Agenda Item

Watson Hearing

- 10.16.2013 Agenda Packet
  - Staff Summary
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WASCO COUNTY

BOARD OF COMMISSIONERS

AGENDA PACKET

FOR

Hearing Date: October 16, 2013

Hearing Time: 1:45 pm

Hearing Location: Wasco County Court House, Room 302
511 Washington Street
The Dalles, Oregon 97058

Action Item(s):

QUASIJUDICIAL HEARING: (Continuation from June 4, 2013 hearing)
File PLAQJR-12-08-0001 (previously named: PLACUP-10-11-0023_PLASTS-10-11-0026_PLAQJR-10-11-0006).

The request by owner, Gabriel Watson, is for an administrative (quasi-judicial) review of the following:

1) 40' x 28' x 24' (1,120 square foot), non-farm dwelling
2) 18' x 12' x 12' (216 square foot) shed
3) 7' x 7' sealed vault toilet
4) Variance to property line setbacks. Requested setbacks are as follows:
   - 25' from front and rear property line
   - 25' from side property lines
   - 25' from Deschutes River
5) Floodplain Development Review of requested structures located within the FEMA delineated floodplain

Modification to Wasco County Fire Safety Standards Review

Wasco County Planning Department

"Service, Sustainability & Solutions"

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Wasco County Board of Commissioners Agenda Packet

Hearing Date: October 16, 2013
Hearing Time: 1:45 pm
Action Items: PLAAPL-13-08-0001 & PLAAPL-13-08-0002 (original application PLAQJR-12-08-0001). Appeals of the planning commission's decision to **deny** the applicant's request:

1. 30' x 30' x 24' (900 square foot), non-farm dwelling.
2. 18' x 12' x 12' (216 square foot) shed.
3. Variance to property line setbacks. Requested setbacks are as follows:
   - 25' from front and rear property line
   - 25' from side property lines
   - 25' from Deschutes River
4. Floodplain Development Review of requested structures located within the FEMA delineated floodplain
5. Modification to Wasco County Fire Safety Standards Review

Property Description: The property is approximately 0.25 acres in size and zoned within the A-1 (160). It is located in the North Junction of the Deschutes River Access Road approximately 19.6 miles south of the City of Maupin (7S 14E 8 D 300).

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- Wasco County Planning Commission Agenda Packets: Entire planning commission record and supplemental materials

Staff Summary

To: Wasco County Board of Commissioners

From: John Roberts, Planning Director
Joey Shearer, Senior Planner

Date: For October 16, 2013 Hearing

Re: **Staff Summary for Public Hearing** on the appeals of the August 14, 2013 Planning Commission Decision: PLAAPL-13-08-0001 & PLAAPL-13-08-0002 (original application PLAQJR-12-08-0001).

PRELIMINARY ISSUE BEFORE BOARD – Partial DeNovo Hearing

Before opening the public hearing for the appeal of the Planning Commission decision on PLAQJR-12-08-0001, the Board of County Commissioners ("Board") needs to determine its preferred course of action, in accordance with the Wasco County Land Use and Development Ordinance ("LUDO") Section 2.180.C (described herein). Two appeals were submitted, including a request for a "de novo or partial de novo" hearing. The request for a de novo hearing shall be decided by the Board as a nonpublic hearing item. The Board shall grant this request only upon findings that:

1. A de novo hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action;
2. The substantial rights of the parties will not be significantly prejudiced; and
3. The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.

The Board has four options for review under LUDO Section 2.180:

Option 1 – Remand the matter to the Planning Commission.

Option 2 – Restrict review to the record. Restricting review to the record eliminates the addition of new evidence, but allows comments from interested parties. This option is most appropriate when there are no changes to the proposal that were not previously considered at the prior Planning Commission public hearing.

Option 3 – Limit review to such issues as the Board deems necessary for a proper resolution of the matter. This option is most appropriate when issues are unclear or require more information than what was presented at the prior public hearing.

Option 4 – A de novo hearing on the merits, which would be a brand new hearing as if no previous evidence had been submitted and no previous decision rendered (although the previous record would be maintained).

Staff recommends Option 2, particularly in light of the findings required per LUDO Section 2.180.C for a DeNovo hearing. Before the Planning Commission reached its decision, the record had been open for approximately 11-months (a much longer time period than usual). Staff feels this was more than enough time for all issues to be identified and addressed by both the Applicant and opponents. Option 2 also allows the Board to be fully informed of all applicable material and criteria in advance of the public hearing. Additionally, it is often the manner in which a reviewing body would receive and review a record where there were no changes to the proposal.

PURPOSE OF STAFF SUMMARY

The purpose of this Staff Summary is to concurrently open the aforementioned appeals of Planning Case PLAQJR-12-08-0001 (request for a non-farm dwelling in North Junction). The Staff Summary is intended to only address the issues identified in the respective appeals. As such, the entirety of the Staff Report and record presented to the Planning Commission will not be discussed. However, at the hearing Staff will be available to answer any questions regarding the entirety of the application.

APPEAL #1: PLAAPL-13-08-0001 (Gabriel Watson - Applicant)

The applicant provided five (5) specific grounds for appeal of the Planning Commission's decision:

1. **Grounds for Appeal:** The Planning Commission used the Watson case to nullify decades of County policy as to development in resource areas without involvement of the Board and without notice affected property owners

STAFF RESPONSE: The planning department works with all applicants to navigate the complexity of state laws and local ordinances. As such, as long as all applicable laws are met, the department has historically worked with all applicants to try and approve proposals along the Deschutes, John Day and White rivers.

How policy and regulations contained in the LUDO are applied to resource lands involves discretion. Meaning, the interpretation of how the LUDO is applied can and does change. In this circumstance the interpretation of the LUDO regulations, pertaining to a resource zoned property, unfortunately did change when compared to past approvals. Interpretation changed as a result of discretion and an immense amount of legal scrutiny during the public process. In moving forward this does not change the LUDO, just how it is applied.

There would need to be an amendment to the Wasco County Comprehensive Plan ("WCCP") and LUDO to make a policy shift. The Board has the ability to direct Staff to conduct an amendment to the WCCP and LUDO to try and address issues brought to light through this application.

All affected property owners in the North Junction area were notified of the application. However, all property owners along the Deschutes, White River and John Day rivers were not, as it was not a "legislative" process.

2. **Grounds for Appeal:** Only the Board of Commissioners, and not the Planning Commission, is entitled to deference in interpreting the zoning code and comprehensive plan

STAFF RESPONSE: The public, planning staff, Planning Commission and Board all have the ability to interpret the LUDO and WCCP. As part of the appeals process the Board has the ability to reverse or even remand the Planning Commission's decision. Moreover, the Board is the county's final authority to formally adopt changes to the LUDO and WCCP.

However, it is the courts that probably have the ultimate deference in interpreting the county's LUDO and WCCP and how it was applied by the Board or Planning Commission. Per ORS 197.829 LUBA shall affirm a local government's interpretation of its comprehensive plan and land use regulation, unless there are some apparent inconsistencies. The Oregon Supreme Court has construed ORS 197.829(1) to require LUBA to affirm a local government code interpretation if the interpretation is "plausible." *Siporen v. City of Medford*, 349 Or 247, 255, 243 P3d 776 (2010).

As part of this application the LUDO or WCCP were not changed. However, many aspects of the Planning Commission's decision were controlled by state law; specifically Statewide Planning Goal 5.

3. **Grounds for Appeal:** Neither the Board of Commissioners nor County Staff have been wrong for decades in allowing nonfarm conditional uses to be considered for approval in recreational river area along the Deschutes and John Day rivers.

STAFF RESPONSE: The application and intense scrutiny of it brought into question the interpretation and nexus between the LUDO's Natural Ares Overlay (EPD 7 – Section 3.910) and WCCP Goal 5 resource policies and implementation statements (in addition to a number of other important provisions in the LUDO). As a result of the scrutiny a more narrow interpretation of the LUDO provisions regarding EPD 7 were ultimately used to support findings for denial.

Oregon law does speak to changing interpretations. Prior quasi-judicial land use decisions do not set formal "precedent" for future quasi-judicial decision-making and interpretations of law. As early as 1969, Oregon courts recognized that a governing body is not necessarily bound to

decide a matter in the same manner as a previous governing body. In *Archdiocese of Portland v. Washington County*, 254 Or 77, 87-8, 458 P2d 682 (1969) Board of County Commissioners are not bound by the action of previous Boards of County Commissioners. Each Board is entitled to make its own evaluation of the suitability of the use sought by an applicant.

Similarly, Staff does not have to perpetuate errors of its predecessors, although arbitrary flip-flopping of interpretations on a case-by-case basis is not allowed. Overall, a local government is not prohibited from reinterpreting the meaning of applicable approval standards from one planning case to the next.

Past Approvals: Over the decades there have been many approvals in the North Junction area issued by the Oregon Parks and Recreation and Department. The approvals are for different types of development including but not limited to remodels, additions and replacement dwellings. Many or possibly all of the Parks and Recreation Department approvals in the North Junction area were submitted by the applicant to be part of the record.

The county has also issued many approvals in the North Junction area for remodels, additions and replacement dwellings. However, a cursory search identified only three Conditional Use Permits issued by the count in North Junction. In 1985 a CUP was approved for an addition to a dwelling not in conjunction with farm use (CUP-85-107). That same year a CUP was issued for a non-farm dwelling (CUP-85-119), which was appealed. In 2007 a CUP was issued for an addition and deck extension to a recreational home (CUP-07-119).

4. **Grounds for Appeal:** The Planning commission nullification of past County policy has disastrous consequences for property owners

STAFF RESPONSE: There will definitely be unintended consequences that stem from the Planning Commission's denial. The Planning Commission's interpretation or decision certainly portends a lot more difficulty in permitting or approving non-farm uses, dwellings, additions and accessory structures for all properties located within the Natural Areas Overlay. However, the impacts of the decision and unintended consequences are subjective. Some opponents' claim severally curtailing development along or within the scenic waterways upholds the intent of the laws as the preservation of resource protection should prevail in land use decisions.

5. **Grounds for Appeal:** The Board's past interpretation is reasonable under the text of the zoning code, the comprehensive plan, and supporting documents

STAFF RESPONSE: For decades we have worked with applicants to permit development in Natural Hazards Overlay District and have issued CUPs to this effect. As mentioned above prior practice does not necessarily establish precedence. A past pattern of applying approval standards in one manner to similarly-situated applicants does not mean that the county cannot change course and apply different approval standards to the next applicant

APPEAL #2: PLAAPL-13-08-002 (Douglas Robertson - Opponent)

This appeal was filed by Douglas S. Robertson, a prevailing party before the Planning Commission, as a "precautionary appeal to preserve issues that the Planning Commission found in favor of the applicant." PLAAPL-13-08-0002 lists four grounds for appeal and cites an attached narrative and accompanying letters dated February 26, 2013 and July 29, 2013. The letters were previously made part of the record.

Grounds for Appeal #1
The Planning Commission erred by finding the proposed structure to constitute a "dwelling". The applicant does not have an approved water supply.

STAFF RESPONSE: State law does not clearly define "dwelling" for the purposes of this application, and the LUDO is also somewhat ambiguous. LUDO Section 1.090 defines "Dwelling Unit" as:

A lawfully established dwelling is a single-family dwelling which:
a. *Has intact exterior walls and roof structure;*
b. *Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
c. *Has interior wiring for interior lights; and*
d. *Has a heating system.*

Nowhere in the definition of dwelling unit is there an explicit requirement for an "approved water supply". However, the required indoor plumbing logically must connect to a water source to ensure a basic level of functionality. Prior to the August 6, 2013 Planning Commission hearing, Applicant submitted a letter dated July 29, 2013 from John L. Smits, a registered environmental health specialist and DEQ Service Provider # RM20. Mr. Smits designed a sanitary waste disposal system for the Applicant which utilizes a "[water] storage tank which will supply typical residential plumbing fixtures such as sinks and a toilet."

Additionally, Staff cannot identify any section of the LUDO, or applicable state law, which prohibits a domestic water tank, refilled with trucked in water from a municipal or other source, from supplying the water necessary to operate indoor plumbing and a sanitary waste disposal system. With conditions requiring installation of interior wiring for lights and a heating system, Staff agrees with the Planning Commission finding that the proposed structure constitutes a dwelling.

Grounds for Appeal #2
The Planning Commission erred by finding that the proposed "dwelling" and accessory structure will not result in the permanent destruction of natural value.

STAFF RESPONSE: The Planning Commission affirmed the finding in the Staff Report that the proposed dwelling and accessory structure will not result in the permanent destruction of natural value. Below is an excerpt of the applicable Planning Commission findings:

There are nine (9) recreational dwellings and several additional accessory structures within the approximately eight (8) acres of North Junction. A tenth dwelling is located 180' south of the railroad tracks. This represents a density of 1.25 dwelling units per acre. Similar densities have been maintained for more than 70 years in North Junction – decades before this area was included in a Wild & Scenic Area. As such, Staff finds that the "natural value" of this area is limited and must be viewed within the context of existing recreational dwellings and their accessory structures. In fact, both recreational and residential uses have occurred on the subject parcel in the past. Up until 1996, a railroad caboose was located on the parcel and used as a recreational dwelling. Therefore, Planning Commission upholds Staff's finding that the proposed dwelling and accessory structure will not result in the permanent destruction of natural value.

Grounds for Appeal #3

The Planning Commission erred by not requiring Site Plan Review.

STAFF RESPONSE: The only approval standard for a single-family dwelling listed in Chapter 20 – Site Plan Review references the following off-street parking requirement:

Section 20.050.A.1 Single-family dwelling: One (1) space per dwelling unit.

No dimensional area requirements are listed for single-family dwellings. The site plan submitted by Applicant shows "Parking" located at the southeast corner of the proposed dwelling. While Chapter 20 was not referenced in the Staff Report or Planning Commission decision, the Applicant addressed the applicable criteria in the submitted site plan.

Grounds for Appeal #4

The application cannot be approved because it is proposed to be built in the visual corridor of the Deschutes River. See Comp Plan, Plan Policy 5, Implementation Measure C.

STAFF RESPONSE: A non-farm dwelling in the A-1 (160) Exclusive Farm Use Zone is listed as a conditional use, subject to LUDO Chapter 5 – Conditional Use Review. Section 5.020 of the LUDO provides standards and criteria for the authorization of conditional uses. Section 5.020.A states:

The proposal is consistent with the goals and objectives of the Comprehensive Plan and implementing Ordinances of the County.

Opponents of the proposed development have identified as relevant Chapter 15, Policy 5, Implementation Measure C of the WCCP, which states:

Policy 5 – Wild & Scenic Rivers
The Deschutes and John Day River Scenic Waterways shall be maintained and protected as natural and open space areas with consideration from agriculture and recreation.

Implementation
C. *Allow only buildings customarily provided with farm use within the visual corridor of the Deschutes and John Day Scenic Waterways.*

Mr. Robertson, through his attorney, contends that the referenced WCCP language is mandatory rather than advisory or aspirational. LUBA has held that certain comprehensive plan policies constitute mandatory approval criteria applicable to quasi-judicial land use decisions, depending on their context and how they are worded. For example, where a comprehensive plan provision includes mandatory language – such as the word "shall" – and is applicable to proposed development or use, then LUBA will find the standard to be a mandatory approval standard. Conversely, use of aspirational language such as "encourage" or "promote", or statements that certain features are "desirable" will generally not be held as mandatory approval standards.

After weighing the evidence, reviewing case law, and discussing with legal counsel, Staff disagrees with the Planning Commission finding, and advises the Board to find the words "*Allow only...*" represent mandatory language which makes WCCP Chapter 15, Policy 5, Implementation Measure C a clear and compulsory review criteria. Such a finding would prohibit the establishment of non-farm buildings within the visual corridor of the Deschutes River.

After examining the site plan and making several visits to the development site, it is clear to Staff that the proposed non-farm dwelling would be visible from the Deschutes River. While there is ambiguity surrounding the definition of "visual corridor," Applicant did not provide sufficient evidence showing the proposed development is outside the visual corridor of the Deschutes River.

WATSON

PLAQJR-12-08-0001

Per Planning Commission

Record Kept Open for 14 Days:

August 7 – August 20

Wasco County Planning Department

"Service, Sustainability & Solutions"

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Phone: (541) 506-2560 • wcplanning@co.wasco.or.us
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MEMORANDUM

To: Wasco County Board of Commissioners

From: Wasco County Planning Department

Date: October 9, 2013

Re: Submittal for Hearing Dated October 16, 2013 - 14-Day Open Record: Submittal of Supplemental Materials (14 day period left open after August Planning Commission meeting)

File PLAQJR-12-08-0001 (previously named: PLACUP-10-11-0023_PLASTS-10-11-0026_PLAQJR-10-11-0006).

The request by owner, Gabriel Watson, is for an administrative (quasi-judicial) review of the following:

1) 40' x 28' x 24' (1,120 square foot), non-farm dwelling
2) 18' x 12' x 12' (216 square foot) shed
3) 7' x 7' sealed vault toilet
4) Variance to property line setbacks. Requested setbacks are as follows:
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6) Modification to Wasco County Fire Safety Standards Review

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August 13, 2013

RECEIVED INTO RECORD
8/14/13 BF
DATE (B)

Wasco County Planning Commission
Attn: John Roberts et. al.
c/o: Wasco County Planning Office
2705 East Second Street
Dalles OR

Fax: 541-506-2561 3 Pages

Re: Gabriel Watson Non-Farm Dwelling Application
File # PLAQRJR-12-08-0001

Dear Honorable Members of the Planning Commission:

Hello, my name is Nancy Erz, I am the daughter of Harold Erz and the sister of Leslie Erz Watson, also the Aunt of Gabriel Watson.

I attended the hearing on August 6th 2013, in support of Gabriels Watsons application to build a cabin on the property that formerly held the red caboose that my father placed there around 1958.

I found the process fascinating, yet disappointing.

I chose not to speak because the things I had to say were in regards to the libelous letters that had been written by the opponents. I noticed that none of the opponents had the courage to say any of the sort of things they wrote about in those letters, in our presence. I also know they are irrelevant to the decision, or should be. But I still want to refute some of the libel for the record and have this included in the file if that is possible, and I believe the file was to remain open for 14 days.

But first, what is important to the decision. The easement that is attached to the land that was purchased by my nephew Gabriel Watson has never been abandoned. The Erz/Watson families have continued to visit that parcel of land every time we are on the river at the other Watson cabin. We walk over the easement often and simply sit on the land to admire the view of the hills, or to reminisce or to dream about the cabin we hope to build. My brother-in-law occasionally drives a vehicle over to the parcel as well. Gabe and I have occasionally slept there under the stars.

Second, I would like to set the record straight regarding some of the lies that have been told about my family. A perfect example is in the letter written by Brenda Whitlow. On page two of her letter to Commissioner Scott Hege dated July 22, 2013 she writes ***"Leslie, a property owner, bought that piece of property full well knowing the law, but taking the chance that she could tell her story of dying of cancer and loving North Junction since she was a child and persuade officials to disregard the law and sympathetically act in her memory."***

Nothing could be further from the truth and this is one of the most upsetting things I've seen or heard around this issue. First of all her husband purchased the land. Second of all my sister already had a cabin and was not interested in taking on such a project, and we all had great hope at the time she would survive breast cancer, we did not consider her to be dying. Most importantly she would never ever play a sympathy card. Anyone that knew my sister knows that Brenda Whitlow is out of her mind making such a statement, and I can vouch for the fact that Brenda Whitlow was not a close friend of our family and is in fact married to the attorney representing one of the defendants. Appalling!

None of this should have any bearing on this case. I certainly hope that those libelous letters such as the one I refer to, had no influence on your decision and that it wasn't a mistake for me to not address them at the hearing. In light of the time it took to get through the hearing process on August 6th, and the opponents not bringing those things up in our presence I thought it best left alone. But it is very important to me in the greater scheme of things to officially set the record straight. This has caused me extreme emotional distress!!!

Brenda Whitlow also wrote ***"Leslie was clear to everyone that her experience at North Junction was camping with big groups of friends. She and Mike, Gabe's Dad, openly chuckled about cutting the grass in front of the neighbor's house and camping on it, even when repeatedly asked not to-- for decades! They have big parties, myriad rafts and camp everywhere. *Evidently, a couple weeks ago there was a party of about 40 and 3 kegs. It's getting so that you want to know when they'll be there and avoid that week-end which is not right. They don't fish; they take over the entire shore area, haul the rafts out of the water and trample the grasses in a wide swath. They don't respect or care that they are ruining the fishing habitat."***

My sister Leslie spent weeks at a time on the Deschutes with only the company of her dogs. Reading, writing and taking long walks, trying to heal. Years before, raising her two sons. She prefered the quiet times and the majority of her time on the Deschutes was quiet reflective time. The statement that Brenda Whitlow made above is completely false and tarnishes my sister's reputation unjustly to folks like yourself that did not know her. In fact it tarnishes Brenda Whitlows credibility! Those that knew Leslie know this is total fabrication.

In regards to the party she refers to above*, there was **NO** party! **I was there the weekend she is referring to.** There were seven of us there, total. Two 57 year old women, both quiet artists, and my nephew and the other woman's kids, all in their late twenties early thirties. We played board games and washers on the lawn.There was very little alcohol consumed and absolutely no kegs. Mrs. Whitlows statement is a blatant lie.The statement that we trample the grass and camp anywhere we want and take over the shore-area is also false. The shore-area wraps around the entire area called North Junction. The area we hang out on is in front of the Watson cabin. It is a very small portion of the shore-area at North Junction, but one of the only areas, beautifully maintained due to Mike and Gabe Watson's effort. So here Brenda Whitlow is claiming we take over the entire shore-area when in fact people such as her and Robertson come to the area maintained by the Watsons and are welcomed. It is not their area. People don't go hang out in front of Robertsons or around Whitlows, because they are not friendly people and let the weeds and cockle burrs go crazy. So they are intruding on our space and we patiently accept it and are friendly and she accuses us of taking over the shore line. Again appalling!

Page 2.

The statements made by other opponents regarding partying and camping and disrespect for the area are either completely false or extremely exaggerated. I would guess the Watson's do have more friends than most of the opponents do, and are more generous sharing people. I hope we are not being penalized for these qualities.

Doug Robertson approached us when we arrived at the hearing stating that he was "Sorry this had to be against us and that it was all about the Scenic Rivers Act and his passion for that". What hypocrisy. His is one of the largest cabins on the flat. Highly visible from the river and anywhere else on the flat. His disrespect for the grandfathered right to rebuild at the same size of the previous cabin's footprint is inexcusable and illustrates his hypocrisy and lack of credibility. His pre-flood cabin was a tiny one room cabin. We have photos of it and were good friends of the previous tennant, Ed Rogers. A friendly neighbor we greatly miss.

I'm sorry to have to address these things but they cannot go on the record unchallenged. I could go on and on refuting the things the opponents have said about my families behavior on the Deschutes, this letter is a drop in the bucket. Thankfully I believe in a higher court that cannot be manipulated by lawyers and two faced individuals, and that one will do the right thing.

It is my feeling that you reached the wrong decision and conclusions. I am glad however that it was at least acknowledged there would be no visual or environmental negative impact to the scenic corridor that would be caused by the building of Gabriel Watson's proposed cabin and shed and septic. I believe you have set a new undesireable precedent and I will be interested to see how this plays out over the years. The deliberations were very interesting indeed.

One other thing that should be noted and was witnessed by the entire audience is this. During the final deliberations at the hearing, the opponents' lawyer went up and whispered something to the Commission's legal advisor, we all saw it. No-one could hear what was said, but after that the legal advisor spoke up and gave instructions to the panel that changed the direction of the discussion. No one else was allowed to address the panel at this point, and this should not have been allowed either.

Respectfully submitted,

Nancy Erz

Nancy Erz
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August 12, 2013

John Roberts
Planning Director
Wasco County Planning and Development
2705 East Second Street
The Dalles, OR 97058

Re: Application of Gabriel Watson
County File No. PLAQJR-12-08-0001

Dear Mr. Roberts:

Please substitute Andrew Stamp as counsel of record for Doug Robertson and remove me and Perkins Coie as counsel of record for Mr. Robertson with respect to this matter. Following your review of this letter, please call me with your questions or comments.

Very truly yours,

Mark D. Whitlow

MDW:lt

cc: Doug Robertson
Andrew Stamp, Esq.

RECEIVED INTO RECORD
8/20/13 BL
DATE BY

8/19/2013

Wasco County Planning Commission / Planning & Development,

RE: Gabriel Watson, Proposed North Junction Project, PLACQJR-12-08-0001

Dear Planning Commission Members,

As an addendum to my letter of 7/26/2013 and to support my testimony of 8/6/13:

"3. Section H, there is no easement in effect over my property. The **access has been abandoned by the previous owner;** unused since the flood of 1996. Topography changes from that flood have obscured reference points. Before this project should move forward the **access to the subject property** must be addressed."

The site of the current application for a non-conforming dwelling is the former site of SP&S Caboose 731, a 200 sq ft 'fishing cabin' that was washed away in the 1996 Flood.

The original access has been abandoned and any future access needs to be agreed upon. An assertion that there should be a blanket easement over any & all of my TL 400 shows a lack of understanding regarding the history of the use of the property.

1.a In the affidavit by Harold Erz he states that there is an ongoing interest in TL 300 that "has not been recorded" and continues to his death. *Paragraphs (3) & (4)*

1.b Also, the claim of uninterrupted use *para (6)* is contradicted in his attached letter.

In fact, a letter was written by Harold Erz to Vicki Welsh Jones relinquishing his interests in the caboose and land in April 1995, the year before the flood. A copy of that letter is attached. The sale of TL 300 from Welsh-Jones to Mike Watson did not take place for about 15 years. *The claim of continuous use is quite misleading.*

This is confirmed by Nancy Erz in her letter to the Planning Commission stating that her father relinquished his interest in the caboose and site at that time.

2. It is further stated by Mr Erz that the flood waters upset the caboose but it remained on TL 300 and was later **taken by me without his knowledge.** (5)

In fact, the caboose was washed beyond the subject property boundary and rested conspicuously on its side on my property. Through Vickie Welsh- Jones, the lawful owner, I signed on to purchase and restore the caboose in May of '96. Mr Erz had given up his interest in the place the year before and was not present. *Attached is a notarized Bill of Sale from Welsh-Jones to John Hartung.*

Prior to that purchase in 1996 I had conversations with Vickie offering to help re-establish the caboose before the **six month time limit expired to grandfather and rebuild a non-conforming, non-farm dwelling on the site.** Vickie told me that she had no interest in replacing the Caboose or any other structure and she felt the site was on an Ox Bow, where anything built there would be flooded again. I cannot believe the site was sold with any provision that it was a buildable lot by Vickie Welsh Jones.

Access or use of their property has been abandoned by the Welsh-Jones family since the '96 flood. The original access route became unusable after the 1996 flood. A new road to the flood damaged structures was constructed with no access to the old caboose site or input or use by Vickie Welsh-Jones.

At no time am I aware of any use of their property, the caboose or other cabins available to the Welsh-Jones family on my property. There was a 2 week annual use of my place by the Welsh-Jones family, available to them as a stipulation of the Caboose sale if they desired to be there. And until the sale to Mike Watson in 2009, where Watsons regained possession, there was no continuity of use by the Erz family.

There may be a way for good neighbors to establish access, but arguing continued use, wholesale access over a large property or arbitrarily designating a route doesn't make an easement.

Thank you,

John Hartung

RECEIVED INTO RECORD
8/20/13 BY
DATE

AFFIDAVIT OF HAROLD F. ERZ

STATE OF OREGON)
) ss.
County of Multnomah)

I, Harold F. Erz, being first duly sworn, depose and say:

1. I am the grandfather of Gabriel A. Watson. His mother, now deceased, was my daughter.

2. I was a close friend of Edwin J. Welsh and I am very familiar with the facts and history of the parcel of property conveyed to him in 1960 by Inez Hartung. The conveyance of the property was in payment for legal services rendered by Mr. Welsh to Mrs. Hartung.

3. I was previously employed by the Spokane Portland, Seattle and Burlington Northern Railroad (now BNSF Railroad) whose tracks run near the property that Mrs. Hartung conveyed to Mr. Welsh. I purchased an old caboose from the Railroad in 1960. By mutual agreement I had the caboose moved onto Mr. Welsh's land and the two of us, with our families, jointly used that property and the caboose as a fishing lodge for many years. I incurred significant expense to purchase and move the caboose onto the property. The understanding between us was that we jointly "owned" that property and the caboose. Mr. Welsh told me repeatedly that my family and I had the legal right to use the property on which the caboose was located for the rest of my life, even if I lived longer than Mr. Welsh.

4. I did not believe it was necessary to record a document to evidence our agreement. It was simply understood among Mr. Welsh, me, and our families that we shared the ownership and use of the property and caboose.

5. The floodwaters of 1996 tipped the caboose onto its side but the caboose remained on our property. Many years afterward, and without my permission, someone moved the caboose onto the land of a neighboring property owner who is a descendant of Inez Hartung.

6. "My family has continued to use the property regularly for camping and fishing trips even though the caboose is no longer there because our agreement did not require that the caboose stay on the property.

7. Sometime after my friend Edwin Welsh died, his daughter Vicki Welsh Jones sold her interest in the real property to Michael A. Watson, my daughter's husband, who then later conveyed it to my grandson Gabriel Watson. When I die, my grandson Gabriel will have sole right and title to the property, but until then I and my family retain the right to use the property.

8. Gabriel now wants to complete his mother's plan to build a small cabin on the property and I make this Affidavit in support of his application for approval to build the cabin. I fully intend to visit Gabriel from time-to-time to continue to enjoy the property since there are so many fond memories of my friendship with Edwin Welsh and of our families spending time there.

Harold F. Erz

SUBSCRIBED AND SWORN to before me this 5th day of August, 2013.

OFFICIAL SEAL
CALEB JAMES KENNEDY
NOTARY PUBLIC-OREGON
COMMISSION NO. 462466
MY COMMISSION EXPIRES OCTOBER 06, 2015

NOTARY PUBLIC FOR OREGON
My Commission Expires: 10-6-15

RECEIVED INTO RECORD
8/20/13 BY
DATE BY

BILL OF SALE

KNOW ALL PERSONS BY THESE PRESENTS that VICKI WELSH JONES, a married woman, acting with respect to her separate property, residing at Mount Vernon, Skagit County, Washington, Party of the First Part, for and in consideration of the sum of One and 00/100s dollars ($1.00) and other valuable consideration, including, without limitation, assumption of liability for the removal of below-described personal property from premises not owned or controlled by the Party of the First Part, does bargain, sell, grant, and convey and, by these presents, confirm unto the Party of the Second Part, JOHN HARTUNG, of Troutdale, Oregon, that certain railroad caboose at North Junction, Wasco County, Oregon, known as *Seattle, Portland & Spokane Caboose No. 731.*

The Party of the Second Part shall have and hold for himself, his heirs, executors, and assigns forever the above-described caboose, subject to the right of the Party of the First Part, her heirs, and immediate family to make use of the said caboose while it remains at North Junction, Wasco County, Oregon. Such use shall not exceed four (4) weeks per year and shall be arranged by advance notice of two (2) weeks or more to JOHN HARTUNG, or his successor in interest.

VICKI WELSH JONES does, for herself, her heirs, executors, administrators, and assigns covenant and agree to and with the Party of the Second Part that she is the owner of the property; that the same is free from all liens and encumbrances; that she has good right to sell the same and will warrant and defend the title to the property hereby sold unto the Party of the Second Part, his heirs, executors, administrators, and assigns against the lawful claims and demands of all persons, except with respect to those rights reserved in this Bill of Sale.

This Bill of Sale is made without warranty as to the condition, utility, or location of the said caboose, which was washed from its foundation in the first week of February 1996 by flood waters of the Deschutes River. This Bill of Sale is delivered for the caboose "as is" and "where is."

IN WITNESS WHEREOF, the undersigned has set her hand this 23rd day of May, 1996.

Vicki Welsh Jones
VICKI WELSH JONES

SUBSCRIBED AND SWORN TO before me this 23rd day of May, 1996.

BEVERLY J. MILLER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES JULY 30, 1998

Beverly J Miller
Notary Public in and for the State of Washington, residing at La Conner
My Commission Expires: 7/30/98

RECEIVED INTO RECORD
8/20/13 BJ
DATE

April 20, 1995

PERSONAL ITEMS REMOVED

TORO RIDING MOWER, 12 HP, W/HYDROSTATIC DRIVE

REFRIGERATOR (FORMERLY OUTSIDE BEHIND SHEDS)

ROASTER, ELECTRIC

WOK, ELECTRIC

BELGIAN WAFFLER

FOOD MIXER, PORTABLE

AIR COMPRESSOR, W/ATTACHMENTS

SPRAYER, SS, W/ATTACHMENT

ICE CREAM FREEZER

MICROWAVE (WAS MY FATHER'S)

COFFEE MAKER (30 CUP)

GRIDDLE, TOASTMASTER

U.S. FLAG (CASKET FLAG OF A VERY DEAR FRIEND. HE LIKED THE CABOOSE VERY MUCH).

April 29, 1995

RECEIVED INTO RECORD
8/20/13 BY
DATE

Mrs. Vicky Jones
[illegible] Landing Road
Mt. Vernon, WA 98273

Congratulations! You now have sole responsibility for care and maintenance of the caboose and grounds thereunder located at Davidson (formerly North Junction), OR.

Vicky, you and I are just not made for each other. Our personalities are so divergent that we could never get along over the long haul. I am sorry for this because I, too, had, and have, very deep feelings about that place.

I was at the caboose last weekend. I installed the pump. It is working fine. You should get a new pressure gauge. It got stuck during the winter and does not read correctly. It works, however.

While there, I removed all personal items. Lest there be any misunderstanding, I am attaching a list of the major items taken.

Attached also is a list of items I left. Some of it has never been used. If you care to reimburse me for them, I would appreciate it. If not, enjoy!

I have retained my North Junction membership for the time being, but am giving up the road key.

Good Luck!

[illegible]

P.S. As soon as I hear from you about the freezer, I will send you all of my caboose keys.

Att-2

NOTICE OF INTENT TO APPEAL
BY GABRIEL WATSON

PLAAPL-13-08-0001
OF
PLAQJR-12-08-0001

Watson Application

Wasco County Planning Department
"Service, Sustainability & Solutions"
2705 East Second St. • The Dalles, OR 97058
(541) 506-2560 • wcplanning@co.wasco.or.us
www.co.wasco.or.us/planning

PLAAPL-13-08-0001
OF PLAQJR-12-08-0001

RECEIVED
AUG 26 2013
WASCO COUNTY PLANNING

APPEAL OF LAND USE DECISION

ORIGINAL PLANNING DEPARTMENT FILE NUMBER: PLAQJR-12-08-0001

Date Received: Planner Initials: Date Complete: Planner Initials:

APPELLANT INFORMATION

Name: Gabriel Watson

Mailing Address: 1824 SE Taylor Street

City/State/Zip: Portland, OR 97214

Phone: (503) 729-3521 Email: watsongabe@gmail.com

APPEAL INFORMATION

1. Appeal Type

   ☐ Administrative Decision to the Planning Commission: Fee = $250

   x Planning Commission Decision to the Board of County Commissioners: Fee = $ 571.00

   If appellant prevails at Planning Commission or a subsequent appeal, the $250 fee for the initial appeal shall be refunded per ORS 215.416(11)(b). This is not applicable for any subsequent appeal costs.

2. Appeal Deadline: August 26, 2013

   Date Submitted: August 26, 2013

   All appeal documents filed with Wasco County must be delivered to the Wasco County Planning Department Office by postal service or in person. Documents faxed are not considered filed. An appeal will not be considered timely unless received no later than 4:00 p.m. on the deadline stated on the Notice of Decision or Resolution. AN APPEAL IS NOT CONSIDERED COMPLETE UNTIL BOTH THE SIGNED NOTICE OF APPEAL AND FILING FEE ARE RECEIVED.

3. Party Status: State how the petitioner(s) qualifies as a party to this matter:

   Petitioner has party status by virtue of being the applicant herein. Petitioner also appeared before the Planning Commission orally and in writing.

   Party includes the following:

   - The applicant and all owners or contract purchasers of record, as shown in the files of the Wasco County Assessor's Office, of the property which is the subject of the application.
   - All property owners of record, as provided in (a) above, within the notification area, as described in section 2.080 A.2., of the property which is the subject of the application.
   - A Citizen Advisory Group pursuant to the Citizen Involvement Program approved pursuant to O.R.S. 197.160.
   - Any affected unit of local government or public district or state or federal agency.
   - Any other person, or his representative, who is specifically, personally or adversely affected in the subject matter, as determined by the Approving Authority. (Revised 1/92)

4. Grounds for appeal: List the specific grounds relied upon in the petition request for review (e.g. ordinance criteria not met, procedural error, etc.) Additional pages may be attached.

A. The Planning Commission used the Watson case to nullify decades of County policy as to development in resource areas without involvement of the Board and without notice to affected property owners.

The historic County policy is to allow campgrounds, houses, power facilities, recreational ranches, and other conditional uses in recreational areas along the Deschutes and John Day rivers. The Planning Commission ruled that these and other uses cannot be permitted. This is a major shift in policy making many properties unbuildable and rendering existing uses nonconforming. By using a single application to reverse County policies the Planning Commission failed to inform affected landowners, and the general public, and made these changes without direction from the Board. To make such a change the correct process would have been to recommend to the Board specific amendments to the zoning code and comprehensive plan that could have been considered in a separate, legislative proceeding

B. Only the Board of Commissioners, and not the Planning Commission, is entitled to deference in interpreting the zoning code and comprehensive plan

The Planning Commission's nullification approach was accomplished by taking advantage of ambiguities in the zoning code and comprehensive plan and by interpreting that language to nullify decades of prior and consistent County interpretation. Under Oregon law only the Board of Commissioners is entitled to interpret the zoning code and comprehensive plan in a binding way. If more than one reading is possible, the Board's interpretation is deferred to by the Land Use Board of Appeals. A major change in policy, based on a change in code or plan interpretation, is the prerogative of the Board of Commissioners and not the Planning Commission.

C. Neither the Board of Commissioners nor County staff have been wrong for decades in allowing nonfarm conditional uses to be considered for approval in recreational river areas along the Deschutes and John Day rivers

For decades, the County has understood its Goal 5 resources program to allow a variety of nonfarm uses in agricultural and forest lands, including lands adjacent to the Deschutes and John Day rivers. The County has historically, and specifically, avoided viewing all of its resource land as open space. Instead, the County has used the conditional use review process to approve uses that conflict with agricultural or forest values, and has recognized that residential uses are a common use in these areas. The Board of Commissioners has passed the zoning code to implement its approach to conditionally approving "conflicting uses," however the Planning Commission has interpreted the zoning code directly opposite to the plan provisions that the code is supposed to implement.

D. The Planning commission nullification of past County policy has disastrous consequences for property owners

Under the Planning Commission's interpretation of the zoning code, an entire category of uses has been deemed nonconforming in the County's Natural Areas Overlay district, which is Division 7 of the County's larger EPO program. This has been done without considering the implications—not to mention unintended consequences—of the interpretation. The interpretation deprives persons of advance notice of such a sweeping change, and an opportunity to be heard. The deprivation of rights is of great magnitude, as not only landowners are affected, but persons who use

land owned by others—such as anglers, campers, and tourists—lose the ability to enjoy land uses that may be shut down or precluded with very negative economic and legal consequences. In particular, currently existing uses are rendered nonconforming by the Planning Commission's interpretation, and uses which could be developed in the future, are now prohibited.

E. The Board's past interpretation is reasonable under the text of the zoning code, the comprehensive plan, and supporting documents

For decades the County has allowed development in the natural areas overlay district (NDO) by treating all uses of land as conditional sues. The essential component of conditional use review is that conditional uses may have impacts and incompatabilies not found in outright permitted uses, thus conditional uses are scrutinized for their compatibility and impacts. The County has applied the NDO to the underlying zoning district as a way of protecting resources by deeming all uses subject to compatibility and impacts review. That is to say, because natural areas have heightened sensitivity and resource value, even outright permitted uses are—in the NDO areas--reviewed as a conditional use. And certainly conditional uses are reviewed under conditional use criteria in these areas. However, the Planning Commission has unilaterally decided to alter this this framework, preferring to deem all conditional uses illegal in NDO.

5. De Novo vs. On the record: All appeals to Planning Commission are DeNovo meaning new information can be entered into the record. All appeals to the Board of Commissioners are on the record unless a request is made as part of this request by party filing the petition. Any other party must make such a request no more than seven (7) calendar days after the deadline for filing a petition for review has expired.

The appeal is to the Board of Commissioners? ☐ NO X YES

I request the hearing to be DeNovo or partial DeNovo? ☐ NO X YES

State the reasons you are requesting a DeNovo or partial DeNovo without addressing the merits of the land use action:

We believe the Board of Commissioners should conduct a partial De Novo hearing, to receive evidence of the county's policy to approve nonfarm land uses in agricultural and forestry zones. This request is warranted because the Planning Commission did not consider or invite consideration of this type of evidence. The request is warranted further because the policy change is of County-wide significance, thus the Board should consider evidence as to the effects of its current policy before the Board takes action on a decision that affects County policies. Finally, the request is further warranted because on August 6th, the Planning Commission made a decision to hold the record open for 14 days, however the Planning Commission made a final written decision before the close of evidence. That rendered futile any effort to supply the Commission with further information.

Indicate any persons known to be opposed to a request for a DeNovo hearing.

_____

_____

_____

When practicable, the requesting party shall advise the other parties and attempt to gain their consent.

I have attempted to gain the consent of the other parties associated with this file? X NO ☐ YES

If you answered no indicate why this is not practicable. If you answered yes list the parties who have consented for this to be a DeNovo or partial DeNovo hearing.

Our decision to appeal was made shortly before the filing deadline, however we will contact parties with potential to become involved in this appeal, and obtain their position on this issue as soon as practicable.

The request for a DeNovo hearing for appeal of a quasi-judicial plan amendment shall be decided by the Board of Commissioners as a nonpublic hearing item, except that the Board may make such provision for notice to the parties and may take such testimony as it deems necessary to fully and fairly address significant procedural or substantive issues raised. The Court shall grant the request only upon findings that:

- A de novo hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action;
- The substantial rights of the parties will not be significantly prejudiced; and
- The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.

6. Outstanding Appeal Fees: Any person wishing to appeal any decision shall be required to pay all outstanding appeal fees prior to their appeal application being considered complete.

List prior appeals filed:

None filed.

I have paid all outstanding fees associated with prior appeals: not applicable ☐ NO ☐ YES

SIGNATURES

Name, Title
Gabriel Watson, applicant

Date
August 26, 2013

NOTICE OF INTENT TO APPEAL
BY DOUGLAS ROBERTSON

PLAAPL-13-08-0002
OF
PLAQJR-12-08-0001

Watson Application

Wasco County Planning Department
"Service, Sustainability & Solutions"
2705 East Second St. • The Dalles, OR 97058
(541) 506-2560 • wcplanning@co.wasco.or.us
www.co.wasco.or.us/planning

PLAAPL-13-08-0002
OF PLAQJR-12-08-0001

RECEIVED
AUG 26 2013
WASCO COUNTY PLANNING

(PRECAUTIONARY)* APPEAL OF LAND USE DECISION

* See Appeal Narrative!

ORIGINAL PLANNING DEPARTMENT FILE NUMBER: PLAQJR-12-08-0001 (See Attached Notice of Decision)

Date Received:	Planner Initials:	Date Complete:	Planner Initials:

APPELLANT INFORMATION

Name: Douglas S. Robertson

Mailing Address: 29 Hillshire Dr.

City/State/Zip: Lake Oswego OR 97034

Phone: 503.804.3295 Email: dougr@easystreet.net

APPEAL INFORMATION

1. Appeal Type

   ☐ Administrative Decision to the Planning Commission: Fee = $250
   ☒ Planning Commission Decision to the Board of County Commissioners: Fee = $ 571.00

   If appellant prevails at Planning Commission or a subsequent appeal, the $250 fee for the initial appeal shall be refunded per ORS 215.416(11)(b). This is not applicable for any subsequent appeal costs.

2. Appeal Deadline: Monday 26 August 2013 @ 4pm

   Date Submitted: Friday, 23 August 2013

   All appeal documents filed with Wasco County must be delivered to the Wasco County Planning Department Office by postal service or in person. Documents faxed are not considered filed. An appeal will not be considered timely unless received no later than 4:00 p.m. on the deadline stated on the Notice of Decision or Resolution. AN APPEAL IS NOT CONSIDERED COMPLETE UNTIL BOTH THE SIGNED NOTICE OF APPEAL AND FILING FEE ARE RECEIVED.

3. Party Status: State how the petitioner(s) qualifies as a party to this matter:

   Although the above-named appellant is a prevailing party before the Planning Commission, the appellant wishes to file this precautionary appeal to preserve issues that the Planning Commission found in favor of the applicant

   Party includes the following:

   - The applicant and all owners or contract purchasers of record, as shown in the files of the Wasco County Assessor's Office, of the property which is the subject of the application.
   - All property owners of record, as provided in (a) above, within the notification area, as described in section 2.080 A.2., of the property which is the subject of the application.
   - A Citizen Advisory Group pursuant to the Citizen Involvement Program approved pursuant to O.R.S. 197.160.
   - Any affected unit of local government or public district or state or federal agency.
   - Any other person, or his representative, who is specifically, personally or adversely affected in the subject matter, as determined by the Approving Authority. (Revised 1/92)

   ↑ prohibited by state law - See attached appeal narrative.

4. Grounds for appeal: List the specific grounds relied upon in the petition request for review (e.g. ordinance criteria not met, procedural error, etc.) Additional pages may be attached.

1. The Planning Commission erred by finding the proposed structure to constitute a "dwelling". The applicant does not have an approved water supply.

2. The Planning Commission erred by finding that "the proposed dwelling and accessory structure will not result in the permanent destruction of natural value."

3. The Planning Commission erred by not requiring site plan review

4. The application cannot be approved because it is proposed to be built in the visual corridor of the Deschutes River. See Comp Plan, Plan Policy 5, Implementation Measure C. See also attached Narrative for additional grounds.

5. De Novo vs. On the record: All appeals to Planning Commission are DeNovo meaning new information can be entered into the record. All appeals to the Board of Commissioners are on the record unless a request is made as part of this request by party filing the petition. Any other party must make such a request no more than seven (7) calendar days after the deadline for filing a petition for review has expired.

The appeal is to the Board of Commissioners? ☐NO ☒YES

I request the hearing to be DeNovo or partial DeNovo? ☒NO ☐YES

See also letter dated Feb 26, 2013 and July 29, 2013 for additional grounds of appeal.

State the reasons you are requesting a DeNovo or partial DeNovo without addressing the merits of the land use action:

N/A

Indicate any persons known to be opposed to a request for a DeNovo hearing.

N/A

When practicable, the requesting party shall advise the other parties and attempt to gain their consent.

I have attempted to gain the consent of the other parties associated with this file? ☐NO ☐YES

If you answered no indicate why this is not practicable. If you answered yes list the parties who have consented for this to be a DeNovo or partial DeNovo hearing.

N/A

The request for a DeNovo hearing for appeal of a quasi-judicial plan amendment shall be decided by the Board of Commissioners as a nonpublic hearing item, except that the Board may make such provision for notice to the parties

and may take such testimony as it deems necessary to fully and fairly address significant procedural or substantive issues raised. The Court shall grant the request only upon findings that:

- A de novo hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action;
- The substantial rights of the parties will not be significantly prejudiced; and
- The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.

5. Outstanding Appeal Fees: Any person wishing to appeal any decision shall be required to pay all outstanding appeal fees prior to their appeal application being considered complete.

List prior appeals filed:

N/A

I have paid all outstanding fees associated with prior appeals: N/A ☐NO ☐YES

SIGNATURES

X _____ August 23, 2013

Name, Title Date

_____

Name, Title Date

Additional petitioner(s):

_____

Name Address

_____

Name Address

_____

Name Address

_____

Name Address

Appeal Narrative:

Note: This appeal is being filed as a precaution in the event the applicant files an appeal of the same decision by the Planning Commission, dated August 14, 2013. If the applicant accepts the decision, this appeal will be withdrawn.

The appellant objects to the requirement of this appeal that an appellant prove that they are adversely affected by the decision. Under state law, an appellant has standing to appeal a land use decision to the governing body and to LUBA simply by virtue of the fact that they appeared orally or in writing before the Planning Commission.

4. Grounds for Appeal:

a. The Planning Commission erred as a matter of law by finding the proposed structure, as modified by the applicant, constitutes a "dwelling" within the meaning of state and local land use laws. A dwelling is required to have an approved water supply, and in this case, the applicant admits that it is not possible to build a well on the subject property.

The applicant proposes to build a structure intended for short-term occupancy for recreational purposes, as opposed to a dwelling for residential use. Such a structure, which in common parlance would be called a "cabin," is not recognized as an allowed or conditional use in the EFU zone. Under Oregon law, only those uses set forth in ORS 215.283 may be permitted in the EFU zone. Recreational short-term occupancy cabins are not listed as an allowed or conditional use in the EFU zone. As a result, cabins are not allowed in the EFU zone under Oregon law. ORS 215.283; ORS 215.284.

In *Wetherell v. Douglas County*, 56 Or. LUBA 120 (2008), LUBA noted that one of the required components of a qualifying dwelling under ORS 215.283(1)(s) is "indoor plumbing" that is "connected to a sanitary waste disposal system." LUBA stated that a "connection to a water supply and a sanitary waste disposal system is an essential component of a 'dwelling.'"

The Wasco County Zoning Code reinforces the need for a non-farm dwelling to have sanitation facilities. WCZO §3.210(J) requires that "[t]he site shall have appropriate physical characteristics such as adequate drainage, proper sanitation and water facilities to accommodate a residence or other non-farm use.

Construction of a single family residential dwelling is governed by the Oregon Residential Specialty Code (2011) (aka "building code"). Section R306 of the ORSC requires that "[e]very dwelling shall be provided with a water closet, lavatory, and a bathtub or shower." Furthermore, "[a]ll plumbing fixtures shall be connected to a sanitary sewer or an approved private sewage disposal system," and [a]*ll plumbing fixtures shall be connected to an approved water supply.*

Thus, an approved water supply and an approved private sewage disposal system is mandatory. The ORSC defines the terms "dwelling" and "dwelling unit" in a manner that precludes the cabin proposed by the applicant. Because the applicant is not proposing to include indoor plumbing and sanitation facilities, the building he proposes is not a dwelling. Since cabins, and particularly

those lacking approved water supply and indoor toilets, are not allowed in the EFU zone, the application must be denied.

b. The Planning Commission erred as a matter of law and made a decision not supported by substantial evidence by finding that "the proposed dwelling and accessory structure will not result in the permanent disruption of natural value." Goal 5, Policy 5 states that *"[t]he Deschutes and John Day River Scenic Waterways shall be maintained and protected as natural and open space areas with consideration for agriculture and recreation."* WCZO §3.910(C) is the approval standard for the Natural Area Overlay District. It is a very restrictive standard, providing:

> *C. Approval Standards: In the evaluation of any use subject to the Natural Area Overlay, finding shall be required demonstrating that the designated natural value will not be damaged by the use or activity. If a proposed use or activity would result in the permanent destruction of natural value, then the request shall be denied.*

There is no exception for areas that have degraded natural value. The site is deemed to have natural value by virtue of is zoning designation. Areas that were deemed to have degraded natural value due to excessive development were given other zoning designations. The Planning Commission's finding is a collateral attack on the zoning designation.

c. The Planning Commission erred as a matter of law by not requiring the applicant to undertake a site plan review proceeding and demonstrate compliance with the criteria set forth in Chapter 20 of the LUDO.

d. In addition to the reason for denial found by the Planning Commission, the application cannot be approved because it violates Comprehensive Plan Policy 5, Implementation Measure C. Comprehensive Plan Policy 5, Implementation Measure C prohibits the proposed "dwelling" because it is proposed to be located within the visual corridor of the Deschutes River. The Planning Commission erred as a matter of law to the extent it found that Comprehensive Plan Policy 5, Implementation Measure C is not a mandatory approval standard for this application. The Planning Commission further erred as a matter of law to the extent it found that a dwelling is not in the visual corridor of the river simply by virtue of the fact that it is screened by deciduous vegetation. The Planning Commission's decision is not supported by substantial evidence to the extent it agreed with staff that vegetation along the river bank provides a sufficient screen to allow a finding of compliance with Comprehensive Plan Policy 5, Implementation Measure C; Comprehensive Plan Policy 5, Implementation Measure C's requirement to be outside of the visual corridor is not limited to times of the year when deciduous trees block the view of a structure from the river. Moreover, in this case, there are gaps in the screening provided by the trees, and therefore a person standing in the Deschutes River will be able to see the proposed dwelling even though deciduous trees may block the view of the proposed structure from some points in the river.

As part of the conditional use process, the applicant is required to demonstrate that "*The proposal is consistent with the goals and objectives of the Comprehensive Plan* * * *." WCZO §5.020(A). The effect of this provision is to make certain plan policies in the comprehensive plan mandatory approval criteria applicable to individual land use decisions, depending on their

context and how they are worded. *See Stephan v. Yamhill County*, 21 Or LUBA 19 (1991), *Von Lubken v. Hood River County*, 19 Or LUBA 404 (1990). Where a comprehensive plan provision is worded in mandatory language – such as when the word "shall" is used – and is applicable to the type of land use request being sought, then LUBA will find the standard to be a mandatory approval standard, *Friends of Hood River v. Cty of Hood River*, __ Or LUBA __ (LUBA No. 2012-050, March 13 2013). Conversely, use of aspirational language such as "encourage" "promote," or statements to the effect that certain things are "desirable" will generally not be found to be mandatory approval standards. *Id.; Neuschwander v. City of Ashland*, 20 Or LUBA 144 (1990); *Citizens for Responsible Growth v. City of Seaside, 23 Or LUBA 100* (1992), *aff'd w/o op.* 114 Or App 233 (1993).

In this case, the Comprehensive Plan designates the Deschutes River Scenic Waterway as a protected Goal 5 resource. The boundaries of the resource are co-terminus with the boundary set forth in Oregon Scenic Waterway's Program. Under the County's Goal 5 program, these lands are considered to be "open space" lands. The management goal for this area is to "preserve their natural and scenic properties." *See* WCCP Ch. 14 (findings); WCCP Ch. 15, Policy 5 ("The Deschutes * * * River Scenic Waterways shall be maintained and protected as natural and open area with consideration for agriculture and recreation."). Policy 5's Implementation Measure C effectuates this policy goal by limiting development in the resource area: "Allow only buildings customarily provided with farm use within the visual corridor of the Deschutes * * * Scenic Waterway."

Goal 5 Policy 5 Implementation Measure C is a mandatory approval criterion in this case because it uses only mandatory words: "Allow only * * * in the visual corridor." Compare *Axon v. City of Lake Oswego*, 20 Or LUBA 108 (1990) ("Comp plan policy that states that "services shall be available or committed prior to approval of development" is a mandatory approval standard). The mandate set forth in measure C is simple: it allows only farm-related dwellings / buildings in the visual corridor of the river. Although the phrase "visual corridor" is not defined, it is clear that the phrase includes all land and structures that can be seen from any point on the river.

In this case, there can be no argument that the goal of the Goal 5 program is to preserve resources that provide Outstanding Scenic Views, and in this case, the view from the Deschutes River is of primary importance. Thus, a non-farm dwelling is not allowed within the visual corridor of the river.

This interpretation is also consistent with the approach taken by the Oregon Scenic Waterways Act and its implementing rules with regard to dwellings. OAR 736-040-0070(2)(c) provides that "[a]dditional dwellings, other than those necessary to existing agricultural uses, and commercial public service facilities, including resorts and motels and lodges that are visible from the river, will not be permitted."

e. The Planning Commission erred by failing to analyze the application under non-conforming use law/ ORS 215.130(5)-(11). The landowner lost its non-conforming use rights by failing to rebuild any structures located on the property after they were destroyed by the 1996 floods.

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FEBRUARY 26, 2013

VIA EMAIL

Wasco County Planning Commission
c/o: Wasco County Planning Office
2705 East Second Street
Dalles, OR 97058

Re: Gabriel Watson Non-Farm Dwelling Application
File # PLAQJR-12-08-0001

Dear Honorable Members of the Planning Commission:

I. Introduction.

I, along with Mark Whitlow of Perkins Coie, LLP, represent Mr. Douglas S. Robertson on land use matters related to the above-captioned case file. Our client is opposed to the Conditional Use Application on the grounds that it is not in compliance with the Wasco County Comprehensive Plan ("WCCP") and Wasco County Zoning Ordinance ("WCZO").

Mr. Whitlow previously submitted a letter to Ms. Isa Taylor that addresses many of the legal issues present in this case. Although there is some overlap between that letter and the material set forth herein, this letter primarily presents new legal arguments in support of a denial of the application.

II. Legal Analysis

A. The Application Does Not Propose to Build a "Dwelling."

The applicant proposes to build a structure intended for short-term occupancy. Such a structure, which in common parlance would be called a "cabin," is not recognized as an allowed or conditional use in the EFU zone. Under Oregon law, only those uses set forth in ORS 215.283 may be permitted in the EFU zone. Recreational short-term occupancy cabins are not listed as an

allowed or conditional use in the EFU zone. As a result, cabins are not allowed in the EFU zone under Oregon law. ORS 215.283; ORS 215.284.

For this reason, the applicant is trying to shoehorn the proposed development through the land use process as a "non-farm dwelling." However, as discussed below, a "dwelling" is intended for year-round occupancy and is required to have running water and indoor sanitation facilities connected to a disposal system. The proposed structure is not a "dwelling" because it does not have the proper indoor water / sanitation facilities.

1. Background on Non-Farm Dwellings.

ORS 215.284 governs the siting of non-farm dwellings on EFU land. This statute dates back to SB 100 (1973). One of the founders of SB-100, Hector MacPherson, said that the non-farm dwelling law was intended to provide "a little escape valve whereby we can allow a small amount of single family residential dwelling within an exclusive farm use zone." Nonetheless, "The clear intent is that non-farm dwellings be the exception and that approval for them be difficult to obtain." *Cherry Lane v. Jackson County*, 84 Or 196, 199 n.3 (1987).

Non-Farm dwellings are regulated by ORS 215.284(2), which provides:

> (2) In counties not described in subsection (1) of this section, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:
>
> (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
>
> (b) The dwelling is situated upon a lot or parcel or portion of a lot or parcel that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel may not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land;
>
> (c) The dwelling will be sited on a lot or parcel created before January 1, 1993;
>
> (d) The dwelling will not materially alter the stability of the overall land use pattern of the area; and

> (e) The dwelling complies with such other conditions as the governing body or its designee considers necessary.

2. The Term "Dwelling" Has a Specific Meaning Under Oregon Law: a Dwelling Must Have Indoor Plumbing and Indoor Sanitation Facilities Which Connect to an Approved Disposal System.

The term "dwelling" is not defined in ORS Chapter 215. However, in *Wetherell v. Douglas County*, 56 Or. LUBA 120 (2008), LUBA recognized that:

> [t]he term "dwelling" is not defined in the statute. "Dwelling" is defined in the Oregon Residential Specialty Code, with reference to the term "dwelling unit." "Dwelling unit" is defined in the Oregon Residential Specialty Code as "a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, *and sanitation*." * * * * *. Thus, the ordinary meaning of dwelling appears to be synonymous with residence, and includes a building that provides amenities typical of a residence, specifically including "sanitation." Sanitation would appear to include both water serving the residence and a method of disposing of waste generated by the residence. (Footnote omitted; Italics in original; underline added).

WCZO §3.210(E)(10) implements ORS 215.283(2), and provides that a non-farm dwelling is a conditional use, as follows.

> E. Uses Permitted Subject to Conditional Use Review/Type II or Type III: The following uses may be permitted on a legal parcel designated "A-1" Exclusive Farm Use * * *.
>
> * * * * *.
>
> 10. Non-Farm Dwelling: One single family dwelling not provided in conjunction with farm use, subject to Section J(1) - Additional Standards, below. (Emphasis added).

The statutory language raises the question of whether the applicant is truly proposing a "single family (residential) dwelling." The applicant states that the proposed structure will not have running water or an operational septic system. However, the term "Dwelling Unit" is defined in both ORS 215.283(1)(s) and WCZO §1.090 as follows:

> "A lawfully established dwelling is a single-family dwelling which:
> a. Has intact exterior walls and roof structure;

> b. Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
> c. Has interior wiring for interior lights; and
> d. Has a heating system." (Emphasis added).

In *Wetherell, supra*, the intervenor was seeking to locate a septic system for a non-farm dwelling on a portion of the property that contained soils suitable for farming. By happenstance, soils that are suitable for septic are usually also suitable for farming. Nonetheless, the statute requires that the non-farm "*dwelling*" be located on a portion of the property that is *not* suitable for farming. Although the statute is silent about whether that same rule applies to the septic system that serves the dwelling, LUBA held that the septic system is an integral part of the dwelling, and therefore, the landowner needed to site the septic system on land that is not suitable for farming.

LUBA rejected intervenor's argument that the "replacement dwelling" provisions of ORS 215.283(1)(s) support an inference that a "dwelling," as that term is used in ORS 215.284(2)(b), includes only the building structure. In so doing, LUBA provided insight as to the characteristics of a dwelling:

> We are not particularly persuaded by intervenor's reference to and reliance on ORS 215.283(1)(s). The purpose of the replacement dwelling provisions is to describe and therefore limit the types of dwellings that qualify for alteration or replacement. A dwelling that does not have all of the required components does not qualify for replacement. It is difficult to infer from ORS 215.283(1)(s) any particular legislative intent regarding what parts of a "dwelling" must be placed on generally unsuitable land under ORS 215.283(2)(b). To the extent some contextual inference from ORS 215.283(1)(s) to ORS 215.283(2)(b) is possible, we note that one of the required components of a qualifying dwelling under ORS 215.283(1)(s) is "indoor plumbing" that is "connected to a sanitary waste disposal system." If anything, that suggests that connection to a water supply and a sanitary waste disposal system is an essential component of a "dwelling." (Emphasis added).

Thus, LUBA seemed willing to accept, as context for statutory interpretation, an inference emanating from ORS 215.283(1)(s): that a structure is not a "dwelling" unless it features "indoor plumbing," including a kitchen sink, indoor toilet and bathing facilities, both of which must be connected to a "sanitary waste disposal system." That makes sense, since that is what the building code requires. Therefore, a structure that does not have these features is not a "dwelling."

3. Wasco County Code Requires a Dwelling to Contain Proper Sanitation and Water Facilities to Accommodate a Residence.

The Wasco County Zoning Code reinforces the need for a non-farm dwelling to have sanitation facilities. WCZO §3.210(J) provides as follows:

> J. Additional Standards
> 1. Non-Farm Dwelling:
> a. The parcel is not within the A-1(40) Zone.
> b. There is no other dwelling on the parcel;
> c. The site shall have appropriate physical characteristics such as adequate drainage, proper sanitation and water facilities to accommodate a residence or other non-farm use; (Emphasis added).

This code provision requires the dwelling to be on a "site" that features "proper sanitation" and "proper water facilities" *to accommodate a residence*. Although these terms are not defined in the code, it is apparent that a site that has *no* water facilities does not have "*proper*" water facilities. As discussed below, Oregon law requires all residential construction to have indoor plumbing. Further, the facilities must be adequate to support a *residence*, which is the location where a person resides. This suggests that the facilities are intended for long term occupancy, and must be more substantial than facilities intended to support intermittent short-term use.

Construction of a single family residential dwelling is governed by the Oregon Residential Specialty Code (2011) (aka "building code"). Section R306 of the ORSC provides as follows:

> *Section R 306*
> *Sanitation*
>
> *R 306.1 Toilet Facilities. Every dwelling shall be provided with a water closet, lavatory, and a bathtub or shower.*
>
> *R 306.2 Kitchen. Each dwelling shall be provided with a kitchen and every kitchen area shall be provided with a sink.*
>
> *R 306.3 Sewage Disposal. All plumbing fixtures shall be connected to a sanitary sewer or an approved private sewage disposal system.*
>
> *R 306.4 Water Supply to Fixture. All plumbing fixtures shall be connected to an approved water supply.*

Thus, an approved water supply and an approved private sewage disposal system is mandatory. The ORSC defines the terms "dwelling" and "dwelling unit" as follows:

> *DWELLING. Any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let, or hired out to be occupied, or that are occupied for living purposes.*

> *DWELLING UNIT. Any single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.*

Because the applicant is not proposing to include indoor plumbing and sanitation facilities, the building he proposes is not a dwelling. Since cabins, and particularly those lacking approved water supply and indoor toilets are not allowed in the EFU zone, the application must be denied.

B. Statewide Planning Goal 5 and the County's Goal 5 Program Provides Context that Guides the Interpretation of WCZO §3.910. Viewed in Light of this Relevant Context, It is Clear that the Only Land Uses Permitted in the Natural Area Overlay Are Those Uses that are Allowed by Right in the Underlying Zone.

This case concerns the relationship between the County's Goal 5 Program and its Natural Area Overlay District ("NAOD"), which is one the Environmental Protection zones that implements the Goal 5 Program. The NAOD is found at WCZO §3.910, and provides as follows:

> SECTION 3.910 DIVISION 7 - NATURAL AREAS OVERLAY
>
> A. Purpose: This overlay district is intended to preempt conflicting use in areas identified in the Wasco County Comprehensive Plan as containing significant natural value. The overlay is designed to protect the identified natural value by allowing only uses which will not permanently destroy the natural value. This overlay applies to all natural areas identified in the Wasco County Comprehensive Plan and to the Wasco County portions of the Deschutes, John Day, and White Rivers designated as Wild & Scenic Rivers as defined and protected in ORS 390.805 & 390.825 or USFC & CFR.
>
> B. Permitted Uses: Uses allowed in the underlying zone shall be subject to the conditional use review permit pursuant to Section 2.060(A) of this Ordinance.
>
> C. Approval Standards: In the evaluation of any use subject to the Natural Area Overlay, finding shall be required demonstrating that the designated natural value will not be damaged by the use or activity. If a proposed use or activity would result in the permanent destruction of natural value, then the request shall be denied.

The natural areas and open space resources that are protected by the NAOD have been inventoried pursuant to Statewide Planning Goal 5. Exercising its police power, the County's has used the Goal 5 program to adopt the same substantive protections provided in Oregon's Scenic

Rivers Act. As relevant here, it has prohibited non-farms dwellings within the NAOD. By making these prohibitions regulatory standards, the County has effectively obviated the need for the State to exercise eminent domain, as originally contemplated by the State's Scenic Rivers Act when it was written in 1970.[1]

To understand the significance and proper interpretation of the County's Goal 5 provisions, some background into the Goal 5 program is required.

1. Background on DLCD's Goal 5 Planning Process.

Both Goal 5 and the implementing Administrative Rule (Divisions 16 & 23[2]) attempt to establish a comprehensive planning process for protecting natural resources. There are four distinct parts to the traditional Goal 5 process, which are listed both in the Goal itself and the administrative rules.[3] The goal set out a process "whereby local governments are required to (1) inventory the location, quality and quantity of the listed resources in the territory; (2) identify conflicting uses for the inventoried resources; (3) conduct an analysis of the economic, social, environmental and energy (ESEE) consequences of negative impacts between conflicting uses and Goal 5 resources, and (4) develop a program to achieve the goal of resource protection."[4]

The first step in the Goal 5 program is the inventory. Goal 5 specially requires counties to inventory "state scenic waterways" such as the Deschutes River. It further requires that the County "adopt plans that will protect natural resources and conserve scenic * * * and open space resources for present and future generations." Thus, Wasco County has inventoried and designated the Deschutes River Scenic Area as a Goal 5 resource, and declared these resources worthy of protection.

The second step is to identify so-called "conflicting uses." The phrase "conflicting uses" is defined under Goal 5 as those uses "which, if allowed, could negatively impact a Goal 5 resource." OAR 660-016-0005. The identification of conflicting uses occurs only after the local

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[1] Oregon's Scenic Waterways Act ("OSWA") was written at a time when the use of the State's police power for land use environmental protection purposes was both controversial and legally uncertain. The adoption of Senate Bills 100 and 101 (1973) ushered in a new era where the state began to regulate land uses under the guise of the police power. For this reason, the Police power approach has largely obviated the need for the state to pay just compensation under the OSWA. The substantive protections set forth in eth OSWA have been incorporated into the County's Goal program, thereby making the County the instrument through which state regulatory power is enforced.

[2] All of the Goal 5 related planning efforts completed by Wasco County was done at a time when Division 16 was in effect. For this reason, all further reference herein to the Goal 5 administrative rules will cite to Division 16.

[3] ORS 197.628, 197.633; OAR 660, Div. 16; OAR 660, Div. 19; *See also Knapp v. City of Jacksonville*, 20 Or. LUBA 189, 197 (1990) (summarizing the Goal 5 process).

[4] *Doty v. Jackson County*, 34 Or LUBA 287 (1998) (citing *Gage v. City of Portland*, 28 Or LUBA 307, 314 (1994); *aff'd*, 133 Or App 346, 891 P2d 1331 (1995)).

government determined that a site warranted being placed on the Goal 5 inventory. The conflicting uses may occur either on the resource site or elsewhere. *Mobile Crushing Company v. Lane County*, 11 Or LUBA 173 (1984). Generally speaking, identifying the main current and potential uses which conflict with the Goal 5 resource results in a process of analyzing uses that conflicted with the preservation of the site in its natural form. Thus, in this case, Wasco County determined that "residential development" is a use that is in conflict with the preservation of the open space resources in the natural areas.

In the vast majority of situations, some conflicting uses pre-existed in the planning area, and the local government was required to continue the Goal 5 analysis by examining the economic, social, environmental, and energy ("ESEE") consequences of those conflicting use on the resource site.[5] The ESEE analysis had to be completed before any resource "use" such as aggregate extraction could occur.[6] In addition, ESEE consequences could not be determined unless conflicting uses were adequately identified.[7] The Div. 16 administrative rules stated:

> Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. A determination of the ESEE consequences of the identified conflicting uses is considered adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites.[8]

To accomplish an ESEE analysis, each of the four topics were to be considered separately. Typically, findings would address both (1) the impacts on the resource of allowing conflicting uses, and (2) the impacts on conflicting uses of allowing resource development. It was not required, however, that the local government makes separate findings for the consequences of each impact (*i.e.*, noise, dust, traffic, etc.).[9]

Notably, once conflicting uses were identified, planning jurisdictions are not automatically required to fully protect Goal 5 resources. Rather, the planning jurisdiction had to make one of three choices based on the ESEE analysis.[10] First, the local government could opt to fully protect

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[5] *Columbia Steel*, 314 Or at 431; *Friends of Forest Park*, 129 Or App at 30.

[6] *Coats v. LCDC*, 67 Or App 504, 679 P2d 898 (1984).

[7] *Gonzalez*, 24 Or LUBA at 267; *Eckis*, 19 Or LUBA at 39, n.17.

[8] OAR 660-016-0005(2).

[9] *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

[10] OAR 660-016-0010.

the Goal 5 resource by restricting conflicting uses.[11] This became known as a "3A" decision. Conversely, the County could make a "3B" decision by fully allowing conflicting uses within the resource site, even if that would ensure the destruction of the resource.[12] Finally, the County could make the politically expedient "3C" decision to sacrifice neither the conflicting use or the Goal 5 resource by allowing both to coexist.[13] Although these decisions were discretionary, the local government was required to explain the reasons for its decision in writing, so that identified Goal 5 resources were adequately protected.[14] As discussed below, the County made a 3C decision, by allowing certain types of conflicting uses in the natural area, while prohibiting others.

With this background in mind, we can now begin to analyze in detail how the County completed its Goal 5 process for the Deschutes River when it completed this work many years ago.

2. Via the Goal 5 Planning Program, the County Has Made the Decision to Limit Conflicting Uses in the Deschutes County Scenic Area to Only Those Residential Uses That Are Allowed by Right in the Underlying Zone, Which in this Case is Farm Dwellings. Because Non-Farm Dwellings Are A Conditional Use in the Underlying (EFU) Zone, Such Dwellings Are Not Allowed on the Subject Property.

Chapter 14 of the Comprehensive Plan provides an analysis of the County's Goal 5 program. The Plan states, in relevant part:

> *B. Goal 5 Issues*
>
> *Goal 5 states that open space shall be preserved and natural and scenic resources protected. The administrative rule on Goal 5 [OAR Ch 660, Div. 16], adopted by the Commission on May 1, 1981, has given the means by which these resources should be inventoried and preserved. The conflict resolution process used for each Goal 5 issue is illustrated below.*
>
> *1. Land Needed or Desirable for Open Space*
>
> *Generally, all of the agricultural and forestry lands in the County could be considered as open space, in accordance with Goal 5. Other lands, such as the rock cliffs found in the Columbia Gorge, the Deschutes and John Day Scenic Waterways, the White River and The Dalles and Dufur Watersheds could also be*

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[11] OAR 660-016-0010(1).

[12] OAR 660-016-0010(2).

[13] OAR 660-016-0010(3).

[14] *Eckis*, 19 Or LUBA at 34; *Knapp v. City of Jacksonville*, 20 Or LUBA 189, 202-04 (1990).

> *considered as open space lands. Each of these areas is being protected by various methods, to preserve their natural and scenic properties. The type of "conflicting use" most often found to occur in the above mentioned open space lands is residential development, either conventional homes or mobile homes. Each open space resource and the method of protection are noted below.*
>
> *a. Agricultural and Forest Lands:*
>
> *According to sections 3.120(2)(a) and 3.210(1)(c) of the Wasco County Zoning Ordinance, residences are permitted outright in the agricultural and forest zones only in conjunction with a farm or forest use. Section 3.210(2)(r) permits a residence not connected with a farm or forest use as a conditional use, based on conditions set forth in section 3.120 (3), 3.210(3) and Oregon Revised Statutes 215.263. These conditions and the density requirement of each zone provide adequate protection of the farm, forest and open space resource. Other conditional uses must comply with the same conditions as mentioned above.*
>
> * * * *
>
> *c. The Deschutes and John Day Scenic Waterways:*
> *These waterways are protected by the State Scenic Rivers Act and the E.P.D. [Environmental Protection District zone] Division 5 (§3.755(5). [aka §3.910]*
> (Emphasis Added).

WCCP Ch. 14(B)(1), quoted above, is important both because it identifies the Deschutes Scenic Waterway as "open space" under Statewide Planning Goal 5, and because it recognizes that the planning goal for such open space is to "protect [its] natural and scenic properties." It further recognizes that residential development is a "conflicting use" under the Goal 5 planning paradigm.

WCCP Ch. 14(B)(1)(a) further concludes that an adequate level of protection is achieved for general farm and forest uses and generic open space by balancing the amount and density of conflicting residential uses. The findings further conclude that the zoning mandated by state law achieves adequate protection for these zones by effectively limiting the amount/density of residential development in EFU and forest zones. *See* ORS 215.283; 215.284.

However, specifically with regard to the Deschutes and John Day River Scenic Areas, the Comprehensive Plan takes a different approach: it states that "These waterways are protected by the State Scenic Rivers Act and the E.P.D. [Environmental Protection District zone] Division 5 (§3.755(5)."[15]

[15] Staff confirmed that the reference to "3.755(5)" is a typographic / scrivener's error. When the finding above states "E.P.D. [Environmental Protection District zone] Division 5 (§3.755(5)," the intended cross-reference is to the Natural Area Overlay District codified at WCZO §3.910.

By using the language "[t]hese waterways are protected by * * *", the Comprehensive Plan finding quoted above assumes that the State Scenic Rivers Act provides some level of *substantive* protection for the river against conflicting uses such as residential development. If, as staff seems to assume in its Staff report dated January 29, 2013, the State Scenic Rivers Act is merely a procedural requirement (*i.e.* one year "delay" period with opportunity for state to exercise condemnation), then there would be no real substantive "protection" provided by the Scenic Area. Such a result is incorrect, as it runs contrary to the stated goal of "protecting" the river's natural and scenic properties by using zoning controls. Thus, this Comprehensive Plan finding is "context" for interpreting WCZO §3.910, and it leads to the conclusion that both the Oregon Scenic Waterways Act and the E.P.D. provides *substantive* protection for Goal 5 resources. This issue is explored in more detail, *infra*.

Second, this code section states that "[t]his overlay district is intended to preempt conflicting use in areas defined in the Wasco County Comprehensive Plan as containing significant natural value." The Comprehensive Plan identifies the "overall variable terrain" of the Deschutes River as having unique and important wildlife habitat.[16] Again, the notion that conflicting uses will be preempted is a theme that provides context bolstering the conclusion that WCZO §3.910 be read strictly, with development rights being highly limited.

The remainder of the findings in the Comprehensive Plan confirm that the County has identified the Deschutes River as a resource that is worthy of protection under Goal 5. WCCP Ch. 14 (B)(1)(6) identifies the Deschutes River as having "outstanding scenic views and sites:"

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[16] The Comprehensive Plan states that the Deschutes River contains important and unique wildlife habitat. *See* Chapter 2 M. Fish and Wildlife Resources, which states:

> 4. Unique Habitats
> The unique rock formations, rock slides and overall variable terrain features of the southern portion of the county and along the Deschutes, John Day and Columbia Rivers provide an important and unique wildlife habitat. Some wild-life species are directly associated with rock formations as a result of adaptation. An example is the chukar part-ridge. Rocky, steep terrain is an integral part of good chukar habitat, as these areas are utilized for shade, cover and escape routes. Other species closely associated with rock formations include bobcat, porcupine, wood rat, cliff swallow, rock and canyon wrens and the rattlesnake. Golden eagles and bald eagles nest in rock outcrops, cliffs and snags along the John Day and Deschutes Rivers, as do burrowing owls and the great blue heron. Osprey nest and feed along the Deschutes and Columbia.
>
> 5. Land Use Conflicts and Resolutions
>
> The type and severity of conflicts between wildlife and other land uses vary depending upon the habitats and land use involved. Conflicts to habitat frequently results in habitat loss or degradation and harassment which reduce animal numbers and correspondingly recreational opportunities. Land uses most compatible with Wasco County's fish and wildlife resources include open space, agriculture and forest. Land use designations which maintain large minimum lot size result in low residential densities and reduced conflicts between habitats and human activities. It is important to note that valuable habitat is found throughout the County, not just in those areas identified as sensitive. (Emphasis added).

> *6. Outstanding Scenic Views and Sites*
> *Outstanding scenic views and sites are generally those in the Columbia Gorge, the Deschutes and John Day Scenic Waterways and the White River Canyon. Protection of these areas has been discussed previously.*

Again, the "protection" referred to above is provided by WCZO §3.910(B), which, as discussed below, limits the permitted uses in natural areas to only those uses that are allowed by right in the underlying zone. And even those uses must be permitted via a conditional use process. *Id.*

In the next section, we apply the above-stated provisions, along with other context, to arrive at the conclusion that non-farm dwellings are not allowed in the NAOD.

3. Textual and Contextual Analysis Confirms that the NAOD, WCZO §3.910(B), Prohibits Non-Farm Dwellings In the Natural Area Overlay District.

The text of WCZO §3.910(B) set forth the uses permitted in the Natural Area Overlay District. It provides as follows:

> *B. Permitted Uses: Uses allowed in the underlying zone shall be subject to the conditional use review permit pursuant to Section 2.060(A) of this Ordinance.*[17]

Because the term "allowed" is not defined, it appears on its face to be susceptible to at least two interpretations. Staff interprets the term broadly, such that a use is "allowed" in the underlying zone if it is either allowed *by right* or if it is allowed *as a conditional use permit*. *See* Staff Report dated January 29, 2013 at p. 18 ("In the A-1 (160) zone, a non-farm dwelling is permitted subject to Conditional Use Review and an accessory structure is permitted subject to type I review.").

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[17] Section §2.060 provides:

> *Application/Completeness (Amended 4/12)*
> *A. The Director shall have the authority to review the following applications for Administrative Action, and shall follow the procedure provided by this Ordinance to accomplish such review. Matters required by this Ordinance that are not subject to other provisions of this Ordinance include, but are not limited to:*
> *1. Conditional Use Review (Chapter 5)*
> *2. Administrative Variances (Chapter 7)*
> *3. Temporary Use Permits (Chapter 8)*
> *4. Partition, Replat and Lot Line Adjustment Approval, except as provided for in section 2.060 B.10 (Chapter 21)*
> *5. Site Plan Reviews (Chapters 3 and 20)*
> *6. Uses Permitted Subject to Standards (Chapter 3)*
> *7. Similar use.*
> *8. Significance Determination for Aggregate Overlay (Chapter 3, Section 3.815)*
> *9. Nonconforming Use Verification, Restoration, or Alteration (Chapter 13)*

However, another more narrow and restrictive interpretation is plausible: only those uses that are "allowed" *by right* are "permitted" within the NAOD. Under this narrow interpretation, only those uses set forth in ORS 215.283(1) and WCZO § 3.210(E) would be allowed in the NAOD. The narrow interpretation is correct, for the reasons set forth below.

To resolve this interpretational issue, we employ the familiar methodological approach set forth in *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or 606, 611–612, 859 P2d 1143 (1993) (hereinafter *PGE v. BOLI*), as modified by ORS 174.010 and .020. *See State v. Gaines*, 346 Or 160, 171–172, 206 P3d 1042 (2009). The goal of the *PGE v. BOLI / Gaines* methodology is to determine the legislature intent of an ambiguous provision.

Under the first step of the *PGE v. BOLI* methodology, the task is to discern the intent of the enacting body by examining the text and context of the statute, as well as whatever legislative history may be presented by the parties. The best evidence of this intent is the law's text and context. *Sanchez v. Clatsop County*, 146 Or App 159, 932 P2d 557 (1997); *Whipple v. Howser*, 291 Or 475, 480, 632 P2d 782 (1981). In addition, "In trying to ascertain the meaning of a statutory provision, and thereby to inform the legislative intent, [LUBA] considers syntax-based rules of construction of the statutory text that bear directly on how to read the text." *State v. Webb*, 324 Or 380, 385-86, 927 P2d 79 (1996). We may also consider, at this first-level analysis, any relevant legislative history. ORS 174.010; 174.020.

a. Text.

When construing a statute, LUBA and the court will generally first look directly at the text of the statute itself.[18] A court will attribute to the legislature meanings based on the ordinary understanding of the words unless the legislature has specifically defined a statutory term or the context of the statute requires a specialized meaning. *North Marion School Dist. No. 15 ex rel. Trejo v. Acstar Ins. Co.*, 206 Or.App. 593, 138 P.3d 876 (2006).

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[18] *See Whipple v. Howser*, 291 Or 475, 635 P2d 782 (1981) (citing *Greyhound Corp. v. Mount Hood Stages, Inc.*, 437 US 322, 330, 98 S Ct 2370, 2375 (1978)). Emphasizing the need to look first to the language of the statute, the *Whipple* court stated:

> "The cardinal rule for the construction of a statute is to ascertain from the language thereof the intent of the law makers as to what the purpose was to be served, or what the objective was designed to be attained."

Whipple, 291 Or at 479 (citing *Swift & Co. and Armour & Cove, Co. v. Peterson*, 192 Or 97, 233 P2d 216 (1951). The *Whipple* court also cited to *State ex rel. Cox v. Wilson*, 277 Or 747, 562 P2d 172 (1977), in which the court stated:

> "There is, of course, no more persuasive evidence of the purpose of a statute then the words by which the legislature undertook to give impression to its wishes."

In this case, the text of the code provision sheds no conclusive light on its meaning when viewed in isolation. Dictionary definitions are inconclusive. The phrase "allowed use" is typically used in land use parlance as a land use that is allowed *by right*, which is to say without additional land use review. In contrast, the term "permitted" is typically used to encompass uses allowed by right as well as those allowed only after a permit has been obtained. Viewed in isolation, however, the intent of these words cannot be determined from the text alone. Therefore, it is critical to evaluate how that phrase is used in the context of this specific zoning ordinance.

b. Context.

The more limiting interpretation is confirmed by the code provision's context. The context of the statute is as important to the interpretation as the text. *State v. Webb*, 324 Or 380, 927 P2d 79 (1996); *Friends of Neaback Hill v. City of Philomath*, 139 Or App 39, 48, 911 P2d 350 (1996). *See e.g., Shadrin v. Clackamas County*, 34 Or LUBA 154 (1998). In fact, a reviewing court may consider the context before examining the text, in situations where the context "provided perspective on the text." *See Plotkin v. Washington County*, 165 Or App 246, 250, 997 P2d 226 (2000). The context of a statute relevant at the first stage of inquiry may include other provisions of the same statute,[19] related statutes, [20] prior enactments,[21] statutes or

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[19] *State v. Guzek*, 322 Or 245, 906 P2d 272 (1995); *Boone v. Wright*, 314 Or 135, 138, 838 P2d 727 (1992). If the text of a statute was part of a larger bill that codified at several places in the Oregon statutes, it is appropriate to examine that test in the larger context of the bill as a whole. *See AT&T Communications of the Pacific Northwest, Inc. v. City of Eugene*, 177 Or App 379, 35 P3d 1029 (2001); *Midler v. Water Wonderland Improvement Dist.*, 326 Or 306, 309 n. 4, 951 P2d 720 (1998). *Rest Haven Memorial Park v. City of Eugene*, 175 Or App 419, 28 P3d 1229 (2001).

[20] *PGE*, 317 Or at 611; *Westwood Home Owners' Ass'n v. Lane County*, 318 Or 146, 864 P2d 350 (1993). *State v. Gulley*, 324 Or 57, 921 P2d 396 (1996); *Bird v. Norpac Foods, Inc.*, 325 Or 55, 934 P2d 382 (1997); *Miller v. Ogden*, 325 Or 248, 935 P2d 1205 (1997); including statements of general policy in statutes and rules. *See State v. McBroom*, 139 Or App 120, 39 P3d 226 (2002); *State v. Thomas*, 104 Or App 126, 130, 799 P2d 208 (1990). For example, in *1000 Friends of Oregon v. LCDC (City of McMinnville)*, 244 Or. App. 239, 259 P.3d 1021 (2011), the Court of Appeals looked to ORS 197.296 to provide context to help determine the meaning of ORS 197.298. Slip op at p. 20. The Court noted that these two provisions were adopted as part of the same bill. The court stated that it will consider "the context of related statutes in the same chapter in which a provision has been codified," as well as other provisions in the bill that enacted the statute. *Id* at 20, n 6. (citing *Morseman v. City of Madras*, 203 Or App 546, 561, 126 P3d 6, *rev den*, 340 Or 483, 135 P3d 318 (2006) and *State v. Ortiz*, 202 Or App 695, 699, 124 P2d 611 (2005)).

[21] *Young v. State*, 161 Or App 32, 983 P2d 1044 (1999); *Stull v. Hoke*, 326 Or 72, 948 P2d 722 (1997); This includes previous versions of a statute or code. *Owen v. Maass*, 323 Or 430, 435, 918 P2d 808 (1996); *Northwestern Title Loans, LLC v. Division of Finance and Corporate Securities, Div. Of Dept. of Consumer and Business Services*, 180 Or App 1, 42 P3d 313 (2002); *Sweeney v. SMC Corp.*, 178 Or App 576, 37 P2d 244 (2002); *SAIF v. Walker*, 330 Or 102, 108-10, 996 P2d 979 (2000) (history of changes to a statute is part of the statute's context). *State v. Rodarte*, 178 Or App 173, 35 P3d 116 (2001) ("the change [in statutory language] is significant because new language in a statute ordinarily signals a change in the statute's meaning"); *State v. Click*, 305 Or 611, 616 n. 5, 755 P2d 693 (1988).

codes adopted after the statute in question,[22] historical context of the relevant enactments,[23] and prior judicial interpretations of those and related statutes.[24]

i. The Purpose Statement of the Natural Area Overlay Provides Context.

We first consider, as context, the purpose statement for the Natural Area Overlay District. Courts have made clear that the purpose statements in a statute or ordinance can be used as context. *State v. Kitzman*, 323 Or 529 920 P2d 134 (1996). *See also, Miller v. Meisel Co., Inc.*, 183 Or App 148, 51 P3d 650 (2002)(statutory terms to be given "a broad construction commensurate with the statute's purpose."). Nonetheless, purpose statements "are instructive only insofar as they have a genuine bearing on the meaning of the provision that is being construed." *DLCD v. Jackson County*, 151 Or App 210, 218, 948 P2d 731 (1997).[25]

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[22] *State v. Carr*, 319 Or 408, 877 P2d 1192 (1994). *Linn-Benton-Lincoln Ed. Ass'n v. Linn-Benton ESD*, 163 Or App 558, 989 P2d 25 (1999).

[23] *Goodyear Tire and Rubber Co. v. Tualatin Tire and Auto*, 322 Or 406, 415, 908 P2d 300 (1995), *modified on Rehg*, 325 Or 46, 932 P2d 1141 (1997). *Young v. State*, 161 Or App 32, 35, 983 P2d 1044 (1999). In addition, it is presumed that when a legislative body enacts subsequent legislation, the legislature was aware of the policy underlying earlier enactments." *Fulmer v. Timber Inn Restaurant and Lodge*, 152 Or App 334, 954 P2d 201 (1998)(quoting *Platiner v. VIP's Industries, Inc.*, 95 Or App 351, 768 P2d 440 (1989)). *See State of Oregon, Mental Health Div. v. Lake County*, 17 Or LUBA 1165 (1989).

[24] *S-W Floor Cover Shop v. National Council on Compensation Ins.*, 318 Or 614, 872 P2d 1 (1994). *Owens v. Maass*, 323 Or 430, 435, 918 P2d 898 (1996); *Stephens v. Bohlman*, 314 Or 344, 838 P2d 600 (1992); *Oregon v. Elliott*, 204 Or 460, 277 P2d 754 (1954), *cert denied*, 349 US 929 (1955); *Tadsen v. Praegitzer Ind., Inc.*, 324 Or 465, 928 P2d 980 (1996). *State v. Toevs*, 327 Or 525, 532, 964 P2d 1007 (1998); *State v. Lamb*, 176 Or App 149, 29 P3d 1206 (2001); *Magee v. Dyrdahl*, 144 Or App 270, 275, 926 P2d 319 (1996).

[25] In *Warburton v. Harney County*, 174 Or App 322, 25 P3d 978 (2001), the court discussed purpose statements as follows:

> While it is true that a policy statement, such as this one, should not provide an excuse for delineating specific policies not articulated in the statutes, such a general purpose statement may serve as a contextual guide for the meaning of a particular statute. *DLCD v. Jackson County*, 151 Or App 210, 218, 948 P2d 731 (1997), *rev. den.* 327 Or 620, 971 P2d 412 (1998). (Emphasis Added).

Id. at 329. The case cited by the *Warburton* court, *DLCD v. Jackson County*, 151 Or App 210, 218, 948 P2d 731 (1997), details the pitfalls:

> Statutes and rules often contain statements of general policy, like the statement that DLCD cites in this rule. Such expressions can serve as contextual guides to the meaning of particular provisions of the statutes or rules, as much as any other parts of the enactment can. At the same time, the use of expressions of policy as context is subject to the same limitations as any other proffered type of context: they are instructive only insofar as they have a genuine bearing on the meaning of the provision that is being construed. Moreover, when legislative or administrative expressions of policy are offered as context, courts must be cautious not to make policy in the guise of interpretation, or to allow agencies or

The purpose statement of the NAOD states that "[t]his overlay district is intended to preempt conflicting use in areas identified in the Wasco County Comprehensive Plan as containing significant natural value." WCZO §3.910(A). Because the Comprehensive Plan identifies residential development as a conflicting use, and the County ultimately makes the decision, via WCZO §3.910(B), to "preempt residential use" in this planning area, if follows that that the County Court intended a narrow reading of the code. As with the generic EFU zone, the County decided to allow a certain amount of residential use in the Deschutes River Scenic Area, but it struck a different balance by more severely limiting the types of residential uses that are allowed in the NAOD. To achieve the proper balance between protecting the resource use and allowing conflicting uses in the NAOD, it decided to allow only farm-related dwellings in the Deschutes River Scenic Area, and even then, such dwellings would be subjected to both the more rigorous conditional use criteria and the requirement that natural value not be damaged. By listing permitted uses so narrowly, the County effectively made the decision to prohibit non-farm dwellings.

Under staff's interpretation, any number of uses allowed by ORS 215.283(2) are allowed, including, in theory, golf courses, dog kennels, private parks, bed and breakfast facilities, etc. Such a broad set of permitted uses seems to run contrary to the stated goal of protecting natural areas.

ii. Sensitive Wildlife Habitat Overlay District ("SWHOD") Provides Context.

The structure of the provides additional context which shows that the NAOD is written in way that prohibits conditional uses. Specifically, WCZO §3.920(D)&(E) provide context for WCZO §3.910(B). WCZO §3.920(D)&(E) state as follows:

> other parties to achieve through a court's interpretation policy objectives that the enactment as promulgated was not meant to or failed to embody. *See 1000 Friends of Oregon v. Wasco County Court*, 299 Or. 344, 703 P.2d 207 (1985). (Emphasis Added).

Id. at 218. The *DLCD v. Jackson County* Court goes to explain that "context" is limited to those provisions of a legislative enactment that reflect in some meaningful way on the intended meaning of the ambiguous provision at issue:

> [A]as we understand the meaning of "context" in *PGE* and related cases, it contemplates a substantive relationship between the provision being interpreted and the putatively contextual provision in which the latter reflects in some meaningful way on the intended meaning of the former; a provision does not constitute "context" for another in that sense simply because the two are connected in some amorphous way that amounts to little more than their common authorship and general subject.

Id. at 220.

> *D. Permitted Uses: All uses allowed in the overlay zone shall be those farm and forest uses permitted outright by the underlying zone.*
>
> *E. Conditional Uses: The conditional uses permitted in the zones in which this overlay is applied, shall be those permitted conditionally by the underlying zone subject to the other applicable standards of this Section.*

Whereas these two provisions provide for both "Permitted Uses" and "Conditional Uses" in the SWHOD, the NAOD only has a section for "Permitted Uses," and all of those uses are required to undergo a review using the CUP process. The NAOD does not have a corresponding section for "Conditional Uses." Again, WCZO §3.910(B) simply provides:

> *B. Permitted Uses: Uses allowed in the underlying zone shall be subject to the conditional use review permit pursuant to Section 2.060(A) of this Ordinance.*

Thus, WCZO §3.910(B) essentially merges the two-category format set forth in WCZO §3.920(D)&(E) into one catch-all category. This catch all category lists the sum total of what is permitted in the NOAD.

Under well-recognized principles of statutory construction, if something is expressly stated in one Code provision and expressly omitted in a "sister" Code provision, that omission will be considered to be an intentional policy choice. ORS 174.010.[26] This holds true whether the omission is by design or by default. *Deluxe Cabinet Works v. Messmer*, 140 Or. App. 548, 915 P2d 1053 (1996). In other words, omissions are presumed to be intentional.[27] In this case, there is no indication that the failure to list a second section for "Conditional Uses" in the NAOD, as was done for the SWHOD, was an unintentional oversight. The Code's failure to include a second section addressing uses that are "*permitted conditionally by the underlying zone*" must be viewed as intentional. As such, non-farm dwellings are prohibited.

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[26] *See Emerald PUD v. Pacific Power & Light Co.*, 302 Or. 256, 269, 729 P.2d 552 (1986) ("when the legislature includes an express provision in one statute but omits such a provision in another statute, it may be inferred that such an omission was deliberate" (internal quotation marks omitted)). *See also Marriage of Perlenfein*, 316 Or. 16, 848 P.2d 604 (1993) ("When a legislature or agency uses a particular term in one provision of a statute or regulation, but omits that same term in a parallel and related provision, we infer that the legislature or agency did not intend that the term apply in the provision from which the term is omitted."); *Hughes v. State of Oregon*, 314 Or. 1, 28, 838 P.2d 1018 (1992); *Oregon Business Planning Council v. LCDC*, 290 Or. 741, 749, 626 P.2d 350 (1981); *J.C. Reeves Corp v. Washington County*, 31 Or LUBA 115 (1996); *Oregonians for Sound Economic Policy, Inc. v. State Acc. Ins. Fund Corp.*, 187 Or. App. 621, 69 P.3d 742 (2003).

[27] *State v. K. P.*, 324 Or. 1, 8, 921 P.2d 380 (1996); *Gladhart v. Oregon Vineyard Supply Co.*, 332 Or. 226, 233, 26 P.3d 817 (2001); *Armstrong v. Rogue Fed.l Credit Union*, 328 Or. 154, 160, 969 P.2d 382 (1998); *State ex rel. Hall v. Riggs*, 319 Or. 282, 286, 877 P.2d 56 (1994).

iii. Oregon Scenic Waterways Act and OAR Ch 736, Div 40 Provide Context.

The narrow interpretation is also consistent with the approach taken by the Oregon Scenic Waterways Act and its implementing rules with regard to dwellings. OAR 736-040-0070(2)(c) provides that "[a]dditional dwellings, other than those necessary to existing agricultural uses, and commercial public service facilities, including resorts and motels and lodges that are visible from the river, will not be permitted." The narrow interpretation results in the same prohibition as stated in the administrative rule, which is that only farm-related dwellings are allowed in Natural Areas Such as the Deschutes River.

> Note: With regard to "commercial public service facilities, including resorts and motels and lodges," the County's NAOD is more restrictive than the State Scenic Waterways Act's Administrative Rule, regardless of whether one applies staff's broad interpretation or the opponent's narrow interpretation of WCZO 9.010(B). By negative inference, the administrative rule allowed these commercial uses so long as they are not "visible" from the river. However, such commercial uses are not allowed in the A-1 (160) zone, which is a by-product of the Goal 5 planning Process. The closest use that is conditionally allowed in the A-1 (160) zone is "Farm Ranch Recreation," by these uses have to be run in conjunction with a commercial farm operation. WCZO §3.210(9). For this reason, Wasco County's Goal 5 program is even more restrictive than the OSWA.

iv. Comprehensive Plan Provides Further Relevant Context.

As mentioned above, the Comprehensive Plan provides further relevant context to guide the interpretation of WCZO §3.910(B). As we previously noted, the Comprehensive Plan provides background into the County's Goals 5 program. The County determined that both the Deschutes River and adjacent lands within ¼ mile of the river are natural areas that provide outstanding wildlife habitat and scenic views that need to be protected. The Comprehensive Plan further states that the Oregon Scenic Waterways Act will, in conjunction with the Natural Area Overlay Zone, will result in the protection of the management goals for the River. The County determined that residential development was a conflicting use that should be limited. Viewed in this light, the only plausible explanation for the meaning of the phrase "*uses allowed in the underlying zone*" is the narrow one: it refers to uses that are allowed by right in the underlying zone, and excludes uses that are conditionally permitted in the underlying zone.

Because the context of the NAOD, as summarized above, leaves no doubt as to its intended meaning, there is no need to proceed further with the *PGE v. BOLI* analysis.

C. The Application Violates Wasco County's Comprehensive Plan.

Even assuming that the development the applicant is proposing falls within the definition of a "non-farm dwelling," and further assuming that non-farm dwellings may be permitted in the

Natural Area Overlay District, this application fails because it does not comply with applicable portions of the Comprehensive Plan.

One of the basic approval criteria for all conditional use permits is set forth with WCZO §5.020(A), which provides:

> *A. The proposal is consistent with the goals and objectives of the Comprehensive Plan * * *.*

As discussed above, the Deschutes River Scenic Waterway is a protected Goal 5 resource, the boundaries of which are co-terminous with the boundary set forth in Oregon Scenic Waterway's Program. Under the County's Goal 5 program, these lands are considered to be open space lands. The management goal for this area is to "preserve their natural and scenic properties." *See* WCCP Ch. 14 (findings); WCCP Ch. 15, Policy 5 ("The Deschutes * * * River Scenic Waterways shall be maintained and protected as natural and open area with consideration for agriculture and recreation."). The County has adopted various implementation measures to achieve the management goal for this area. Each of these measures is addressed below.

Before addressing the specific implementation measures, the threshold question of whether these comprehensive plan provisions are mandatory approval standards must be addressed. Staff states that "no parts of the [Comprehensive] Plan present approval criteria that are directly applicable to the present application." Staff Report dated Jan. 29, 2013 at p. 19. To support this conclusion, staff relies on an unidentified findings implementing Goal 2 of the Plan. Staff states that "Goal 2 of the Plan itself indicates that conformance with its implementing ordinance indicates, *ipso facto*, conformance with the Plan." Staff Report at p. 19. We have been unable to confirm the existence of a provision that makes the statement quoted by staff.[28]

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[28] GOAL # 2 - LAND USE PLANNING is reproduced in its entirety below.:

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Policy 1
Citizen Involvement shall be an integral part of the planning process and shall be accomplished through the County's Citizen Involvement Program.

Implementation
A. The Citizen Involvement Program shall be maintained and updated periodically by the Wasco County Planning Office.
B. The Citizen Involvement Program shall abide by the policies as set forth in Goal # 1, "Citizen Involvement".

Policy 2
Comprehensive plans and implementing ordinances shall be consistent with the statewide goals and guidelines as well as the needs and desires of citizens in the County.

Implementation

Even if Goal 2 did say what staff attributes to it, reading such a provision as a statement that makes no part of the Comprehensive Plan an approval criterion would render WCZO §5.020(A) a nullity. This violates the first level maxim of statutory construction that courts give effect to all parts of a statute, in order to produce a harmonious whole. ORS 174.010.[29] As a corollary, courts will avoid interpretations that render a portion of the statute redundant or meaningless surplusage. ORS 174.010.[30]

In this case, staff's reading of Comprehensive Plan, Goal 2, is also incorrect for another reason: WCZO §5.020(A) would be meaningless surplusage if the County Court had intended the Zoning Code to fully implement the Comprehensive Plan. *See State v. Stamper*, 197 Or.App.

A. The Comprehensive Plan shall include all elements identified by the Land Conservation and Development Commission which are applicable to the County.
B. Inventories and other forms of data used in the development of the Comprehensive Plan shall be the most factual and current data available.
C. The Comprehensive Plan shall be coordinated with all other plans and programs affected by, or having effect on, land use within the County.
D. All implementing ordinances applicable to the County shall be consistent with the Comprehensive Plan.

Policy 3
The Comprehensive Plan shall be reviewed periodically for necessary revisions to keep pace with changes in the physical, environmental, social and economic character of the County.

Implementation
A. The Citizen Advisory Groups, in conjunction with the County Planning staff, shall conduct annual Comprehensive Plan review and evaluation.
B. Plan review and amendment shall take place every two years or whenever significant changes in the social, economic, physical, or environmental character of the County are evident.
C. Plan review, evaluation, and amendment shall be carried out utilizing the revisions process as set forth in the Comprehensive Plan. (This process is identical to the planning process employed for the initial development of the Comprehensive Plan.)

Policy 4
Increase public awareness of the planning process and plan implementation.

Implementation
A. Signs should be posted throughout the County to indicate permits are required.
B. Federal, State, County and City agencies should cooperate to simplify combine and expedite permit application.
C. Allow for local public input into the process of locating electrical corridors.
D. Hearing notice procedures shall be included in the Wasco County Zoning Ordinance.

[29] *Lane County v. LCDC*, 325 Or 569, 578, 942 P2d 278 (1997); *Bolt v. Influence, Inc.*, 333 Or. 572, 581, 43 P.3d 425 (2002) ("we are to construe multiple provisions, if possible, in a manner that will give effect to all"). *See also Davis v. Wasco IED*, 286 Or 261, 267, 593 P2d 1152 (1979); *Tatum v. Clackamas County*, 19 Or App 770, 775, 529 P2d 393 (1974); *Plotkin v. Washington County*, 36 Or LUBA 378 (1996); *Walz v. Polk County*, 31 Or LUBA 363 (1996); *Fechtig v. City of Albany*, 31 Or LUBA 410 (1996) (Ordinance).

[30] *Certain Underwriters at Lloyd's London and Excess Ins. Co., Ltd. v. Massachusetts Bonding and Ins. Co.*, 235 Or.App. 99, 230 P.3d 103 (2010); *State v. Stamper*, 197 Or.App. 413, 417, 106 P.3d 172, *rev. den.*, 339 Or. 230, 119 P.3d 790 (2005); *EQC v. City of Coos Bay*, 171 Or.App. 106, 110, 14 P.3d 649 (2000).

413, 418, 106 P.3d 172, *rev. den.*, 339 Or. 230, 119 P.3d 790 (2005) ("we assume that the legislature did not intend any portion of its enactments to be meaningless surplusage"). Thus, when one interprets Goal 2 and WCZO §5.020(A) as a harmonious whole, the correct conclusion is that certain Goals and mandatorily-worded policies and implementation measures in Comprehensive Plan are approval standards for CUP permits.

a. The Watson Application Violates Goal 5, Policy 5.

Goal 5, Policy 5 states that *"[t]he Deschutes and John Day River Scenic Waterways shall be maintained and protected as natural and open space areas with consideration for agriculture and recreation."*

Staff proposes findings which attempt to exempt the subject property from the boundaries of the NAOD:

> "Staff finds that the subject property, while undeveloped, does not constitute 'open space' or a 'natural or scenic resource' because it is bordered by two dwellings in a 'neighborhood' that has existed for several decades. It follows that this area is not 'natural.' More importantly, the implementation strategy has been satisfied."

There are numerous problems with this finding. As an in initial matter, the boundaries of the Natural Area Overlay District are established and fixed by both the Comprehensive Plan and the Zoning Ordinance. Both of these laws set the boundary in the same location as established by the Oregon Scenic Waterway Act. *Compare* ORS 390.805(1); 390.826(5); WCZO 3.910(B). There is no process in either the Plan or the Zoning Ordinance that allows the County to exempt a property from the District based on an ad hoc, site-specific evaluation of the quality of the resource or development impacts on adjacent properties. Simply put, the facts that staff identifies in its proposed finding above are irrelevant, even to the extent that they may be true. Staff's finding is essentially a collateral attack on the County's Goal 5 program, because it seeks to redefine the boundaries of the resource that were established via Goal 5 inventory, and it seeks to change the balancing exercise completed via the GOAL 5 ESEE analysis completed for this resource.

Furthermore, the plan policy does not seek to define open spaces on the basis that they are devoid of adjacent pre-existing conflicting uses. Rather, all land within ¼ mile of the bank is considered "related adjacent land:" that is part of the Scenic Area." *Id.* The subject property does not have to be "natural" in order to be subject to the requirement that it be "maintained and protected" as a "natural and open area." Stated another way, the land has been determined to be a part of a larger natural area that warrants protection, and the fact that isolated pockets within that larger area are compromised in some way does not make them less deserving of protection. For the sake of the larger resource, the County has determined that even lesser quality resources merit protection against conflicting use.

Finally, all of the development on neighboring properties are non-conforming uses. The presence of a cluster of non-conforming uses cannot be used as a basis to avoid zoning

requirements requiring preservation of natural areas. By their very definition, such uses are in derogation of the zoning code, and cannot be used to support further degradation of the resource. To rule otherwise would create a domino effect that could result in more area within the Deschutes River Natural Area being lost to development.

b. The Application Proposes a Non-Farm Dwelling in the Visual Corridor of the Deschutes River, Which Violates Wasco County Goal 5, Policy 5.

Policy 5's Implementation measure C states: "Allow only buildings customarily provided with farm use within the visual corridor of the Deschutes * * * Scenic Waterway." This provision is written in mandatory terms, and because of its clear unambiguous directive, it is surely not merely advisory or aspirational in nature.

The only aspect of the standard that requires interpretation is the contours of the phrase "visual corridor." As staff notes, the phrase is not defined. Regardless of this fact, it is apparent that the visual corridor at the very least includes all land that can be seen from any point on the river. In this case, there can be no argument that the goal of the Goal 5 program is to preserve resources that provide Outstanding Scenic Views, and in this case, the view from the Deschutes River is of primary importance.

Staff uses the absence of a definition to conclude that "the visual corridor for this property should take into account the entire physical and built landscape of North Junction. Meaning, for purposes of this application, the visual corridor includes all nine dwellings, accompanying structures in the area and topography." As a result of this analysis, Staff concludes that "the proposal would not jeopardize the integrity of the visual corridor and not visually degrade the existing beauty of the landscape." Staff Report at p. 20.

Staff errs by introducing a new unwarranted definition of "visual corridor" that is not supported by any language set forth in the Comprehensive Plan or Zoning Ordinance. Goal 5 Implementation Policy 3 is simple: it allows only farm-related dwellings and buildings in the visual corridor of the river. In other words, if you can see the proposed use from the river, it will only be permitted if it is a farm dwelling or building. Staff's attempt to create an exemption for areas that are developed with non-conforming uses fails, because there is nothing in the code that supports such an exemption.

Finally, it is again worth noting that Implementation Measure C is consistent with Oregon Parks and Recreation's Administrative rules implementing the Scenic Waterway Act, which shares the concern of making sure that the view from the river is free of development. In the case of the OSWA, it seeks to prohibit certain commercial uses that are "visible from the river." OAR 736-040-0070(2)(c). The goal of this standard – protection of scenic views from the perspective of a river traveler, is consistent with the above-stated interpretation of Goal 5, Policy 5, Implementation Measure 3.

D. The Application Violates WCZO § 3.910(C) Because It Will Result in the "Permanent Destruction of the Natural Value of the Site."

WCZO §3.910(C) is the approval standard for the Natural Area Overlay District. It is a very restrictive standard, providing:

> *C. Approval Standards: In the evaluation of any use subject to the Natural Area Overlay, finding shall be required demonstrating that the designated natural value will not be damaged by the use or activity. If a proposed use or activity would result in the permanent destruction of natural value, then the request shall be denied.*

Staff proposes the following findings:

> "There are nine (9) recreational dwellings and several accessory structures within the approximately eight (8) acres of North Junction. A tenth dwelling is located 180' feet south of the railroad tracks. This represents a density of 1.25 dwelling units per acre. Similar densities have been maintained for more than 70 years in North Junction – decades before this area was included in the Wild and Scenic Area. Staff finds that the 'natural value' of the area is limited and must be viewed in the context of existing recreational dwellings and their accessory structures. In fact, both recreational and residential uses have occurred on the subject parcel in the past. Up until 1996, a railroad caboose was located on the parcel and used as s recreational dwelling. Therefore, staff finds that the proposed dwelling and accessory structure will not result in the destruction of natural value."

Staff Report at p. 18. Staff relies on the existence of nine (9) non-conforming "recreational dwellings" in close proximity of the site to conclude that the subject property is already low and, as a result," the addition of one more "recreational dwelling" will not "*result in the permanent destruction of natural value.*" Staff's finding, which can be distilled down to the notion that non-conforming development on adjacent land makes the subject property ill-suited for uses advanced by the Statewide Planning Goals applicable to this property, is essentially the analysis called for by a Goal 2 "committed exception." No attempt has been made to take exception to either Goal 3 or Goal 5 using the Goal 2 exceptions process, however, and therefore, staff's analysis is inappropriate in the context of this application.

Furthermore, WCZO §3.910(C) does not call for a site-specific evaluation of natural value, as staff seems to suggest. To the contrary, the Comprehensive Plan designates the entire North Junction area as having high natural value, as evidenced by the fact that it applied the Natural Area Overlay District to this and surrounding properties. If North Junction is not a "natural area" then Wasco County should not have placed an overlay district on the subject property. Staff's finding is, therefore, simply a collateral attack on the legislative mandate to "preempt conflicting

uses in areas identified in the Wasco County Comprehensive Plan as containing significant natural value."

Furthermore, all of the "recreational dwellings" that staff mentions in its proposed findings are all non-conforming uses in the NAOD and A-1 (160) zone. The presence of nonconforming uses cannot be used as a basis to justify a similar exception for undeveloped properties in these zones.

Similarly, the fact that the subject property was previously used to site the Caboose is also irrelevant. The Caboose was a non-conforming use that was lost via abandonment. It's former presence on the site provides no legal justification to avoid the strict mandate of WCZO §3.910(C).

E. The Application Violates WCZO § 5.020(F) Because It Will "Significantly Reduce or Impair Sensitive Wildlife Habitat."

WCZO §5.020(F) is one the approval standards for a Conditional Use Permit. It provides as follows:

> *F. The proposed use will not significantly reduce or impair sensitive wildlife habitat, riparian vegetation along streambanks and will not subject areas to excessive soil erosion.*

Staff states that "the subject property does not contain sensitive wildlife habitat." Staff report, at 26. However, that finding is in direct contradiction to the legislative facts adopted in the Comprehensive Plan. Chapter 2 M. Fish and Wildlife Resources states: "The unique rock formations, rock slides and overall variable terrain features of the southern portion of the county and along the Deschutes, John Day and Columbia Rivers provide an important and unique wildlife habitat." (Emphasis added). This finding recognizes that all land adjacent to the Deschutes River provides wildlife habitat. The Comprehensive Plan does not call out North Junction as an exception. Thus, the applicant has not demonstrated that the addition of a non-farm dwelling will not significantly reduce or impair that sensitive wildlife habitat.

III. Conclusion.

For all of the reasons discussed above, the applicant's request for a Non-Farm Dwelling must be DENIED.

ANDREW H. STAMP, P.C.

Andrew H. Stamp

Andrew H. Stamp

AHS:ahs

Enclosures
cc: Isa Ann Taylor, Jacques Sharp, et al.
John Roberts, Wasco County Planning Dept.
Mark Whitlow, Perkins Coie
Timothy V. Ramis
Steven Shipsey, DOJ
Client.

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Admitted in Oregon.

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andrewstamp@comcast.net

JULY 29, 2013

VIA EMAIL

Wasco County Planning Commission
c/o: Wasco County Planning Office
2705 East Second Street
Dalles, OR 97058

Re: Gabriel Watson Non-Farm Dwelling Application
File # PLAQJR-12-08-0001

Dear Honorable Members of the Planning Commission:

I. Introduction.

I, along with Mark Whitlow of Perkins Coie, LLP, represent Mr. Douglas S. Robertson on land use matters related to the above-captioned case file. Our mutual client is opposed to the Conditional Use application on the grounds that it is not in compliance with the Wasco County Comprehensive Plan ("WCCP"); Wasco County Zoning Ordinance ("WCZO") and Wasco County Land Use and Development Ordinance ("LUDO").

Both Mr. Whitlow and I have previously submitted letters to the Planning Commission that address many of the key legal issues This letter is intended both to present a new legal issue, present new evidence, and to provide rebuttal to arguments submitted by attorney Timothy V. Ramis, Jordan Ramis, P.C., on February 25, 2013 in support of the application.

II. Legal Analysis.

A. New Issue: The Applicant is Required to Undergo Site Plan Review Because the Applicant is Required to Provide Off-Street Parking.

The Code chapter addressing Site Plan Review contains standards for off-street parking. LUDO §20.050 states that "[a]t the time of erection of a new structure * * * off-street parking

spaces shall be provided in accordance with this Section." LUDO §20.050 further provides as follows:

> "The following are the uses and minimum standards provided for off-street parking:
>
> A. Residential
>
> 1. Single-family dwelling: One (1) space per dwelling unit.

Thus, the Zoning Code requires an applicant seeking approval to build a single family dwelling to provide one off-street parking spot in support of that application. The codes further requires

> E. Uses Permitted Subject to Conditional Use Review/Type II or Type III: The following uses may be permitted on a legal parcel designated "A-1...#157; Exclusive Farm Use subject to subsection F - Property Development Standards, subsection H - Agricultural Protection, Chapter 5 - Conditional Use Review, Chapter 10 - Fire Safety Standards, Chapter 20 – Site Plan Review ***only if the request includes off-street parking***, off-street loading or bicycle parking, as well as any other listed, referenced, or applicable standards:
>
> * * * * *
>
> 10. Non-Farm Dwelling: One single family dwelling not provided in conjunction with farm use, subject to Section J(1) - Additional Standards, below. * * * * *. (Emphasis added).

This provision makes clear that the approval standards set forth in Chapter 20 (Site Plan Review) are applicable to the applicant's request for a residential dwelling.

The approval standards for site plan review are set forth at LUDO Section 20.040. Among other requirements, the applicant is required to demonstrate that "pedestrian and vehicular safety are protected" and that "there will be minimal adverse effect on surrounding properties." In this case, the applicant has made no effort to demonstrate that it has legal access to the subject property. The applicant states in its application that it has "an easement," but no easement is provided. We have searched the land records for "an easement" but as of today, we are not aware of the existence of a recorded easement. In the absence of a legal right of access, the application will violate the two approval standards quoted above, because it will result in the approval of a dwelling that will be accessed across property owned by other neighbors.

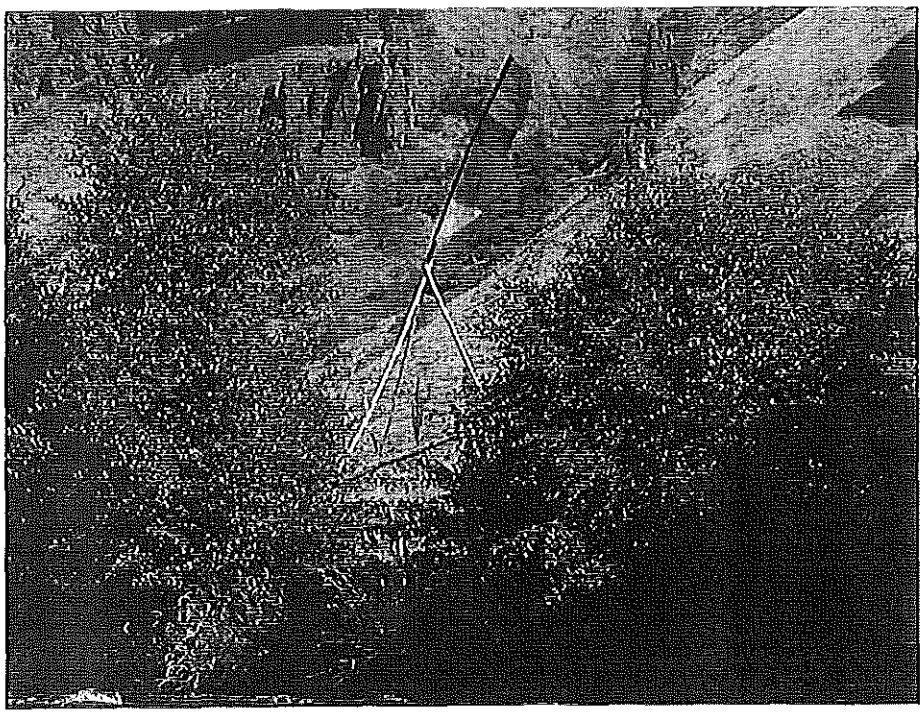
B. The Applicant proposes to build in the "Visual Corridor" of the River. In Violation of the Comprehensive Plan's Goal 5 Policy 5 Implementation Measure C.

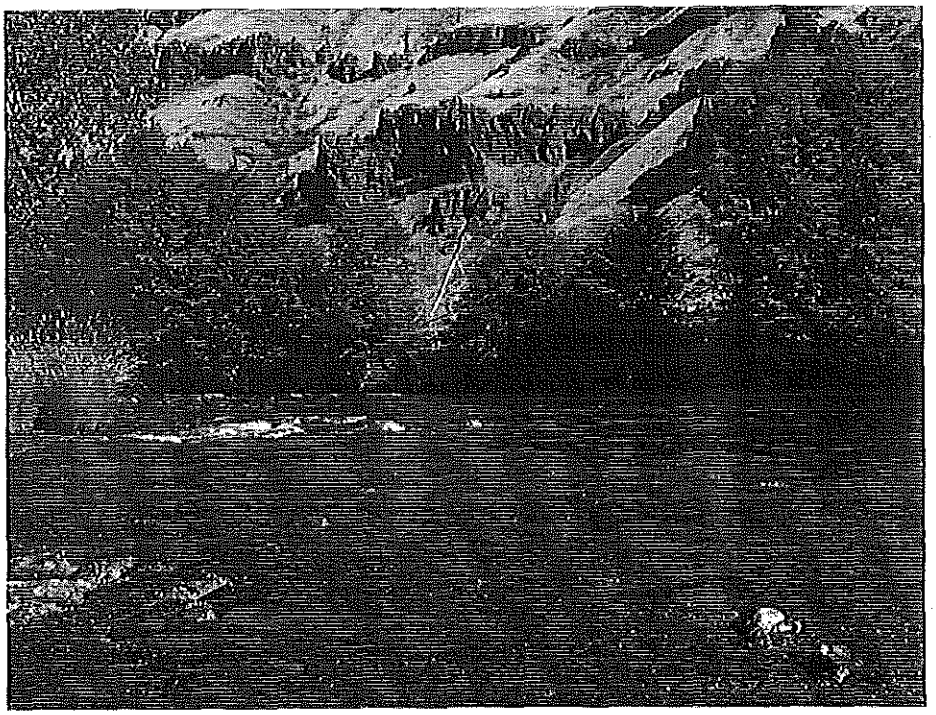
As part of the conditional use process, the applicant is required to demonstrate that "*The proposal is consistent with the goals and objectives of the Comprehensive Plan* * * *." WCZO §5.020(A).

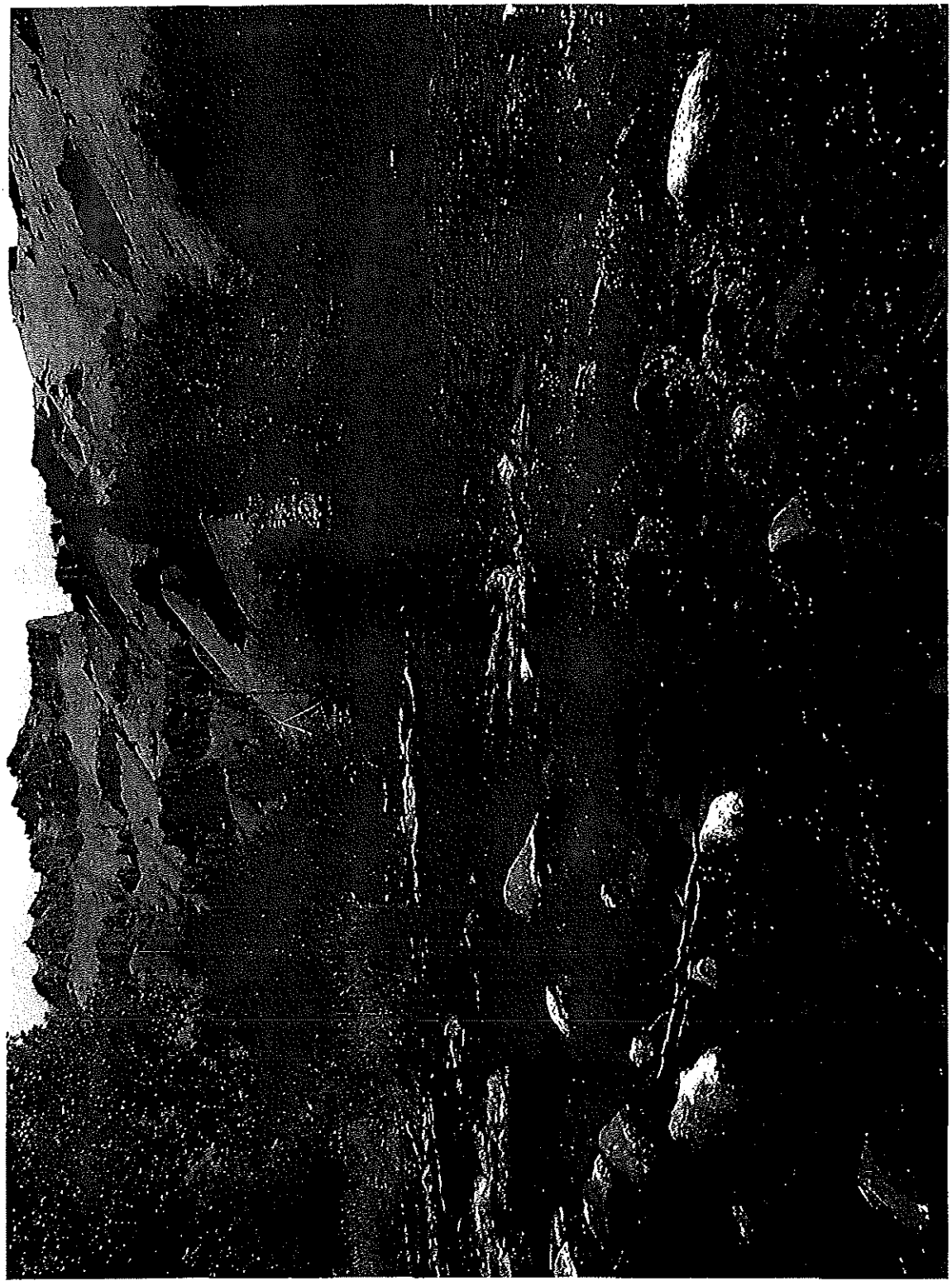
In this case, the Comprehensive Plan designates the Deschutes River Scenic Waterway as a protected Goal 5 resource. The boundaries of the resource are co-terminus with the boundary set forth in Oregon Scenic Waterway's Program. Under the County's Goal 5 program, these lands are considered to be "open space" lands. The management goal for this area is to "preserve their natural and scenic properties." *See* WCCP Ch. 14 (findings); WCCP Ch. 15, Policy 5 ("The Deschutes * * * River Scenic Waterways shall be maintained and protected as natural and open area with consideration for agriculture and recreation."). Policy 5's Implementation Measure C effectuates this policy goal by limiting development in the resource area: "Allow only buildings customarily provided with farm use within the visual corridor of the Deschutes * * * Scenic Waterway."

Goal 5 Policy 5 Implementation Measure C is a mandatory approval criterion in this case because it uses only mandatory words: "*Allow only* * * * in the visual corridor." Compare *Axon v. City of Lake Oswego*, 20 Or LUBA 108 (1990) ("Comp plan policy that states that "services shall be available or committed prior to approval of development" is a mandatory approval standard). The mandate set forth in measure C is simple: it allows only farm-related dwellings / buildings in the visual corridor of the river. Although the phrase "visual corridor" is not defined, it is clear that the phrase includes all land and structures that can be seen from any point on the river.

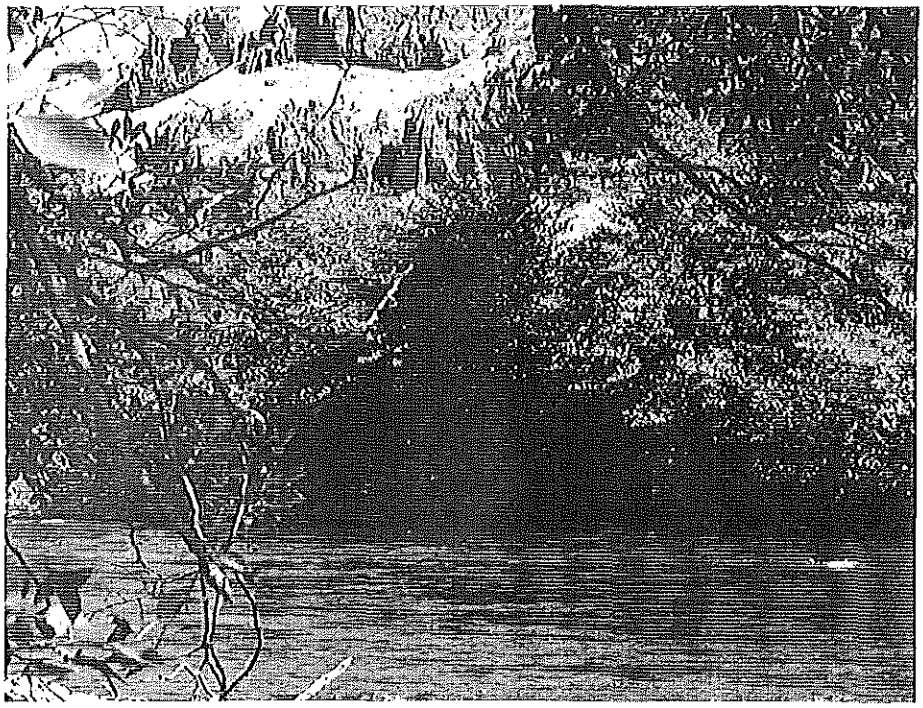
The following photos were taken from a watercraft situated on the waters of the Deschutes River in July of 2013, and show a flag located on the center of the Watson property. These images clearly show that a dwelling placed on the Watson property could be seen from the river – even in the summer when the vegetation is at its most dense. The tripod is made of 10 foot long sections of PVC pipe, creating a structure that is approximately 16- 17 feet tall. The flag adds another 12 feet (give or take) to the total height. Therefore, the total height of the flag is approximately 28-29 feet, which is less than the height of the dwelling proposed by the Watsons.



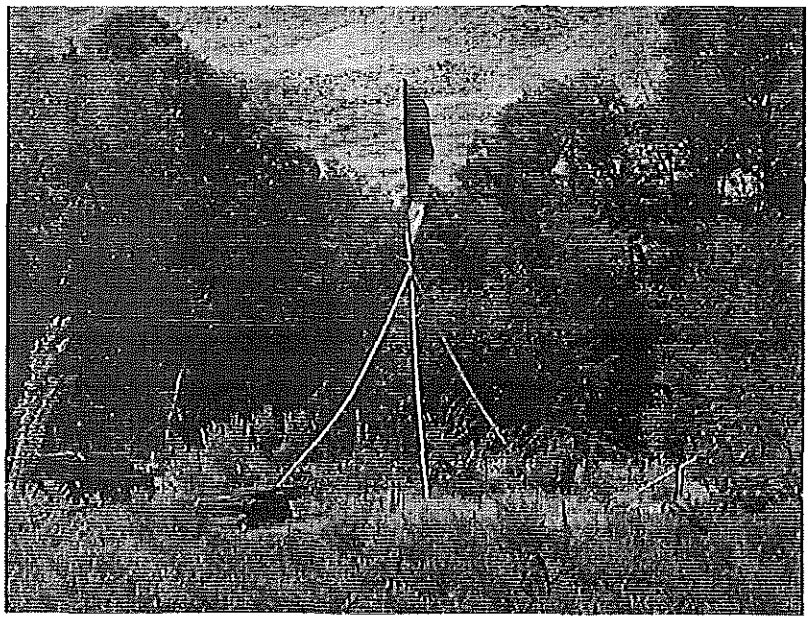


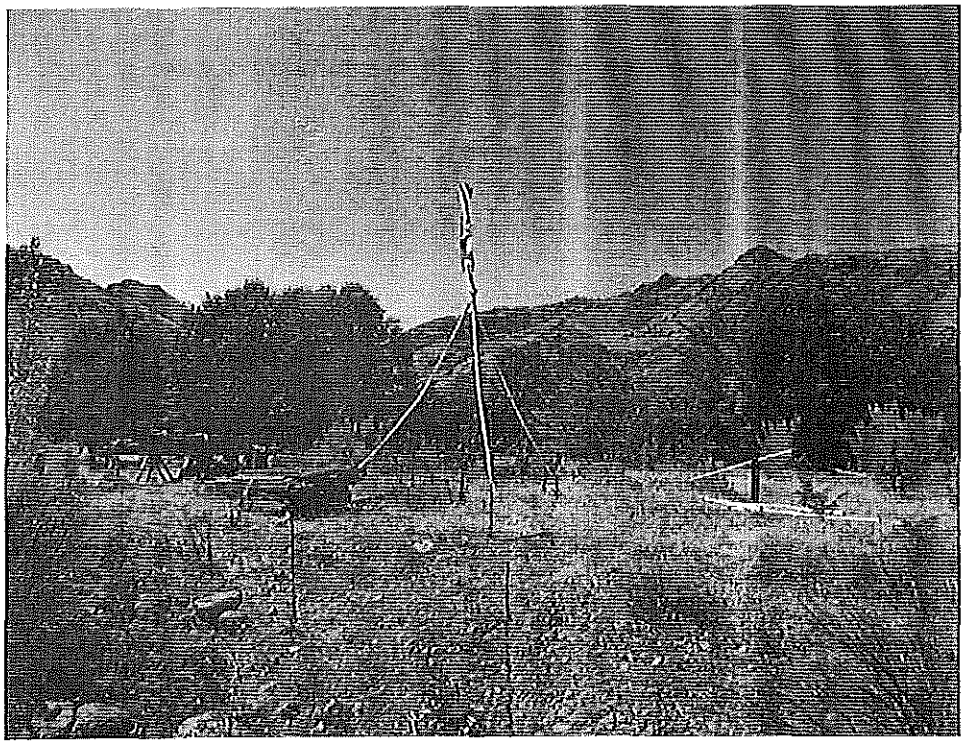


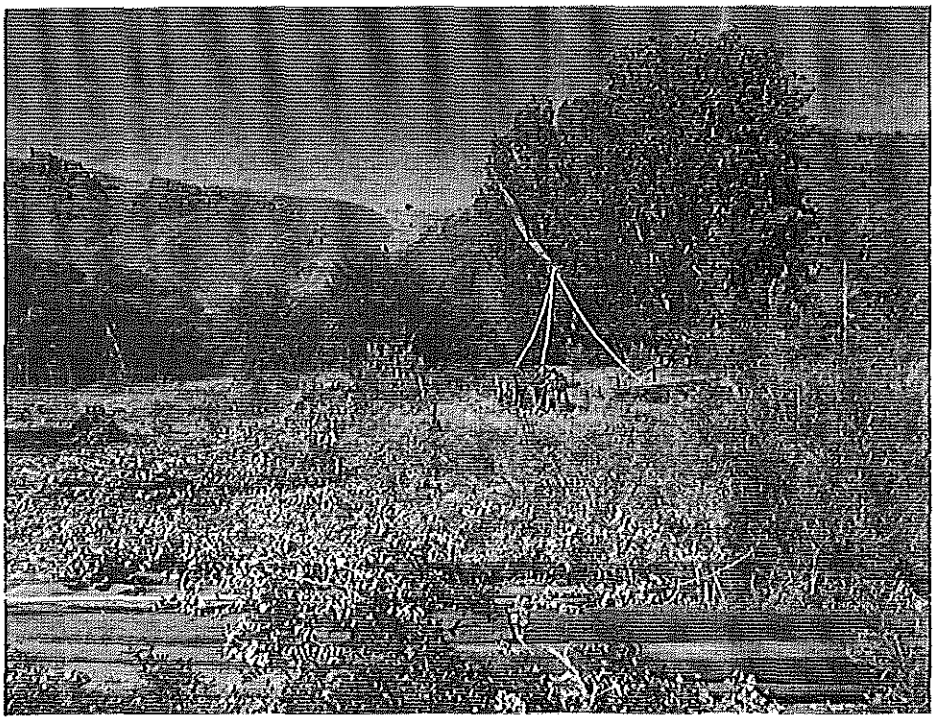
Even in locations where the seasonal vegetation is at its tallest, the flag is clearly visual over the top of the trees:



The same flag can be seen in these three images taken from neighboring property:







In this case, there can be no argument that the goal of the Goal 5 program is to preserve resources that provide Outstanding Scenic Views, and in this case, the view from the Deschutes River is of primary importance. The proposed dwelling would further degrade the scenic views in this area, which is inconsistent with the policy set forth in eth Comprehensive Plan

Thus, this proposed non-farm dwelling is not allowed within the visual corridor of the river.

C. Response to Applicant's February 25, 2013 Letter.

1. The Applicant Cannot Rebuild Non-Conforming Structures Destroyed by the 1996 Flood Due to the Operation of ORS 215.130(5)-(11).

Citing to WCZO §3.210(E), the applicant argues that he can "rebuild flood-damaged structures" via a conditional use permit. However, the applicant ignores the fact that residential uses are a non-conforming use in the Natural Area Overlay Zone. *See* WCZO §3.910; Comprehensive Plan Policy 5, Implementation measure C ("Allow only buildings customarily provided with farm use within the visual corridor of the Deschutes * * * Scenic Waterway.").

A non-conforming use is essentially a "grandfathered" use: a use of land, structures, or premises which lawfully existed prior to the enactment of a zoning ordinance, but which no longer complies with use restrictions applicable to the zone. *Clackamas County v. Holmes*, 265 Or 193, 508 P2d 190 (1973).

In this case, non-conforming use law governs the question as to whether the applicant can rebuild a residential structure. As we have previously discussed, the WCZO and WCCP do not allow non-farm dwellings or recreational cabins in the Natural Area Overlay Zone, and, as a result, all of the existing non-farm structures located in North Junction are non-conforming uses.

Non-conforming uses are regulated by ORS 215.130(5)-(11). A county's code may generally be more restrictive than the statute, but may not be more lenient. *Corvallis v. Benton County*, 16 Or LUBA 488 (1988); *Gibson v. Deschutes County*, 17 Or LUBA 692 (1989). ORS 215.130(6) governs the replacement of non-conforming residences that have been destroyed by flood waters. It provides as follows:

> Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster.

The applicant admits that the structure on the property, a train caboose, was "tipped over" by the 1996 flood. *See* letter from Timothy V. Ramis, dated February 25, 2013, at p. 1. The applicant further admits that residential use of the caboose ended at that time. These facts

together establish that the replacement of the structure was not "commenced within one year from the occurrence of the fire, casualty or natural disaster." For this reason, non-conforming use rights have been lost.

While that result may seem harsh, the Planning Commission must understand that non-conforming uses are not favored in Oregon law. *Michael v. Clackamas County*, 9 Or LUBA 70, 75 (1983). A nonconforming use is by definition contrary to provisions of a local government's comprehensive plan and land use regulations. For this reason, it is certain that LUBA and the courts will not allow the applicant to rebuild a non-conforming use 17 years after the flooding occurred.

Finally, it is worth noting that a replacement of a nonconforming use due to flooding must be "in-kind and in place"; the use may not be expanded or intensified as a result of destruction through such an event. *See, e.g., Sellwood Harbor Condominium Ass'n v. City of Portland*, 16 Or LUBA 505 (1988). In this case, the applicant seeks to replace a caboose with a large, two-story dwelling, Such a replacement constitutes an expansion of a non-conforming use.

2. Applicant's Arguments Pertaining to the Oregon Scenic Waterways Act Miss the Mark.

The applicant states that the Oregon Scenic Waterways Act is separate from the County's Zoning Program, and, as a result, is "not applicable to this County land use application." The applicant is wrong.

As we explained in our letter dated February 26, 2013, the Land Conservation and Development Commission ("LCDC") adopted Statewide Planning Goal 5 in 1975. Under Goal 5, the County was required to inventory open space lands includes lands designated as wild and scenic rivers. Wasco County did exactly that, and then recognized that the planning goal for such open space is to "protect [its] natural and scenic properties." The County then identified residential development as a "conflicting use" to the resource. WCCP Ch. 14(B)(1). The County also made the policy decision, consist with Goal 5, to protect the Deschutes River from such conflicting uses, including residential development.

Policy 5's Implementation Measure C states: "Allow only buildings customarily provided with farm use within the visual corridor of the Deschutes * * * Scenic Waterway." This provision is written in mandatory terms, and because of its clear unambiguous directive, it is surely not merely advisory or aspirational in nature, as the applicant suggests.

3. The Applicant is Not Entitled to a Variance.

The applicant seeks a variance to the 100 foot setback requirement. A variance is by definition a request to use property in a manner that is expressly prohibited by law. *Bienz v. City of Dayton*, 29 Or App 761, 566 P2d 904 (1977), *rev den.*, 280 Or. 171 (1977). However, as noted by the Court of Appeals, "variances are an extraordinary remedy that 'should not be employed as

a substitute for the normal legislative process of amending zoning regulations." *Kelley v. Clackamas County*, 158 Or App 159, 163-65, 973 P2d 916 (1999). The 100 foot setback exists for a reason, and it should not be ignored merely because the applicant seeks to site an inappropriate development on the property. The property is simply too small to support residential uses, and the use of the variance process as a remedy for that problem is inappropriate.

The variance application runs afoul of at least two separate variance criteria.

First, the applicant cannot meet WCZO § 6.020(B), which states: "The variance is necessary for the preservation of a property right of the applicant which is the same that is enjoyed by other property owners in the same zoning district in the area." The only development-related "property rights" enjoyed by other landowners in North Junction are non-conforming use rights. The applicant does not have non-conforming use rights because his predecessor-in-interest voluntarily gave those rights up by failing to rebuild in a timely manner after the 1996 floods.

The failure to rebuild lead to the second problem: the applicant's inability to comply with WCZO § 6.020(E). This criterion requires an affirmative finding that "the variance is not the result of a self-created hardship." In this case, the hardship is self-created, because landowner's predecessor in interest failed to perfect non-conforming use rights. That failure essentially rendered the land unbuildable.

The applicant states that the creation of the lot in 1960 – prior to zoning - is the cause of the need for a variance. However, it was the landowner's inaction in the 1996-1997 that resulted in the loss of non-conforming use rights – by the applicant's lack of rebuilding, the land reverted to being available only for uses allowed by the zoning code.

Finally, the applicant is also wrong when it points out that the "the variance has been used as a remedy for other setback violations in this area." However, the fact that the county has a history of granting variances in North Junction is not germane to either the determination of whether the variance is self-created or whether the variance is necessary for the preservation of a property right of the applicant which is the same that is enjoyed by other property owners in the same zoning district in the area. Furthermore, illegal interpretations of the code do not somehow become correct interpretations merely through repetition. A firmly held mistake is just as reversible as a first-time mistake. While it may be that past variances would not have survived judicial scrutiny had they been put to the test, this applicant gets the opportunity to have the code correctly applied to his situation.

The variance must be denied.

III. Conclusion.

For all of the reasons discussed above, the applicant's requests for a Non-Farm Dwelling and a variance must be DENIED.

ANDREW H. STAMP, P.C.

Andrew H. Stamp

Andrew H. Stamp

AHS:ahs
Enclosures
cc: Isa Ann Taylor, Jacques Sharp, et al.
John Roberts, Wasco County Planning Dept.
Mark Whitlow, Perkins Coie, LLP
Timothy V. Ramis, Jordan Ramis, P.C.
Client.

Wasco County Planning Department

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(541) 506-2560 • wcplanning@co.wasco.or.us
www.co.wasco.or.us/planning

NOTICE OF DECISION
WASCO COUNTY PLANNING COMMISSION

FILE #: PLAQJR-12-08-0001

FINAL HEARING DATE: August 6, 2013
DECISION DATE: August 14, 2013

REQUEST: Quasi-judicial review of the following:

1. 30' x 30' x 24' (900 square foot), non-farm dwelling
2. 18' x 12' x 12' (216 square foot) shed
3. Variance to property line setbacks. Requested setbacks are as follows:
   - 25' from front and rear property line
   - 25' from side property lines
   - 25' from Deschutes River
4. Floodplain Development Review of requested structures located within the FEMA delineated floodplain
5. Modification to Wasco County Fire Safety Standards Review

DECISION: By a vote of 5-2, the Planning Commission **denies** the request

APPLICANT/OWNER INFORMATION:

Gabriel Watson
1824 SE Taylor
Portland, OR 97214

PROPERTY INFORMATION:

Zoning: A-1 (160); EPD-1, Flood Hazard Overlay; EPD-7, Wild and Scenic River Overlay

Location: The subject property is located in North Junction, along the Deschutes River Access Road, approximately 19.6 miles south of the City of Maupin, Oregon. The property is further described as:

Existing Taxlot	Acct#	Acres	Previous Taxlot
7S 14E 8 D 300	12783	0.25	N/A

Attachments:
A. Planning Commission Findings
B. Time Limits & Appeal Information
C. Maps
D. Staff Report

After recording, please return to:
Wasco County Planning Department

ATTACHMENT A – PLANNING COMMISSION FINDINGS

1. Staff sent notice of Planning Commission hearings to interested parties, relevant agencies and owners of property located within 750' of the subject property on August 9, 2012 and January 16, 2013. Notice of the hearings also ran in *The Dalles Chronicle* on August 14, 2012 and January 18, 2013.

2. Each hearing was held in accordance with Section 2.140 of the Wasco County Land Use and Development Ordinance (LUDO) and other applicable procedural rules for quasi-judicial hearings. Hearings were re-noticed or continued to a date and time certain leading up to the final hearing on August 6, 2013.

3. Seven members of the Planning Commission were present and qualified to sit as decision-makers after full disclosure was made and the matter of qualifications was discussed by the Commission.

4. In making its decision, the Planning Commission recognizes the procedural and legal requirements of the Wasco County Land Use and Development Ordinance (LUDO) and Comprehensive Plan, and weighed fully each requirement in arriving at its decision.

5. The Planning Commission adopts the findings presented in the Staff Report (Attachment D), except for the following Planning Commission findings which supersede the Staff findings in each applicable section of the Staff Report:

   Section 3.210 Exclusive Farm Use ("EFU") Zone

   Section 3.210.E. Uses Permitted Subject to Conditional Use Review/Type II or Type III...

   (***)

   10. Non-Farm Dwelling: One single family dwelling not provided in conjunction with farm use, subject to Section J(1) - Additional Standards, below.

   FINDINGS: The applicant has requested approval of a Conditional Use Permit to construct a 30' x 30' x 24' (900 SF) single-family dwelling not provided in conjunction with farm use.

   Section 1.090 of the LUDO provides the following definition for "Dwelling Unit":

   A lawfully established dwelling is a single-family dwelling which:
   a. Has intact exterior walls and roof structure;
   b. Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
   c. Has interior wiring for interior lights; and
   d. Has a heating system.

   During the August 6, 2013 hearing, Applicant introduced amendments to the site plan showing a reduction in size of the proposed dwelling from 40' x 28' x 24' (1,120 SF) to 30' x 30' x 24' (900 SF). Elevation drawings show intact exterior walls and roof structure. Applicant also introduced amendments to the original application which include an engineered septic system, connecting to the dwelling, to accommodate human and household waste. Wasco Electric provides electricity to the North Junction area, so with conditions for the installation of interior wiring for lights and a heating system, we find that the structure can meet the definition of "dwelling unit".

Section 3.910 Division 7 – Natural Areas Overlay

A. *Purpose: This overlay district is intended to preempt conflicting use in areas identified in the Wasco County Comprehensive Plan as containing significant natural value. The overlay is designed to protect the identified natural value by allowing only uses which will not permanently destroy the natural value. This overlay applies to all natural areas identified in the Wasco County Comprehensive Plan and to the Wasco County portions of the Deschutes, John Day, and White Rivers designated as Wild & Scenic Rivers as defined and protected in ORS 390.805 & 390.825 or USFC & CFR.*

B. *Permitted Uses: Uses allowed in the underlying zone shall be subject to the conditional use review permit pursuant to Section 2.060(A) of this Ordinance.*

C. *Approval Standards: In the evaluation of any use subject to the Natural Area Overlay, finding shall be required demonstrating that the designated natural value will not be damaged by the use or activity. If a proposed use or activity would result in the permanent destruction of natural value, then the request shall be denied.*

FINDINGS: The application must be denied because the proposed use, a non-farm dwelling is a conditional use, not "permitted outright" or "allowed" in the EFU Zone.

Section 3.910.B sets forth the uses which are permitted in the Natural Areas Overlay (NAO). Although the term "allowed" is not defined, contextual analysis confirms that "allowed" means "allowed by right" or "permitted by right." The purpose statement of the NAO provides context. LUDO Section 3.910.A states that "[t]his overlay district is intended to preempt **conflicting use** in areas identified in the Wasco County Comprehensive Plan as containing significant natural value" (emphasis added). Chapter 14.B.1 of the Comprehensive Plan identifies "residential development" as a "conflicting use" in the NAO.

This interpretation is supported by comparing the NAO to Section 3.920 – Sensitive Wildlife Habitat Overlay (SWHO). In contrast to the NAO, the SWHO in Section 3.920.D-E lists both "Permitted Uses" and "Conditional Uses" (emphasis added):

D. *Permitted Uses: All uses **allowed** in the overlay shall be those farm and forest uses **permitted outright** by the underlying zone.*

E. *Conditional Uses: The conditional uses permitted in the zones in which this overlay is applied, shall be those permitted conditionally by the underlying zone subject to the other applicable standards of this Section.*

Here, the LUDO makes clear that the word "allowed" is synonymous with "permitted uses." Under common standards of legal interpretation, where the same word is used in two provisions of the same law, that word retains the same meaning. Therefore, the term "allowed" has the same meaning in both the NAO and the SWHO: "allowed" means "allowed outright" or "permitted outright."

There are nine (9) recreational dwellings and several additional accessory structures within the approximately eight (8) acres of North Junction. A tenth dwelling is located 180' south of the railroad tracks. This represents a density of 1.25 dwelling units per acre. Similar densities have been maintained for more than 70 years in North Junction – decades before

this area was included in a Wild & Scenic Area. As such, Staff finds that the "natural value" of this area is limited and must be viewed within the context of existing recreational dwellings and their accessory structures. In fact, both recreational and residential uses have occurred on the subject parcel in the past. Up until 1996, a railroad caboose was located on the parcel and used as a recreational dwelling. Therefore, Planning Commission upholds Staff's finding that the proposed dwelling and accessory structure will not result in the permanent destruction of natural value.

SIGNED THIS 14th day of August 2013, at The Dalles, Oregon.

Don Hoffman, Chair
Wasco County Planning Commission

ATTACHMENT B – TIME LIMITS AND APPEAL INFORMATION

No development shall occur until all applicable land use permits are obtained, conditions are met, and all building permits are issued.

Please Note!

No guarantee of extension or subsequent approval either expressed or implied can be made by the Wasco County Planning Department. Please take care in implementing your proposal in a timely manner.

APPEAL PROCESS:

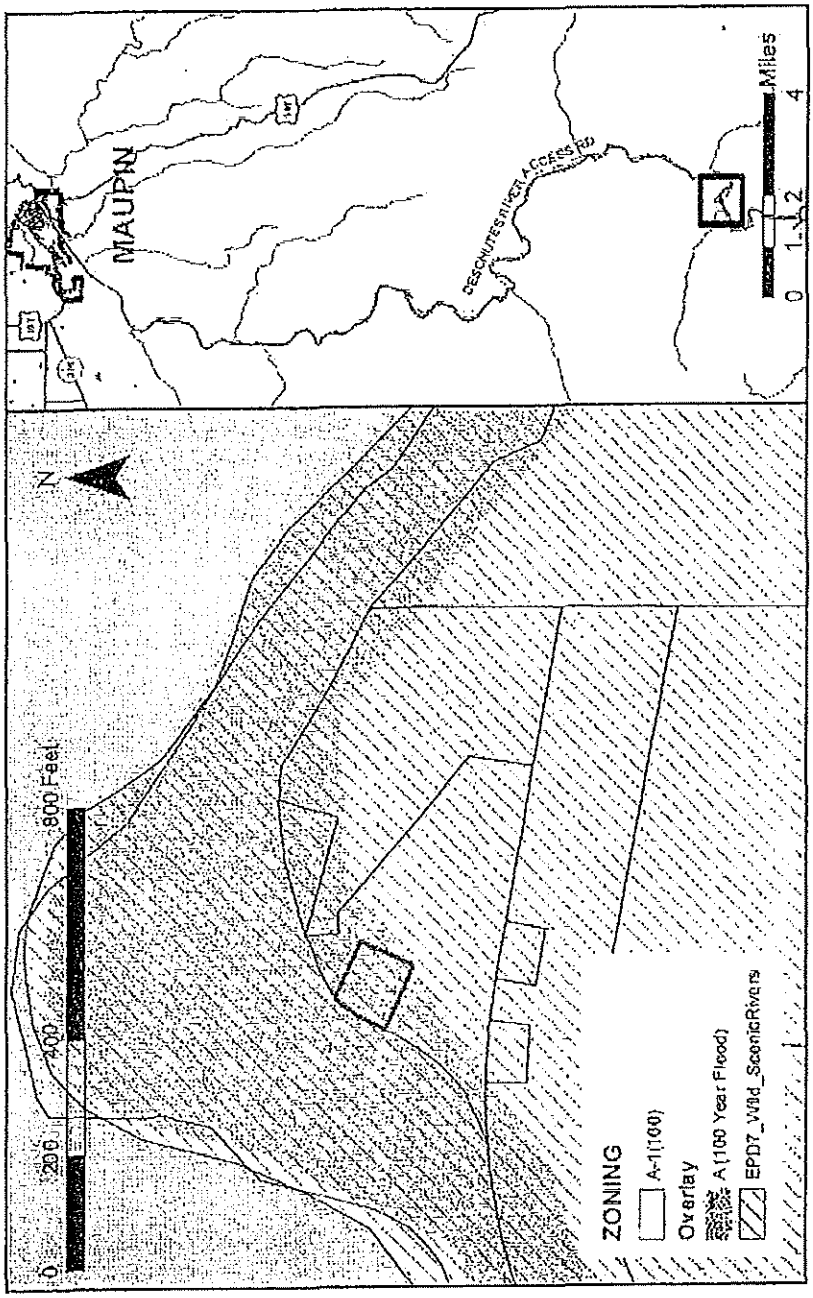
The date of this quasi-judicial Planning Commission decision is **Wednesday, August 14, 2013.** The decision of the Planning Commission shall be final unless an appeal from an aggrieved party is received by the Director within twelve (12) days of the mailing date of this decision, **Monday, August 26, 2013, at 4:00 p.m.**, or unless the Board of County Commissioners on its own motion orders review within twelve (12) days of the date of decision. A complete record of the matter is available for review upon request during regular business hours or copies can be ordered at a reasonable price at the Wasco County Planning Department. Notice of Appeal forms may also be obtained at the Wasco County Planning Department. **The filing fee for an appeal of the Planning Commission decision is $571.00. Fees are refunded if appellant prevails.**

FINDINGS OF FACT:

Findings of fact approving this request may be reviewed at the Wasco County Planning Department, 2705 East Second Street, The Dalles, Oregon, 97058, or are available for purchase at the cost of $0.25 per page. These documents are also available online at: http://co.wasco.or.us/planning, click on Pending Land Use Decisions. The table is sorted alphabetically by the name of the applicant. The information will be available until the end of the appeal period.

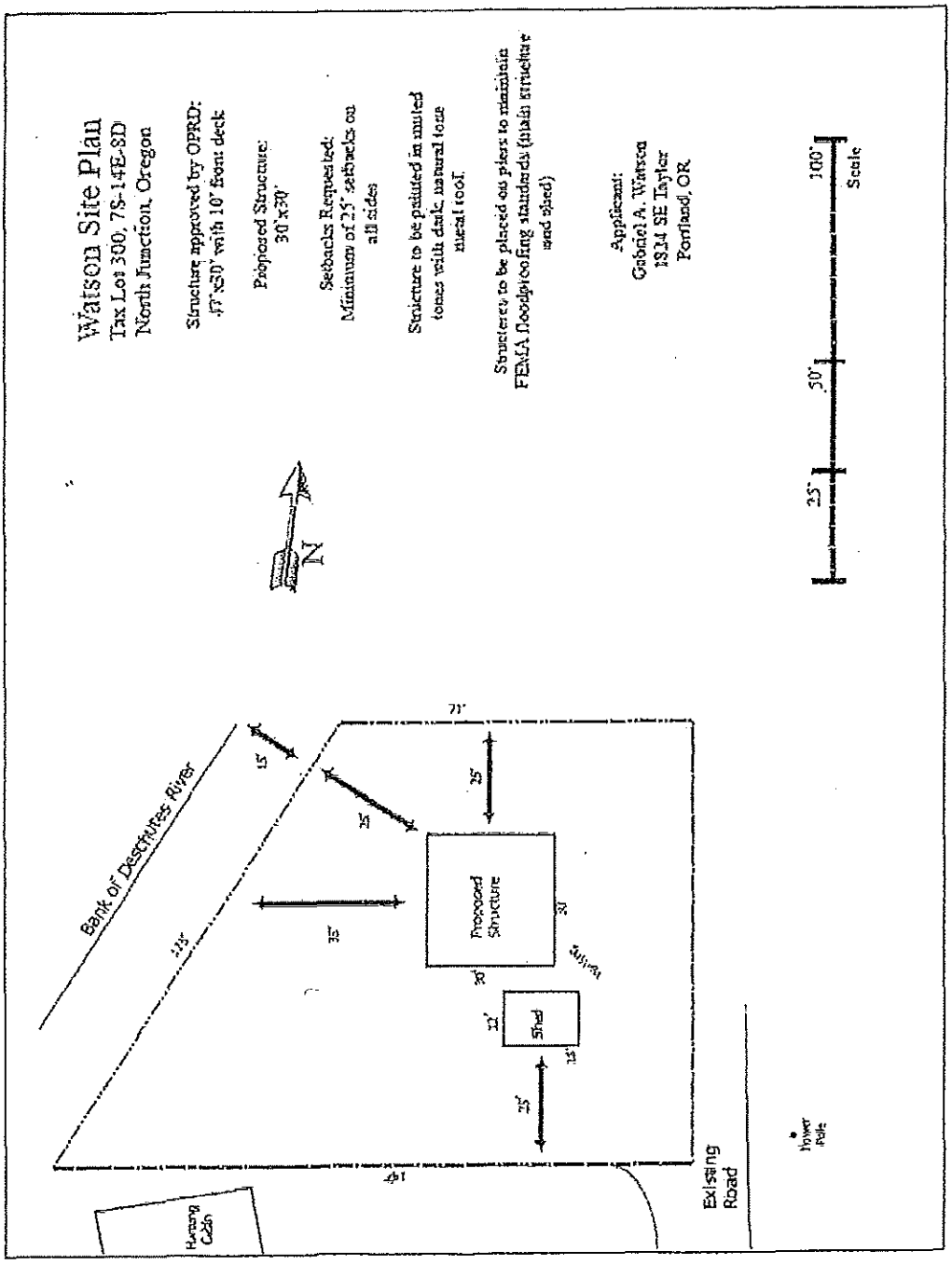
ATTACHMENT C – MAPS

Vicinity and Zoning Map



ATTACHMENT C – MAPS

Site Plan



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MEMORANDUM

To: Wasco County Board of Commissioners

From: Wasco County Planning Department

Date: October 9, 2013

Re: Submittal for Hearing Dated October 16, 2013 – Documents submitted at August 6, 2013 Planning Commission Hearing.

File PLAQJR-12-08-0001 (previously named: PLACUP-10-11-0023_PLASTS-10-11-0026_PLAQJR-10-11-0006).

The request by owner, Gabriel Watson, is for an administrative (quasi-judicial) review of the following:

1) 40' x 28' x 24' (1,120 square foot), non-farm dwelling
2) 18' x 12' x 12' (216 square foot) shed
3) 7' x 7' sealed vault toilet
4) Variance to property line setbacks. Requested setbacks are as follows:
   - 25' from front and rear property line
   - 25' from side property lines
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5) Floodplain Development Review of requested structures located within the FEMA delineated floodplain
6) Modification to Wasco County Fire Safety Standards Review

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Supplemental Information submitted by Andrew Stamp	1-168
Supplemental Information submitted by Mark Whitlow	1-191
Supplemental Information submitted by Doug Robertson	1-221
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Supplement to Lower Deschutes River Management Plan – Final Decision	1-293

Gabriel Watson
2815 NE 77th Pl
Portland OR 97213

RECEIVED INTO RECORD
August 6 2013
DATE BY

July 29, 2013

Email Copy

John Roberts
Planning Director
Wasco County Planning and Development
2705 E 2nd St
The Dalles OR 97058

Contains Exhibit 1 Site Plan

Re: **Supplemental Information—North Junction dwelling**
Wasco County File No. PLAQJR-12-08-0001

Our File No. 51690-71154

Dear Mr. Roberts & Planning Commissioners:

I thank you for providing the parties with time under continuance to discuss this case with members of the North Junction community. The dialogue has been valuable; I have considered opposition testimony and incorporated it into his project to the greatest extent possible.

This letter presents additional facts and findings, and augments my attorney's letter of February 25, 2013. This letter also distinguishes the principal opposition arguments raised by Andrew Stamp. I ask that our letter be included in the record, and respectfully ask the Commission to approve my application.

Attorney Stamp's February 26, 2013 opposition letter essentially reduces to three claims:

A. Watson will not build his house with plumbing facilities, thus the building will not be a "dwelling;"

B. Wasco County's Natural Area Overlay District forbids any nonfarm dwelling; and

C. Watson's dwelling will violate the Comprehensive Plan.

I believe Staff's analysis aptly covers these points. However, I have developed additional facts and analysis and offer the following along with our February 25, 2013 letter to supplement the staff reports.

I. Preliminary Matters

A. Site plan clarifications

You will recall from our February 25 letter that I am conforming my proposed development to the site plan that my late mother, Leslie, noticed to Oregon Parks and Recreation Department (OPRD) for Oregon Scenic Waterways development purposes. *See,* letter of Tim Ramis dated February 25, 2013. The building layout and setbacks of Leslie Watson's site plan satisfy State of Oregon standards, and by proceeding under Leslie's site plan, my site plan has equal conformance.

Since submitting our February 25 site plan, I have obtained a design for an onsite septic system. To accommodate the system, and to obey the requested 25' setback variances, I have reduced my building square footage to 900 square feet. The plan is illustrated in Exhibit 1 to this letter. The plan remains consistent with my mother's approved site plan as demonstrated by the overlay attached as page 2 of exhibit 1. This overlay demonstrates consistency as to all measurable impacts, namely building size, layout, and setbacks.

The smaller building footprint does not disturb staff's proposed findings in the February staff report. Each factual finding as to the house is premised on one explicit fact and one implicit fact. The implicit fact was a house size of 1,120 square feet. The implicit fact is, smaller houses have less impact.

Yet in reducing the size of the house to 900 square feet, all of staff's findings and conclusions stemming from house size are preserved and need not be changed. This is demonstrated in the following chart. The chart cites to each mention of house size, and the page on which the citation can be found. The citation is followed by the finding. Finally, the table discusses the impact of reduced size on staff's finding. The result is, that no staff findings need to be changed on account of reducing the house size.

Citation	Finding	Result
Introduction of request [page 1]	Applicant requests approval of a 40' x 28' house.	Applicant requests approval of a 30' x 30' house.
Whether a 216 square foot (sq. ft.) shed is an accessory structure as to a 1,120 sq. ft. house. [page 5]	A 216 sq. ft. shed is accessory to a 1,120 sq. ft. house.	The essence of "accessory" use is smaller size and subordinate function to the principal use. A 216 sq. ft. shed is still accessory as to a house that is 900 square feet.
Size of proposed house under conditional use criterion 5.020(B), compatibility with	A 1,120 sq. ft. house is compatible with the surrounding area because it is	Because surrounding development ranges between 632 and 1,258 sq. ft., a smaller house

surrounding area [page 23].	approximately 128 sq. ft. smaller than the next largest home in the area.	is more compatible with surrounding homes because it is similar in size to more of these homes.
As a matter of variance criterion 6.020(D), the 40' x 28' dwelling obtains the minimum variance to alleviate the difficulty [page 31].	The 40' x 28' house, when placed in the middle of the property, can be developed with a 25' setback. Thus, the 25' setback is the minimum required.	The 30' x 30' house, when placed on the site in such a way to accommodate a septic tank, sand filter, and keep open area for a future repair sand filter if necessary, can be developed with a 25' setback. The extra facilities required for the onsite system do not require any change to the requested setback, thus the 25' setback remains the amount necessary to alleviate the difficulty posed by the lot size and the setback requirements as written in the code.
Summary of request [page 39]	Applicant requests a 40' x 28' dwelling (1,128 sq. ft. dwelling).	Applicant requests a 30' x 30' dwelling (900 sq. ft.)

B. Updated fire break evidence

I also wish to update the evidence in support of my fire suppression plan, submitted with his application and analyzed on pages 33 through 38 of the revised staff report. I submit an additional photograph of the area under Exhibit 2 of this memo as further evidence in support of the conclusion that there is a 50' full fire fuel break to the windward (river facing) side of the premises.

The augmented site plan does not disturb the analysis or the other facts analyzed by staff on pages 33 through 38 of the Staff Report, nor staff's conclusion than an adequate fuel break exists to the river side of the house. For one thing, the vegetation to the river side of the building can be kept trimmed close to the ground, thus increasing the value of that terrain as a fuel break. Moreover, both the trimmed area and the Deschutes River are by definition a fire fuel break since the trimmed ground reduces the potential for fire to spread, and the water of the river has no potential to catch fire. *See,* Oregon Administrative Rule OAR 629-044-1005:

"'Fuel Break' means a natural or a human-made area immediately adjacent to a structure or to a driveway, where material capable of allowing a wildfire to spread does not exist or has been cleared, modified, or treated to:

(A) Significantly reduce the rate of spread and the intensity of an advancing wildfire

(B) Create an area in which fire suppression operations may more safely occur.

Indeed the Deschutes River provides fuel break to more than just my property. The photograph in Exhibit 2 shows the North Junction area and identifies its nature as a sort of peninsula surrounded on three sides by the Deschutes River. Were fire to approach North Junction from the other side of the Deschutes, the water would block the fire from spreading to the other side. Since my property abuts the river, the river will protect the property.

To underscore the protections discussed in these modified facts, I submit an additional condition of approval at the end of this memo.

II. **Applicant proposes to construct a "dwelling" because septic facilities can be constructed on applicant's property. These facilities replace the "sealed vault toilet" and applicant proposes findings to replace findings made by staff as to the toilet.**

Mr. Stamp contends that my house will lack two features essential to a "dwelling unit" as that term is defined by the Wasco County Land Use and Development Ordinance (LUDO): 1) indoor plumbing, and 2) sanitation facilities. *See*, letter of Andrew Stamp, February 26, 2013 at p. 6.

In actuality, my proposed house possesses both these attributes. Taking sanitation first, I propose to replace my county-approved pot privy with a fully engineered and constructed onsite septic system plus plumbing. These amplify the sanitary disposal and plumbing characteristics of the house in the following ways.

A. <u>The house will be served by a sanitary disposal system that can be approved and constructed to standards required by DEQ.</u>

Attached as Exhibit 3 are a septic plan and explanatory memo created by John Smits, Registered Environmental Health Specialist. Mr. Smits has designed a septic system consisting of a septic tank coupled to a pump and soil absorption facility known as a bottomless sand filter (BSF). According to Mr. Smits's evaluation, the soil type in the vicinity is sandy loam, with sand, rock, and cobbles. These soils are best recruited to onsite purposes with a BSF, as opposed to a soil absorption trench.

The facility illustrated in the drawing in Exhibit 3 can be constructed wholly within my lot in conformance with DEQ setbacks from natural and man-made features. This demonstrates compliance with the following criteria, cited in the staff report, in the same way that the pit privy satisfied those criteria. Smits's memo, and this letter's discussion of it, update staff's findings and conclusions as follows:

Statement of the application [pages 1 and 39]: as I propose an onsite system, the request no longer includes a sealed vault toilet.

Criterion 3.210.J.1 [page 8]—requires that a sanitary facility accommodate a residence. The septic plan satisfies the criterion because—just as a pit privy can serve a house—a toilet with running water, cleaned by an onsite system, even more adequately serves a house.

Criterion 3.743.D.3[page 17]—development in flood hazard overlay areas must be designed to limit infiltration of water into the system. The septic system proposed by Mr. Smits will use weights to hold down the septic tank in case the property is inundated, which will reduce infiltration risk. Furthermore, the concrete box will have the effect of protecting the sand filter during times floodwater may inundate the property, and this effect will protect the drainfield to a greater extent that if the system used unprotected soil trenches, as seems to be the norm in North Junction.

Moreover, the onsite system is consistent with the development site plan approved in Leslie Watson's notice to the Oregon Parks and Recreation Department (ORPD) because it is proposed for construction in the area of the site she proposed.

As discussed by Mr. Smits, it is appropriate for the County to impose approval conditions to limit the house to two (2) bedrooms, plus impose other conditions listed in his report.

B. <u>The house will be served by a potable water tank and indoor plumbing to connect all facilities into one household plumbing system.</u>

As you know, my house is proposed with indoor plumbing and a 2,000 gallon freshwater storage tank on the property. There is nothing in the plumbing code that prohibits use of a water storage tank as a water supply. Furthermore, owners of homes may install their own household plumbing under OAR 918-695 0020. Thus, I have understood planning staff to take the position that the plumbing must be installed only upon a septic system being available.

Staff's concern could arise under Uniform Plumbing Code (UPC) section 3.05.2. It is true that under this rule, drainage from buildings should be connected to an approved private sewage disposal system (when public sewers are not available.). My septic plan constitutes a private sewage disposal system under Uniform Plumbing Code section 221.0, thus this rule authorizes me to construct drains in my house and operate them with my septic system.

However, though our project complies with UPC 3.05.2, we question whether it applies to this case. According to UPC 305.3, the provisions of the UPC "relating to building sewers" don't apply if the "installation of building sewers is under the jurisdiction of a department other than the Authority Having Jurisdiction." We believe this means, that if an agency other than Wasco County has jurisdiction over building sewers, then UPC 305.2 doesn't apply. In Wasco County, authority over sewers is exercised by the Department of Environmental Quality, with the Mid Columbia Council of Governments playing a role. The existence of those other agencies probably eliminates compliance with UPC 3.05.2 relating to sewers.

Either way, my dwelling may be constructed with household plumbing under state law. The DEQ may permit the septic facility. And conditions of approval will ensure that the water tank is

built under Wasco County building or plumbing permits, if any are required by County officials. All these facts and authorities, taken together, indicate that my dwelling will be constructed with a comprehensive, lawfully-installed plumbing system.

Critics could attempt to argue that I may not develop in the floodplain, but in fact I (as well as my neighbors) may build in the floodplain. Uniform Plumbing Code section 301.3 requires plumbing systems to be located above the design flood elevation. That is possible in my house by simply constructing the system above the elevation. However, the system may be constructed beneath the design flood elevation so long as two requirements are met. First, plumbing systems must be "designed and installed to prevent water from entering or accumulating within their components." Second, systems must be "constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the design flood elevation." UPC section 301.3.

I can meet this requirement on my property. As an example, I have attached information about fiberglass polyethylene and fiberglass water tank installations in Exhibit 4 of this letter. According to this information, it is possible to anchor a tank to the ground with deadman devices, cast from concrete. These tanks can be mounted above or below ground, and they are made in sizes ranging from 602 gallons on up. These facts demonstrate that the house can be approved with a water tank constructed to a size and installation that satisfies any requirements of the building or sanitation officials.

In sum, I believe that drinking water is a matter of public health. Thus, I accept that location and use of the tank are in the remit of the County Sanitarian, with the building official empowered to exercise authority as to anchoring or other construction issues. I have proposed a condition of approval along these lines.

C. <u>The house will be constructed with a foundation that can satisfy requirements for floodplain development</u>

I would like to develop the record with information about the flood-worthiness of my house and out building (shed). I propose to connect both structures to the ground with concrete piers and steel connectors as more fully explained below.

I have contacted an architect, Kerry Shynn, and structural engineer Thomas Walsh, along with the owner of Oregon Log Homes company. All these professionals report that a foundation, attached with Simpson Strong Ties, to concrete pillars formed in sonotube, will both bring the floor level above the flood plain, and satisfy FEMA guidelines for flood-proof construction. Their statements and supportive information are contained in Exhibit 5.

It is worth taking a moment to note these FEMA guidelines. In sum, they require that materials for a foundation must be durable in two ways. First, the materials must withstand temporary water pressures of the 100-year flood waters. Second, the materials must remain intact if submerged for several days in floodwaters.

Both architect Shynn and engineer Walsh agree that the Strong Tie / pillar construction satisfies FEMA requirements. The building code requires that construction in the floodplain be engineered. UBC 301.1.3. The house may be constructed with Simpson Strong Tie "column

caps" to join the concrete pillar to the foundation. According to the technical bulletin for these column caps, the caps will satisfy standards for engineered buildings and will also withstand "uplift forces and lateral displacement" of foundation beams, which are forces of the kind exerted by floodwaters (floatation being one form of uplift, and flowing flood water being one form of lateral, or sideways, displacement). *See*, ICC-ES Evaluation Report ESR-2604, Simpson Strong-Tie Column Caps for Wood Construction, International Code Council (January 1, 2013), at page 1, section 2.0.

Opponents may suggest that the technical bulletin does not illustrate that the column cap will result in adequate construction for my house. That would be a big red herring, because that completely misses the point. Flood proof construction techniques are proposed to the building official, in the form of engineered building plans. The Simpson Strong Tie materials (as well as the water tank materials) demonstrate that it is possible for my engineer or architect to design an engineered building. That is what the land use process requires. It is the Building Official's responsibility (and jurisdiction) to receive an engineered drawing (once I create one) and evaluate the proposed structure for its engineering, as a matter of the building permit process. That will happen separately, and in the future, after the land use decisions are resolved. Conditions of approval will require the building official to issue any necessary building permits before the County allows occupancy.

D. Additional historic evidence confirms residential usage of Applicant's property around the 1930s

I have located additional photographic evidence that his property was used for residential purposes dating back perhaps to the 1930s. This evidence is attached as page 1 of Exhibit 6 to this memo.

The photograph corroborates a photograph submitted to the Planning Commission in our February 25 letter, and I have attached another copy of that photograph as page 2 of Exhibit 6 for reference. These two historic photos show tents and a stick built cabin in the vicinity of my property, and probably on my property given the orientation of the photos to the terrain. The presence of these dwellings, again, makes sense in that era because the railroad line passed through North Junction and human activity such as signaling was needed at the North Junction railroad outpost (depicted in the historic image).

I attach a recent photograph of North Junction (page 3 of Exhibit 6) taken from the railroad tracks, albeit at a location north of where the photo on page 1 was taken. There are two distinctive rock outcrops at the top of the ridgline in this page 3 photo, and these are the same outcrops present in the ridgeline visible in page 2. There are two series of trees behind the cabins in the page 2 photo; the further series very likely corresponds to trees currently standing across the river from my property. The nearer series of trees is very likely the trees on what is now the island in the middle of the current Deschutes riverbed. Recall, that as a braided stream (and before the water controls resulting from the regulating dams) the water level and even precise location of the Deschutes River could change from time to time.

The early human residence in or near my property proves up a number of findings already analyzed by staff. First, residences in or on my property further demonstrate the residential

character of my property under Oregon Scenic Waterways Act, in particular that the visual corridor of the Deschutes River has historically included views of human home sites.

Second, the residential uses demonstrate that this part of Wasco County was inhabited by humans, and not farmed. This amplifies staff's finding that the building does not detract from the visual character of the area (conditional use criterion H). The historic cabin and tents also confirm that the dwelling in fact continues residential use patterns and thus does not force a significant change in agricultural activities (conditional use criterion K)

Finally, the historic human habitation confirm staff's analysis of the variance criteria. For example, under variance criterion B the early habitation illustrates that there were property rights under which residents used the land for residences located near the water, and near each other. Moreover, granting the variance demonstrates that there have been a cluster of dwellings in North Junction not just in recent past, but in the historical past, and this confirms staff's analysis under variance criterion C.

III. Access to the Watson property is available through a connected system of easements and other access rights that, when taken together, connect Watson's property to the public highway

I would like to further develop the access rights discussed in the staff report. Staff have found that I have access to a private roadway operated by the Deschutes Club. However, to eliminate any question that I have access to the public roadway, I have asked my attorneys to analyze the property rights—including the Deschutes Club road access—that connect my property to the public highway. A report of these rights is attached as Exhibit 7 to this letter. In sum, the access rights are:

- In 1965, Inez Hartung burdened all of her land with an easement that granted my property the right of access across Inez Hartung's land. Takers under Inez Hartung took title subject to this easement. Under this easement right, I may travel between the subject property, adjacent to the river, to a second parcel I lease, adjacent to the railroad tracks.

- From the parcel I lease, I have a legal right of access along the railroad tracks, which connects to the Deschutes Club road.

- I have signed a contract with the Deschutes Club that allows me to travel along the Deschutes Club road to that road's connection to the public highway.

Attorney Ed Trompke has analyzed these access rights, and his work is presented in Exhibit 7 to this letter.

IV. The application should be approved over opposition comments

A. <u>Watson's proposed dwelling is allowable in the natural areas overlay district despite attempts to suggest otherwise.</u>

I discern a second theme in Mr. Stamp's opposition comments, namely that the County's natural areas overlay district (NAOD) bars my house.

Whatever it is that Mr. Stamp is trying to say about this issue, it overlooks that the Natural Areas overlay (section 3.910) is just that: an overlay. It operates in tandem with the rules of the underlying zoning district. Also, it operates with two features. First, the NAOD subjects all development to the conditional use process, LUDO 3.910(B). Second, the NAOD requires the County to apply an extra criterion: development must not "result in the permanent destruction of natural value . . . ." LUDO 3.910(C).

I believe Staff has correctly applied these regulations. First, staff have interpreted subsection (B) as subjecting all "uses allowed" in the zone to the conditional use process. Under that interpretation the County increases scrutiny of all uses by subjecting them to the conditional use process, even if the use is permitted outright. This is a natural result of an overlay district designed to add criteria to existing procedures. It is much more reasonable an interpretation than Mr. Stamp's suggested interpretation, which would require the County to explain how the term "uses allowed" really means "the County will subject outright permitted uses to the conditional use process, and convert conditional uses to prohibited uses." . We believe that by applying the conditional use process to my proposed house—which is allowed by conditional use permit anyway in the A-1 (160) zone—Staff has applied the NAOD process in the manner that is faithful to the text.

The second concept within the NAOD is the special criterion itself—no "permanent destruction of natural values" is allowed. I believe staff has correctly evaluated the facts existing in the North Junction letter. The natural value of the North Junction area is already reduced by virtue of the many-decades pattern of residential and railroad development in the area. Recall, evidence submitted in our February 25, 2013 area included a photograph that illustrated a small railroad outpost in North Junction, with humans not just working at the railroad but living in encampments on what was to become my property. Indeed, a railroad caboose furnished a dwelling for several decades on my property.

If anything, the proposed dwelling will restore lost natural value. The dwelling will be constructed as a house, in colors that blend with the natural environment (the previous caboose dwelling was painted red). Second, and again unlike the caboose, my replacement house will be screened from view of persons boating down the Deschutes River.

B. <u>The Comprehensive Plan allows the proposed dwelling</u>

1. *Goal 3 Policy 1 allows nonfarm dwellings, and Watson's proposed dwelling satisfies the LUDO standards that implement this provision*

Mr. Stamp attempts to extinguish the proposed dwelling by asking the Planning Commission to apply Goal 5 Policy 5 of the Comprehensive Plan. Forgetting for a moment that his argument would render his own client's property nonconforming, his effort overlooks that Goal 3 Policy 1 of the Plan specifically applies to nonfarm dwellings and allows my dwelling along with the dwellings of my neighbors. Goal 3, Policy 1, implements the County's agricultural lands policies with protections for nonfarm dwellings established under state law (ORS 215.213). That statute allows the County to create a program for nonfarm dwellings, and Wasco County has embodied such a program in the development code.

The regulations are embodied as the "additional standards" for nonfarm dwellings under LUDO 3.210.J.1 (herein, the "J1" standards"). Staff have evaluated the application under the J1 standards and developed extensive findings on pages 8 through 15 of the staff report. I agree with those findings.

2. *Goal 5 Policy 5 does not bar dwellings along the Deschutes River. Furthermore, Watson proposes his dwelling in a "visual corridor" that already includes several houses*

We agree with staff that Goal 5, policy 5 of the Comprehensive plan does not forbid the dwelling (or render all North Junction houses nonconforming, a result Mr. Stamp is apparently willing to accept as a Pyrrhic victory). This provision reads as follows:

"Policy 5 – Wild & Scenic Rivers

The Deschutes and John Day River Scenic Waterways shall be maintained and protected as natural and open space areas with consideration for agriculture and recreation.

Implementation

A. Coordinate all land use planning activities with the Bureau of Land Management, Oregon State Department of Transportation and the Warm Springs Indian Reservation. These three parties shall be notified of all proposed land actions within the Deschutes River and John Day River Scenic Waterways for their review and comment.

B. Allow agricultural operations within the Deschutes and John Day Scenic Waterways.

C. Allow only buildings customarily provided in conjunction with farm use within the visual corridors of the Deschutes and John Day Scenic Waterways.

D. Encourage the preservation of landscape features of the John Day and Deschutes Rivers."

Opponents cite to Implementation Measure C as baring any nonfarm use in "visual corridors." In the text of Measure C, both opponents and staff appear to believe only the term "visual corridors" is open to interpretation. We part ways slightly, as it is also not entirely certain what structures are referred to in the term "buildings customarily provided in conjunction with farm use." Certainly, a barn is customarily provided with a farm use. But if the term "farm use" refers to the use of land in an agricultural area, then even in exclusive farm use areas, both state law and the LUDO allow some non-agricultural development, such as nonfarm dwellings, small-scale power generating facilities, and farm ranch recreation uses such as horse riding and fly fishing. Under this view, and under the J1 criteria in the LUDO, the Plan contemplates the homes in North Junction as lawful nonfarm uses in an exclusive farm use area.

Nonetheless, if the Planning Commission cabins the discussion to whether my house is proposed in a "visual corridor," we agree with Staff's analysis of this phrase. We wish to additionally distinguish Mr. Stamp's assertion that the Oregon Scenic Waterways Act (OSW) makes "sure that the river is free from development." Letter of Andrew Stamp, February 26, Page 22. As both staff and my attorneys have pointed out, the intent of OSW is not to bar development. Rather, OSW creates a program under which property owners must notify the Oregon Parks and Recreation Department of proposed development, and wait one year before construction. The power of delay created by OSW gives the State of Oregon time to decide if it wishes to condemn the land before construction enhances the purchase price.

The notice and delay are toothsome. If an owner fails to give notice under OSW, or builds a structure of a type not allowed by OSW rules, the owner is barred from receiving eminent domain damages for value created by the construction. In other words, if an owner secretly built a house in an OSW protected area, then if the State of Oregon exercised its eminent domain power the owner could only receive damages for loss of land; he or she would eat the cost of the improvement.

It is important to understand this mechanism of OSW. Its eminent domain framework creates a relationship between the State of Oregon's land bank, and private property owners. OSW is not designed to operate like a planning or design code. That is an important reason why the LUDO and the Comprehensive Plan don't attempt to incorporate the text of OSW or measure land use against that text. Instead, the eminent domain framework of OSW explains why the County's ordinances establish independent criteria such as the "no permanent damage" standard of the NAOD process, for purposes of development review and long range planning.

V. Conditions of approval

Given that this letter adds septic and plumbing details to the proposed house, I submit that the following additional conditions of approval are appropriate:

A. Before issuance of an occupancy permit, Applicant must construct an onsite wastewater treatment facility of a design that is approved by the Department of Environment Quality; and

B. The following conditions apply to the septic system constructed to serve this property:

   1. Applicant may construct no more than 2 bedrooms in the building.

   2. Applicant may not construct more than 1 shower and 1 toilet to serve this building.

   3. Applicant must monitor wastewater discharge generated by the building and, if discharge reaches 225 GPD on any given day, stop using the system for the rest of that day.

C. Before receiving an occupancy permit applicant shall install a potable water holding tank that is acceptable to the County Sanitarian, and shall obtain any required building permits prior to installing the tank on the property.

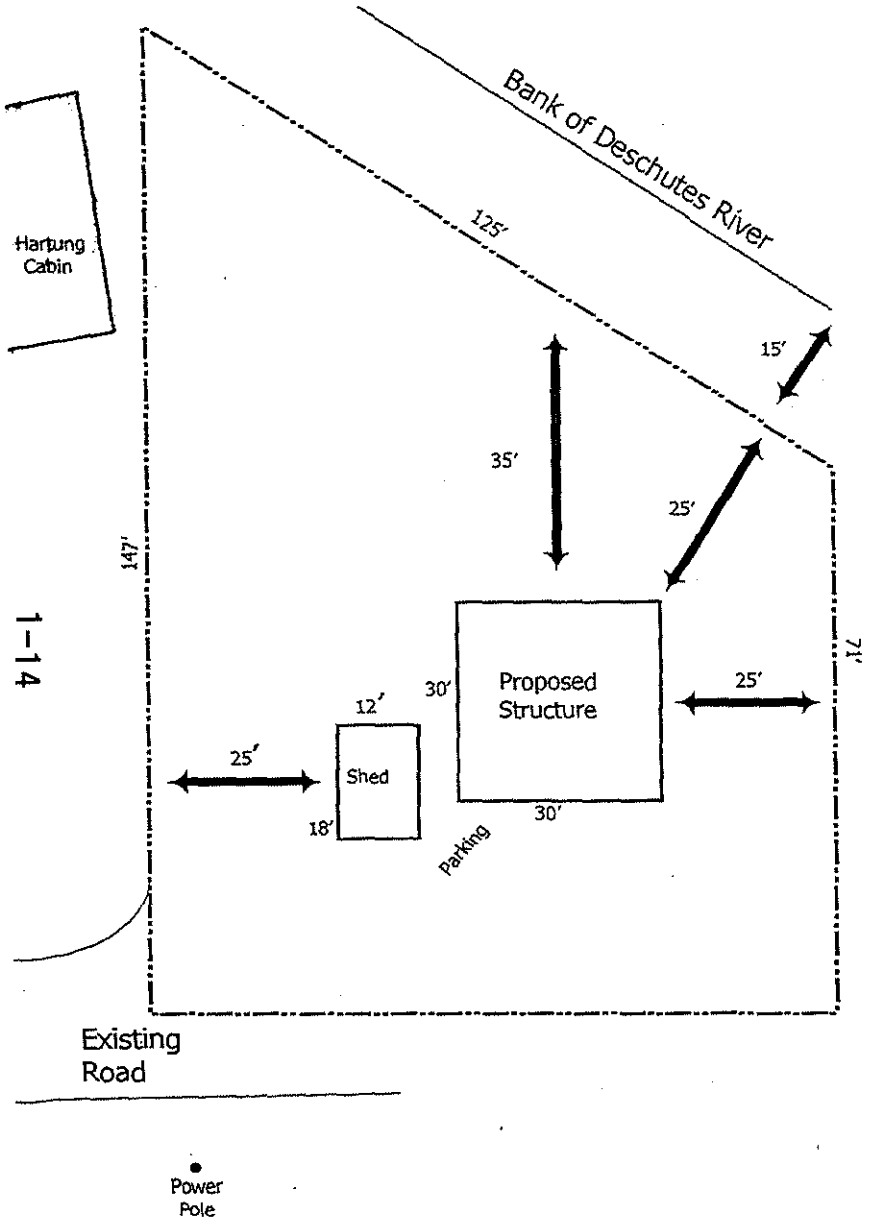
D. Landowner will cut vegetation to the river side of the building to the extent allowed under County and Statewide regulations, in order to maintain a fire fuel break between the proposed dwelling and the Deschutes river.

Sincerely,

Gabe Watson

Exhibit 1

To be provided no later than August 6, 2013



Watson Site Plan

Tax Lot 300, 7S-14E-8D
North Junction, Oregon

Structure approved by OPRD:
47'x30' with 10' front deck

Proposed Structure:
30'x30'

Setbacks Requested:
Minimum of 25' setbacks on all sides

Structure to be painted in muted tones with dark, natural tone metal roof

Structeres to be placed on piers to maintain FEMA floodproofing standards (main structure and shed)

Applicant:
Gabriel A. Watson
1824 SE Taylor
Portland, OR

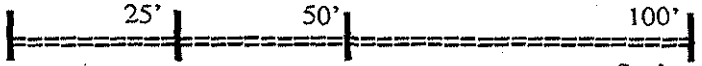


Exhibit 2

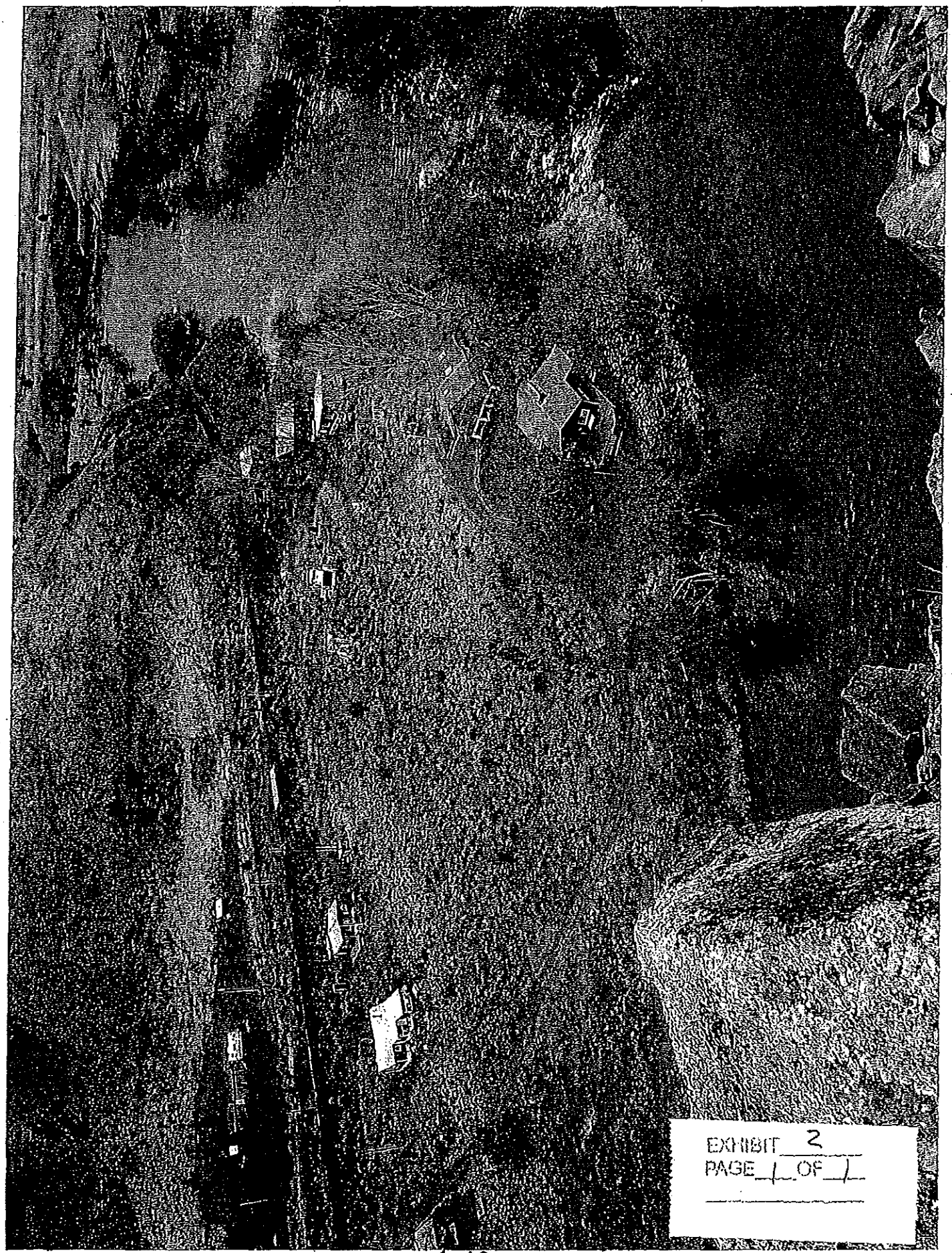


EXHIBIT 2
PAGE 1 OF 1

Exhibit 3

EXHIBIT 3
PAGE 1 OF 7

Smits & Associates, Inc.

16878 Gassner Lane
Lake Oswego, OR 97035-4524
Cell: (503) 804-0056
E-mail: john.smits.associates@gmail.com

July 29, 2013

John Roberts
Planning Director
Wasco County Planning and Development
2705 E 2nd St
The Dalles OR 97058

Re: **Gabe Watson - North Junction Dwelling**
Wasco County File No. PLAQJR-12-08-0001

Dear Mr. Roberts & Planning Commissioners:

INTRODUCTION

Smits & Associates, Inc. has been engaged by Gabriel Watson to review his parcel on the Deschutes River at North Junction with the goal of designing an onsite sewage disposal system to serve a small recreational cabin in the area of several other existing river front cabins. I understand that the cabin will replace a railroad caboose formerly used as a residence on this site. Existing cabins in the area appear to utilize fresh water to operate plumbing fixtures that discharge to existing septic tank and gravity fed drainfield systems discharging directly into the native soil. The system proposed for Mr. Watson's property will be more expensive to construct than the drainfields used elsewhere in North Junction, but I believe it will operate more efficiently and offer greater environmental protection than a soil trench system.

SUBJECT PROPERTY

The site is diagrammed on page 1 of the exhibit attached to my report. Mr. Watson's parcel measures 100 feet on its eastern side, which is where the sand filter will be constructed. At the south side the site measures 147 feet, and this is its longest dimension. To the north, the site is 71 feet, its shortest dimenstion. The west side of the site measures approximately 125 feet; the Deschutes River is adjacent to the parcel on this western side. Fresh water will be supplied by water from a storage tank which will supply typical residential plumbing fixtures such as sinks and a toilet. The water tank will require periodic filling from distant sources. Economics, and the small size of the site suggest that there are limits on the size of the water tank that could be installed. No domestic water well will be provided, though wells exist on other properties in the vicinity. The remoteness of the cabin and storage tank capacity will most likely limit the generation of wastewater to less than 100 gallons per day when the cabin is in use, which I say because it appears to me that it would take extraordinary efforts to fill and refill the site's water tank with enough water to provision a stay of longer than a

several days, if several stays at the site were desired between tank fill-ups. Still, though the site is likely to generate less than 100 gallons of wastewater per day, the system I have designed will treat up to 450 gallons of wastewater per day.

SOILS

The soils found along the river consist of a thin mantle of loamy sand over layers of sand, gravel, cobbles and boulders deposited over the years by the river aptly named Riverwash by NRCS (Natural Resources Conservation Service). It is also probable that a permanent water table is present below the ground surface at a depth similar to the level of water at the rivers edge. The soil is rapidly drained and given the proximity to the river, typically wastewater treatment systems more protective than a septic tank and gravity drainfield are required. The permit and as-built records of the existing septic systems serving the other homes at North Junction indicate that those systems consist of standard septic tanks and gravity-fed drainfields. The records show the existing drainfields have been dug up to 36 inches deep into the sand, gravel, cobbles and boulders.

APPLICANT'S RESEARCH AND PRELIMINARY SANITARY PROPOSALS

In an effort to gain septic approval for his parcel, Mr. Watson dug three (3) test pits and submitted an application for a site evaluation. On Nov. 4, 2012 Wasco County approved use of a sealed vault privy at the site to treat sewage. A vault privy can treat sanitary waste, but has insufficient capacity to treat graywater.

Out of a desire to treat also properly manage graywater we contacted Bob Baggett with DEQ seeking his comment on the use of a gray water waste disposal sump similar to those used in state parks. Mr. Baggett delivered an email on February 28, 2013 that supported treating graywater at a house of the type proposed by Mr. Watson. Mr. Baggett wrote that *"[y]es, a primitive hunt cabin with no plumbing and limited hauled in water can be set up with a gray water sump. Any structure that has plumbing will need an onsite wastewater system. A site evaluation is always required and a permit for the gray water sump."*

I was asked to investigate a system that would dispense with a separate gray water sump, and instead operate with residential plumbing that was connected to a water tank and soil absorption facility. I have developed a bottomless sand filter facility plan, with septic tank and connecting components, which is illustrated on page 1 of the Exhibit. Below, I identify how the system operates, how it is approvable by DEQ, and thus how Mr. Watson can construct it on his property. I also propose conditions of approval for the Planning Commission.

SYSTEM COMPONENTS

As the cabin is proposed to have plumbed fixtures such as sinks and a toilet, and because plumbing fixtures must discharge to an approved onsite sewage disposal system, Mr. Watson proposes to treat his gray water and sewage discharge by way of a bottomless sand filter (BSF) onsite system. The system will include a septic tank, a sand filter, and connecting equipment. The septic/dosing tank will likely be a fiberglass unit that

can be trucked to the site and meet the clearance limits of the railroad underpass. Anti-buoyancy counter measures will be included to secure the relatively light weight fiberglass tank. It is anticipated that the sand filter container will be constructed of reinforced concrete to contain the treatment materials and distribution piping. Electric power is available to the property to operate the pump and alarm control panel that will regulate discharge to the bottomless sand filter. Oregon law requires that a sand filter be constructed at least large enough to manage 450 gallons of wastewater per day. The plan I have created recommends construction of a sand filter to this minimum standard. The filter is explained in more detail below, in connection with the DEQ regulations for its use.

I am informed that Mr. Watson's septic system will be served with fresh water from an onsite storage tank that will be filled from water trucked in from other locations. I am aware that fresh water tanks are used in a variety of applications, such as to serve public parks that may be located far away from wells or municipal water supplies. I believe a plumbing system using integrated components such as fresh water and septic tanks, a soil absorption facility, and plumbing, efficiently uses scarce resources such as water. I also believe such a system presents lower risk for environmental contamination than a system connected to an uninterrupted water source (such as a municipal water supply or a pump-operated well). This is because a system with a finite water supply, in the fresh water tank, is an effective, extremely low-tech means to ensure that only so much water could pass through the septic system (perhaps undetected) before the system automatically stopped operating due to water running out.

SETBACKS

Several DEQ rules apply to the lot relative to horizontal setbacks as well as minimum system sizing, namely:

1. OAR 340-071-0220(1)(j)(B) .... For lots or parcels legally created before May 1, 1973, the agent may approve installation of a standard or alternative system with a setback from surface waters of less than 100 feet but not less than 50 feet if all other applicable provisions of this rule can be met.
2. OAR 340-071-0220(2)(a).....A system must be sized on the basis of 300 gallons sewage flow per day plus 75 gallons per day for the third bedroom when the system: (A) Is proposed to serve a single family dwelling on a lot of record created before March 1, 1978 that is too small to accommodate a system sized for a daily sewage flow of 450 gallons, or.....
3. OAR 340-071-0290(2)(g) Setbacks in Table 1 can be met, except the minimum separation distance between the sewage absorption area (read drainfield) and surface waters must be at least 50 feet.

The site plan attached to this memorandum illustrates compliance with all applicable DEQ setback requirements.

CHOICE OF SYSTEM: ALTERNATIVE OR STANDARD

An important initial decision for Mr. Watson's property was which type of system should be used. On the one hand, a standard system (meaning, a system with a septic tank and soil absorbing trenches) costs less to install, but operates inefficiently in the rapidly-draining soils present in much of North Junction. A standard system may not satisfy DEQ regulations unless it operates with at least four feet of soil depth between the water table and the bottom of the trenches (which may have to be installed 2 to 3 feet below ground in sandy soils). On the other hand, DEQ allows alternative systems, such as a bottomless sand filter which is a concrete box, without a bottom, filled with select sand, which when connected to an onsite system operates as the soil absorption facility. In sandy soils an alternative system such as a bottomless sand filter operates more efficiently than a standard system, but costs more to install.

It is my opinion that the alternative system embodied in a bottomless sand filter ("BSF" hereafter) is appropriate for Mr. Watson's property and can be constructed to satisfy DEQ regulations. I believe this for several reasons. The first reason is that the BSF can be constructed above the water table, as DEQ requires. I performed a site visit on May 10, 2013, and determined that the water table in the area of the test pits on Mr. Watson's lot was calculated to be approximately 7.45 feet below the ground surface. I developed this information using a laser level and rod to reckon the water table relative to the water level of the Deschutes River at the bank. The depth to groundwater on the properties along the Deschutes River at North Junction will vary as the river level changes. The sand filter on Mr. Watson's property can be constructed to keep several feet of soil depth between the filter box and the water table, which will exceed DEQ's requirement to keep 24" of soil depth between the filter and the water table under OAR 340-071-0290(2)(b). DEQ and its agents have jurisdiction over construction details and will evaluate those details during its separate onsite permitting process.

Second, the BSF is also an effective system in relation to gravelly terrain, which is present in the North Junction area. Given Watson's 1/4 acre parcel size, apparent depth to groundwater, and rapid permeability of the soil, an alternative system such as a bottomless sand filter (BSF) can be utilized to treat the cabin wastewater before it is released into the sand, gravels and cobbles. Such systems are commonly used to serve homesites in the Rhododendron, Brightwood, and Welches area where soils similar to North Junction are found, as well as to serve dwellings on small lots in the Gearhart area where the sandy soil is often also shallow in relation to a permanent groundwater aquifer.

The third reason I believe the BSF is appropriate and approvable for Mr. Watson's property is that the system will satisfy two rules for onsite facilities on small lots recorded in the 1970s. According to the first such rule, OAR 340-071-0290(2)(c), small size lots created prior to 1973 can be served by alternative bottomless sand filters if the owner limits the discharge to 450 gallons per day ("GPD") per 1/2 acre of property. OAR 340-071-0290(2)(c). Applying this formula to Mr. Watson's property, which is 1/4 acre, Watson may comply with this rule if discharge is limited to 225 GPD.

A question arises about how much discharge Mr. Watson's house will produce. DEQ regulations include a table of some more popular types of establishments, and per-day estimates of their sewage discharge. According to this table (known as Table 2), and to illustrate, a single-family, two-bedroom dwelling is

estimated to discharge 300 GPD. A mobile home discharges somewhat less, around 250 GPD, and a travel trailer hooked-up to a sanitary connection at a park discharges an even lower 100 GPD. Mr. Watson's house, while proposed to be constructed with residential-type rooms such as bedrooms, kitchen, toilet, and a living room, is nonetheless proposed for use as a recreational cabin, with occasional use. The cabin is remote and not likely to be used for daily living, insofar as daily living involves social contact such as for employment or education (neither of which use is present in North Junction). Furthermore, there is no easy access to potable water. This use pattern suggests that 300 GPD is an excessive estimate of the Watson house, and that the house will more likely discharge between 100 and 200 GPD.

What is more, the Table 2 values are deliberately elevated, by DEQ, to encourage property owners to overbuild their treatment capacity. By this I mean, the GPD figures that DEQ lists in table 2 are, in actuality, overstated by a factor of 2. For example, Table 2 requires the owner of a four-bedroom house to construct a system that can manage a peak 450 GPD of wastewater. However, an average four-bedroom treatment system sees an average of 225 GPD. A two-bedroom system is typically engineered—and required by Table 2—to manage 300 GPD of wastewater, but in reality sees more like 150 GPD.

Nonetheless, the elevated figures are safeguards to protect the public health. Thus, to meet the most demanding interpretation of Table 2, and because the building will be constructed with *rooms* akin to a house, conditions of approval are appropriate to constrain the use of the sanitary system to 225 GPD, so that the system can be approved and operated under DEQ's rule for small lots created before 1973. Accordingly, I recommend that the Planning Commission adopt conditions of approval limiting the number of bedrooms in the dwelling unit to 2 per instruction of the County Sanitarian, plus additional conditions to limit the number of toilets and showers to 1 of each such fixture, and to require applicant to monitor wastewater discharge and, if discharge reaches 225 GPD on any given day, stop using the system for the rest of that day.I

Returning to the rules for 1970's-era lots reveals the second of two rules that govern an onsite system constructed on Mr. Watson's property. Under OAR 340-071-0220(2)(a), lots of record created before 1978 must—when used for a single-family dwelling—allow construction of a system that will treat a minimum of 300 gallons of sewage flow per day if the dwelling will be constructed with 2 or fewer bedrooms. Oregon law requires sand filters to be constructed no smaller than 360 square feet. A filter that size can treat 450 GPD. 450 GPD exceeds the 300 GPD threshold of this rule. Accordingly, a sand filter by its essential definition satisfies this administrative rule.

I have also been able to develop an opinion that DEQ seems inclined to favorably evaluate Mr. Watson's septic system. I offer this information not to speak for DEQ, but to demonstrate that Mr. Watson's septic system is approvable and buildable, under DEQ regulations. On March 25, 2013 I posed the following scenario to Kevin Dworschak, EHS with the North Central Public Health District regarding Mr. Watsons parcel:

> Although Gabe's lot is 1/4 acre I believe the lot qualifies for a sand filter under OAR 340-071-0290(2)(c). That rule allows a BSF when discharge is limited on a lot as follows: 'Sand Filter systems installed in soils with rapid or very rapid permeability in areas with permanent water tables may not discharge more than 450 gallons of effluent per 1/2 acre per day.....'

EXHIBIT 3
PAGE 6 OF 7

Gabe's lot size is listed as 0.25 acres and therefore could be approved if the discharge does not exceed peak of 225 gpd. As the structure will use a water holding tank, I hope you agree that the use is unlikely to exceed 225 gpd and may be more like 100 gpd on the days the seasonal cabin is in use. OAR 340-071-0295(2) requires the minimum sand filter size to be 360 sq. ft. Please reference the attached site plan for more information about the layout of the proposed cabin, water storage tank, septic/dosing tank and 8 ft. x 45 ft. bottomless sand filter."

On March 28, 2013 Mr. Dworschak responded by email indicating he had obtained feedback from DEQ, and Mr. Dworschak described the information as follows:

"John, the DEQ has responded and have no issues with this current plan. We believe your plan satisfies the requirements of this site. We will allow for the altered setbacks you proposed from the Deschutes River. Next steps; We will need a final plan that includes pump type, materials detail, exact locations of the system. We will most likely forward this on to DEQ for approval. We would like you to keep the setbacks as close to the 100 feet from the river as possible within a workable site plan. Also the cabin must be restricted to no more than 2 bedrooms. We also need the paperwork filled out for the construction permit. The fee for a sand filter construction permit is $1010.00."

SUMMARY

The proposed comprehensive onsite system, serving a cabin having only a water storage tank, connected to the plumbing with limited wastewater discharge, can be served by a conventional bottomless sand filter system. The filter will provide advanced treatment significantly more protective of public health and the environment in North Junction than a standard septic tank and gravity drainfield/soil trench system.

CONDITIONS OF APPROVAL

I recommend that the Planning Commission attach the following conditions of approval to Gabe Watson's application to construct a dwelling on his property.

1. Applicant may construct no more than 2 bedrooms in the building.
2. Applicant may not construct more than 1 shower and 1 toilet to serve this building.
3. Applicant must monitor wastewater discharge generated by the building and, if discharge reaches 225 GPD on any given day, stop using the system for the rest of that day.

Please call me at (503) 804-0056 if you have questions about this report.

Respectfully submitted,

John L. Smits, REHS
Principal,
Smits & Associates, Inc.

EXHIBIT 3
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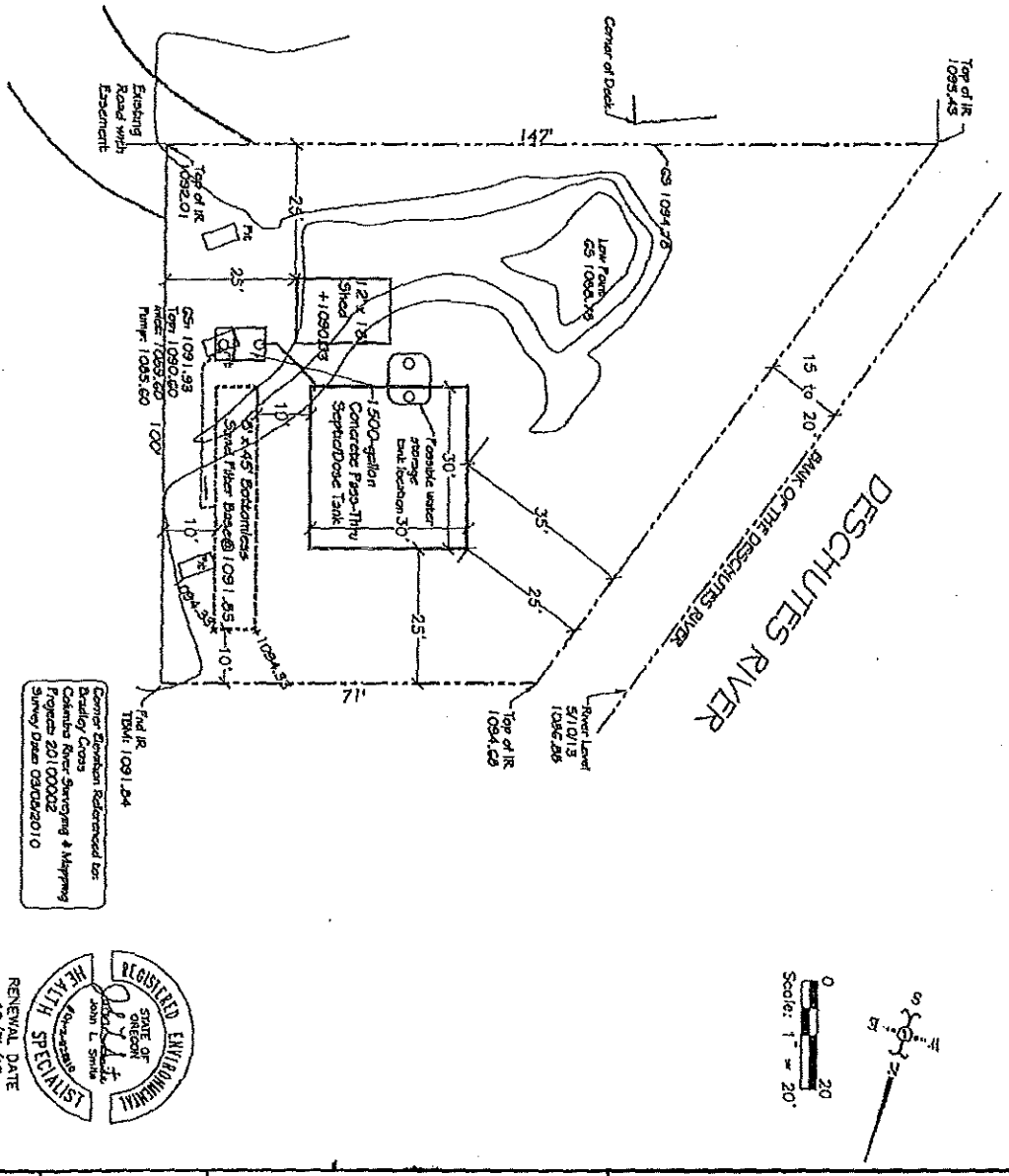

July 10, 2013	SHEET San 1 of __	PROPOSED SITE @ 1"=20' GABRIEL A. WATSON NORTH JUNCTION T.7S.,R.14E.,Sec.8D TL 300 Wasco County	Smits & Associates, Inc. Environmental Consultants Designers 16678 S. W. Gassner Lane Lake Oswego, OR 97035-4624 John L. Smits, REHS Ph. (503) 804-0056 Fax (503) 699-2076 Email: john.smits.associates@gmail.com

Exhibit 4

Exhibit 4
Water Tanks

Applicant proposes storage of potable water in a tank that may be installed underground or above ground. A low profile polyethylene 1,500-gallon storage tank offered by Don Hartog industries is suitable for this purpose (see page 2 of this Exhibit). This tank is constructed to withstand flooding and to prevent penetration of floodwaters into the tank during a flooding incident. An integral riser with non-corrosive seals of the kind on page 3 of this exhibit may be used to fill the tank. Water may be trucked in from a municipal water supply. Applicant lives in the City or Portland and has access to municipal water supplies in Portland, Hood River, The Dalles, and Maupin. Additionally, the gatekeeper on Deschutes Access road supplies potable water from a well, and Applicant can fill water transport tanks there

Polyethylene tank proposed meets NSF/ANSI 61 requirements for use in a potable water storage and supply system. Moreover, the riser extending from the top of the tank will open at a location above the base flood elevation (BFE). If flood-waters exceed this level the system is designed to seal out all contaminants. The tank is manufactured to hold liquids with specific gravity up to 1.7 (water is 1.0).

Underground installation is possible under the manufacturer's instructions attached as pages 4 and 5 of this Exhibit. Dead man anchors of cast concrete will be used to prevent floatation of the tank during times of high groundwater, or flooding. Additionally, applicant will ensure that tank is at full capacity between September and April when risk of flooding exists at subject parcel.

All plumbing from tank will be PEX, a product that is compatible with the materials used in the construction of the tank. PEX is also designed to flex without breaking should flooding or other disruption cause the tank to move.

Should underground storage, the desired option, become infeasible, applicant acknowledges that several alternatives to underground storage of potable water exist. For example, above ground storage tanks are available for indoor and outdoor applications; these tanks are available in several sizes and meet all requirements of NSA/ANSI 61. A drawing of an indoor/outdoor polyethylene tank is included on page 6.

Anchored fiberglass tanks are also an option on this site. For example, Xerxes Corporation makes water tanks in various sizes starting at 602 gallons (see page 15). Moreover, such tanks may also be anchored by a concrete deadman system as illustrated on pages 19 and 20 of this exhibit.

EXHIBIT 4
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ACT1500-LP

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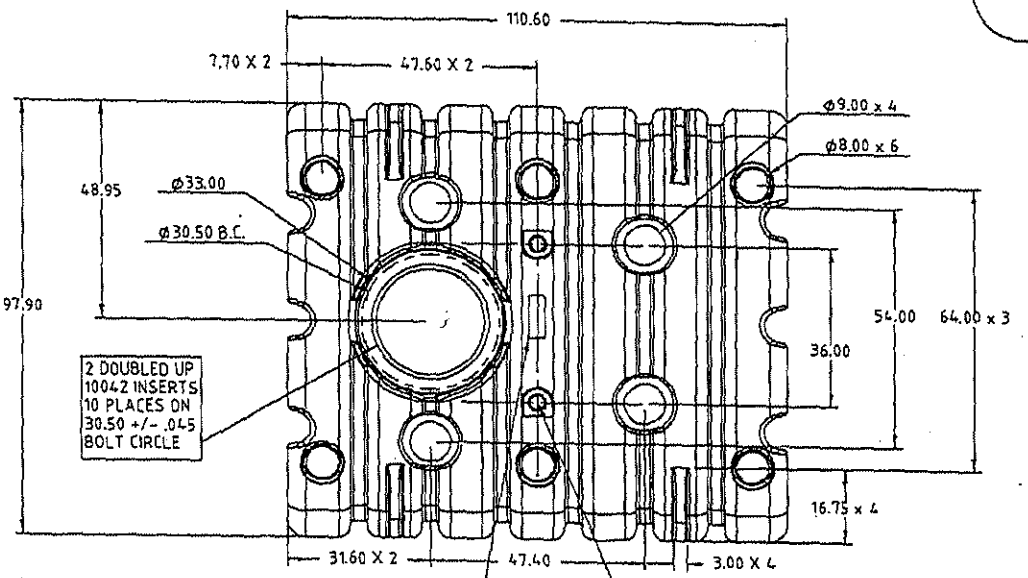

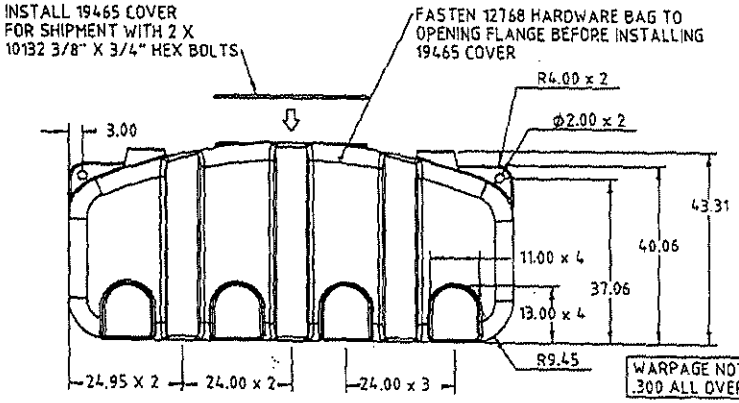

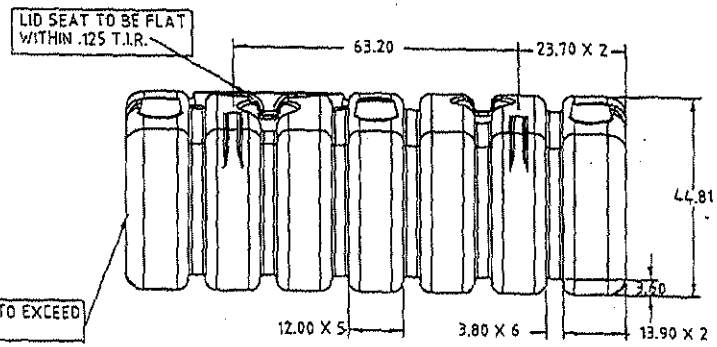

REV	DESCRIPTION	BY / DATE	CEN

DRAWN / DATE: ADH 5/11/09
APPRD. / DATE: REH 11/16/09
MATERIAL: 12769 M/B 10538 POWDER

ALL DIMENSIONS ARE IN DECIMAL INCHES
TOLERANCES UNLESS OTHERWISE SPECIFIED
THIRD ANGLE PROJECTION ANSI Y14.5M

POLYETHYLENE	METAL
±1% @ 68° F	DECIMAL ± .125"
	FRACTION ± 1/4"
	ANGLE ± 1°

SHOT WEIGHT: 680 LB.
SHIPPING WEIGHT: 685 LB.
FINISH:

NOTES:
1.) 0.400 WALL THICKNESS

Den Hartog
INDUSTRIES, INC.
4010 HOSPERS DRIVE S BOX 425, HOSPERS, IOWA 51238-0425

DESCRIPTION: 1500 GALLON CISTERN
SCALE: N.S.
PART NO: ACT1500-LP

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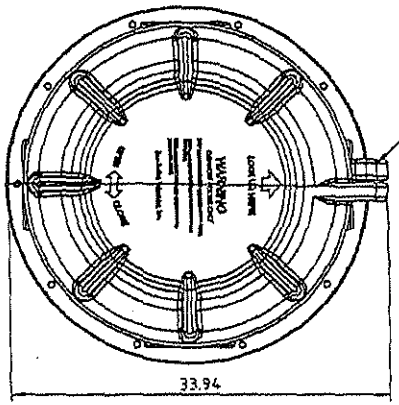
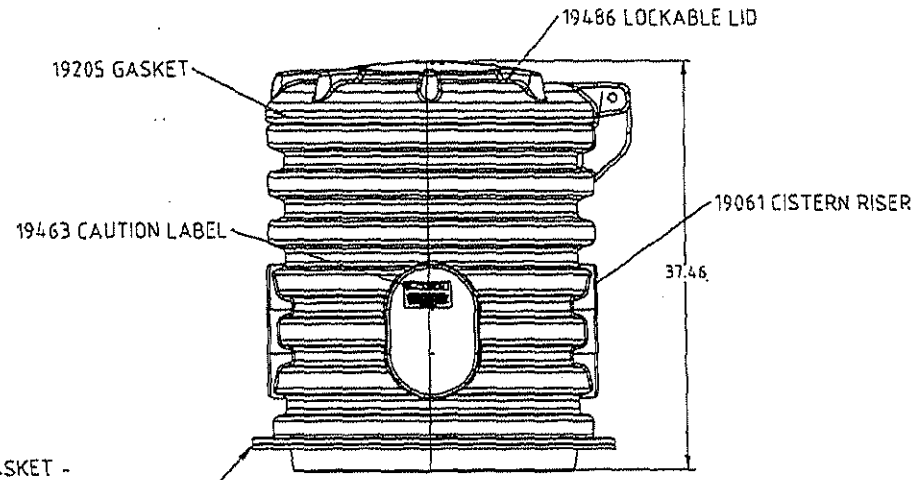
ACT-16052





NOTE: STRETCH WRAP FOR SHIPMENT

REV	DESCRIPTION	BY / DATE	CCN

ALL DIMENSIONS ARE IN DECIMAL INCHES
TOLERANCES UNLESS OTHERWISE SPECIFIED

POLYETHYLENE	METAL
±1% @ 68° F	DECIMAL ± .125" FRACTION ± 1/4" ANGLE ± 1°

THIRD ANGLE PROJECTION

DRAWN / DATE: ADH 6/1/09

APPRV. / DATE: REH 6/2/09

SHOT WEIGHT:

SHIPPING WEIGHT: 53 LB.

FINISH:

MATERIAL

NOTES:

Den Hartog INDUSTRIES, INC.

Ace Roto-Mold Injection Molding Blow Molding Sawjoy

4618 HOSPERS DRIVE S. BOX 425 HOSPERS, IOWA 51239-0425

DESCRIPTION: 28" CISTERN RISER, LOCKABLE LID AND GASKET

SCALE: N.S.

PART NO.: ACT-16052

EXHIBIT 4
PAGE 3 OF 20

Ace Roto-Mold

A DIVISION OF DEN HARTOG INDUSTRIES, INC.

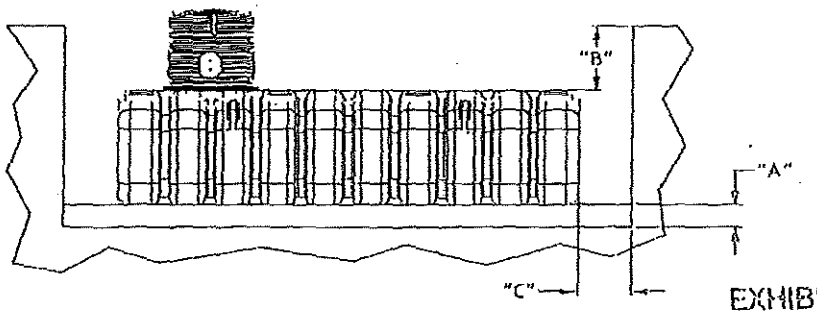
Publication 19468

Low Profile Cistern Tank Installation Guidelines

IMPORTANT – PLEASE READ CAREFULLY BEFORE INSTALLING PRODUCT

1. **General Information**
   a) Check with the governing agency in your county or city for specific installation requirements for cistern tank systems. These codes may specify different installation details than presented in this guideline and as a result will have precedence.
   b) Never install this product in an area with a high water table or in a water-saturated clay mix. Failure to heed may result in tank damage and/or contamination from leakage.
   c) Never install this product beneath vehicular traffic. Tank is not designed for these traffic loads. Failure to heed may result in tank collapse and/or contamination from leakage.
   d) Use of this product in areas with frost depths below 28" will require suitable submersible tank heaters be installed. Heaters must be UL rated for this application.
   e) It is recommended that if tank is to be utilized for drinking water that a suitable means of filtration and treatment be provided and that the water in the tank be checked regularly against your local drinking water standards.
   f) Tanks that are equipped with above ground access must have the access cover securely locked. The DHI riser option provides a locking ear so that access cover can be secured with a tamper proof lock.

2. **Site Excavation**
   a) Surrounding site soil must be undisturbed soil or a well-compacted engineering fill.
   b) Measure tank width, height and length to establish excavation profile.
   c) Excavate and provide a well-compacted support layer of a sand / gravel mixture so that Dimension 'A' is a minimum of 6" for soil terrain and 12" for rocky terrain.
   d) Allow Dimension 'B' to be a maximum of 28".
   e) Allow Dimension 'C' to be a minimum of 18" and a maximum of 36".
   f) Place and center tank in excavated hole using lifting ears provided. Do not lift tank with lid opening.



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3. **Tank Plumbing**
   a) Tank features a variety of fitting installation options. Be certain all plumbing materials are rated for the intended application for the tank.
   b) Supply lines should have flexible couplings installed to accommodate soil expansion, contraction and settlement.

4. **Site Backfilling**
   a) Backfill around tank using a sand / gravel mixture.
   b) Mound soil over tank to provide sufficient site drainage and to prevent pooling around tank lid and riser opening.
   c) Site should be periodically checked for soil settlement and maintenance provided as necessary for adequate drainage.

5. **Warranty**
   a) Reference Warranty document, *Limited Warranty Polyethylene Tanks* (WIR7.5-67)

Ace Roto-Mold • Injection Molding • Blow Molding • Sowjoy

EXHIBIT 4
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PROPRIETARY DATA

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VT1000-64

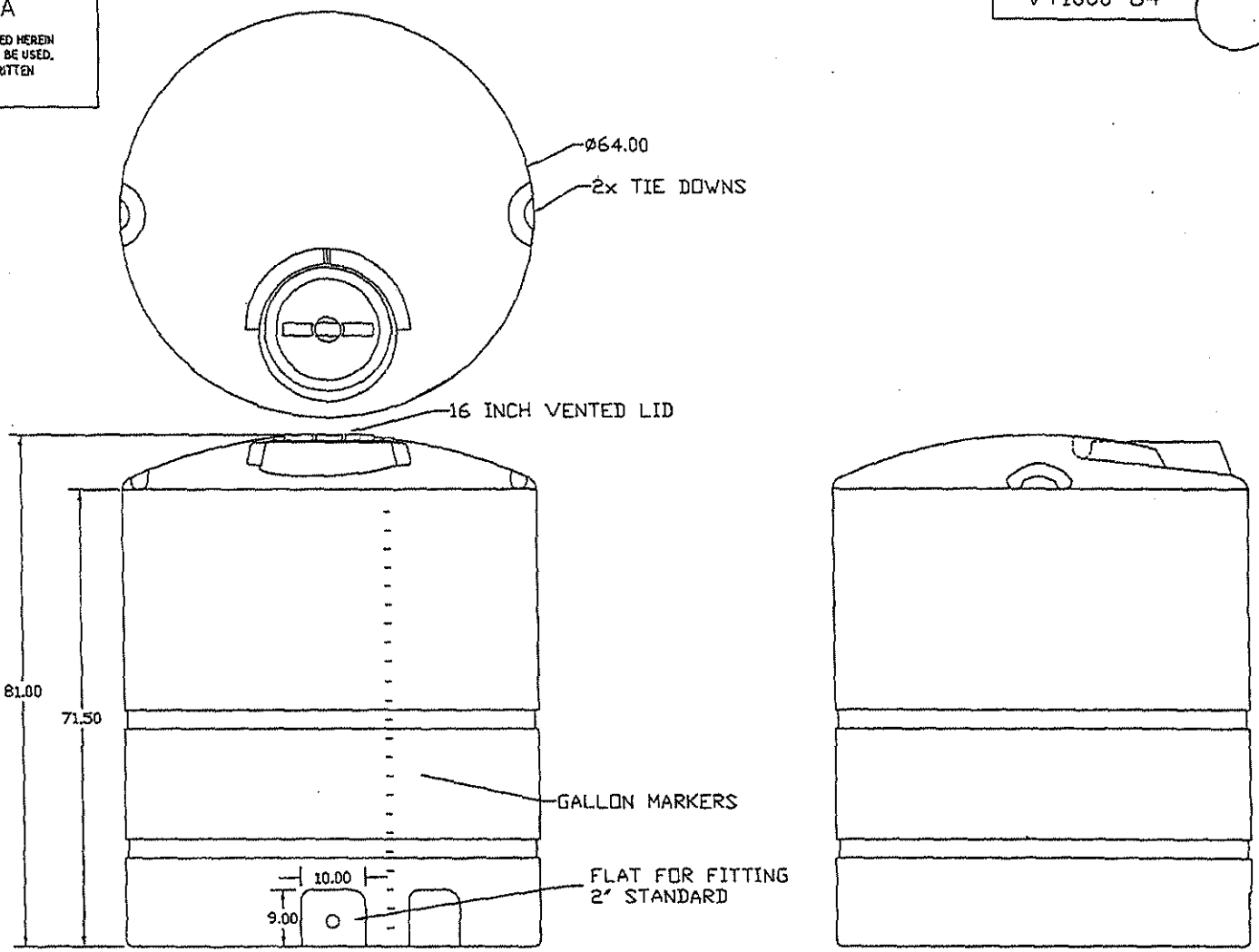

EXHIBIT 4
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1-31

REV	DESCRIPTION	DATE APPRD.

DRAWN /DATE: DHJ 11/11/03

APPRD. /DATE: ADH 11/19/07

ALL DIMENSIONS ARE IN DECIMAL INCHES
TOLERANCES UNLESS OTHERWISE SPECIFIED
±1% @ 68° F

THIRD ANGLE PROJECTION
ANSI 14.5M

MATERIAL / SHOT WEIGHT: POLYETHYLINE 250 LBS.

NOTES: .31 NOM. WALL

Ace Roto-Mold
A DIVISION OF DEN HARTOG INDUSTRIES, INC.

CLIENT / DESCRIPTION: 1000 GALLON VERTICAL

SCALE: NONE

PART NO.: VT1000-64

XERXES®
CORPORATION
a subsidiary of ZCL Composites Inc.

Fiberglass Underground Water Tanks

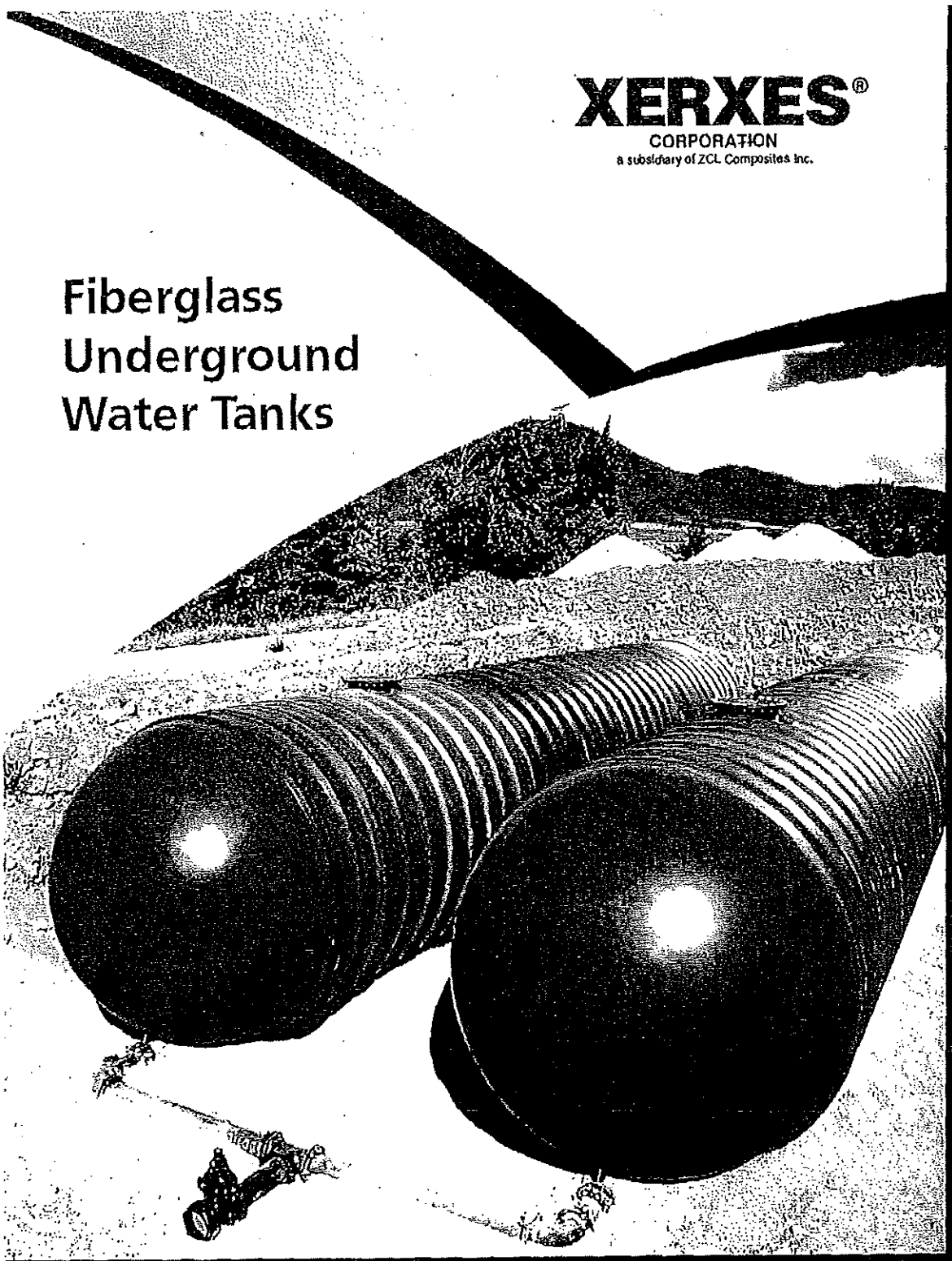

EXHIBIT 4
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Xerxes Fiberglass Water Tanks

Fiberglass Tanks for Long-Term Storage of Water

As communities, businesses and industries become increasingly accountable to meet environmental requirements for liquids that require safe, design proven storage, Xerxes is in the forefront with innovative answers. When considering the options in customized systems to store water, facility designers and owners look for a long term, structurally strong, watertight and cost effective option. That is exactly what the Xerxes fiberglass tank is.

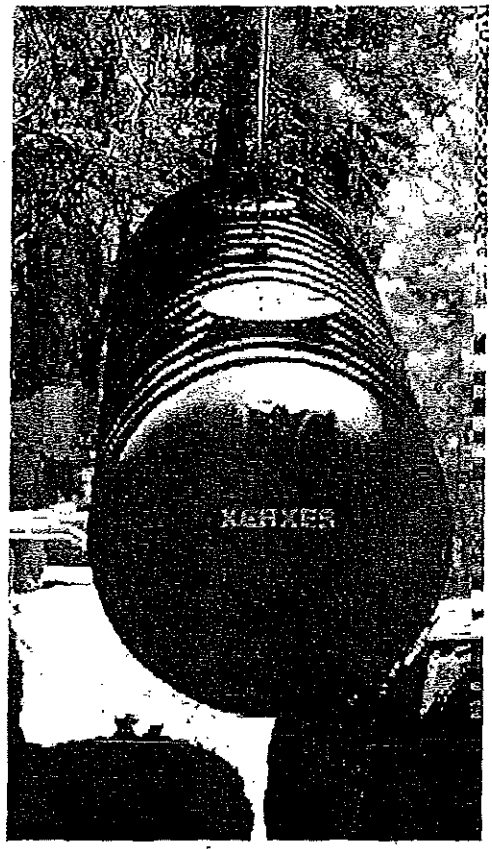
For decades, Xerxes has been well known as a major tank supplier to the petroleum industry with more than 100,000 tanks installed. Many of the world's largest oil companies rely on Xerxes to supply environmentally safe underground tanks for storage of gasoline at their retail service stations. Throughout the neighborhoods and communities of America, Xerxes underground tanks are in place, simultaneously storing products and protecting the environment.

Today Xerxes is taking its place in those same neighborhoods and communities as a major supplier of storage tanks for water — potable water, fire protection water, irrigation water, gray water, rain water, stormwater and emergency supply water — as well as other liquids, such as septage, leachate and chemicals. Each time a Xerxes fiberglass underground tank is delivered to a customer, the same performance standard has been met — a vessel for safe underground storage of liquid and careful protection of the environment.

Tanks Designed and Manufactured by a Long-Time Industry Leader

Xerxes is a leader in the design and manufacture of high quality, cost effective products that help protect the fragile relationship between humans and their environment. Each Xerxes water tank represents decades of innovation and proven experience developing and fabricating fiberglass storage tanks for underground storage of liquids.

At Xerxes, excellence in service is as highly valued as excellence in product design and manufacturing. Xerxes' strategically located manufacturing facilities in the United States provide customers with prompt, economical delivery and quality service. That gives Xerxes tanks one more advantage — they are readily available to customers wherever they are.



Features of Xerxes Water Tanks

- Constructed of rustproof, long-lasting fiberglass
- Manufactured to meet customers' functional requirements
- Designed for added strength with integral ribs
- Designed for H-20 load conditions
- Easy to ship and install
- Can be purchased with accessories that allow for both preinstallation and postinstallation pressure testing
- Manufactured to applicable requirements of Underwriters Laboratories (UL) 1316
- Manufactured with resin conforming to NSF Standard 61 requirements (potable water tanks)
  - NSF listed tanks also available
- Available in sizes from 600 gallons to sizes in excess of 50,000 gallons.

EXHIBIT 4
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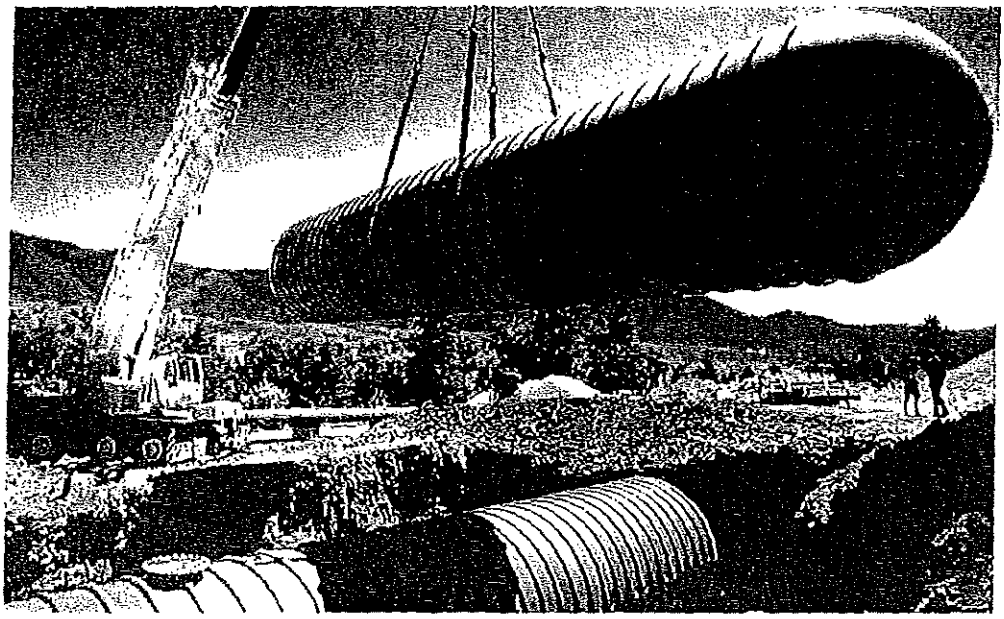

Watertight Tanks Featuring the Many Benefits of Fiberglass

A fiberglass water tank, both by virtue of its materials and its design, is inherently the superior choice for safe, long term storage of water for a wide range of applications. The best storage system for water is structurally strong, corrosion resistant, watertight, easily installed and cost effective. All these elements come together in the design and manufacture of a Xerxes fiberglass water tank.

Xerxes uses only high quality resin and glass in the manufacture of its fiberglass tanks. Integral ribs in the tanks add strength to the structure. Because the integral ribs and tanks are made of the same materials and are manufactured simultaneously, the result is an extremely robust tank.

Another common material used in tanks today is concrete, in either the form of precast concrete or cast in place concrete. Precast tanks are heavy and therefore can be difficult to ship and to install. When larger capacity tanks (approximately 6,000 gallons and greater) are required, precast tanks are generally not available. Therefore, a cast in place tank is the only concrete option. Cast in place tanks cannot undergo the careful quality control process that fiberglass tanks manufactured in a factory do. This quality control is key to producing a strong, watertight tank. The installation and proper curing of cast in place tanks can be very time consuming, taking days or weeks, as opposed to the one day installation typical for a Xerxes fiberglass tank.

Since a Xerxes fiberglass tank is significantly lighter in weight than comparably sized concrete tanks, a fiberglass tank is much easier to ship and install. This is especially important for water applications because many of these tanks are installed in hard to access or even remote locations, or are at sites with limited excavation space, and the heavy equipment required to install concrete or steel tanks presents a problem.

Lightweight fiberglass tanks are ideally suited to a variety of water tank projects whether the site is in a rural community, a remote location or the middle of a city. A few examples of the many recent Xerxes water tank installations are: potable water in a mountain housing development, emergency drinking supplies in a Florida community and firewater reserves in a U.S. National Forest Service ranger station.

Since water by nature can create a corrosive environment, it is likely that rust can be a major weakness in certain underground water storage systems. Unlike tanks made of other materials, Xerxes fiberglass tanks are constructed of materials that are inherently rustproof. In contrast, to guard against corrosion or to provide compatibility with the water being stored, tanks constructed of concrete or steel may require internal and external coatings. Of the tank options available for water storage, a fiberglass tank offers the best long term protection against leakage due to both internal and external corrosion.

Not only is a Xerxes tank rustproof, it is also watertight. Easily equipped for on site pressure testing before and after installation, Xerxes water tanks give owners the confidence that the tank is watertight from the time it is installed.

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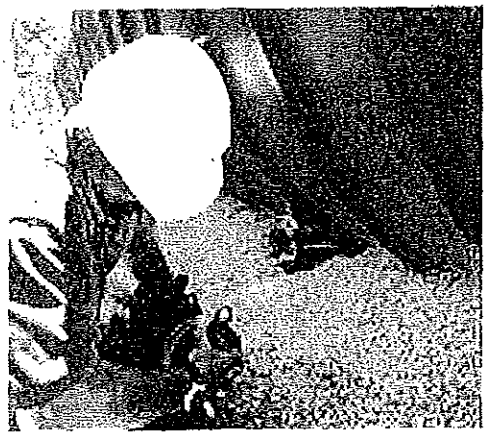
Fiberglass Water Tanks for Potable Water Applications

Each Xerxes potable water tank is designed and manufactured to meet a customer's specific requirements. A major benefit of ordering a Xerxes potable water tank is that it can be manufactured with materials that conform to the requirements of NSF® Standard 61 — Drinking Water System Components — Health Effects. A Xerxes potable water tank is also available as an NSF-listed and labeled tank.

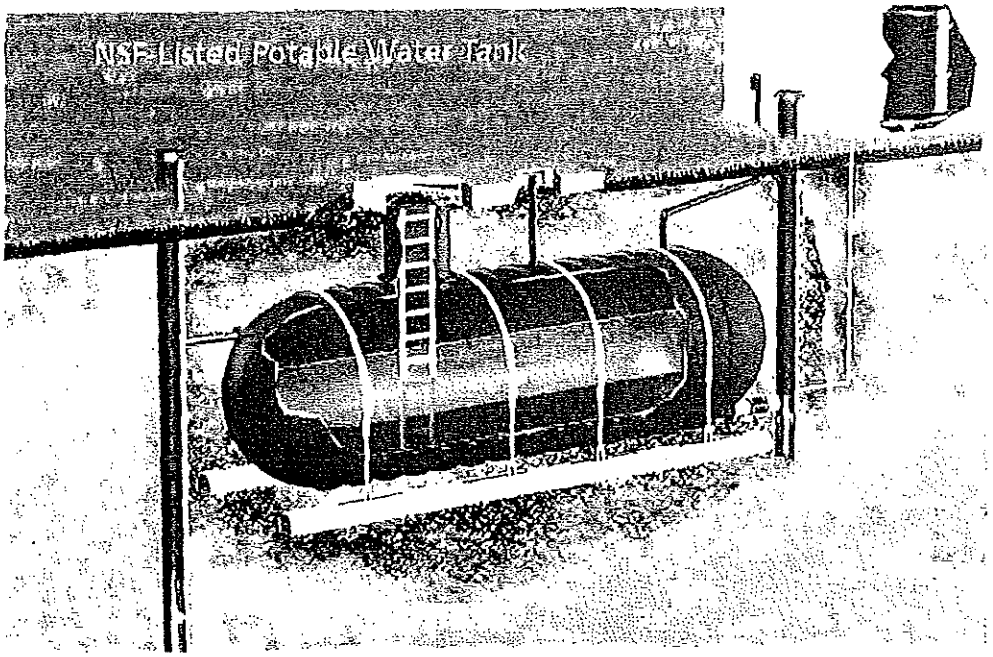


The National Sanitation Foundation (NSF) is a leading international organization that develops standards, and tests and certifies products in the areas of public health safety and environmental protection. Xerxes potable water tanks are manufactured with a resin that has been approved as conforming to NSF standards for drinking water system components, demonstrating once again that Xerxes is a pioneer in its industry.

The process by which Xerxes manufactures potable water tanks with NSF-listed materials offers a significant advantage over steel and concrete tanks. The Xerxes fiberglass potable water tank is an integral structure incorporating an NSF-listed resin interior with a polyester-resin-glass exterior. This is the most effective combination for a potable water tank.

Steel and concrete storage systems typically use internal linings to meet industry standards for potable water. In order to be effective, these linings require a degree of adhesion that can be difficult to obtain in the manufacturing process and to maintain over the life of the system. When linings are constructed of materials different from the tank materials, the durability of the end product can be compromised. In short, a Xerxes fiberglass potable water tank offers many advantages over these systems.

Another significant advantage of a Xerxes potable water tank is that because it is lightweight a Xerxes tank can be easily installed in the remote locations that are common to potable water system installations, such as campgrounds, resorts, national parks and private homes.



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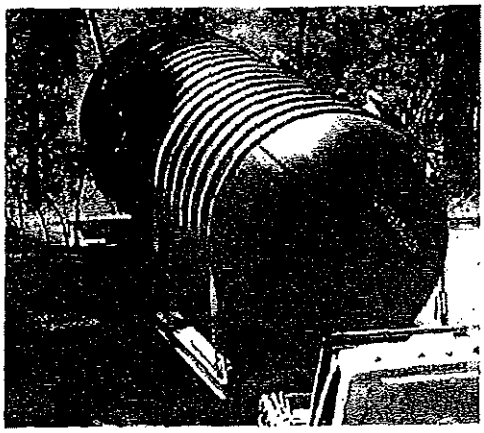
Fiberglass Water Tanks for Fire-Protection Water Applications

Growing concerns about fire safety and increased use of sprinkler systems in building construction have resulted in a new demand for underground tanks for the storage of fire protection water. Because of this, residential and commercial building designers need to find safe, reliable and cost effective systems for the storage of fire protection water in their projects. Often, new regulatory codes and insurance requirements are calling for stand alone, standby water supplies. Common examples of fire protection water applications are schools, housing developments, medical centers, resort properties and casinos.

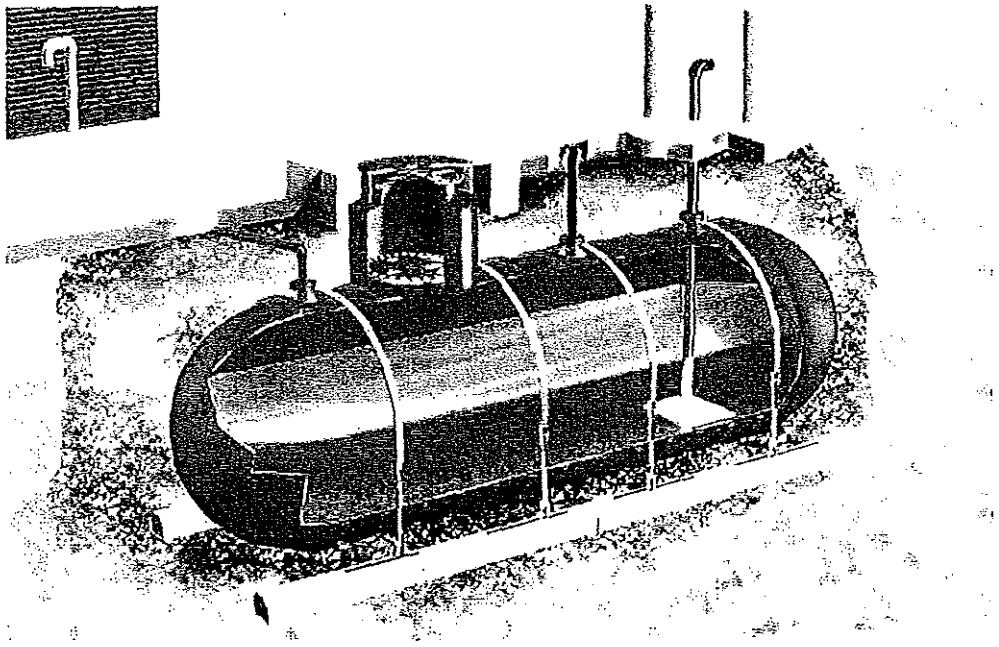


Xerxes fiberglass water tanks are becoming an especially popular choice for all types of water applications in rural, suburban and urban facilities. Whether the need is as a sole source of water in rural areas or as a standby water reservoir to supplement a pressurized municipal water system, a Xerxes tank provides maintenance free underground storage of water.

Recent changes in NFPA codes require system design alternatives, such as standby water reservoirs when the existing pressurized water supply is inadequate or when water pressure levels are not dependable. The 2001 edition of NFPA 1142 Standard on Water Supplies for Suburban and Rural Fire Fighting depicts a fiberglass underground storage tank to illustrate a sole source water cistern.

A Xerxes underground tank used as a water reservoir has many advantages over an aboveground tank used for the same purpose. For instance, it does not occupy valuable property that could be used for parking or other needs, and it makes the property aesthetically pleasing. Also, since the tank is buried, it does not require the expensive protection against water freezing that might be necessary with an aboveground tank.

A growing trend is to use a water tank as a dual purpose tank, such as for potable water and fire protection water. A Xerxes fiberglass tank using NSF listed resin is ideally suited for such dual purpose applications.



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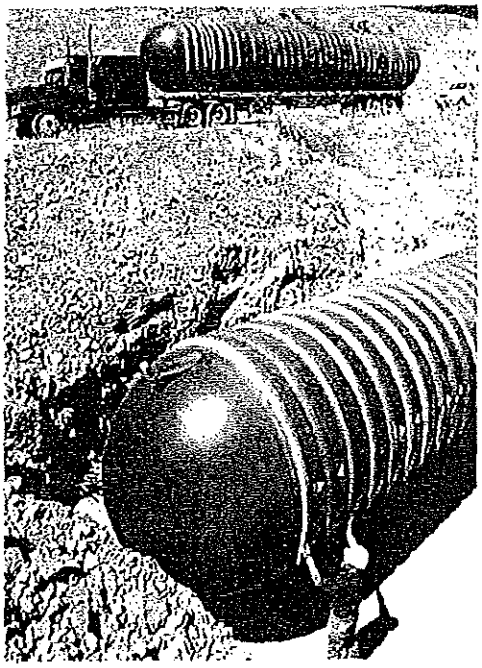
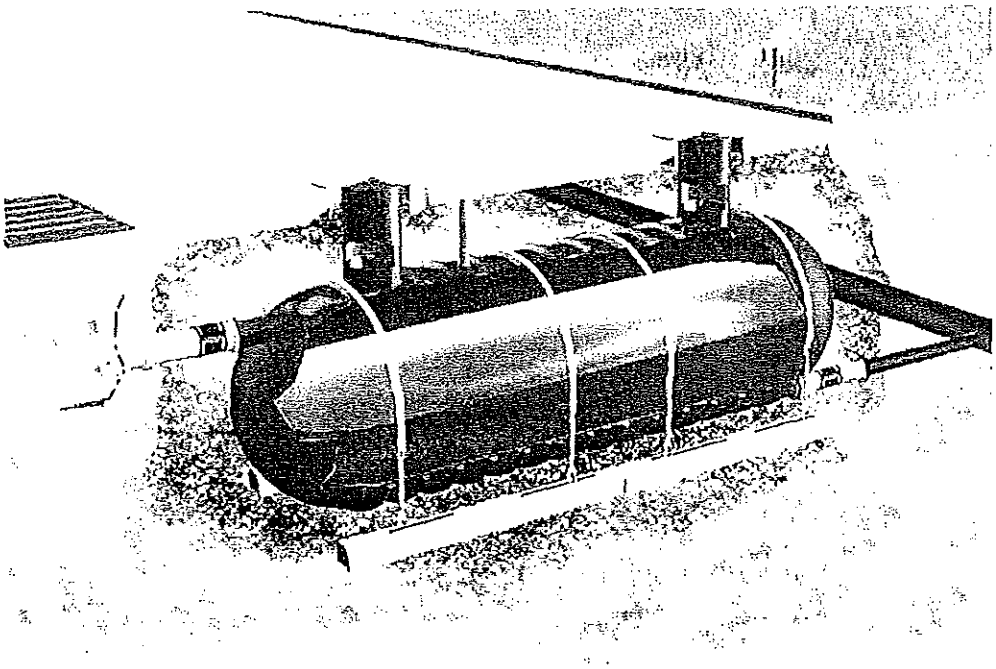
Fiberglass Water Tanks for Stormwater Retention Applications

Changes in stormwater management are being driven from two directions — environmental concerns and land costs. To address the groundwater contamination or flooding that can occur when stormwater runs directly into sewer systems, new regulations in many communities require a specific retention time before allowing stormwater to run into the drainage system.

Traditionally, a retention pond has been used to meet this requirement. One of the major benefits of using an underground water tank for stormwater retention is that it allows developers and property owners to make better use of the property while simultaneously meeting retention-in-time requirements and protecting the environment. With property values high and parking space limited at many commercial sites, this is a significant advantage to property owners. In addition, a Xerxes tank is available nationwide and in a variety of sizes.

A Xerxes stormwater retention tank has all the usual advantages of an underground fiberglass tank. It is lightweight and, therefore, easy to install. It is watertight and can be purchased to be testable for watertightness. It is corrosion-resistant, thus easy to maintain. It is H-20 axle-load rated, which means it is ideally suited for use beneath parking lots. When a higher level of stormwater treatment is necessary, a Xerxes underground oil/water separator is a superior option. Xerxes has a variety of fiberglass products that meet the ever-changing needs of customers for stormwater retention.





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Other Common Applications for a Xerxes Fiberglass Water Tank

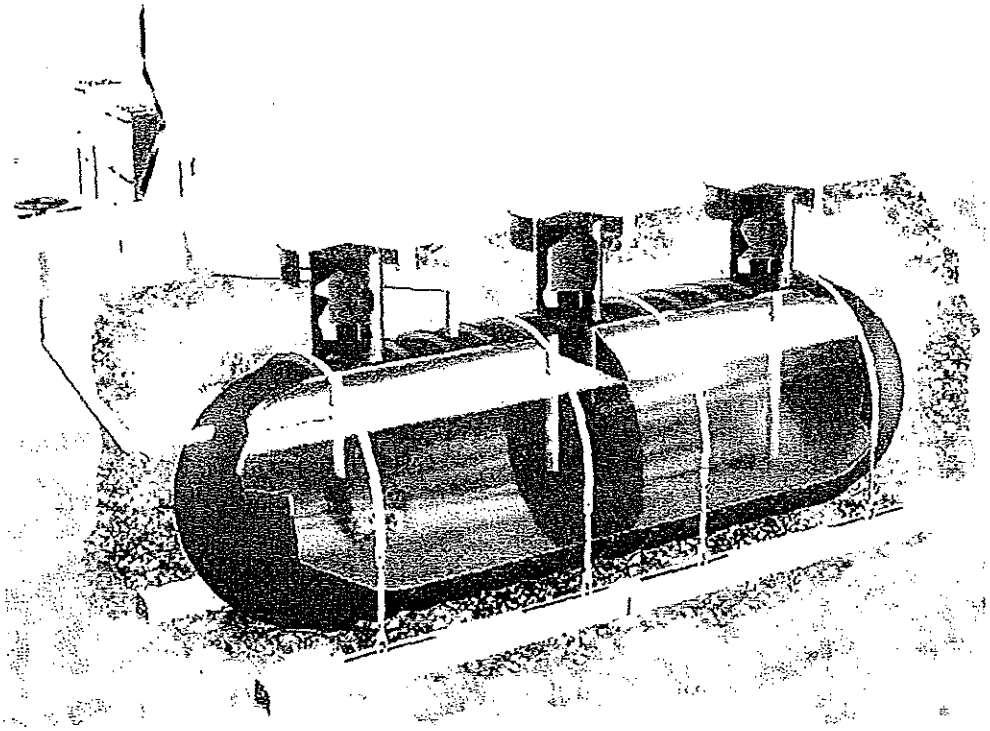
In addition to these uses of a Xerxes water tank — for potable water, fire protection water and stormwater retention — a fiberglass water tank is a superior choice for numerous other water applications. Examples of the flexibility of Xerxes water tanks is that they can be designed and manufactured for such diverse applications as field-irrigation water, rainwater collection, livestock and wildlife water supplies, emergency water supplies and gray water (for example, residential dish washing water, laundry water and bath water). Again, whatever a customer's water tank needs, a Xerxes water tank can be designed and manufactured to meet that particular application.

In addition to the specific types of water tanks outlined in this brochure, Xerxes also manufacturers tanks for other water and wastewater applications, oil/water separators with enclosures that can reduce the oil content of stormwater runoff to 10 ppm, grease traps commonly used in commercial kitchen applications and a wide variety of septic tanks that are increasingly popular in on-site wastewater systems. (Contact your Xerxes sales representative to obtain Xerxes sales literature on these specific products.)

Xerxes has a proven record of innovative design and a quality-driven manufacturing process at its network of plants across the country. This results in a Xerxes tank that is high quality and competitively priced. A Xerxes water tank has the added benefit that it can be removed, recertified and relocated. These features make a Xerxes tank a cost-effective option with expanded value for an initial investment.

Typical Water Applications

- National and state parks
- Housing developments
- Schools
- Resorts
- Campgrounds
- Emergency water supplies
- Rural properties
- Rest areas
- Truck stops
- Casinos
- Water recirculation systems
- Large private properties
- Livestock feeding operations
- Residential cisterns
- Car washes



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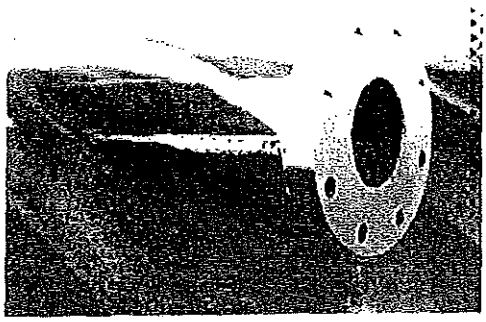
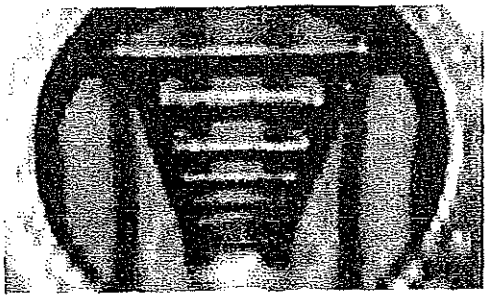
Optional Tank Accessories to Fit a Variety of Water Applications

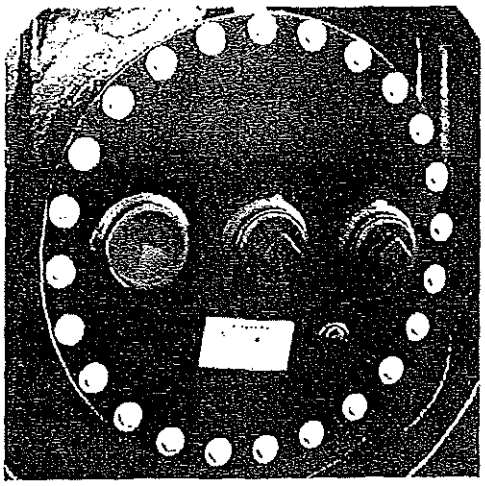


As the demand for Xerxes tanks expands into ever growing types of water applications, the need for specific accessories to complement these tanks expands as well. A goal at Xerxes has always been to meet the challenge of a constantly changing market by meeting the functional requirements of system designers and owners. Xerxes meets that challenge by developing and manufacturing a wide — and growing — range of water tank accessories such as those listed on this page.

In some cases, Xerxes products that are commonly used in the petroleum industry, such as FRP hold down straps and prefabricated concrete deadmen, have direct application in water tank system designs. In other cases, Xerxes has designed products specifically for use as water tank accessories, such as baffles/partition walls, access risers, pump platforms and anti vortex plates (to name just a few). Together, these products provide solutions for the needs of the water storage industry.



One example of a cost saving innovation introduced by Xerxes is the large diameter tank bottom sump, which Xerxes designed to eliminate the need and expense of a separate lift station when full use of a tank's capacity is necessary. The Xerxes bottom sump provides that requirement while at the same time eliminating a potential source of leakage in the piping between a lift station and tank.



Whether a customer's particular water storage need is met by the full range of complementary accessories now available, or by a unique solution Xerxes develops for a specific customer requirement, Xerxes works diligently with customers and the industry to continue to offer solutions to a host of water storage needs.

Optional Water Tank Accessories

- FRP manways (22-inch, 30 inch and 36-inch in diameter)
- FRP manway extensions (variable length)
- FRP or PVC drop/fill tubes
- FRP ladders
- Internal pump platforms
- FRP anti-vortex plates
- Flanged FRP nozzles
- Threaded FRP or steel fittings
- Large diameter bottom sumps
- Internal baffles/Partition walls
- Hinged and lockable lids
- FRP hold-down straps
- Concrete deadmen

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Single-Wall Tank Chart

Nominal Capacity (gallons)	Actual Capacity (gallons)	Tank Length	Shipping Weight (pounds)	Number of Hold-Down Straps Required
4-Foot-Diameter Tanks				
600	602	6'-11 7/8"	500	2
1,000	1,009	11'-3 7/8"	700	2
1,500	1,449	16'-0"	1,000	2
6-Foot-Diameter Tanks				
1,500	1,779	10'-7 1/4"	800	2
2,000	2,376	13'-5 3/4"	1,000	2
3,000	2,973	16'-4 1/4"	1,200	2
4,000	4,131	21'-11 1/8"	1,600	2
5,000	5,064	26'-5"	1,900	4
6,000	5,960	30'-8 3/4"	2,200	4
8-Foot-Diameter Tanks				
2,000	2,169	9'-1/2"	900	2
3,000	3,271	12'-3"	1,200	2
4,000	4,218	15'-1/2"	1,400	2
5,000	5,165	17'-8 1/2"	1,700	2
6,000	6,084	20'-6 1/2"	2,000	2
7,000	6,946	23'-1"	2,200	4
8,000	7,950	26'-1/2"	2,500	4
9,000	8,869	28'-9"	2,700	4
10,000	9,816	31'-6 1/2"	3,000	4
11,000	10,763	34'-4"	3,200	4
12,000	11,682	37'-1/2"	3,500	4
13,000	13,081	41'-2"	4,000	6
14,000	14,028	43'-11 1/2"	4,200	6
15,000	14,975	46'-9"	4,500	6
10-Foot-Diameter Tanks				
10,000	10,563	21'-5 1/4"	3,200	4
11,000	11,364	22'-9 3/4"	3,400	4
12,000	12,068	24'-1/4"	3,600	4
13,000	12,966	25'-6 3/4"	3,800	4
14,000	13,767	26'-11 1/4"	4,000	4
15,000	15,248	29'-5 3/4"	4,500	4
20,000	20,055	37'-6 3/4"	5,700	6
22,000	22,580	42'-3/4"	6,600	8
25,000	25,763	47'-6 3/4"	7,900	8
30,000	30,590	55'-9 3/4"	9,400	10
35,000	35,397	64'-3/4"	10,500	12
40,000	41,004	73'-8 1/4"	12,100	14
12-Foot-Diameter Tanks				
20,000	20,781	29'-4"	9,200	6
25,000	25,541	35'-7"	10,600	8
30,000	31,253	43'-1"	12,500	10
35,000	36,013	49'-4"	13,900	12
40,000	39,821	54'-4"	15,000	12
48,000	48,389	65'-7"	17,700	18
50,000	50,293	68'-1"	18,300	18

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Guide Specifications – Single-Wall FRP Tanks for Water Use

Short Form:

The contractor shall provide a single wall fiberglass reinforced plastic (FRP) underground storage tank as shown on the drawings. Sizes and fittings shall be as shown. The tank shall be a fiberglass tank as manufactured by Xerxes Corporation.

Tank shall be tested and installed according to the Xerxes Installation Manual and Operating Guidelines in effect at time of installation.

Long Form:

Part I: General

1.01 Quality Assurance

A. Acceptable Manufacturer: Xerxes Corporation

B. Governing Standards, as applicable:

1. Tank manufacturer shall be in the business of manufacturing tanks to Underwriters Laboratories, Inc. (UL) Standard 1316.

2. Tank manufacturer shall be in the business of manufacturing tanks with the NSF Standard 61 listing.

3. Tank manufacturer shall be in the business of manufacturing tanks conforming to the requirements of ANSI/AWWA D120-02 Thermosetting Fiberglass Reinforced Plastic Tanks.

Part II: Products

2.01 Single-Wall Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks:

A. Loading Conditions — Tank shall meet the following design criteria:

1. Internal Load — Tank shall be designed to withstand a 5 psig air pressure test with 5:1 safety factor. When tank is designed for on site testing, contractor shall individually test tank for leakage prior to installation. Maximum test pressure is 5 psig (3 psig for a 12' diameter tank).

2. Vacuum Test — Tanks 10' diameter tank and smaller shall be designed to withstand a vacuum test to 11.5" of mercury.

3. Surface Loads — Tank shall withstand surface H-20 axle loads when properly installed according to tank manufacturer's current Installation Manual and Operating Guidelines.

4. External Hydrostatic Pressure — Tank shall be capable of being buried in ground with 7' of overburden over the top of the tank, the hole fully flooded and a safety factor of 5:1 against general buckling.

5. Tank shall support accessory equipment — such as internal pump platforms, drop/fill tubes, submersible pumps and ladders — when installed according to tank manufacturer's current Installation Manual and Operating Guidelines.

B. Product Storage:

1. Tank shall be capable of storing water products with specific gravity up to 1.1.

2. Tank shall be vented to atmospheric pressure.

3. Tank shall be capable of storing products identified in the manufacturer's current standard limited warranty.

C. Materials:

1. Tank shall be manufactured with 100% resin and glass fiber reinforcement. No sand fillers.

2. The laminate materials used in the internal coating system of a potable water tank shall conform to the requirements of NSF Standard 61.

D. Tank Dimensions (Refer to Xerxes literature on gallonage.):

1. Tank shall have nominal capacity of _____ gallons.
2. Tank shall have nominal outside diameter of _____ feet.
3. Tank shall have approximate overall length of _____ feet and _____ inches.

2.02 Accessories

A. Optional Anchor Straps:

1. Straps shall be FRP anchor straps as supplied by tank manufacturer.

2. Number and location of straps shall be specified in current literature by tank manufacturer.

B. Optional Manways (required for potable water tanks):

1. All manways shall be flanged and 22" I.D., complete with gasket, bolting hardware and cover. (30" and 36" I.D. manways are also available on certain larger tanks)

2. Location is shown on tank drawings.

3. Optional manway extensions shall be FRP.

C. Optional Drop/Fill Tubes:

1. Drop/fill tubes shall be FRP and shall terminate a minimum of 4" from the bottom of tank.

2. Drop/fill tubes for potable water tanks shall be manufactured with materials conforming to the requirements of NSF Standard 61 or shall be NSF listed PVC.

D. Optional Ladders:

1. Ladders shall be the standard ladder as supplied by tank manufacturer.

2. Ladders for potable water tanks shall be manufactured with materials conforming to the requirements of NSF Standard 61.

E. Optional Fittings:

1. All threaded fittings shall be constructed of carbon steel or FRP.

2. All standard threaded fittings shall be half couplings and shall be 2", 4" or 6" in diameter. Reducers are to be used for smaller sizes where shown and provided by contractor.

3. All FRP and PVC nozzles shall be flat faced and flanged, and shall conform to ANSI B16.5 150# bolting pattern.

F. Optional Internal Pump Platforms:

1. Pump platforms shall be FRP.

2. Pump platforms for potable water tanks shall be manufactured with materials conforming to the requirements of NSF Standard 61.

3. Contact tank manufacturer with pump details, such as dimensions and weight.

G. Optional Access Openings (not for use with potable water tanks):

1. FRP access openings shall be 24" or 30" in diameter.

2. PVC risers and FRP lids shall be provided by tank manufacturer for field installation on access openings.

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Guide Specifications – Single-Wall FRP Tanks for Water Use

Part III: Testing and Installation

3.01 Testing

A. Tank shall be tested according to the Xerxes Installation Manual and Operating Guidelines in effect at time of installation.

3.02 Installation

A. Contractor shall be trained by the tank manufacturer, the state or other approved agency in proper installation procedures.

B. Tank shall be installed according to the Xerxes Installation Manual and Operating Guidelines in effect at time of installation.

Part IV: Warranty

4.01 Warranty

Warranty shall be manufacturer's standard limited warranty in effect at time of purchase.

Limited Warranty
Underground Water and Potable Water Tanks

Xerxes Corporation ("Xerxes") warrants to ("Owner") that our underground storage tanks for water other than potable water, if installed, used and maintained in the United States in accordance with Xerxes' published specifications, installation instructions and operating guidelines, and all applicable laws and regulations, and limited to the storage of water, other than potable water, at temperatures not to exceed 150° F, will be free from material defects in materials and workmanship for a period of one (1) year from date of original delivery by Xerxes.

Xerxes warrants to Owner that our underground storage tanks for potable water, if installed, used and maintained in the United States in accordance with Xerxes' published specifications, installation instructions and operating guidelines, and all applicable laws and regulations, and limited to the storage of potable water:

1) Will not fail for a period of thirty (30) years from date of original delivery by Xerxes due to natural external corrosion.
2) Will not fail for a period of thirty (30) years from date of original delivery by Xerxes due to internal corrosion, provided the tank is used solely for potable water, the customer provides Xerxes with written notice of its intended use before the tank is manufactured, and the water is stored at ambient temperatures.
3) Will not fail for a period of thirty (30) years from date of original delivery by Xerxes due to structural failure (defined as spontaneous breaking or collapse caused by material defects in materials or workmanship).
4) Will meet Xerxes' published specifications and will be free from material defects in materials and workmanship for a period of one (1) year following the date of original delivery by Xerxes.

Xerxes warrants to Owner that all Xerxes manufactured accessories for potable water tanks and water tanks other than for potable water, if installed, used and maintained in the United States in accordance with Xerxes' published specifications, installation instructions and operating guidelines, and all applicable laws and regulations, will be free from material defects in materials and workmanship for a period of one (1) year following the date of original delivery by Xerxes.

If any tank is to be removed from an installation, moved to Owner's new location and is intended for active service at the new location, the tank must be recertified by Xerxes in order to maintain the warranty as originally extended. The foregoing warranty does not extend to tanks or accessories (collectively "Goods") damaged due to acts of God, war, terrorism, or failure of Goods caused, in whole or in part, by misuse, improper installation, storage, servicing, maintenance, or operation in excess of their rated capacity or contrary to their recommended use, whether intentional or otherwise, or any other cause or damage of any kind not the fault of Xerxes. Xerxes only warrants repairs or alterations performed by Xerxes or its authorized contractors. Xerxes does not warrant any product, components or parts manufactured by others.

Owner's sole and exclusive remedy for breach of warranty is limited at Xerxes' option to: (a) repair of the defective tank or accessory, (b) delivery of a replacement tank or accessory, to the point of original delivery, or (c) refund of the original purchase price. A claimant must give Xerxes the opportunity to observe and inspect the tank and accessory prior to removal from the ground or the claim will be forever barred. All claims must be made in writing within one (1) year after tank and/or accessory failure or be forever barred. THE FOREGOING WARRANTY CONSTITUTES XERXES' EXCLUSIVE OBLIGATION AND XERXES MAKES NO OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS, OR ANY SERVICE, ADVICE, OR CONSULTATION, IF ANY, FURNISHED TO OWNER BY XERXES OR ITS REPRESENTATIVES, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. THE SELLER (XERXES) UNDERTAKES NO RESPONSIBILITY FOR THE QUALITY OF THE GOODS, EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT. THE SELLER (XERXES) ASSUMES NO RESPONSIBILITY THAT THE GOODS WILL BE FIT FOR ANY PARTICULAR PURPOSE FOR WHICH YOU (OWNER) MAY BE BUYING THESE GOODS, EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT. THE REMEDIES SET FORTH IN THE ABOVE WARRANTY ARE THE ONLY REMEDIES AVAILABLE TO ANY PERSON OR ENTITY FOR BREACH OF WARRANTY OR FOR BREACH OF ANY OTHER COVENANT, DUTY, OR OBLIGATION ON THE PART OF XERXES. XERXES SHALL HAVE NO LIABILITY OR OBLIGATION TO ANY PERSON OR ENTITY FOR BREACH OF ANY OTHER COVENANT, DUTY, OR OBLIGATION UNDER THIS WARRANTY EXCEPT AS EXPRESSLY SET FORTH HEREIN. IT IS EXPRESSLY AGREED THAT THIS WARRANTY DOES NOT FAIL OF ITS ESSENTIAL PURPOSE. XERXES SHALL HAVE NO LIABILITY FOR COSTS OF INSTALLATION OR REMOVAL OF GOODS, ENVIRONMENTAL CONTAMINATION, FIRES, EXPLOSIONS, OR ANY OTHER CONSEQUENCES ALLEGEDLY ATTRIBUTABLE TO A BREACH OF WARRANTY, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES OF ANY DESCRIPTION, WHETHER ANY SUCH CLAIM OR DAMAGES BE BASED UPON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE. IN NO EVENT SHALL XERXES' TOTAL LIABILITY HEREUNDER EXCEED THE ORIGINAL PURCHASE PRICE OF THE GOODS WHICH GAVE RISE TO SUCH LIABILITY.

Consumer Notice: This warranty gives you (Owner) specific legal rights. You (Owner) may also have other rights which vary from state to state.

Effective 6/1.05

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Xerxes Manufacturing Facilities

Anaheim, CA
Phone 714.630.0012
Fax 714.632.7133

Hagerstown, MD
Phone 301.223.6933
Fax 301.223.6836

Seguin, TX
Phone 830.372.0090
Fax 830.372.0321

Tipton, IA
Phone 563.886.6172
Fax 563.886.2042

ZCL Manufacturing Facilities

Edmonton, AB
Phone 800.661.8265
Fax 780.466.6126

Drummondville, QC
Phone 800.661.8265
Fax 780.466.6126

Waverley, NS
Phone 800.661.8265
Fax 780.466.6126

Hagerstown, MD

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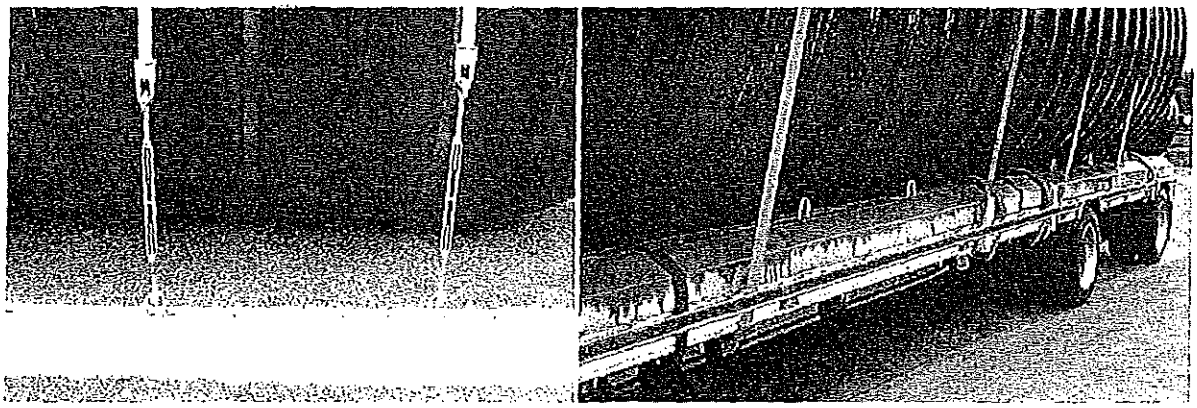
XERXES®
a ZCL company

Tank Anchoring System

An engineered solution



Xerxes recognizes that the components of a tank anchoring system can be critical to a reliable, long-term tank installation. A large percentage of today's underground tank installations are anchored, whether site conditions mandate it or not. Use of inferior components, such as improperly designed or undersized concrete deadmen, can lead to disastrous results. As a solution, we designed and began supplying each of the components essential to proper tank anchoring, prefabricated deadmen, galvanized turnbuckles and extruded fiberglass hold-down straps. Providing a safe, dependable anchoring solution is not our only objective. The Xerxes anchoring package is also designed to provide installers with a quick, easy to install package of components that expedites the overall installation. The Xerxes tank anchoring system is yet another example of product innovations that Xerxes has been offering customers for more than three decades.

Consider the following features and benefits:

Flexible Design – Xerxes prefabricated deadmen were engineered with ease of shipping and installation in mind. With their unique and patented design, which incorporates adjustable galvanized steel anchor points, installers can properly align each anchor point and hold-down strap after the tank and deadmen have been set in place.

An Engineered Product – Tank installers and owners can have the confidence that prefabricated deadmen, an often overlooked yet critical component of an anchored tank installation, have been properly engineered and sized for each tank. Xerxes precast deadmen are fabricated to meet American Concrete Institute (ACI) design standards, which establishes such things as proper steel reinforcement, concrete psi specifications and adequate cure time.

Transportation – An additional feature of Xerxes deadmen is that their geometry and dimensions allow them, in most cases, to be placed on the same shipping trailer as the tank. For installers, this means that the components of the anchoring system arrive with the tank, avoiding the potential for jobsite delays.

A Complete System – Combined, Xerxes supplied fiberglass hold-down straps, galvanized turnbuckles and prefabricated deadmen provide a complete anchoring package. With each component specifically designed and supplied by Xerxes, facility owners have the added peace-of-mind that in addition to having installed the industries' finest storage tank, they have also installed a reliable anchoring system.

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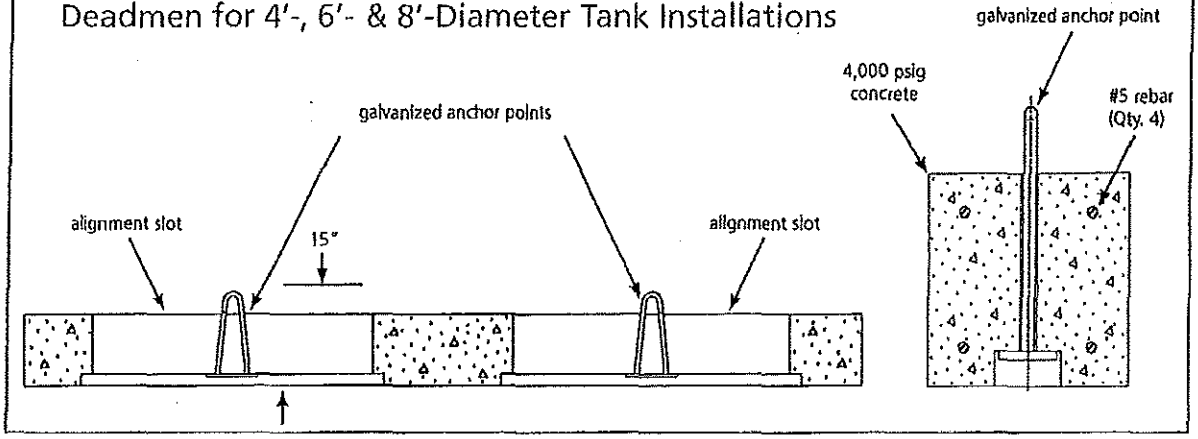
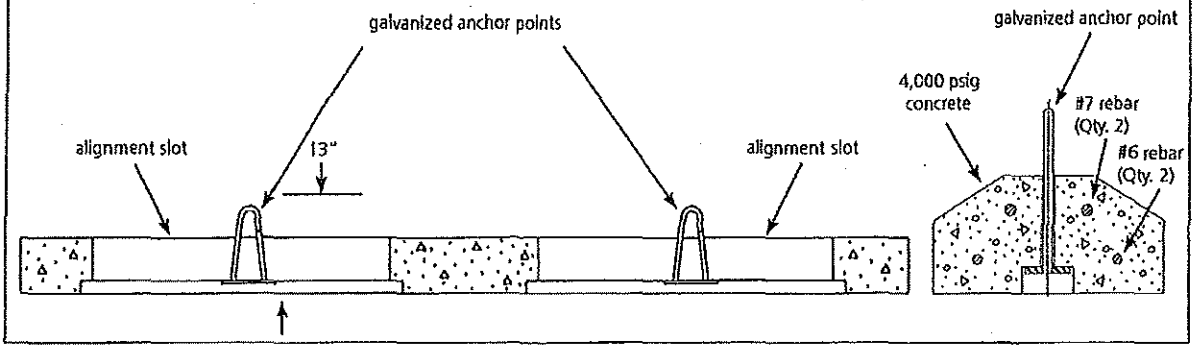
Deadmen for 4′-, 6′- & 8′-Diameter Tank Installations



Deadmen for 10′- and limited 12′- Diameter Tank Installations



Product Specifications

Deadmen for 4′-, 6′- and 8′-Diameter Tanks		
Nominal length	Nominal width x depth	Approximate weight (lbs.)
12′	12" x 12"	1,800
16′	12" x 12"	2,400
18′	12" x 12"	2,700

Deadmen for 10′- and 12′-Diameter Tanks		
Nominal length	Nominal width x depth	Approximate weight (lbs.)
14′	18" x 8 3/4"	1,900
18′	18" x 8 3/4"	2,400
22′	18" x 8 3/4"	3,000
30′	18" x 8 3/4"	5,000

Turnbuckles Jaw-to-Jaw Style
6′-Diameter Tanks 3/4" x 9" (17" closed, expanding to 26")
8′-Diameter Tanks 3/4" x 12" (20" closed, expanding to 32")
10′- and 12′-Diameter Tanks 3/4" x 18" (26" closed, expanding to 44")

General Notes:

1. Deadmen requirements may vary with tanks 25,000 gallons or larger, and/or based on the number of containment sumps, access risers and burial depth.
2. Consult the Xerxes Installation Manual and Operating Guidelines or your Xerxes sales representative for more information.

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7901 Xerxes Avenue South, Minneapolis, MN 55431 USA
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Exhibit 5

Exhibit 5
Post and Pier Construction

To supply additional evidence about floodworthiness of house and outbuilding foundations, applicant has consulted architect Kerry Shynn, structural engineer Thomas Walsh, representatives of Oregon Log Homes, and additional licensed and bonded contractors. All these sources agree that a post and pier foundation using Simpson Strong Tie attachments will meet or exceed requirements for construction in flood-prone areas.

Simpson Strong Ties are engineered attachment devices designed to meet the demands of building in areas subject to flooding. Used in conjunction with concrete piers, the Simpson Tie is capable of protecting against lateral and uplift forces, corrosion, and water damage possible in a flooding event.

The materials involved in this post and pier system will be rated V or VI under classifications employed by the Federal Emergency Management Agency (FEMA). For reference, FEMA describes these materials classifications as follows:

Class V Materials:

Highly resistant to floodwater damage, including damage caused by moving water. These materials can survive wetting and drying and may be successfully cleaned after a flood to render them free of most harmful pollutants. Materials in this class are permitted for partially enclosed or outside uses with essentially unmitigated flood exposure.

Class IV Materials:

Resistant to floodwater damage from wetting and drying, but less durable when exposed to moving water. These materials can survive wetting and drying and may be successfully cleaned after a flood to render them free of most harmful pollutants. Materials in this class may be exposed to and/or submerged in floodwaters in interior spaces and do not require special waterproofing protection.

For more information, see FEMA, *Flood Damage-Resistant Materials Requirements*, Technical Bulletin 2, p 4.

Post and pier construction has been used extensively and with success along the Deschutes River. Three cabins within 500' of subject parcel are constructed using post and pier construction identical to Simpson Strong Ties products.

Applicant consulted the following documents in preparing this summary:

- ASCE (American Society of Civil Engineers), *Minimum Design Loads for*

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Buildings and Other Structures, ASCE Standard ASCE 7-10 (2010).

- FEMA, *Flood Damage-Resistant Materials Requirements.* Technical Bulletin 2 (2010).
- Bowles, J.E., *Foundation Analysis and Design,* 5th Ed. New York: McGraw-Hill (1986).
- International Code Council, *International Building Code,* section ICC. 2011a (2012).
- International Code Council, *International Residential Code for One and Two Family Residences,* ICC. 2011b (2012).

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ICC EVALUATION SERVICE
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ESR-2604

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DIVISION: 06 00 00—WOOD, PLASTIC AND COMPOSITES
Section: 06 05 23—Wood, Plastic, and Composite Fastenings

REPORT HOLDER:

SIMPSON STRONG-TIE COMPANY INC.
5956 WEST LAS POSITAS BOULEVARD
PLEASANTON, CALIFORNIA 94588
(800) 925-5099
www.strongtie.com

EVALUATION SUBJECT:

SIMPSON STRONG-TIE® COLUMN CAPS FOR WOOD CONSTRUCTION

1.0 EVALUATION SCOPE

Compliance with the following codes:

- 2012, 2009 and 2006 *International Building Code®* (IBC)
- 2012, 2009 and 2006 *International Residential Code®* (IRC)

Property evaluated:

Structural

2.0 USES

The Simpson Strong-Tie® CC/ECC column caps (Table 1) and the CCQ/ECCQ column caps (Table 2) are used to connect wood beams to wood posts and timbers in engineered applications in accordance with Section 2304.9.3 of the IBC or Section R301.1.3 of the IRC. The AC/ACE post caps (Table 3), LPCZ post caps (Table 4), PC/EPC post caps (Table 5), and the BC/BCS post caps (Table 6) are used to provide a positive connection between post-and-beam construction used to support wood framing members to resist uplift forces and lateral displacement of the beam in accordance with Section 2304.9.7 of the IBC and Section R502.9 of the IRC.

3.0 DESCRIPTION

3.1 CC/ECC Column Caps:

The CC3$^1/_4$, ECC3$^1/_4$, CC4, ECC4, CC6 and ECC6 are fabricated from two No. 7 gage steel straps factory welded to a No. 7 gage steel U-shaped channel, where $^3/_{16}$-inch-thick (4.8 mm) by 2$^1/_2$-inch-long (63.5 mm) fillet welds are located on one side of each strap attached to the U-channel. All other CC/ECC column caps are fabricated from two No. 3 gage steel straps factory welded to a No. 3 gage steel U-shaped channel, where $^1/_4$-inch-thick (6.4 mm) by 2$^1/_2$-inch-long (63.5 mm) fillet welds are located on one side of each strap attached to the U-channel. Column caps with fillet welds on both sides of each strap are available. The ECC column caps are designed for use at beam ends. See Table 1 for column cap models, dimensions, required quantity and diameter of bolts, and allowable loads. See Figure 1 for a drawing of a typical CC column cap connector and the ECC44 end column connector.

3.1.1 CCQ/ECCQ Quick Drive Column Caps: The CCQ3, ECCQ3, CCQ4, ECCQ4 CCQ6, and ECCQ6 are fabricated from two No. 7 gage steel straps factory welded to a No. 7 gage steel U-shaped channel, where $^3/_{16}$-inch-thick (4.8 mm) by 2$^1/_2$-inch-long (63.5 mm) fillet welds are located on one side of each strap attached to the U-channel. The CCQ5, ECCQ5, CCQ7, and ECCQ7 column caps are fabricated from two No. 3 gage steel straps factory welded to a No. 3 gage steel U-shaped channel, where $^1/_4$-inch-thick (6.4 mm) by 2$^1/_2$-inch-long (63.5 mm) fillet welds are located on one side of each strap attached to the U-channel. Column caps with fillet welds on both sides of each strap are available. The ECCQ column caps are used to connect the end of a beam to a post. See Table 2 for column cap models, dimensions, required quantity of SDS $^1/_4$ x 2$^1/_2$ wood screws, and allowable loads. See Figure 2 for a drawing of a CCQ46-SDS2.5 column cap, a typical installation of a CCQ46-SDS2.5 column cap, and of an ECCQ46-SDS2.5 end column cap connector.

3.1.2 AC/ACE Post Caps: The AC and ACE are two-piece post caps fabricated from No. 18 gage galvanized steel. The AC post caps must be used in pairs and in locations where the supported beam is continuous over the wood post. ACE post caps are used to connect the end of a beam to a post. See Table 3 for dimensions, minimum (MIN) and maximum (MAX) fastener schedules, and allowable uplift and lateral loads corresponding to the minimum and maximum fastener schedules. See Figure 3a for a drawing of a typical AC post cap, and Figure 3b for a drawing of a typical installation of an ACE post cap showing the "left" and "right" pieces of the post cap assembly.

3.1.3 LPC Light Post Caps: The LPC6 and LPC4 post caps are two-piece post caps fabricated from No. 16 gage and No. 18 gage galvanized steel respectively. The LPC post caps must be used in pairs and in locations where the supported beam is continuous over the wood post. The LPC post caps are designed to be used with wood beams having a width less than the supporting wood post, and

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can connect continuous beams or the end of beams to a post provided the required nails are installed. Both LPC post caps described in this report have a model designation ending with the letter Z, indicating they have a G185 zinc coating in accordance with ASTM A653. See Table 4 for the connector width for the supporting wood post, required fasteners, and allowable uplift and lateral loads. See Figure 4 for a drawing of a typical LPC post cap connector, and a typical installation where the supported wood beam is continuous over the wood post.

3.1.4 PC/EPC Post Caps: The PC and EPC post caps are one-piece connectors. PC44-16 (EPC44-16), PC26-16 (EPC26-16), PC48-16 (EPC48-16), PC64-16 (EPC64-16), and the PC66-16 (EPC66-16) are fabricated from No. 16 gage galvanized steel, and all of the other PC and EPC post caps are fabricated from No. 12 gage galvanized steel. The EPC post caps are used to connect the end of a beam to a post. See Table 5 for model numbers, post cap dimensions, required fasteners, and allowable uplift and lateral loads. See Figure 5 for drawings of typical PC and EPC post caps, and a drawing of a typical installation of a PC post cap.

3.1.5 BC/BCS Post Caps: The BC/BCS post caps are one-piece connectors fabricated from No. 18 gage galvanized steel. The BCS2-2/4 post cap is designed for the connection of double 2x's to a nominally 4-inch-wide post, and the BCS2-3/6 post cap is designed for the connection of triple 2x's to a nominally 6-inch-wide post. The BC/BCS post caps are designed to be used with built-up wood beams having a width less than the post width, and can connect continuous beams or the end of beams to a post provided the required nails are installed. See Table 6 for model numbers, post cap dimensions, required fasteners, and allowable uplift and lateral loads. See Figure 6 for drawings of a BC4 post cap and a BCS2-2/4 post cap, and a drawing of a typical installation of a BCS2-2/4 post cap.

3.2 Materials:

3.2.1 Steel: The galvanized connectors described in this report are manufactured from galvanized sheet steel complying with ASTM A653, SS designation, Grade 33, with a minimum specified yield strength, F_y, of 33 ksi and tensile strength, F_u, of 45 ksi. The CC/ECC and CCQ/ECCQ column cap connectors are manufactured from steel complying with ASTM A1011, SS designation, Grade 33, with minimum specified yield strength, F_y, of 52 ksi and tensile strength, F_u, of 45 ksi and a painted finish. Base-metal thicknesses for the connectors in this report are as follows:

NOMINAL THICKNESS (Gage)	MINIMUM BASE METAL THICKNESS (Inches)
No. 3[1]	0.2285
No. 7[1]	0.1705
No. 12[1]	0.0955
No. 12[2]	0.0975
No. 16[2]	0.0555
No. 18[2]	0.0445

For SI: 1 inch = 25.4 mm.

[1]Base-metal thickness for steel conforming to ASTM A1011.
[2]Base-metal thickness for steel conforming to ASTM A653.

Some connectors (designated with a model number ending with Z) are available with a G185 zinc coating specification in accordance with ASTM A653. Some models (designated with a model number ending with HDG) are available with a hot-dip galvanization, also known as "batch" galvanization, in accordance with ASTM A123, with a minimum specified coating weight of 2.0 ounces of zinc per square foot of surface area (610 g/m^2), total for both sides. Model numbers in this report do not include the Z or HDG ending (except for Table 4), but the information shown applies. The lumber treater and the holder of this report (Simpson Strong-Tie Company) should be contacted for recommendations on the appropriate coating or material to specify for use of the steel connectors in contact with the specific proprietary preservative treated or fire retardant treated lumber.

3.2.2 Wood: Wood members with which the connectors are used must be either sawn lumber or engineered lumber having a minimum specific gravity of 0.50 (minimum equivalent specific gravity of 0.50 for engineered lumber), and having a maximum moisture content of 19 percent (16 percent for engineered lumber) except as noted in Section 4.1. The thickness of the supporting wood member must be equal to or greater than the length of the fasteners specified in the tables in this report, or as required by wood member design, whichever is greater. For installation in engineered wood members, minimum allowable nail spacing and end and edge distances, as specified in the applicable evaluation report for the engineered wood product, must be met.

3.2.3 Fasteners: Nails used with connectors described in this report must comply with the material requirements, physical properties, tolerances, workmanship, protective coating and finishes, certification, and packaging and package marking requirements specified in ASTM F1667. The nails must have the following minimum fastener dimensions and bending yield strengths (F_{yb}):

FASTENER	SHANK DIAMETER (Inches)	NAIL LENGTH (Inches)	F_{yb} (psi)
10d	0.148	3	90,000
16d	0.162	3 1/2	90,000

For SI: 1 inch = 25.4 mm, 1 psi = 6.895 kPa.

At a minimum, bolts must comply with ASTM A36 or A307. SDS screws must comply with ESR-2236.

Nails and bolts used in contact with preservative treated or fire retardant treated lumber must comply with Section 2304.9.5 of the IBC, Section R317.3 of the 2012 and 2009 IRC or Section R319.3 of the 2006 IRC, as applicable. SDS screws used in contact with preservative-treated or fire-retardant-treated lumber must, as a minimum, comply with ESR-2236. For use with treated lumber, the lumber treater or this report holder (Simpson Strong-Tie Company), or both, should be contacted for recommendations on the appropriate coating or material to specify for the fasteners as well as the connection capacities of fasteners used with the specific proprietary preservative treated or fire retardant treated lumber.

4.0 DESIGN AND INSTALLATION

4.1 Design:

The tabulated allowable loads shown in the product tables of this report are based on Allowable Stress Design (ASD) and include the load duration factor, C_D, corresponding with the applicable loads in accordance with the National Design Specification for Wood Construction and its supplement (NDS).

Tabulated allowable loads apply to products connected to wood used under dry conditions and where sustained temperatures are 100°F (37.8°C) or less. When products are installed to wood having a moisture content greater than 19 percent (16 percent for engineered wood

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products), or where wet service is expected, the allowable loads must be adjusted by the wet service factor, C_M, specified in the NDS for dowel-type fasteners. When connectors are installed in wood that will experience sustained exposure to temperatures exceeding 100°F (37.8°C), the allowable loads in this report must be adjusted by the applicable temperature factor, C_t, specified in the NDS. Connected wood members must be analyzed for load-carrying capacity at the connection in accordance with the NDS.

4.2 Installation:

Installation of the connectors must be in accordance with this evaluation report and the manufacturer's published installation instructions. In the event of a conflict between this report and the manufacturer's published installation instructions, this report governs.

5.0 CONDITIONS OF USE

The Simpson Strong-Tie connectors described in this report comply with, or are suitable alternatives to what is specified in, those codes listed in Section 1.0 of this report, subject to the following conditions:

5.1 The connectors must be manufactured, identified and installed in accordance with this report and the manufacturer's published installation instructions. A copy of the instructions must be available at the jobsite at all times during installation.

5.2 Calculations showing compliance with this report must be submitted to the code official. The calculations must be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed

5.3 Adjustment factors noted in Section 4.1 and the applicable codes must be considered, where applicable.

5.4 Connected wood members and fasteners must comply, respectively, with Sections 3.7.2 and 3.7.3 of this report.

5.5 Use of connectors with preservative treated or fire retardant treated lumber must be in accordance with Section 3.7.1 of this report. Use of fasteners with preservative treated or fire retardant treated lumber must be in accordance with Section 3.7.3 of this report.

5.6 Welded connectors are manufactured under a quality control program with inspections by Benchmark Holdings L.L.C. (AA-660).

6.0 EVIDENCE SUBMITTED

Data in accordance with the ICC-ES Acceptance Criteria for Joist Hangers and Similar Devices (AC13), dated October 2010 (editorially revised December 2011).

7.0 IDENTIFICATION

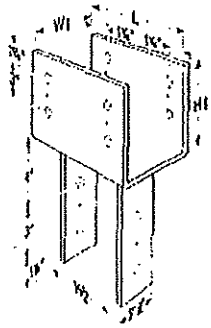
The products described in this report are identified with a die-stamped label indicating the name of the manufacturer (Simpson Strong-Tie), the model number, and the number of an index evaluation report (ESR-2523) that is used as an identifier for the products recognized in this report. Additionally, the factory-welded connectors manufactured in the United States and Canada are identified with the acronym of the inspection agency (BMH)

TABLE 1—CC AND ECC SERIES COLUMN CAPS

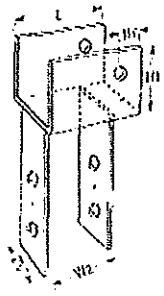
MODEL NO.	COLUMN CAP DIMENSIONS (inches)					BOLTS[1] (Quantity–Diameter)		ALLOWABLE LOADS[2,3,4] (lbs)		
								CC	CC	ECC
	Width for Beam (W_1)	Width for Post (W_2)	Bearing Length for Beam (L)		U-Channel Height for Beam (H_1)			Uplift[5,6,7]	Download[8,9,10,11]	
			CC	ECC		Beam	Post	C_D = 1.6	C_D = 1.0	
CC3 1/4-4	3 1/4	3 5/8	11	7 1/2	6 1/2	4 – 5/8	2 – 5/8	3,640	16,980	6,125
CC3 1/4-6		5 1/2	11	7 1/2	6 1/2	4 – 5/8	2 – 5/8	3,640	19,250	9,625
CC44	3 5/8	3 5/8	7	5 1/2	4	2 – 5/8	2 – 5/8	1,465	15,310	7,655
CC46		5 1/2	11	8 1/2	6 1/2	4 – 5/8	2 – 5/8	2,795	24,060	12,030
CC5 1/4-4	5 1/4	3 5/8	13	9 1/2	8	4 – 3/4	2 - 3/4	7,565	26,635	10,045
CC5 1/4-6		5 1/2	13	9 1/2	8	4 – 3/4	2 - 3/4	7,530	28,190	15,785
CC5 1/4-8		7 1/2	13	9 1/2	8	4 – 3/4	2 - 3/4	7,530	37,310	21,525
CC64	5 1/2	3 5/8	11	7 1/2	6 1/2	4 – 5/8	2 – 5/8	4,040	28,585	12,030
CC66		5 1/2	11	7 1/2	6 1/2	4 – 5/8	2 – 5/8	4,040	30,250	18,905
CC68		7 1/2	11	9 1/2	6 1/2	4 – 5/8	2 – 5/8	4,040	37,810	25,780
CC76	6 7/8	5 1/2	13	10 1/2	8	4 – 3/4	2 - 3/4	7,525	37,125	20,790
CC77		6 7/8	13	10 1/2	8	4 – 3/4	2 – 3/4	7,525	49,140	25,515
CC78		7 1/2	13	10 1/2	8	4 – 3/4	2 – 3/4	7,525	49,140	28,350
CC86	7 1/2	5 1/2	13	10 1/2	8	4 – 3/4	2 – 3/4	7,440	41,250	23,100
CC88		7 1/2	13	10 1/2	8	4 – 3/4	2 – 3/4	7,440	54,600	31,600
CC96	8 7/8	5 1/2	13	10 1/2	8	4 – 3/4	2 – 3/4	7,510	48,125	26,950
CC98		7 1/2	13	10 1/2	8	4 – 3/4	2 – 3/4	7,510	63,700	36,750
CC106	9 1/2	5 1/2	13	10 1/2	8	4 – 3/4	2 – 3/4	7,510	52,250	29,260

For SI: 1 inch = 25.4 mm, 1 lbs = 4.45 N.

[1]ECC has one-half the tabulated beam bolts. ECC9 and ECC10 have four beam bolts. Bolt holes bored into the wood beam and post must be no less than 1/32 inch greater and no more than 1/16 inch greater than the diameter of the bolt.
[2]Tabulated allowable load must be selected based on duration of load as permitted by the applicable building code.
[3]The wood post depth must be equal to the wood beam width (W_1).
[4]If structural composite lumber posts are used, installation of the fasteners into the wide face (fasteners perpendicular to the strands/veneers) is required in order to obtain the loads listed in this report. The structural composite lumber must have an ICC-ES report that shows fastener design specific gravity equivalent of 0.50 or better.
[5]The uplift loads have been increased for wind or earthquake loading with no further increase allowed. The allowable loads must be reduced when other load durations govern.
[6]Allowable uplift loads for the CC column caps do not apply to spliced beam conditions.
[7]Allowable uplift loads assume a beam height of 11 inches to ensure minimum edge distance for the top bolts in the U-shaped channel loaded perpendicular to the grain of the wood beam.
[8]Allowable downloads are for beams that are continuous over the length (L) of the CC connector.
[9]When a spliced beam condition occurs, that is, where the ends of two beams are supported by the post and connected to the CC post cap connector, the splice must occur at the middle of the connector and the maximum allowable download for spliced beams is one half of the tabulated allowable download. When spliced beams must be connected together to transfer design tension loads (i.e., lateral loads parallel to the beams), the connection must be by means other than the column cap.
[10]Tabulated allowable download capacity is the lesser of calculated capacity based on $F_{c\perp}$ for the supported beam and the calculated capacity based on $F_{c\parallel}$ for the supporting wood post. $F_{c\perp}$ values are 560 psi and 625 psi for glulam beams and DFL beams, respectively. $F_{c\parallel}$ values are 1,550 psi for glulam beams, 1,350 psi for 4-inch-wide DFL (W_2 dimension) posts, and 1,000 psi for 5-inch-wide and larger DFL (W_2 dimension) posts.
[11]Allowable downloads may not be increased for short-term loading.



CC Column Cap



ECC44 Column Cap

FIGURE 1—CC and ECC COLUMN CAPS

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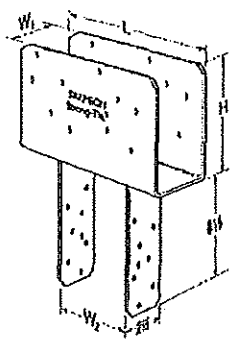
TABLE 2—CCQ AND ECCQ SERIES COLUMN CAPS

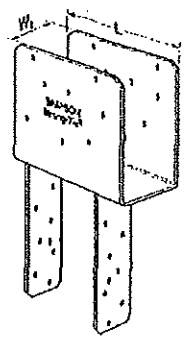
MODEL NO.	COLUMN CAP DIMENSIONS (inches)					QUANTITY OF SDS 1/4 x 2 1/2 SCREWS[1]		ALLOWABLE LOADS[2,3,4,5] (lbs)			
	Width for Beam (W_1)	Width for Post (W_2)	Bearing Length for Beam (L)		U-Channel Height for Beam (H_1)			CCQ	ECCQ[6]	CCQ	ECCQ[6]
			CCQ	ECCQ		Into Beam	Into Post	Uplift[6,7,8]		Download[9,10,11,12]	
								C_D=1.6	C_D=1.6	C_D=1.0	
CCQ3-4-SDS2.5	3 1/4	3 5/8	11	8 1/2	7	16	14	5,680	3,695	16,980	6,125
CCQ3-6-SDS2.5		5 1/2						5,680	3,695	19,250	9,625
CCQ44-SDS2.5	3 5/8	3 5/8	11	8 1/2	7	16	14	5,680	4,040	19,020	7,655
CCQ46-SDS2.5		5 1/2						7,145	4,040	24,065	12,030
CCQ48-SDS2.5		7 1/2						7,145	4,040	24,065	16,405
CCQ54-SDS2.5	5 1/4	3 5/8	11	8 1/2	7	16	14	5,680	4,040	26,635	10,045
CCQ56-SDS2.5		5 1/2						7,245	5,535	28,190	15,785
CCQ58-SDS2.5		7 1/2						7,245	5,535	31,570	21,525
CCQ64-SDS2.5	5 1/2	3 5/8	11	8 1/2	7	16	14	5,680	4,040	28,585	12,030
CCQ66-SDS2.5		5 1/2						7,145	4,040	30,250	18,905
CCQ68-SDS2.5		7 1/2						7,145	4,040	37,815	25,780
CCQ74-SDS2.5	6 7/8	3 5/8	11	8 1/2	7	16	14	5,680	4,040	33,490	13,230
CCQ76-SDS2.5		5 1/2						7,245	5,535	37,125	20,790
CCQ77-SDS2.5		6 7/8						7,245	5,535	41,580	25,515
CCQ78-SDS2.5		7 1/2						7,245	5,535	41,580	28,350

For SI: 1 inch = 25.4 mm, 1 lbs = 4.45 N.

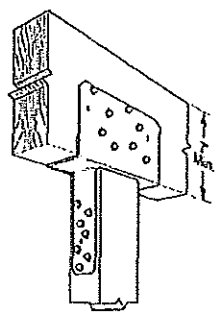
[1]The model number for the SDS1/4x21/2 is SDS25250 (see ESR-2236). The screws are included as components of the CCQ/ECCQ column caps.
[2]Tabulated allowable load must be selected based on duration of load as permitted by the applicable building code.
[3]The wood post depth must be equal to the wood beam width (W_1).
[4]If structural composite lumber posts are used, installation of the fasteners into the wide face (fasteners perpendicular to the strands/veneers) is required in order to obtain the loads listed in this report. The structural composite lumber must have an ICC-ES report that shows fastener design specific gravity equivalent of 0.50 or better.
[5]ECCQ uses 14–SDS 1/4 x 2 1/2 screws into the beam and 14–SDS 1/4 x 2 1/2 screws into the post.
[6]The uplift loads have been increased for wind or earthquake loading with no further increase allowed. The allowable loads must be reduced when other load durations govern.
[7]Allowable uplift loads for the CCQ column caps do not apply to spliced beam conditions.
[8]Allowable uplift loads assume a minimum beam height of 7 inches to ensure minimum edge distance for the top SDS screws in the U-shaped channel loaded perpendicular to the grain of the wood beam.
[9]Allowable downloads for beams that are continuous over the length (L) of the CCQ connector.
[10]When a spliced beam condition occurs, that is, where the ends of two beams are supported by the post and connected to the CCQ post cap connector, the splice must occur at the middle of the connector and the maximum allowable download for spliced beams is one half of the tabulated allowable download. When spliced beams must be connected together to transfer design tension loads (i.e., lateral loads parallel to the beams), the connection must be by means other than the column cap.
[11]Tabulated allowable download capacity is the lesser of calculated capacity based on $F_{c\perp}$ for the supported beam and the calculated capacity based on $F_{c\parallel}$ for the supporting wood post. $F_{c\perp}$ values are 560 psi and 625 psi for glulam beams and DFL beams, respectively. $F_{c\parallel}$ values are 1,550 psi for glulam beams, 1,350 psi for 4-inch-wide DFL (W_2 dimension) posts, and 1,000 psi for 5-inch-wide and larger DFL (W_2 dimension) posts.
[12]Allowable downloads may not be increased for short-term loading.



CCQ46SDS2.5 Column Cap



ECCQ46SDS2.5 Column Cap for End Conditions



CCQ46SDS2.5 Installation

FIGURE 2—CCQ and ECCQ COLUMN CAPS

EXHIBIT 5
PAGE 8 OF 11

TABLE 3—AC AND ACE SERIES POST CAPS

MODEL NO. [1,2]		POST CAP DIMENSIONS (Inches)		NAILS (Quantity–Type)		ALLOWABLE LOADS[3,4,5] (lbs)	
						Uplift[6]	Lateral[7]
		W	L	Into the Beam	Into the Post	C_D = 1.6	C_D = 1.6
AC4	MIN	3 9/16	6 1/2	8 – 16d	8 – 16d	1,430	715
	MAX			14 – 16d	14 – 16d	2,500	1,070
AC4R	MIN	4	7	8 – 16d	8 – 16d	1,430	715
	MAX			14 – 16d	14 – 16d	2,500	1,070
ACE4	MIN	—	4 1/2	6 – 16d	6 – 16d	1,070	715
	MAX			10 – 16d	10 – 16d	1,785	1,070
AC6	MIN	5 1/2	8 1/2	8 – 16d	8 – 16d	1,430	715
	MAX			14 – 16d	14 – 16d	2,500	1,070
AC6R	MIN	6	9	8 – 16d	8 – 16d	1,430	715
	MAX			14 – 16d	14 – 16d	2,500	1,070
ACE6	MIN	—	6 1/2	6 – 16d	6 – 16d	1,070	715
	MAX			10 – 16d	10 – 16d	1,785	1,070

For SI: 1 inch = 25.4 mm, 1 lbs = 4.45 N.

[1]"MIN" suffix to the model No. indicates that only the round holes must be filled with the quantity and type of nails specified in the table to achieve the tabulated allowable load values.
[2]"MAX" suffix to the model No. indicates that both round and triangular holes must be filled with the quantity of nails specified in the table to achieve the tabulated allowable load values.
[3]The allowable loads do not apply to spliced beams, that is, where the ends of two beams are supported by the wood post and connected to the AC post cap connector. When a spliced beam condition occurs, the splice must occur at the middle of the connector (middle of post) and the maximum allowable download for spliced beams is one half of the tabulated allowable download. A spliced beam condition occurs must be designed and detailed to transfer tension loads (i.e., tabulated allowable lateral loads) between spliced beams by means other than the column cap.
[4]Allowable uplift and lateral loads apply only for AC and ACE post cap connectors installed in pairs, as shown in Figure 3b, with each piece connected to the wood post and beam with an equal amount and type of nails.
[5]Allowable uplift and lateral loads have been increased for wind or earthquake loading with no further increase allowed. The allowable loads must be reduced when other load durations govern.
[6]Allowable uplift loads for the AC column caps do not apply to spliced beam conditions.
[7]Allowable lateral loads are parallel to the length of the supported wood beam, as shown in Figure 3b.

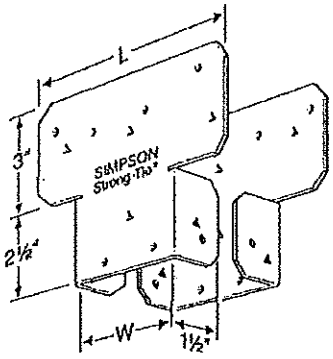


Figure 3a—AC post cap connector components

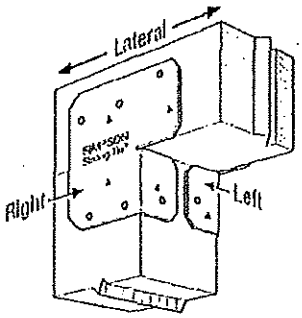


Figure 3b—Typical ACE Installation

FIGURE 3—AC AND ACE POST CAPS

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TABLE 4—LPCZ LIGHT POST CAPS[1,2]

MODEL NO.	CONNECTOR WIDTH FOR WOOD POST (Inches)	NAILS (Quantity-Type)		ALLOWABLE LOADS[3,4,5] (lbs.)	
				Uplift[6]	Lateral[7]
		Into the Beam	Into the Post	$C_D = 1.6$	$C_D = 1.6$
LPC4Z	$3^{9}/_{16}$	8–10d	8–10d	760	325
LPC6Z	$5^{9}/_{16}$	8–10d	8–10d	915	490

For SI: 1 inch = 25.4 mm, 1 lbs = 4.45 N.

[1]The LPCZ post cap is a two-piece wood-beam-to-post connector that is designed to be used with wood beams having a width less than the post width, as implied in Figure 4.
[2]The LPC4 and LPC6 models shown in the table end with the letter Z, indicating that they have a G185 zinc coating in accordance with ASTM A653.
[3]The allowable loads do not apply to spliced beams, that is, where the ends of two beams are supported by the wood post and connected to the LPC post cap connector. When a spliced beam condition occurs, the splice must occur at the middle of the connector (middle of post) and the maximum allowable download for spliced beams is one half of the tabulated allowable download. A spliced beam condition occurs must be designed and detailed to transfer tension loads (i.e., tabulated allowable lateral loads) between spliced beams by means other than the column cap.
[4]Allowable uplift and lateral loads apply only for LPC post cap connectors installed in pairs, as shown in Figure 4, with each piece connected to the wood post and beam with an equal amount and type of nails.
[5]Allowable uplift and lateral loads have been increased for wind or earthquake loading with no further increase allowed. The allowable loads must be reduced when other load durations govern.
[6]Allowable uplift loads for the LPC column caps do not apply to spliced beam conditions.
[7]Allowable lateral loads are parallel to the length of the supported wood beam, as shown in Figure 4.

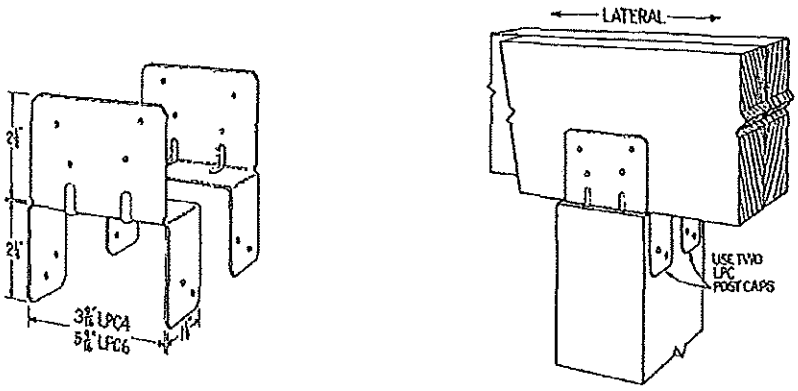


FIGURE 4—LPCZ POST CAPS

EXHIBIT 5
PAGE 10 OF 11

TABLE 5—PC AND EPC SERIES POST CAPS

MODEL NO.	POST CAP DIMENSIONS (in)					NAILS (Quantity-Type)			ALLOWABLE LOADS[1,2,3] (lbs)		
									PC and EPC	PC	EPC
	Width for Beam (W_1)	Width for Post (W_2)	Metal Flange Length			Into Wood Post	Into Wood Beam		Uplift[4,5]	Lateral[5]	
			PC & EPC	PC	EPC		PC Post Cap	EPC Post Cap	C_D = 1.6	C_D = 1.6	C_D = 1.6
			L_1	L_2	L_3						
PC44-16	3 9/16	3 9/16	2 5/8	11	7 3/8	8–16d	12–16d	8–16d	1,000	925	1,000
PC44						8–16d	12–16d	8–16d	1,700	925	1,070
PC46-16		5 1/2	2 5/8	13	9 1/4	8–16d	12–16d	8–16d	1,000	925	1,000
PC46						8–16d	12–16d	8–16d	1,700	925	1,070
PC48-16		7 1/2	2 5/8	15	11 1/4	8–16d	16 - 16d	12–16d	1,000	1,475	1,285
PC48						8–16d	16 - 16d	12–16d	1,700	2,075	1,610
PC64-16	5 1/2	3 9/16	4 9/16	11	7 3/8	8 - 16d	12–16d	8–16d	1,000	925	1,000
PC64						8–16d	12–16d	8–16d	1,700	925	1,070
PC66-16		5 1/2	4 9/16	13	9 1/4	8–16d	12–16d	12–16d	1,000	925	1,285
PC66						8–16d	12–16d	12–16d	1,700	925	1,610
PC68		7 1/2	4 9/16	15	11 1/4	8–16d	16 - 16d	12–16d	1,700	2,075	1,610
PC84	7 1/2	3 9/16	6 9/16	11	7 3/8	8–16d	12–16d	12–16d	1,700	925	1,610
PC86		5 1/2	6 9/16	13	9 1/4	8–16d	12–16d	12–16d	1,700	925	1,610
PC88		7 1/2	6 9/16	15	11 1/4	8–16d	16 - 16d	12–16d	1,700	2,075	1,610

For SI: 1 inch = 25.4 mm, 1 lbs = 4.45 N.

[1]Tabulated allowable loads must be selected based on duration of load as permitted by the applicable building code.
[2]Tabulated allowable loads for the PC44-16, PC26-16, PC48-16, PC64-16, and the PC66-16 post cap connectors, which are fabricated from No. 16 gage galvanized steel, that are less than the values assigned to the PC44, PC26, PC48, PC64, and the PC66 post cap connectors, which are fabricated from No. 12 gage galvanized steel, are the result of nail lateral values determined in accordance with the NDS.
[3]The allowable loads do not apply to spliced beams, that is, where the ends of two beams are supported by the wood post and connected to the PC post cap connector. When a spliced beam condition occurs, the splice must occur at the middle of the connector (middle of post) and the maximum allowable download for spliced beams is one half of the tabulated allowable download. A spliced beam condition occurs must be designed and detailed to transfer tension loads (i.e., tabulated allowable lateral loads) between spliced beams by means other than the column cap.
[4]Allowable uplift and lateral loads have been increased for wind or earthquake loading with no further increase allowed. The allowable loads must be reduced when other load durations govern.
[5]Allowable uplift loads for the PC column caps do not apply to spliced beam conditions.
[6]Allowable lateral loads are parallel to the length of the supported wood beam, as shown in Figure 5.

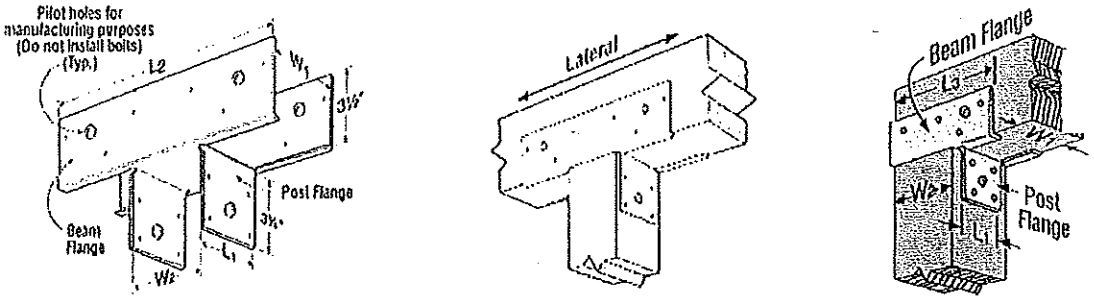


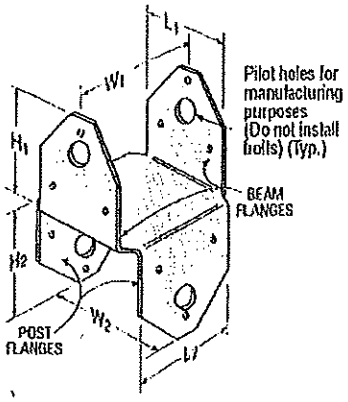
FIGURE 5—PC AND EPC POST CAPS

TABLE 6—BC AND BCS POST CAPS[1]

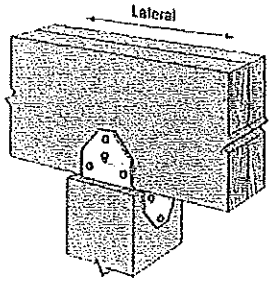
MODEL NO.	POST CAPS DIMENSIONS (In.)						NAILS[2] (Quantity-Type)		ALLOWABLE LOADS[3,4]	
	Width for Beam (W_1)	Width for Post (W_2)	Metal Flange Length		Metal Flange Height		Into the Wood Beam	Into the Wood Post	Uplift[5]	Lateral[6]
			Beam (L_1)	Post (L_2)	Beam (H_1)	Post (H_2)			C_D = 1.6	C_D = 1.6
BC4	$3^{9}/_{16}$	$3^{9}/_{16}$	$2^{7}/_{8}$	$2^{7}/_{8}$	3	3	6–16d	6–16d	980	1,000
BC46	$3^{9}/_{16}$	$5^{1}/_{2}$	$4^{7}/_{8}$	$4^{7}/_{8}$	$3^{1}/_{2}$	$2^{1}/_{2}$	12–16d	6–16d	980	1,000
BC4R	4	4	4	4	3	3	12–16d	12–16d	980	1,000
BC6	$5^{1}/_{2}$	$5^{1}/_{2}$	$4^{3}/_{8}$	$4^{3}/_{8}$	$3^{3}/_{8}$	$3^{3}/_{8}$	12–16d	12–16d	1,050	2,000
BC6R	6	6	6	6	3	3	12–16d	12–16d	1,050	2,000
BC8	$7^{1}/_{2}$	$7^{1}/_{2}$	$7^{1}/_{2}$	$7^{1}/_{2}$	4	4	12–16d	12–16d	1,800	2,000
BCS2-2/4	$3^{1}/_{8}$	$3^{9}/_{16}$	$2^{7}/_{8}$	$2^{7}/_{8}$	$2^{15}/_{16}$	$2^{15}/_{16}$	8–10d	6–10d	780	1,025
BCS2-3/6	$4^{5}/_{8}$	$5^{9}/_{16}$	$4^{3}/_{8}$	$2^{7}/_{8}$	$3^{15}/_{16}$	$2^{15}/_{16}$	12–16d	6–16d	800	1,495

For SI: 1 inch = 25.4 mm, 1 lbs = 4.45 N.

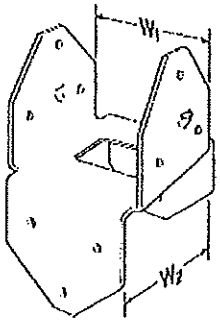
[1]The BCS2-2/4 post cap is designed for the connection of double 2x's to a nominally 4-inch-wide post, and the BCS2-3/6 post cap is designed for the connection of triple 2x's to a nominally 6-inch-wide post.
[2]The BCS has slant nail holes for nails that must be installed into the beam at a 45-degree angle and penetrate into the end grain of the supporting post. Nails must be minimum $3^{1}/_{2}$-inches long (i.e., 16d common nails).
[3]Tabulated allowable load capacities must be selected based on duration of load as permitted by the applicable building code.
[4]Spliced beams, where the ends of two beams are supported by the wood post and connected to the BC post cap connector, are not permitted. The supported wood beam must be continuous.
[5]Allowable uplift and lateral loads have been increased for wind or earthquake loading with no further increase allowed. The allowable loads must be reduced when other load durations govern.
[6]Allowable lateral loads are parallel to the length of the supported wood beam, as shown in Figure 6.



BC4 Post Cap



Typical BCS Post Cap Installation



Slant Nail Holes, typical both sides. (See footnote 2)

BCS2-2/4 Post Cap

FIGURE 6—BC AND BCS POST CAPS

Exhibit 6

EXHIBIT 6
PAGE 1 OF 3

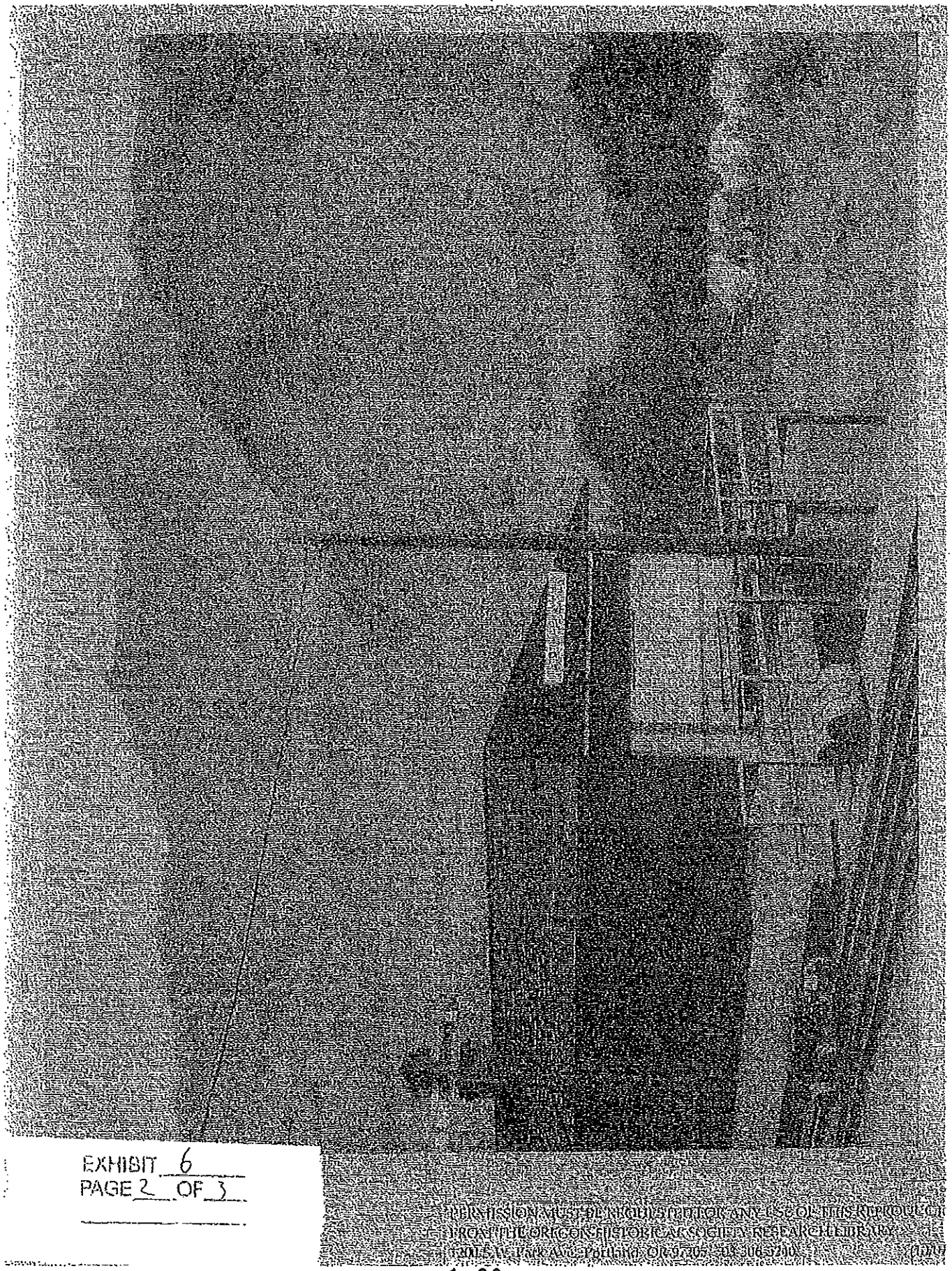


EXHIBIT 6
PAGE 2 OF 3

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EXHIBIT 4
PAGE 2 OF 2

JORDAN RAMIS PC
ATTORNEYS AT LAW

July 29, 2013

John Roberts
Planning Director
Wasco County Planning
and Development
2705 E 2nd St
The Dalles OR 97058

Re: **Access Issues**
Application of Gabriel Watson
County File No. PLAQJR-12-08-0001
Our File No. 51690-71154

EDWARD H. TROMPKE

Admitted in:
Oregon

Direct Dial
(503) 598-5532

E-mail
ed.trompke@jordanramis.com

Dear Mr. Roberts:

I am assisting Tim Ramis with certain aspects of our mutual client Gabriel Watson's pending application referenced above.

The purpose of this letter is to address concerns raised by opponents of this application related to access to the parcel of property Mr. Watson owns in the North Junction along the Deschutes River.

Inez Hartung and her former husband, Ludwig Hartung, owned large holdings of real property in the area. Mrs. Hartung was granted sole ownership through her divorce decree in June 1955, as modified in 1957, of over 88 acres of property (**Exhibit A**).

Edwin Welsh, as we understand it, performed legal services for Mrs. Hartung and, in payment of such services, Mrs. Hartung conveyed a parcel of her property to Edwin Welsh. A copy of Mrs. Hartung's Deed to Edwin Welsh, recorded on May 31, 1960, in Book 141 at Page 543, Wasco County Records, is enclosed as **Exhibit B-1**. The parcel was later enlarged by a second conveyance to Mr. Welsh by Deed recorded on May 21, 1971, under Document No. 710815 (**Exhibit B-2**).

At some time shortly after Mrs. Hartung's original conveyance to Edwin Welsh in 1960, and before the later expansion of the parcel, Mr. Welsh and the applicant's grandfather installed a "retired" caboose on the property. Mr. Erz, who worked for the railroad at that time, purchased the retired caboose from the railroad. As you are aware, Mr. Watson's grandfather

Two Centerpointe Drive, 6th Floor, Lake Oswego, OR 97035 | 503.598.7070 phone | 503.598.7373 fax | www.jordanramis.com
1499 SE Tech Center Place, Suite 380, Vancouver, WA 98683 | 360.567.3900 phone | 360.567.3901 fax | 888.598.7070 toll free

Harold Erz was a close friend of Edwin Welsh. Together Messrs. Welsh and Erz (and their families) jointly used the property with the caboose as a fishing cabin. The property has remained in the ownership of, and use by, the families since that date. See the Affidavit of Harold Erz (**Exhibit C**).

By Easement recorded November 23, 1965, under Document No. 652447 (**Exhibit D**), Mrs. Hartung granted to Edwin Welsh, his heirs, successors, administrators, and assigns a permanent easement and right of way across her property to access the property where the caboose had been installed. This Easement granted access to the property across any and all of her property, since no specific easement area is defined.

Thus, there is an easement of record back to the edge of the Hartung property, as it existed in 1965. We provide the following additional information confirming current access to the Watson property, up to the boundary of the 1965 Hartung lot.

Since at least 1988, Mr. Watson's father, and now Mr. Watson, has had joint use of a cabin located within the railroad right of way that Mr. Benson leased from the railroad (**Exhibit E**).

The cabin shared with Mr. Benson has access along the railroad right of way just north of the railroad tracks.

The roadway within railroad right of way is clearly visible on both the historic (1994) aerial black and white photograph (**Exhibit F**) on which the caboose is visible on the property and a much clearer 2013 colored photograph (**Exhibit G**) of the area. In both photos it is readily apparent that the "roadway" continues across the Hartung property to the location of the property owned by Mr. Watson.

In 2006, both Michael Watson and Gabriel Watson, together with other lessees, leased land from the railroad which also grants to lessees access along the road on the railroad's right of way (**Exhibit H**). The only caveat to that access is that the lessees cannot "cross" the railroad tracks and the roadway access, in fact, goes under the tracks at the site at the end of the railroad bridge over the Deschutes River which is readily visible on the current photo (**Exhibit G**) of the area and is also visible on the 1994 photo of the area (**Exhibit F**).

That roadway along the North Junction side of the railroad tracks is accessed by way of the Deschutes River Road, to which owners of properties accessed by virtue thereof must obtain a key. A copy of Mr. Watson's Non-Member Key Agreement is attached as **Exhibit I.**

Deschutes River Road connects the North Junction properties with the public highway as evidenced on the map (**Exhibit J-1**). The Deschutes Club Gate is located about 13.1 miles from the property where Deschutes River Road connects to public roadways at Highway 197 in Maupin, Oregon (**Exhibit J-2**). Deschutes River Road runs along the Deschutes River all the way from Maupin to the North Junction area as evidenced by the aerial photos (**Exhibit J-3, pages 1-29**).

In conclusion, Applicant has submitted written evidence of a right of access from the public highway all the way to his lot.

If there are any remaining questions regarding access to the property owned by Mr. Watson that is the subject of the captioned application, please contact me. Thank you.

Sincerely,

JORDAN RAMIS PC

Edward H. Trompke

Enclosures

cc: Gabe Watson

EXHIBIT A

BOOK 131 PAGE 202

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

INEZ N. HARTUNG,

Plaintiff,

v.

LUDWIG HARTUNG,

Defendant.

D E C R E E

No. 224-237

JUN 10 1955

BE IT REMEMBERED that on the 10th day of June, 1955, the above-entitled cause came on regularly for hearing on the default of the defendant and on the application of the plaintiff for the relief prayed for in her complaint. The plaintiff appeared in person and by William F. Bernard, one of her attorneys, the defendant did not appear. The State of Oregon appeared by the District Attorney for Multnomah County, Oregon, through one of his deputies. The plaintiff having offered due proof that the defendant is not engaged in military service, and the Court having determined from the evidence offered by the plaintiff that the plaintiff is entitled to the relief prayed for in her complaint, now, therefore, it is

ORDERED, ADJUDGED, and DECREED as follows:

The bonds of matrimony and marriage contract now and heretofore existing between Inez N. Hartung, plaintiff, and Ludwig Hartung, defendant herein be and hereby are dissolved forever.

Plaintiff is awarded the exclusive care, custody, and control of Ludwig Hartung, Jr., Sally Hartung, Bernard Hartung, and John Hartung, the four minor children of the parties.

EXHIBIT A
Page 1 of 5

Defendant shall pay plaintiff the sum of Fifty Dollars ($50) per month for the support of each of the minor children of the parties. This requirement shall cease as to any child when he attains his majority or upon order of the court whichever event occurs first.

Defendant shall pay plaintiff the sum of Fifty Dollars ($50) per month for her support and maintenance, the first payment being due within ten days from the entry of this decree.

Defendant shall pay plaintiff the sum of Two Hundred Dollars ($200) for application on her attorney's fees incurred in these proceedings, together with her actual court costs in the amount of Twenty-eight Dollars ($28).

Plaintiff, Inez N. Hartung, is awarded all of Ludwig Hartung's interest in and is the owner free of any claim, right, title, or interest of the defendant in and to the following described parcels of real property:

> Lot Fifteen (15) in Block One Hundred Eleven (111), ROSE CITY PARK, in the City of Portland, County of Multnomah, State of Oregon, which is more particularly known as 3146 N. E. 58th Avenue, Portland, Oregon.
>
> ALSO: Lots One (1) and Two (2) in the South one-half (S½) of the Southeast quarter (SE¼), except right-of-way, Section Eight (8), T. 1S S., R. 14 E., in Wasco County, Oregon, containing 38.23 acres, more or less.

Defendant shall transfer to plaintiff all of his right, title, and interest to these two parcels of real property by good and sufficient conveyance within ten days of the entry of this decree and in the event he does not execute these conveyances, then this decree shall stand in lieu thereof.

EXHIBIT A
Page 2 of 5

BOOK 131 PAGE 261

Plaintiff is awarded any right, title, interest, or claim which the defendant may have in any real or personal property in which plaintiff has a present or expectant interest.

Neither party shall marry a third person within six months after the date of the entry of this decree in the State of Oregon, any other state in the United States or any country.

Dated this 10th day of June, 1955.

/s/ VIRGIL H. LANDIS
Circuit Judge

STATE OF OREGON,
COUNTY OF MULTNOMAH } ss

I, SI COHN, COUNTY CLERK AND EX OFFICIO CLERK OF THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH, A COURT OF RECORD, DO HEREBY CERTIFY THAT THE FOREGOING COPY OF Decree- Inge E. Hartung, Plaintiff, vs. Ludwig Hartung, Defendant.

No. 22h237

HAS BEEN COMPARED BY ME WITH THE ORIGINAL AND THAT IT IS A CORRECT TRANSCRIPT THEREFROM, AND OF THE WHOLE OF SUCH ORIGINAL.

Decree

AS THE SAME APPEARS OF Record

IN MY OFFICE AND IN MY CUSTODY.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE SEAL OF SAID COURT, THIS 10th DAY OF June A. D. 55

SI COHN, COUNTY CLERK

BY [illegible] DEPUTY

No. 19890

STATE OF OREGON,
County of Wasco } ss

I, D. P. BOLTON, County Clerk and ex-officio Clerk of the County Court of said County, do hereby certify that the within instrument of writing was received and duly recorded by me in said County, in Book 131 on Page [illegible]

Witness my hand and seal of said County affixed this [illegible] day of [illegible] A.D. 19[illegible]

D. P. BOLTON, County Clerk

By [illegible] Deputy

Return To: Cashier, Bonneville Branch
Street: Suite 220 Postal Bldg.
City: Portland 4, Oregon

In Book 131

PAGE 3. DECREE

EXHIBIT A
Page 3 of 5

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

ENTERED IN JOURNAL
AUG 16 1957

INEZ N. HARTUNG,

Plaintiff,

vs.

LUDWIG HARTUNG,

Defendant.

No. 224-237

MODIFICATION OF DIVORCE DECREE

It appearing to the Court that the defendant, LUDWIG HARTUNG, was duly served with an order to show cause directing him to appear on Monday, the 29th day of July, 1957, at the hour of 2:00 o'clock p.m., in Room 580, before the Honorable Donald E. Long, and that thereafter said LUDWIG HARTUNG caused an affidavit to be filed in the above entitled case, and

It further appearing to the Court that the description of real property in the decree entered on the 10th day of June, 1955, at paragraph IV thereof, page 2, lines 23 to 28 reads as follows:

> Lots One (1) and Two (2) in the South one-half ($S\frac{1}{2}$) of the Southeast quarter ($SE\frac{1}{4}$) except right-of-way, Section Eight (8), T. 17 S. R. 14 E. in Wasco County, Oregon, containing 88.23 acres, more or less.

It further appearing to the court that the description should have read as follows:

> Lots One (1) and Two (2) and the South one-half ($S\frac{1}{2}$) of the Southeast quarter ($SE\frac{1}{4}$) except right-of-way, Section Eight (8), T. 7, S. R. 14 E. of W.M., in Wasco County, Oregon, containing 88.23 acres, more or less.

and also:

> Lots One (1), Two (2), Three (3) and Four (4), Section Nine (9), T. 7, S. R. 14 E. of W.M., in Wasco County, Oregon.

It further appearing to the Court that said error was clerical and was the error of the scrivener of the deed, and that the intention of the Court was to grant all of the defendant's (an undivided one-half) interest in the last above described properties

EXHIBIT A
Page 4 of 5

described in said Decree could not possibly be [illegible]

is sixty miles south in Deschutes County, and

It further appearing to the Court that the last described property in the corrected descriptions is the property upon the Deschutes River known as the fishing property in the testimony of the plaintiff upon the hearing of the above entitled matter and which property the Court awarded to the plaintiff.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the decree heretofore made and entered on the 10th day of June, 1957, be modified in paragraph IV thereof, page 2, lines 23-28, as to the description of real property, to read as follows:

> Lots One (1) and Two (2) and the South one-half (S½) of the Southeast quarter (SE¼) except right-of-way, Section Eight (8), T. 7, S. R. 14 E. of W.M., in Wasco County, Oregon, containing 88.23 acres, more or less.

and also:

> Lots One (1), Two (2), Three (3) and Four (4), Section Nine (9), T. 7, S. R. 14 E. of W.M., in Wasco County, Oregon.

DATED this 12th day of August, 1957.

/s/ DONALD E. LONG
Judge

STATE OF OREGON,
COUNTY OF MULTNOMAH

I, SI COHN, COUNTY CLERK AND EX-OFFICIO CLERK OF THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH, A COURT OF RECORD, DO HEREBY CERTIFY THAT THE FOREGOING COPY OF Modification of Divorce Decree- Ines M. Hartung, Plaintiff, vs. Ludwig Hartung, Defendant. No. 224237

IS A TRUE COPY AS THE SAME COMPARES TO AND WITH THE ORIGINAL AND THAT IT IS A CORRECT TRANSCRIPT THEREFROM AND OF THE WHOLE OF SUCH ORIGINAL

Modification of Divorce Decree

AS THE SAME APPEARS OF record IN MY OFFICE AND IN MY CUSTODY.

IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED THE SEAL OF SAID COURT, THIS [illegible] DAY OF Aug 12 1957 A.D.

SI COHN, COUNTY CLERK

BY [illegible] DEPUTY

STATE OF OREGON,
County of Wasco, ss.

I, D. V. BOLTON, County Clerk and ex-officio Clerk of the County Court of the State of Oregon, for the County of Wasco, do hereby certify that the foregoing is a full, true and correct copy of [illegible] as the same appears of record in my office and in my custody.

Witness my hand and seal of said Court this 4th day of Sept. 1957 A.D.

D. V. BOLTON, County Clerk

By [illegible] Deputy

/13/

Return to [illegible]

EXHIBIT A
Page 5 of 5

EXHIBIT B-1

FORM No. 111—BARGAIN AND SALE DEED.

BOOK 141 PAGE 543

KNOW ALL MEN BY THESE PRESENTS, That INEZ N. HARTUNG, a single woman, grantor, in consideration of TEN AND NO/100 - - - - - - Dollars, and other good and valuable consideration to her paid by EDWIN J. WELSH, grantee, does hereby grant, bargain, sell and convey unto the said grantee, his heirs and assigns, all the following real property, with the tenements, hereditaments and appurtenances, situated in the County of Wasco and State of Oregon, bounded and described as follows, to-wit:

All of the real property bounded by the intersections of the three herein described lines and the southerly line of the Deschutes River, all in Section 8, Township 7 South Range 14 East of the Willamette Meridian, Wasco County, Oregon, to-wit: Beginning at a point South 00°36' east from the most easterly meander corner on the section line between Sections 8 and 9, Township 7 South Range 14 East of the Willamette Meridian; thence North 67°42' 589.50 ft; thence South 46°36' West 10 ft; thence South 24°48' West 78.95 ft. to the true point of beginning; thence from said true point of beginning South 24°48' West 50 ft; thence North 65°12' West 110 ft, more or less to the southerly line of the Deschutes River; also from the said identical true point of beginning North 65°12' West 95 ft, more or less to the southern line of the Deschutes River, all bearings being based on true north.

(The consideration for this deed is less than $100.00)

To Have and to Hold, the above described and granted premises unto the said grantee, his heirs and assigns forever.

Witness my hand and seal this 28th day of May, 1960.

Inez N. Hartung (SEAL)

(SEAL)

(SEAL)

(SEAL)

STATE OF OREGON, County of MULTNOMAH, ss.

On this 28th day of May, 1960, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named INEZ N. HARTUNG, a single woman who is known to me to be the identical individual described in and who executed the within instrument, and acknowledged to me that she executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Maryou D. Lawson
Notary Public for Oregon
My commission expires 1/28/64

Bargain and Sale
DEED

Inez N. Hartung, a single woman

to

Edwin J. Welsh

AFTER RECORDING RETURN TO
Edwin J. Welsh
1201 Equitable Bldg.
Portland, Oregon.

Docket No. 10,226

STATE OF OREGON, County of Wasco, ss.
I, D. V. BOLTON, County Clerk and ex officio Recorder of Conveyances, in and for said county, do hereby certify that the within instrument of writing was received for record and recorded in the records of said county at
DEEDS
1960 MAY 31 AM 11 58
On Page 543
In Book 141
Witness my hand and seal of office affixed at The Dalles, Oregon
D. V. BOLTON, County Clerk
By Deputy
Return
Street
City

723

EXHIBIT B-1
Page 1 of 2

PAGE 6

INDEX TO DEEDS—DIRECT

WASCO COUNTY, OREGON

Date of Instrument Month	Day	Year	Time of Reception Month	Day	Year	Given Name	Name of Grantor	Name of Grantee	Kind of Instrument	Where Recorded Vol.	Page	Remarks
Aug	21	1957	August		1957	A. L.	Harader, et ux	Chas. L. Manley, et ux	WD	135	645	
Mch	16	1966	"	29	"	" "	" "	Claude N. Hendrix et ux	WD	135	658	
Aug	19	1957	Sept	11	"	Ludwig	Hartung	Meg J. Hartung	—	135	717	Illegible decree
"	22	"	"	12	"		Harvey Machine Co. Inc	U.S. of America	ED	135	771	
Oct	23	"	Oct	22	"	Gustave C.	Hartmann, et ux	Jodie M. Willett et ux	WD	135	907	
June	10	1954	Nov	22	"	Jesse R.	Hardwick & Hall	Paul D. Bullock	WD	136	55	
Sept.	1	1954	Nov.	1	1954		Harvey Machine Co	Gwinn & Dodd	Q	136	362	Mineral Deed
Mar.	17	1956	May	19	1958	A. L.	Harader, et ux	Richard D. Kenyon, et ux	WD	136	600	
Oct	29	"	Oct	29	"	Charles A.	Harding et ux	Donald D. Pillon, et ux	WD	136	207	
Nov.	—	1958	Nov.	6	1958	N. A.	Hartelson et ux	Jack A. Loomini et ux	—	138	250	
Oct	21	1958	Jan	18	1959		Harvey Aluminum Inc	State of Oregon, Dept	—	138	533	Easement & Grant change
Mar.	7	1931	Feb.	19	1959	John A	Harkin et ux	Frank Scherer et ux	WD	138	709	
Mch	10	1959	Mch	20	"	Clarence E.	Hardin, et ux	Rose O. Merritt et ux	WD	139	169	
Oct	2	1958	Apr.	10	"	Joseph E.	Harris, et ux	D. L. Meekins et ux	WD	139	290	
May	12	1959	May	15	"	A. L.	Harader, et ux	Arthur N. Appling, et ux	WD	139	497	
June	9	"	June	22	"	Willie V.	Harrison, et ux	Paul A. Ruppell	WD	139	585	
July	6	1955	July	1	1959	Fred P.	Harrison et ux	Leland C. Jones et ux	WD	139	639	
June	1	1959	"	6	"		Harvey Aluminum Inc	U.S. of America		139	655	Easement
"	"	"	"	"	"		" "	" "		139	658	Bill of Sale
Sept.	1	"	Sept	1	"							
June	31	"	"	2	"	Frances Ward	Hartman	Cecil Mayfield et ux	WD	140	162	
Sept.	1	1959	Dec.	2	"	Walter M & Ev.	Hart, et ux	Ruth E. Anderson	WD	140	163	
April	24	1958	Dec.	1	"		Harris et ux	T. J. Meilenberg et ux	WD	140	555	
Nov.	1	1955	Apr.	13	1960	J. W.	Harrison et ux	Ned M. Carr et ux	WD	140	536	
May	28	1960	May	31	1960	Albert L.	Harader et ux	Henry C. Lenser et ux	WD	141	334	
June	1	1960	June	14	1960	Lucy M.	Hartung	Edwin J. Welch	Rel	141	543	
June	25	"	June	27	"		Henry Aluminum Inc	Northwest Pipeline Co	E	141	610	
Oct	5	1960	Oct	13	1960	Homer L.	Harriman, et ux	Mildred M. Attack	WD	141	164	
Aug	18	1960	Oct	28	1960	Albert L.	Harader et ux	Henry C Lenser et ux	WD	142	325	Lease
Nov	15	1960	Nov	22	1960	Harvey	Aluminum (Inc.)	U.S. of America	Lease	142	380	
						Martin A. Hung et ux		Chas A. Call et ux		142	510-514	Contract
Sept.	1	1960	Nov	25	1960	Dau. Gertrude	Hardin	Chas T. Hardin		142	614	Agmt & Sub Deed
Apr.	5	1961	Apr.	13	1961	Norma	Harris	Paul J. Harris	QCD	143	295	
Apr.	10	1961	Apr.	18	1961	Dale R.	Harris, dec'd	Donald Stutts et ux	WD	143	327	
June	6	"	June	13	"	Ina D.	Hardin	James Hardin et al	WD	143	597	
Oct	16	1958	June	26	1961	Dannie P.	Hartman	Alva Marshall et ux	"	143	658	

1-73

EXHIBIT B-1
Page 2 of 2

EXHIBIT B-2

FORM No. 23—BARGAIN AND SALE DEED.

1967

KNOW ALL MEN BY THESE PRESENTS, That INEZ HARTUNG

hereinafter called grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto EDWIN J. WELSH

hereinafter called grantee, and unto grantee's heirs, successors and assigns all of that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the County of Wasco *, State of Oregon, described as follows, to-wit:*

All the real property bounded by the intersection of the herein described lines and the southerly (easterly bank) line of the Deschutes River, all in Wasco County, Oregon. The point of beginning may be established by traversing 65.30' on a line bearing S 00°36' E from the (most easterly meander corner on the Section Line between Sections 8 and 9, Township 7 S. R. 14 E.W.M., then 589.50' on a line bearing N 67° 42' W, then 10.00' on a bearing S 46° 36' W, then 78.95' on a line bearing S 24°48' W to a point.

From that point all the property bounded by the 3 herein described lines and the southerly line of the Deschutes River: Traverse 50.00' to a line bearing S 24°48' W to the point of beginning. Then continue the traverse 35' S 24°48' W, then 118.7' more or less on a line bearing N 65°12' W to the southerly (easterly bank) of the Deschutes River. Also from the identical point of beginning traverse 110' more or less on a line bearing 65°12' W to the southerly (easterly bank) line of the Deschutes River being a common line described in a previous deed to the same grantee, all bearings being based on true North.

All the property bounded by the 3 herein described lines and the southerly line of the Deschutes River. From that point which is the point of beginning traverse 15' on a line bearing N 24°48' E then 86' more or less on a line bearing N 65°12' W to the southerly line of the Deschutes River. Also from the identical point of beginning 95' more or less on a line bearing N 65°12' W to the southerly line of the Deschutes River being a common line described in the previous deed to the same grantee, all bearings being based on true North. *

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is $ .0 *(Whenever, the actual consideration consists of or includes other property or value given or promised which is the whole part of the consideration (indicate which).)*

In construing this deed the singular includes the plural as the circumstances may require.

Witness grantor's hand this 21st *day of* March, *19*67.

*The purpose of this deed is to grant 35' additional property upstream and 15' additional property downstream to Edwin J. Welsh from the property upon which is located an S.P. & S. caboose which property presently approximates 50' x 100' on the southerly (easterly bank) line of the Deschutes River; which property I have previously conveyed to Edwin J. Welsh.

Ines J. Hartung

STATE OF OREGON, County of Multnomah *) ss.*

Personally appeared the above named Ines Hartung

and acknowledged the foregoing instrument to be her *voluntary act and deed.*

Before me: W. A. Phelps

(OFFICIAL SEAL)

Notary Public for Oregon

My commission expires 2-25-73

NOTE—The sentence between the symbols ◊, if not applicable, should be deleted. See Chapter 450, Oregon Laws 1967, as amended by the 1967 Special Session.

Bargain and Sale Deed

Ines Hartung

TO

Edwin J. Welsh

AFTER RECORDING RETURN TO

No. 710815

STATE OF OREGON, County of Wasco, ss.

I, H. A. HOWARD, County Clerk and ex officio Recorder of Conveyances, in and for said county, do hereby certify that the within instrument of writing was received for record —

Mar 21 11 24 AM '67

and recorded in the DEED records of said County under Micro film

NUMBER: 710815

H. A. HOWARD, County Clerk

By Deputy

COMPARED INDEXER

EXHIBIT B-2
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INDEX TO DEEDS—DIRECT
WASCO COUNTY, OREGON

Date of Instrument: Month	Day	Year	Date of Reception: Month	Day	Year	Given Names: ABC DEF	GHI JKL	MNO PQR	STU VWX YZ	Name of Grantor	Name of Grantee	Kind of Instrument	Where Recorded: Vol.	Page	Remarks
Nov	13	1969	Nov	13	1969	S. A.				Henry	Glenn A. Jameson et ux	B&S			
Nov	12	1969	Nov	14	1969	Hazel				Hendricks	Robert J. Lee et ux	W.D.	69	2442	
Aug	22	1969	Dec	15	1970	Dennis A.				Henry	Arabella Telephone Co	S	70	252	
Apr	1	1970	Apr	1	1970	Cecil	S			Hendrix et ux	Wasco County	D	70	1491	Long Hollow Rd.
Mar	26	1970	Apr	1	1970	Cecil				Hendrix et ux	Wasco County	D	70	472	Same.
Feb	16	1970	Apr	22	1970	Henry Abstract Inc					Wasco County	Q.S.	70	581	
Mar	25	1970	June	1	1970	Dennis A.				Henry	Wasco Irr. Dist.	S	70	1111	Same Use Value
July	13	1967	June	3	1970	Donna Kelly				Hart et vir	Harold Hartley et ux	W.D.	70	836	
June	16	1970	Aug	31	1970	Henry Abstract Inc					Wasco County	D	70	1285	Long Hollow Rd
Mar	26	1968	Sept	11	1970	Ina F.				Henry	George F. Henry	M.D.	70	1359	
Sept	29	1970	Sept	29	1970	Fannie Hart				Hartman	Kenneth A. Fennell Trustee	Q.S.	70	1491	
Sept	29	1970	Oct	1	1970	Donna Kelly				Hart	Harold Hartley et ux	W.D.	70	1540	
Mar	1	1970	Nov	17	1970	Phyllis Estes				Hart	Ada M. Fennell	Q.S.	70	1720	
Mar	31	1969	Dec	3	1970	Lois M.				Harrison	Lee A. Johnson et ux	W.D.	70	1952	
Mar	31	1969	Dec	3	1970	Lois M.				Harrison	Kenneth H. Rumpel et ux	W.D.	70	1952	
Aug	8	1970	Jan	4	1971	Glenn				Herrington et ux	Warden Hutt	Q.S.	71	206	
Jan	5	1971	Feb	25	1971	Henry Abstract Inc					The Dalles	S	71	1221	Dalles Central Cert.
Mar	5	1971	Mar	15	1971	Henry Abstract Inc					The Dalles	S	71	1221	Dalles Central Cert.
Mar	8	1971	Mar	18	1971	Donna Kelly				Hart et ux	Willis Hartman	W.D.	71	1277	
Aug	24	1970	Apr	5	1971	Ina F.				Henry	George F. Henry	W.D.	71	1295	
Apr	26	1971	Apr	28	1971	Philip E.				Hart et ux	William F. Pruett et ux	W.D.	71	1287	
May	13	1971	May	21	1971	Inez				Hartung	Edna F. Walsh	B&S	71	1515	
June	8	1971	June	10	1971	Albert E.				Lee	Orin E. Reed	Q.S.	71	2076	
Apr	2	1971	June	23	1971	Cecil S.				Hendrix et ux	County of Wasco	S	71	1621	Long Hollow Rd
May	17	1962	July	8	1971	Fannie Hart				Hartman	Paul F. Tiffen et ux	W.D.	71	1725	
Sept	9	1971	Oct	14	1971	Malcolm				Hare et ux et al	Herbert A. Read	W.D.	71	1915	
Mar	5	1971	Nov	10	1971	Neil E.				Herrington et ux	Kermit E. Lynch et ux	W.D.	71	2121	
Nov	4	1971	Nov	11	1971	Henry Abstract Inc					Pacific Power & Light Co	E	71	2122	
Mar	26	1971	Nov	19	1971	Charles				Healy et ux	City of The Dalles	C.D.	71	2164	Easement deed
Apr	27	1971	Nov	30	1971	Mary L.				Harris	Nettie E. Knight	Lease	71	2220	
Apr	3	1972	Apr	4	1972	Bess E.				Hendrix	Vernon Bunting et ux	W.D.	72	1482	
Apr	25	1972	Apr	26	1972	William				Henry et ux	Robert L. Bartlett et ux	R.D.	72	1915	
Apr	27	1971	Apr	27	1972	Mary L.				Harris	Rose E. Murphy	W.D.	72	1971	
Apr	13	1972	May	1	1972	Donald J.				Hummel et ux	Paul J. Riddle et ux	W.D.	72	1995	
Apr	21	1972	May	4	1972	L. L.				Harris et ux	Russell J. Mays	W.D.	72	1992	

EXHIBIT C

Affidavit of Harold Erz

[To Be Provided]

EXHIBIT D

E A S E M E N T

KNOW ALL MEN BY THESE PRESENTS that I, INEZ HARTUNG, a single woman, in consideration of TEN DOLLARS ($10.00) and other good and valuable consideration to me paid by EDWIN J. WELSH, do hereby grant, bargain, sell and convey unto the said EDWIN J. WELSH, his heirs, administrators and assigns, together with the tenements, hereditaments and appurtenances situate in the County of Wasco, State of Oregon, the following described real property bounded and described as follows, to-wit:

A permanent easement and right of way across property owned by grantor to the property previously conveyed by said grantor to Edwin J. Welsh and upon which there is now situate a building comprised of a caboose, the said property being approximately 50 ft. x 100 ft. in area and having been previously described in such conveyance which was intended to convey approximately 50 ft. x 100 ft. in the area in which said caboose is situated, the description being as follows, to-wit:

All the real property bounded by the intersections of the 3 herein described lines and the southerly line of the Deschutes River, all in Wasco County, Oregon. The point of beginning may be established by traversing 65.30' on a line bearing S 00°36' E. from the (most easterly) meander corner on the Section Line between Sections 8 and 9, Township 7 S.,R. 14 E.W.M., then 589.50' on a line bearing N 67°42' W, then 10.00' on a bearing S. 46°36' W, then 78.95' on a line bearing S 24°48' W, at which the point of beginning is located. From the point of beginning traverse 50.00' on a line bearing S 24°48' W, then 110' more or less on a line bearing N 65°12W to the southerly line of the Deschutes River. Also from the identical point of beginning 95' more or less on a line bearing N 65°12' W to the southern line of the Deshhutes River, all bearings being based on true North.

to have and to hold the above described and granted premises unto the said Edwin J. Welsh, his heirs and assigns forever. And Inez Hartung, the grantor above named, does covenant to and with the above named grantee, his heirs and assigns, that she is lawfully seized in fee simple of the above granted premises, and that the above granted premises are free from all encumbrances, and that she will and her heirs, executors and administrators shall warrant and

652119 cy

COMPARED

INDEXED

EXHIBIT D
Page 1 of 3

forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever.

WITNESS my hand and seal this 8 day of November 1965.

Inez Hartung

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

BE IT REMEMBERED, that on this 8 day of November 1965, before me, the undersigned, a notary public in and for said County and State, personally appeared the within named INEZ HARTUNG, known to me to be the individual described in and who executed the within instrument and acknowledged to me that she executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public for Oregon

STATE OF OREGON, County of Wasco } ss
I, H. A. HOWARD, County Clerk and ex officio Recorder of Conveyances, in and for said county, do hereby certify that the within instrument of writing was received for record and recorded in the records of CEEDS of said county at
NOV 23 11 21 AM '65
Micro-Film Number 652447
Witness my hand and seal of office affixed at The Dalles
H. A. HOWARD, County Clerk
By Deputy
Return to
Street
City

652447

EXHIBIT D
Page 2 of 3

INDEX TO DEEDS—DIRECT
WASCO COUNTY, OREGON

Date of Instrument Month	Day	Year	Time of Recording Month	Day	Year	Given Names ABC DEF	GHI JKL	MNO PQR	STU VW XYZ	Name of Grantor	Name of Grantee	Kind of Instrument	Where Recorded Vol.	Page	Remarks
Sept.	9.	1965	Nov	23.	1965		Greg			Hartung	Edwin J. Welch	D	65	24-27	Easement
Oct.	29.	1965	Dec	1	1965					Harney Aluminum Inc	United States of America	D	65	2506	Exploration Road
Aug.	10	1953	Feb	24	1966		H. A.			Lautenschlager, et ux	Lawrence A. White	WD	66	1367	
Mar.	14	1966	Mar	18	1966		L. J.			Harney, et ux	George E. Hardesty et ux	WD	66	1572	
June	29	1966	June	29	1966		Frank			Heuer	Edward Simmons	WD	66	1220	
May	23	1966	June	30	1966			Velia R.		Heuer et ux	Ralph N. Clarke et ux	WD	66	1206	
July	25	1966	Aug.	1	1966			Rayce		Hartung et ux	Ethel B. Howe	QD	66	1435	
Apr.	1	1966	Aug	31	1966		Glenn	L.		Harrington et ux	Steve L. Mercer	D	66	1621	Assign of Contract
May	14	1966	Sept	21	1966		John	P.		Harmon et ux	Cecil J. Messenger et ux	QD	66	1720	
"	"	"	"	"	"					" "	Ethel White et al	QD	66	1720	
Sept.	6	1962	Nov	2	1966		Mildred	Green		Hartley	Edward J. Singer	WD	66	1973	
Jan.	6	1967	Jan	13	1967		Harvey	Aluminum		Harney	United States of America	D	67	0026	Easement
Sept	7	1967	Sept	14	1967					Harmon et ux	Robert T. Cook et ux	WD	67	1419	
Nov	30	1967	Dec	7	1967										
Oct.	11	1967	Oct	15	1967		La	Von		Harmon et ux	Lee Simons et ux et al	QD	67	1572	
Oct.	11	1967	Oct	13	1967		La	Von		Harmon et ux	R.A. Lepper et al	QD	67	1572	
Feb.	7	1968	Feb	13	1968			Stanley	A.	Harrington	Fennie K. Smith et ux	QD	68	0194	
Mar.	1	1968	Mar	5	1968		Glen	L.		Harrington et ux	Arthur Platt et ux	WD	68	0325	
Apr.	5	1968	Apr	11	1968	Alden				Harmon et ux	Paul T. Simms et ux	WD	68	0349	
Apr.	22	1968	Apr	24	1968				Heath	Heath	George Van Heath	QD	68	0411	
Apr.	22	1968	Apr	24	1968		George	Van		Heath et ux	George Van Heath	QD	68	0412	
Mar.	26	1968	Apr	24	1968		George	Van		Heath	John A. Patterson	D	68	0414	
Mar.	22	1968	Apr	30	1968	Lewis	A.			Heiney	Wasco Co Soil Conserv	D	68	0455	FARM USE VALUE
Apr.	30	1968	May	1	1968	Lewis	A.			Harney	Wasco County	D	68	0760	Grant of Easement
May	1	1968	May	1	1968	Lewis		L.		Hardin et ux	County of Wasco County	D	68	0761	Easement Rel Ord
May	3	1968	May	6	1968	Alden				Harmon et ux	Paul T. Simms et ux	WD	68	1196	
May	21	1968	July	15	1968					Hardin &o	Harney Aluminum Inc	D	68	1291	
July	1	1968	July	15	1968			Pattie		Hardesty et ux	William J. Hardesty et ux	WD	68	1238	
Aug	26	1968	Sept	23	1968			Harvey	Aluminum	(Easement)	Part of the Seller	QD	68	1672	Contract
Mar.	5	1969	Mar	14	1969			Ray		Harmon et ux	Albert K. Hansen et ux	D	69	0356	
Mar	21	1969	Mar	21	1969	Alden	K.			Heuer	Cecil J. Heuer	D	69	0402	
Apr	25	1969	Apr	28	1969			Glenn	A.	Hardy et ux	Eugene R. Heisner et ux	WD	69	0434	
											Wasco Co Soil Conserv	D	69	0480	FARM USE VALUE
May	19	1969	May	2	1969		Lewis	A.		Harney					
July	21	1969	July	28	1969			Leopold		Hartman et ux et al	Nancy Reed	WD	69	1443	
Oct	7	1968	July	8	1969					Hardin et ux	John A. Blevins et ux	WD	69	1465	
Sept	3	1969	Sept	10	1969			James	A.	Hartman et ux	Mitchell McCallister	WD	69	1460	

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EXHIBIT D

EXHIBIT E

Item #3

It is understood by and between the undersigned parties as follows:

That Fred O. Benson (now deceased) and Harry V. Benson, a copy of the lease being attached hereto and made a part hereof.

That Michael A. Watson is desirous of sharing the use of said premises and dwelling thereon.

Accordingly, it is mutually agreed as follows:

That Harry V. Benson will continue to make the lease payments, will continue to pay the Deschutes club the annual road maintenance installments and will continue to pay the electric bills provided the electric is used for household purposes only and not for heat, etc.

That Michael A. Watson will make such repairs as may be required to make the dwelling wind and water tight and suitable as a fishing cabin and will continue to make such repairs as may be required from time to time, all without any expense to Harry V. Benson.

That either party and/or their guests shall be entitled to use the dwelling at all reasonable time and agree to notify one another when it is to be used. That both parties shall abide by and be responsible for compliance with any agreements required by the Lessor or by The Deschutes Club.

Said agreement shall be continuous from date hereof and shall not be cancelled be either party so long as the Lessor and The Deschutes Club continue to permit the use of the property as herein agreed.

Dated February 7, 1988

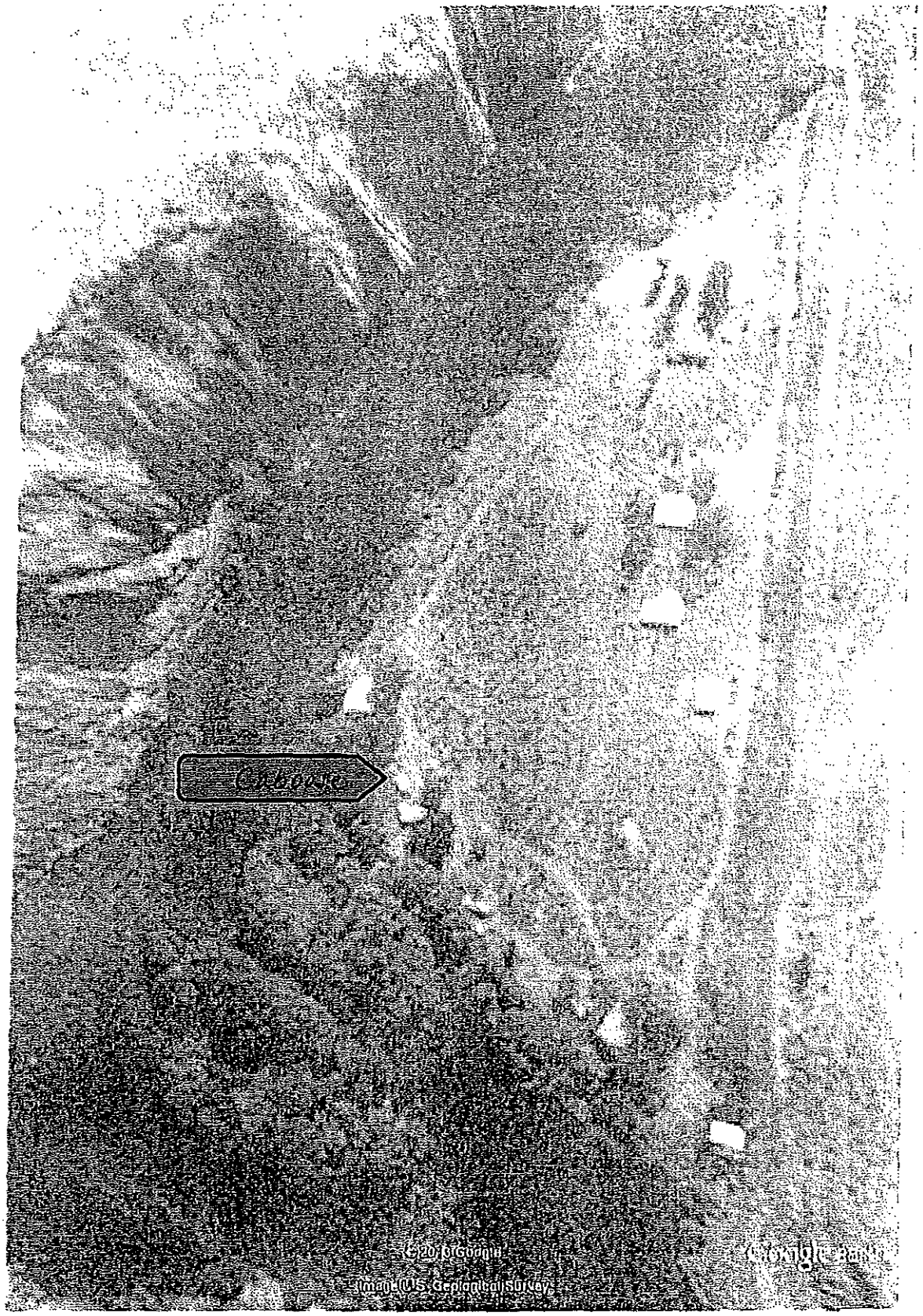
Harry V. Benson

by

Michael Watson

EXHIBIT E
Page 1 of 1

EXHIBIT F



Google earth

feet 500
meters 100

EXHIBIT F
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EXHIBIT G

Google

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EXHIBIT H

INDEFINITE TERM LEASE
LAND

THIS INDEFINITE TERM LEASE FOR LAND ("Lease") is made and entered into to be effective as of the 21st day of June, 2006 ("Effective Date"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Lessor") and **ROBERT G. BENSON, STEVEN E. BENSON, MICHAEL GEMMET, MICHAEL WATSON, PAUL TAYLOR, and GABRIEL WATSON** ("Lessee").

RECITALS

A. Lessor is in the railroad transportation business and owns or controls a system of rail tracks ("Lessor's Track(s)") and various real properties associated therewith, including certain Premises as described below which Lessee desires to lease from Lessor.

B. Lessor has agreed to lease to Lessee the Premises, subject to the terms, conditions and limitations provided herein.

AGREEMENTS

In consideration of the mutual covenants herein, Lessor and Lessee hereby agree as follows:

Section 1. Premises and Term.

A. Lessor leases to Lessee and Lessee leases from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, that certain parcel of real property, situated near the City of Davidson, County of Wasco, State of Oregon, along Line Segment 53, Mile Post 74.93 and constituting the shaded area shown upon Print No. 1-35268, dated 01/12/2005 and revised 09/21/2006, a copy of which is attached hereto as Exhibit "A" and made a part hereof ("Premises"). DECEMBER 1, 2006

B. Lessee leases the Premises from Lessor beginning June 21, 2006 ("Commencement Date"), and shall continue until terminated by either party as provided in this Section 1(B). This Lease may be terminated by either party, at any time, without cause, for convenience, by serving upon the other party written notice of termination at least thirty (30) days in advance. Upon the expiration of the time specified in such notice, this Lease and all rights of Lessee shall absolutely cease.

C. Upon termination, either (i) Lessor may retain from prepaid rent, as an additional charge for use of the Premises, a sum equal to three (3) months Base Rent (as defined below), and any unearned portion of the annual Base Rent, in excess of such retainage, paid in advance shall be refunded to Lessee or (ii) if Lessor has not been paid sufficient Base Rent to satisfy the above retainage, then Lessee shall pay Lessor a sufficient sum so that, together with sums already held by Lessor, Lessor shall hold a sum equal to three (3) months Base Rent which Lessor shall retain as an additional charge for use of the Premises, and such additional sum shall be paid by Lessee within thirty (30) days of termination of the Lease.

D. Each consecutive twelve-month period this Lease is in effect, beginning with the Effective Date of this Lease, is herein called a "Lease Year."

E. Lessee acknowledges that it is assuming all risks associated with Lessor's right to terminate this Lease at any time as provided above, and (i) Lessor gives no assurance that Lessor will delay termination of this Lease for any length of time whatsoever, (ii) Lessee may expend money and effort during the term of this Lease which may not ultimately be of any benefit to Lessee if Lessor terminates this Lease, but nonetheless, Lessor shall have the right to terminate the Lease if Lessor determines in its sole and absolute discretion that

Lessor desires to terminate, and (iii) in no event shall Lessor be deemed to have any legal obligations to continue to lease the Premises for any length of time.

Section 2. Use and Compliance.

A. Lessee may use the Premises for the sole and exclusive purpose of maintenance and use of Lessee-owned cabin ("Existing Lessee Improvements") and for no other purpose without the prior written consent of Lessor. Lessee shall respond to Lessor's reasonable inquiries regarding the use or condition of the Premises.

B. Lessee shall comply with all Laws applicable to Lessee, the Premises, this Lease and Lessee's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "Laws" shall mean any and all statutes, laws, ordinances, codes, rules or regulations or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Lessee, the Premises, this Lease, and/or Lessee's obligations under this Lease, and shall include all Environmental Laws (as defined in Section 4(A)). Lessee shall, at its sole expense, comply with all requirements by any State of Oregon agency regarding removal of any portion of the Existing Lessee Improvements.

C. If any governmental license or permit is required or desirable for the proper and lawful conduct of Lessee's business or other activity in or on the Premises, or if the failure to secure such a license or permit might in any way affect Lessor, then Lessee, at Lessee's expense, shall procure and thereafter maintain such license or permit and submit the same to inspection by Lessor. Lessee, at Lessee's expense, shall at all times comply with the requirements of each such license or permit.

Section 3. Rent.

A. Lessee shall pay as rental for the Premises, in advance, an amount equal to Two Thousand and No/100 Dollars ($2,000.00) annually during the term of the Lease, ("Base Rent"). Base Rent shall increase 3% annually during the term of the Lease. Lessor reserves the right to change rental rates as conditions warrant. Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from canceling this Lease as provided herein. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease. All rent and other monetary payments under this Lease from Lessee to Lessor shall be delivered solely to the following address:

Staubach - its Attorney-in-Fact for BNSF
P.O. Box 676160
Dallas, TX 75267-6160

Lessor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Lessee pursuant to the notice provisions of Section 36 below. No rent or other payment sent to any other address shall be deemed received by Lessor unless and until Lessor has actually posted such payment as received on the account of Lessee, and Lessee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Lessee had failed or delayed in making any payment.

B. Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease Lessee hereby waives any rights it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of

rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, adjusted as set forth in this Lease, and enforcing the termination provisions of this Lease.

C. Lessee shall pay the Base Rent and all additional amounts due pursuant to Section 9 as and when the same become due and payable, without demand, set-off, or deduction. Lessee's obligation to pay Base Rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this Lease by Lessor, shall release Lessee of its obligation to pay Base Rent and all amounts due as required by this Lease.

D. If any Base Rent or any payment under Section 9 or any other payment due by Lessee hereunder is not paid within five (5) days after the date the same is due, Lessor may assess Lessee a late fee ("Late Fee") in an amount equal to 5% of the amount which was not paid when due to compensate Lessor for Lessor's administrative burden in connection with such late payment. In addition to said Late Fee, Lessee shall pay interest on the unpaid sum from the due date thereof to the date of payment by Lessee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

Section 4. Environmental.

A. Lessee shall strictly comply with all federal, state and local environmental laws and regulations in its occupation and use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Clean Air Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "Environmental Laws"). Lessee shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Lessee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.

B. Lessee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises and to Lessor's Manager Environmental Leases at (785) 435-2386 for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Premises. Lessee shall use its best efforts to promptly respond to any release on or from the Premises. Lessee also shall give Lessor's Manager Environmental Leases immediate notice of all measures undertaken on behalf of Lessee to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor's Manager Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Premises.

C. In the event that Lessor has notice from Lessee or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this Lease, Lessor may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.

D. Lessee shall promptly report to Lessor in writing any conditions or activities upon the Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Lessee's reporting to Lessor shall not relieve Lessee of any obligation whatsoever imposed on it by this Lease. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.

E. Hazardous Materials are not permitted on the Premises except as otherwise described herein. Lessee expects to use on the Premises the following Hazardous Materials: NONE, other than those materials contained in household appliances, and to store on the Premises the following Hazardous Materials (as defined in Section 4(F) below): NONE, other than those materials contained in household appliances; provided, however, that Lessee may only use and store the listed Hazardous Materials in such amounts as are necessary and customary in Lessee's industry for the permitted uses hereunder ("Permitted Substances"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Premises of any Hazardous Materials not disclosed in this Section 4(E) is a breach of this Lease.

F. For purposes of this Section 4, "Hazardous Materials" means all materials, chemicals, compounds, or substances (including without limitation asbestos, petroleum products, and lead-based paint) identified as hazardous or toxic under Environmental Laws.

G. Lessor may, at its option prior to termination of this Lease, require Lessee to conduct an environmental audit of the Premises through an environmental consulting engineer acceptable to Lessor, at Lessee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by Lessee prior to termination of this Lease.

Section 5. Access to Adjacent Property by Lessee.

If access to and from the Premises can be accomplished only through use of Lessor's property adjacent to the Premises, such use is granted for ingress and egress only and on a non-exclusive basis, subject to such restrictions and conditions as Lessor may impose by notice to Lessee. Lessor shall have the right to designate the location or route to be used. Lessee understands and agrees that all of the terms and obligations under this Lease applicable to Lessee shall also be applicable to Lessee with respect to Lessee's use of any property adjacent to the Premises which Lessee may use just as though the property has been specifically described as part of the Premises, including, without limitation, the indemnity provisions of Section 13. Notwithstanding anything to the contrary herein, this Section 5 shall not grant Lessee any right to cross any of Lessor's Tracks. Any such crossing rights may only be granted by a separate written agreement between Lessor and Lessee.

Section 6. Access to Premises by Lessor.

A. Lessor and its contractors, agents and other designated third parties may at all reasonable times and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's use of the Premises as allowed hereunder, (i) enter the Premises for inspection of the Premises or to protect the Lessor's interest in the Premises or to protect from damage any property adjoining the Premises, (ii) enter the Premises to construct, maintain, and operate trackage, fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances or facilities of like character, upon, over, across, or beneath the Premises, without payment of any sum for any damage, including damage to growing crops, (iii) take all required materials and equipment onto the Premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Lessor may elect if Lessee defaults in its obligation to do so, (iv) enter the Premises to show the Premises to holders of encumbrances on the interest of Lessor in the Premises, or to prospective purchasers or mortgagees of the Premises, and all such entries and activities shall be without any rebate of rent to Lessee for any loss of occupancy of the Premises, or damage, injury or inconvenience thereby caused.

B. For purposes stated in this Section 6, Lessor will at all times have keys with which to unlock all of the doors and gates on the Premises, and Lessee will not change or alter any lock thereon without Lessor's permission.

C. In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Premises. Any entry to the Premises by Lessor as described in this Section 6 shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Lessee from the Premises, and any damages caused on account thereof will be paid by Lessee.

Section 7. Warranties.

LESSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. This Lease is made subject to all outstanding rights or interests of others. If the Premises are subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that possibility and its effect on Lessee's rights and ownership of the Lessee Improvements. In case of eviction of Lessee by anyone other than Lessor, or anyone owning or claiming title to or any interest in the Premises, Lessor shall not be liable to Lessee for damage of any kind (including any loss of ownership right to Lessee's Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

Section 8. Premises Condition; Lessee Improvements.

A. Lessee represents that the Premises, the title thereto, any subsurface conditions thereof, and the present uses thereof have been examined by the Lessee. Lessee accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the title thereto, the nature, condition or usability thereof, or the uses to which the Premises may be put. By taking possession or commencing use of the Premises, Lessee (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Lessor regarding the Premises; (ii) establishes conclusively that the Premises are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Premises in its condition as of the Commencement Date on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, subject to all faults and infirmities, whether now or hereafter existing. Nothing contained in this Section 8 affects the commencement of the term of the Lease or the obligation of Lessee to pay rent as provided above. Lessee represents and warrants to Lessor as follows: (i) Lessee does not intend to, and will not, use the Premises for any purpose other than as set forth in Section 2; (ii) Lessee has previously disclosed in writing to Lessor all special requirements (but Lessor shall have no responsibility relative to any such special requirement), if any, which Lessee may have in connection with this intended use; and (iii) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Premises for Lessee's intended use. Lessee shall comply with any covenants, conditions or restrictions now or hereafter affecting the Premises, and acknowledges that Lessor may place any covenants, conditions or restrictions of record affecting the Premises prior to or during the term of the Lease. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Lessee acknowledges that Lessor has given material concessions for the acknowledgements and provisions contained in this Section 8, and that Lessor is relying on these acknowledgments and agreements and would not have entered into this Lease without such acknowledgements and agreements by Lessee.

B. If future improvements are necessary for Lessee's use of the Premises, Lessee, at Lessee's sole cost and expense, shall, on or after the Commencement Date, construct and install such improvements to the Premises which are necessary for Lessee's use of the Premises and are acceptable to Lessor in Lessor's

sole discretion, and any such future Improvements and Existing Lessee Improvements shall be defined together as ("Lessee Improvements"). The construction and installation of any Lessee Improvements shall be subject to Lessor's prior written approval of plans and specifications for such Lessee Improvements to be prepared by Lessee and submitted to Lessor for approval as set forth below, such approval to be in Lessor's sole and absolute discretion. Within forty-five (45) days after the Commencement Date, Lessee shall submit detailed plans and specifications, and the identity of Lessee's proposed general contractor for the Lessee Improvements for Lessor's review and approval. Lessor shall either approve or disapprove the plans and specifications and general contractor (in its sole and absolute discretion) by written notice delivered to Lessee within sixty (60) days after receipt of the same from Lessee. In the event of any disapproval, Lessor shall specify the reasons for such non-approval. If Lessor fails to deliver notice to Lessee of Lessor's approval or disapproval of the plans, specifications, and proposed general contractor within the time period discussed above, Lessee's plans, specifications and proposed contractor shall be deemed disapproved. If Lessor specifies objections to the plans and specifications or general contractor as herein provided and Lessor and Lessee are unable to resolve the objections by mutual agreement within a period of thirty (30) days from the date of delivery of written notice thereof, Lessee, as its sole remedy, to be exercised not later than ten (10) days after the expiration of said thirty (30) days period, may terminate this Lease by written notice to Lessor. Upon approval of the plans and specifications by Lessor, Lessor and Lessee shall sign the same, and they shall be deemed a part hereof. All Lessee Improvements shall be constructed and installed in accordance with the terms and conditions of Exhibit "B" attached to the Lease and all applicable terms and conditions of the Lease regarding alterations and Improvements. Lessee shall not construct any other alteration or improvement to the Premises without Lessor's prior written consent. The Lessee Improvements constructed pursuant to the above provisions and/or existing at the time of the Commencement Date shall be owned by Lessee during the term of the Lease and removed from the Premises or surrendered to the Lessor pursuant to Section 20 below upon termination of this Lease.

Section 9. Taxes and Utilities.

A. In addition to Base Rent, Lessee shall pay all taxes, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the term of this Lease and may become due or levied against the Premises, against Lessee, against the business conducted on the Premises or against the Lessee Improvements placed thereon during the term hereof, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease provided; however, that Lessee shall only be responsible for the payment of property taxes levied against the Premises to the extent such taxes are separately assessed by the applicable taxing authority as a result of this Lease. Lessee agrees that Lessor shall not be required to furnish to Lessee any utility or other services. If this Lease is a transfer of an existing lease, Lessee must make arrangements with the present lessee for payment of any delinquent and current taxes, utilities, and other charges prior to taking possession. If such arrangements are not made, Lessee agrees to pay all such taxes, utilities, and other charges. If Lessor should make any such payments, Lessee shall promptly upon demand reimburse Lessor for all such sums.

B. Should the Premises be subject to special assessment for public improvements in the amount of Five Hundred Dollars ($500.00) or less during any Lease Year, Lessee shall promptly reimburse Lessor the amount in full. Should the assessment exceed Five Hundred Dollars ($500.00) during any Lease Year then such excess shall be paid by Lessor, but the Base Rent herein shall be increased by an amount equal to twelve percent (12%) of such excess payable for each Lease Year such amounts are payable.

Section 10. Track Clearance.

A. Lessee shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within (i) 8½ feet laterally from the centerline of any of Lessor's Tracks on or about the Premises (nine and one-half (9-1/2) feet on either side of the centerline of any of Lessor's Tracks which are curved) or (ii) 24 feet vertically from the top of the rail of any of Lessor's Tracks on

or about the Premises ("Minimal Clearances"); provided that if any law, statute, regulation, ordinance, order, covenant or restriction ("Legal Requirement") requires greater clearances than those provided for in this Section 10, then Lessee shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this Section 10, so long as Lessee strictly complies with the terms of any such Legal Requirement and posts a sign on the Premises clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint.

B. Lessor's operation over any Lessor's Track on or about the Premises with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this Section 10 or of Lessor's right to recover for and be indemnified and defended against such damages to property, and injury to or death of persons, that may result therefrom.

C. Lessee shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on Lessor's Tracks.

Section 11. Repairs; Maintenance.

A. Lessee shall, at its sole expense, take good care of the Premises (including all Lessee Improvements) and shall not do or suffer any waste with respect thereto and Lessee shall promptly make all necessary or desirable Repairs to the Premises. The term "Repairs" means all reasonable repair and maintenance necessary to keep the Premises (including all Lessee Improvements) in good condition and includes, without limitation, replacements, restoration and renewals when necessary. Lessee shall keep and maintain any paved areas, sidewalks, curbs, landscaping, and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish.

B. Lessor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Lessee acknowledges that Lessor shall have no responsibility for management of the Premises.

Section 12. Safety; Dangerous and Hazardous Conditions.

It is understood by Lessee that the Premises may be in dangerous proximity to railroad tracks, including Lessor's Tracks, and that persons and property, whether real or personal, on the Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Premises), and Lessee accepts this Lease subject to such dangers, and acknowledges that its indemnification obligations hereunder extend to and include all such risks.

Section 13. Indemnity.

A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;

(iii) LESSEE'S OCCUPATION AND USE OF THE PREMISES;

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR

(v) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LESSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 13(A), LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

C. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LESSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

D. Upon written notice from Lessor, Lessee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Lessee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 14. Equal Protection.

It is agreed that the provisions of Sections 10, 12, and 13 are for the equal protection of other railroad companies, including, without limitation, the National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property, and such railroad companies shall be deemed to be included as Indemnitees under Sections 10, 12, and 13.

Section 15. Assignment and Sublease.

A. Lessee shall not (i) assign or otherwise transfer this Lease or any interest herein, or (ii) sublet the Premises or any part thereof, without, in each instance, obtaining the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. For purposes of this Section 15, in the event that there are aggregate transfers or other changes in the ownership interests of Lessee resulting in a change of more than 20% of the ownership interests as held on the date hereof, a transfer shall be deemed to have occurred hereunder. Any person or legal representative of Lessee, to whom Lessee's interest under this Lease passes by operation of law, or otherwise, will be bound by the provisions of this Lease.

B. Any assignment, lease, sublease or transfer made pursuant to Section 15(A) may be made only if, and shall not be effective until, the assignee cures all outstanding defaults of Lessee hereunder and executes, acknowledges and delivers to Lessor an agreement, in form and substance satisfactory to Lessor, whereby the assignee assumes the obligations and performance of this Lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of Lessee to be performed or observed. Lessee covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of rent by Lessor from an assignee or transferee or any other party, Lessee will remain fully and primarily liable along with the assignee for the payment of the rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions, and conditions of this Lease on the part of Lessee to be performed or observed.

Section 16. Liens.

Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Premises. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section 16 or any other Section of this Lease.

Section 17. Insurance.

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

A. Homeowners Insurance. The policy must be written on a Homeowners 2 – Broad Form, ISO form number HO 00 02 05 01 or equivalent. The insurance must contain contractual liability with a combined single limit of $1,000,000. No other endorsements limiting coverage may be included on the policy.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least $100,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

C. Umbrella Insurance. The Homeowners and Auto insurance may be provided on a continuation of an umbrella insurance policy. Any such umbrella insurance policy shall provide that the coverage "follows form" to the underlying insurance and that such policy provides equivalent or broader coverage than that provided by such underlying insurance.

D. If construction is to be performed on the Premises by Lessee, Lessee or Lessee's contractor shall procure Railroad Protective Liability Insurance naming only the Lessor as the Insured with coverage of at least $2,000,000 per occurrence and $6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the Lessor prior to performing any work or services under this Lease

Other Requirements:

Lessee is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the Premises, Lessee shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Premises is located.

Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

Failure to provide evidence as required by this Section 17 shall entitle, but not require, Railroad to terminate this Lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee including, without limitation, liability under the indemnity

provisions of this Lease. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

For purposes of this Section 17, Railroad shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 18. Water Rights and Use of Wells.

This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to the Premises. All right, title, and interest in and to such water is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor. Lessee shall not use, install or permit to be installed or used any wells on the Premises without the prior written consent of Lessor.

Section 19. Default.

A. An "Event of Default" by Lessee shall have occurred hereunder if any of the following shall occur:

(i) if Lessee violates any safety provision contained in this Lease;

(ii) if Lessee fails to pay rent or any other monetary payment hereunder when due or fails to perform any other obligations under this Lease and such failure continues thirty (30) days after written notice from Lessor to Lessee of Lessee's failure to make such payment or perform such obligations;

(iii) if a decree or order of a court having jurisdiction over the Premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee or over all or a substantial part of the property of Lessee shall be entered; or if Lessee becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of Lessee or of all or a substantial part of the property of Lessee shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of Lessee shall be issued and any such event shall not be stayed, dismissed, bonded or discharged within thirty (30) days after entry, appointment or issuance;

(iv) if the Premises is abandoned or vacated by Lessee.

B. If an Event of Default occurs as provided above, Lessor may, at its option, (i) terminate this Lease by serving five (5) days notice in writing upon Lessee, in which event Lessee shall immediately surrender possession of the Premises to Lessor, without prejudice to any claim for arrears of rent or breach of covenant, (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Lessee of the applicable provisions of this Lease or to recover damages for a breach thereof, (iii) cure the default by making any such payment or performing any such obligation, as applicable, at Lessee's sole expense, without waiving or releasing Lessee from any obligation, or (iv) enter into and upon the Premises or any part thereof and repossess the same without terminating the Lease and, without obligations to do so relet the Premises or any part thereof as the agent of Lessee and in such event, Lessee shall be immediately liable to Lessor for all costs and expenses of such reletting, the cost of any alterations and repairs deemed necessary by Lessor to effect such reletting and the full amount, if any, by which the rentals reserved in this Lease for the period of such reletting exceeds the amounts agreed to be paid as rent for the Premises for the period of reletting. The foregoing rights and remedies given to Lessor are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise by Lessor at any time of a different or inconsistent remedy. If, on account of breach or default by Lessee of any of Lessee's obligations hereunder, it shall become necessary for the Lessor to employ an attorney to enforce or

defend any of Lessor's rights or remedies hereunder, then, in any such event, any reasonable amount incurred by Lessor for attorneys' fees shall be paid by Lessee. Any waiver by Lessor of any default or defaults of this Lease or any delay of Lessor in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this Lease. The remedies set forth in this Section 19 shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity, and the applicable statutory period for the enforcement of a remedy will not commence until Lessor has actual knowledge of a breach or default.

Section 20. Termination.

Upon the termination of Lessee's tenancy under this Lease in any manner herein provided, Lessee shall relinquish possession of the Premises and shall remove any Lessee Improvements, and restore the Premises to substantially the state and environmental condition in which it was prior to Lessee's use ("Restoration Obligations"). If Lessee shall fail within thirty (30) days after the date of such termination of its tenancy to complete the Restoration Obligations, then Lessor may, at its election (i) either remove the Lessee Improvements or otherwise restore the Premises, and in such event Lessee shall, within thirty (30) days after receipt of bill therefor, reimburse Lessor for cost incurred, (ii) upon written notice to Lessee may take and hold any Lessee Improvements and personal property as its sole property, without payment or obligation to Lessee therefor, or (iii) specifically enforce Lessee's obligation to restore and/or pursue any remedy at law or in equity against Lessee for failure to so restore. Further, in the event Lessor has consented to Lessee Improvements remaining on the Premises following termination, Lessee shall, upon request by Lessor, provide a Bill of Sale in a form acceptable to Lessor conveying such Lessee Improvements to Lessor.

Section 21. Survival of Obligations.

Notwithstanding any expiration or other termination of this Lease, all of Lessee's indemnification obligations and any other obligations that have accrued but have not been satisfied under this Lease prior to the termination date shall survive such termination.

Section 22. Holding Over.

If Lessee fails to surrender the Premises to Lessor upon the termination of this Lease, and Lessor does not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee's holdover will be subject to all provisions of this Lease.

Section 23. Multiple Party Lessee.

In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.

Section 24. Damage or Destruction.

If at any time during the term of this Lease, the Premises are damaged or destroyed by fire or other casualty, then Lessor may terminate this Lease or repair and reconstruct the Premises to substantially the same condition in which the Premises existed immediately prior to the damage or destruction, except that Lessor is not required to repair or reconstruct any Lessee Improvements, personal property, furniture, trade fixtures, or office equipment located on the Premises and removable by Lessee under the provisions of this Lease. In the event that the Existing Lessee Improvements are destroyed by fire or other casualty, Lessee shall have the right, subject to Lessor's right to terminate the Lease and to Section 8.B. of the Lease, to reconstruct the Existing Lessee Improvements, provided that (i) Lessee shall be solely responsible for all costs and risk of liability associated with such reconstruction; (ii) in reconstructing the Existing Lessee

Improvements, Lessee is limited to the footprint of the Existing Lessee Improvements and may not expand the footprint to include more of the Premises; and (iii) Lessee's right to reconstruct the Existing Lessee Improvements shall be subject to Lessor's right to require that the reconstructed Existing Lessee Improvements be relocated to another portion of the Premises or to other premises owned by Lessor.

Section 25. Eminent Domain.

If any part of the Premises is taken by eminent domain, Lessor may either terminate this Lease or continue the Lease in effect. If Lessor elects to continue the Lease, rent will be reduced in proportion to the area of the Premises taken by eminent domain, and Lessor shall repair any damage to the Premises resulting from the taking. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee, whether as damages or as compensation, will be the property of Lessor; without prejudice, however, to claims of Lessee against the condemning authority for moving costs and the unamortized cost of leasehold improvements paid for by Lessee taken by the condemning authority. If this Lease is terminated under this Section 25, rent will be payable up to the date that possession is taken by the condemning authority, and Lessor shall refund to Lessee any prepaid unaccrued rent less any sum then owing by Lessee to Lessor.

Section 26. Representations.

Neither Lessor nor Lessor's agents have made any representations or promises with respect to the Premises except as herein expressly set forth.

Section 27. Signs.

No signs are to be placed on the Premises without the prior written approval of Lessor of the size, design, and content thereof.

Section 28. Consents and Approvals.

Whenever in this Lease Lessor's consent or approval is required, such consent or approval shall be in Lessor's sole and absolute discretion. If Lessor delays or refuses such consent or approval, such consent or approval shall be deemed denied, and Lessee in no event will be entitled to make, nor will Lessee make, any claim, and Lessee hereby waives any claim, for money damages (nor will Lessee claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval.

Section 29. Captions.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

Section 30. Public Record.

It is understood and agreed that this Lease shall not be placed of public record.

Section 31. Governing Law.

All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the state in which the Premises are located.

Section 32. No Waiver.

One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor to or of any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 33. Binding Effect.

All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign was named a party to this Lease.

Section 34. Force Majeure.

Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

Section 35. Entire Agreement/Modification.

This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Premises and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. If this Lease is a reissue of an existing agreement held by Lessee, it shall supersede and cancel the previous lease or leases, without prejudice to any liability accrued prior to cancellation. This Lease may be modified only by a written agreement signed by Lessor and Lessee.

Section 36. Notices.

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address hereinafter set forth, or (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth. Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All rent and other payments due to Lessor hereunder shall also be made as provided in Section 3(A) above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number within the 48 contiguous states of the United States of America for all purposes of this Lease by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to Lessee:

Attention: Melinda B. Wilde
Watson, Taylor, Gemmet, Benson Lease
P.O. Box ~~14562~~ 14652
Portland, OR 97293

If to Lessor:

BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828
Attn: Senior Manager – Real Estate

With a copy to:

Staubach Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, Texas 76131-2800
Attn: Director – Leases and Permits

Section 37. Counterparts.

This Agreement may be executed in multiple counterparts; each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

Section 38. Relationship.

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Lease, to be the agent, partner, joint venturer, or associate of the other party hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all times during the term of this Lease, shall remain that of Lessor and Lessee.

Section 39. Severability.

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 40. Transferability; Release of Lessor.

Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Premises, and upon such transfer, Lessor shall be released from any further obligations hereunder, and Lessee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

Section 41. Tax Waiver.

Lessee waives all rights pursuant to all Laws to protest appraised values or receive notice of reappraisal regarding the Premises (including Lessor's personalty), irrespective of whether Lessor contests the same.

Section 42. Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

Executed by the parties to be effective as of the Effective Date above.

LESSOR

BNSF Railway Company

By: _____
Name: _____
Title: _____

LESSEE

ROBERT G. BENSON

By: _____

STEVEN E. BENSON

By: _____

MICHAEL GEMMET

By: _____

MICHAEL WATSON

By: _____

PAUL TAYLOR

By: _____

GABRIEL WATSON

By: _____

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN

BNSF RAILWAY COMPANY

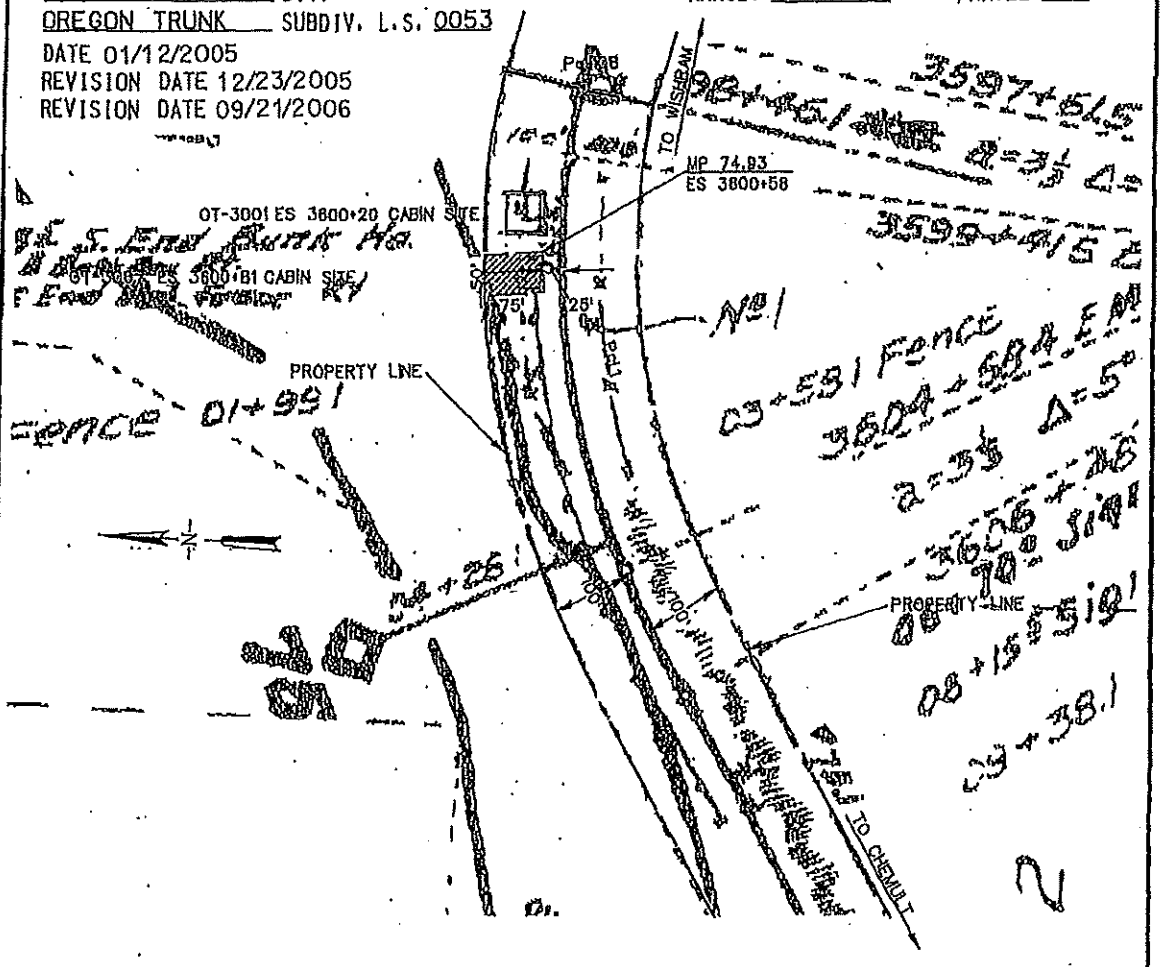
AND

GABE WATSON, MICHAEL WATSON, PAUL TAYLOR,
MICHAEL GEMMET, STEVEN E. BENSON, AND ROBERT G. BENSON

FORT WORTH, TEXAS
SCALE: 1 IN. = 200 FT.
NORTHWEST DIV.
OREGON TRUNK SUBDIV. L.S. 0053
DATE 01/12/2005
REVISION DATE 12/23/2005
REVISION DATE 09/21/2006

SECTION: 8 V- OR-2
TOWNSHIP: 7S MAP 1
RANGE: 14E PARCEL 1

MAP REF. R52521



DESCRIPTION:

A PARCEL OF LAND CONTAINING A TOTAL OF 4,000 SQ.FT. (.0918 AC.) MORE OR LESS SHOWN SHADED.

NEAR DAVIDSON
COUNTY OF WASCO STATE OF OR

THM

DRAWING NO. 1-35268

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT (the "Agreement") supplements that certain Indefinite Term Lease for Land ("Lease") dated June 21, 2006 by and between **BNSF Railway Company**, a Delaware corporation ("Lessor") and **ROBERT G. BENSON, STEVEN E. BENSON, MICHAEL GEMMET, MICHAEL WATSON, PAUL TAYLOR, and GABRIEL WATSON** ("Lessee"). In the event of any conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall control. Unless the context otherwise requires, capitalized terms not defined herein shall have the meaning assigned to such terms in the Lease.

In the event Lessee uses one or more general contractors or subcontractors ("Contractor(s)") for any improvements, alterations, build out, finish out, or other similar work on the Premises ("Work"), Lessee agrees to and accepts the following:

1. Prior to performing any Work, Lessee shall obtain Lessor's approval of each Contractor and any Work to be performed by such Contractor shall be performed pursuant to a written contract between Lessee and the Contractor ("Work Contract") approved in advance by Lessor.

2. Prior to commencing any Work, Lessee shall submit for Lessor's review and approval Lessee's plans, specifications and/or drawings for such Work (collectively, "Plans") in accordance with the procedure set forth in the Lease.

3. All Work must be performed at Lessee's sole cost and expense and in accordance with the Plans which have previously been approved by Lessor.

4. Lessee shall cause its Contractors to meet all insurance and indemnification requirements required of Lessee under the Lease and shall obtain indemnification and insurance provisions from its Contractors in favor of Lessor and in the same form as set forth in the Lease.

5. Prior to the commencement of the Work, all required local building, fire, health and other departments must approve all Plans requiring approval by local building codes. In addition, the Work shall be performed, installed and/or constructed in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations, including without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C.A. 12101 et seq.

6. Lessee shall be responsible for obtaining all municipal and other governmental licenses or permits for the Work with copies furnished to Lessor prior to commencement of any construction.

7. Lessee shall furnish Lessor, for Lessor's approval, a copy of its schedule of the Work. Lessee shall perform the Work in accordance with the schedule approved by Lessor, and any changes in such schedule must be approved by Lessor in writing in advance.

8. Notwithstanding the status of the completion of the Work, Lessee's obligation for payment of Base Rent and other amounts due under the Lease shall commence on the Commencement Date provided in the Lease. Notwithstanding anything herein to the contrary, Lessor may, in Lessor's sole discretion, permit Lessee and Lessee's Contractors to enter the Premises prior to the Commencement Date in order to commence Work; provided, however, that Lessee agrees that such early entry or occupation of the Premises shall be governed by all of the terms and conditions of the Lease and this Agreement (including the insurance and indemnity requirements therein), as such terms and conditions are more specifically set forth in the Lease and this Agreement.

9. During construction, Lessor reserves the right to inspect the Work at any time upon reasonable notice to Lessee.

10. Lessee's Contractors shall keep the Premises reasonably clean at all times during the performance of the Work.

11. All Work must be performed in a good and workmanlike manner, free from defects in materials and workmanship.

12. If any materialman's, mechanic's, laborer's or any other liens for any work claimed to have been undertaken for Lessee or at Lessee's request is filed against the Premises, Lessee shall indemnify, defend and hold harmless Lessor from any such liens filed during the term of the Lease and shall, at Lessee's own expense, cause all such liens to be removed within ten (10) days after written notice from Lessor to Lessee of the filing thereof.

13. Lessee must obtain Lessor's reasonable approval that the Work has been completed in substantial accordance with the approved plans and specifications. Lessor shall receive copies of all Certificates of Occupancy and as-built drawings (electrical, mechanical, fire and architectural) prior to approving the Work.

14 All guarantees and warranties provided by Lessee's Contractors shall be issued to Lessee and, for Work which is or will at the termination of this Lease be Lessor's property, also to Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first set forth above.

LESSOR:

BNSF Railway Company

By: _____
Name: _____
Title: _____

LESSEE: Sample

By: _____
Name: _____
Title: _____

EXHIBIT I

THE DESCHUTES CLUB

310 SW Fourth Avenue, Suite 512
Portland, Oregon 97204

NON-MEMBER KEY AGREEMENT

This Agreement is entered into effective this 22 day of May, 2007, by and between The Deschutes Club, an Oregon corporation, hereinafter known as the Club, and Gabe & Audrey Watson, a non-Club member:

WHEREAS, the non-Club member represents that they have a legal ownership interest in property south of the locked gate as confirmed by the attached questionnaire; and

WHEREAS, the non-Club member, for their convenience, desires to use such rights of way on the Deschutes River as are now owned by the Club for alternative access to property in which the non-Club member has a legal ownership interest; and

WHEREAS, this Agreement terminates with the non-Club member's sale or assignment of all or a part of the non-Club member's legal ownership interest in such property; and

WHEREAS, the Club has agreed with said non-Club member for the use of such rights of way at such times and under such conditions as are hereinafter set forth, subject, however, at all times to immediate revocation without notice and without determination of cause; now therefore:

It is expressly understood and agreed between the parties hereto that the non-Club member assumes and agrees to pay upon billing their pro rata share of such expenses as the Club may deem proper and just, road maintenance, watchmen's expenses, etc.

It is further understood and agreed that the non-Club member will register upon entering the property of the Club and will pay to the watchman stationed thereon, or otherwise as they may be directed by the Club, the regular guest fees as established by the Club, which shall be in addition to the pro rata share of expenses above provided.

It is further agreed between the parties hereto that the non-Club member will not permit keys for entry to Club property to be duplicated nor will such non-Club member give into the keeping of any other person or persons the key or keys entrusted to them.

A cash deposit of $100 will be required for the key entrusted to said non-Club member, which will be refunded upon the return of the key to the Club. If the non-Club member has a $100 deposit for a prior key, that deposit will be transferred to meet this requirement.

It is further understood and agreed between the parties hereto that said non-Club member will refrain from using the road and grounds of the Club for any purposes excepting that of non-commercial egress and ingress to the property of the non-Club member and while making such

use of this access will themselves do no fishing or hunting, nor permit their guests to do so, on any of the water or land on the east side of the Deschutes within the property owned or controlled by the Club. The non-Club member further agrees not to use or transport boats or any floating devices, or permit their guests to do so, on or over any of the land on the east side of the Deschutes within the property owned or controlled by the Club.

The non-Club member has given no valuable consideration for the privileges herein granted and the same are subject to revocation at the will of the Club. Neither shall the enjoyment of said privileges for any period of time, however long, be deemed to create any permanent rights in said non-Club member or anyone else.

It is expressly understood that the road over said right of way is dangerous and non-Club member and all persons brought on said premises by them, accept said road as the same now is, or may become, at their own risk. Said non-Club member agrees to hold the Club harmless from any claim for damage or injury either to person or property resulting from the use of said road hereunder.

Revocation of this Agreement by the Club shall be notice and demand upon non-Club member to deliver to the Club the keys theretofore given to their possession.

The prevailing party shall recover their attorneys fees and costs in any action to enforce this Agreement, including appeals.

The courtesy herein extended is personal to the signators, and is not transferable.

IN WITNESS WHEREOF the Club has caused this Agreement to be signed by its President and Secretary and the non-Club member has signed as an individual.

THE DESCHUTES CLUB

_____
President
Name:_____
Date:_____

NON-CLUB MEMBER

A Watson
Name: Barbara L. Watson & Andrew J. Watson
Date: 2/22/07

Key Number _____ issued this ____ day of _____, 200___ by _____.

EXHIBIT J-1

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EXHIBIT J-1
Page 1 of 1

EXHIBIT J-2

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Deschutes River
Deschutes River Trail
Deschutes River Trail
Deschutes River Trail

EXHIBIT J-3

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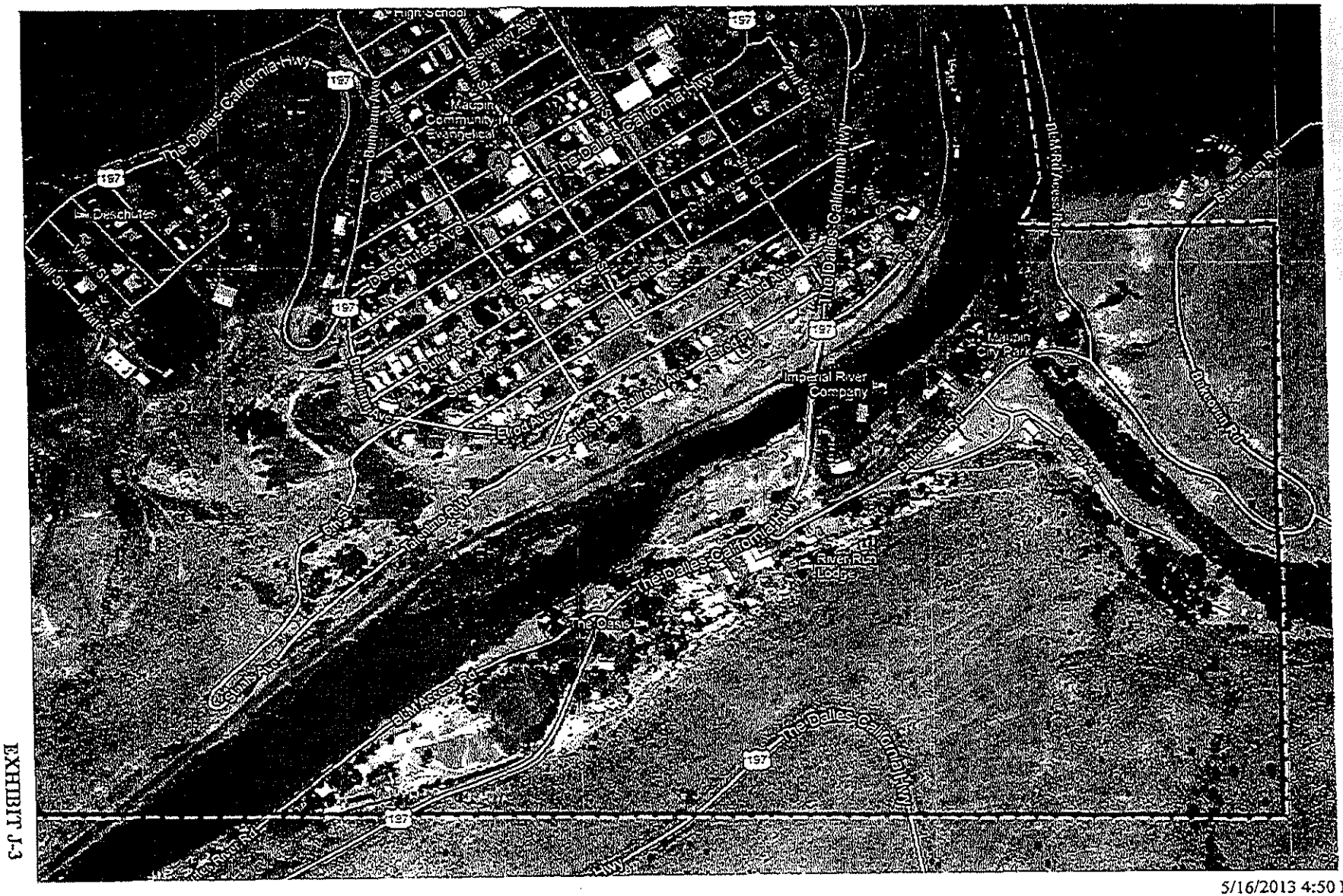

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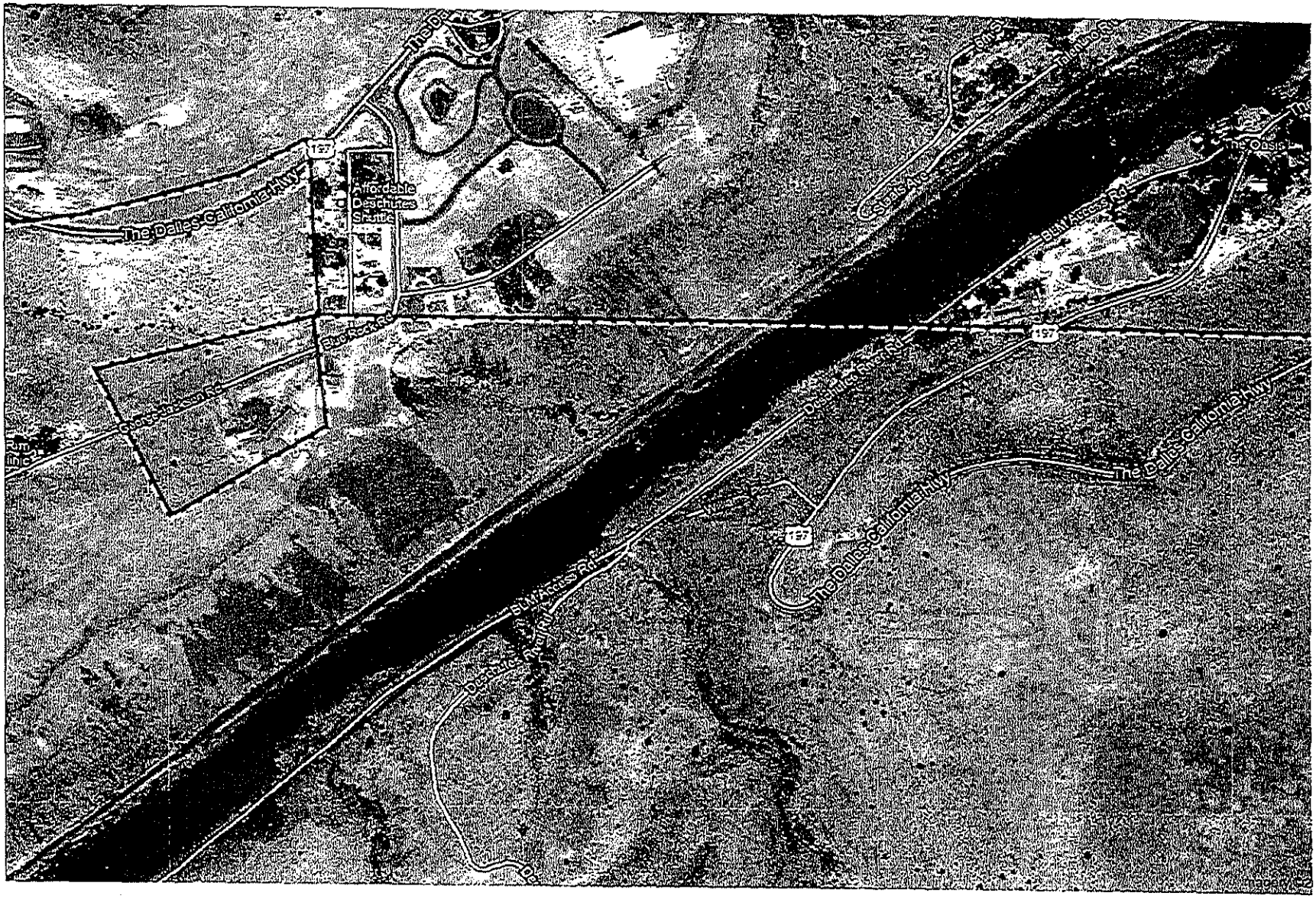

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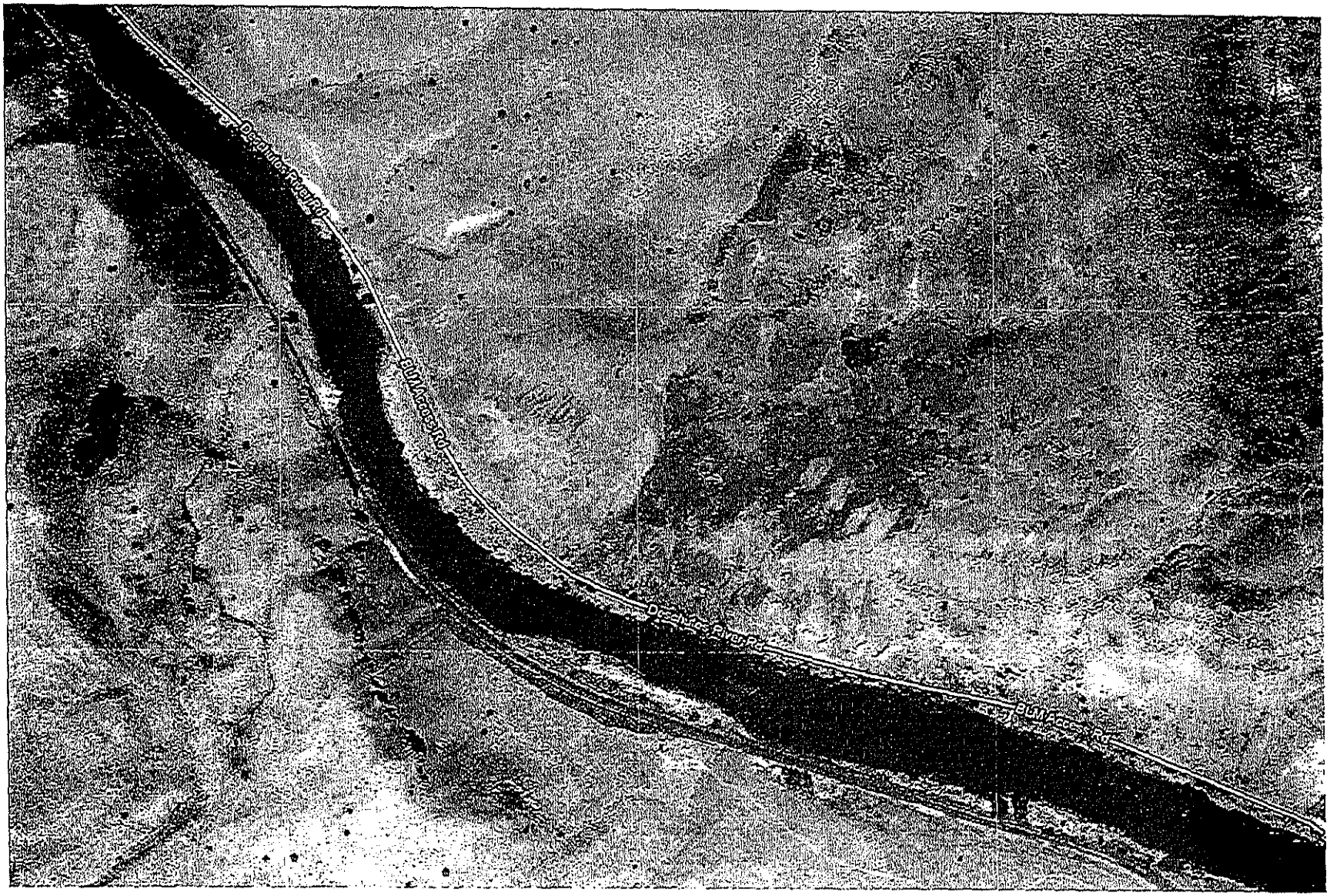

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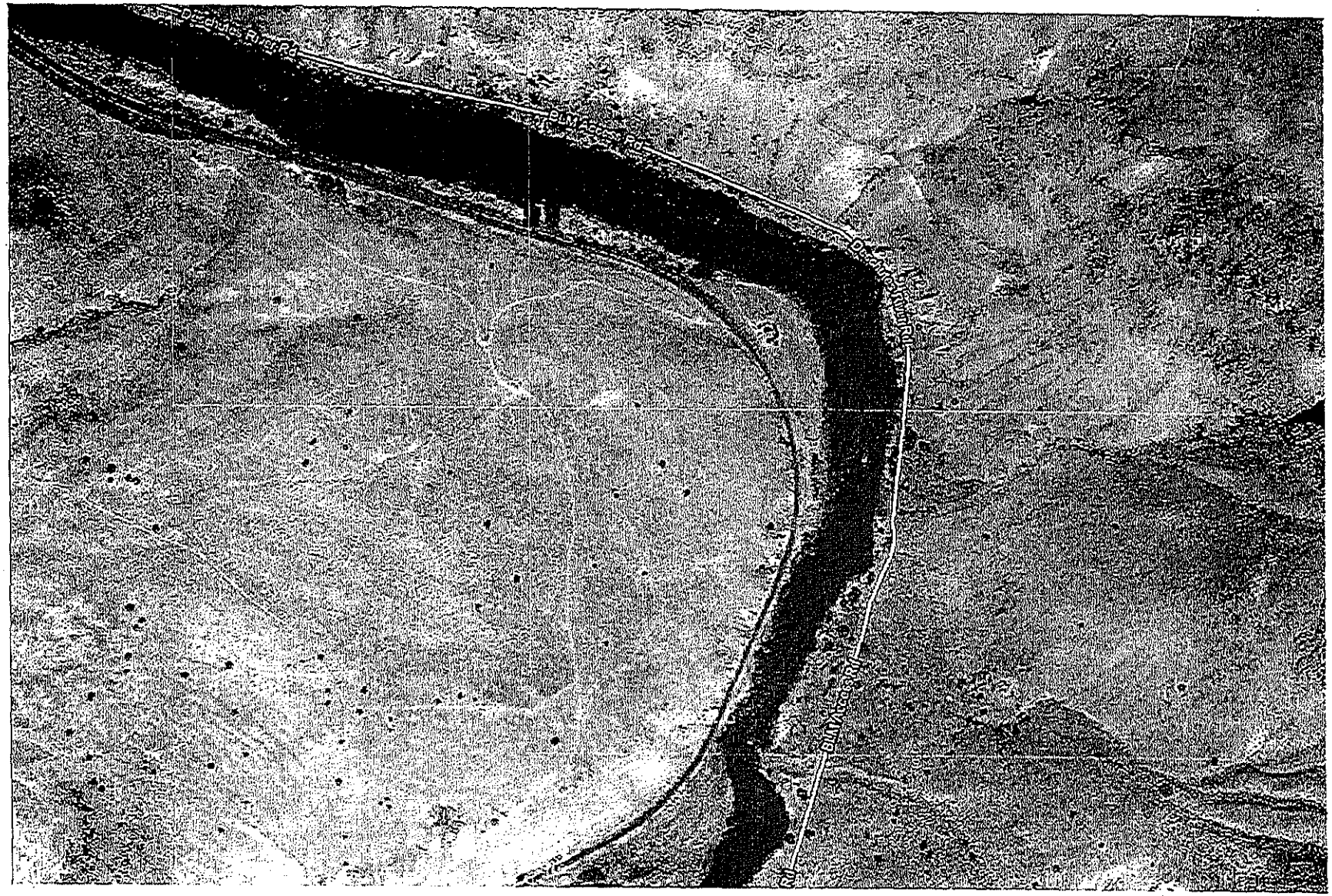

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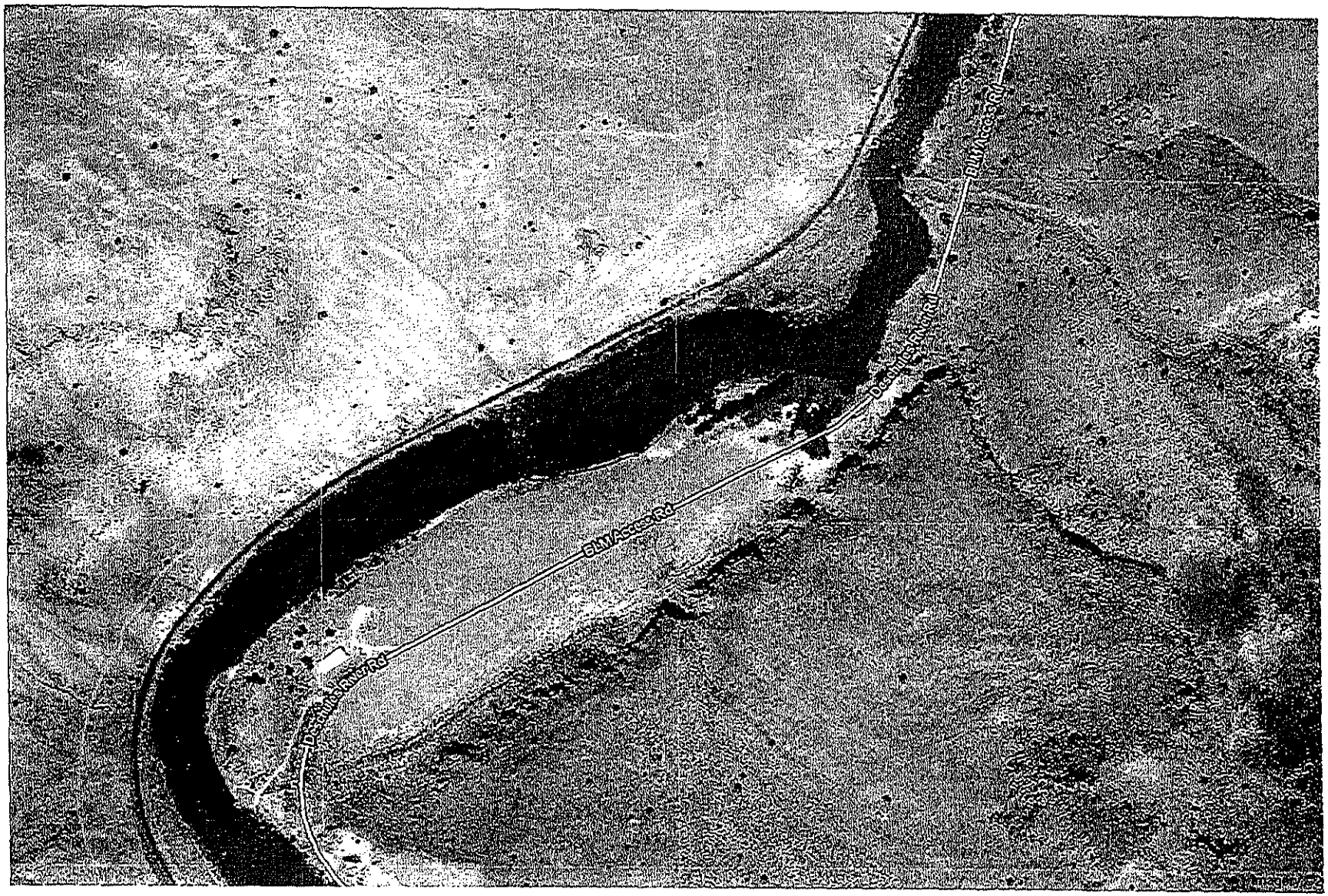

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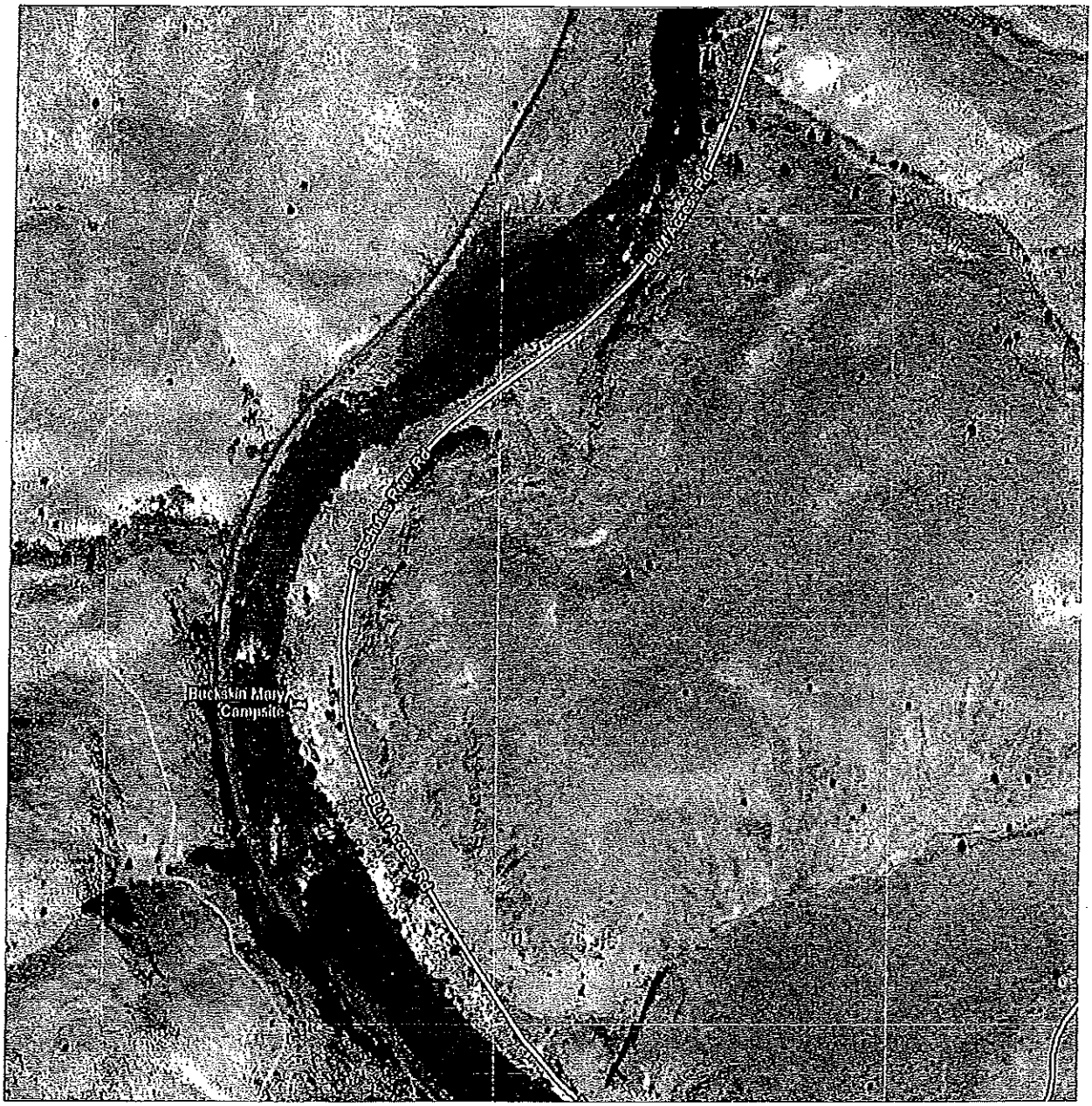

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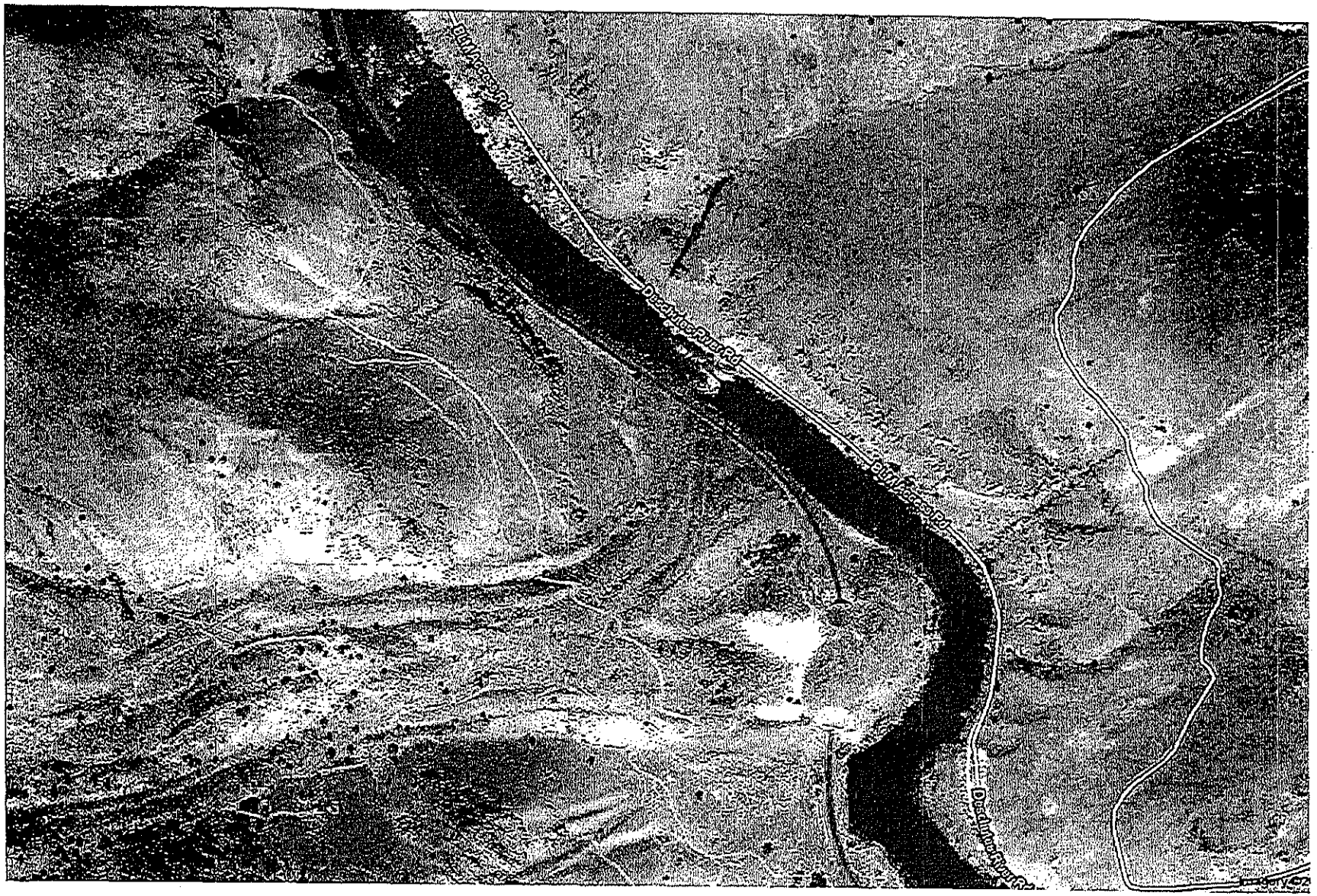

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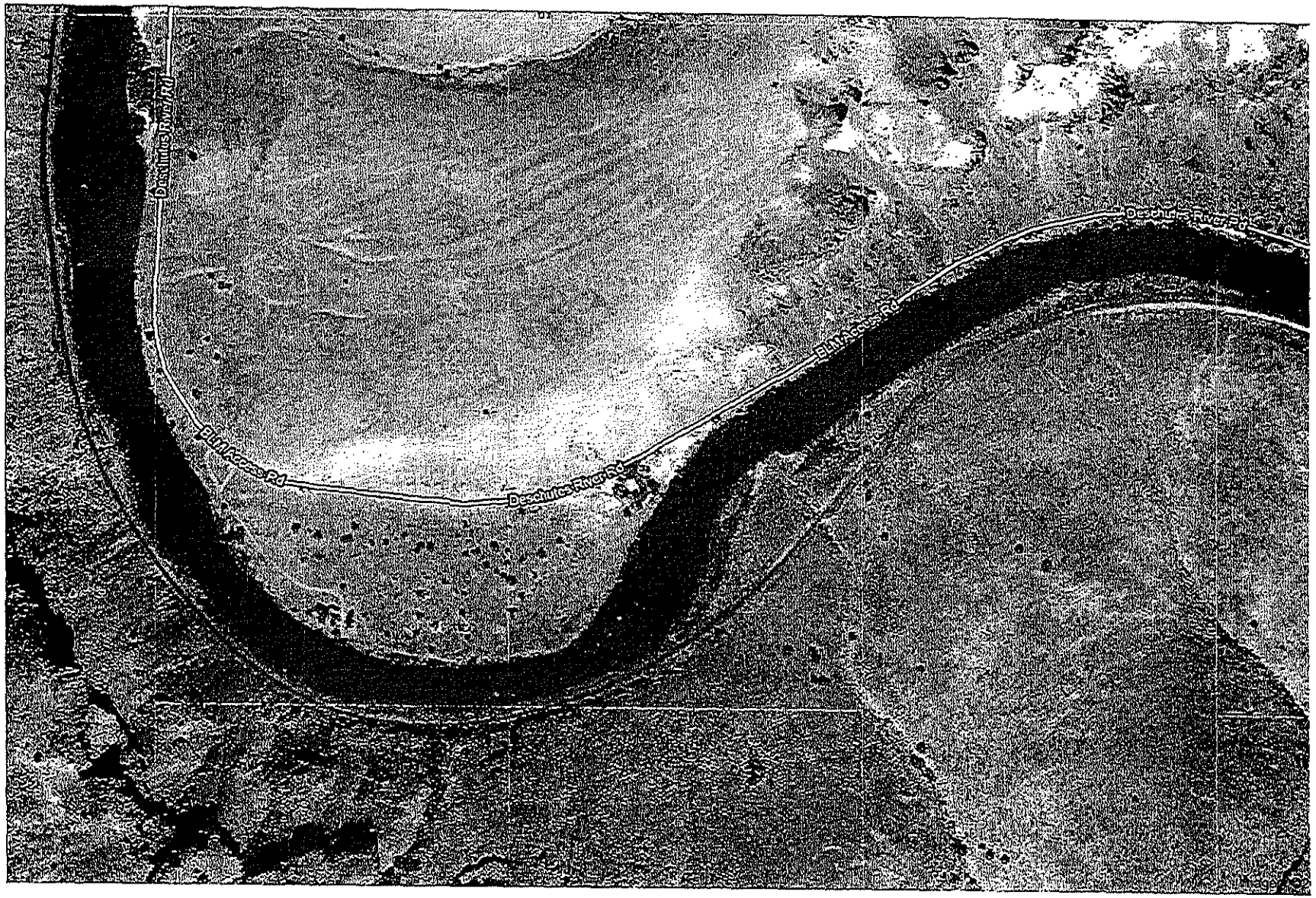

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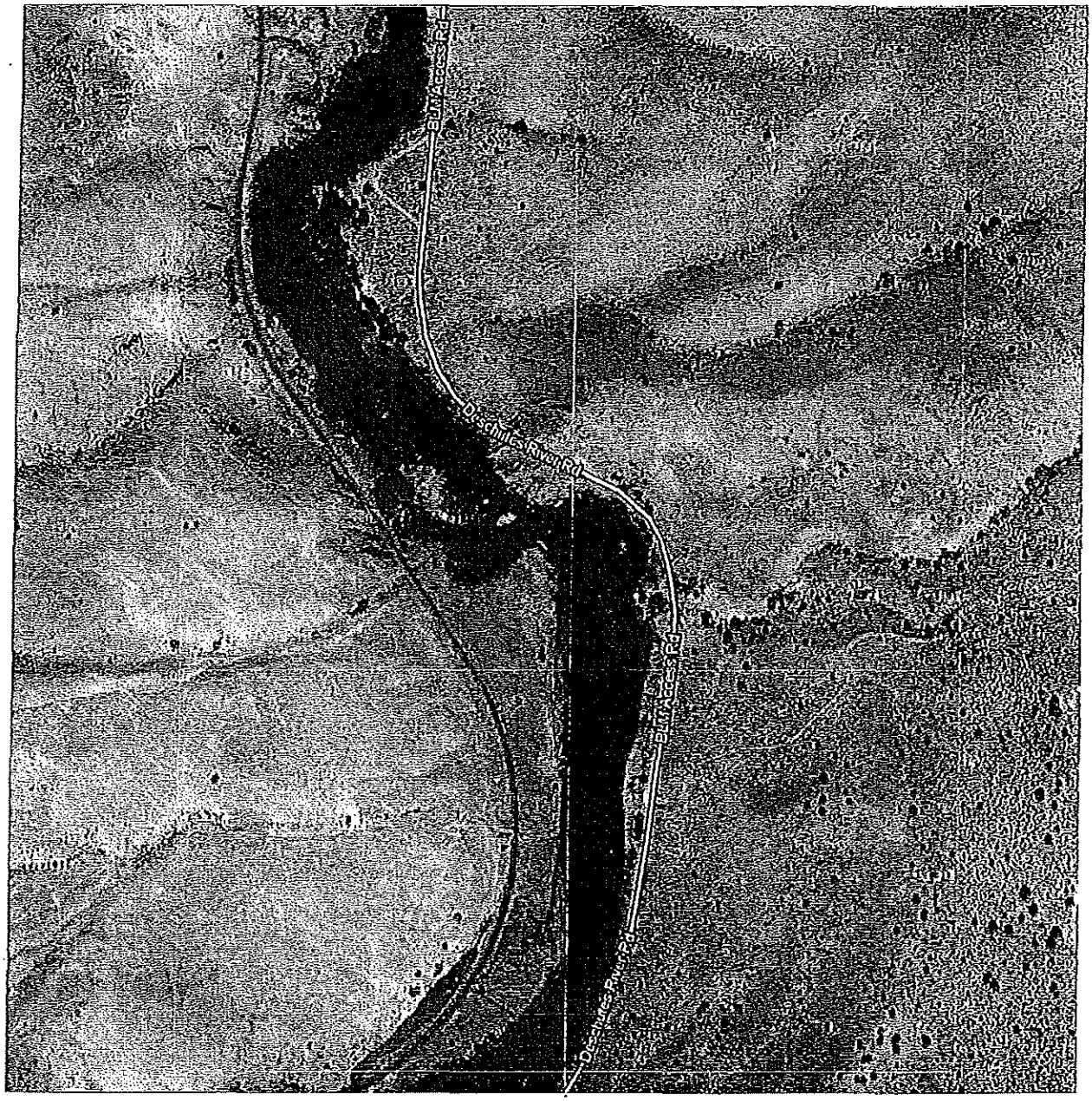

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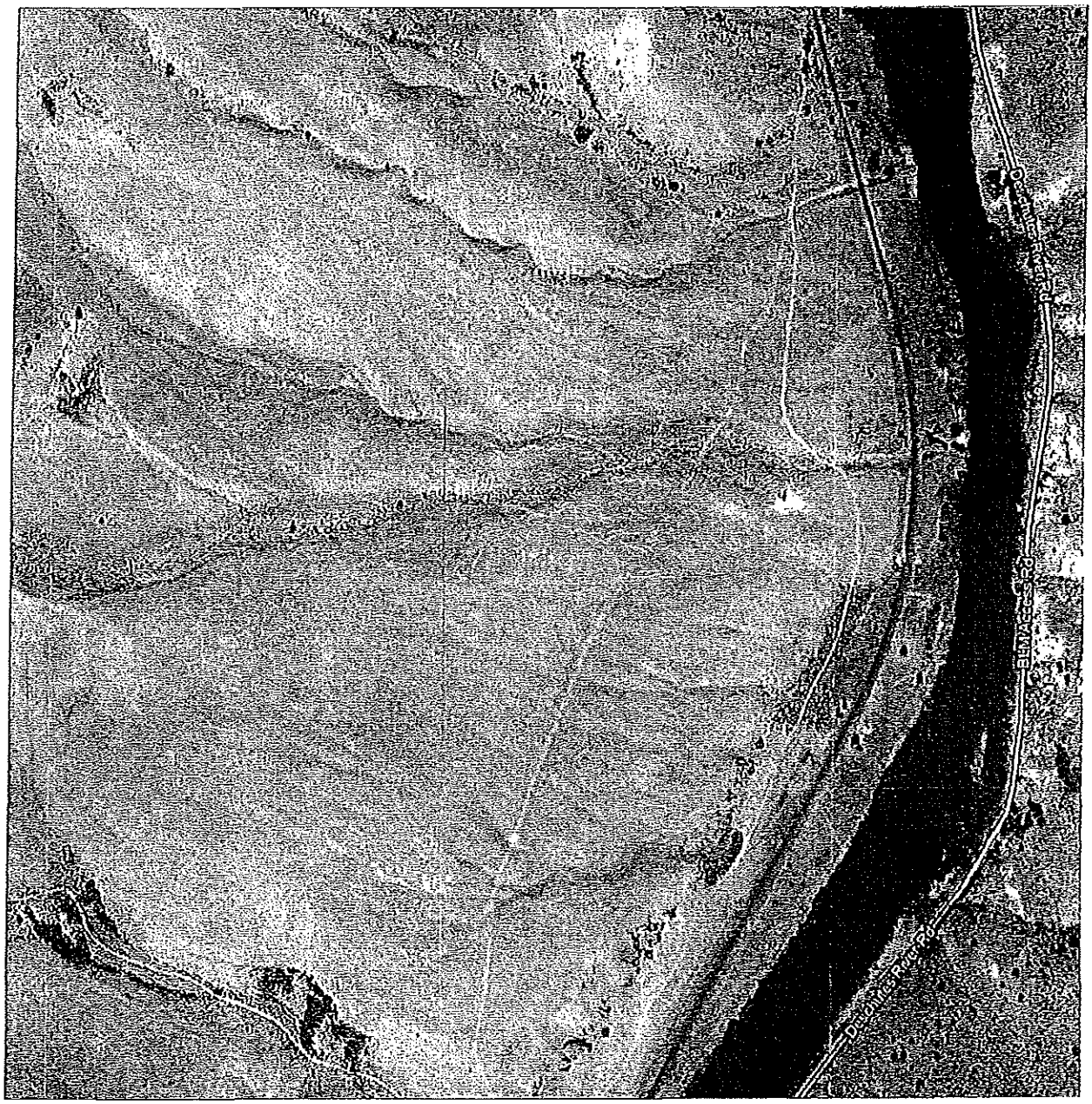

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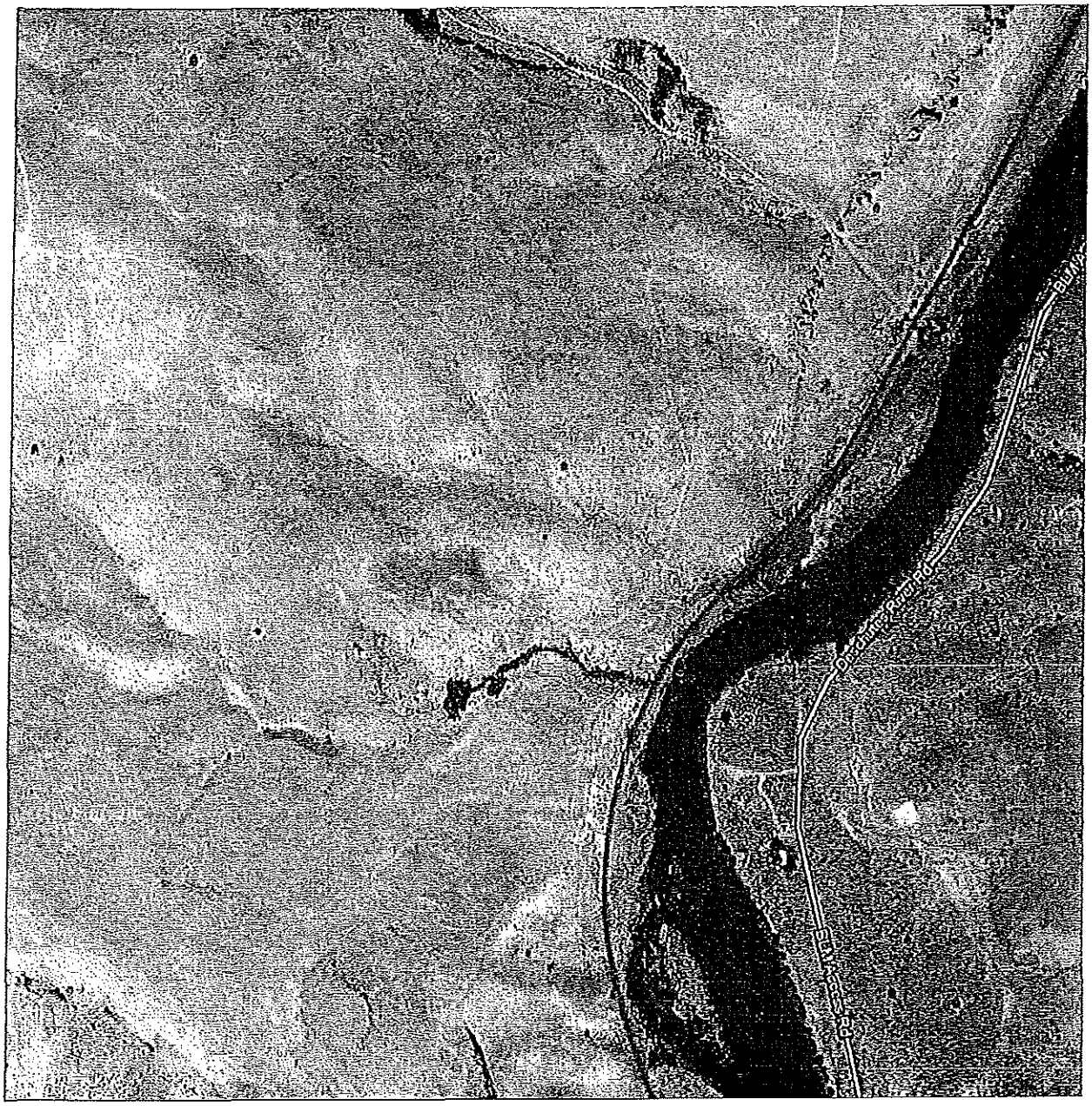

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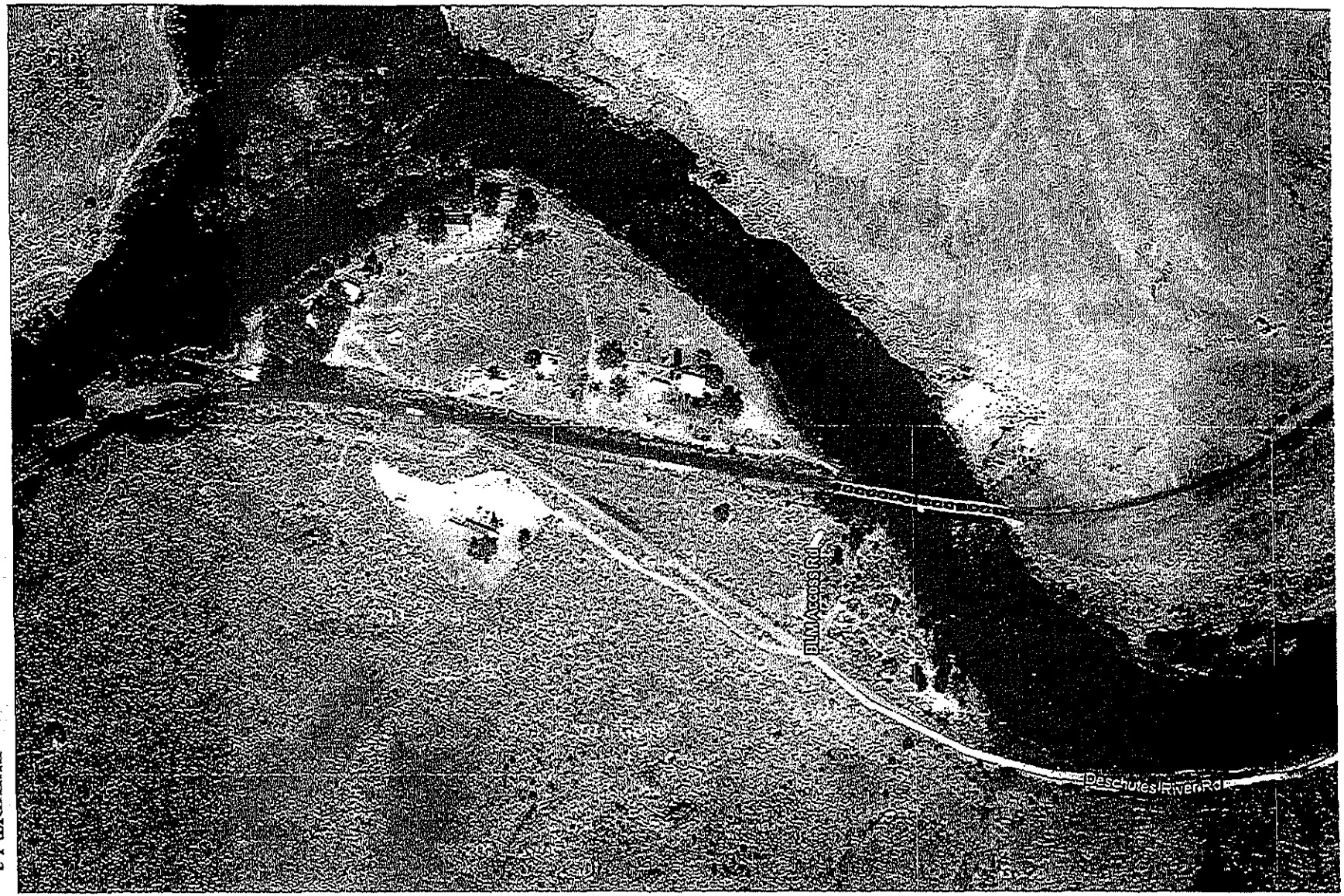

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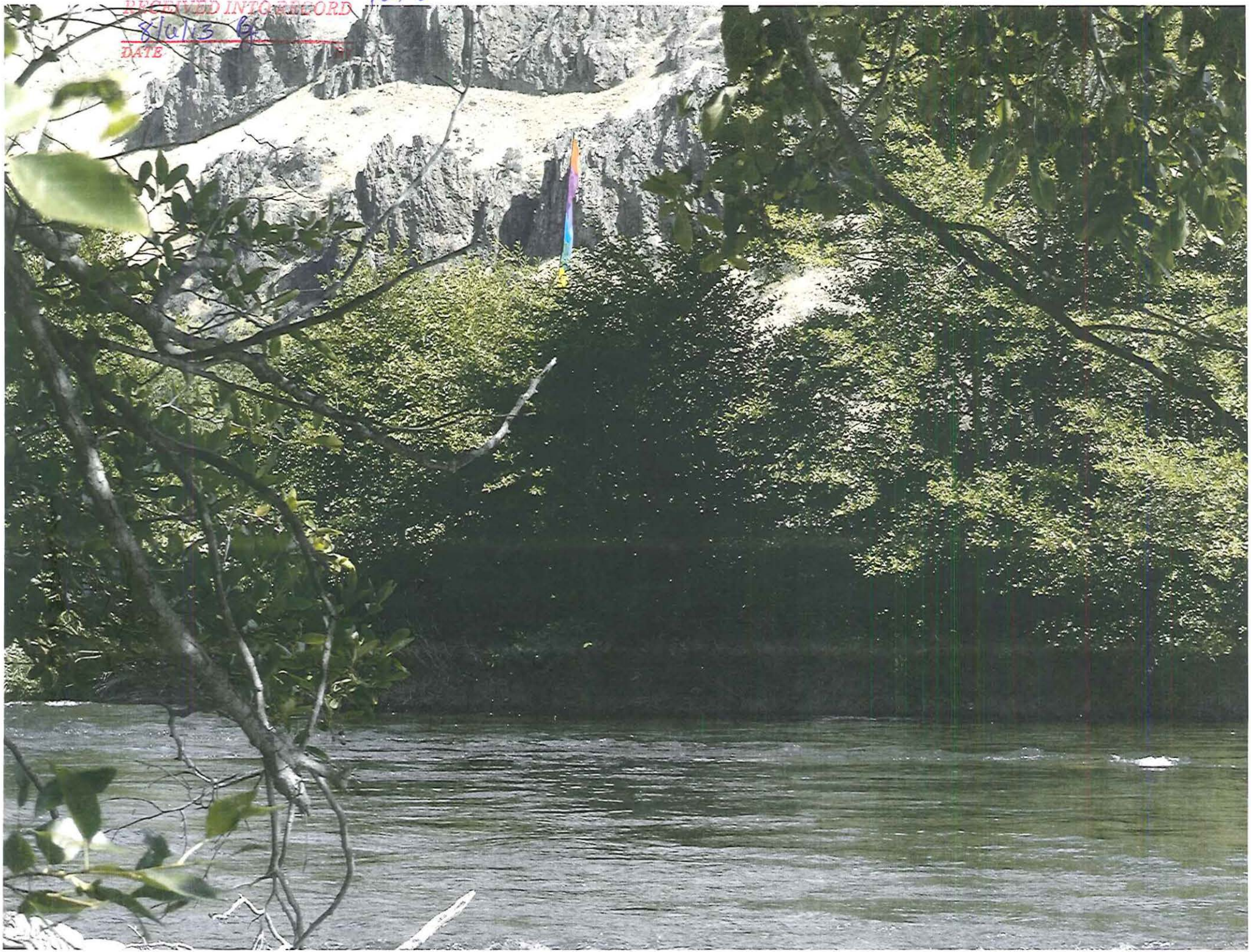

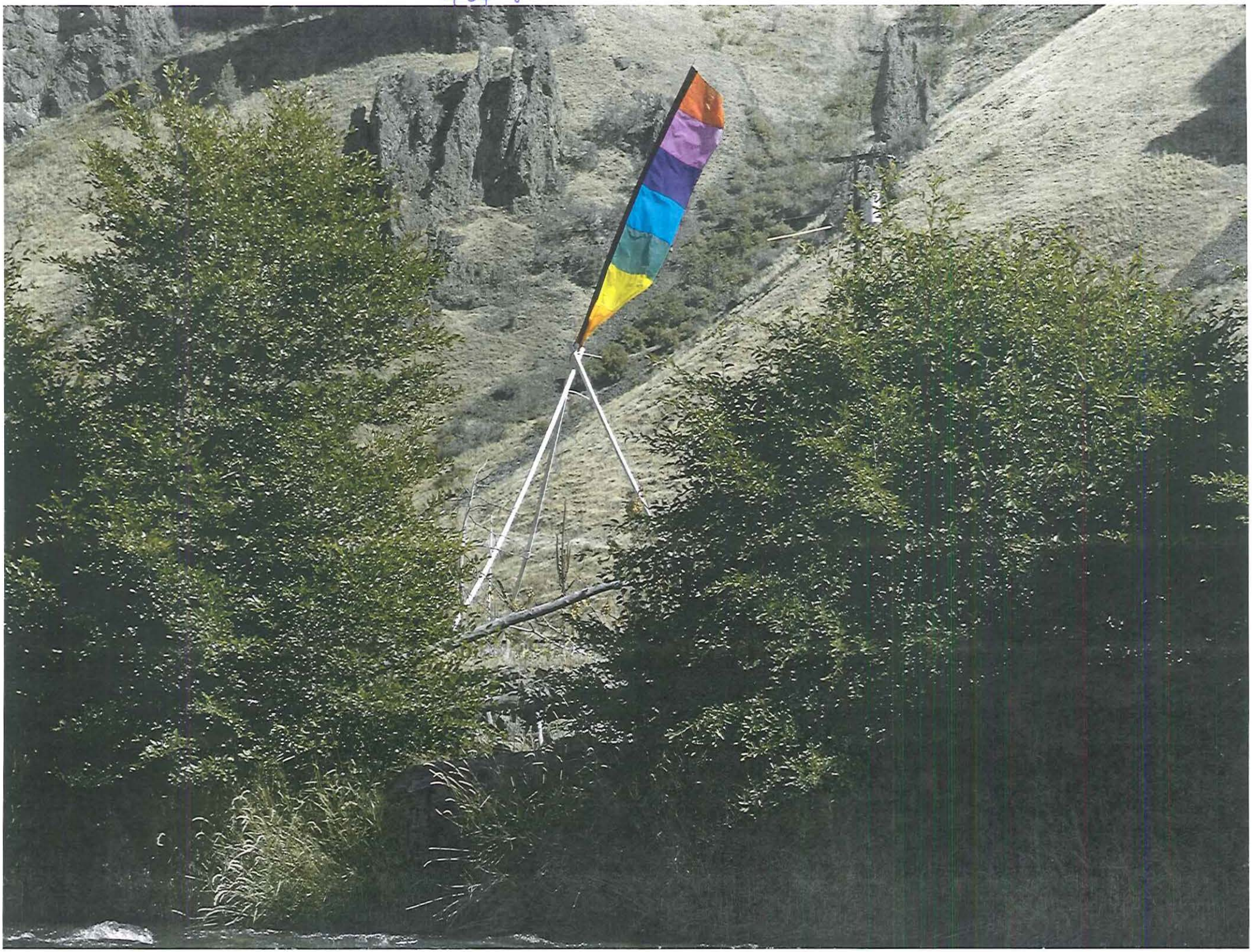

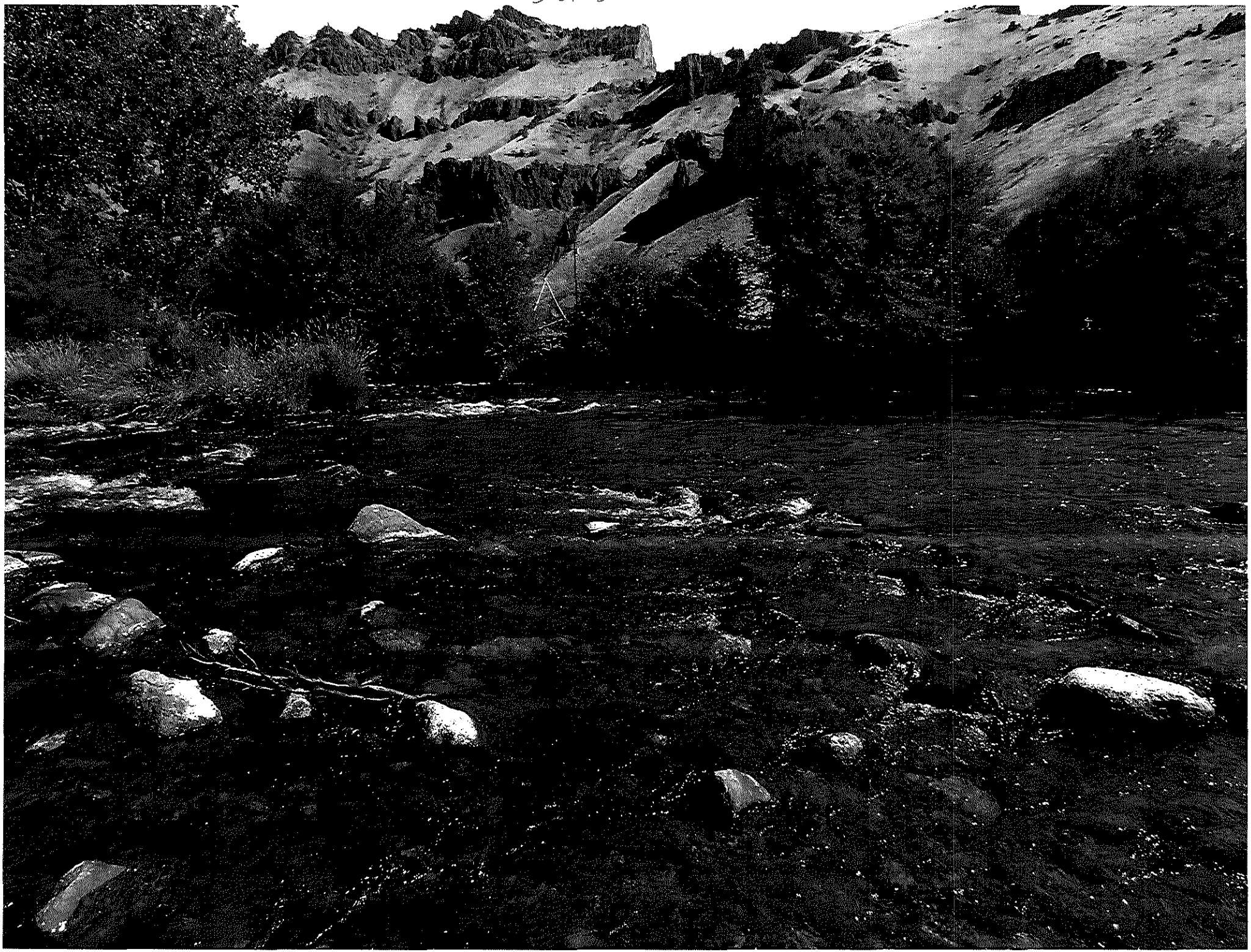

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Gabriel Watson Photographs

PLAQJR-12-08-0001

Preparation of Mock Up

Raising the Mock up

Mockup standing Upright

Mock up Width 30'6"
Height 26' above grade

Comparison of Photgraphic Evicence

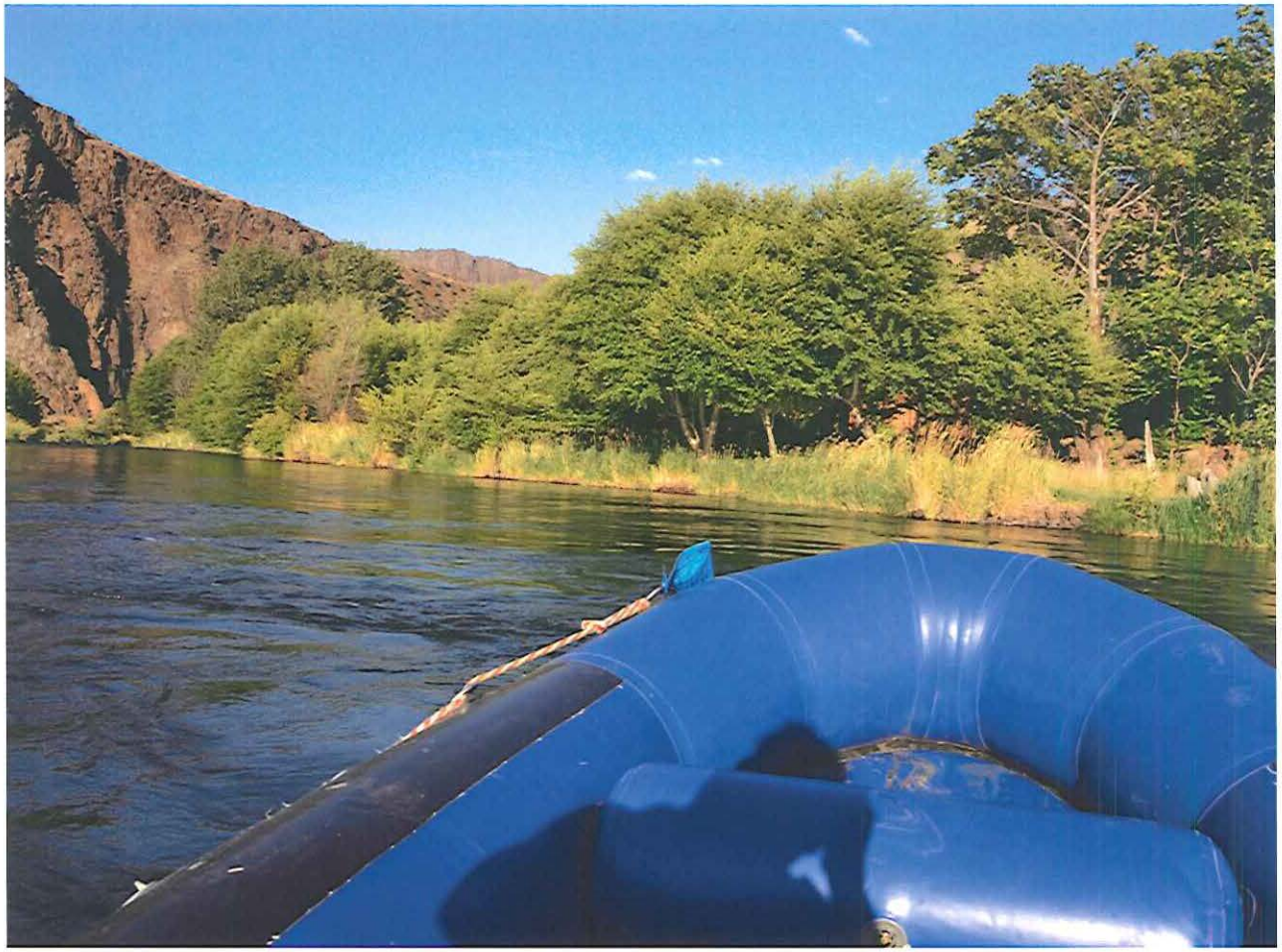
Applicant

- Built to match height and width of proposed structure
- Constructed using natural tones as conditioned
- Placement on site is consistent with site plan submitted
- Built using dimensional supplies and photographed with persons to gauge height
- Photographs of photographer and river for context

Opposition

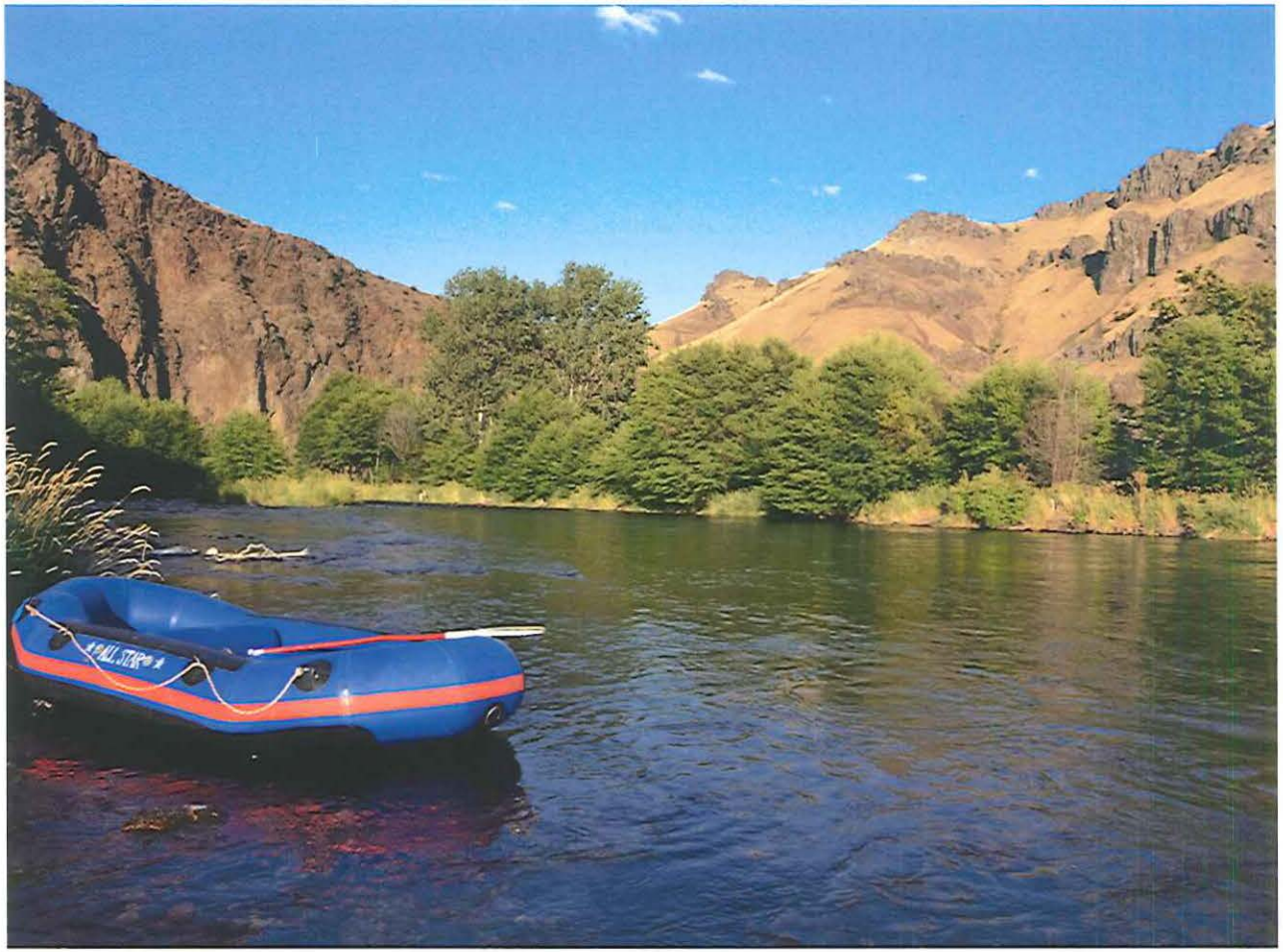
- Tripod placed at forefront of the property 25' from proposed location
- White poles used with large rainbow colored flag on top
- Height is approximated and is greater than proposed structure
- Photographs do not show river for context

Location where opponents tripod was placed



Taken approaching site, center channel

View from water approaching center island.



Taken from large island. View of site from main channel of river is blocked by this island.

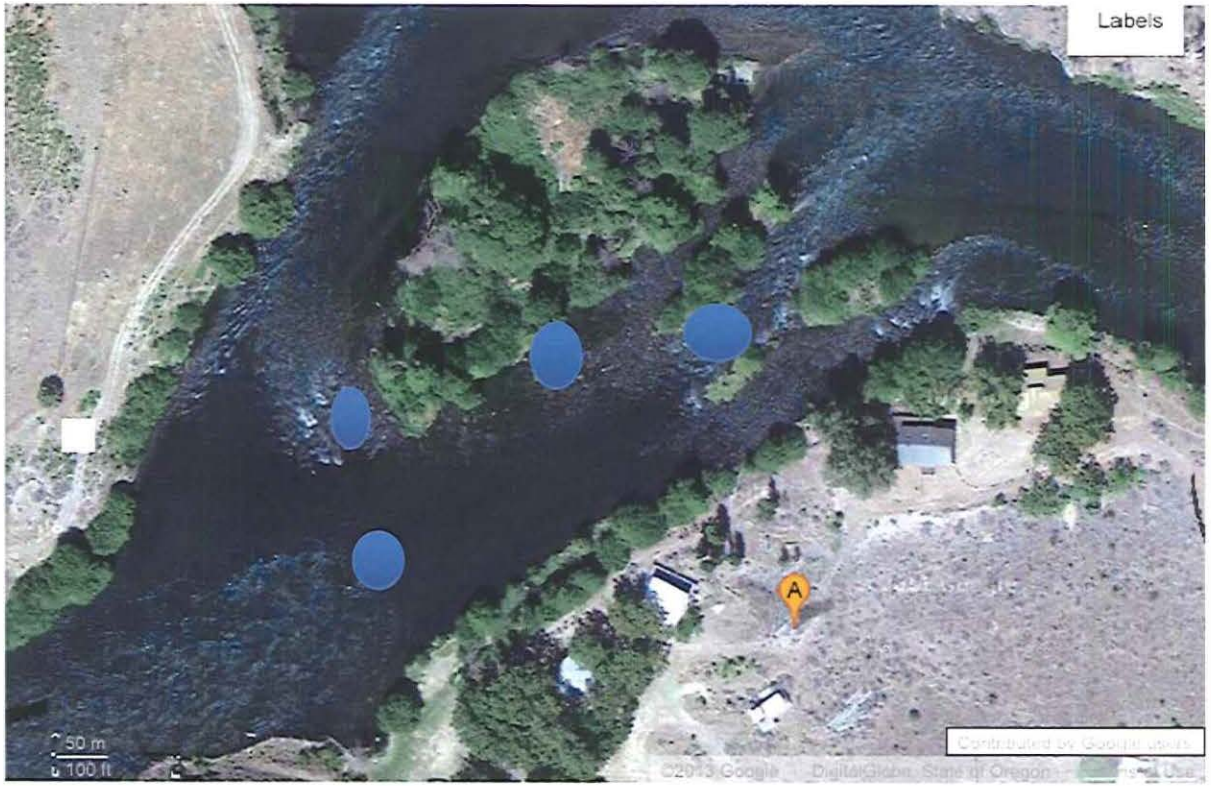
View from chute between main island and center island

View from mid stream with no telephoto

View standing 4' above river on island.

Photographer as seen by person standing on bank at forefront of property with telephoto application.

Locations of Photographers



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AFFIDAVIT OF HAROLD F. ERZ

STATE OF OREGON)
) ss.
County of Multnomah)

I, Harold F. Erz, being first duly sworn, depose and say:

1. I am the grandfather of Gabriel A. Watson. His mother, now deceased, was my daughter.

2. I was a close friend of Edwin J. Welsh and I am very familiar with the facts and history of the parcel of property conveyed to him in 1960 by Inez Hartung. The conveyance of the property was in payment for legal services rendered by Mr. Welsh to Mrs. Hartung.

3. I was previously employed by the Spokane Portland, Seattle and Burlington Northern Railroad (now BNSF Railroad) whose tracks run near the property that Mrs. Hartung conveyed to Mr. Welsh. I purchased an old caboose from the Railroad in 1960. By mutual agreement I had the caboose moved onto Mr. Welsh's land and the two of us, with our families, jointly used that property and the caboose as a fishing lodge for many years. I incurred significant expense to purchase and move the caboose onto the property. The understanding between us was that we jointly "owned" that property and the caboose. Mr. Welsh told me repeatedly that my family and I had the legal right to use the property on which the caboose was located for the rest of my life, even if I lived longer than Mr. Welsh.

4. I did not believe it was necessary to record a document to evidence our agreement. It was simply understood among Mr. Welsh, me, and our families that we shared the ownership and use of the property and caboose.

5. The floodwaters of 1996 tipped the caboose onto its side but the caboose remained on our property. Many years afterward, and without my permission, someone moved the caboose onto the land of a neighboring property owner who is a descendant of Inez Hartung.

6. "My family has continued to use the property regularly for camping and fishing trips even though the caboose is no longer there because our agreement did not require that the caboose stay on the property.

7. Sometime after my friend Edwin Welsh died, his daughter Vicki Welsh Jones sold her interest in the real property to Michael A. Watson, my daughter's husband, who then later conveyed it to my grandson Gabriel Watson. When I die, my grandson Gabriel will have sole right and title to the property, but until then I and my family retain the right to use the property.

8. Gabriel now wants to complete his mother's plan to build a small cabin on the property and I make this Affidavit in support of his application for approval to build the cabin. I fully intend to visit Gabriel from time-to-time to continue to enjoy the property since there are so many fond memories of my friendship with Edwin Welsh and of our families spending time there.

Harold F. Erz

SUBSCRIBED AND SWORN to before me this 5th day of August, 2013.

OFFICIAL SEAL
CALEB JAMES KENNEDY
NOTARY PUBLIC-OREGON
COMMISSION NO. 462466
MY COMMISSION EXPIRES OCTOBER 06, 2016

NOTARY PUBLIC FOR OREGON
My Commission Expires: 10-6-16

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KEY REGULATORY DOCUMENTS RELATED TO THE GOAL 5 ISSUE.

1. Statewide Planning Goal 5.

   - Requires County to inventory open spaces and natural resource areas, including "State Scenic Waterways."

   - Encourages County to protect and manage fish and wildlife areas IAW Oregon Wildlife Commission's management plans.

2. OAR 660, Div 16 (Goal 5 Administrative Rule – Pre-1995 Version).

   - Requires County identify land uses which conflict with inventoried Goal 5 resources.

   - Requires County to evaluate Economic, Social, Environmental, and Energy ("ESEE") consequences of the conflicting uses upon the resource, and vice versa.

   - Based on results of ESEE analysis, County must develop a plan to achieve compliance with Goal 5, by either:

     - Fully protecting the Goal 5 Resource;
     - Fully allowing the conflicting use (at the expense of the resource), or;
     - Limit conflicting uses to achieve a balance between the resource and the conflicting use

3. Wasco Co. Comprehensive Plan - Excerpt From Chapter 2

   - Identifies the land along the Deschutes River as providing "important and unique wildlife habitat."

4. Wasco Co. Comprehensive Plan – Chapter 14 (Goal 5 Findings).

   - Identifies "residential development" as the type of "conflicting use" that is most often found to occur in open spaces lands.

   - States that Deschutes River is "protected" by the "State Scenic Rivers Act" and "the E.P.D. Division 5 (§3.755(5))." Environmental Protection District [aka: Section 3.910, Div. 7 Natural Area Overlay"].

   - Identifies Deschutes River as offering "outstanding scenic views."

5. Wasco Co. Comprehensive Plan – Chapter 15 (Goal 5 Policies and Implementation Measures).

   - Policy 5: Sets forth Goal 5 policy for Wild and Scenic Rivers: "Shall be maintained and protected as natural and open space areas with consideration for agriculture and recreation."

   - Implementation Measure C: "allow only buildings customarily provided in conjunction with farm use within the visual corridors of the Deschutes * * * Scenic Waterway."

6. **Wasco Co. Zoning Code - Section 3.910 Division 7: Natural Area Overlay.**

   - Sets forth the purpose of the overlay district: "This overlay district is intended to preempt conflicting uses in areas identified in eth Wasco County Comprehensive Plan as containing significant natural value.

   - Contains a section entitled "Permitted uses." This section states that "Uses allowed in the underlying zone shall be subject to the conditional use review permit pursuant to Section 2.060(A) of this Ordinance."

7. **Wasco Co. Zoning Code - Section 3.920 Division 8 – Sensitive Wildlife Habitat Overlay.**

   - Provides context as to the meaning of Section 3.910.

   - Sets forth two separate sections for "Permitted" and "Conditional Uses," but subjects conditional uses to special "siting standards."

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Oregon's Statewide Planning Goals & Guidelines

GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

OAR 660-015-0000(5)
(Please Note: Amendments Effective 08/30/96)

To protect natural resources and conserve scenic and historic areas and open spaces.

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability.

The following resources shall be inventoried:

a. Riparian corridors, including water and riparian areas and fish habitat;
b. Wetlands;
c. Wildlife Habitat;
d. Federal Wild and Scenic Rivers;
e. State Scenic Waterways;
f. Groundwater Resources;
g. Approved Oregon Recreation Trails;
h. Natural Areas;
i. Wilderness Areas;
j. Mineral and Aggregate Resources;
k. Energy sources;
l. Cultural areas.

Local governments and state agencies are encouraged to maintain current inventories of the following resources:

a. Historic Resources;
b. Open Space;
c. Scenic Views and Sites.

Following procedures, standards, and definitions contained in commission rules, local governments shall determine significant sites for inventoried resources and develop programs to achieve the goal.

GUIDELINES FOR GOAL 5

A. PLANNING

1. The need for open space in the planning area should be determined, and standards developed for the amount, distribution, and type of open space.

2. Criteria should be developed and utilized to determine what uses are consistent with open space values and to evaluate the effect of converting open space lands to inconsistent uses. The maintenance and development of open space in urban areas should be encouraged.

3. Natural resources and required sites for the generation of energy (i.e. natural gas, oil, coal, hydro, geothermal, uranium, solar and others) should be conserved and protected;

reservoir sites should be identified and protected against irreversible loss.

4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

5. The National Register of Historic Places and the recommendations of the State Advisory Committee on Historic Preservation should be utilized in designating historic sites.

6. In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected.

7. As a general rule, plans should prohibit outdoor advertising signs except in commercial or industrial zones. Plans should not provide for the reclassification of land for the purpose of accommodating an outdoor advertising sign. The term "outdoor advertising sign" has the meaning set forth in ORS 377.710(23).

B. IMPLEMENTATION

1. Development should be planned and directed so as to conserve the needed amount of open space.

2. The conservation of both renewable and non-renewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality, location, rate and type of growth in the planning area.

3. The efficient consumption of energy should be considered when utilizing natural resources.

4. Fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans.

5. Stream flow and water levels should be protected and managed at a level adequate for fish, wildlife, pollution abatement, recreation, aesthetics and agriculture.

6. Significant natural areas that are historically, ecologically or scientifically unique, outstanding or important, including those identified by the State Natural Area Preserves Advisory Committee, should be inventoried and evaluated. Plans should provide for the preservation of natural areas consistent with an inventory of scientific, educational, ecological, and recreational needs for significant natural areas.

7. Local, regional and state governments should be encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this goal.

8. State and federal agencies should develop statewide natural resource, open space, scenic and historic area plans and provide technical assistance to local and regional agencies. State and federal plans should be reviewed and coordinated with local and regional plans.

9. Areas identified as having non-renewable mineral and aggregate resources should be planned for interim,

transitional and "second use" utilization as well as for the primary use.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

DIVISION 16

REQUIREMENTS AND APPLICATION PROCEDURES FOR COMPLYING WITH STATEWIDE GOAL 5

NOTE: The rules under this division are superseded by OAR 660, division 023, except with regard to cultural resources and certain post-acknowledgment plan amendments and periodic review work tasks described in OAR 660-023-0250(2) and 660-023-0250 (4) (See 660-023-0250(1)).

660-016-0000

Inventory Goal 5 Resources

(1) The inventory process for Statewide Planning Goal 5 begins with the collection of available data from as many sources as possible including experts in the field, local citizens and landowners. The local government then analyzes and refines the data and determines whether there is sufficient information on the location, quality and quantity of each resource site to properly complete the Goal 5 process. This analysis also includes whether a particular natural area is "ecologically and scientifically significant", or an open space area is "needed", or a scenic area is "outstanding", as outlined in the Goal. Based on the evidence and local government's analysis of those data, the local government then determines which resource sites are of significance and includes those sites on the final plan inventory.

(2) A "valid" inventory of a Goal 5 resource under subsection (5)(c) of this rule must include a determination of the location, quality, and quantity of each of the resource sites. Some Goal 5 resources (e.g., natural areas, historic sites, mineral and aggregate sites, scenic waterways) are more site-specific than others (e.g., groundwater, energy sources). For site-specific resources, determination of *location* must include a description or map of the boundaries of the resource site and of the impact area to be affected, if different. For non-site-specific resources, determination must be as specific as possible.

(3) The determination of *quality* requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of *quantity* requires consideration of the relative abundance of the resource (of any given quality). The level of detail that is provided will depend on how much information is available or "obtainable".

(4) The inventory completed at the local level, including options in subsections (5)(a), (b), and (c) of this rule, will be adequate for Goal compliance unless it can be shown to be based on inaccurate data, or does not adequately address location, quality or quantity. The issue of

adequacy may be raised by the Department or objectors, but final determination is made by the Commission or the Land Use Board of Appeals as provided by law.

(5) Based on data collected, analyzed and refined by the local government, as outlined above, a jurisdiction has three basic options:

(a) Do Not Include on Inventory: Based on information that is available on location, quality and quantity, the local government might deter mine that a particular resource site is not important enough to warrant inclusion on the plan inventory, or is not required to be included in the inventory based on the specific Goal standards. No further action need be taken with regard to these sites. The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory unless challenged by the Department, objectors or the Commission based upon contradictory information;

(b) Delay Goal 5 Process: When some information is available, indicating the possible existence of a resource site, but that information is not adequate to identify with particularity the location, quality and quantity of the resource site, the local government should only include the site on the comprehensive plan inventory as a special category. The local government must express its intent relative to the resource site through a plan policy to address that resource site and proceed through the Goal 5 process in the future. The plan should include a time-frame for this review. Special implementing measures are not appropriate or required for Goal 5 compliance purposes until adequate information is available to enable further review and adoption of such measures. The statement in the plan commits the local government to address the resource site through the Goal 5 process in the post-acknowledgment period. Such future actions could require a plan amendment;

(c) Include on Plan Inventory: When information is available on location, quality and quantity, and the local government has determined a site to be significant or important as a result of the data collection and analysis process, the local government must include the site on its plan inventory and indicate the location, quality and quantity of the resource site (see above). Items included on this inventory must proceed through the remainder of the Goal 5 process.

Stat. Auth.: ORS 183 & ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81; LCDC 3-1990, f. & cert. ef. 6-6-90

660-016-0005

Identify Conflicting Uses

(1) It is the responsibility of local government to identify conflicts with inventoried Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have

been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences:

(2) Preserve the Resource Site: If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance provisions, as appropriate, which ensure preservation of the resource site.

(3) Determine the Economic, Social, Environmental, and Energy Consequences: If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. A determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81; LCDD 3-2004, f. & cert. ef. 5-7-04

660-016-0010

Develop Program to Achieve the Goal

Based on the determination of the economic, social, environmental and energy consequences, a jurisdiction must "develop a program to achieve the Goal." Assuming there is adequate information on the location, quality, and quantity of the resource site as well as on the nature of the conflicting use and ESEE consequences, a jurisdiction is expected to "resolve" conflicts with specific sites in any of the following three ways listed below. Compliance with Goal 5 shall also be based on the plan's overall ability to protect and conserve each Goal 5 resource. The issue of adequacy of the overall program adopted or of decisions made under sections (1), (2), and (3) of this rule may be raised by the Department or objectors, but final determination is made by the Commission, pursuant to usual procedures:

(1) Protect the Resource Site: Based on the analysis of the ESEE consequences, a jurisdiction may determine that the resource site is of such importance, relative to the conflicting uses, and the ESEE consequences of allowing conflicting uses are so great that the resource site should be protected and all conflicting uses prohibited on the site and possibly within the impact area identified in OAR 660-016-0000(5)(c). Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

(2) Allow Conflicting Uses Fully: Based on the analysis of ESEE consequences and other Statewide Goals, a jurisdiction may determine that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. This approach may be used when the conflicting use for a particular site is of sufficient importance, relative to the resource site.

Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

(3) Limit Conflicting Uses: Based on the analysis of ESEE consequences, a jurisdiction may determine that both the resource site and the conflicting use are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource site to some desired extent. To implement this decision, the jurisdiction must designate with certainty what uses and activities are allowed fully, what uses and activities are not allowed at all and which uses are allowed conditionally, and what specific standards or limitations are placed on the permitted and conditional uses and activities for each resource site. Whatever mechanisms are used, they must be specific enough so that affected property owners are able to determine what uses and activities are allowed, not allowed, or allowed conditionally and under what clear and objective conditions or standards. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81; LCDD 3-2004, f. & cert. ef. 5-7-04

660-016-0015

Post-Acknowledgment Period

(1) All data, findings, and decisions made by a local government prior to acknowledgment may be reviewed by that local government in its periodic update process. This includes decisions made as a result of OAR 660-016-0000(5)(a), 660-016-0005(1), and 660-016-0010. Any changes, additions, or deletions would be made as a plan amendment, again following all Goal 5 steps.

(2) If the local government has included in its plan items under OAR 660-016-0000(5)(b), the local government has committed itself to take certain actions within a certain time frame in the post-acknowledgment period. Within those stated time frames, the local government must address the issue as stated in its plan, and treat the action as a plan amendment.

Stat. Auth.: ORS 183 & ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

660-016-0020

Landowner Involvement

(1) The development of inventory data, identification of conflicting uses and adoption of implementing measures must, under Statewide Planning Goals 1 and 2, provide opportunities for citizen involvement and agency coordination. In addition, the adoption of regulations or plan provisions carries with it basic legal notice requirements. (County or city legal counsel can advise the planning department and governing body of these requirements.) Depending upon the type of action involved, the form and method of landowner notification will vary. State statutes and local charter provisions contain basic notice requirements. Because of the nature of the Goal 5 process as outlined in this paper it is important to provide for notification and involvement of landowners, including public agencies, at the earliest possible opportunity. This will likely avoid problems or disagreements later in the process and improve the local decision-making process in the development of the plan and implementing measures.

(2) As the Goal 5 process progresses and more specificity about the nature of resources, identified conflicting uses, ESEE consequences and implementing measures is known, notice and involvement of affected parties will become more meaningful. Such notice and landowner involvement, although not identified as a Goal 5 requirement is in the opinion of the Commission, imperative.

Stat. Auth.: ORS 183 & ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

660-016-0030

Mineral and Aggregate Resources

(1) When planning for and regulating the development of aggregate resources, local governments shall address ORS 517.750 to 517.900 and OAR Chapter 632, Divisions 1 and 30.

(2) Local governments shall coordinate with the State Department of Geology and Mineral Industries to ensure that requirements for the reclamation of surface mines are incorporated into programs to achieve the Goal developed in accordance with OAR 660-016-0010.

(3) Local governments shall establish procedures designed to ensure that comprehensive plan provisions, land use regulations, and land use permits necessary to authorize mineral and aggregate development are coordinated with the State Department of Geology and Mineral Industries. Local governments shall amend comprehensive plans and land use regulations, as necessary, no later than January 1, 1993.

(4) The provisions of this rule shall be effective immediately.

The forested regions of the western portions of the county provide winter habitat for the deer and elk that range there from higher elevations. Migrational movements range from a few hundred feet to several miles. The winter range area varies in size depending on winter weather conditions and snow depth. Although much of the range area is in public ownership, many of the lower valley areas are now largely settled by private owners. Maintenance of the remaining big game winter range is necessary if viable herds of deer and elk are to remain in these portions of the county.

Also ranging in these forested areas are black bear, cougar; migratory birds, northern bald eagles and other species. Many of these species have large ranging requirements and feed on deer mortalities. Proper management and maintenance of these species includes maintaining road less areas and preserving key stands of old timber.

Timber management on forest land has both beneficial and detrimental effect on wildlife species. Clear-cutting methods have increased habitat for big game species but have at the same time eliminated habitat for some bird and mammal species. Consequently, proper timber management is essential.

In recent years, the productive pine-oak habitat has been undergoing development into recreational subdivisions. Road access, off road vehicles and free-ranging dogs can have detrimental effects on animals utilizing these areas. Harvesting of old growth pine will diminish necessary habitat for animals such as the introduced Merriam's turkey, which has a definite preference for pine as a food source and roosting area.

Riparian habitats are very sensitive to adverse impacts, as these areas serve a great number of wildlife species in a variety of ways. Not only does this vegetation provide habitat, but is instrumental in maintaining water quality and preventing soil erosion. In some parts of the county, particularly the eastern and southern portions, riparian habitat is scarce and must be protected.

Livestock grazing has had a tremendous effect on vegetative cover along streams. Intensive grazing has caused a decline of large native grasses, such as blue brush wheatgrass and Idaho fescue. The Columbian sharp-tailed grouse, which was associated with native bunchgrass and adjoining bushy areas, has disappeared. Heavy grazing of livestock and deer in the summer has an adverse impact on wintering deer and other wildlife species. Fires, as well as misuse and over-use of riparian habitats by man also have tremendous detrimental effects.

Figure 16 shows areas of sensitive big game winter range and riparian habitat. These areas were determined through research by the Oregon Department of Fish and Wildlife.

4. Unique Habitats

The unique rock formations, rock slides and overall variable terrain features of the southern portion of the county and along the Deschutes, John Day and

Columbia Rivers provide an important and unique wildlife habitat. Some wild-life species are directly associated with rock formations as a result of adaptation. An example is the chukar part-ridge. Rocky, steep terrain is an integral part of good chukar habitat, as these areas are utilized for shade, cover and escape routes. Other species closely associated with rock formations include bobcat, porcupine, wood rat, cliff swallow, rock and canyon wrens and the rattlesnake. Golden eagles and bald eagles nest in rock outcrops, cliffs and snags along the John Day and Deschutes Rivers, as do burrowing owls and the great blue heron. Osprey nest and feed along the Deschutes and Columbia.

Oregon white oak is a common deciduous tree species in central Wasco County, but it is considered to be a unique entity, as there is little in the remainder of eastern Oregon. Older age class oaks provide many nest cavities for a wide range of non-game wildlife species. Several species directly associated with Oregon white oak include the Lewis woodpecker, silver gray squirrel and Merriam turkey.

5. Land Use Conflicts and Resolutions

The type and severity of conflicts between wildlife and other land uses vary depending upon the habitats and land use involved. Conflicts to habitat frequently results in habitat loss or degradation and harassment which reduce animal numbers and correspondingly recreational opportunities. Land uses most compatible with Wasco County's fish and wildlife resources include open space, agriculture and forest. Land use designations which maintain large minimum lot size result in low residential densities and reduced conflicts between habitats and human activities. It is important to note that valuable habitat is found throughout the County, not just in those areas identified as sensitive.

CHAPTER 14 FINDINGS AND RECOMMENDATIONS

A. Justifications for Minimum Lot Sizes

Goal #3 states that "minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area". The minimum lot sizes in the exclusive farm use zones are twenty (20) acres and eighty (80) acres. The justifications for these lot sizes are as follows.

1. A-1(20)

The A-1 (20) zoning has generally been applied to the orchard lands surrounding The Dalles and lying to the south of Mosier. The average lot size for all orchard lands in 1976 was 42.2 acres and was approximately forty (40) acres in 1980(Jack Thienes Telephone Conversation) However, this does not represent the true picture of orchard sizes in the County; nor does it address the Goal 3 requirement stated above.

The question of what is a "commercial agricultural enterprise" has been wrestled with for several years in Oregon by many of the agricultural experts in government, universities and businesses. Everyone has a general idea or understanding of the answer, but no one has yet been able to precisely define it; and perhaps that is best. Defining a commercial orchard enterprise in Wasco County is also extremely difficult. Everyone knows an orchard when they see one, but each of the 150 orchards in Wasco County has their own unique set of circumstances which makes a single definition improbable and impractical. Each orchard operates differently but many have common characteristics.

One characteristic common to most, if not all, of the smaller orchards is that the orchard enterprise is not the sole source of income for the owner. The idea then that lot sizes must be large enough to ensure that one can make his livelihood solely from the orchard enterprise is simply not valid.["1000 Friends" letter; July 31, 1981, Page 6, U 3].

The smaller orchards make up the majority of all orchard lands within Wasco County. There are currently 150 orchards comprising 6,000 acres. The ten largest orchards involve 2,690 acres, leaving 3,310 acres for the remaining 140 orchards.

No one would argue that the small orchard enterprises are not important to the overall fruit processing economy of Wasco County. The large orchards have been described as the backbone of the fruit industry. That being the case, and carrying the analogy further, the small orchards must then be the heart. If the opportunity for buying and operating a small orchard should be eliminated by excessively large minimum lot sizes, an acceleration of the consolidation of orchards, which is already occurring, would result. Many people who might want to begin operating a small orchard or those who want to expand an existing

dwelling will need to receive a conditional use permit thus protecting adjacent farming operations which may be occurring in the area.

See additional documentation in Revisions Document Related to F-F(10)

B. Goal 5 Issues

Goal 5 states that open space shall be preserved and natural and scenic resources protected. The administrative rule on Goal 5, adopted by the Commission on May 1, 1981, has given the means by which these resources should be inventoried and preserved. The conflict resolution process used for each Goal 5 issue is illustrated below.

1. Land Needed or Desirable for Open Space

Generally, all of the agricultural and forestry lands in the County could be considered as open space, in accordance with Goal 5. Other lands, such as the rock cliffs found in the Columbia Gorge, the Deschutes and John Day Scenic Waterways, the White River and The Dalles and Dufur Watersheds could also be considered as open space lands. Each of these areas is being protected by various methods, to preserve their natural and scenic properties.

Key Finding: Residential use is considered a "conflicting use" To open space.

The type of "conflicting use" most often found to occur in the above mentioned open space lands is residential development, either conventional homes or mobile homes. Each open space resource and the method of protection are noted below.

a. Agricultural and Forest Lands:

According to sections 3.120(2)(a) and 3.210(1)(c) of the Wasco County Zoning Ordinance, residences are permitted outright in the agricultural and forest zones only in conjunction with a farm or forest use. Section 3.210(2)(r) permits a residence not connected with a farm or forest use as a conditional use, based on conditions set forth in section 3.120 (3), 3.210(3) and Oregon Revised Statutes 215.263. These conditions and the density requirement of each zone provide adequate protection of the farm, forest and open space resource. Other conditional uses must comply with the same conditions as mentioned above.

b. Columbia Gorge:

The Columbia Gorge, (as defined by Oregon Revised Statutes 390.460), is being protected from conflicting uses by the placement of the Environmental Protection District (EPD) Overlay zone, Section 3.700 of the Wasco County Zoning Ordinance. This overlay allows farm and forest uses, some utilities and re-creational use to occur, and dwellings in connection with farm or forest uses, provided they are constructed of materials which will minimize adverse impacts to the scenic values of the Gorge. All other uses permitted in the primary zone, either permitted out-right or as conditional uses, are considered

as conditional uses in the Environmental Protection District zone. The conflicting uses are allowed, but are specifically limited.

c. The Deschutes and John Day Scenic Waterways:
These waterways are protected by the State Scenic Rivers Act and the E.P.D. Division 5 (§3.755(5).

d. The White River:
The White River Canyon (generally from rim to rim), has been designated as a natural area by the Nature Conservancy and Wasco County, and protected by the placement of the Environmental Protection District zone. Due to the Environmental Protection District zone, topography and nature of the canyon, (very few roads exist in this area), the threat of conflicting uses damaging this resource is negligible. The resource is adequately protected.

Now Section 3.910 DIV 7 "Natural Area Overlay"

e. The Dalles and Dufur Watersheds:
These municipal watersheds are both zoned "F-1 (80)", which does not allow residential uses in any form, either as permitted use or conditional uses. Generally, only farm and forest uses and uses to maintain and enhance water quality and supply are permitted.

2. Mineral and Aggregate Resources
As stated in the Goals and Policies under Goal #5, rock and aggregate resources will be identified and protected by placement of the Environmental Protection District zone.

Extraction of these resources is a conditional use in the agricultural and forestry zones and a permitted use in the manufacturing zones.

Generally, residential uses are the uses which come into conflict with the extraction of aggregate and mineral resources. The provisions of the Environmental Protection District Division 5 overlay zone provide the protection necessary for all aggregate sites.

3. Energy Resources
Wind provides the most encouraging potential new source of energy in Wasco County. Privately owned and used wind generators are permitted in the farm and forest zones as customary accessory uses to any of the permitted uses [see Section 3.120(1)(f) and 3.210(1)(c).] If the owner of a wind generator sells excess electricity to a Utility, the Ordinance permits it as a utility facility necessary for public service [see Section 3.120 (1)(d) and 3.210(1)(d).]

Large-scale, commercial wind farms are considered as conditional uses in the A-1 Exclusive Farm Use zone and the F-F Forest-Farm zone. The limitations on conditional uses set forth in each section of the Ordinance and in Chapter 5

(Conditional Use Permits), must be addressed before the conditional use may be granted.

Exploration for geothermal resources is treated in a similar manner. It is considered as a conditional use in the agricultural zones, subject to the provisions in Chapter 5 of the Ordinance.

4. Fish and Wildlife Areas and Habitats
Big game herds are considered to be a valuable resource that was being threatened and in danger of being damaged. To remedy this situation, the placement of low density zoning requirements and stream setbacks were used to protect the resource. The development densities of one dwelling unit per forty (40) acres north of the Willamette Base Line and one per eighty (80) acres south of the Line were sanctioned by the Department of Fish and Wild-life as being adequate to maintain big game herds in the sensitive big game winter range area.

5. Ecologically and Scientifically Significant Natural Areas, Including Desert Areas
Natural areas have been identified and protected by the placement of the Environmental Protection District zone. None of the identified natural areas contain lands owned by private timber companies. No conflicts exist in the timber lands.

The Environmental Protection District zone allows for farm and forest practices to continue. The property owners that were contacted generally felt that there would be no conflicts with use of their land and protection of a natural area.

6. Outstanding Scenic Views and Sites
Outstanding scenic views and sites are generally those in the Columbia Gorge, the Deschutes and John Day Scenic Waterways and the White River Canyon. Protection of these areas has been discussed previously.

7. Water Areas, Wetlands, Watersheds and Groundwater Resources
Generally all water areas and wetlands are managed and protected by the State of Oregon. Occasionally, conflicts between recreational uses and agricultural uses exist, and are resolved at the State level. If the conflict is concerning water rights, the issue is resolved by the County Water master.

8. Wilderness Areas
There are no designated wilderness areas in the County.

9. Historic Areas, Sites, Structures and Objects
Thirty historic sites have been designated in the County. Only four of the sites are included in the "Statewide Inventory of Historic Sites and Buildings", for Wasco County, (Department of Transportation, 1976). These sites have been protected by the placement of the Environmental Protection District zone. Any

alteration or building of a structure that would have a detrimental effect on a historic site, as determined by the Planning Commission or County Court, based on input by the Historic Landmarks Advisory Committee, will not be permitted.

10. Cultural Areas
Cultural areas include archeological resources, as well as historic sites. Any proposed conflicting uses will be considered in light of the conditions set forth in the Environmental Protection District overlay zone.

11. Potential and Approved Oregon Recreation Trails
There are currently no Oregon recreation trails in Wasco County. The Columbia Gorge trail, which may pass into the county in the distant future, would fall under the conditions set forth in Section 3.755 of the Zoning Ordinance, which also affects the Columbia Gorge.

The Pacific Crest Trail, which passes through the County, is considered a part of the State Trail system. This trail, however, is located in the National Forest and is managed and maintained by the U.S. Forest Service. No conflicts exist in relation to any Oregon recreation trails.

12. Potential and Approved Federal Wild and Scenic Water-ways and State Scenic Waterways
At the present time there are no Federal wild and scenic rivers in the county and no knowledge of any potential for such a designation. State Scenic Waterways have been discussed previously (see Item 1 (c).)

GOAL # 5 - OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES

To conserve open space and protect natural and scenic resources.

Policy 1 – Mineral Resources
Protect and utilize appropriately the mineral and aggregate resources of Wasco County, and minimize conflict between surface mining and surrounding land uses.

Implementation

A. The development of new rock and aggregate resource sites shall be consistent with the State Planning Goal 5 and Oregon Administrative Rules Chapter 660, Division 16 process to balance conflicts between mining operations and new and existing surrounding conflicting uses.

B. Sites identified as significant aggregate resource sites shall not support interim or permanent uses which may jeopardize the future availability of the resource.

C. Mining and processing of gravel and mineral materials may only be allowed at sites included on the "Other Site" inventory or "Significant Sites" inventory.

1. Mining at sites on the "Other Sites" inventory may be allowed by a conditional use permit.

2. Mining at sites on the "Significant Sites" inventory may only be permitted in accordance with the Mineral Resources Overlay.

D. For each site determined to be significant, the County shall complete the remainder of the County Goal 5 process identifying conflicting uses, analyzing the ESEE consequences of the conflicting use(s), and designating a level of protection from conflicting uses. If the final decision concerning the site is to preserve fully or partially protect the resource from conflicting uses, the County shall zone the site with the Mineral Resources Overlay.

Policy 2 – Mineral Resources
The County shall maintain an inventory of mineral and aggregate resource sites. The comprehensive plan inventory shall consist of three parts:

-An inventory of "Significant Sites" identified through the Goal 5 process as important resources that will be protected from conflicting uses;

An inventory of "Potential Sites" for which sufficient information concerning the location, quality, and quantity of a resource site is not adequate to allow the County to make a determination of significance;

An inventory of "Other Sites" for which available information demonstrates that the site

G. No surface mining or processing activity, as defined by the zoning ordinance, shall commence without land use approval from the County, and approval of a reclamation plan and issuance of an operating permit by DOGAMI.

H. Aggregate sites shall be subordinate to the landscape setting as seen from travel corridors when such travel corridors have been determined to be significant by the ESEE analysis.

Policy 3 – Mineral Resources
New mineral and aggregate sites shall not be allowed within the quarter mile boundary of either the John Day or Deschutes Rivers.

Policy 4 – Mineral Resources
All aggregate operations within the Columbia River Gorge National Scenic Area shall be operated in compliance with the Management Plan for the National Scenic Area and its implementing ordinance.

Policy 5 – Wild & Scenic Rivers
The Deschutes and John Day River Scenic Waterways shall be maintained and protected as natural and open space areas with consideration for agriculture and recreation.

Implementation

A. Coordinate all land use planning activities with the Bureau of Land Management, Oregon State Department of Transportation and the Warm Springs Indian Reservation. These three parties shall be notified of all proposed land actions within the Deschutes River and John Day River Scenic Waterways for their review and comment.

B. Allow agricultural operations within the Deschutes and John Day Scenic Waterways.

C. Allow only buildings customarily provided in conjunction with farm use within the visual corridors of the Deschutes and John Day Scenic Waterways.

D. Encourage the preservation of landscape features of the John Day and Deschutes Rivers.

Policy 6 - Wild & Scenic Rivers
Cooperate with managing agencies to solve recreation use management on the John Day and Deschutes River Scenic Waterways.

Implementation

A. Coordinate with and support the managing agencies recreation use management issues and facilities necessary for recreation and resource protection.

Policy 7 – Columbia River Gorge
Maintain the existing aesthetic quality of the Columbia River Gorge.

Implementation

A. Scenic and Open Space areas in the Columbia River Gorge will be preserved by placement of the Environmental Protection District, Division 4, and overlay zone.

B. The Oregon State Highway Division should employ plantings to provide buffers between residential areas and Interstate 84 when feasible.

C. Forestry uses shall be in accordance with the Oregon Forest Practices Act.

D. Clear-cutting within the legal boundaries of the Columbia River Gorge is discouraged.

Policy 8 - Water
Encourage the construction of ponds for livestock, fire protection and water reclamation.

Implementation

A. Allow such uses in the "A-1" (Exclusive Farm Use) zone.

B. The County Watermaster and Sanitarian shall continue to regulate appropriations, diversions and sewage waste disposals to ensure quality water resources.

Policy 9 - Fish and Wildlife

-Encourage land use and land management practices which contribute to the preservation and enhancement of fish and wildlife resources, with consideration for private agricultural practices.

-To conserve and protect existing fish and wildlife areas.

-To maintain wildlife diversity and habitat so that it will support optimum numbers of game and nongame wildlife for recreation and aesthetic opportunities.

SECTION 3.910 DIVISION 7 - NATURAL AREAS OVERLAY

"preempt conflicting use"

A. Purpose: This overlay district is intended to preempt conflicting use in areas identified in the Wasco County Comprehensive Plan as containing significant natural value. The overlay is designed to protect the identified natural value by allowing only uses which will not permanently destroy the natural value. This overlay applies to all natural areas identified in the Wasco County Comprehensive Plan and to the Wasco County portions of the Deschutes, John Day, and White Rivers designated as Wild & Scenic Rivers as defined and protected in ORS 390.805 & 390.825 or USFC & CFR.

B. Permitted Uses: Uses allowed in the underlying zone shall be subject to the conditional use review permit pursuant to Section 2.060(A) of this Ordinance.

C. Approval Standards: In the evaluation of any use subject to the Natural Area Overlay, finding shall be required demonstrating that the designated natural value will not be damaged by the use or activity. If a proposed use or activity would result in the permanent destruction of natural value, then the request shall be denied.

SECTION 3.920 DIVISION 8 - SENSITIVE WILDLIFE HABITAT OVERLAY

In any zone which is in the Wildlife Overlay (EPD-8), the requirements and standards of this Chapter shall apply in addition to those specified in this Section for the underlying zone. If a conflict in regulation or standards occurs, the provisions of this Section shall govern except that the larger minimum lot size shall always apply.

A. Purpose: The purpose of this overlay district is to conserve important wildlife areas by providing supplementary development standards; to promote an important environmental, social, and economic element of the area; and to permit development compatible with the protection of the wildlife resource.

B. Application of Provisions: Except as provided in Section C. below, this overlay district shall be applied to all areas identified in the Comprehensive Plan as Big Game Winter Range Habitat and Area of Voluntary Siting Standards.

C. Exempt Areas: The following areas are exempt from these provisions:

1. Rural Service Centers.

2. Areas designated as Impacted Areas in the Transition Lands Study Area.

D. Permitted Uses: All uses allowed in the overlay zone shall be those farm and forest uses permitted outright by the underlying zone.

E. Conditional Uses: The conditional uses permitted in the zones in which this overlay is applied, shall be those permitted conditionally by the underlying zone subject to the other applicable standards of this Section.

F. Siting Standards

1. For lands within the Area of Voluntary Siting Standards a meeting between the applicant and Oregon Department of Fish and Wildlife shall be required if Oregon Department of Fish and Wildlife determines that habitat values exist which may be important to discuss with the applicant. The result of the meeting shall be included as information in the county review of a land use application.

2. In the area designated Big Game Winter Range the following siting standards shall be applied as a condition of approval for all new dwellings. In the area designated Area of Voluntary Siting Standards the following siting standards shall be by voluntary agreement of the applicant.

a. New dwellings shall be located within three hundred feet (300') of public roads or easement or private roads or easements existing as of October 22, 1997, unless it can be found that:

(1) Habitat values (browse, forage, cover, access to water) are afforded equal or greater protection through a different development pattern; or,

(2) The siting within three hundred feet (300') of such roads or easements would force the dwelling to be located on irrigated land, in which case, the dwelling shall be located to provide the least impact on wildlife habitat possible considering browse, forage cover, access to water, and minimizing length of new access roads.

G. Fencing Standards: The following fencing standards could apply to new fences constructed as a part of development of a property in conjunction with conditional use permit. These standards shall be a voluntary agreement by the applicant.

New fences in the Big Game overlay zone are designed to permit wildlife passage. The following standards are guidelines approved by the County after consultation with the Oregon Department of Fish and Wildlife:

1. To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.

2. A 3-wire or 4-wire fence with the bottom wire at least 18 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire to avoid injury to animals.

3. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.

H. The County shall notify the Oregon Division of State Lands and the Oregon Department of Fish and Wildlife of any development application for land within a wetland identified on the National Wetlands Inventory maps.

I. An application for a destination resort, or any portion thereof, in a recognized Big Game Habitat overlay zone shall not be accepted pending completion of the County's Goal 8 destination resort mapping process.

J. The county shall provide ODFW an annual record of development approvals within the areas designated as "Area of Voluntary Siting Standards" on the plan map to allow ODFW to monitor and evaluate if there is a significant detrimental effect on habitat (Added October 1997).

4 BUFFER TREES PLANTED TO SCREEN REQUESTED BY PARKS

RECEIVED INTO RECORD
DATE August 6, 2013 BY

Perkins Coie

Mark D. Whitlow
PHONE: (503) 727-2073
FAX: (503) 346-2073
EMAIL: MWhitlow@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

August 5, 2013

John Roberts
Planning Director
Wasco County Planning and Development
2705 East Second Street
The Dalles, OR 97058

Re: Access Issues
Application of Gabriel Watson
County File No. PLAQJR-12-08-0001

Dear Mr. Roberts:

This letter is submitted on behalf of Doug Robertson and will reiterate the matters we have discussed on the telephone over the past several days as we continually receive additional, last minute information from the applicant. Please make this letter available to the Planning Commission in advance of the Public Hearing.

We object to the new information and urge the Planning Commission to reject it as a *de facto* new application and require that the Watsons submit it as such and withdraw the existing application. It is unfair to the other property owners within North Junction to be subjected to a completely new proposal at the brink of the public hearing.

In reviewing the Planning Commission's packets, we fail to find many of the photographs, emails and other letters of comment which have been submitted through my office or through Doug Robertson or John Hartung to you. Please make all of those prior communications to you a part of the record to be placed before the Planning Commission for its consideration.

Regarding that, I resubmit Doug Robertson's email communications in reference to the County non-conforming development ordinance which was in place at the time of the 1996 flood. Doug Robertson's email then details the County's requirements imposed on all property owners in North Junction at that time to replace their non-conforming dwellings by starting that process within 6 months or to be forever barred from doing so. I enclose another copy of Doug Robertson's July 21, 2013 email message to you setting forth all of the particulars and,

additionally, providing direct evidence that Leslie Watson purchased the lot knowing it was unbuildable.

As previously stated in other submittals, it is unfair to all of the other land owners in North Junction to give the Watsons special treatment by allowing them to develop a new dwelling 17 years after the 1996 flood, where everyone else was only given 6 months to start to replace their old, non-conforming dwellings, without being able to establish anything beyond what had already existed there. The Watson property was given the same entitlement that all other properties received, which was to initiate the reestablishment of the non-conforming dwellings within 6 months. The prior owner of the Watson lot elected not to reestablish the non-conforming dwelling and the non-conforming right on that lot was lost through abandonment. It cannot now be reestablished without granting the Watsons a greater right than was granted to all other property owners in North Junction.

We hereby request a continuance in order to have the opportunity to respond to the late submitted material.

Very truly yours,

Mark D. Whitlow

MDW:lt

Enclosure

cc: Doug Robertson (w/encl.)

Twombly, Lisa (Perkins Coie)

From: Doug Robertson <dougr@easystreet.net>
Sent: Sunday, July 21, 2013 4:21 PM
To: John Roberts
Cc: andrewstamp@comcast.net
Subject: Watson Hearing re North Junction Tax Lot #300

Dear Mr. Roberts;
I'm writing this note to you even though I have submitted other such information in the past and through my attorney Mark Whitlow and Andrew Stamp. In review of my records, I see that our landowner meeting at North Junction the weekend before April 4, 1996 (which is the date of my confirmation letter) set out the regulations we had confirmed with WASCO County and Parks Dept. Specifically I met with Gary and Vicki Jones (ED Welsh's daughter) Amelia and their daughter. We discussed the administrative regulation Section 13.070 (citation in our opposition filing) allowing only 6 months from the date of natural destruction (the Flood 2-8-96) in which to commence replacement of our "nonconforming uses", the cabins, and in their case the caboose. We also discussed the 12 month substantial completion time lines. Ken Klarquist in tax lot #200 also a lawyer had researched the law and contacted the county and arrived at the same conclusions. All of us—Hartung, Robertson, Klarquist (KNAKLE Partnership) and Harlow were in attendance with Gary Jones and Vicki (Welsh). Vicki remarked how sad she was that it was their father's favorite resting place but it was too sad for her to come up again. Gary said he'd let me know what their plans were very soon as he saw the urgency—he was a lawyer—and appreciated all our help. I talked to Gary last about the rebuild deadlines and their decision in June and July of 2004. He said that they had decided to not rebuild—they would later sell the caboose to Hartung—and I even offered to purchase it from him. Myself. He thought they'd keep the land simply so they would have a Deschutes Club key so he could visit and fish. He mentioned he was going to ask for a tax reduction as no longer a dwelling on the land and acknowledged it reverted to pre-caboose status—undeveloped land. I last talked to Gary in 2010 to inquire of the rumor that they were trying to sell the land—he confirmed that despite my offer and Hartungs his wife Vicki sold it to Leslie Watson just for "old times' sake" as Leslie lobbied them hard he said. He said we shouldn't worry even though the Watsons were unruly, destructive and always asking forgiveness after they broke the laws as the lot was unbuildable per the law. He said Leslie was fully aware of this as he fully disclosed the problems to her upon the sale. I confirmed this with Leslie Watson when I called to inquire of her plans for the lot, shortly after the phone call to Gary and she confirmed that she bought the lot as a reminder of her growing up on the flats and knew that it was unbuildable and all they wanted to do was camp on it and assure that the Rail Road if it evicted them again that they would still have rights to come up to the flats.

To regress a bit and give more of my detrimental reliance and that of the other landowners, I contacted Wasco Planning 5-10-04 and was told that the nonpermitted use sections of the law stated that if you don't replace a nonpermitted use exception within 12 months of its destruction that one could NEVER replace it. They said this was strictly construed in part at North Junction because of the Scenic Waterways Act. I talked to Bruce Barnwell 5-11-04 about the replacement potential on tax lot #200 as I was considering buying it to assure it could never be rebuilt—since I was next door, and he told me I could save my money because the land had reverted to its preexisting use and no dwelling would be allowed. Again, 5-25-04 I called Planning and spoke to several people including Dawn Baird and was assured that the 40 acre farm use would not allow a building on the Tax lot 200 including even putting the old caboose back and that was the legal status of the lot—the replacement exception was not timely commenced and the property had reverted to the nonexception pre dwelling us and could only come back if the Planning Commission overruled the rules and created an exception on building anew in a 40 acre zone and got a variance from Parks and the Scenic Waterway Act to construct a new dwelling where one did not legally exist . Therefore, I took the positive (now detrimental) steps to withdraw my offer to the Jones(Welsh) family as I was assured I would never have a building on that lot which was my only concern. That is why I am so surprised that 17 years later the County has allowed this application to proceed and I and all the other landowners will be damaged by the prior advice given by the same county if this application is granted. All the other land owners followed the law for a protection of our unique grandfather status—we worked with the county and

feel it so inappropriate to allow someone newly purchasing the land to ignore its legal history and status and claim" well there is another building in the immediate vicinity so I should have one too—what's one more where there is already a view infringement-I should be allowed to do whatever I want with my land, never mind I was told it was unbuildable by operation of law." This is not the law, this precedent would be disastrous to the rest of the River as there are other old parcels that could be "resurrected" simply because in pioneer days there may have been a homesteader's cabin on it. The Scenic Waterways should not be gutted by this inroad and that is why the opposition is so vehement over what may seem a minor change in the number of grandfathered dwellings. Progress to upgrade the county could never happen if backtracking to poor prior planning was allowed. I remain committed to upholding the intent of the law and holding our representatives accountable for Oregon's progressively positive land planning. Always have and always will. It's nothing to do with whether I approve or disapprove of Gabe Watson's behavior at North Junction. I would oppose this attempted change in the laws through "variances" no matter who was making this back door attempt to overrule the Scenic Waterways Act.

In 1985 I had ownership rights to the entire lower 12 miles of the Deschutes. In order to preserve it for the people of Oregon, I turned it over to the State with a set of promises to keep it protected and open to the public forever. I was honored by then Governor Vic Atlya and the State of Oregon by the establishment of Robertson Point State Park which is a 20 acre tract 12 miles from the Mouth of the Deschutes on the water across from the old railroad water tower—dedicated to me for being "the guy who saved the Deschutes River" according to the press. You can read about me in the final chapter of the book called "The Deschutes" by Dave Hughs. The River is in my bloodstream and I will devote my efforts in preserving every piece of property from falling out of the State Scenic Waterways Protection. It is the legal precedent—it is my lifelong pursuit. I can count 6 parcels of land that fit this same fact description and have talked to the owners—To a person, they are all anxiously awaiting the outcome of this decision, have the resources to start development proceedings and the impact will make this North Junction inroad appear very miniscule in comparison. Please, not on your watch.

Respectfully submitted in opposition to allowing the variances to county laws and state Scenic Waterways Act regulations by granting a building permit to the Watson application on file for tax lot 300.

Douglas Robertson

RECEIVED INTO RECORD
DATE August 6, 2013 BY

Perkins Coie

Mark D. Whitlow
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FAX: (503) 346-2073
EMAIL: MWhitlow@perkinscoie.com

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August 6, 2013

John Roberts
Planning Director
Wasco County Planning and Development
2705 East Second Street
The Dalles, OR 97058

Re: Application of Gabriel Watson
County File No. PLAQJR-12-08-0001

Dear Mr. Roberts:

This letter is submitted on behalf of Doug Robertson. Please make this letter available to the Planning Commission in advance of the Public Hearing.

In reviewing the Planning Commission's packets, we fail to find many of the photographs, emails and other letters of comment which have been submitted through my office or through Doug Robertson or John Hartung to you. Please make all of those prior communications to you a part of the record to be placed before the Planning Commission for its consideration.

As previously stated in other submittals, it is unfair to all of the other land owners in North Junction to give the Watsons special treatment by allowing them to develop a new dwelling 17 years after the 1996 flood, where everyone else was only given 6 months to start to replace their old, non-conforming dwellings, without being able to establish anything beyond what had already existed there. The Watson property was given the same entitlement that all other properties received, which was to initiate the reestablishment of the non-conforming dwellings within 6 months. The prior owner of the Watson lot elected not to reestablish the non-conforming dwelling and the non-conforming right on that lot was lost through abandonment.

It cannot now be reestablished without granting the Watsons a greater right than was granted to all other property owners in North Junction.

Very truly yours,

Mark D. Whitlow

MDW:lt

cc: Doug Robertson

RECEIVED INTO RECORD
August 6, 2013
DATE

Whitlow, Mark (Perkins Coie)

From: Whitlow, Mark (Perkins Coie)
Sent: Wednesday, August 22, 2012 5:36 PM
To: John Roberts
Cc: Whitlow, Mark (Perkins Coie); Vogel, Stephanie (Perkins Coie)
Subject: FW: North Junction - Watson Application for Conditional Use Approval and Variances

John, I will forward some of my prior messages to Jeanette. This one has the LUBA case that says that it is improper for the County to defer the technical review of code requirements, such as the engineering of a septic field, to a later date or forum under a condition of approval. It is a Deschutes County case. Mark

Mark Whitlow | Perkins Coie LLP
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

From: Whitlow, Mark (Perkins Coie)
Sent: Friday, August 17, 2012 2:43 PM
To: 'Jeanette Montour'
Cc: Doug Robertson; Vogel, Stephanie (Perkins Coie)
Subject: RE: North Junction - Watson Application for Conditional Use Approval and Variances

Janette,

thanks for the message, as I know you are off today. We really need to talk. Based on what you are telling me, I will have take the position that the application is incomplete and should not be sent out for hearing until the missing information is submitted. For example, for a property this small, the septic field will need to be engineered and designed before the site plan can be developed for the placement of the structures on the site, with requested variances for that placement. From what we know, the septic field will need to be much larger than what is show on the sketch plan. The soils will need to be analyzed for percolation and the land will need to be analyzed for slopes and drainage, with the size and location of the septic field a function of all of those considerations. So, getting the septic field designed should be the start point for the development of the site plan on a small site. If the field cannot be placed where it is now shown, or if it is not large enough, then the buildings would need to be relocated and/or downsized. That information should be submitted up front with the site plan, together with copies of the necessary access and utility easements, the location of which could also require that the buildings be relocated or downsized. That information should be the starting point and the application should not be deemed complete until it is submitted. LUBA cases say that it is error to defer that type of technical review to later under a condition of approval, so you may want to confer with County Counsel about that. (See *Gould vs. Deschutes County*, 216 Or. App.150, 2007).

I will be traveling Monday and available to talk on cell at (503) 816-9805.

I will send you more comments in the interim.

Thanks, Mark

Mark Whitlow | Perkins Coie LLP
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

From: Jeanette Montour [mailto:jeanettem@co.wasco.or.us]
Sent: Friday, August 17, 2012 1:39 PM

To: Whitlow, Mark (Perkins Cole)
Subject: Re: North Junction - Watson Application for Conditional Use Approval and Variances

Hello Mark,

The application that is uploaded on the website is the application which Mr. Watson submitted, nothing has changed from their 2010 application.

As you have noted, there are a number of materials that may not be included in their submitted application, but this is usually the case. The pending items will be evaluated thought the review and additional materials will be required as conditions of approval.

Thanks,

Jeanette

On Fri, Aug 17, 2012 at 11:58 AM, Whitlow, Mark (Perkins Coie) <MWhitlow@perkinscoie.com> wrote:

Jeanette,

I called you this morning to request a copy of the Watson's complete application which I did not find on your website. I only find the 11/8/2010 draft that is missing critical information.

Please send me a copy of their complete application.

Thanks, Mark

Mark Whitlow | Perkins Coie LLP
1120 N.W. Couch Street
Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

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--

Jeanette Montour
Senior Planner
Wasco County Planning and Development

WASCO COUNTY

RECEIVED INTO RECORD
August 6, 2013 BJ
DATE BY

John Roberts < johnr@co.wasco.or.us>

Watson Application - North Junction

11 messages

Whitlow, Mark (Perkins Cole) < MWhitlow@perkinscole.com> Tue, Jan 29, 2013 at 1:59 PM
To: Isa Anne Taylor <isa@hoodriverlaw.com>, John Roberts <johnr@co.wasco.or.us>
Cc: Doug Robertson <dougr@easystreet.net>, Andrew Stamp <andrewstamp@comcast.net>, "Vogel, Stephanie (Perkins Cole)" <SVogel@perkinscole.com>, "Whitlow, Mark (Perkins Cole)" <MWhitlow@perkinscole.com>

Isa and John,

Please provide us with an electronic copy of the staff report when it is issued today by the County. Please be advised that Andrew Stamp will be added as new land use counsel for Doug Robertson.

Thank you for your courtesies.

Best wishes,

Mark

Mark Whitlow | Perkins Cole LLP
1120 N.W. Couch Street
Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscole.com

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Question: why is there no concurrent application for site plan review?

Variances cannot be approved in a vacuum of the site plan review criteria that dictate where the structures will be placed on the site relative to parking, access and significant features of the site, all of which are to be arranged to avoid adverse effect on the surrounding properties under the relevant site plan review criteria in Chapter 20. Nothing in the staff report talks about that and, unless the application is somehow exempt from the requirement for site plan review, we will take the position that the sketch plan submitted with the application and the related requested variances for placement of structures and parking on the site cannot be approved without an application for site plan review that addresses the adverse effect criteria of Chapter 20, none of which was set out in the public notice as applicable review criteria.

In addition, I do not believe that the sketch plan addresses how the site gets access across the Hartung property. The sketch appears to reference a "'residential easement" (wording unclear). If an easement across land owned by others is needed to access the site in the location described on the sketch, the applicant should be required to produce a copy of the recorded easement showing that it encumbers the adjacent land as depicted in the sketch.

Further Question: Has the County requested a copy of the access easement and, if so, why is it not attached to the staff report and findings?

Please answer my questions.

Thanks, Mark

Mark Whitlow | Perkins Coie LLP
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

From: John Roberts [mailto:johnr@co.wasco.or.us]
Sent: Tuesday, January 29, 2013 3:22 PM
To: Whitlow, Mark (Perkins Coie)
Cc: Isa Anne Taylor; Doug Robertson; Andrew Stamp; Vogel, Stephanie (Perkins Coie)
Subject: Re: Watson Application - North Junction

[Quoted text hidden]

John Roberts < johnr@co.wasco.or.us> Wed, Jan 30, 2013 at 8:17 AM
To: Isa Taylor <isa@hoodriverlaw.com>, Joey Shearer <joeys@co.wasco.or.us>

John Roberts < johnr@co.wasco.or.us> Tue, Jan 29, 2013 at 2:21 PM
To: "Whitlow, Mark (Perkins Coie)" <MWhitlow@perkinscoie.com>
Cc: Isa Anne Taylor <isa@hoodriverlaw.com>, Doug Robertson <dougr@easystreet.net>, Andrew Stamp <andrewstamp@comcast.net>, "Vogel, Stephanie (Perkins Coie)" <SVogel@perkinscoie.com>

We are making copies right now.

As soon as the documents and links are ready to be posted online I will let you know. The web documents should be ready by close of work today.

[Quoted text hidden]

--

John Roberts, AICP
Planning Director, Wasco County Planning Department

"Service, Sustainability & Solutions"
Ph: (541) 506-2563 · johnr@co.wasco.or.us

John Roberts < johnr@co.wasco.or.us> Tue, Jan 29, 2013 at 3:21 PM
To: "Whitlow, Mark (Perkins Coie)" <MWhitlow@perkinscoie.com>
Cc: Isa Anne Taylor <isa@hoodriverlaw.com>, Doug Robertson <dougr@easystreet.net>, Andrew Stamp <andrewstamp@comcast.net>, "Vogel, Stephanie (Perkins Coie)" <SVogel@perkinscoie.com>

The packets/materials for the Watson application are so large we are having some challenges in getting them posted online.

Nevertheless, attached is the Summary, Staff Report and Comments.

On Tue, Jan 29, 2013 at 1:59 PM, Whitlow, Mark (Perkins Coie) <MWhitlow@perkinscoie.com> wrote:
[Quoted text hidden]

[Quoted text hidden]

3 attachments

SUMMARY_PLAQJR-12-08-0001_Watson_2013.01.29.pdf
681K

SR_PLAQJR-12-08-0001_Watson_2013.01.29.pdf
2700K

Attachment H Comments PLAQJR-12-08-0001.pdf
15034K

Whitlow, Mark (Perkins Coie) < MWhitlow@perkinscoie.com> Tue, Jan 29, 2013 at 6:21 PM
To: John Roberts <johnr@co.wasco.or.us>
Cc: Isa Anne Taylor <isa@hoodriverlaw.com>, Doug Robertson <dougr@easystreet.net>, Andrew Stamp <andrewstamp@comcast.net>, "Vogel, Stephanie (Perkins Coie)" <SVogel@perkinscoie.com>

Isa and John,

Thanks for the copies.

Isa & Joey: Below are Whitlow's latest round of questions, which I think we can answer. However, maybe before we answer them we do a quick conference call today to touch base, overview outstanding issues and the meeting Tuesday.

However, Isa I remember you said you were going out of town this week? I stopped by your office to drop off the packet, but it was closed (as it was really early).

Let us know if there is a time that works for you Isa...

[Quoted text hidden]

Isa@hoodriverlaw.com < Isa@hoodriverlaw.com> Wed, Jan 30, 2013 at 9:06 AM
Reply-To: Isa@hoodriverlaw.com
To: John Roberts <johnr@co.wasco.or.us>, Joey Shearer <joeys@co.wasco.or.us>

Sorry about closed office. I had to/got to cancel the trip, so I am easily available anytime.

-Isa (via blackberry)

From: John Roberts <johnr@co.wasco.or.us>
Date: Wed, 30 Jan 2013 08:17:28 -0800
To: Isa Taylor<isa@hoodriverlaw.com>; Joey Shearer<joeys@co.wasco.or.us>
Subject: Fwd: Watson Application - North Junction
[Quoted text hidden]

John Roberts < johnr@co.wasco.or.us> Wed, Jan 30, 2013 at 10:31 AM
To: Isa@hoodriverlaw.com
Cc: Joey Shearer <joeys@co.wasco.or.us>

How about we call at 11:00?
[Quoted text hidden]

Isa Anne Taylor < isa@hoodriverlaw.com> Wed, Jan 30, 2013 at 11:04 AM
To: John Roberts <johnr@co.wasco.or.us>
Cc: Joey Shearer <joeys@co.wasco.or.us>

Yes

Isa Anne Taylor

Attorney ~ Jaques Sharp Sherrerd FitzSimons & Ostrye

541-386-1311

From: John Roberts [mailto:johnr@co.wasco.or.us]
Sent: Wednesday, January 30, 2013 10:32 AM
To: Isa@hoodriverlaw.com
Cc: Joey Shearer
Subject: Re: Fwd: Watson Application - North Junction

Cc: Isa Anne Taylor <isa@hoodriverlaw.com>, Doug Robertson <dougr@easystreet.net>, Andrew Stamp <andrewstamp@comcast.net>, "Vogel, Stephanie (Perkins Cole)" <SVogel@perkinscole.com>

Mark: Thanks for your comments/questions. We will submit the inquiries into the record and make sure they are addressed at the hearing in front of the decision makers.

At this point I would request all communication is conducted with our legal counsel (Isa). Thanks...

On Tue, Jan 29, 2013 at 1:59 PM, Whitlow, Mark (Perkins Cole) <MWhitlow@perkinscole.com> wrote:
[Quoted text hidden]

[Quoted text hidden]

Whitlow, Mark (Perkins Cole) < MWhitlow@perkinscole.com> Mon, Aug 5, 2013 at 3:49 PM
To: "John Roberts (johnr@co.wasco.or.us)" <johnr@co.wasco.or.us>

Mark Whitlow | Perkins Cole LLP
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscole.com

From: Whitlow, Mark (Perkins Cole)
Sent: Tuesday, January 29, 2013 6:21 PM
To: 'John Roberts'
Cc: Isa Anne Taylor; Doug Robertson; Andrew Stamp; Vogel, Stephanie (Perkins Cole)
Subject: RE: Watson Application - North Junction

Isa and John,

Thanks for the copies.

Question: why is there no concurrent application for site plan review?

Variances cannot be approved in a vacuum of the site plan review criteria that dictate where the structures will be placed on the site relative to parking, access and significant features of the site, all of which are to be arranged to avoid adverse effect on the surrounding properties under the relevant site plan review criteria in Chapter 20. Nothing in the staff report talks about that and, unless the application is somehow exempt from the requirement for site plan review, we will take the position that the sketch plan submitted with the application and the related requested variances for placement of structures and parking on the site

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Version: 2013.0.2890 / Virus Database: 2639/6063 - Release Date: 01/28/13

John Roberts < johnr@co.wasco.or.us> Wed, Jan 30, 2013 at 12:59 PM
To: Isa Anne Taylor <isa@hoodriverlaw.com>
Cc: Joey Shearer <joeys@co.wasco.or.us>

Isa: Per our conversation here is the link Joey found to LUBA headnotes pertaining to site visits.

http://www.oregon.gov/LUBA/docs/headnotes/25.6.4.pdf
Here is the party status language in Chp. 2 of our LUDO:

SECTION 2.130 Establishment of Party Status

A. In order to have standing under this Chapter, a person shall be recognized as a party by the Approving Authority.

Party status, when recognized by the Approving Authority, establishes the right of the person to be heard, either orally or in writing and to pursue a review or appeal under this Chapter.

B. A request for establishment of party status may be made at least ten (10) days before the date set for a quasi-judicial public hearing by any person who files a written statement regarding the application being considered.

C. Seven (7) or more days prior to the date set for a public hearing, the Director shall mail the applicant any statements that have been filed and a copy of the staff report.

D. With respect to applications under Section 2.060 (B) of this Chapter, the Approving Authority may authorize a person to have party status, at any time prior to the close of a hearing, if that person is not otherwise a party, as defined by Section 1.090 of this Ordinance. (Revised 1-92)

E. A request for establishment of party status for an Administrative decision pursuant to Section 2.060(A) of this Chapter shall be made by filing a written statement within a ten (10) day notification period. Such statement shall include:

1. The name, address and telephone number of the person filing the statement;

2. How the person qualifies as a party; as defined in Section 1.090 of this Ordinance; and

3. Comments which the party wishes to make with respect to the application under consideration.

F. Any party may appeal a decision of the Director relative to an Administrative Action. In the conduct of a hearing, the Approving Authority shall establish the appellant as a party or the appeal shall not be heard and the contested decision shall become final.

[Quoted text hidden]

John Roberts < johnr@co.wasco.or.us> Wed, Jan 30, 2013 at 1:03 PM
To: "Whitlow, Mark (Perkins Cole)" <MWhitlow@perkinscole.com>

cannot be approved without an application for site plan review that addresses the adverse effect criteria of Chapter 20, none of which was set out in the public notice as applicable review criteria.

In addition, I do not believe that the sketch plan addresses how the site gets access across the Hartung property. The sketch appears to reference a "'residential easement" (wording unclear). If an easement across land owned by others is needed to access the site in the location described on the sketch, the applicant should be required to produce a copy of the recorded easement showing that it encumbers the adjacent land as depicted in the sketch.

Further Question: Has the County requested a copy of the access easement and, if so, why is it not attached to the staff report and findings?

Please answer my questions.

Thanks, Mark

Mark Whitlow | Perkins Cole LLP
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

From: John Roberts [mailto:johnr@co.wasco.or.us]
Sent: Tuesday, January 29, 2013 3:22 PM
To: Whitlow, Mark (Perkins Cole)
Cc: Isa Anne Taylor; Doug Robertson; Andrew Stamp; Vogel, Stephanie (Perkins Cole)
Subject: Re: Watson Application - North Junction

The packets/materials for the Watson application are so large we are having some challenges in getting them posted online.

[Quoted text hidden]

WASCO COUNTY

RECEIVED INTO RECORD
August 12, 2013
DATE BY

John Roberts < Johnr@co.wasco.or.us>

Watson Application - North Junction

11 messages

Whitlow, Mark (Perkins Cole) < MWhitlow@perkinscoie.com> Tue, Jan 29, 2013 at 1:59 PM
To: Isa Anne Taylor <isa@hoodriverlaw.com>, John Roberts <johnr@co.wasco.or.us>
Cc: Doug Robertson <dougr@easystreet.net>, Andrew Stamp <andrewstamp@comcast.net>, "Vogel, Stephanie (Perkins Cole)" <SVogel@perkinscoie.com>, "Whitlow, Mark (Perkins Cole)" <MWhitlow@perkinscoie.com>

Isa and John,

Please provide us with an electronic copy of the staff report when it is issued today by the County. Please be advised that Andrew Stamp will be added as new land use counsel for Doug Robertson.

Thank you for your courtesies.

Best wishes,

Mark

Mark Whitlow | Perkins Coie LLP
1120 N.W. Couch Street
Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

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****

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John Roberts < johnr@co.wasco.or.us> Tue, Jan 29, 2013 at 2:21 PM
To: "Whitlow, Mark (Perkins Coie)" <MWhitlow@perkinscoie.com>
Cc: Isa Anne Taylor <isa@hoodriverlaw.com>, Doug Robertson <dougr@easystreet.net>, Andrew Stamp <andrewstamp@comcast.net>, "Vogel, Stephanie (Perkins Coie)" <SVogel@perkinscoie.com>

We are making copies right now.

As soon as the documents and links are ready to be posted online I will let you know. The web documents should be ready by close of work today.

[Quoted text hidden]
--

John Roberts, AICP
Planning Director, Wasco County Planning Department

"Service, Sustainability & Solutions"
Ph: (541) 506-2563 · johnr@co.wasco.or.us

John Roberts < johnr@co.wasco.or.us> Tue, Jan 29, 2013 at 3:21 PM
To: "Whitlow, Mark (Perkins Coie)" <MWhitlow@perkinscoie.com>
Cc: Isa Anne Taylor <isa@hoodriverlaw.com>, Doug Robertson <dougr@easystreet.net>, Andrew Stamp <andrewstamp@comcast.net>, "Vogel, Stephanie (Perkins Coie)" <SVogel@perkinscoie.com>

The packets/materials for the Watson application are so large we are having some challenges in getting them posted online.

Nevertheless, attached is the Summary, Staff Report and Comments.

On Tue, Jan 29, 2013 at 1:59 PM, Whitlow, Mark (Perkins Coie) <MWhitlow@perkinscoie.com> wrote:
[Quoted text hidden]

[Quoted text hidden]

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3 attachments

SUMMARY_PLAQJR-12-08-0001_Watson_2013.01.29.pdf
681K

SR_PLAQJR-12-08-0001_Watson_2013.01.29.pdf
2700K

Attachment H Comments PLAQJR-12-08-0001.pdf
15034K

Whitlow, Mark (Perkins Coie) < MWhitlow@perkinscoie.com> Tue, Jan 29, 2013 at 6:21 PM
To: John Roberts <johnr@co.wasco.or.us>
Cc: Isa Anne Taylor <isa@hoodriverlaw.com>, Doug Robertson <dougr@easystreet.net>, Andrew Stamp <andrewstamp@comcast.net>, "Vogel, Stephanie (Perkins Coie)" <SVogel@perkinscoie.com>

Isa and John,

Thanks for the copies.

Question: why is there no concurrent application for site plan review?

Variances cannot be approved in a vacuum of the site plan review criteria that dictate where the structures will be placed on the site relative to parking, access and significant features of the site, all of which are to be arranged to avoid adverse effect on the surrounding properties under the relevant site plan review criteria in Chapter 20. Nothing in the staff report talks about that and, unless the application is somehow exempt from the requirement for site plan review, we will take the position that the sketch plan submitted with the application and the related requested variances for placement of structures and parking on the site cannot be approved without an application for site plan review that addresses the adverse effect criteria of Chapter 20, none of which was set out in the public notice as applicable review criteria.

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Further Question: Has the County requested a copy of the access easement and, if so, why is it not attached to the staff report and findings?

Please answer my questions.

Thanks, Mark

Mark Whitlow | Perkins Coie LLP
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

From: John Roberts [mailto:johnr@co.wasco.or.us]
Sent: Tuesday, January 29, 2013 3:22 PM
To: Whitlow, Mark (Perkins Coie)
Cc: Isa Anne Taylor; Doug Robertson; Andrew Stamp; Vogel, Stephanie (Perkins Coie)
Subject: Re: Watson Application - North Junction

[Quoted text hidden]

John Roberts < johnr@co.wasco.or.us> Wed, Jan 30, 2013 at 8:17 AM
To: Isa Taylor <isa@hoodriverlaw.com>, Joey Shearer <joeys@co.wasco.or.us>

Isa & Joey: Below are Whitlow's latest round of questions, which I think we can answer. However, maybe before we answer them we do a quick conference call today to touch base, overview outstanding issues and the meeting Tuesday.

However, Isa I remember you said you were going out of town this week? I stopped by your office to drop off the packet, but it was closed (as it was really early).

Let us know if there is a time that works for you Isa...

[Quoted text hidden]

Isa@hoodriverlaw.com < isa@hoodriverlaw.com> Wed, Jan 30, 2013 at 9:06 AM
Reply-To: isa@hoodriverlaw.com
To: John Roberts <johnr@co.wasco.or.us>, Joey Shearer <joeys@co.wasco.or.us>

Sorry about closed office. I had to/got to cancel the trip, so I am easily available anytime.

-Isa (via blackberry)

From: John Roberts <johnr@co.wasco.or.us>
Date: Wed, 30 Jan 2013 08:17:28 -0800
To: Isa Taylor<isa@hoodriverlaw.com>; Joey Shearer<joeys@co.wasco.or.us>
Subject: Fwd: Watson Application - North Junction
[Quoted text hidden]

John Roberts < johnr@co.wasco.or.us> Wed, Jan 30, 2013 at 10:31 AM
To: isa@hoodriverlaw.com
Cc: Joey Shearer <joeys@co.wasco.or.us>

How about we call at 11:00?
[Quoted text hidden]

Isa Anne Taylor < isa@hoodriverlaw.com> Wed, Jan 30, 2013 at 11:04 AM
To: John Roberts <johnr@co.wasco.or.us>
Cc: Joey Shearer <joeys@co.wasco.or.us>

Yes

Isa Anne Taylor

Attorney ~ Jaques Sharp Sherrerd FitzSimons & Ostrye

541-386-1311

From: John Roberts [mailto:johnr@co.wasco.or.us]
Sent: Wednesday, January 30, 2013 10:32 AM
To: isa@hoodriverlaw.com
Cc: Joey Shearer
Subject: Re: Fwd: Watson Application - North Junction

[Quoted text hidden]

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2013.0.2890 / Virus Database: 2639/6063 - Release Date: 01/28/13

John Roberts < johnr@co.wasco.or.us> Wed, Jan 30, 2013 at 12:59 PM
To: Isa Anne Taylor <isa@hoodriverlaw.com>
Cc: Joey Shearer <joeys@co.wasco.or.us>

Isa: Per our conversation here is the link Joey found to LUBA headnotes pertaining to site visits.

http://www.oregon.gov/LUBA/docs/headnotes/25.6.4.pdf
Here is the party status language in Chp. 2 of our LUDO:

SECTION 2.130 Establishment of Party Status

A. In order to have standing under this Chapter, a person shall be recognized as a party by the Approving Authority.

Party status, when recognized by the Approving Authority, establishes the right of the person to be heard, either orally or in writing and to pursue a review or appeal under this Chapter.

B. A request for establishment of party status may be made at least ten (10) days before the date set for a quasi-judicial public hearing by any person who files a written statement regarding the application being considered.

C. Seven (7) or more days prior to the date set for a public hearing, the Director shall mail the applicant any statements that have been filed and a copy of the staff report.

D. With respect to applications under Section 2.060 (B) of this Chapter, the Approving Authority may authorize a person to have party status, at any time prior to the close of a hearing, if that person is not otherwise a party, as defined by Section 1.090 of this Ordinance. (Revised 1-92)

E. A request for establishment of party status for an Administrative decision pursuant to Section 2.060(A) of this Chapter shall be made by filing a written statement within a ten (10) day notification period. Such statement shall include:

1. The name, address and telephone number of the person filing the statement;

2. How the person qualifies as a party; as defined in Section 1.090 of this Ordinance; and

3. Comments which the party wishes to make with respect to the application under consideration.

F. Any party may appeal a decision of the Director relative to an Administrative Action. In the conduct of a hearing, the Approving Authority shall establish the appellant as a party or the appeal shall not be heard and the contested decision shall become final.

[Quoted text hidden]

John Roberts < johnr@co.wasco.or.us> Wed, Jan 30, 2013 at 1:03 PM
To: "Whitlow, Mark (Perkins Cole)" <MWhitlow@perkinscole.com>

Cc: Isa Anne Taylor <isa@hoodriverlaw.com>, Doug Robertson <dougr@easystreet.net>, Andrew Stamp <andrewstamp@comcast.net>, "Vogel, Stephanie (Perkins Coie)" <SVogel@perkinscoie.com>

Mark: Thanks for your comments/questions. We will submit the inquiries into the record and make sure they are addressed at the hearing in front of the decision makers.

At this point I would request all communication is conducted with our legal counsel (Isa). Thanks...

On Tue, Jan 29, 2013 at 1:59 PM, Whitlow, Mark (Perkins Coie) <MWhitlow@perkinscoie.com> wrote:
[Quoted text hidden]

[Quoted text hidden]

Whitlow, Mark (Perkins Coie) < MWhitlow@perkinscoie.com> Mon, Aug 5, 2013 at 3:49 PM
To: "John Roberts (johnr@co.wasco.or.us)" <johnr@co.wasco.or.us>

Mark Whitlow | Perkins Coie LLP
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

From: Whitlow, Mark (Perkins Coie)
Sent: Tuesday, January 29, 2013 6:21 PM
To: 'John Roberts'
Cc: Isa Anne Taylor; Doug Robertson; Andrew Stamp; Vogel, Stephanie (Perkins Coie)
Subject: RE: Watson Application - North Junction

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E-MAIL: mwhitlow@perkinscole.com

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Subject: Re: Watson Application - North Junction

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[Quoted text hidden]

WASCO COUNTY

RECEIVED INTO RECORD
August 6 2013 BY
DATE

John Roberts <johnr@co.wasco.or.us>

Watson Hearing re North Junction Tax Lot #300

9 messages

Doug Robertson <dougr@easystreet.net> Sun, Jul 21, 2013 at 4:20 PM
To: John Roberts <johnr@co.wasco.or.us>
Cc: andrewstamp@comcast.net

Dear Mr. Roberts;

I'm writing this note to you even though I have submitted other such information in the past and through my attorney Mark Whitlow and Andrew Stamp. In review of my records, I see that our landowner meeting at North Junction the weekend before April 4, 1996 (which is the date of my confirmation letter) set out the regulations we had confirmed with WASCO County and Parks Dept. Specifically I met with Gary and Vicki Jones (ED Welsh's daughter) Amelia and their daughter. We discussed the administrative regulation Section 13.070 (citation in our opposition filing) allowing only 6 months from the date of natural destruction (the Flood 2-8-96) in which to commence replacement of our "nonconforming uses", the cabins, and in their case the caboose. We also discussed the 12 month substantial completion time lines. Ken Klarquist in tax lot #200 also a lawyer had researched the law and contacted the county and arrived at the same conclusions. All of us—Hartung, Robertson, Klarquist (KNAKLE Partnership) and Harlow were in attendance with Gary Jones and Vicki (Welsh). Vicki remarked how sad she was that it was their father's favorite resting place but it was too sad for her to come up again. Gary said he'd let me know what their plans were very soon as he saw the urgency—he was a lawyer—and appreciated all our help. I talked to Gary last about the rebuild deadlines and their decision in June and July of 2004. He said that they had decided to not rebuild—they would later sell the caboose to Hartung—and I even offered to purchase it from him. Myself. He thought they'd keep the land simply so they would have a Deschutes Club key so he could visit and fish. He mentioned he was going to ask for a tax reduction as no longer a dwelling on the land and acknowledged it reverted to pre-caboose status—undeveloped land. I last talked to Gary in 2010 to inquire of the rumor that they were trying to sell the land—he confirmed that despite my offer and Hartungs his wife Vicki sold it to Leslie Watson just for "old times' sake" as Leslie lobbied them hard he said. He said we shouldn't worry even though the Watsons were unruly, destructive and always asking forgiveness after they broke the laws as the lot was unbuildable per the law. He said Leslie was fully aware of this as he fully disclosed the problems to her upon the sale. I confirmed this with Leslie Watson when I called to inquire of her plans for the lot, shortly after the phone call to Gary and she confirmed that she bought the lot as a reminder of her growing up on the flats and knew that it was unbuildable and all they wanted to do was camp on it and assure that the Rail Road if it evicted them again that they would still have rights to come up to the flats.

To regress a bit and give more of my detrimental reliance and that of the other landowners, I contacted Wasco Planning 5-10-04 and was told that the nonpermitted use sections of the law stated that if you don't replace a nonpermitted use exception within 12 months of its destruction that one could NEVER replace it. They said this was strictly construed in part at North Junction because of the Scenic Waterways Act. I talked to Bruce Barnwell 5-11-04 about the replacement potential on tax lot #200 as I was considering buying it to assure it could never be rebuilt—since I was next door, and he told me I could save my money because the land had reverted to its preexisting use and no dwelling would be allowed. Again, 5-25-04 I called Planning and spoke to several people including Dawn Baird and was assured that the 40 acre farm use would not allow a building on the Tax lot 200 including even putting the old caboose back and that was the legal status of the lot—the replacement exception was not timely commenced and the property had reverted to the nonexception pre dwelling us and could only come back if the Planning Commission overruled the rules and created an exception on building anew in a 40 acre zone and got a variance from Parks and the Scenic Waterway Act to construct a new dwelling where one did not legally exist . Therefore, I took the positive (now detrimental) steps to withdraw my offer to the Jones(Welsh) family as I was

assured I would never have a building on that lot which was my only concern. That is why I am so surprised that 17 years later the County has allowed this application to proceed and I and all the other landowners will be damaged by the prior advice given by the same county if this application is granted. All the other land owners followed the law for a protection of our unique grandfather status—we worked with the county and feel it so inappropriate to allow someone newly purchasing the land to ignore its legal history and status and claim" well there is another building in the immediate vicinity so I should have one too—what's one more where there is already a view infringement-I should be allowed to do whatever I want with my land, never mind I was told it was unbuildable by operation of law." This is not the law, this precedent would be disastrous to the rest of the River as there are other old parcels that could be "resurrected" simply because in pioneer days there may have been a homesteader's cabin on it. The Scenic Waterways should not be gutted by this inroad and that is why the opposition is so vehement over what may seem a minor change in the number of grandfathered dwellings. Progress to upgrade the county could never happen if backtracking to poor prior planning was allowed. I remain committed to upholding the intent of the law and holding our representatives accountable for Oregon's progressively positive land planning. Always have and always will. It's nothing to do with whether I approve or disapprove of Gabe Watson's behavior at North Junction. I would oppose this attempted change in the laws through "variances" no matter who was making this back door attempt to overrule the Scenic Waterways Act.

In 1985 I had ownership rights to the entire lower 12 miles of the Deschutes. In order to preserve it for the people of Oregon, I turned it over to the State with a set of promises to keep it protected and open to the public forever. I was honored by then Governor Vic Atiya and the State of Oregon by the establishment of Robertson Point State Park which is a 20 acre tract 12 miles from the Mouth of the Deschutes on the water across from the old railroad water tower—dedicated to me for being "the guy who saved the Deschutes River" according to the press. You can read about me in the final chapter of the book called "The Deschutes" by Dave Hughs. The River is in my bloodstream and I will devote my efforts in preserving every piece of property from falling out of the State Scenic Waterways Protection. It is the legal precedent—it is my lifelong pursuit. I can count 6 parcels of land that fit this same fact description and have talked to the owners—To a person, they are all anxiously awaiting the outcome of this decision, have the resources to start development proceedings and the impact will make this North Junction inroad appear very miniscule in comparison. Please, not on your watch.

Respectfully submitted in opposition to allowing the variances to county laws and state Scenic Waterways Act regulations by granting a building permit to the Watson application on file for tax lot 300.

Douglas Robertson

John Roberts < johnr@co.wasco.or.us> Mon, Jul 22, 2013 at 5:07 PM
To: Isa Taylor <isa@hoodriverlaw.com>, Joey Shearer <joeys@co.wasco.or.us>

Just want to 1) pass along a recent email from adjacent property owner Doug Robertson and 2) quickly recap today's conversation.

1) Doug Robertson claims "Wasco County" over the years (since 1996) stated no development on Gabe's parcel would be allowed and the existing property owners knowingly gave up their development rights (huh). Joey and I can ask internally if there are any records of these types of conversations or decisions we haven't looked at or found. Whitlow just called to say the county should obviously follow prior decisions and look at their own record (and uphold that record).

2) It terms of preparing and presenting at the planning commission meeting on August 6 it was discussed Isa will cover the county's relationship and enforcement of the Scenic Waterway Regulations and look into Andrew Stamp's Comprehensive Plan / LUDO Overlay argument. Isa is also going to call Andrew regarding the submission of a new site plan at the hearing and how to address such findings. Joey will brush-up on the definition of dwelling vs. Single Family Residence. However, the point is to provide the planning commission with the notion there are a range of interpretations (or spectrum of approaches) we considered. I will brush-up and refine how the recent cutting of trees affects our findings regarding the vegetative buffer.

My overall impressions are I thought we owed it to the applicant to deliver a thorough review and staff report to the planning commission. We've definitely accomplished that in light of the application. The county has no vested interest in the outcome either way. What we do have a vested interest in is putting this to rest/bed (so we can dedicate our limited resources on other more important projects).

John Roberts, AICP
Planning Director, Wasco County Planning Department

"Service, Sustainability & Solutions"
Ph: (541) 506-2563 · johnr@co.wasco.or.us
[Quoted text hidden]

John Roberts < johnr@co.wasco.or.us> Mon, Jul 22, 2013 at 5:14 PM
To: Doug Robertson <dougr@easystreet.net>
Cc: Andrew Stamp <andrewstamp@comcast.net>, Joey Shearer <joeys@co.wasco.or.us>

Doug: Thanks for feedback. I will discuss the information at staff meeting tomorrow and see what records we possibly have not looked at or researched. In that vein - do you have copies of anything the county wrote, issued, distributed, etc. regarding your claims? Do you have any references in staff reports and findings made? Any specific leads for us would be helpful.

I have never heard of the County's Planning Department working with the Wasco County Parks Department regarding land use decisions or interpretations. We've never really had a county specific parks department. However, I am new around here and do not have an institutional knowledge base.

Again, any more specific records would be helpful to us as we continue to research this application.

John Roberts, AICP
Planning Director, Wasco County Planning Department

"Service, Sustainability & Solutions"
Ph: (541) 506-2563 · johnr@co.wasco.or.us

[Quoted text hidden]

Doug Robertson < dougr@easystreet.net> Mon, Jul 22, 2013 at 9:00 PM
To: John Roberts <johnr@co.wasco.or.us>
Cc: MWhitlow@perkinscoie.com

HI John

I hired a local builder, Randy Kletke, who did all the permit work so I don't have the specific paperwork. By Parks, I meant state parks,. I just went back over my notes to send you that email and that is all I had. The Parks approval was specific as I remembered—height, color of roof—actually went to hearing on

using a metal roof as it was prohibited at the time. As to the regulations on the 6 month time frame Mark has the Oregon Administrative Regulation and I believe he has sent but I'll ask him to again. The County opinions were based on face to face meetings at your offices and reviewing the regulations by the staff.

I'll go over my building files if it would help but the issue of commencing of construction deadlines and reversion of the land to pre dwelling zoning was never an issue as we made certain to follow the 6 month 12 month deadlines. Again I'll have Mark copy you on the two regulations. The landowners knew that either you complied with the deadlines or you lost the grandfathering of the zoning exception that would allow building a dwelling. The Scenic Waterways Act simply allowed the existing uses but by its terms prohibited new structures except in aid of an existing structure—basically no new dwellings—so everyone knew how much we had to lose if we didn't hustle. We relied on the administrative rules and regulations published at the time and the county and parks sent us copies—those are the only claims I reference but I'll reconfirm the citations for you.

Thanks

Doug

From: John Roberts [mailto:johnr@co.wasco.or.us]
Sent: Monday, July 22, 2013 5:15 PM
To: Doug Robertson
Cc: Andrew Stamp; Joey Shearer
Subject: Re: Watson Hearing re North Junction Tax Lot #300

[Quoted text hidden]

Whitlow, Mark (Perkins Coie) < MWhitlow@perkinscoie.com> Tue, Jul 23, 2013 at 1:38 PM
To: John Roberts <johnr@co.wasco.or.us>
Cc: Doug Robertson <dougr@easystreet.net>, "John Hartung (deweydrizzle@gmail.com)" <deweydrizzle@gmail.com>, "skip@erisalaw.com" <skip@erisalaw.com>, "jay.fewel@ost.state.or.us" <jay.fewel@ost.state.or.us>, "Jim Harlow (JiminKeys@aol.com)" <JiminKeys@aol.com>, "Met Wilson (met.wilson@gmail.com)" <met.wilson@gmail.com>, "Fortino, Paul (Perkins Coie)" <PFortino@perkinscoie.com>, "david.symes@ogletreedeakins.com" <david.symes@ogletreedeakins.com>

John,

Please check the County's files from 1996 to confirm that everyone was given a limited time to re-establish their nonconforming dwellings after the flood. That can't be too difficult. We could come to your office this Friday to assist if that would help you.

Bottom line - It doesn't make sense for the County to tell everyone, including the prior owner of the Watson lot, that they had to re-establish nonconforming dwellings within a limited time period (6 months to a year) following the 1996 flood, or be forever barred from doing so, and then 17 years later tell the new owner of the old lot that they can develop the lot. We will be focused on the bottom line at the hearing and ask the Planning Commission why the county accepted and processed the application on an unbuildable lot, to everyone's great inconvenience and expense, including the County's.

Please change your recommendation to denial based on the above. Let me know if you need my help doing a County file search this Friday.

Best, Mark

Mark Whitlow | Perkins Coie LLP
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

From: Doug Robertson [mailto:dougr@easystreet.net]
Sent: Monday, July 22, 2013 9:01 PM
To: 'John Roberts'
Cc: Whitlow, Mark (Perkins Coie)
Subject: RE: Watson Hearing re North Junction Tax Lot #300

[Quoted text hidden]

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John Roberts < johnr@co.wasco.or.us> Tue, Jul 23, 2013 at 2:15 PM
To: Joey Shearer <joeys@co.wasco.or.us>, Isa Taylor <isa@hoodriverlaw.com>

Just wanted to keep y'all in the loop with correspondence regarding the Watson application. Gotta drum up a response to this one.

John Roberts, AICP
Planning Director, Wasco County Planning Department

"Service, Sustainability & Solutions"
Ph: (541) 506-2563 · johnr@co.wasco.or.us

---------- Forwarded message ---------
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FEWEL Jay B < Jay.FEWEL@ost.state.or.us> Tue, Jul 23, 2013 at 3:17 PM
To: "Whitlow, Mark (Perkins Coie)" <MWhitlow@perkinscoie.com>, John Roberts <johnr@co.wasco.or.us>
Cc: Doug Robertson <dougr@easystreet.net>, "John Hartung (deweydrizzle@gmail.com)" <deweydrizzle@gmail.com>, "skip@erisalaw.com" <skip@erisalaw.com>, "Jim Harlow (JimInKeys@aol.com)" <JimInKeys@aol.com>, "Met Wilson (met.wilson@gmail.com)" <met.wilson@gmail.com>, "Fortino, Paul (Perkins Coie)" <PFortino@perkinscoie.com>, "david.symes@ogletreedeakins.com" <david.symes@ogletreedeakins.com>

John,

I concur with Mark's request. KNAKL, at North Junction, was required to abide by these rules.

Jay

From: Whitlow, Mark (Perkins Coie) [mailto:MWhitlow@perkinscoie.com]
Sent: Tuesday, July 23, 2013 1:39 PM
To: 'John Roberts'
Cc: Doug Robertson; John Hartung (deweydrizzle@gmail.com); skip@erisalaw.com; FEWEL Jay B; Jim Harlow (JimInKeys@aol.com); Met Wilson (met.wilson@gmail.com); Fortino, Paul (Perkins Coie); david.symes@ogletreedeakins.com

[Quoted text hidden]

[Quoted text hidden]

Joey Shearer < joeys@co.wasco.or.us> Tue, Jul 23, 2013 at 7:09 PM
To: John Roberts <johnr@co.wasco.or.us>
Cc: Isa Taylor <isa@hoodriverlaw.com>

I think this is more bluster from Mr. Whitlow. First,knowing what I do about our records, I'd be surprised if we have such a detailed letter from 1996 laying around. In fact, I would welcome them to come dig through files. Better us than them.

Second, if we have any letters, I would be surprised if it's so detailed that it says no future development can happen PERIOD, as opposed to a summary of nonconforming use provisions which (I believe) give folks one year to replace destroyed nonconforming uses.

Finally, if such a letter exists and relies on an interpretation that we disagree with, there is new leadership in the Planning Department and I believe we are justified in making a new/different, well-reasoned interpretation.
[Quoted text hidden]
--

Joseph Shearer, Senior Planner
Wasco County Planning Department
2705 East Second Street
The Dalles, OR 97058
www.wasco.or.us/planning
541.506.2566

"To preserve and enhance the beauty, livability, and economy of Wasco County"

Whitlow, Mark (Perkins Coie) < MWhitlow@perkinscoie.com> Mon, Aug 6, 2013 at 3:51 PM
To: "John Roberts (johnr@co.wasco.or.us)" <johnr@co.wasco.or.us>

Mark Whitlow | Perkins Coie LLP
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

From: Whitlow, Mark (Perkins Coie)
Sent: Tuesday, July 23, 2013 1:39 PM
To: 'John Roberts'
Cc: 'Doug Robertson'; John Hartung (deweydrizzle@gmail.com); skip@erisalaw.com; jay.fewel@ost.state.or.us; Jim Harlow (JimInKeys@aol.com); Met Wilson (met.wilson@gmail.com); Fortino, Paul (Perkins Coie); david.symes@ogletreedeakins.com
Subject: RE: Watson Hearing re North Junction Tax Lot #300

John,

Please check the County's files from 1996 to confirm that everyone was given a limited time to re-establish their nonconforming dwellings after the flood. That can't be too difficult. We could come to your office this Friday to assist if that would help you.

Bottom line - it doesn't make sense for the County to tell everyone, including the prior owner of the Watson lot, that they had to re-establish nonconforming dwellings within a limited time period (6 months to a year) following the 1996 flood, or be forever barred from doing so, and then 17 years later tell the new owner of the old lot that they can develop the lot. We will be focused on the bottom line at the hearing and ask the Planning Commission why the county accepted and processed the application on an unbuildable lot, to everyone's great inconvenience and expense, including the County's.

Please change your recommendation to denial based on the above. Let me know if you need my help doing a County file search this Friday.

Best, Mark

Mark Whitlow | Perkins Coie LLP
PHONE: 503.727.2073
FAX: 503.346.2073
E-MAIL: mwhitlow@perkinscoie.com

From: Doug Robertson [mailto:dougr@easystreet.net]
Sent: Monday, July 22, 2013 9:01 PM
To: 'John Roberts'
Cc: Whitlow, Mark (Perkins Coie)
Subject: RE: Watson Hearing re North Junction Tax Lot #300

[Quoted text hidden]

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

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WASCO COUNTY

RECEIVED INTO RECORD August 6, 2013 BY
DATED

John Roberts < johnr@co.wasco.or.us>

Watson Hearing re North Junction Tax Lot #300

4 messages

Doug Robertson < dougr@easystreet.net> Sun, Jul 21, 2013 at 4:20 PM
To: John Roberts <johnr@co.wasco.or.us>
Cc: andrewstamp@comcast.net

Dear Mr. Roberts;

I'm writing this note to you even though I have submitted other such information in the past and through my attorney Mark Whitlow and Andrew Stamp. In review of my records, I see that our landowner meeting at North Junction the weekend before April 4, 1996 (which is the date of my confirmation letter) set out the regulations we had confirmed with WASCO County and Parks Dept. Specifically I met with Gary and Vicki Jones (ED Welsh's daughter) Amelia and their daughter. We discussed the administrative regulation Section 13.070 (citation in our opposition filing) allowing only 6 months from the date of natural destruction (the Flood 2-8-96) in which to commence replacement of our "nonconforming uses", the cabins, and in their case the caboose. We also discussed the 12 month substantial completion time lines. Ken Klarquist in tax lot #200 also a lawyer had researched the law and contacted the county and arrived at the same conclusions. All of us—Hartung, Robertson, Klarquist (KNAKLE Partnership) and Harlow were in attendance with Gary Jones and Vicki (Welsh). Vicki remarked how sad she was that it was their father's favorite resting place but it was too sad for her to come up again. Gary said he'd let me know what their plans were very soon as he saw the urgency—he was a lawyer—and appreciated all our help. I talked to Gary last about the rebuild deadlines and their decision in June and July of 2004. He said that they had decided to not rebuild—they would later sell the caboose to Hartung—and I even offered to purchase it from him. Myself. He thought they'd keep the land simply so they would have a Deschutes Club key so he could visit and fish. He mentioned he was going to ask for a tax reduction as no longer a dwelling on the land and acknowledged it reverted to pre-caboose status—undeveloped land. I last talked to Gary in 2010 to inquire of the rumor that they were trying to sell the land—he confirmed that despite my offer and Hartungs his wife Vicki sold it to Leslie Watson just for "old times' sake" as Leslie lobbied them hard he said. He said we shouldn't worry even though the Watsons were unruly, destructive and always asking forgiveness after they broke the laws as the lot was unbuildable per the law. He said Leslie was fully aware of this as he fully disclosed the problems to her upon the sale. I confirmed this with Leslie Watson when I called to inquire of her plans for the lot, shortly after the phone call to Gary and she confirmed that she bought the lot as a reminder of her growing up on the flats and knew that it was unbuildable and all they wanted to do was camp on it and assure that the Rail Road if it evicted them again that they would still have rights to come up to the flats.

To regress a bit and give more of my detrimental reliance and that of the other landowners, I contacted Wasco Planning 5-10-04 and was told that the nonpermitted use sections of the law stated that if you don't replace a nonpermitted use exception within 12 months of its destruction that one could NEVER replace it. They said this was strictly construed in part at North Junction because of the Scenic Waterways Act. I talked to Bruce Barnwell 5-11-04 about the replacement potential on tax lot #200 as I was considering buying it to assure it could never be rebuilt—since I was next door, and he told me I could save my money because the land had reverted to its preexisting use and no dwelling would be allowed. Again, 5-25-04 I called Planning and spoke to several people including Dawn Baird and was assured that the 40 acre farm use would not allow a building on the Tax lot 200 including even putting the old caboose back and that was the legal status of the lot—the replacement exception was not timely commenced and the property had reverted to the nonexception pre dwelling us and could only come back if the Planning Commission overruled the rules and created an exception on building anew in a 40 acre zone and got a variance from Parks and the Scenic Waterway Act to construct a new dwelling where one did not legally exist . Therefore, I took the positive (now detrimental) steps to withdraw my offer to the Jones(Welsh) family as I was

assured I would never have a building on that lot which was my only concern. That is why I am so surprised that 17 years later the County has allowed this application to proceed and I and all the other landowners will be damaged by the prior advice given by the same county if this application is granted. All the other land owners followed the law for a protection of our unique grandfather status—we worked with the county and feel it so inappropriate to allow someone newly purchasing the land to ignore its legal history and status and claim" well there is another building in the immediate vicinity so I should have one too—what's one more where there is already a view infringement-I should be allowed to do whatever I want with my land, never mind I was told it was unbuildable by operation of law." This is not the law, this precedent would be disastrous to the rest of the River as there are other old parcels that could be "resurrected" simply because in pioneer days there may have been a homesteader's cabin on it. The Scenic Waterways should not be gutted by this inroad and that is why the opposition is so vehement over what may seem a minor change in the number of grandfathered dwellings. Progress to upgrade the county could never happen if backtracking to poor prior planning was allowed. I remain committed to upholding the intent of the law and holding our representatives accountable for Oregon's progressively positive land planning. Always have and always will. It's nothing to do with whether I approve or disapprove of Gabe Watson's behavior at North Junction. I would oppose this attempted change in the laws through "variances" no matter who was making this back door attempt to overrule the Scenic Waterways Act.

In 1985 I had ownership rights to the entire lower 12 miles of the Deschutes. In order to preserve it for the people of Oregon, I turned it over to the State with a set of promises to keep it protected and open to the public forever. I was honored by then Governor Vic Atiya and the State of Oregon by the establishment of Robertson Point State Park which is a 20 acre tract 12 miles from the Mouth of the Deschutes on the water across from the old railroad water tower—dedicated to me for being "the guy who saved the Deschutes River" according to the press. You can read about me in the final chapter of the book called "The Deschutes" by Dave Hughs. The River is in my bloodstream and I will devote my efforts in preserving every piece of property from falling out of the State Scenic Waterways Protection. It is the legal precedent—it is my lifelong pursuit. I can count 6 parcels of land that fit this same fact description and have talked to the owners—To a person, they are all anxiously awaiting the outcome of this decision, have the resources to start development proceedings and the impact will make this North Junction inroad appear very miniscule in comparison. Please, not on your watch.

Respectfully submitted in opposition to allowing the variances to county laws and state Scenic Waterways Act regulations by granting a building permit to the Watson application on file for tax lot 300.

Douglas Robertson

John Roberts < johnr@co.wasco.or.us> Mon, Jul 22, 2013 at 5:07 PM
To: Isa Taylor <isa@hoodriverlaw.com>, Joey Shearer <joeys@co.wasco.or.us>

Just want to 1) pass along a recent email from adjacent property owner Doug Robertson and 2) quickly recap today's conversation.

1) Doug Robertson claims "Wasco County" over the years (since 1996) stated no development on Gabe's parcel would be allowed and the existing property owners knowingly gave up their development rights (huh). Joey and I can ask internally if there are any records of these types of conversations or decisions we haven't looked at or found. Whitlow just called to say the county should obviously follow prior decisions and look at their own record (and uphold that record).

2) It terms of preparing and presenting at the planning commission meeting on August 6 it was discussed Isa will cover the county's relationship and enforcement of the Scenic Waterway Regulations and look into Andrew Stamp's Comprehensive Plan / LUDO Overlay argument. Isa is also going to call Andrew regarding the submission of a new site plan at the hearing and how to address such findings. Joey will brush-up on the definition of dwelling vs. Single Family Residence. However, the point is to provide the planning commission with the notion there are a range of interpretations (or spectrum of approaches) we considered. I will brush-up and refine how the recent cutting of trees affects our findings regarding the vegetative buffer.

My overall impressions are I thought we owed it to the applicant to deliver a thorough review and staff report to the planning commission. We've definitely accomplished that in light of the application. The county has no vested interest in the outcome either way. What we do have a vested interest in is putting this to rest/bed (so we can dedicate our limited resources on other more important projects).

John Roberts, AICP
Planning Director, Wasco County Planning Department

"Service, Sustainability & Solutions"
Ph: (541) 506-2563 · johnr@co.wasco.or.us
[Quoted text hidden]

John Roberts < johnr@co.wasco.or.us> Mon, Jul 22, 2013 at 5:14 PM
To: Doug Robertson <dougr@easystreet.net>
Cc: Andrew Stamp <andrewstamp@comcast.net>, Joey Shearer <joeys@co.wasco.or.us>

Doug: Thanks for feedback. I will discuss the information at staff meeting tomorrow and see what records we possibly have not looked at or researched. In that vein - do you have copies of anything the county wrote, issued, distributed, etc. regarding your claims? Do you have any references in staff reports and findings made? Any specific leads for us would be helpful.

I have never heard of the County's Planning Department working with the Wasco County Parks Department regarding land use decisions or interpretations. We've never really had a county specific parks department. However, I am new around here and do not have an institutional knowledge base.

Again, any more specific records would be helpful to us as we continue to research this application.

John Roberts, AICP
Planning Director, Wasco County Planning Department

"Service, Sustainability & Solutions"
Ph: (541) 506-2563 · johnr@co.wasco.or.us

[Quoted text hidden]

Doug Robertson < dougr@easystreet.net> Mon, Jul 22, 2013 at 9:00 PM
To: John Roberts <johnr@co.wasco.or.us>
Cc: MWhitlow@perkinscoie.com

Hi John

I hired a local builder, Randy Kletke, who did all the permit work so I don't have the specific paperwork. By Parks, I meant state parks,. I just went back over my notes to send you that email and that is all I had. The Parks approval was specific as I remembered—height, color of roof—actually went to hearing on

using a metal roof as it was prohibited at the time. As to the regulations on the 6 month time frame Mark has the Oregon Administrative Regulation and I believe he has sent but I'll ask him to again. The County opinions were based on face to face meetings at your offices and reviewing the regulations by the staff.

I'll go over my building files if it would help but the issue of commencing of construction deadlines and reversion of the land to pre dwelling zoning was never an issue as we made certain to follow the 6 month 12 month deadlines. Again I'll have Mark copy you on the two regulations. The landowners knew that either you complied with the deadlines or you lost the grandfathering of the zoning exception that would allow building a dwelling. The Scenic Waterways Act simply allowed the existing uses but by its terms prohibited new structures except in aid of an existing structure—basically no new dwellings—so everyone knew how much we had to lose if we didn't hustle. We relied on the administrative rules and regulations published at the time and the county and parks sent us copies—those are the only claims I reference but I'll reconfirm the citations for you.

Thanks

Doug

From: John Roberts [mailto:johnr@co.wasco.or.us]
Sent: Monday, July 22, 2013 5:15 PM
To: Doug Robertson
Cc: Andrew Stamp; Joey Shearer
Subject: Re: Watson Hearing re North Junction Tax Lot #300

[Quoted text hidden]

WASCO COUNTY

John Roberts < johnr@co.wasco.or.us>

RE: Watson Hearing re North Junction Tax Lot #300

3 messages

Doug Robertson < dougr@easystreet.net> Sun, Aug 4, 2013 at 12:04 PM
To: John Roberts <johnr@co.wasco.or.us>
Cc: andrewstamp@comcast.net, MWhitlow@perkinscoie.com

John

I noticed in your hearing book that you didn't include my letter and I think given the last minute filings of Mr. Ramus' office and Gabe Watson who put together information with Mr. Ramus' office even though its under his own signature (I note that Gabe has been accepted to Lewis and Clark Law School) so in all fairness, you still have to contend with a bunch of attorneys including me, so I would appreciate the addition to the formal record of hearing subject book.

I find Mr. Trompke's letter introducing his packet to be the most disturbing of everything I read. He stated the caboose was purchased by Gabe Watson's grandfather and "Together Messrs. Welsh and Erz (and their families) jointly used the property with the caboose as a fishing cabin. The property has remained in the ownership of, and use by, the families since that date." The actual purchase of the caboose By Hal Erz may be true but Hal Erz had no ownership in the underlying land and the tax statements went to Ed Welsh taxing him (only) on the caboose and the land. When it came time to transfer the caboose ownership from the Welsh estate to John Hartung in 1996 as the caboose was not even on the subject parcel anymore (the flood took it downstream), no other owners were of record but Ed Welsh's daughter. Hal Erz may have had some sort of use agreement from Welsh but never was the Erz or Watson family owners of the parcel Leslie and now Gabe bought in 2010. Whatever use agreement, if any, was terminated in 1996 with the sale of the caboose. Neither Hal Erz nor his "family" has had a formal or an informal right to use either the property or the caboose for 17 years. Erz even left a note to Vicki Welsh-Jones that the caboose was entirely hers. The only "right" to use any North Junction property was as an undocumented with the Railroad, sub lease from Mr. Benson of a one room cabin on a separate piece of property owned by the Union Pacific, now Burlington Northern Railroad, incrementally enlarged over the years (four rooms including a bathroom, two exterior decks and a storage building with a pump house), leading up to their combined eviction by the Railroad several years ago in and then fairly recently re-renewed (2006) by the Railroad. That use, Watson presence on the North Junction flats and rights to that property has nothing to do with tax lot #300. Mr. Tromke has painted a picture of uninterrupted family ownership of the parcel in question by the Watson family up to this very date of the hearing. Simply put—this is presenting a false picture to the Commission to blur the distinction between Nick Kaiser's situation (family owned for generations, agricultural support dwelling, burned down and replacement grandfathering sought over 6 months from destruction) and theirs. The first ownership of this parcel in question by any member of the Watson extended "family" occurred in 2010 when Vicki Welsh-Jones sold the property (and of course not the caboose she no longer owned) to Leslie Watson. At this point it had been a raw parcel of land with no structure on it since 1996, and no application to establish a grandfathered structure by the former owners until the new owners started this process before us. The County had always assured all of the neighbors (most recently set out in my previous letter by Bruce Barnett and Dawn Baird of your office in 2004) that the lot was unbuildable for a dwelling so all the neighbors had no urgency or fear of the Welsh-Joneses or anyone else trying to build a dwelling on the land that had reverted to the original nonbuildable zoning 6 months after February 8, 1996. The former

owners knew this and so did the new owners before this Commission. Although I am seeking to uphold the current laws without variance and have nothing against Gabe Watson personally, I simply could not sit by and allow his attorney to present such a confusing and untruthful representation to the Commission. Had I not known the facts, I would have been confused too.

Sincerely

Doug Robertson

From: John Roberts [mailto:johnr@co.wasco.or.us]
Sent: Monday, July 22, 2013 5:15 PM
To: Doug Robertson
Cc: Andrew Stamp; Joey Shearer
Subject: Re: Watson Hearing re North Junction Tax Lot #300

Doug: Thanks for feedback. I will discuss the information at staff meeting tomorrow and see what records we possibly have not looked at or researched. In that vein - do you have copies of anything the county wrote, issued, distributed, etc. regarding your claims? Do you have any references in staff reports and findings made? Any specific leads for us would be helpful.

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John Roberts, AICP

Planning Director, Wasco County Planning Department

"Service, Sustainability & Solutions"
Ph: (541) 506-2563 · johnr@co.wasco.or.us

On Sun, Jul 21, 2013 at 4:20 PM, Doug Robertson <dougr@easystreet.net> wrote:

Dear Mr. Roberts;

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Watson's behavior at North Junction. I would oppose this attempted change in the laws through "variances" no matter who was making this back door attempt to overrule the Scenic Waterways Act.

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Douglas Robertson

John Roberts < johnr@co.wasco.or.us> Mon, Aug 5, 2013 at 8:28 AM
To: Doug Robertson <dougr@easystreet.net>
Cc: Andrew Stamp <andrewstamp@comcast.net>, "Whitlow, Mark (Perkins Coie)" <MWhitlow@perkinscoie.com>

Doug: It will be not be a problem to get your email(s) entered into the record. It was unclear to me if your previous emails were intended for the planning commission packet or for background information for planning staff.

We did receive some last minute information from Gabe and his attorneys on Monday and Tuesday (about 144 pages worth of info). This information is not included in the planning commissioner packets as it was submitted late. The information is not posted on our department website either. Gabe will obviously be presenting this information to the planning commission Tuesday.

John Roberts, AICP
Planning Director, Wasco County Planning Department

"Service, Sustainability & Solutions"
Ph: (541) 506-2563 · johnr@co.wasco.or.us

[Quoted text hidden]

Doug Robertson < dougr@easystreet.net> Mon, Aug 5, 2013 at 11:00 AM

To: John Roberts <johnr@co.wasco.or.us>
Cc: andrewstamp@comcast.net, MWhitlow@perkinscoie.com

John

Thanks, just in case I get tongue tied the history and the dates are set out as best as I could glean from my files and I would like the Commission to have this sense of the chronology both before and after the flood of 1997. I say that only because the Commission Agenda Packet contains Mr. Ramis lengthy narrative of facts that are simply not the case. Such as P15 which says this case is similar to Win Francis' replacement of a an existing-owned trailer on his generations owned land, with a house. The trailer was a grandfathered residence under the Scenic Waterways Act and replacing it with something more aesthetic is good use of the Act but more importantly is a "remodel" of an owned dwelling. The Watsons don't have the caboose on their lot, they don't own the caboose and they are not "replacing" it. The lot they bought in 2010 is and was vacant of any structures. The caboose is still is on the flats on another's lot and owned by that lot owner. He also maintains the Watson's relative, Hal Erz still has an unbroken chain of a "life interest" in the property. This claim is a surprise to everyone and even the Welsh-Jones previous owners.

All the prior uses were grandfathered under the Scenic Waterways Act including the caboose on that lot in 1972 and former Senator and Governor Mark Hatfield assured landowners that only future uses would be impacted. That is why the largest landowner, the Deschutes Club, signed on in support of the Act. However, everyone knew how valuable the Scenic Waterways and County Zoning exceptions were and thus strict compliance with the "file within 6 month, build within a year" timeline was never an issue for those who wanted to rebuild. We did it without issue.

The summary in opposition to Mr. Ramis' should be included in the record I feel even though you are not allowing Mr. Trompke's late packet as I assume he will still be using its content orally. So just this email string from July 21 2013 which includes the two emails should be included—and of course this one I'm writing.

Thank you

Doug Robertson

From: John Roberts [mailto:johnr@co.wasco.or.us]
Sent: Monday, August 05, 2013 8:29 AM
To: Doug Robertson
Cc: Andrew Stamp; Whitlow, Mark (Perkins Cole)

[Quoted text hidden]

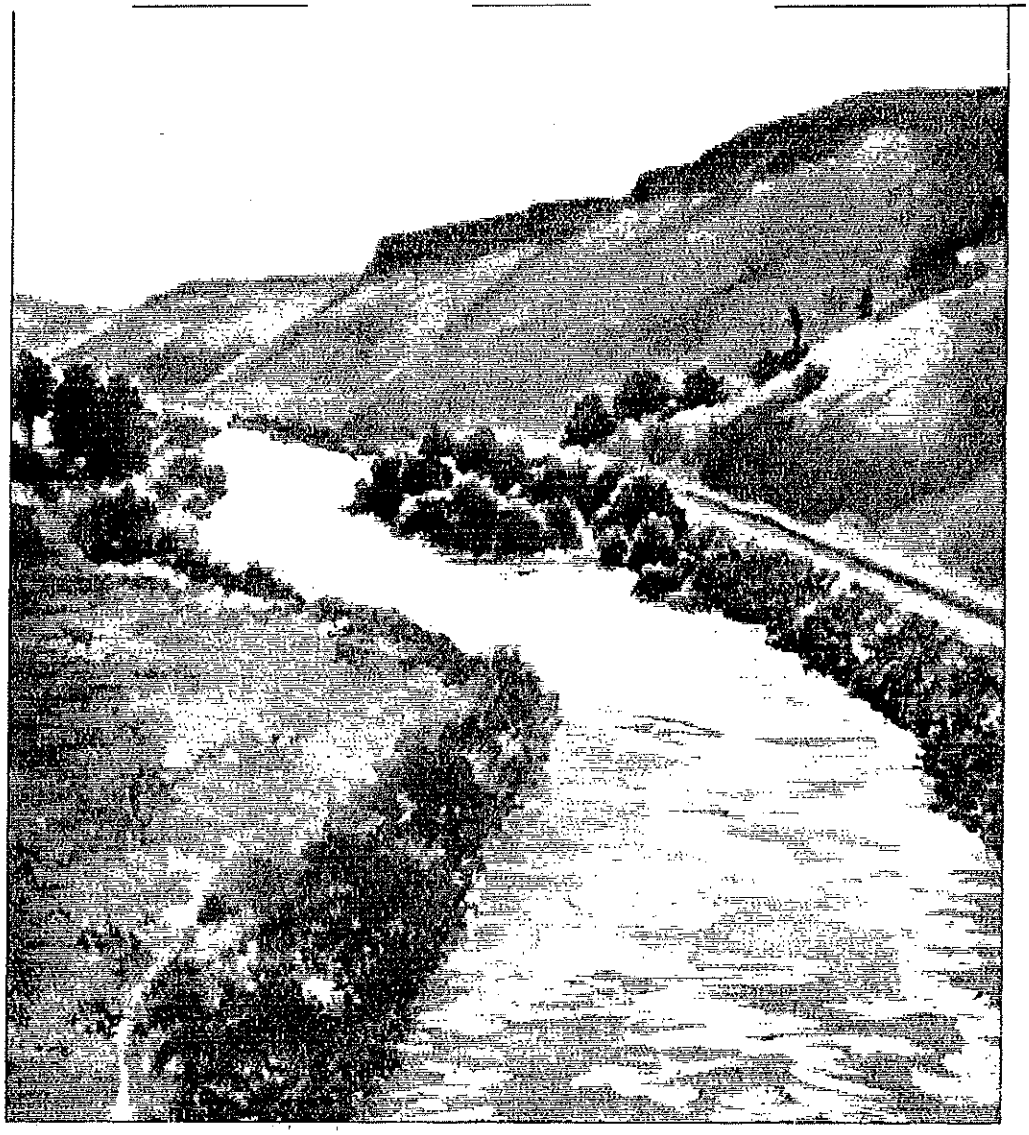
[Quoted text hidden]

U.S. Department of the Interior
Bureau of Land Management

Prineville District Office
185 East 4th Street, P.O. Box 550,
Prineville, Oregon 97754

February 1993

Lower Deschutes River Management Plan Record of Decision



As the Nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering the wisest use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to assure that their development is in the best interest of all our people. The Department also has a major responsibility for American Indian reservation communities and for people who live in Island Territories under U.S. administration.