in a remote rural area. It is adjacent to an urban area which is developed with dwellings. The usage will be similar to the Waterhouse Trail which runs north/south in the Bethany area. Trail counts on the nearby trail averages just over 11,000 trail users a month or 366 a day. In a clarifying email (Exhibit A.51), the applicant indicates that THPRD has not conducted any studies to determine the number of individuals in Multnomah County that will use the Trail.

Hearings Officer: Staff interpret the standard "[p]rimarily serve the needs of the rural area" to require that at least 51-percent (more than half) of the users come from the rural area in which the use is located. The hearings officer disagrees with this interpretation. The plain language of the Code refers to the "type and scale" of the "use," not the number or residence of the users of the facility. In addition, staff's interpretation would preclude any road, trail, or other transportation facility that provided a connection to the urban area while passing through the rural area. Given the difference in population density between the urban and rural areas, any such transportation facility would carry more urban than rural traffic. Even if 100-percent of rural residents within a certain distance used the Trail and 50-percent of urban residents within that same distance used the Trail, urban users would likely outnumber rural users.

The hearings officer finds that the Trail is limited in type and scale to serve the rural area; it is a bare bones trail of minimal width consistent with the design of other trails in the rural areas of the County (Springwater trail and the planned Westside Trail). The Trail does not include restrooms, parking areas, lighting, or other urban amenities. It is a transportation facility that will enable the public to travel through the area on foot, bicycle, or other non-motorized modes of travel. This is consistent with the design of NW Springville Road. The section of

roadway within rural Multnomah County is a narrow roadway with no curbs, sidewalks, shoulders, streetlights, or other urban amenities. This section of the roadway, like the proposed trail, is limited in type and scale to primarily serve the needs of the rural area. The section of roadway within Washington County is developed with a wider paved section with curbs, sidewalks, streetlights, and a bike lane on one side and a paved shoulder on the other side. This section of roadway is designed to a different type and scale to serve the needs of the urban area (Exhibit H.13).

Criterion met.

- 6.11 (B) Except for off-site stockpiling, Subsection (A) of this Section shall not apply to applications for mineral extraction and processing activities. Proposals for mineral extraction and processing shall satisfy the criteria of MCC 39.7315.**

Staff: The proposed use does not involve the off-site stockpiling of materials for mineral extraction. *The Hearings Officer finds that this criterion is not applicable.*

- 6.12 MCC 39.7020 ADDITIONAL APPROVAL CRITERIA FOR CERTAIN TRANSPORTATION USES IN THE EFU ZONE.**

For the transportation uses listed in MCC 39.4230(P), (Q), and (R), the Hearing Authority shall find that Multnomah County has:

- (A) Identified reasonable build alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The County need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer.**
- (B) Assessed the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands.**
- (C) Selected from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.**

Hearings Officer: The above alternative analysis requires consideration of alternative alignments that are safe and can be constructed at a reasonable cost with available technology. The County must then assess the Alternatives in the context of:

- Effects on farm and forest practices;
- Impacts to farm and forest lands and the structures and facilities on the land;
- The effect of traffic on the movement of farm and forest vehicles and equipment; and
- How access is effected to farm and forest parcels.

After considering the above, the Hearings Officer must select the Alternative that has the least impact on agricultural or forest lands in the immediate area. The applicant has proposed three alternative routes for the Trail Segment along with the Preferred Alignment.

Alternative #1 (Exhibit A.28, page 1) Identifies the proposed Trail segment contained completely within Washington County urban area. It does not impact any EFU zoned land

within Multnomah County. It uses a mixture of existing residential roadways and trails to connect up to NW Springville Road.

Alternative #2 (Exhibit A.28, page 2) brings the Trail segment up into EFU zoned land for approximately 360 feet and then turns westward into Washington County and uses a combination of existing residential roadways and existing trails.

Alternative #3 (Exhibit A.28, page 3) brings the Trail segment up into EFU zoned land for approximately 1,010 feet and then turns west into Washington County to connect into residential roadways.

Alternative #4 (Exhibit A.28, page 4) brings the Trail segment up into the EFU zoned land for approximately 740 feet and then turns west into Washington County for a short distance and parallels the Counties' line immediately adjacent to it for approximately 283 feet before turning east to travel up to NW Springville Road and an alternative crossing site within Multnomah County's right-of-way. The Trail then turns west back into Washington County to connect into the existing trail. The majority of this Alternative is west of the existing BPA/TVWD access road. The alignment is directly parallel to and abutting the UGB.

Preferred Alignment (Exhibit A.10 and A.45). This is the alternative which the applicant has requested the county evaluate against all relevant approval criteria and the alternative considered in all other findings. This alternative brings the Trail segment into the southern portion of the BPA property where it extends north approximately 1,832 feet to NW Springville Road. The Trail segment then re-enters Washington County by turning west within the NW Springville Road right-of-way and crosses NW Springville Road at a controlled crosswalk to connect into the existing trail north of NW Springville Road in Washington County. The Preferred Alignment follows the existing BPA/TVWD access road except in the extreme northern portion where it turns west to access the signalized crossing of Springville Road within Washington County.

The applicant indicates in their narrative (Exhibit A.6 and A.36, page 40) that Alignments #1 - #3 are considered unsafe, as they would be located on a narrower surface, users would have to walk across uncontrolled streets and contend with vehicles entering and exiting residential driveways, as well as the doors of cars parked on the street opening in the sidewalk or travel lane. In addition, the sidewalks are used for garbage and recycling containers during the week, which may restrict the width of the sidewalk. Alternative #4 is not specifically discussed by the applicant in this section.

For the effects and impacts discussion of the farm land, the applicant states:

The existing driveway, utilized by both BPA and Tualatin Valley Water District, is already being used as a trail by both pedestrians and bicyclists, and the farmer who uses both the BPA property, and the parcels to the east, has not felt that their presence has affected his farming practices. There are no existing farm structures or facilities in proximity to the existing driveway, and none are proposed.

The applicant's response to the effects and impacts to farm land continues with a discussion of the problems that walkers and bicyclists would face by the Alternative routes #1 - #3. These includes walkers and bicyclists having to use the street or sidewalk within the residential development, a longer route, narrower surfaces, vehicle movements, car doors opening on sidewalks and into the roadway, mail boxes, and trail users crossing unsignalized intersections, the shared path only be five feet instead of ten feet wide, and the regular interaction with garbage and recycling containers. In addition, the applicant notes that the

Alternatives are in conflict with the goals of the THPRD 2016 Trails Functional Plan. The applicant continues their statement as to why Alternative #1 and #2 do not work as it requires a hard surface trail through a high priority natural area.

The applicant states:

Alternative #4 which maintains the proposed trail alignment entirely within the BPA right-of-way, aligns the Trail to the extreme western edge of that right-of-way. This alternative would be located directly over an existing Portland General Electric (PGE) easement, and power lines buried within the easement. And, it would create an additional impervious surface paralleling the existing driveway used by both BPA and TVWD. The same would be true for that segment of this alternative which is shown to be located within Washington County, as it would not remove any of the existing driveway that would be parallel to it within Multnomah County. In addition, the farmer has mentioned that the soils in the northwest corner are the poorest found within the land he is farming, and he doesn't utilize that portion of the property west of the existing driveway. (Exhibit A.6 and A.36)

The applicant's response to the selection from the alternatives that has the least impact on agricultural or forest lands in the immediate area, they state the following:

While moving the proposed trail off-site would lessen any impact to the adjacent farming operations, it would not result in the removal of the existing driveway. It would also be unlikely to change the current usage of the BPA corridor as a trail and, instead, divert pedestrian and bicycle traffic to the existing street to the southwest. Pedestrians and bicyclists could already use the street to the west now, if they so desired, but it is apparent that most prefer to use the BPA corridor and there are not measures in place that stops them from doing so; and, there's no indication that any measures will ever be implemented that stops them from doing so. Further, since any of the alternative routes would result in a less safe trail alignment, as previously described, it is most likely that many of the Trail users currently utilizing the existing BPA corridor would continue to do so. And, they would do so without the benefit of trash being collected by THPRD, without the construction of the previously described fence along the eastern edge of the Trail, and without the benefit of the signage notifying them of farming activities that could create dust or notifying them of when spraying will be occurring (Exhibit A.6 and A.36, page 41).

The hearings officer has reviewed the proposed Alternatives #1 – 4 (Exhibit A.28) and the Preferred Alignment (Exhibit A.10 and A.45). The first step is to consider whether the proposed Alternative Alignments are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The applicant has identified the alternative alignments for the hearings officer to consider and the hearings officer finds them to be reasonable build alternatives. The applicant has not stated that any of the alternative alignments cannot be built, but only that they are not ideal for various reasons. The applicant has not stated that Alternatives #1 – 4 cannot be constructed at a reasonable cost or that there is a technological hurdle to their construction. The hearings officer finds that Alternative #1 - #3 are generally safe and should be considered, as the proposed routes chiefly use existing trails, sidewalks and residentially zoned local streets. The applicant has provided no evidence that the sidewalks are not legally available for pedestrians to use that the local residential streets are not legally available for bicyclists, or that these local residential streets and sidewalks are inherently dangerous to bicyclists and/or pedestrians. These routes utilize

existing low traffic residential streets and sidewalks. They may be less safe than the preferred alternative for the reasons noted by the applicant, but the hearings officer cannot find that they are “unsafe.” Alternative #4 proposes an alternative crossing at NW Springville Road and Transportation Planning has not considered this alternative crossing as part of their review. It is unclear why Alternative #4 includes an alternative crossing rather than using the signalized crossing proposed in the Preferred Alignment. The hearings officer finds that a modified Alternative #4 utilizing the signalized crossing proposed in the Preferred Alignment can be reviewed, rather than ignoring this alternative altogether.

The fact that the Preferred Alignment may be safer than Alternatives #1 - #4 is irrelevant to this criterion. As discussed above, the Alternative Alignments are not unsafe. Therefore, they can be considered as alternatives under MCC 39.7020(A). However, the remainder of this criterion relates to the impact of the alternatives on farm or forest uses and practices. Assertions that the Alternative Alignments are less safe than the Preferred Alignment are irrelevant.

The next step is to consider the impacts and effects the Alternatives #1 - #4 will have on the agricultural lands on the BPA property and to the eastern parcels in farm use. The hearings officer will only consider the effects for agricultural lands as there are no forested lands adjacent to the project area. The lands within the Kaiser Woods Natural Area are a park/open space and are located within the Urban Growth Boundary and are not protected Goal 4 Forest lands.

Proposed Alternative #1 uses no EFU zoned land. It would have no effects or impacts on agricultural practices on the BPA property or the adjacent farmland to the east. Alternative #1 will not have an effect on farm vehicle or equipment movement. It will not affect access to the farm land or the TVWD site located on EFU zoned lands.

Proposed Alternative #2 uses approximately 360 feet of the BPA property that is currently being farmed and has been farmed in the past, based on aerial photos (Exhibit B.8). Alternative #2 avoids the Kaiser Woods Natural Area (non-Goal 4 protected) but is very close to the western edge of the BPA property. The shorter proposed Trail segment limits the length of impact to the Farmer’s fields, but may still expose individuals to spraying, dust, etc. Vehicle movement or access to adjacent parcels do not seem to be affected.

Proposed Alternative #3 uses 1,010 feet of the BPA property. Its alignment is against the western edge of the BPA property. The medium length Trail segment limits the exposure to the agricultural fields, but would still expose individuals to spraying, dust, etc. Trail users, BPA and TVWD vehicles would share a portion of the paved path. It is unclear how THPRD would prevent Trail users from continuing on the access road for TVWD vehicles. Additional information would be needed to understand how Alternative #3 would not function like the Preferred Alignment with less pavement.

Proposed Alternative #4 uses slightly less than 1,832 feet of the BPA property; this route jogs west through the Kaiser Woods Park for a short distance before returning to the BPA property. The majority of the alignment is located in the rural area, but in the extreme western portion abutting the UGB. This alignment reduces potential exposure to the agricultural fields somewhat by shifting the Trail further west. However, it creates new impervious area within the EFU zone, parallel with the existing TVWD/BPA driveway. In addition, this alignment would be located directly over an existing Portland General Electric (PGE) easement, and power lines buried within the easement. Vehicle movement or access to adjacent parcels do not seem to be affected.

The Preferred Alignment uses the entire 1,832 feet of the BPA property and exposes the farm lands to pressures discussed above under various findings. THPRD mitigation measures will reduce impacts on the agricultural use of the EFU zoned properties to some extent. The applicant stated in these findings:

While moving the proposed trail off-site would lessen any impact to the adjacent farming operations, it would not result in the removal of the existing driveway. It would also be unlikely to change the current usage of the BPA corridor as a trail and, instead, divert pedestrian and bicycle traffic to the existing street to the southwest.

The applicant states that the BPA and TVWD use the access road very infrequently (two to four times a year). The proposed trail is projected to carry 366 users a day. However, some level of use is currently occurring on the informal trail and TVWD/BPA driveway. As discussed above, the existing informal trail carries between seven and 54 pedestrian or bicycle trips per hour under existing conditions, based on limited observations by the applicant and members of the FPNA. (Exhibit A.56, page 43 and Exhibit I.7, Attachment 4).

The hearings officer finds that use of the informal trail is likely to continue if one of the alternative alignments is constructed, as the existing informal trail is clearly visible and provides a shorter, more direct route for Trail users. The existing TVWD/BPA driveway will be clearly visible to southbound Trail users approaching NW Springville Road. The informal trail will be less visible to northbound Trail users approaching the County line. Alternative #1 will continue the paved trail into the Kaiser Woods Natural Area and Trail users will likely follow the Trail, at least initially. However, frequent users of the Trail will realize that the informal trail through the BPA right-of-way provides a more direct route through this area that does not require travel on public streets or sidewalks within the adjacent neighborhood. The informal trail will become more obvious over time as ongoing use creates a more defined route through the southern section of the BPA right-of-way where there is no existing access road. There are no existing measures to prevent such use and no indication that such measures will be installed in the future.

With the Preferred Alignment, THPRD will install a split rail fence along the eastern edge of the Trail, clearly demarcating the boundary between the Trail and the adjacent farm fields and install signs warning Trail users of potential impacts from dust, spray, and other farming activities on the adjacent property. In addition, THPRD staff will patrol this section of trail, cleaning up litter and performing other maintenance. If the applicant utilizes one of the Alternative Alignments the public will continue to use the informal trail through the rural area without these mitigation measures.

Based upon the above analysis, the hearings officer finds that the Preferred Alignment will have the least impact on agricultural lands in the immediate vicinity, because the applicant will provide mitigation measures to reduce impacts on the adjacent farmlands and farm uses occurring on those lands.

The Preferred Alignment meets the approval criteria of MCC 39.7020.

6.13 MCC 39.7025 DESIGN REVIEW.

Uses authorized under MCC 39.7000 through 39.7035 shall be subject to design review approval under MCC 39.8000 through 39.8050.

Staff: The applicant has applied for Design Review. Compliance with the Design Review criteria are in Section 8.

6.14 MCC 39.7030 DESIGN REVIEW EXEMPTION.

Exempted from the Design Review criteria of MCC 39.8000 through 39.8050 include:

(A) Single family residences.

(B) Type B Home Occupations that require the addition of less than 400 square feet of ground coverage to the structure.

(C) Commercial photovoltaic solar power generation facility.

Staff: The proposed conditional use request is for a pedestrian and bicycle trail. It is not exempt from Design Review.

6.15 MCC 39.7035 CONDITIONAL USE PERMIT.

A conditional use permit shall be obtained for each conditional use approved, before development of the use. The permit shall specify any conditions and restrictions imposed by the approval authority or Board of County Commissioners, in addition to those specifically set forth in this Chapter.

Staff: The applicant has applied for a conditional use permit to establish a Trail segment. The proposed project does not require more than one conditional use permit. *This criterion is met.*

7.00 Significant Environmental Concern Approval Criteria

7.01 MCC 39.5510 USES; SEC PERMIT REQUIRED.

(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.

Staff: The subject property is located in an area designated Significant Environmental Concern for wildlife habitat (SEC-h). An SEC-h permit is required.

7.02 MCC 39.5520 APPLICATION FOR SEC PERMIT.

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 39.5540 through 39.5860.

(A) An application for an SEC permit shall include the following:

(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 39.5540 through 39.5860.

(2) A map of the property 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) Proposed fill, grading, site contouring or other landform changes;

(e) 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;

(f) Location and width of existing and proposed roads, driveways, and service corridors

Staff: The applicant has provided the required materials in Exhibits A.5, A.36, A.37, and A.52.

7.03 MCC 39.5860 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT.

(A) In addition to the information required by MCC 39.5520 (A), an application for development in an area designated SEC-h shall include 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:

(1) 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.

(2) Location of existing and proposed structures;

(3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and 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.

Staff: The above information has been provided in Exhibits A.5, A.36, A.37, and A.52.

7.04 (B) 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.

Staff: The applicant states, "The entire subject property is a non-forested 'cleared' area. Therefore, this Code section would allow development to occur anywhere within the subject property." The applicant's narrative addresses their response to this standard in Exhibit A.36 on page 21. Review of a 2018 aerial photo suggests the subject property does not contain any trees. Therefore, staff finds the property qualifies as a "cleared" area as the property lacks areas having at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger. The property is not being reforested pursuant to Forest Practice Rules of the Department of Forestry.

This standard is met.

7.05 (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Staff: Multnomah County Code does not define the term “within” for purposes of application of this standard. The term “*within*” is interpreted to mean at least 51-percent of the proposed development (more than half) is located no more than 200 feet from the public road.

The applicant states:

The proposed Bethany Creek Trail will take its access off of NW Springville Road, near the intersection with NW Shackelford Road, in Washington County. This intersection currently contains the beginning of a trail that goes north of NW Springville Road, and with which the proposed trail will connect. The connection between these 2 trail sections will be at the existing intersection of NW Springville Road and NW Shackelford Road Intersection and all Washington County design standards will be followed (Exhibit A.36, page 21).

The proposed development starts at NW Springville Road and extends south for 1,832 feet (Exhibit A.36). Staff’s estimate based on these linear measurements is that approximately 10-percent of the project is located within two hundred feet of a public road capable of providing reasonable access (NW Springville Road).

This standard not met. A wildlife conservation plan will be required.

7.06 (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Staff: The most common application of this standard arises when considering a driveway length serving a proposed development site. This proposal is different in that the development is a trail. The Trail length is 1,832 feet (Exhibit A.5 and A.6). However, this standard relates to access corridors serving the development which in this case is the Trail itself. Therefore the access to the development does not equate to a 1,832 foot long corridor.

The applicant’s narrative addresses their response to this standard in Exhibits A.6 and A.36 on page 21. The applicant makes the case that no other separate access road is required, because the development is a trail/access road between two other segments. Staff concurs. The only portion of the development in Multnomah County that would be considered access to the Trail might be the portion of the Trail within the southern right-of-way of NW Springville Road, connecting the public road crossing to the main trail alignment within the subject property. This access connection does not exceed 500 feet in length.

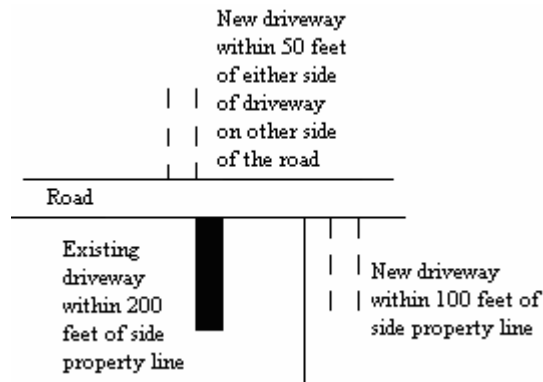
This standard is met.

7.07 (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

(a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or

(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

(c) Diagram showing the standards in (a) and (b) above.



For illustrative purposes only.

(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County “Design and Construction Manual,” adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).

- 1. The modification shall be the minimum necessary to allow safe access onto the public road.**
- 2. The County Road Official shall provide written findings supporting the modification.**

Staff: The existing maintenance road access point onto NW Springville Road was established between 2008 and 2010 when TVWD built the second water reservoir on the property to the east of the project site.

The applicant will be constructing the paved Trail over that existing access roadway except the Trail will not connect to NW Springville Road by the existing approved roadway access point. A portion of the Trail enters the NW Springville Road right-of-way, then the Trail turns west and enters Washington County where the Trail will access NW Springville Road at a proposed signalized crossing located in Washington County. Staff finds a trail paralleling a public road, but not providing direct access to that road, is not an access point for purposes of evaluation of this standard. No additional access points are proposed in Multnomah County.

This standard is met.

7.08

(5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

Staff: Properties to the west, in Washington County, are developed with dwellings. The subject property is only 100 feet wide so the proposed development will meet the above standard.

This standard is met.

7.09

(6) 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. (See Figure 4 below.)**

Figure 4.

FENCE EXEMPTION AREA



(f) Fencing standards do not apply where needed for security of utility facilities.

Staff: The setback from the public road is 30 feet from the right-of-way line. The applicant is proposing a split rail fence (Exhibit A.14 and A.47 Sheet C5.02) that will have a 19.5 inch gap between the ground and the bottom of the fence and has a maximum height of 42 inches at the top of the fence post. The fence is cedar split rail and post. It's ratio of solids to voids in less than 2:1.

This standard is met.

7.10

(7) The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.

Hearings Officer: The applicant's Technical Memorandum (Exhibit A.37, page 7) states that nuisance plants exist on the subject site. These plants include Queen Ann's lace, Canada thistle, tansy ragwort, reed canarygrass, common thistle, Poison hemlock, annual bluegrass, common dandelion, English ivy, and St. John's wort, etc.

MCC 39.5860(B)(7) has two components: 1. A prohibition on planting nuisance plants; and 2. A requirement to remove nuisance plants and assure they remain removed from the cleared

areas of subject property. The applicant is not proposing planting any nuisance plants which satisfies the first component.

The Code does not define the term “subject property.” In this case, the applicant proposed to construct the Trail within a 20-foot wide easement over the BPA property. The easement agreement does not authorize the applicant to maintain vegetation on those portions of the BPA property outside of the easement. Therefore, the hearings officer finds that the “subject property” should be interpreted to mean only the 20-foot wide easement. To hold otherwise would require, for example, an applicant for a cellular tower with a 2,500 square foot lease area to maintain nuisance vegetation on a multi-acre parcel over which the applicant may have no control. Therefore, the applicant should only be required to remove nuisance vegetation within the 20-foot wide easement over the BPA property. Proposed condition 8 should be modified to that effect.

Through a condition, the standard is met.

7.11 (C) 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 subsection (B) 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 subsection (B), but demonstrates that the alternative conservation measures exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).**

Hearings Officer: The proposed application has not met all of the Development Standards under MCC 39.5860(B). Therefore, a Wildlife Conservation Plan is required. Depending on the project site, the hearings officer must determine whether the property itself meets (C)(1) ...as the applicant cannot meet all of the standards in (B)(1) through (B)(7) due to physical characteristics unique to the property or (C)(2)that the applicant’s project design does not meet the Development Standards of (B)(1) through (B)(7) but the mitigation measures or project design will result in less detrimental impact on forested wildlife habitat than the standards in subsection (B).

As staff noted, there are no physical characteristic unique to the property that would prevent the applicant from meeting the development standards of subsection (B). As discussed in the Staff Report, it is possible for the Trail alignment to be redesigned to meet the development standards of (B), although this would require the Trail to be shortened and re-routed at a different southern terminus into Washington County so that at least half of the Trail development is located within 200 feet of a public road capable of providing access. Therefore, (C)(1) is inapplicable and the applicable standard for evaluating the Wildlife Conservation Plan is (C)(2).

The applicant must demonstrate that the alternative conservation measures proposed exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).

There is no forested wildlife habitat on the subject property; there are no trees within the proposed 20-foot lease area or anywhere on the BPA property. Therefore, the hearings officer

finds that the alternative conservation measures proposed by the applicant exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).

Criterion met.

7.12 (3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), 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.

(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.

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

(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.

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

Staff: The applicant is proposing to construct a split rail fence along the majority of the Trail length except where necessary for access by other parties. Since new fencing will be built, the applicant cannot meet the above requirements under (C)(3)(c). The applicant states, “(C)(3) is not applicable because the Wildlife Conservation Plan demonstrates satisfaction of the criteria in subsection (C)(5).” The Wildlife Conservation Plan will need to meet the requirements under (C)(5).

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

* * *

Staff: The proposed project does not involve an addition to an existing use. *This criterion is not applicable.*

7.14 (5) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, 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.

Staff: The application did not meet the criteria listed in (C)(3). The Wildlife Conservation Plan must now demonstrate compliance with the criteria listed below. The applicant has

documented that the subject property qualifies as “cleared area” and no forested areas will be affected by the proposed use (Exhibit A.36 and A.37).

Criterion met.

- 7.15 (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.**

The applicant states:

The proposed project will not result in the removal of any forest cover. All of the subject property has been previously cleared of forest vegetation and meets the MCC 39.5830 definition for a “non-forest cleared” area. Refer to the Wildlife Conservation Plan (Appendix 6, in Section D) for further details (Exhibit A.36)

Staff: No new cleared areas need to be created. The BPA property is 4.21 acres. The proposed Trail easement is 20 feet wide by approximately 1,832 feet long for a total of 36,640 square feet associated with the development (Exhibit A.). The fire district has not specified any access requirements for the project (Exhibit A.23).

Criterion met.

- 7.16 (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes. Existing fencing located in the front yard adjacent to a public road shall be consistent with subsection (B)(6).**

The applicant states:

There are no existing fences within the boundary of the subject property. A split rail fence is proposed as part of this application to separate actively farmed areas from the Trail. The fence would be located along the eastern edge of the Bethany Creek Trail. Refer to MCC 39.5860(A)(4) for further details on fencing, and Sheet C5.02, in Section C for details of the proposed fencing.

[Staff Note: Sheet C5.02 is labeled as Exhibit A.14. Applicant’s narrative for MCC 39.5860(A)(4) can be found in Exhibit A.36 page 20.]

Staff: The applicant is proposing to construct a split rail fence in a cleared area to delineate the eastern boundary of the Trail segment. The fence is to demarcate the Trail use from the agricultural use on the BPA property and the adjacent agricultural uses on the parcels to the east. The purpose of the fence is to help delineate and protect agricultural uses adjacent to the Trail segment from unintentional trespass. The proposed fence within the 30 foot front yard adjacent to NW Springville Road will be used for agricultural purposes and complies with the requirements listed in (B)(6) above.

Criterion met.

- 7.17 (d) For mitigation areas, all trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the total developed area (including buildings, pavement, roads, and land designated as a Development Impact Area) on a Lot of Record will be one acre or more, the applicant shall comply with Mitigation Option 2:**

Staff: The applicant has stated that a detailed planting plan will be completed as part of the final project permitting and preparation of construction drawings (Exhibit A.36, page 28). Therefore staff is lacking information with respect to proposed plantings. The Trail easement is 20 feet wide and 1,832 feet long. Some of the proposed trail improvements appear to be located outside of the easement, but they involve minor square footage. The amount of total developed area calculates out to 36,640+/- square feet, which is less than one acre of Development Impact Area. A condition of approval is warranted requiring that all mitigation trees, shrubs and ground cover shall be native and selected from Metro's native plant list.

Through a condition, this criterion is met.

7.18

1. Mitigation Option 1. In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the development site. Trees that are removed from the development site shall be replaced as shown in the table below. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Tree Replacement Table:

Size of tree to be removed (inches in diameter)	Number of trees and shrubs to be planted
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

Staff: Mitigation Option 1 is based on the number of trees removed and their size. No trees exist so the number of trees required by Option 1 is zero.

7.19

2. Mitigation Option 2. In this option, the mitigation requirement is calculated based on the size of the disturbance area associated with the development. Native trees and shrubs are required to be planted at a

rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

The applicant states:

Mitigation obligations for tree, shrub and ground cover will be satisfied using Mitigation Option 2. Based upon the estimate of 10,292 square feet of new development within SEC-h wildlife habitat, mitigation plantings of 103 trees and 515 shrubs would be required. All planting will be native species selected from the Metro Native Plant List. Refer to the Wildlife Conservation Plan (Appendix 6 in Section D) for further details.

[Staff Note: The Wildlife Conservation Plan has been labeled Exhibit A.24.]

Hearings Officer: Staff make a reasonable argument, based on the dictionary definition of the word “disturbance,” that the applicant should be required to mitigate for all areas impacted by construction of the proposed trail, regardless of the habitat value of those areas. However, the hearings officer must disagree. The purpose of the mitigation requirement is to replace habitat lost to development. That is consistent with Mitigation Option 1, which requires mitigation based on the number and size of trees that are removed from the development site. Therefore, the hearings officer finds that the term “disturbance area” must be construed, based on the text and context of the Code, to be limited to areas of existing vegetation. Areas covered by existing structures or impervious surfaces that may be altered by the proposed development are not “disturbance areas” that require mitigation.

In this case the applicant proposed to construct portions of the Trail over the existing gravel surfaced TVWD/BPA access road. This previously disturbed area provides minimal wildlife habitat value. Although construction of the proposed trail will “disturb” the existing gravel surfaced access road, it will not significantly alter the habitat value of the roadway area. Staff’s interpretation would require habitat mitigation anytime an existing roadway or parking area within the SEC-h overlay is graded or resurfaced, as such activities would “disturb” the existing roadway.

Based upon the applicant’s estimate of 10,292 square feet of disturbance area within SEC-h wildlife habitat, mitigation plantings of 103 trees and 515 shrubs would be required. Option 2 would require more trees and shrubs than Option 1 and therefore Option 2 must be utilized to determine plantings in compliance with (d). The applicant should be required to modify the mitigation planting plan based on the final Trail design and construction impacts.

7.20

(e) Location of mitigation area. All vegetation shall be planted within the mitigation area located on the same Lot of Record as the development and shall be located within the SEC-h overlay or in an area contiguous to the SEC-h overlay; provided, however, that if the vegetation is planted outside of the SEC-h overlay then the applicant shall preserve the contiguous area

by executing a deed restriction, such as a restrictive covenant. (Note: an off-site mitigation option is provided in a streamlined discretionary review process). The mitigation area shall first be located within any existing non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas and last in forested areas or adjacent to landscaped yards.

Hearings Officer: The hearings officer und interprets the criterion in (e) to operate as follows:

1. The mitigation plantings must be placed on the Lot of Record where the development is occurring and shall be located:
 - a. within the SEC-h overlay; or
 - b. In an area contiguous to the SEC-h overlay and a preservation deed restriction or restrictive covenant must be recorded.
- Or
2. In an off-site mitigation area located:
 - a. within the SEC-h overlay; or
 - b. In an area contiguous to the SEC-h overlay and a preservation deed restriction or restrictive covenant must be recorded.
3. The order of mitigation plantings are to occur as follows:
 - a. within any existing non-forested cleared areas contiguous to forested areas;
 - b. within any degraded stream riparian areas;
 - c. in forested areas or adjacent to landscaped yards.

The applicant cannot provide on-site mitigation, as the existing overhead BPA powerlines prohibit the planting of vegetation that may grow over five feet in height on the subject property as this could conflict with maintenance and operation of the overhead power lines (Exhibit A.28, page 10). Therefore, it is impossible to plant the required mitigation trees on the site.

The applicant proposed to various off-site mitigation sites for the proposed plantings: Kaiser Woods Natural Area, Kaiser Woods Park, Area south of TVWD water reservoirs in Washington County, Banister Creek Greenway site (Exhibit A.6 and A.36, page 27). With one exception, the mitigation sites cannot comply with the requirements of the Code.

- The Kaiser Woods Natural Area is contiguous to the site and the SEC-h overlay, abutting the western boundary of Multnomah County. However, the area within the Kaiser Woods Natural Area where mitigation is proposed is not contiguous to the SEC-h overlay. The mitigation area is roughly 1,182 feet from the southwest corner of the BPA property (Exhibit A.49, Planting and Seeding Plan L1.05). (Exhibit A.49)
- Kaiser Woods Park is also contiguous to the site and the SEC-h overlay (Exhibit A.9). However, it is also impacted by a power line corridor for PGE, which precludes the planting of trees in this location.
- The applicant identified an “area south of TVWD Reservoirs in Washington County” has a potential mitigation site. However, that area has been subject to past mitigation and is in

“very good condition” (Exhibit A.36, p 27). No additional mitigation is needed in this area. In addition, there is no evidence that this area is adjacent to the SEC-h overlay. Therefore, this area cannot comply with the requirements of the Code.

However, THPRD also owns “the Banister Creek Greenway site,” a portion of which lies within Multnomah County and within the SEC-h overlay (Exhibits A.36, p 27; Exhibit A.40). According to the applicant, this area has good opportunities for wildlife habitat restoration. Therefore, the hearings officer finds that it is feasible to provide offsite mitigation consistent with MCC 39.5860(C)(5)(e). A condition is warranted requiring the applicant obtain County approval of a mitigation plan for this area.

Mr. Dunn argues that offsite mitigation not allowed, because the Code does not provide “a streamlined discretionary review process” (Exhibit H.6). The hearings officer finds that, although this provision could have been written more clearly, the language of the Code shows a clear intent to allow for offsite mitigation. To hold otherwise would preclude any new development on this site within the SEC-h overlay where the planting of trees is prohibited due to the overhead powerlines. Any offsite mitigation area must be located within the SEC-h overlay or an area contiguous to the SEC-h overlay and subject to recorded a preservation deed restriction or restrictive covenant.

Criterion met with a condition.

7.21

(f) Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.

(g) Trees shall not be used as anchors for stabilizing construction equipment.

(h) Native soils disturbed during development shall be conserved on the property.

(i) An erosion and sediment control plan shall be prepared in compliance with the ground disturbing activity standards set forth in MCC 39.6200 through MCC 39.6235.

(j) Plant size. Replacement trees shall be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs shall be in at least a 1-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.

(k) Plant spacing. Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on-center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on-center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.

(l) Plant diversity. Shrubs shall consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.

(m) Nuisance plants. Any nuisance plants listed in MCC 39.5580 Table 1 shall be removed within the mitigation area prior to planting.

(n) Planting schedule. The planting date shall occur within one year following the approval of the application.

(o) Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

Hearings Officer: The applicant states, “A detailed planting plan will be completed as part of the final project permitting and preparation of construction design documents. These plans will demonstrate compliance with (C)(5)(f) through (C)(5)(o) above, as needed.” (Exhibit A.36, page 28). The hearings officer finds that it is feasible to develop a planting plan consistent with the above requirements. Nothing in the plain language of the Code requires that the applicant provide a detailed planting plan prior to preliminary approval. The applicant is not required to provide detailed designs at this stage of review. *See Meyer v. City of Portland*, 67 Or App 274, n 6, 678 P2d 741, rev den 297 Or 82 (1984). (“[C]onditions of approval may include conditions that specific technical solutions to identified development problems be submitted and reviewed and approved by the government's technical staff.”).

7.22 (6) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, 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 application is not for a protected aggregate and mineral resource (Exhibit A.1). *MCC 39.5860(C)(6) is not applicable.*

7.23 (D) Optional Development Impact Area (DIA). For the purpose of clustering home sites together with related development within the SEC-h overlay, an applicant may choose to designate an area around the home site for future related development and site clearing. For the purposes of establishing the appropriate mitigation for development within the DIA, existing vegetation within the DIA is presumed to be ultimately removed or cleared in the course of any future development within the DIA. Establishment of a DIA is subject to all of the applicable provisions in this section and the following:...

* * *

Staff: The applicant is not proposing a residential use (Exhibit A.1). *MCC 39.5860(D) is not applicable.*

8.00 Design Review

8.01 § 39.8010 DESIGN REVIEW PLAN APPROVAL REQUIRED.

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

Staff: The applicant has requested Design Review be completed as part of the submitted land use application (Exhibit A.6 and A.36).

8.02 MCC 39.8020 APPLICATION OF REGULATIONS.

(A) Except those exempted by MCC 39.8015, the provisions of MCC 39.8000 through 39.8050 shall apply to all conditional and community service uses, and to specified uses, in any base zone.

(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 39.6590 shall only be subject to the following Design Review approval criteria: MCC 36.8040(A)(1)(a) and (1)(c), (4) and (7), except when located in the RC, BRC, OR, OCI, PH-RC or SRC zone base zones.

(C) All other uses are subject to all of the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

(D) Alteration or modification of the physical development previously reviewed through the Design Review process shall be subject to the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

(E) A multiplex, garden apartment or apartment dwelling or structure.

(F) A boarding, lodging or rooming house.

(G) A hotel or motel.

(H) A business or professional office or clinic.

(I) A use listed in any commercial base zone.

(J) A use listed in any manufacturing base zone.

Staff: The applicant has applied for conditional use approval, so a design review permit is required. The proposed Trail segment has no parking, therefore, the applicable approval criteria to this application are limited as specified in (B). The subject property is zoned EFU. Criteria (C) through (J) are not applicable.

8.03 MCC 39.8040 DESIGN REVIEW CRITERIA.

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

(I) 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.

Staff: The applicant's response can be found in Exhibit A.6 and A.36, page 45. No buildings are proposed. The only structures proposed are the signs and the split rail fence. The type of fence proposed is a split rail fence (Exhibit A.14). Split rail fences are often found in the rural area. The proposed signage is various and different sizes. The materials used are metal. The

site is currently developed with BPA electrical transmission towers which consist of a metal structure. The signage uses harmonious materials to the environment in which they are set.

Criterion met.

- 8.04 (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.**

Staff: The applicant's response can be found in Exhibit A.36, page 45. The Trail is a paved ten foot wide asphalt surface with gravel on each side for water infiltration. The Trail is not readily viewable from surrounding properties as it is at ground level. The split rail fence is constructed of wood and is a type that is seen in rural areas of the County. It is minimalist fencing to demarcate a separation of the Trail from adjacent farming activities. The signs are typically placed at various trail intersections to provide various information to trail users. Provided the signs meet the sign code starting at MCC 39.6700, they will serve their function. The proposed improvements are efficient and functional. They are on a human scale and fit within the surrounding area.

Criterion met.

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

Staff: The applicant's response can be found in Exhibit A.36, page 46. The applicant has indicated that no grading will occur for the construction of the Trail. The project site is a flat piece of land and no significant terrain alteration is necessary to construct the Trail as it is proposed. No trees or shrubs exist where the Trail is proposed within the BPA property.

Criterion met.

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

Staff: The applicant states that none of the above elements are proposed (Exhibit A.6 and A.36, page 46). Staff concurs.

Criterion met.

9.00 Parking, Loading, Circulation and Access

- 9.01 Parking: MCC 39.6590(F) Unspecified Uses. Any use not specifically listed above shall have the off-street parking space requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.**

Staff: The proposed Trail segment is for pedestrian and bicycle use and is not a destination use such as a park. Staff finds that no parking spaces are required on the site as the Trail is for alternative transportation and will not generate the need for on-site parking.

The Parking requirements are not applicable to this project.

10.00 Signage

10.01 Signage: MCC 39.6710 CONFORMANCE.

No sign may be erected unless it conforms with the regulations of this Subpart. Sign permits must be approved prior to erection of the sign.

MCC 39.6720 EXEMPT SIGNS.

The following signs are exempt from the provisions of this Subpart, but may be subject to other portions of the County Zoning Code:

- (A) Signs not oriented or intended to be legible from a right-of-way, private road or other private property;
- (B) Signs inside a building, except for strobe lights visible from a right-of-way, private road or other private property;
- (C) Signs legally erected in the right-of-way in accordance with MCC 29.500 through 29.583, the Multnomah County Road Rules and Design and Construction Manual adopted thereunder, and Administrative Rules and Regulations pursuant to MCC 15.225 through 15.236;
- (D) Building numbers required by the applicable street naming and property numbering provisions in Multnomah County Code;
- (E) Signs carved into or part of materials which are an integral part of the building;
- (F) Flags on permanent flag poles which are designed to allow raising and lowering of the flags;
- (G) Banners on permanent poles which are designed and intended as a decorative or ornamental feature;
- (H) Painted wall decorations and painted wall highlights;
- (I) Bench advertising signs which have been lawfully erected.

Staff: The applicant has included signage as part of the Design Review application. The proposed Trail segment has six signs. All signs are visible from either the NW Springville Road right-of-way or from other properties (Exhibit A.10 and A.45).

The proposed signs are not exempt from the County's sign code as proposed.

10.02 MCC 39.6725 PROHIBITED SIGNS.

The following signs are prohibited and shall be removed:

- (A) Strobe lights and signs containing strobe lights which are visible beyond the property lines;
- (B) Signs placed on or painted on a motor vehicle or trailer and parked with the primary purpose of providing a sign not otherwise allowed for by this Subpart;
- (C) Abandoned signs;
- (D) Balloon signs; and
- (E) Signs in the right-of-way in whole or in part, except signs legally erected for informational purposes by or on behalf of a government agency.

Staff: The proposed signs are various metal signs with no proposed illumination (Exhibit A.10, A.45 and A.14). They will be installed into the soil on the BPA property. They are not balloon signs. The sign that appears to be partly within the public right-of-way of NW Springville Road is being installed by Tualatin Hills Park and Recreation District (THPRD). THPRD qualifies as a governmental agency.

The proposed signs are not prohibited.

10.03 MCC 39.6740 BASE ZONE SIGN REGULATIONS.

Signs are allowed in unincorporated Multnomah County depending on the base zone in which a property is situated as described in MCC 39.6745 through 39.6765. Signs are allowed on properties that are zoned PD or have CS designations to the extent that signs are allowed in the base zone, except as provided in this Subpart.

Staff: The subject property is zoned EFU. Signage is allowed in the EFU zone.

10.04 MCC 39.6745 SIGNS GENERALLY.

For all uses and sites in all zones except the LM, C-3 and MR-4 zones, the following types, numbers, sizes and features of signs are allowed. All allowed signs must also be in conformance with the sign development regulations of MCC 39.6780 through MCC 39.6820.

(A) The following standards apply to Free Standing Signs:

- (1) Allowable Area - Free standing signs are allowed .25 square feet of sign face area per linear foot of site frontage, up to a maximum of 40 square feet.**
- (2) Number - One free standing sign is allowed per site frontage.**
- (3) Height - The maximum height of a free standing sign is 16 feet.**
- (4) Extension into the Right-Of-Way - Free standing signs may not extend into the right-of-way.**

(C) Sign Features. Permanent signs may have the following features:

- (1) Signs may be indirectly illuminated downward onto the sign face.**
- (2) Electronic message centers are not allowed.**
- (3) Flashing signs are not allowed.**
- (4) Rotating signs are not allowed.**
- (5) Moving parts are not allowed.**

*** * ***

(D) Additional Signs Allowed. In addition to the sign amounts allowed based on the site and building frontages, the following signs are allowed in all base zones for all usages:

- (1) Directional signs pursuant to MCC 39.6805.**
- (2) Temporary lawn, banner and rigid signs.**
- (3) Subdivisions may have a free standing sign at each entrance, up to a total of four, each of which may be up to ten feet in height and 50 square feet in area**

S.P Keynote*	Sheet	Sign Type	Sign Detail Location	Sign Width	Sign Height	Sign Type
7	C3.04	A3/R1	Sheet C5.02, Detail 4	12"	72"	Freestanding
21	C3.03	D1	Sheet C5.03, Detail 1	12"	66"	Freestanding

***Site Plan Keynote**

Staff: The County's sign code divides sign types into different categories depending on their purpose or usage. **MCC 39.6820 Definitions** provides the following meanings:

(J) Directional Sign is “A permanent sign which is designed and erected solely for the purpose of traffic or pedestrian direction and placed on the property to which the public is directed.”

(K) Free Standing Sign is “A sign on a frame, pole or other support structure which is not attached to any building.”

(FF) Sign is “Materials placed or constructed primarily to convey a message or other display and which can be viewed from a right of-way, private roadway or another property.”

Planning staff reviewed the various sign design details and sign locations on the proposed trail. It was determined that two signs would qualify as freestanding signs due to their location. The first freestanding sign is adjacent to NW Springville Road and is shown on Sheet C3.04 as keynote #7. The other freestanding sign is at the intersection of the Trail segment with an existing paved trail leading from a public open space/park in Washington County and is shown on Sheet C3.03 as keynote #21. This is an issue.

The BPA property only has site frontage on NW Springville Road. Since the BPA property only has one site frontage, it can only have one freestanding sign. **MCC 39.6820(KK)** defines **Site Frontage** as “That portion of a lot on one side of a street between two intersecting streets, accessways, or other rights-of-way (crossing or terminating) measured along the line of the street or for a dead-end street or accessway, all the property between an intersecting street or other right-of-way and the dead-end of the street or accessway.” It may be possible for the applicant to move the sign and have it qualify as a directional sign, but it will also need to be shortened and comply with the standards under MCC 39.6805.

The freestanding sign adjacent to NW Springville Road (keynote #7, Sheet C3.04) meets the above codes for freestanding signs. It is possible for the applicant to designate sign keynote #21, Sheet C3.03 as the freestanding sign and redesign the keynote #7 sign to qualify as a directional sign. It would have to be moved and placed so that its purpose is to provide direction to users within the property to meet the standard.

The BPA property has 100 feet of site frontage on NW Springville Road. The freestanding sign may have up to 25 square feet of sign face pursuant to MCC 39.6745(A)(1). The keynote #7 sign detail shows the freestanding sign will have 2.125 square feet of sign face and will be six feet tall. The keynote #21 sign detail shows a freestanding sign with 1.96 square feet of sign face and five-½ feet tall. Neither sign is proposed to be illuminated, move, rotate, flash or contain an electronic message center and is not proposed for the public right-of-way of NW Springville Road. Both of the proposed freestanding signs comply with the criterion above, with the exception of MCC 39.6745(A)(2) as only one freestanding sign is allowed.

The applicant agreed to redesign the keynote #7 sign as a directional sign (Exhibit H.15, p 11).

As conditioned, this Criterion is met.

10.05 MCC 39.6805 DIRECTIONAL SIGNS.

Directional signs shall comply with the following provisions:

Maximum Sign Face Area:	Six Square Feet
Types of Signs Allowed:	Free Standing, Fascia, Projecting, Painted Wall
Maximum Height:	Free Standing 42 Inches Fascia and Projecting 8 Feet
Extensions into R/W:	Not Allowed
Lighting:	Indirectly illuminated downward onto the sign face
Maximum Sign Face Area:	Six Square Feet
Flashing Lights:	Not Allowed
Electronic Message Centers:	Not Allowed
Moving or Rotating Parts:	Not Allowed

Staff: The applicant has proposed a number of signs that could qualify as Directional Signs pursuant to MCC 39.66820(J). Some of the signs exceed the maximum allowances for these types of signs. Figure #1 lists the signs that planning staff determined could qualify as Directional Signs:

Figure #1				
S.P Keynote*	Sheet	Sign Type	Sign Detail Location	Sign Type
24	C3.04	T4	Sheet C5.03, Detail 2	Directional
7	C3.03	A3/R1	Sheet C5.02, Detail 4	Directional
22	C3.03	?	No Trespass Sign	Directional
23	C3.02	T1	Sheet C5.02, Detail 5	Directional

Figure #2 lists each Directional Sign dimensions and sign face.

Figure #2					
S.P Keynote*	Sheet	Sign Type	Sign Width	Sign Height	Sign Face
24	C3.04	T4	8"	42"	0.44 sq. ft.

7	C3.03	A3/R1	12"	72"	2.125 sq. ft.
22	C3.03	?	?	?	?
23	C3.02	T1	2.75"	42"	0.34 sq. ft.

On the directional signs where information is provided, none of them are proposed to be illuminated, have moving or rotating parts, or be an electronic message center. The keynote #24 sign appears to be partially located within the public right-of-way (Exhibit A.10, A.45, Sheet C3.04). Based on the site plan, it could be relocated to comply with the above directional sign criteria. The keynote #7 sign is too tall and will need to be reduced in height to 42 inches or less. No information has been provided for the keynote #22 sign ("No Trespassing" sign) in the applicant's submittal.

A condition of approval is warranted requiring the applicant modify the proposed signs to comply with MCC 39.6700 *et al.*

As conditioned, this Criterion is met.

10.06 MCC 39.6780 SIGN PLACEMENT.

(A) Placement. All signs and sign structures shall be erected and attached totally within the site except when allowed to extend into the right-of-way.

(B) Frontages. Signs allowed based on the length of one site frontage may not be placed on another site frontage. Signs allowed based on a primary building frontage may be placed on a secondary building frontage.

(C) Vision Clearance Areas.

(1) No sign may be located within a vision clearance area as defined in subsection (C) (2) below. No support structure(s) for a sign may be located in a vision clearance area unless the combined total width is 12 inches or less and the combined total depth is 12 inches or less.

(2) Location of vision clearance Areas - Vision clearance areas are triangular shaped areas located at the intersection of any combination of rights-of-way, private roads, alleys or driveways. The sides of the triangle extend 45 feet from the intersection of the vehicle travel area (See MCC 39.6820 Figure 2). The height of the vision clearance area is from three feet above grade to ten feet above grade.

(D) Vehicle Area Clearances. When a sign extends over a private area where vehicles travel or are parked, the bottom of the sign structure shall be at least 14 feet above the ground. Vehicle areas include driveways, alleys, parking lots, and loading and maneuvering areas.

(E) Pedestrian Area Clearances. When a sign extends over private sidewalks, walkways or other spaces accessible to pedestrians, the bottom of the sign structure shall be at least 8-1/2 feet above the ground.

(F) Required Yards and Setbacks. Signs may be erected in required yards and setbacks.

(G) Parking Areas.

(1) Unless otherwise provided by law, accessory signs shall be permitted on parking areas in accordance with the provisions specified in each base zone, and signs designating entrances, exits or conditions of use may be maintained on a parking or loading area.

(2) Any such sign shall not exceed four square feet in area, one side. There shall not be more than one such sign for each entrance or exit to a parking or loading area.

Staff: Planning staff has analyzed the proposed signage and finds the following:

- For criterion (A), the keynote #24 sign appears to be partially located within the public right-of-way (r.o.w) (Exhibit A.10 and A.45, Sheet C3.04). This sign needs to be relocated so it does not extend into the r.o.w.
- For criterion (B), the property only has one site frontage, which is adjacent to NW Springville Road. The applicant has proposed two freestanding signs. If the applicant wanted to remove the freestanding keynote #7 sign, Sheet C3.04, staff believes they could keep the other freestanding sign (keynote #21, Sheet C3.03) as proposed, as its location is not another site frontage. The site can only have one freestanding sign.
- For criterion (C), the sign (keynote#24 sign, Sheet C3.04) may be in the Vision Clearance Area. The applicant will need to demonstrate the sign is outside of the Vision Clearance Area when or if it is relocated.
- For criteria (D) and (E), no proposed signs will extend over a vehicle travel lane or sidewalk.
- For criterion (F), the sign locations within the minimum yards is allowed.
- For criterion (G), no parking is proposed and no signs are proposed in a parking area.

The applicant will need to correct any issues identified above for the signage to meet the applicable code criteria. As conditioned, this Criterion is met.

Transportation Planning

11.00 Transportation Standards:

FINDINGS: Written findings are contained herein. The Multnomah County Road Rules are in **bold** font. Staff analysis and comments are identified as '**Staff:**' and address the applicable criteria. Staff comments may include a conclusory statement in italic.

11.01 MCRR 4.000 Access to County Roads

MCRR 4.100 Application for New or Reconfigured Access: Applicants for a new, altered or reconfigured access onto a road under County Jurisdiction are required to submit a site plan. Applicants may be required to provide all or some of the following:

- A. Traffic Study-completed by a registered traffic engineer;**
- B. Access Analysis-completed by a registered traffic engineer;**
- C. Sight Distance Certification from a registered traffic engineer; and**
- D. Other site-specific information requested by the County Engineer including a survey.**

Staff: The applicant is proposing to construct a trail that is near NW Springville Road, a Multnomah County facility classified as a Rural Collector facility. An existing driveway

serves properties to the south. Repairs to the driveway are proposed. All required information has been submitted.

Criterion is met.

- 11.02 MCRR 4.200 Number of Accesses Allowed: 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 is the standard for approval pursuant to the Multnomah County Code. 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. If more than one access is desired, a land use application must be submitted in compliance with applicable Multnomah County Codes.**

Staff: No new access points are proposed.

Criterion is not applicable.

- 11.03 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.**

Staff: No new access points are proposed.

Criterion is not applicable.

- 11.04 MCRR 4.400 Width: Driveway, Private road and Accessway widths shall conform to the dimensions laid out in the Design and Construction Manual.**

Staff: No new access points are proposed.

Criterion is not applicable.

- 11.05 MCRR 4.500 Sight Distance: All new or altered 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.**

Staff: Multnomah County Road Rules Section 4.500 states that access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the County Design and Construction Manual or AASHTO's A Policy on Geometric Design of Highway and Streets. The applicant has submitted for review by the County Transportation Division a traffic analysis which provides an assessment of sight distance at the intersection in question consistent with AASHTO standards. The Trail crossing of NW Springville Road is located in Washington County and subject to their standards. The applicant should maintain sight distance along the Trail to ensure the crossing is visible and that trail and road users have safe sight distance available.

As conditioned, this Criterion is met.

- 11.06 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 subsection 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. The County Engineer determination of pro-rata share of improvements will expire twelve months from the date of the County Engineer's determination or after the associated land use permit is granted or closed. If expired, a review process and new determination will be required.

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.

Staff: The Multnomah County Road Rules define a Transportation Impact as the effect of any new construction or alteration which will increase the number of vehicle 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 [MCRR 3.000]. A minimum increase of 10 new vehicle trips per day is required to find a transportation impact.

This project is a trail segment that will support bike and pedestrian movement. No trailheads and/or parking type amenities are proposed. No transportation impact is anticipated as part of this project.

This criterion is not applicable.

11.07 MCRR 6.000 Improvement Requirements

MCRR 6.100 Site Development: All subject parties with respect to any property proposed for development, including but not limited to the owner of the site and the applicant (if different than the owner), will be responsible for improvements to the right-of-way for any said development of the property which is found to cause a Transportation Impact, those improvements shall include:

- A. Dedication of Right of Way Requirement:** The subject parties are responsible for a pro-rata share, as determined by the County Engineer, of right-of-way and easement dedications necessary to bring the affected, existing, created or planned public streets and other facilities within and abutting the development to the current County standard. The dedication of the required easements and right-of-way may be conditions of approval of Design Review or any other development permit related to the proposal.

Staff: No right of way dedications are required as a result of this proposal. The County standard right of way for a Rural Collector facility is 60 feet, 30 feet from the road centerline to adjacent property lines, (DCM Table 2.2.5 Rural Cross Section). Currently, 30 feet of right of way exist between the site's property line and the centerline of NW Springville Road. The total existing right of way width on NW Springville Road is 60 feet.

Criterion is met.

- 11.08 A. Frontage Improvement Requirements: Frontage Improvement Requirements:** In addition to easement and right-of-way dedication requirements, a prorated share may include half-street improvements along all of the site's County Road frontage(s). Right of Way improvements shall satisfy the standards of the County Design and Construction Manual based upon the functional classification of the road(s). The commitment to improve the affected streets or other facilities to the required standards shall be conditions of approval of Design Review or any other development permit related to the proposal. Half-street improvements can include all of the following:
- a. Street widening/improvement
 - b. Utility cut restoration
 - c. Curb and sidewalk
 - d. Driveway relocation/replacement/removal
 - e. Traffic controls
 - f. Drainage facilities
 - g. Lighting facilities
 - h. Bicycle facilities
 - i. Signal conduit facilities
 - j. Street trees
 - k. Other appropriate facility or right of way requirements as required by applicable statutes, codes and regulations.

Staff: The applicant is proposing signage for the crossing as well as stormwater components. Any work in the Multnomah County right-of-way will require a permit from Multnomah County prior to opening of the Trail for public use.

As conditioned, criterion is met.

- 11.09 C. Required Submissions by Subject Parties.** Subject parties shall submit to the County Engineer the following: engineered plans, traffic studies, traffic analysis, reports, surveys or similar documents as requested or required by the County Engineer under this Subsection 6.100 or as may additionally be required under Section 18.

Staff: The applicant has submitted plans for signage and stormwater.

This criterion is met.

11.10 26.000 Stormwater and Drainage

26.100 Onsite management of Stormwater is a priority for County.

26.150 Applicants for a development or redevelopment that impacts impervious surface will be required to provide a Stormwater certificate and/or analysis showing method of and ability to retain Stormwater on site. Stormwater solutions must be consistent with Multnomah County Design and Construction Manual standards.

26.200 Any development or redevelopment of a site which proposes Discharge of Stormwater onto County right of way is subject to Stormwater Discharge permit requirements outlined below, and must comply with drainage requirements identified in the Multnomah County Design and Construction Manual.

26.300 Stormwater Discharge permit requirements: The County Engineer may allow drainage of Stormwater to County right of way when the following standards are met:

A. Applicant demonstrates that they are not able to meet the Discharge hierarchy of the Portland Stormwater Manual.

B. An Analysis conducted by a registered engineer shows that soil infiltration is not feasible.

C. A Drainage analysis is conducted by a registered engineer that ensures the storm sewer pipe/system can handle conveyance of a 25-year storm event or another storm event as identified by the County Engineer based on site/area/facility conditions.

D. Standards under Section 16.200 of these rules are addressed.

Staff: The project is proposing to manage stormwater on-site and has submitted stormwater reports. Any impacts or location of facilities in the count right-of-way will require a permit.

As conditioned, this Criterion is met.

12.0 Other Issues

12.10 Coordination with the Bicycle/Pedestrian Citizen Advisory Committee

Hearings Officer: Mr. Holtz argued that the County should have consulted with the Multnomah County Bicycle/Pedestrian Citizen Advisory Committee (the “CAC”) prior to issuance of the Staff Report for this application (Holtz testimony and Exhibits H.2 and I.4). The hearings officer understands the CAC’s desire to be involved in the review of this pedestrian/bicycle trail project. However, the Code does not require such involvement. In addition, review of this development application is subject to deadlines imposed by state law, which would severely limit the County’s ability to provide for such review.

12.20 Lack of contact between THPRD and the FPNA.

Hearings Officer: There is a dispute about whether the FPNA invited THPRD staff to present this project at a meeting of the FPNA (Exhibits I.5, I.7, and I.8). However, this issue is not relevant to the applicable approval criteria for this application. The Code does not require the applicant to meet with the neighborhood association regarding the application.

'A' Applicant's Exhibits
 'B' Staff Exhibits
 'C' Procedural Exhibits
 'D' Comments Received
 'H' Hearing Exhibits
 'I' Post Hearing Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T3-2019-11682 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	3.07.2019
A.2	1	Authorization Letter from the United States of America Dept. of Energy, Bonneville Power Administration	3.07.2019
A.3	11	Mailer Map and Address List for Washington County	3.07.2019
A.4	2	Table of Contents for Submitted Narrative	3.07.2019
A.5	4	Section A: Introduction	3.07.2019
A.6	45	Section B: Applicable Zoning Code Standards - Narrative	3.07.2019
A.7	1	Section C: Exhibit Drawings – Exhibit List	3.07.2019
A.8	1	C1.00: Cover Sheet	3.07.2019
A.9	5	C2.00 – 2.04: Existing Conditions Survey and Demolition Plans a. C2.01 b. C2.02 c. C2.03 d. C2.04	3.07.2019
A.10	5	C3.00 – 3.04: Site Plan a. C3.01 Site Plan b. C3.02 Site Plan c. C3.03 Site Plan d. C3.04: Site Plan	3.07.2019
A.11	1	C4.00: Overall Grading and Erosion Control Plan	3.07.2019
A.12	4	C4.01 – 4.04: Grading and Erosion Control Plans a. C4.02 b. C4.03 c. C4.04	3.07.2019
A.13	1	C5.00: Erosion Control Details	3.07.2019

A.14	3	C5.01-5.03: Details a. C5.02 b. C5.03	3.07.2019
A.15	1	L1.00: Overall Planting and Seeding Plan	3.07.2019
A.16	5	L1.01-1.05: Planting and Seeding Plan a. L1.02 b. L1.03 c. L1.04 d. L1.05	3.07.2019
A.17	1	L2.00: Planting Details	3.07.2019
A.18	1	Section D: Appendices – Table of Contents	3.07.2019
A.19	1	Appendix 1: Assessors Tax Map for 1N 1W 16C	3.07.2019
A.20	21	Appendix 2: Judgements Creating BPA property	3.07.2019
A.21	7	Appendix 3: Pre-Application Conference Summary	3.07.2019
A.22	1	Appendix 4: Sheriff Office Review	3.07.2019
A.23	3	Appendix 5: Fire Service Agency Review	3.07.2019
A.24	21	Appendix 6: Wildlife Conservation Plan	3.07.2019
A.25	1	Appendix 7: Letter of Support from Tri-County Investments, LLC	3.07.2019
A.26	2	Appendix 8: Photos from NW McGregor Terrace	3.07.2019
A.27	1	Appendix 9: List of Existing Portland Metropolitan Area Trails within EFU zoned properties	3.07.2019
A.28	5	Appendix 10: Trail Alignment Alternatives 1-4	3.07.2019
A.29	14	Appendix 11: THPRD 2016 Trails Functional Plan	3.07.2019
A.30	1	Appendix 12: Metro Regional Trails System Plan Map	3.07.2019
A.31	3	Appendix 13: Storm Water Certificate completed by Daniel Boultinghouse, P.E.	3.07.2019
A.32	9	WA Co Land Use Decision dated 6.5.19	6.15.2019
A.33	1	WHPacific Transmittal letter dated 4.22.19	4.22.2019
A.34	2	Letter dated 4.22.19 from applicant to Lisa Estrin deeming application complete	4.22.2019
A.35	2	Revised Table of Contents – replaces Ex. A.4	4.22.2019
A.36	46	Revised Narrative – replaces Ex. A.6	4.22.2019
A.37	21	Appendix 6 - Revised Wildlife Conservation Plan	4.22.2019

A.38	30	Appendix 13 – Revised Storm Water Certificate (4.17.19) / Drainage Report (4.17.19)	4.22.2019
A.39	3	Appendix 14 – Response to Multnomah Co Transportation System Plan	4.22.2019
A.40	1	Appendix 15 – Off-site Multi-use trail connection	4.22.2019
A.41	1	Appendix 16 – Jacob Wismer Elementary Safe Routes to School	4.22.2019
A.42	1	Appendix 17 – Washington County Proposed Neighborhood Bikeway Path	4.22.2019
A.43	1	Email re: 1N1W16C – 02800	8.07.2019
A.44	1	Replaces Ex. A.9 Existing Conditions Survey and Demolition Plans: C2.04.d:	4.22.2019
A.45	1	Replaces Ex. A.10 Site Plan: C3.04.d	4.22.2019
A.46	1	Replaces Ex. A.12 Grading and Erosion Control Plans: C4.04.c	4.22.2019
A.47	1	Replaces Ex. A.14 Details: C5.01	4/22/2019
A.48	1	Replaces Ex. A.16 Planting and Seeding Plan: L1.04.c	4/22/2019
A.49	1	Replaces Ex. A.16 Planting and Seeding Plan: L1.05.d	4/22/2019
A.50	1	Email dated 8.7.19 clarifying tax lot	8.07.2019
A.51	3	Email dated 8.8.19 clarifying information submitted	8.08.2019
A.52	1	Replaces Figure 4 SEC-h Mitigation Planting and Seeding Plan in Appendix 6: Wildlife Conservation Plan	4/22/2019
A.53	1	Email dated 8.15.19 from David Bantz, WHPacific clarifying Nuisance Plant Removal	8/15/2019
‘B’	#	Staff Exhibits	Date
B.1	2	Tax Information for 1N1W16C -02800	3.07.2019
B.2	11	BPA Survey 63739 (Page 10 is subject area)	3.07.2019
B.3	26	TVWD Nonconforming Use Dec T2-08-068 dated 1.29.09	3.07.2019
B.4	1	County High-Value Soil List dated 8.8.94	3.07.2019
B.5	1	Alan Schaaf Letter dated 8.29.09	3.07.2019
B.6	1	1977 Aerial w/BPA Property	3.07.2019
B.7	1	1986 Aerial	3.07.2019
B.8	5	Multiple years aerials	3.07.2019
B.9	1	Wildlife Habitat Map	8.07.2019

B.10	32	STCD Supreme Court Ruling	8.07.2019
B.11	1	Neighborhood Association Map	8.07.2019
B.12	26	EFU Zone	8.07.2019
B.13	3	Goal 14	8.08.2019
B.14	1	Vehicle Speeds	8.08.2019
B.15	2	Dart Printout for 14120 NW Springville Rd	8.09.2019
B.16	2	14344 NW Springville Rd	8.09.2019
B.17	17	Public Facilities	8.13.2019
B.18	16	TSP Ped and Bicycle Element	8.13.2019
B.19	37	Natural Resources	8.13.2019
B.20	4	OR Worker Protection Standards	8.15.2019
B.21	-	CD of video of Oregon OSHA Application Exclusion Zone (AEZ)	8.15.2019
‘C’	#	Administration and Procedures	Date
C.1	5	Incomplete Letter	4.05.2019
C.2	1	Letter Stating Applicant Deemed Case Complete on April 22, 2019	5.17.2019
C.3	21	Hearing Notice	8.01.2019 and 8.08.2019
C.4	3	Email dated 8.9.19 showing property has been posted as of 8.8.19	8.09.2019
‘D’	#	Comments Received	Date
D.1	1	Washington County Community Participation Organization #7 letter dated 7.24.19 in support of application	7.26.2019
‘H’	#	Hearing Exhibits	Date
H.1	2	Email dated 8.21.19 from Armando Zelada	8.23.2019
H.2	2	Email dated 8.21.19 from Andrew Holtz rep. Mult. Co Bicycle and Pedestrian CAC	8.23.2019
H.3	3	Letter dated 8.22.19 from Jerry Grossnickle, FPNA Land Use Committee	8.23.2019
H.4	1	Letter dated 8.22.19 from Jim Sjulín	8.23.2019
H.5	1	Letter dated 8.22.19 from Metro	8.23.2019
H.6	14	Submittal from Garland Dunn, undated	8.23.2019

H.7	35	T2-08-023 Decision for TVWD	8.23.2019
H.8	1	Email dated 8.22.19 from Sarah Beachy	8.23.2019
H.9	1	Email dated 8.22.19 from David Newman	8.23.2019
H.10	8	Email dated 8.22.19 from John Ratliff	8.23.2019
H.11	3	Letter dated 8.23.19 from Andrew Holtz	8.23.2019
H.12	2	Staff recommended Conditions of Approval	8.23.2019
H.13	2	Maps from applicant	8.23.2019
H.14	1	Tualatin Valley Water District service area	8.23.2019
H.15	12	Letter dated 8.23.19 from Kelly Hossaini, Miller Nash representing Tualatin Hills Park and Recreation Dept	8.23.2019
H.16	1	Map from Sam Scheerens, Chair of Nature & Trails Advisory Committee for THPRD	8.23.2019
H.17	50	Letter dated 8.22.19 from Carol Chesarek, representing Forest Park Neighborhood Association (FPNA)	8.23.2019
H.18	2	Hearing sign-in sheet	8.23.2019
'I'	#	Post Hearing Exhibits	Date
I.1	1	Letter dated 8.26.19 from Kelly Hossaini to Lisa Estrin re: 150-day waiver	8.26.2019
I.2	7	Memo dated 8.30.19 with attachments from Katherine Thomas, Assistant County Attorney re: Character of the Area	8.30.2019
I.3	2	Letter dated 8.29.19 from Andrew Holtz re: follow-up	8.30.2019
I.4	63	Email dated 8.29.19 from Andrew Holtz w/link to Resolution 2014-045 supporting and acknowledging the Westside Trail Master Plan	8.30.2019
I.5	13	Email dated 8.30.19 with letter and attachments from Carol Chesarek representing FPNA	8.30.2019
I.6	1	Letter dated 8.30.19 from Rep. Ken Helm and Brad Witt	8.30.2019
I.7	39	Letter w/attachments dated 8.30.19 from Kelly Hossaini	8.30.2019
I.8	3	Letter dated 9.6.19 from Carol Chesarek	9.06.2019
I.9	27	Letter w/attachments dated 9.5.19 from Kelly Hossaini	9.06.2019
I.10	11	Final Argument from Kelly Hossaini dated 9.12.19	9.12.2019