

W-8.C.

AGENDA COVER MEMO

DATE: November 27, 2005 (Date of Memo)
December 14, 2005 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department

PRESENTED BY: Thom Lanfear, Associate Planner, Land Management Division

AGENDA ITEM TITLE: Order No. 05-_____ In the Matter of Electing Whether or Not to Hear Arguments on an Appeal of a Hearings Official's Decision Affirming a Planning Director Denial of a Request to develop a private park (Private Trails and Nature Park) within the Impacted Forest Lands (F-2) Zone as provided by Lane Code 16.211(3)(c). (file PA 04-6260/Gillette)

I. MOTION

MOVE TO ADOPT THE ORDER ESTABLISHING THE BOARD'S ELECTION TO NOT HEAR ARGUMENTS IN AN APPEAL OF THE HEARINGS OFFICIAL'S DECISION AND TO AFFIRM THE HEARINGS OFFICIAL'S INTERPRETATION OF LANE CODE ON THE RECORD.

II. ISSUE OR PROBLEM

An appeal to the Board, contesting a Hearings Official decision affirming the Planning Director denial of an Application to develop a private park (Private Trails and Nature Park) within the Impacted Forest Lands (F-2) Zone, has been received by the Director. Pursuant to Lane Code 14.600, the Board must now decide whether or not to hear the appeal by applying criteria set forth in the Code.

III. DISCUSSION

A. Background

1. Property involved in this action is identified as Map 18-04-14, tax lot 3900 and Map 18-04-23, tax lots 202 and 204 located at 86340 Needham Road, and zoned F-2 (Impacted Forest Lands) and RR-5 (Rural Residential) within the jurisdiction of the Lane County Rural Comprehensive Plan and Lane Code Chapter 16. Contiguous property also owned by the applicant at the time of application included Map 18-04-14, tax lots 3400, 4000, 4001, 4004, 4005, 4007, 4009 and Map 18-04-23, tax lot 100.
2. The acreage involved in the proposed park use is 292 acres of the total 400 acre ownership. Three zones are found within the entire contiguous ownership: F-2 (Impacted Forest

Lands), E-40 (Exclusive Farm Use), and RR-5 (Rural Residential). The proposed uses will occur in the F-2 zoned portions of the property with the exception of the access from Lorane Highway which crosses through the RR-5 Zone.

3. In the form of application PA 04-6260, the property owner submitted a request on November 9, 2004 to develop a private park (Private Trails and Nature Park) within the Impacted Forest Lands (F-2) Zone as provided by Lane Code 16.211(3)(c). The park would take access through the Rural Residential Zone as provided by Lane Code 16.290(4)(p).
4. The Planning Director elected to conduct an evidentiary hearing on the proposal in accordance with the criteria of Lane Code 14.110(3). The evidentiary hearing was held on January 27, 2005. The record was held open until February 11 for additional materials from all parties. A site visit was conducted on February 15 with the applicant and a representative of the neighbors. The record was left open until February 25 for all parties to respond to the materials submitted earlier and the site visit memorandum. The applicant was able to provide final rebuttal until March 4, 2005. The Planning Director decision was issued on June 13, 2005.
5. An appeal of the Planning Director decision was filed on June 27, 2005. The Planning Director affirmed the decision and scheduled the appeal for review by the Hearings Official on the record.
6. A hearing before the Lane County Hearings Official was held on July 21, 2005. The record was held open until August 4 at the request of parties.
7. On November 7, 2005, the Hearings Official issued a decision affirming the Planning Director denial of the proposal.
8. A timely appeal of the Hearings Official decision was filed by the applicant on November 15, 2005. On November 16, the Hearings Official affirmed his decision.

B. Elective Board Review Procedure

The *Elective Board Review Procedure* in Lane Code 14.600(2)(c) and (d) provides the Board with three options:

- To hear the appeal on-the-record,
- To not hear the appeal and to remain silent on the Hearings Official's decision, or
- To not hear argument in the appeal but to expressly agree with any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed and affirm the Hearings Official's decision.

The applicable subsections are:

LC14.600(2)(c) The Board shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for the appeal, the Board order shall also specify the tentative date for the hearing on

the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.

LC14.600(2)(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

If the Board's decision is to hear arguments on the appeal, then the Board must adopt an Order and findings specifying the tentative date for a hearing and the parties who qualify to participate in a hearing on the record for the appeal. Such an Order is not attached here and will need to be produced if the Board elects to hear.

In order for the Board to hear the appeal, the Decision Criteria of LC 14.600(3) requires that one or more of the four criteria cited below, be satisfied:

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must conclude the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing and must comply with one or more of the following criteria:

- a) The issue is of Countywide significance.***
- b) The issue will reoccur with frequency and there is a need for policy guidance.***
- c) The issue involves a unique environmental resource.***
- d) The Planning Director or Hearings Official recommends review.***

C. Analysis.

Character of the Appeal.

The applicant/appellant has raised the following issues in the appeal submittal:

1. The Planning Director / Hearings Official exceeded his jurisdiction in the following manners:

A. Inaccurately assessing the (in)feasibility of engineering and constructing access to emergency vehicle standards across Tax lot 3400 from Lorane Highway;

The applicant failed to adequately address the problems with the proposed access to Lorane Highway through the Rural Residential Zone. The issue was raised by Transportation Planning during the open record period at the Planning Director proceedings and left unanswered in the record by the applicant. Failure to demonstrate that the proposal would not create significant adverse impacts on existing uses on adjacent or nearby lands are grounds for denial of the proposal within the jurisdiction of the Planning Director and Hearings Official.

B. Inaccurately judging that the scope of improvements necessary to implement the proposed Special Use is too extensive to reasonably anticipate completion within two years;

There is no evidence in the record that the proposal could be implemented within two years but this was not a basis for denial of the application by either the Planning Director or Hearings Official. This issue is raised in the Hearings Official conclusion as a necessary condition to be considered in the event that an approval is subsequently given during the appeals process.

- C. *Denying the applicant of his codified right to have a longer time line specified for certain condition(s) if deemed necessary, by basing a Finding of Fact opposing the application upon the unsubstantiated conjecture that said improvements could not be completed within two years; and*

The record is silent on the issue of completion of the project within two years. The Hearings Official decision does not conclude that the applicant should be limited to a two-year time period, only that the time period is limited by Lane Code to a two-year period unless the Approval Authority grants a longer time period. Any approval of this proposal must include a determination of the length of time to be allowed the applicant to satisfy all conditions of approval.

- D. *Raising new requirements in and/or subsequent to the decision which were not prior communicated and in fact are not applicable to the approval or denial of the application.*

No details are provided that identify the alleged “new” requirements.

2. *The Planning Director and Hearings Official failed to follow the procedure applicable to the matter by mis-applying criteria and implying (though never stating outright) that a Facility Permit should have been secured prior to land use approval, though such prior application was neither suggested prior to the decision nor even permitted by Transportation Planning upon the applicant's early attempt. The Director and HO further failed to follow applicable procedures in failing to recognize substantial answers in the record to alleged "questions" which supposedly formed the basis for denying the application and upholding that decision. Substantial evidence in the record has been "conveniently" omitted or disregarded from the Planning Director's and HO's findings.*

The applicant misunderstands the issue about the access to Lorane Highway. It is not the failure to obtain a Facility Permit that was the grounds for denial of the proposal. Rather, it was the failure to demonstrate that the access to Lorane Highway would not create a significant impact on the adjacent or nearby lands since the applicant did not address the issues raised by Transportation Planning during the Planning Director proceedings. In addition, the applicant disagrees with the conclusions drawn by the Planning Director and the Hearings Official after evaluation of the entire record.

3. *The Planning Director and Hearings Official rendered a decision that is unconstitutional in that it denies me the right to make reasonable and responsible use of my property in a manner which is, with fully manageable conditions of approval, consistent with the Lane Comprehensive Plan and zoning codes.*

The method used to determine if the proposed use is “reasonable and responsible” is the evaluation of the proposal through the Special Use Permit process. The applicant has not demonstrated that the proposal is consistent with the Land County Rural Comprehensive

Plan and the criteria found in the Impacted Forest Lands (F-2) Zone and the Rural Residential (RR-5) Zone. It is the applicant's burden to submit adequate evidence that it is feasible to develop the park proposal in a manner that does not create a significant fire hazard and create significant impact on adjacent properties. That determination cannot be delegated to conditions of approval.

If, pursuant to Lane Code 14.600(2)(d), the Board agrees with the Hearings Official's decision and affirmation of his decision, it is then appropriate not to hear arguments on the appeal and to adopt the attached Order affirming and adopting the Hearings Official's justification for the decision, findings of fact, and conclusions of law as written in his decision of November 7, 2005.

If on the other hand the Board concludes that further interpretation of issues raised in the appeal is necessary, then it is appropriate to schedule an on the record hearing as authorized by Lane Code 14.600(2)(c) and conducted pursuant to Lane Code 14.600. A new Order with Findings will be needed in lieu of the attached Order.

Analysis of Election to Hear Criteria.

Each Lane Code 14.600(3)(a)-(d) election-to-hear criterion is presented below with the Director's analysis.

a. The issue is of Countywide significance.

The application was denied on site specific compatibility issues, particularly the increased fire hazard presented by the proposed use and conflicts with access to Lorane Highway. The record developed during the Planning Director hearing process fails to demonstrate that the increased fire hazard has been adequately addressed and safe access to Lorane Highway can be provided.

b. The issue will reoccur with frequency and there is a need for policy guidance.

Evaluation of impacts due to increased fire hazard occurs during every Special Use Permit in the F-2 Zone, but no policy guidance is necessary. Although it is likely that this application may be submitted again in the future (reoccur), there is no issue that requires policy guidance associated with the proposal. The denial is based upon the failure of the applicant to demonstrate the feasibility of safe access to Lorane Highway and the use would not significantly increase fire hazard. The evaluation of these issues was based on the specifics of the subject property and evaluation of the applicant's proposal and submitted evidence.

c. The issue involves a unique environmental resource.

No unique or rare environmental resources on the property have been identified in the record. The applicant mentions an extensive oak savannah on the property but this savannah is not identified in the Rural Comprehensive Plan for protection. The applicant states that somehow this proposal would preserve the savannah from development, but this application represents "development" and it has been found by the Planning Director and Hearings Official to increase the fire hazard to the area, which presumably includes the savannah.

d. The Planning Director or Hearings Official recommends review.

Neither the Hearings Official nor the Planning Director recommends review of the appeal.

D. Options

1. To hear the appeal on the record;
2. To not hear arguments on the appeal and to remain silent on the Hearings Official's decision and interpretations; or
3. To not hear arguments on the appeal, affirm the Hearings Official's decision, and to expressly agree with any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed.

E. Recommendation

Option 3 is recommended.

F. Timing

If the Board elects to hear the appeal, a date for an on-the-record hearing will need to be established following adoption of an Order electing to hear.

IV. IMPLEMENTATION/FOLLOW-UP

Notify the parties of the Board decision to adopt the attached Order, or

If the Board elects to hear the appeal, a new Order and Findings will need to be prepared and adopted, and notice of a hearing given, as soon as possible.

V. ATTACHMENTS

1. Board Order electing to not hear the appeal, with Exhibits "A" (findings) and "B" (Hearings Official Decision, November 7, 2005 with Affirmation of decision, November 16, 2005).
2. Appeal of Hearings Official November 7, 2005 decision, dated November 15, 2005, with arguments.
3. Map illustrating location of property.

More background information can be supplied if needed. If an on-the-record appeal hearing is scheduled, a complete copy of the record with all evidence will be made available to the Board.

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

Order No. 05-_____ **(In the Matter of Electing Whether or Not to Hear
(Arguments (on an Appeal of a Hearings Official's Decision
(Affirming a Planning Director Denial of a Request to
(Develop a Private Park (Private Trails and Nature Park)
(within the Impacted Forest Lands (F-2) Zone as Provided by
(Lane Code 16.211(3)(c). (file PA 04-6260/Gillette)**

WHEREAS, the Lane County Hearings Official has made a decision on application PA 04-6260;
and

WHEREAS, the Lane County Planning Director has accepted an appeal of the Hearings
Official's Decision to the Board of County Commissioners pursuant to LC 14.515; and

WHEREAS, the Lane County Hearings Official has affirmed his decision on application PA 04-
6260; and

WHEREAS, Lane Code 14.600 provides the procedure and criteria which the Board follows in
deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings
Official; and


WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting
of the Board; NOW

THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds
and orders as follows:

1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A".
2. That the Board of County Commissioners expressly agrees with any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision attached as Exhibit "B".
3. That the Lane County Hearings Official decision dated November 7, 2005 is affirmed by the Board of County Commissioners.

DATED this _____ day of December, 2005.

APPROVED AS TO FORM

Date 12-6-2005 lane county

OFFICE OF LEGAL COUNSEL

Chairperson, Lane County Board of Commissioners

FINDINGS IN SUPPORT OF THE ORDER

1. Property involved in this action is identified as tax lots 3400 and 3900, assessor's map 18-04-14, and tax lots 202 and 204, assessor's map 18-04-23 located at 86430 Needham Road, and zoned impacted Forest Lands (F-2) and Rural Residential (RR-5) within the jurisdiction of the Lane County Rural Comprehensive Plan and Lane Code Chapter 16.
2. The acreage involved in the proposed park use is 292 acres of the total 400 acre ownership. Three zones are found within the entire contiguous ownership: F-2 (Impacted Forest Lands), E-40 (Exclusive Farm Use), and RR-5 (Rural Residential). The proposed uses will occur in the F-2 zoned portions of the property with the exception of the access from Lorane Highway which crosses through the RR-5 Zone.
3. In the form of application PA 04-6260, the property owner submitted a request on November 9, 2004 to develop a private park (Private Trails and Nature Park) within the Impacted Forest Lands (F-2) Zone as provided by Lane Code 16.211(3)(c). The park would take access through the Rural Residential Zone as provided by Lane Code 16.290(4)(p).
4. The Planning Director elected to conduct an evidentiary hearing on the proposal in accordance with the criteria of Lane Code 14.110(3). The evidentiary hearing was held on January 27, 2005. The record was held open until February 11 for additional materials from all parties. A site visit was conducted on February 15 with the applicant and a representative of the neighbors. The record was left open until February 25 for all parties to respond to the materials submitted earlier and the site visit memorandum. The applicant was able to provide final rebuttal until March 4, 2005. The Planning Director decision was issued on June 13, 2005.
5. An appeal of the Planning Director decision was filed on June 27, 2005. The Planning Director affirmed the decision and scheduled the appeal for review by the Hearings Official on the record.
6. An on-the-record hearing before the Lane County Hearings Official was held on July 21, 2005. The record was held open until August 4 at the request of parties.
7. On November 7, 2005, the Hearings Official issued a decision affirming the Planning Director denial of the proposal.
8. A timely appeal of the Hearings Official decision was filed by the applicant on November 15, 2005. On November 16, the Hearings Official affirmed his decision.
9. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - *The issue is of Countywide significance.*
 - *The issue will reoccur with frequency and there is a need for policy guidance.*
 - *The issue involves a unique environmental resource.*
 - *The Planning Director or Hearings Official recommends review.*

10. **The Board of Commissioners finds that the appeal involves a set of circumstances and a fact pattern particular to the property. The Board further finds no issues of Countywide significance raised in the appeal.**
11. **The Board of Commissioners finds that the issues associated with this appeal may reoccur within the County on occasion during the application of Lane Code criteria to requests for private parks within the Impacted Forest Lands Zone. However, additional policy guidance from the Board is not necessary in that the Board is satisfied with the reasoning and findings of the Planning Director and Hearings Official with respect to the application of existing Lane Code criteria. No further policy guidance from the Board is necessary at this time.**
12. **The Board of Commissioners finds that the subject property is not a unique environmental resource.**
13. **Neither the Planning Director nor the Hearings Official recommends review.**
14. **To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.**
15. **The Board has reviewed this matter at its meeting of December 14, 2005 and finds that the appeal does not comply with the criteria of Lane Code Chapter 16.600(3), and elects to not hold an on the record hearing.**

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR'S DENIAL OF A REQUEST FOR A PRIVATE
PARK ON PROPERTY ZONED F-2**

Application Summary

James Gillette, 86430 Needham Road, Eugene, OR 97405, requests approval for a private park on tax lots 3400 and 3900, assessor's map 18-04-14; and tax lots 202 and 204, assessor's map 18-04-23. The Planning Director held an evidentiary hearing on the matter on January 27, 2005. The record was held open until February 11 for additional materials from all parties. A site visit was conducted on February 15 with the applicant and a representative of the neighbors. The record was left open until February 25 for all parties to respond to the materials submitted earlier and the site visit memorandum. The applicant was able to provide final rebuttal until March 4, 2005. The Planning Director decision denying the application was issued on June 13, 2005. A timely appeal was filed on June 27, 2005. The Hearings Official held an "on the record" appeal on July 21, 2005.

Application History

Hearing Date: July 21, 2005
(Record Held Open Until August 4, 2005)

Decision Date: November 7, 2005

Appeal Deadline

An appeal must be filed within 10 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane County Rural Comprehensive Plan
Lane Code 16.211(5)
Lane Code 16.290(5)

Findings of Fact

1. The property subject to this application, hereinafter referred to as "the subject property," can be identified as tax lots 3404 and 3900, assessor's map 18-04-14; and tax lots 202 and 204, assessor's map 18-04-23 and has a mailing address of 86430 Needham Road, Eugene, OR. The subject property is about 400 acres in size. Contiguous property also owned by the applicant include Map 18-04-14, tax lots 4000, 4001, 4004, 4005, 4007, 4009 and Map 18-04-23, tax lot 100.

The acreage involved in the proposed park use is 292 acres of the total 400 acres owned by the applicant. Three zones are found within the entire contiguous ownership: F-2 (Impacted Forest Lands), E-40 (Exclusive Farm Use), and RR-5 (Rural Residential). The proposed uses will occur in the F-2 zoned portions of the property with the exception of the access from Lorane Highway, tax lot 3400, which crosses through the RR-5 Zone. Tax lot 3400 is a small (.25 acres) rectangular-shaped parcel that borders on the Lorane Highway.

The subject property is traversed by two powerlines, and slopes from a high point of approximately 800' msl, southward and westward. Small stream(s) on this land eventually flow into Spencer Creek, a Class I stream that traverses the property and constitutes a zoning boundary between the E-40 Zone and the F-2 Zone

2. The applicant proposes to develop a private trails and Nature Park entitled "Trials Country Trails Park" and a paintball area. The paintball area is located in the northwest portion of the property. The trails occur on the F-2 zoned portions of the property in the south and northwest portions of the tract. According to the applicant, "[T]ypical operations include people arriving with or on their mountain bicycles to ride the site; individuals to community groups entertaining passive, personally-edifying as well as educational natural outings and investigations; picnickers, bird watchers, flora and fauna collectors, seekers and protectors, naturalists, students, scientists and geographers; paint ball enthusiasts; and trails for off-road-vehicles (ORVs) and motorcycle riders."

Normal hours of operation will be limited to daylight hours. Organized riding events will occur approximately 4-6 times per year, paintball tournaments will occur less frequently. Paintball tournaments will not occur at the same time as any organized riding event. The maximum number of persons on the site at one time would be approximately 50 - 100 persons. Parking areas are designed to accommodate 30 cars each; one in each of the two park sections.

Paintball is described as a combination of "tag" and "hide and seek". The proposed paintball area is between 20 to 30 acres in size on tax lot 3900. There are three main varieties of paintball activities: "walk on", Tournament / League Play and Scenario Games. The numbers of players varies for walk on games from 10 to 70 players. Tournaments consist of 6 to 30 teams of up to 10 members each. Scenario Games attract 100 - 300 players but generally do not happen more than 2 - 3 times per year. The paintball area was located generally on tax lot 3900 but also extended into property owned by the applicant that was zoned EFU. The paintball area is actually larger than depicted on the map submitted by the applicant. The applicant's site plan that showed existing fire access roads had several inaccuracies and there were many unimproved roadways on the property that did not correspond to roads shown on the site plan.¹

¹ Observations of Thom Lanfear in February 17, 2005 memo describing February 15, 2005 site view of property. (File Exhibit #109)

The applicant estimates an average of thirty (30) vehicles per week during the riding season (early autumn, spring, and summer). Access will be provided by all-weather, gravel accesses to serve the southerly portions of the tract from Isaac Walton Road and the northwesterly portion from Lorane Highway.

Two parking lots are proposed, one in each F-2 portion of the property. Each parking area will be a clay dirt surface with gravel placed as needed and will accommodate 30 cars. The parking lots are located in interior locations of the property to minimize impacts to neighboring properties. No self-fueling activities will be allowed to occur anywhere on the site except in the parking lot.

The proposed use includes the use of trails by trails motorcycles, trails ATVs and trail bicycles. The motorcycles differ from dirt bikes in their lower horsepower and gears, softer tire types, lesser noise levels, and lower rates of travel. Noise levels are typically below 90 decibels.

The future fire roads are intended to provide emergency access points reaching all individual owners on abutting parcels. All vehicles allowed on the trails will be required to be equipped with a spark arrestor. Regular inspections of equipment will occur on arrival at the park and also verified on the trails. Visitors will not be permitted to have campfires on the site at any time. During times of heightened fire hazard, riding of motorized vehicles will be prohibited on the site. The applicant proposes to thin overcrowded timber stands and remove and spray the under story to reduce fire fuel loads. Testimony from neighbors and those who have viewed the site note that grass can get waist-high in on portions of the subject property during the early summer months. The applicant warrants that noxious vegetation and undergrowth will be removed from site, composted, or destroyed through a controlled burn and that smoking will not be allowed on site except in the parking lots. Chemical toilets will be maintained at each proposed parking lot.

The applicant has warranted that the larger of two existing reservoirs (more accurately described as ponds) will be excavated and improved to constitute a year-round water source and that a drafting pad will be constructed for fire trucks. In his rebuttal, however, the applicant stated that compliance with fire safety standards is not dependent upon the two "reservoirs" on the subject property and therefore it is not necessary to demonstrate adequate water rights to maintain the reservoirs. The applicant has further warranted that riding will not be permitted during times of "heightened fire hazard." Heightened fire hazard, as defined by the applicant, are those times when the temperature exceeds 90 degrees Fahrenheit or when activities are prohibited by the Oregon Department of Forestry (DOF). The record is not clear as to what circumstances determine when the DOF prohibits activities on forest lands.

The applicant proposes to complete, replace and improve as necessary, the fencing around the subject property's entire perimeter prior to opening the park. The fencing will be complemented by "signage" to discourage trespassing. Boundary protection measures will include daily perimeter checks and trail use monitoring.

The owner plans to establish a 50' wide riparian area buffer on either side of the stream (Spencer Creek) for its length on and abutting the subject tract. ODFW has reviewed the Creek in May of 2003 and identified four stream crossings in existence.

2. The subject property is bordered on the west by property zoned F-2 (tax lots 3504, 3802, 3800, 300, 600, 700 and 201) and on the southeast (tax lots 200 and 204). The subject property is bordered by E-40 zoned land on the west (tax lot 400) and on the east (tax lot 3800). Property zoned Marginal Land, 160 acres of which is subject to forest tax deferral and is involved in native Oak Savanna restoration.
3. Access onto Lorane Highway for the northern portion of the park proposal is via tax lot 3400. Lorane Highway is a Rural Major Collector road designed to carry through traffic (non-local trips). The speed in this area of Lorane Highway is posted at 45 mph. Driveway and intersection spacing is required be a minimum of 400 feet (LC 15.138(1-Table 2)). Spacing is measured from centerline of the driveway to the centerline of the adjacent driveway or road intersection.

LC 15.137(5) states that road approaches on County Roads shall be located where they do not create undue interference or hazard to the free movement of highway and pedestrian traffic. Locations on sharp curves, steep grades, areas of restricted sight distance or at points that interfere with the placement and proper functioning of signs, lighting, guardrail, or other traffic control devices are not permitted. Based on the anticipated use and trip generation of the proposal, any access to Lorane Highway (even if it met the spacing standards) would be closely evaluated against the above section of Lane Code.

The access road across tax lot 3400 is currently subject to a facility permit (FP 04-1586) issued by Lane County Public Works to Marty Campbell, owner of tax lot 3402, assessor's map 18-04-14.² The permit is for a driveway approach to log the property for a home site. The road is roughly graveled, is deeply rutted, quite steep and impacted by a creek bed. It took a 4-wheel drive jeep with the applicant providing navigation instructions to traverse the road during the February site view of the property. The record does not contain any information regarding whether the road could be brought up to a standard where it would be accessible to emergency vehicles and the general public or what resources would be necessary if that standard could be met.

Access to the tax lots 202 and 204 is through Isaac Walton Road. Some wetland and drainage issues are present but the road is relatively flat and it appears feasible, using standard engineering practices, to develop the road to emergency vehicle standards and Lane Code 16.211(8)(e) requirements.

4. The subject property is subject to fire protection coverage of Lane District #1. In February of 2005, there was a house fire on Bailey Hill Road, within the District

² February 11, 2005 electronic communication from John Petsch to Thom Lanfear. (File Exhibit #100)

Boundaries. The driveway was accessible, immediately off Bailey Hill Road and vegetation had been cut back around the structure. There was no onsite water source and water had to be trucked in via the fire vehicles. The house burned to the ground.

The subject property is also receives fire protection from the Western Lane District of the Oregon Department of Forestry (DOF). Ms. Joy Corliss apparently took a site view of the property and noted that the property had gravel and dirt roads, some of which needed improvement, that were wide enough for fire engines.³ She noted that a Type 6 (200 gallon) engine was able to drive on the roads and on some trails and a Type 4 (1000 gallon) engine was able to drive on the roads. She also noted that it was necessary to have a clear, detailed map of the property and that trails and roads must be clearly marked on the ground. A dispatch plan was also necessary to be developed. The record does not reflect which roads were observed by Ms. Corliss and the location of those roads vis-a-vis EFU and F-2 zoning.

5. Trespass onto the applicant's property has been an issue in the past and is acknowledged by the applicant.⁴ The paintball facility and trails are well known to enthusiasts of both sports and use of the property for these activities has sometimes occurred without the knowledge or consent of the applicant.

Decision

THE LANE CNTY PLANNING DIRECTOR'S DENIAL OF THE GILLETTE REQUEST (PA 04-6260) FOR APPROVAL TO DEVELOP A PRIVATE PARK WITHIN AN IMPACTED FORST LANDS ZONE IS AFFIRMED.

Justification for the Decision (Conclusion)

This appeal has been reviewed "on the record." I have listened to the cassette tapes of the January 27, 2005 hearing and the have reviewed written materials in the record. In the applicant's reasons for appeal he generally challenges the Planning Director's conclusion that (1) he has failed to demonstrate that access onto the Lorane Highway is feasible and (2) failure to demonstrate that the proposed use would not significantly increase fire hazard and the risks to fire suppression personnel. Other issues include whether the application represents activities that are appropriate to forest land and whether noise will pose a significant impact on adjacent properties. These allegations are addressed individually, below.

1. **Failure to demonstrate feasibility of access to the Lorane Highway.**

³ See February 18, 2005 letter from Joy Corliss to "To Whom It May Concern." (File Exhibit #113)

⁴ February 18, 2005 electronic message from Bryan Lessley to Thom Lanfear. (File Exhibit #110)

The proposed park is separated by EFU-zoned land, a portion of which (tax lot 100, assessor's map 18-04-23) is owned by the applicant. Since the EFU-zoned land is not a part of this application, access to the two park segments must be individually and separately evaluated. The northern portion of the park requires access through tax lot 3400, a small (.25 acre) parcel owned by the applicant that is zoned rural residential and provides access from the Lorane Highway to tax lot 3900. A parcel that provides access to a use is considered to be accessory to that use and, as such, is subject to an evaluation of the zoning that applies to the parcel. *Roth v. Jackson County*, 38 Or LUBA 894, 905 (2000).

Lane Code 16.290(4)(p) allows parks within the rural residential zone subject to compliance with the criteria of Lane Code 16.290(5). The Planning Director found that because the applicant had not shown that it was feasible to meet Lane County road access standards the application was not consistent with Lane Code 16.290(5)(a), which states:

"Shall not create significant adverse impacts on existing uses on adjacent and nearby lands or on uses permitted by the zoning of adjacent or nearby undeveloped lands;"

Lorane Highway is a Rural Major Collector road designed to carry through traffic (non-local trips). The speed in this area of the Lorane Highway is posted at 45 mph. Driveway and intersection spacing is required be a minimum of 400 feet. LC 15.137(5) states that road approaches on County Roads shall be located where they do not create undue interference or hazard to the free movement of highway and pedestrian traffic. Zoning along the area where tax lot 3400 touches the highway is generally Rural Residential.

The applicant argues that the Planning Director's requirement that a Facility Permit from the Lane County Public Works Department be secured prior to approval of the special use permit for the park is contrary to Lane Code 16.205(3). He notes that this section of the code provides three options for when a facility permit may be issued and that the only option that is applicable in the present case is where the permit is required as a condition of approval in a land division or other land use decision. He further argues that the issuance of a facility permit is purely an administrative decision and does not involve the discretion of the hearings official. Essentially, the applicant is arguing that the issuance of a facility permit is not a land use decision. Finally, the applicant points out that the issuance of a facility permit as a condition of approval is standard practice (as opposed to requiring a facility permit prior to land use approval).

Under normal circumstances the applicant would be correct and the facility permit issuance procedures of Lane Code 15.205 would require that a facility permit be addressed in the conditions of approval of a land use decision. Unfortunately, the proposal does not represent normal circumstances. Tax lot 3400 is zoned residential and, as noted above, Lane Code 16.290(5)(a) imposes a "significant impact" test on the proposed use.

One of the impacts of the proposed use is the need for access onto the Loraine Highway. In the present case, there is substantial evidence in the record that access onto the Loraine Highway from tax lot 3400 may not meet driveway separation standards and, because of travel speeds and visibility limitations, may not be safe. Transportation planning staff, after reviewing the applicant's submission, determined that the application was inadequate because it did not address the location or width of access point onto the Loraine Highway. In a memo to Thom Lanfear, Land Management Division planning staff, Bill Morgan, Lane County Transportation Planner, stated: "Access from Loraine Highway cannot be approved based on the information we have and our review of applicable codes." The need to have an adequate access point onto the Loraine Highway is a matter of safety as the travel speed along the highway in that location is around 45 mph and the access point is a short distance from a curve in the road that limits sight distance for cars traveling eastbound. There also did not appear to be room for adequate separation from other existing access points.

While these are certainly issues that are pertinent to the issuance of a facility permit, they are also very relevant to the standard of Lane Code 16.290(5)(a) as they affect neighboring residential uses as well as users of the proposed park. A determination of whether safe access can be accomplished is one that includes a significant level of discretion as the aforementioned safety concerns as well as other information (that is not in the record) such as highway capacity, traffic volume, residential density, and vehicle accident information, must be considered.

As land use decision-makers, the Director and the Hearings Official cannot delegate this analysis, through the Facility Permit process, to the Public Works Department⁵ without first analyzing the applicant's submission to determine if there is enough evidence in the record to determine whether or not it is feasible for the applicant to satisfy the above-identified standards of Lane Code 16.290(5)(a).⁶ The Planning Director concluded that there was not and I concur.

The use of tax lot 3400 for access also presents a serious problem related to emergency vehicle access. The existing access road is roughly graveled and built to provide access to a logging operation. It is deeply rutted, quite steep and impacted by a creek bed. It took a 4-wheel drive jeep with the applicant providing navigation instructions to traverse the road during the February site view of the property. The record does not contain any information regarding whether the road could be brought up to a standard where it would be accessible to emergency vehicles and the general public or what resources would be necessary if that standard could be met. The applicant was advised of this deficiency by the Planning Director before the record closed but additional information was not forthcoming.

⁵ *Tenley v. Washington County*, 34 Or LUBA 352, 364-365 (1998)

⁶ *Rhyme v. Multnomah County*, 23 Or 10 LUBA 442, 447 (1992)

The applicant's proposal regarding access to tax lot 3900 fails on four grounds:

- a. There is substantial evidence in the record that suggests that the applicant will not be able to access the northern portion of the proposed park through tax lot 3400. As this is the only access that was proposed to serve this section of the park⁷, the application fails as it relates to tax lot 3900.
- b. There is substantial evidence in the record that the utilization of tax lot 3400 to provide access to the Loraine Highway is a safety hazard. Numerous issues were raised by County Transportation Planning staff that suggested that the access could not be approved and the applicant did not rebut these concerns. The standard in Lane Code 16.290(5)(a) is that the proposed use not create significant adverse impacts on existing uses on adjacent and nearby lands or on uses permitted by the zoning of adjacent or nearby undeveloped lands. Unsafe access would clearly cause a significant adverse impact on the residential uses that currently abut and utilize the Loraine Highway. The inability of the access road to support emergency vehicles also has a significant adverse impact on the proposed park, and surrounding forest and residential uses, as the applicant's fire safety assurances strongly rely upon providing superior access to fire equipment.
- c. Private parks are allowed under Lane Code 16.211(3)(c) and are thus subject to the siting standards of Lane Code 16.211(8). Lane Code 16.211(8)(e) provides standards for routes of access for fire fighting equipment across private roads or driveways. These standards include requirements for 20 feet of unobstructed width, a travel width of 16 feet constructed to certain standards, and limitations on grades in excess of 16 percent over longer distances. The applicant has not provided any evidence that these standards can be met in regard to the use of tax lot 3400 to access tax lot 3900.⁸
- d. Lane Code 16.211(3) requires that private parks not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel. As stated above, the applicant's proposal relies heavily on his ability to provide adequate access to fire fighting equipment. Failure to provide adequate access to the park for fire fighting equipment transfers the cost and risk of fire suppression from fires originating on the subject property onto

⁷ Alternative access is available through property owned by the applicant and that is zoned EFU but this alternative was not included in this application.

⁸ The applicant has stated that he was told by the Deputy Fire Chief (Lane District #1?) that Lane Code 16.211(8)(e) only pertained to roads accessing structures. This is false. Lane Code 16.211(8) applies to "other uses" specified in Lane Code 16.211(3)-(7) and Lane Code 16.211(8)(e) only exempts commercial forest uses from the fire safety design standards for roads and driveways. (File Exhibit #116)

neighboring property owners.

The applicant cites ORS 105.676 for the proposition that his proposal is consistent with the Oregon Legislature's intent to encourage land owners to make their land available to the public for recreational purposes. As an aside, I have a concern that the limitation of liability to the property owner granted by ORS 105.682 may extend beyond the person using the land to include neighboring landowners who are damaged by fire or other impacts from the recreational use of private park property.

For the four reasons outlined above, I must affirm the Planning Director's denial on the basis that the applicant has not met applicable approval standards regarding access to the proposed park.

2. Failure to demonstrate that the proposed use would not significantly increase fire hazard and the risks to fire suppression personnel.

Lane Code 16.211(3) requires that private parks not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

The applicant's property can be described as forested, with underbrush, mixed with areas of open space than often are occupied with waist-high grass in the early summer. Adjacent properties are similar in nature. The applicant has described the methods by which he means to address fire safety and these include cutting away and spaying underbrush. He has also pledged to fence the property lines if required to do so. A 50' buffer is proposed between the proposed trail system and adjacent residences.

The applicant seems to exhibit a genuine concern for fire safety and has demonstrated knowledge of how fire safety can be maintained. The problem with the application concerns the implementation of that knowledge. For instance, the applicant's site plan shows many unimproved roadways on the property that do not correspond to roads shown on the map and the fire access roads are roughly sketched in. To be able to meet the approval standard each of the fire access roads must be precisely located and located in reference to the off-road vehicle, motorcycle, bike trails that will be constructed. The condition of the access roads must be identified and a work plan must be developed to bring those roads up to all-weather, emergency vehicle standards.

Attachment "B" to the applicant's submission shows a connecting system of trails throughout the EFU property with the F-2 portions of the property to the west and south. There are at least 2 trail crossings over Spencer Creek which is the dividing line between the F-2 and E-40 zoned portions of the property. The existing area used for paintball straddles the zone boundary. In an acknowledgment that the EFU-zoned land is essential to the provision of adequate fire protection the applicant has proposed not to open the park until the EFU-zoned portion of the park is approved.

The applicant has pledged to build the trails according to the specifications of the fire district but the County may not delegate the determination of whether the fire safety standards of Lane Code 16.211(3) have been satisfied. It is correct to assume that the fire district personnel will have a significant role in the planning and design of the access roads but that input is just one of several that must be weighed. The County decision-maker's analysis is necessarily broader than that of the fire district and must address comments from neighbors and the feasibility of the applicant to implement the final design. The first step in this process, and the one that is incomplete, is to provide a detailed map of the access trails and to explain why these trails, based upon the topography that they traverse, their location in conjunction with the use of the park and adjacent property lines, and their design, will satisfy the approval criterion. Since, in the applicant's own words, the riding trails are constantly evolving, the fire access trails, as designed and located, must be shown to be adequate to serve the entire property.

The applicant's proposal fails to demonstrate that the proposed use would not significantly increase fire hazard and the risks to fire suppression personnel. It relies upon subsequent approval of adjacent EFU-zoned property being added to the park without showing that it is feasible to do so. A prior application that included the EFU-zoned land was denied in 2003. Also, the applicant has not supplied a sufficiently detailed map and plan for the creation of a system of fire access roads that will adequately protect the subject property.

3. Failure to demonstrate that the proposed use is consistent with the *Utsey* case.

The question raised is whether the uses proposed for the subject property, taken as a whole, exceed the permissible level of activity (i.e. be appropriate in a forest environment) allowed on forest lands and opined by the Oregon Land Use Board of Appeals in *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

In *Utsey*, LUBA found that an off-highway vehicle (OHV) trail that was a "single-file" trail system distributed over 200 acres on a 531 acre site, "with dispersed riders passing at intervals" was a recreational activity appropriate in a forest environment. In the present case, the applicant proposes the activity to occur on 292 acres of his 400+ contiguous acres. He estimates that 30 trails motorcycles per week, on the average, plus an unknown number of trail bicycles. There will be four to six organized riding events each year. If the riding events are as described by the applicant to be "skill" rather than "speed" oriented then it appears that the park, as described by the applicant, satisfies the *Utsey* test.

It is unclear whether the paintball portion of the application complies with *Utsey*. While the applicant states that there will be a maximum number of 100 persons on the site at any one time he also describes paintball activities as including tournaments and scenario games where the former can consist of 6 to 30 teams of up to 10 members each and where the latter activity may attract between 100 and 300 players two to three times per year. It is unclear whether it is the applicant's intent to limit the paintball events to 100 persons or whether he does not believe that more than 100 people would participate in

such activities on his property. An activity that includes 300 participants operating as teams does not seem like an intensity of use that is appropriate in a forest environment. Like so many other aspects of the applicant's proposal he leaves it to the decision-maker or interested parties to fill in the blanks.

4. Noise

The applicant has made many representations regarding noise management. For instance, he has promised to require that all vehicles must have a spark arrestor and states that he will do spot checks of decibel levels and at entry into the park. He says that he has sound measurement equipment, although he does not specifically identify this equipment, and that he will use this equipment to ensure that the trail motorcycles (in the aggregate) will not exceed 90 dBA at property lines.⁹

The standard applicable to the proposed park is found in Lane Code 16.211(3) is that it must not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands and that it not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel. There have been no allegations that noise from the proposed park would adversely affect forest management of adjacent or nearby properties nor has there been credible evidence that the noise will adversely affect the grazing of cattle, the only agricultural activity reported to occur within the general vicinity.

Conclusion

The Planning Director's denial is affirmed on the basis of the failure of the applicant to demonstrate the feasibility of safe access onto tax lot 3900 via tax lot 3400 and because fire access roads have not been sufficiently delineated on the applicant's F-2-zoned property. The latter issue can clearly be rectified with more specific maps and development plans.

By his own admission, the applicant has expended a substantial amount of time improving his property so that it may function as a park. A tremendous amount of work remains and includes upgrading the access across tax lot 3400, constructing perimeter fencing around the entire park, removing hazardous fuels (brush) from the remaining ½ of the subject property, designing and constructing the fire access roads to applicable Code and fire district standards and obtaining land use approval necessary to incorporate the EFU-zoned land into the park. The amount of work involved appears substantial and costly. Assuming that the applicant can afford the material and labor necessary to accomplish these tasks there is little evidence that it can be completed within two years. Lane Code 14.700(4) is therefore relevant.

Lane Code 14.700(4) provides that "...unless provided otherwise in the approval of an application or by other Chapters of Lane Code, conditional or tentative approval of an

⁹ The applicant claims that the upper limit of noise for muffled motorbikes is 93 dBA. The DEQ standard for motorbikes is 99 dBA (motorcycles made after 1975) (Table 4, OAR 340-035-0030(1)(b)(A)).

application shall be valid for a two-year period during which all conditions of tentative approval or the development authorized by the conditional approval must be completed.” With the exception of hardship mobile homes and recreational vehicles or home occupations, there are no provisions in Lane Code 16.211(3) that prescribe when a development authorized by conditional approval must be completed. Therefore, the two-year limitation of Lane Code 14.700(4) is applicable unless the conditions of approval specify otherwise. The Planning Director has the authority to require that the park be completed within a reasonable time. Thus, the approval of the applicant's plan for the development of a private park should be measured against the time necessary to make improvements promised by the applicant and required by conditions of approval. The reasonableness of this time period is within the discretion of the Planning Director but any timetable for completion of the improvements must clearly address the resources necessary of the Land Management Division to monitor the progress of the applicant and ultimately to determine whether all conditions of approval and representations by the applicant have been satisfied.

Respectfully Submitted,



Gary Barnielle
Lane County Hearings Official

ICOG Lane Council of Governments

99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

November 16, 2005

Mr. Kent Howe, Director of Planning
Lane County Land Management Division
125 E. 8Th Ave.
Eugene, OR 97401


Re: *Appeal of Hearings Official decision in Gillette (PA 04-6260)*

Dear Mr. Howe:

On November 15, 2005, the Applicant appealed my November 7, 2005 decision in PA 04-6260 involving a request for a private park on land zoned RR-5 and F-2.

Upon my review of this appeal, I find that the allegations of error have been adequately addressed in my decision and that a reconsideration of that decision is not warranted. Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my November 7, 2005 decision without further consideration. Please advise interested parties of this decision.

Sincerely,



Gary L. Darnielle
Lane County Hearings Official

LAND MANAGEMENT DIVISION



APPEAL OF A HEARINGS OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401
Planning: 682-3807 Building: 682-3823 Sanitation: 682-3754

Appellant: JIM GILLETTE

Mailing address: 86340 NEEDHAM RD

Phone: 484-0517 Email: -

Appellant's Representative: CREED A. ECKERT, AICP

Mailing address: 715 SW 54th ST CORVALLIS, OR 97333

Phone: 541-740-7771 Email: creedae333@peak.org

Required submittals. Your appeal application will be rejected if it does not contain all the required information.

- 1. A copy of the decision being appealed, with the department file number. File # PA-04-6260
2. The \$3490 appeal fee, payable to Lane County. (See the reverse side for important fee information)
3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision) 11.17.05
4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:
[X] I am the owner or contract purchaser of the subject property;
[X] I am the applicant for the subject application;
[X] Prior to the decision by the Hearings Official, I submitted written testimony into the record
___ I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision for the reasons explained in my letter.
5. A letter that includes that addresses each of the following three standards:
a. The reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;
b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:
- The Hearings Official exceeded his or her authority;
- The Hearings Official failed to follow the procedure applicable to the matter;
- The Hearings Official rendered a decision that is unconstitutional;
- The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.
c. The Hearings Official should reconsider the decision to allow the submittal for additional evidence not in the record that addresses compliance with the applicable standards or criteria.
6. Any additional information in support of your appeal.

TO: Lane County Board of Commissioners
FROM: James Gillette, Applicant, PA 04-6260
DATE: November 15th, 2005
RE: My Appeal of above-referenced Hearings Official / Planning Director Decision

Please accept and consider hearing my appeal of the above matter. It seems the Hearings Official and Planning Director have hand selected isolated bits of the record in attempts to support findings in opposition to this application, while refusing or failing to acknowledge substantial evidence and testimony which clearly supports approval and adequately addresses any reasonable concerns. My planner has assisted me in preparing this letter to you.

A brief comparison of the staff report for the original hearing; the Planning Director's decision; the applicant's responses to matters discussed in public hearing; County Staff's response to our appeal documentation; and the HO's findings and conclusions will reveal how the issues raised by the Director and HO have truly represented a "moving target" for me. In fact, the specific details claimed to provide the substance behind their adverse findings, or the bases they state for their concerns, seem to be continually shifting. Once an issue is raised in the record, my planner and I provide an appropriate and thorough response, only to later have the matter mutated with additional vague claims or with new, previously un-communicated measures for meeting the burden of proof for this application. We believe we have met the tests for approval and ask that you overturn the decision of the Planning Director and Hearings Official.

In this appeal to the County Board of Commissioners, I am only seeking fair treatment and an acknowledgement that I have put together a responsible and comprehensive private park proposal which can and should be conditionally approved. Reasons for this appeal include but are not limited to:

- ***The Planning Director / Hearings Official exceeded his jurisdiction*** in the following manners:
 - A) Inaccurately assessing the (in)feasibility of engineering and constructing access to emergency vehicle standards across Tax lot 3400 from Lorane Highway;
 - B) Inaccurately judging that the scope of improvements necessary to implement the proposed Special Use is too extensive to reasonably anticipate completion within two years;
 - C) Denying the applicant of his codified right to have a longer time line specified for certain condition(s) if deemed necessary, by basing a Finding of Fact opposing the application upon the unsubstantiated conjecture that said improvements could not be completed within two years; and

Lane Board of Commissioners
Re: Appeal of PA 04-6260
November 15th, 2005
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- D) Raising new requirements in and/or subsequent to the decision which were not prior-communicated and in fact are not applicable to the approval or denial of the application.
- ***The Planning Director and Hearings Official failed to follow the procedure applicable to the matter*** by mis-applying criteria and implying (though never stating outright) that a Facility Permit should have been secured prior to land use approval, though such prior application was neither suggested prior to the decision nor even permitted by Transportation Planning upon the applicant's early attempt. The Director and HO further failed to follow applicable procedures in failing to recognize substantial answers in the record to alleged "questions" which supposedly formed the basis for denying the application and upholding that decision. Substantial evidence in the record has been "conveniently" omitted or disregarded from the Planning Director's and HO's findings.
 - ***The Planning Director and Hearings Official rendered a decision that is unconstitutional*** in that it denies me the right to make reasonable and responsible use of my property in a manner which is, with fully manageable conditions of approval, consistent with the Lane Comprehensive Plan and zoning codes.

All the information that forms the bases for this appeal was entered into the record prior to the close of the record for the original application and appeal to the HO. I do feel the matter is of *County-wide significance* because County planners do not seem prepared to deal appropriately with proposals for privately-owned parks, and because this proposal addresses County-wide recreation needs of Lane's citizens. As you know, the matter of this proposed park has been before the County before and will likely come again, if denied, in the form of further appeals and/or re-application with modifications to address "shortcomings" cited in the County's final decision. This appeal to the Board represents an opportunity to soundly address any concerns the Board may have about this existing activity and *recurring land use request*. Finally, there are *unique environmental resources* including extensive oak savannah on my property. This proposal would preserve those from development and adverse impacts to perpetuity, a considerable benefit to the County as a whole.

I respectfully request that my planner's Proposed Conditions of Approval (or some semblance thereof) be incorporated into a decision by the Board to overturn the previous denial of my application, and that it be approved, because I have met the burden of proof necessary in this case. Thank you very much for your consideration of the above.

