BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the	)	Case No. CU 05-65
	)	
Application of:	)	Clerk's File No.
	)	
CAMP DAKOTA, LLC	)	**Conditional Use/Variance**

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on remand from the Marion County Board of Commissioners for further review of the application of Camp Dakota, LLC for a conditional use to expand an existing campground approved under CU 97-30 on a 43.3 acre parcel in an FT (Farm Timber) zone at 1843 Crooked Finger Road NE, Scotts Mills, Marion County, Oregon (T7S, R2E, Section 21, tax lot 700). Applicant modified the application to include a variance to the property line setback requirement for a memorial, viewing platform.

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and the Marion County Zoning Ordinance (MCZO) (Rural), especially chapters 119, 122 and 139.

III. Public Hearing

A public hearing was duly held on this application on January 11, 2006. At the hearing, the Planning Division file was made part of the record. The record remained open until January 18, 2006 for opponents and until January 25, 2006 for applicants to submit additional information. The following persons appeared at the hearing and provided testimony on the application:

1.	Lisa Milliman	Planning Division
2.	David Epling	Planning Division
3.	Don Kelley	Attorney for Applicant
4.	John Winslow	For applicant
5.	Katie Davis	Proponent
6.	Susan Davis	Proponent
7.	Tina Brundridge	Opponent
8.	Judy Eckley	Opponent
9.	Kurt Combs	General
10.	Scott Hadsall	General
11.	Lyndon Way	General

The following documents were presented, marked and entered into the record as exhibits:

Ex. 1	January 11, 2006 letter from Jon Mayer
Ex. 2	Specifications for custodial service
Ex. 3	January 7, 2006 letter from Tim Van Laanen

Ex. 4	Four pages of printouts regarding paintball and proximity of deck to housing
Ex. 5	Photo of view from deck
Ex. 6	Annotated copy of Marion County Assessor's Office map 72E21
Ex. 7	November 15, 2005 letter from V. Bankhardt
Ex. 8	October 19, 2005 letter from Dennis and Linda Shores
Ex. 9	November 17, 2005 letter from the Shepherd Family
Ex. 10	November 17, 2005 letter from Yvonne Landers and William Robinson
Ex. 11	Letter from Rodney Galloway, undated
Ex. 12	November 21, 2005 letter from Janet and Robert Richardson
Ex. 13	November 20, 2005 letter from Jason and Callie Zink and family
Ex. 14	Letter from Doris Millis and the Millis and Davenport Families, undated
Ex. 15	November 21, 2005 letter from Theresa VanBeek and family
Ex. 16	November 21, 2005 letter from Ron Hall
Ex. 17	Letter from Kurtis Kent, undated
Ex. 18	November 23, 2005 letter from Gail Wilson
Ex. 19	November 23, 2005 letter from Elmer and LoLita ValKenaar
Ex. 20	November 22, 2005 letter from Marvin and Karen Massey
Ex. 21	November 25, 2005 letter from Erica Harold Heine
Ex. 22	November 28, 2005 letter from Scott and Carla Hadsall
Ex. 23	November 28, 2005 letter from John Winslow
Ex. 24	November 29, 2005 letter from Lori Deibert
Ex. 25	November 28, 2005 letter from Marc and Laurel Walker
Ex. 26	November 28, 2005 letter from Corey and Stacy Rabe
Ex. 27	Letter from Curt Davis, undated
Ex. 28	November 30, 2005 letter from Greg Smith
Ex. 29	December 1, 2005 letter from Darrin Fleener
Ex. 30	Letter from Mrs. Kenneth Davis, undated
Ex. 31	November 30, 2005 letter from Rock and Andrea Shetler
Ex. 32	Letter from Katie Davis, undated
Ex. 33	December 1, 2005 email from Durfee and Tyrney families
Ex. 34	December 29, 2005 email from Lyndon Way
Ex. 35	January 1, 2006 email from David Tanksley
Ex. 36	January 4, 2006 letter from Ron Hall
Ex. 37	January 6, 2006 email from Jane Grover
Ex. 38	January 6, 2006 email from Angie VanLaanen
Ex. 39	January 9, 2006 email from D.J. Tobey
Ex. 40	January 9, 2006 email from Evans family
Ex. 41	January 10, 2006 email from Jeff Deatherage
Ex. 42	January 17, 2006 email from Kellie Myers
Ex. 43	January 17, 2006 email from Judy Eckley
Ex. 44	January 18, 2006 letter signed by residents surrounding Camp Dakota
Ex. 45	January 16, 2006 signatures collected in opposition of expanding Camp Dakota
Ex. 46	Undated and unsigned letter in opposition of expanding Camp Dakota, date stamped January 18, 2006
Ex. 47	January 19, 2005 and January 26, 2006 newspaper articles
Ex. 48	January 18, 2006 letter from Deanna Dorgan Verboort and Daniel Dorgan and Darlene Dorgan Geschwils
Ex. 49	January 19, 2006 letter from John Winslow

No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing.

The hearings officer issued a decision denying the application on May 4, 2006. Applicant appealed the hearings officer's decision to the Marion County Board of Commissioners (BOC) on May 15, 2006. On May 31, 2006, the BOC accepted the appeal and remanded the application to the hearings officer for further review. On July 10, 2006, applicant submitted a variance application.

A remand hearing was held on September 27, 2006. The record remained open until October 4, 2006 for opponents and until October 11, 2006 for applicants to submit additional information. The following persons appeared at the hearing:

1.	Diane Rolph	Planning Division
2.	Don Kelley	Attorney for Applicant
3.	John Winslow	For applicant
4.	Scott Hadsall	Proponent
5.	John Weaver	Proponent
6.	Tina Brundridge	Opponent
7.	Judy Eckley	Opponent

The following documents were presented, marked and entered into the record as exhibits:

Ex. 1	Statement by John Winslow with attached views A-D
Ex. 2a-c	Three photos of deck area
Ex. 3a-b	Two photos of previous paintball location
Ex. 4	July 5, 2006 letter from Dennis Conrad
Ex. 5	August 16, 2006 letter from Don Kelley
Ex. 6	May 10, 2006 e-mail from Jon Mayer regarding Fire Prevention and Protection Plan for Camp Dakota
Ex. 7	May 14, 2006 letter from John Winslow with attached petition with signatures in support
Ex. 8	September 25, 2006 letter from Daniel Dorgan signed by Darlene Geschwill as Power of Attorney
Ex. 9	September 25, 2006 fax from Don Kelley with attached Fire Prevention and Protection Plan for Camp Dakota
Ex. 10	September 27, 2006 e-mail from Byron Meadows
Ex. 11	October 2, 2006 letter from Deanna Verboort and Darlene Geschwill
Ex. 12	Letter from Timothy and Helen Fennimore dated October 1, 2007 [sic]
Ex. 13	October 6, 2006 letter from Steve Donofrio
Ex. 14	October 10, 2006 letter from Don Kelley

No objections were raised at the hearing as to notice, jurisdiction, conflicts of interest, or to evidence or testimony. In a letter (exhibit 11), Deanna J. Verboort and Darlene R. Geschwill, representing the estate of Daniel R. Dorgan, stated that no notice of the public hearing was given to Daniel R. Dorgan, Ms. Verboort or Ms. Geschwill. The September 6, 2006 certificate of mailing for the notice of public hearings shows that notice was mailed to Daniel and Dolores Dorgan at 1 Towers Lane #2145 in Mt. Angel, Oregon, the

address of the abutting property owner as shown in the tax records of Marion County. Notice was proper.

Applicant also raised the issue of notice at this hearing and it is addressed in V below.

IV. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Farm/Timber in the MCCP and is zoned FT. The purpose of this designation and zoning is to encourage the continuation of commercial agricultural and forestry uses.

2. The subject 43.3-acre property is south and west of Crooked Finger Road NE, approximately ½ mile south of its intersection with Moss Lane NE. The property contains a single-family dwelling, temporary medical hardship mobile home approved under CU 96-84, accessory structures, well, septic system and a campground approved under CU 97-30. The property was lawfully created in MP 78-163.

3. Surrounding properties are devoted to a mixture of timber and farm uses with a few smaller non-farm/non-forest uses to the west and northwest. Land to the north is zoned TC (Timber Conservation). Other surrounding properties are zoned FT.

4. According to the *Soil Survey of Marion County Area Oregon*, the subject property contains 73% non high-value farm soils.

5. Applicant proposes expanding an existing campground approved under CU 97-30 by adding 30 new campsites, 30 day use parking spaces, paintball course and other recreational activities including but not limited to: archery, volleyball, badminton, air rifle target shooting, disc golf, orienteering, polo, rock climbing, outdoor musical performances, religious services, medieval reenactments, outdoor educational activities, scouting ceremonies, wedding ceremonies, memorials, old time logging exhibitions, wildlife exhibitions, conservation exhibitions, and forest product exhibitions. Applicant also requests further definition of what activities can occur within the special setback area during the non-quiet hours, asks that a memorial viewing platform be allowed to remain near the property line and to convert a mobile office structure to a permanent structure.

6. The Marion County Planning Division requested comments on the proposal from various government agencies.

   The Marion County Department of Public Works (DPW) commented:

   The Public Works Department has the following comments, requirements and recommendations for the proposed conditional use:

   1. Crooked Finger Road is currently an improved turnpike section; this does not meet County standards for a local road. The applicant shall be required to construct a half street improvement along their

frontage on Crooked Finger Road to include: widen the existing road half width to 11-feet with a 5-foot wide shoulder, remove sight distance obstructions, and construct any storm drainage elements necessary to ensure proper drainage. Tapers and transitions shall be constructed to join existing pavement.

2. In accordance with Marion County Driveway Ordinance #651, driveway permits will be required for any new access or change in use of the existing access to the public right-of-way. Through the building permit process, the applicant shall be required to apply for a driveway permit and construct any improvements required by the permit or an exemption from the permit process. Public Works staff will review the driveway at that time and determine if it is in compliance with current County standards. If an exemption is denied, the applicant will be required to apply for a driveway permit and make necessary changes to establish a compliant access.

3. The County requires any development 0.5 acre or larger to provide storm water detention. The system shall be sized so that it will detain the difference between a 5-year frequency storm with pre-development conditions and a 10-year frequency storm with development conditions.

4. Prior to issuing any building permits, the applicant shall submit a site drainage plan. The plan shall show existing contours or natural drainage courses that are indicated by drainage arrows pointed in the direction of flow. The plan shall also show how the applicant proposes to discharge runoff from the site, down spout locations, septic fields and any natural water features.

5. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. Site grading shall not impact surrounding properties in a negative manner.

6. The subject property is within the unincorporated area of Marion County. Transportation and Parks Systems Development Charges shall be assessed upon any development on the parcel at the time of application for building permits.

7. Any utility work in the public right-of-way will require a utility permit from Public Works.

DPW revised its comments for the September 27, 2006 hearing:

> The Public Works Engineering requirements for this Conditional Use requires the applicant to bring the frontage up to county roads standards of 11 travel lane, five foot shoulder and ditch. According to our records the road already has eleven foot travel lanes. The shoulders [are] generally five feet. In order to clarify our requirements in a phone conversation I told John Winslow that we would require them to pave their driveway 20 feet back and do some brushing but that I didn't see a need to move the ditch.

The Marion County Building Inspection Division commented that permits from their office are required for a recreation park/organizational camp.

All other contacted agencies either failed to respond or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met for the conditional use and variance applications.

2. This is the second order issued by the hearings officer in this case. Many of the findings and conclusions have not changed. Also, applicant modified this proposal by adding a variance application. Changed and new findings appear below in **bold** type.

CONDITIONAL USE

3. Camp Dakota was established under CU 97-30 when the Marion County Board of Commissioners approved a request to establish a campground on a 43-acre parcel in an FT zone. The following conditions were imposed:

    1. The proposed campground shall have no more than ten improved, and ten unimproved camping spaces.

    2. A 150-foot setback shall be maintained from all property lines.

    3. All septic systems shall be reviewed and approved by the Marion County Building Inspection Division, and written proof of approval shall be submitted to the file prior to occupancy of the campground.

    4. Applicants shall provide written proof that a fire protection plan has been reviewed and approved by the Silverton Fire District, and proof of compliance with all Silverton Fire District requirements, prior to occupancy of the campground.

    5. Applicants shall submit a final detailed site plan to the Planning Division showing compliance with all MCZO development standards, including parking and loading requirements, for review and approval of the Principal Planner.

    6. Applicants shall comply with all Marion County Department of Public Works requirements, including driveway permitting, drainage facility and other DPW requirements.

    7. Any expansion of the proposed campground shall require conditional use review.

    8. To be effective, this permit shall be exercised within one year of the effective date of this order. An additional one year extension may be obtained on approval of the Planning Division, provided the request is submitted prior to the expiration date of this order. Any additional extensions of time must be submitted to the hearings officer prior to the new expiration of the order, and must detail

the reasons for the delay and state the amount of time needed to implement the use.

The 1997 request was to "establish a campground" and the BOC approval was for a 20-campsite campground. Uses other than camping were not requested or mentioned by applicants and were not authorized by BOC approval. In that case, applicants stated that campground rules would include a provision that "[n]o one shall possess any loaded firearm or discharge any firearm, pellet gun, bow and arrow, slingshot, or other weapon capable of injuring any person or wildlife." Applicants also stated, "we find it hard to believe that a small campground could have an adverse effect upon the area in which we live." Applicant now holds or asks to hold archery, paintball and air rifle competitions and is engaged in a number of other uses not associated with temporary overnight camping and not anticipated in the prior approval. Applicant seeks approval for uses that are on-site, have occurred on-site or it may wish to have on-site at some time. To expand the campground and establish uses other than temporary overnight camping, applicant must prove all applicable standards and criteria are met.

4. Under MCZO 119.100, the Planning Director has the power to decide conditional uses listed in the applicable zone. The Planning Director could decide this matter.

5. Under MCZO 119.140, interested persons may appeal the Planning Director's decision no later than 12 days after the decision is mailed.

The Planning Director's decision is dated December 9, 2005. Applicant appealed the Planning Director's decision on December 16, 2005. An interested person filed the appeal within 12 days. The appeal was timely filed and is considered.

6. Under MCZO 119.150, if the Planning Director's decision is appealed, the hearings officer shall conduct a public hearing. A public hearing was held on January 11, 2006. **The hearings officer issued an order denying the application. Applicant appealed that decision to the BOC. The BOC remanded the application to the hearings officer for further review. The hearings officer has authority to hear and determine this matter on remand.**

7. Under MCZO 119.070, before granting a conditional use, the hearings officer shall determine:

(a) That the hearings officer has the power to grant the conditional use;

(b) That the conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;

(c) That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

8. Under MCZO 119.030, the hearings officer may hear and decide only those applications for conditional uses listed in the MCZO. The hearings officer shall decide whether the conditional use may be placed in a zone and may impose the conditions, subject to the restrictions and provisions of the MCZO. MCZO 139.050(h)(1) lists private parks, playgrounds and campgrounds, subject to section 139.060(e) and (f) and subject to section 139.070(b) as a conditional use in the AR zone.

Applicant requested several items under an expansion of a campground. In evaluating the application, the Planning Director did not consider uses he believed were more associated with establishment of a private park because the application requested an expansion of a campground and not establishment of a private park. Applicant points out that the zoning code makes no distinction in criteria between parks, playgrounds and campgrounds and all uses should be considered an application for a park, playground or campground.

To consider all the proposed uses, the application must be one for expansion of an existing campground *and* establishment of a playground and/or private park. These uses are listed as a conditional use in the FT zone and the hearings officer may hear and decide matters pertaining to these uses.

9. Considering the proposed use as expanding a campground and establishing a private park and/or playground raises the issue of the adequacy of the notice. The Planning Director did not consider certain requested uses because he considered them outside the scope of campground uses. The notice of the public hearing before the hearings officer mentions only expansion of a campground, and not establishment of a private park. The issue here is whether the notice was adequate to allow the hearings officer to consider establishment of a private park or playground as well as expansion of a campground.

The notice of public hearing states:

> **PURPOSE OF HEARING:** To receive testimony on an appeal filed on an approval/denial of an application of Camp Dakota for a conditional use to expand an existing campground approved under conditional use 97-30 by adding 30 new campsites, 30 day use parking spaces, a paintball course and other recreational activities that include but are not limited to; archery, volley ball, badminton, air rifle target shooting, disc (Frisbee) golf, orienteering, polo, rock climbing, outdoor musical performances, religious services, medieval reenactments, outdoor educational activities, scouting ceremonies, wedding ceremonies, memorials, old time logging exhibitions, wildlife exhibitions, conservation exhibitions, forest product exhibitions and for further definition on what activities can occur within the special setback area during the non-quiet hours on a 43.3 acre parcel in a FT (Farm Timber) zone located at 1843 Crooked Finger Road NE, Scotts Mills. T7S; R2E; Section 21; Tax lot 700.

Under ORS 197.763(3)(a) notice provided by the jurisdiction shall explain the nature of the application and the proposed use or uses that could be authorized by the application. Under ORS 197.830(3), if a local government makes a land use decision which is different from the proposal

described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the Land Use Board of Appeals. ORS 197.763 and ORS 197.830 have been read together to analyze local notice requirements. *Bigley v. City of Portland*, 168 Or App 508 (2000). The court of appeals did not provide a great deal of guidance in *Bigley* and noted that its decision may present practical difficulties for local governments on giving effective notice. *Bigley* at 514.

Here, the notice of public hearing clearly states the application is for a conditional use to expand an existing campground, but does not state that it may involve establishing a playground or private park. Still, the notice listed the myriad activities to be considered, and the criteria for establishing a private park and expanding a campground are the same. The notice alerted the public of day use activities by mentioning the 30 day-use parking places and to the types of activities proposed for the subject property. Whether the uses fall under the category of campground or park activities, the activities themselves were stated. Additionally, the park versus campground issue was discussed at hearing and the record left open to allow all parties an opportunity to address the matter. Notice was adequate.

Notice for the new hearing was similar to the previous notice except that notice for the proposed variance was added. Applicant asked for an interim ruling on notice for the modified setback and mobile building conversion, or an opportunity to continue the hearing and amend the notice. The hearings officer ruled initially, with reservation to reconsider, that notice was adequate and allowed the hearing to go forward. The hearings officer notes that applicant removed its request for one of the overflow parking lots in the 150′ setback from the proposal and applicant points out that the building in question is not being changed from a temporary structure to a permanent structure, but from a mobile structure to a permanently placed structure. Applicant still wants to place this structure within the 150′ setback to facilitate the check in/check out process and to enhance security. Given the previous finding that notice was valid and the reduction of impact to the 150′ setback, the clarification that the structure is not being changed from a temporary to a permanent structure but from a mobile to a permanently placed structure, the discussion of these issues at hearing, and the opportunity to keep the record open to address these issues further, the hearings officer finds that notice for the second hearing was valid.

10. Under MCZO 139.060(a), the following criteria apply to all uses in Section 139.050 and other uses where referenced:

    (1) The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.

(2) The use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

(3) Adequate fire protection and other rural services are or will be available when the use is established.

(4) The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

(5) Any noise associated with the use will not have a significant adverse impact on nearby land uses.

(6) The use will not have a significant adverse impact on potential water impoundments identified in the comprehensive plan, and not create significant conflicts with operations included in the comprehensive plan inventory of significant mineral and aggregate sites.

11. To determine whether the proposed uses will force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use, the county's decision must describe the farm or forest practices on surrounding lands devoted to farm or forest use, and explain why the proposed use will not force a significant change in or significantly increase the cost of those practices. *Donnelly v. Curry County*, 33 Or. LUBA 624 at 640 (1997), referring to *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991). LUBA further clarified the scope of the *Schellenberg* test as it relates to forestlands in footnote 11:

> The Goal 4 Rule and ordinance at issue in this case differs from the statute at issue in *Schellenberg* only in that the Goal 4 Rule broadly mentions "agricultural or forest lands" without specifying whether they are "surrounding" the subject property or have another relationship (such as "adjacent" or "nearby"). However, OAR 660-06-025(5)(c), the subsection immediately following the Goal 4 Rule in question, requires the applicant to record statements recognizing the rights of "adjacent and nearby land owners to conduct forest operations * * *." . . . This subsection clarifies that the "agricultural or forest lands" on which the county must describe farm or forest practices includes at least agricultural or forest lands adjacent or nearby to the subject property. *Id.*

Previously, applicant simply noted that the Longview Fibre Company owns nearby TC zoned land, but did not describe the farm or forest practices on that or other parcels. As a result, the hearings officer found that this criterion had not been met. Applicant further addressed this issue for the second hearing. John Winslow provided a letter describing the activities taking place on surrounding properties and supplemented his letter with testimony at hearing. The evidence that there is no farm use on surrounding properties is substantial and is not rebutted. A Christmas tree operation was evidently contemplated on the Kneeland property (the niche in the northwest section of the subject property) at one time, but

the trees have overgrown and could be considered a timber stand, though no active management or forest practices are occurring at this time.

The Fennimore property to the north is being actively managed for timber and typical practices occurring on that property include occasional tree limbing with accompanying burning. No aerial spraying or harvesting has been observed. The Fennimore property is across Crooked Finger Road. The Crooked Finger Road right-of-way provides 60′ of buffering between the subject property and the Fennimore property. Additionally the campground currently has a 150′ buffer between campsites and the right-of-way. (Reduced to 90′ along Crooked Finger Road below.) The 150′ buffer was originally proposed to protect neighboring timber properties and will still serve this purpose. The camping activities will not significantly interfere with timber use of the Fennimore property.

According to applicant, the Dorgan property to the south and east is used similarly to the Fenninmore property. The representative of the estate of Mr. Dorgan do not complain that the proposed use will interfere with their timber operations but rather complain of noise, property devaluation and potential trespass liability problems. The Longview Fibre Company property to the southwest is in timber production. Longview Fibre currently cooperates with Camp Dakota to allow campers access to Longview Fibre Company property, but closing that access during harvest or fire danger periods. The tree farm manager stated that "Mr. Winslow has explained the current expansion plans at Camp Dakota and Longview Fiber Co. does not have any comments at this time. Historically, Camp Dakota has not caused Longview Fiber any problems." The Brundridge property to the west is not in forest use.

The proposed uses will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. MCZO 139.060(a)(1) is satisfied.

12. The increased camping activity and proposed day use will increase the risk of fire. Applicant notes that a fire suppression pond is on-site and a volunteer fire station within five miles. Applicant submitted a fire prevention plan for the record. The Silverton Fire District reviewed applicant's fire plan and had no further requirements and no objection as long as the plan remains in effect and any additional Oregon Department of Forestry (ODF) requirements are satisfied The North Cascade District Assistant District Forrester also reviewed the plan and stated that the "plan appears adequate" but asked for certain reasonable additions and clarifications. Applicant will be required to incorporate ODF requirements into its plan and provide proof that ODF has approved the plan. With this condition, the proposal will not significantly increase fire hazard and therefore not significantly increase fire suppression costs or significantly increase risks to fire suppression personnel. As conditioned, MCZO 139.060(a)(2) can be satisfied.

13. As noted above, any approval of this application will require a detailed fire suppression plan to be reviewed and approved by ODF.

The Marion County Sheriff's Office (MCSO) provides police services for the area. Opponents worry about public safety, noting that MCSO patrols are spotty, but another neighbor who was originally opposed to the campground says it has caused no problems. MCSO help was required to evict some campers at the camp's request, but the camp has rules that are strictly enforced, limiting the need for police intervention. MCSO coverage appears adequate for the needs of the current camp, but applicant proposes adding more than double the number of campsites and as many day users to the site. **Applicant provided information on the proposed campground expansion from 20 to 50 spaces to the MCSO. The MCSO provided a letter to Mr. Winslow stating that there was no reason not to support the expansion of the campground from a law enforcement perspective. Additionally, the person providing patrol services in the area for the ODF stated that in the five years of patrolling in the area he has had no complaints about Camp Dakota. The campground expansion will not overtax police services.**

Crooked Finger Road is a Marion County maintained public roadway. As noted by Marion County DPW, the road is developed to turnpike standards and does not meet standards for a local road. The Planning Division's notice of land use request/request for comments form did not specifically mention establishment of a private park but did put DPW on notice that in addition to an expanded number of campsites, applicant proposed a number of recreational uses and included "30 day use parking spaces". DPW's comments are based on the uses described in the notice and DPW found that certain improvements would be required for the public service facility to adequately handle the proposed use. **Prior to the September 27, 2006 hearing, DPW modified its comments on proposed improvements to the roadway. DPW had requested that applicant bring the frontage up to county road standards of eleven-foot travel lane, five-foot shoulder and ditch relocation. DPW's new comments note that Crooked Finger Road already has eleven-foot travel lanes, and that the shoulders are already generally five feet wide. Given these findings, DPW determined there was no need to provide these improvements or to move the roadside ditch. Instead, DPW wants applicant to pave its driveway 20 feet back from the roadway surface and do some "brushing". With a condition of approval requiring applicant to provide the recommended 20' of driveway pavement, remove sight distance obstructions, obtain a driveway permit, provide stormwater detention and a site drainage plan, MCZO 139.060(a)(3) will be met.**

14. The campground area is relatively flat and is not within a geologic slide hazard or floodplain. No streams or other potentially erosive waterways are on the subject property. With submission of a DPW approved stormwater detention and site grading/drainage plan, the use will have no significant impact on slope or soil stability. The detention, grading and drainage plan requirement along with the Building Inspection Division permitting process will help ensure that water quality will be protected. Campfires and barbecues may generate particulate discharge into the air, but applicant provided information that according to Department of Environmental Quality (DEQ), air quality is well within federal standards. There are no sensitive streams or headwaters near the property, and the drainage and stormwater detention plans will ensure that runoff is not a problem. Fish habitat will not be affected by the proposal. The two contested issues under this criterion are whether the proposal will have a significant negative effect on groundwater supplies and on wildlife habitat.

The subject property is within an MCCP identified big game habitat area. MCCP policies do not directly address campground development. In CU 97-30 it was found that the primary big game animals in the area would be blacktail deer, elk, black bear and cougar. The hearings officer found in that case that none of these species were threatened or endangered in this area. Applicant spoke with an Oregon State Parks and Recreation wildlife biologist for an update on the habitat issue and was told that wildlife levels are currently stable and healthy and not threatened or endangered. The wildlife biologist's main concern with the campground was that campers might feed the deer. Applicant states Camp Dakota has adopted an official policy to warn guests not to feed the deer. Neighbors are concerned about the viability of the big game habitat area but offer no specific evidence to rebut applicant's evidence that the campground has not had or will not have an adverse impact on big game in the area.

The final issue under this criterion is the quantity of the groundwater resource, and whether expanding the camp and establishing the day use park will diminish the groundwater supply to the detriment of the resource. Neighbors report that some wells in the area have gone dry in the summer. Specific accounts are not in the record, but the mention raises concern with the ability of the groundwater supply to support an expanded camp and a day use park without significantly interfering with the resource.

The subject site is not within a sensitive groundwater overlay zone and applicant notes that the Oregon Water Resources Department (OWRD) does not require permitting for commercial uses unless water consumption reaches 5,000 gallons per day. Applicant states that the camp is not even close to that rate of consumption. Applicant also notes it has installed water saving showers and devices at the camp and that flush toilets are not installed for campers. Additionally, only ten campsites are improved with individual water hook ups. Applicant submitted OWRD well log information showing no well deepenings in the area, although one well apparently came up dry when drilled to a depth of 205' (MARI 8590). Applicant has submitted evidence sufficient to overcome the inference that the groundwater resource may be insufficient. **The issue of water was brought up again in the September 27, 2006 hearing but no new evidence or arguments were presented.** It is more likely than not that the proposed use will not have a significant adverse impact on groundwater.

With conditions of approval relating to stormwater management, site grading plans, and "do not feed the deer" policies, MCZO 139.060(a)(4) will be satisfied.

15. Noise is a concern with the unapproved uses and with the proposed campground expansion. **Noise can be a difficult issue because noise is subjective.** What is music to one person's ears may be irritating noise to another's. The state and the county have attempted to come up with objective noise standards. The state laws, found in DEQ regulations, are aimed at preventing noise pollution. The county ordinance is intended to prevent and regulate excessive noise that is deemed harmful to the health, safety, welfare and quality of life of Marion County citizens. The county noise ordinance (Ordinance 1190) appears to be based to some extent on the state regulation. Under Ordinance 1190, section 5:

(1) It shall be unlawful for any person to produce or permit to be produced, with a sound producing device, sound within Marion County but outside the Salem-Keizer Urban Growth Boundary which:

(a) When measured at or within the boundary of the property on which a dwelling unit that is not the source of the sound is located, or, within a dwelling unit that is not the source of the sound, or, on a public right-of-way at a distance of 50 feet or more from the source of the sound, exceeds:

(A) Fifty-five (55) dBA at any time between 10:00 p.m. and 7:00 a.m. the following day; or

(B) Sixty-five (65) dBA at any time between 7:00 a.m. and 10:00 p.m. the same day, except that if the sound producing device is an off-road vehicle operating in a non-road area, the sound level may not exceed eighty (80) dBA; or

(b) Is plainly audible at any time between 10:00 p.m. and 7:00 a.m. the following day:

(A) Within a dwelling unit which is not the source of the sound; or

(B) On a public right-of-way at a distance of 50 feet or more from the source of the sound.

(c) If a measurement of the sound is made, subsection (a) of this section shall supersede subsection (b) of this section and shall be used to determine if a violation exists.

Under section 2, a sound producing device means:

(1) Loudspeakers, public address systems;

(2) Radios, tape recorders or tape players, phonographs, compact disc players, television sets, stereo systems, including those installed in a vehicle;

(3) Musical instruments, amplified or unamplified;

(4) Sirens, bells;

(5) Motor vehicle engines or exhausts;

(6) Domestic power tools and equipment used for home or building repair, maintenance, alteration or similar construction project, including but not limited to powered hand tools, lawn mowers, garden equipment and snow removal equipment, but only between 10:00 p.m. and 7:00 a.m. of the following day;

(7) Heat pumps, air-conditioning units, and refrigeration units, including those mounted on vehicles; and

(8) Other similar sound producing devices.

Additionally, section 7 provides exemptions to the regulation:

(1) Sounds generated by activities for which a mass gathering permit or conditional use permit has been granted if the activities are conducted in accordance with the terms and conditions of the permit.

(2) Sounds made by work necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from imminent exposure to danger.

(3) Sounds made by warning devices to protect persons or property from imminent exposure to danger, provided however that burglar or fire alarms shall not operate continuously for more than fifteen minutes.

(4) Sounds made by an emergency vehicle when responding to or returning from an emergency or when in pursuit of an actual or suspected violator of the law.

(5) Sounds made by current employment of land and buildings on a farm for the purpose of obtaining a profit in money by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of livestock, poultry, fur-bearing animals or honeybees, or the produce thereof, or for dairying and the sale of dairy products or any other agricultural or horticultural operations or any combination thereof including the preparation and storage of the products raised for human or animal use and disposal by marketing or otherwise by a farmer on the farm.

(6) Sounds made by the normal and usual operation of equipment and machinery in connection with and on land being used for the growing and harvesting of timber and other forest products.

(7) Sounds caused by organized athletic, religious, educational, civic or other group activities, when those activities are conducted between 7 a.m. and 10 p.m. on property generally used for those purposes, including stadia, athletic fields, parks, race tracks, schools, churches, airports and waterways.

(8) Sounds made in conjunction with permitted industrial or commercial uses.

(9) Sounds made by activities by or on direction of Marion County or the state of Oregon in maintenance, construction or repair of public improvements on public lands or in public rights of way or easements.

(10) Sounds regulated by federal and state law, including but not limited to sounds caused by railroads and aircraft.

(11) Sounds caused by motor vehicles operated on public roads, which are regulated by state law (ORS 815.250) except where a motor vehicle is idling for more than 15 consecutive minutes in such a manner as to

be plainly audible within a dwelling unit between 10:00 p.m. and 7 a.m. the following day.

Applicant purchased a decibel meter and measured activities from various points on the property. The sound generated by paintball play was measured at the property line of the property closest to the paintball course and was recorded at 65 decibels on an a-weighted scale (dBA). This level of sound would meet Ordinance 1190 requirements. It is not known what conditions were occurring when the measurement was taken but the measure is an indication that it is feasible for paintball course activity to meet Ordinance 1190 standards.

Applicant points out that sounds caused by organized athletic, religious, educational, civic or other group activities, when conducted between 7 a.m. and 10 p.m. on property generally used for those purposes, including stadia, athletic fields, *parks*, race tracks, schools, churches, airports and waterways are exempt from Ordinance 1190 noise restrictions.

The proposed park and its proposed activities are not yet legally established so the subject property is not "generally used" for park purposes. Additionally, the land use criterion does not say that the use must comply with the Marion County noise ordinance but that the noise generated by the use shall not significantly interfere with neighboring property uses. Ordinance 1190 provides valuable guidance on what may be acceptable noise levels, but approving a use based on an exemption does not show satisfaction of the criterion. Oregon DEQ regulations also provide guidance to help sort out this criterion.

OAR 340-035 contains DEQ noise control regulations that are in addition to and not supplanted by the Marion County noise ordinance. DEQ does not have a noise permitting process and does not fund a noise enforcement program. The state provides no mechanism for ensuring compliance with the DEQ noise regulations, but meeting state noise standards will likely provide adequate protection to the public. The state rules are more complex than the county regulations, but they have some similar requirements.

The state regulates noise based on the type and location of the noise source. The campground/private park is a commercial activity and would be considered a commercial noise source. Noise sources are further defined by whether they are new or existing noise sources. OAR 340-035-0015(33) defines a new industrial or commercial noise source as any industrial or commercial noise source for which installation or construction was commenced after January 1, 1975 on a site not previously occupied by the industrial or commercial noise source in question. The camp was established in 1997 and the park has yet to be legally established. The commercial activities were not conducted on the subject site or proposed expansion area on January 1, 1975 or before. The subject site is a new industrial or commercial noise source.

Noise regulations also differ based on whether the site has been a commercial or industrial site in the past. Under OAR 340-035-0015(47), a previously unused industrial or commercial site means property that has not been used by any industrial or commercial noise source during the 20 years immediately preceding commencement of construction of a new industrial or commercial source on that property. Agricultural activities and silvicultural activities generating infrequent noise emissions shall

not be considered as industrial or commercial operations for the purposes of this definition.

Applicant uses the site for forestry purposes and mentioned that it was used for Christmas tree production in the past. These uses would not be counted as commercial or industrial uses. There is no evidence that the subject expansion site has been used by any industrial or commercial noise source in the last 20 years. OAR 430-035-0035(1)(b)(B) standards for a new noise source on previously unused site would apply.

Noise limits under OAR 340-035-0035(1)(b)(B)(i) for new sources on previously unused sites are the lower of the ambient statistical noise level, L10 or L50, plus 10 dBA, or the noise level listed in OAR 340-035, Table 8. L10 is the noise level equaled or exceeded 10% of an hour (six minutes), and L50 is the noise level equaled or exceeded 50% of an hour (30 minutes). Under OAR 430-035-0035(5)(c), vehicle noise is not normally examined, but, under OAR 340-035-0035(1)(b)(B)(ii), sources exempt from the requirements of section 340-035-0035(1) by 340-035-0035(5)(b)-(f) must be examined in the noise level analysis.

OAR 340-035 contains specific requirements regarding sound study equipment, placement and test methodology, and normally tests are conducted on-site by an acoustical engineer and often engineering models are used to project likely levels of new sound sources.

At the January 11, 2006 hearing, a neighboring property owner then living next to the paintball course asserted that the noise from the paintball guns could be heard from inside her home with the windows closed and was disturbing to her. Applicant insisted noise is not a problem because paintball guns are CO2 powered and the neighbor's house is several hundred feet from applicant's property line. Applicant has since moved the paintball course away from this dwelling to a site that is not as near a habitable dwelling. The issue of noise was brought up again on remand, but no new evidence or specific arguments were presented. Much of the subject property borders and is buffered by Crooked Finger Road, and the paintball course was moved away from habitable dwellings. But, in addition to paintball related sounds, other noise is generated by campground and park activities. Applicant notes that medieval reenactments, church services, scout gatherings, weddings and family reunions have taken place on-site. Group sounds and live or recorded music may occur in association with activities taking place on the campground. One way to address noise issues related to these activities is to disallow electronically amplified sound. Applicant was agreeable to this condition but wanted to make sure it was known that this would not mean there could be no radios or CD players allowed on-site. The hearings officer's concern with amplification is not with a radio playing but more with an amplified live band providing music at a wedding reception or other similar activity.

With a condition of approval forbidding electronically amplified sound and setting back the registration building as noted below, no sound study will be required and MCZO 139.060(a)(5) will be met.

16. There are no MCCP identified water impounds or mineral and aggregate sites on or near the subject property. MCZO 139.060(a)(6) is satisfied.

17. MCZO 139.060 contains the following additional criteria related to campgrounds and private parks:

(e) For uses listed in Sections 139.050(d)(3), (h)(1),(2) and (3), and (i), new facilities on high-value farmland shall not be authorized. Existing legally established facilities on high-value farmland may be maintained, enhanced, or expanded on the same tract where the current use is located.

(f) Private Parks, playgrounds and campgrounds shall meet the following criteria:

(1) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.

(2) It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

(3) A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.

(4) A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:

(A) No more than one-third or a maximum of 10 campsites, whichever is smaller may include yurts;

(B) The yurt shall be located on the ground or on a wood floor with no permanent foundation.

(5) Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.

(6) It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

(7) Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6-month period.

18. The subject campground is already existing and is on a parcel that is not composed of predominately high-value farm soils. Although the private park is not already legally existing, it is also not on a parcel made up primarily of high value farm soils. MCZO 139.060(e) is satisfied.

19. The urban growth boundary (UGB) nearest to the property is the Scotts Mills UGB, more than seven miles away. MCZO 139.060(f)(1) is satisfied.

20. The subject campground is approved for temporary overnight use for vacation and recreational purposes, not residential use. If not for the preexisting campground, the proposal could not be approved because the site is not on or contiguous to lands with a park or other outdoor natural amenity. Applicant built the campground and is now asking to establish the park that would be required to establish a campground today. Nevertheless, the campground exists and may be expanded without reference to being established on or contiguous to parkland or other amenity. MCZO 139.060(f)(2) is satisfied.

21. **The on-site trees provide buffers between campsites in a manner that protects the site's natural amenities, but with the addition of so many recreational and other events and uses (paintball, weddings, medieval reenactments, musical performances, etc.), the park risks becoming dominant over and not integrated into the forest environment.**

In 1997, applicants proposed a 150' vegetative buffer as a condition of approval to address forest use compatibility issues. The campground application approval was conditioned on maintaining the 150' vegetative buffer. The buffer helps prevent interference with forest practices, but also helps integrate the campground with the forest environment. This buffer is especially needed because along with the request to expand campsites, applicant is asking to establish a private park with a variety of activities that are not forest related and do nothing to integrate the site with the forest environment. Although applicant originally proposed the 150' buffer to address forest resource practices compatibility, its purpose can be expanded to meet other concerns and criteria. Having excessive day use and excessive overflow parking next to the property borders does not integrate the site into the forest environment. Applicant is now asking only for incidental day use, the registration building and ten overflow parking spaces within the setback area. These are discussed below and with the conditions noted below, day and recreational use of the site will be integrated into the forest environment and MCZO 139.060(f)(3) will be satisfied.

22. Applicant proposes 30 new campsites, with 26 primitive tent or RV sites and four yurts. The additional campsites will bring the approved total to 50 campsites. A maximum of ten yurts are allowed under state and local law. Applicant proposes a maximum of ten yurts for the campground. With a condition of approval limiting the total number of yurts to ten and forbidding permanent foundations, MCZO 139.060(f)(4) will be satisfied.

23. Applicant proposes 30 new campsites, 26 with primitive tent or RV sites. Applicant proposes no individual water, sewer, or electrical hook ups and none can be approved. A condition of approval will forbid additional individual water, sewer, or electrical hook ups. As conditioned, MCZO 139.060(f)(5) will be satisfied.

24. Whether the proposal includes "intensively developed recreational uses" appears to be the main sticking point with this application. Applicant proposes that virtually any recreation use not requiring a building permit is not intensively developed, and states that the Oregon

Department of Land Conservation and Development (DLCD) and the Marion County Planning Manager pretty much agree with that interpretation. That proposition is too broad (and, a campground expansion alone without additional uses requires Marion County Building Inspection permitting as noted in their comments in section IV above and OAR 918-650). The nature of the use must be considered. *See Donnelly v. Curry County*, 33 Or LUBA 624, 632 (1997), ("it is the nature and interrelationship of the uses that determines intensity . . .")

In *Donnelly*, LUBA wrote:

> The question under Goal 4 is not whether a campground on forest lands is appropriately rural (*i.e.* non-urban) in intensity, but whether the campground's intensity of development is 'appropriate in a forest environment.' . . . [In Tice v. Josephine County, 21 Or LUBA 371 (1991) w]e held, as a matter of law, that a motocross racetrack is not a permitted 'outdoor recreational activity' under former Goal 4 because it dominates and changes the character of the forest environment. Id. at 379. In a footnote, we referred to the recent adoption of the current Goal 4 and Goal 4 Rule, and stated that
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> > 'amendments to Goal 4 and OAR 660-06-025(1) regarding permitted recreational uses in a forest zone strongly support an interpretation that in a forest zone *only those recreational uses with a relatively low impact on the forest environment are contemplated.*' 21 Or LUBA at 378 n 7 (emphasis added). (*Donnelly* at 633-34.)

Applicant proposes several activities for campers and day users. The most contentious and apparently loudest activity is paintball play, but applicant also proposes 30 day use parking spaces and other recreational activities that include but are not limited to archery, volleyball, badminton, air rifle target shooting, disc golf, orienteering, polo, rock climbing, outdoor musical performances, religious services, medieval reenactments, outdoor educational activities, scouting ceremonies, wedding ceremonies, memorials, old time logging exhibitions, wildlife exhibitions, conservation exhibitions, forest product exhibitions, and miniature golf (not in the notice of public hearing but mentioned in the application). Many of the activities, such as paintball, are to take place within the previously imposed 150' buffer area. Each use, individually, may not be intensive, but a combination of uses could dominate and change the character of the forest environment, especially if the site becomes a wedding and event center, drawing numerous people to the site for day uses.

State parks and campgrounds such as the fairly nearby Silver Falls State Park may allow day and event uses, but the state park is already established and is much bigger than the subject site, allowing uses to be buffered and less concentrated. So, while this proposal may not include swimming pools, tennis courts, and retail stores or gas stations, applicant's proposal still intensively develops the site for recreational and *nonrecreational* uses. Applicant offered to limit special events such as weddings and reunions to no more than five per year as a way to limit their impact. This appears to be a reasonable limitation that would allow

some extra use of the site without committing it to becoming a commercial event or conference center. The events should be further limited to require an association with overnight campers. Other day use should be similarly restricted to people visiting the site in conjunction with overnight camping events. This would allow some day use of the site but effectively limit use so that day use does not dominate or change the character of the forest environment. Such a limitation would limit the need for day use/overflow parking. **Applicant originally proposed three day-use/overflow parking areas; two that exist within the 150' buffer area and one proposed for outside the 150' buffer area. Applicant revised its plan reducing the request for overflow parking from three lots and 30 spaces to one lot with ten spaces. The lot is proposed to be within the current 150' buffer area. With the buffer area reduced by the right-of-way width along Crooked Finger Road, the parking lot will be out of the buffer zone, but still about 150' from the property across the road. Applicant also proposed to allow only incidental recreational use of the buffer area and not intensive uses such as the paintball course. The reduction in day use overall, the only incidental recreational use of the 150' buffer and the reduced overflow parking will help limit day use of and development on the site.**

With the limitations on events, day use and parking facilities, the campground and park use of the site will not be intensively developed for recreational uses. As conditioned, MCZO 139.060(f)(6) is satisfied.

25. A condition of approval shall limit use of the campground by a camper or camper's vehicle to a total of 30 days or less during any consecutive six-month period. As conditioned, MCZO 139.060(f)(7) is satisfied.

26. The Planning Division noted that there are currently violations on the subject property. Under MCZO 110.680 no permit for the use of land or structures, or for the alteration or construction of any structure, shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, or is being used or has been divided in violation of the provisions of this ordinance unless issuance of the permit would correct the violation. Planning found that two specific violations would or could not be corrected by the conditional use application . . . An above ground swimming pool open to guests and a memorial viewing platform that is about five feet from the property line.

27. Applicant acknowledged that under current laws and regulations the pool cannot be used by campers although it would still like to have a pool open to campers at some time in the future if it becomes legal to do so. Applicant has taken steps to keep campers out of the pool area, including fencing, locking, and posting the area for no trespassing. Provided applicant continues to forbid use of the pool for other than personal use, the pool is not in violation of the ordinance.

28. A memorial viewing platform was constructed to commemorate the life of a Camp Dakota employee and friend of the Winslow family. The platform is a raised wooden deck with seating and railing. Applicant notes that the deck is a private area though campers are not restricted from using it. Applicant asks to let the memorial stand as is and where it is, noting that fencing would detract from the memorial and its placement is

significant because it is in the place the family friend most often frequented and because it overlooks the place of his death.

If the memorial platform is not a part of Camp Dakota but is a use private to the Winslow family, the memorial does not violate the 150' buffer, but would still violate the MCZO 139.100(b) setback requirement for structures in the FT zone. (Under MCZO 110.555, structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, regardless of whether it is wholly or partly above or below grade including mobile homes.) The memorial viewing platform is a structure and is subject to the 20' setback provision.

One way of assuring that the memorial platform remains a private space would be to restrict access by posting and fencing. While it might, in some way, detract from the function as a memorial, it would prevent removing the platform from the 150' setback area. This still does not address the 20' setback requirement. It appears that the only way to allow the structure within the 20' setback is through a variance procedure. **A variance was requested for the viewing platform and is examined below and is not granted. The structure must be removed or moved to comply with the 20' setback requirement.**

29. Applicant **originally asked** for clarification of what activities are allowed in the 150' setback area imposed as a condition of approval in CU 97-30. CU 97-30 condition of approval 2 simply states, "[a] 150 foot setback shall be maintained from all property lines." Applicant reads the limitation as preventing any campsites, group gatherings and amenities such as toilet and shower facilities **in** the area, but that uses should not otherwise be restricted. Applicant notes that the buffer takes up 22 acres of the 43-acre site and that a more restrictive interpretation severely limits use of the property. Applicant also notes that its fire trails are within the setback area and those fire trails provide a natural walking path for guests. Applicant believes it is unreasonable to keep hikers out of the area and that it would defeat the purpose of the fire trails if access were blocked.

Condition 2 does not provide a lot of guidance on what is allowed or not allowed within the 150' buffer. The body of the decision in CU 97-30 provides the following:

> Applicants made several proposals to address the compatibility of the campground with adjacent farm and forest uses. A 150 foot buffer from all adjacent properties, maintained in its natural state, is proposed to ensure there are no conflicts with resource management on adjacent or nearby properties.
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> * * *
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> As noted above, applicants' plan provides sufficient safeguards to ensure the use is compatible with farm or forest uses and consistent with the intent of the FT zone. (CU 97-30, V6.)

* * *

Applicants have proposed 150 foot setbacks from all sides of the property, limited the number of spaces to 20, provided a fire prevention and suppression plan, and will be required to obtain a driveway permit from Marion County DPW to ensure safe and adequate access can be provided to the site. With conditions of approval for setbacks, camp site limitations, fire protection and driveway permitting, MCZO 139.040(d)(2) will be satisfied. (CU 97-30, V7.)

* * *

Neighbors expressed concern that the campground will cause increased disease and respiratory distress to livestock, but no specifics of how or why this would happen was provided. As noted before, traffic will be minimal given the limited number of camp sites, the septic system must be reviewed and approved, and there will be a 150 foot buffer maintained around the entire property. Applicant noted that DEQ knows of no case where a campground has produced enough pollution to cause respiratory distress to livestock, and knows of no incidents of disease spreading from a campground to livestock. Applicants consulted with a veterinarian and were told that the primary way that disease is spread is through direct contact. Applicants will maintain a 150 foot setback from all property lines, will provide on-site trails for patron use, and will require all animals to be leashed or confined to a vehicle. The likelihood of respiratory illness or spread of disease to livestock is minimal. (CU 97-30, V10.)

The body of the order indicates that the 150′ buffer was to be maintained in an undeveloped "natural state" and was also intended to prevent campers from coming into contact with livestock. Allowing recreational uses and foot traffic near the property line would not be consistent with the intent of the 150′ buffer area. **No camper or user activities were proposed or allowed in the buffer area in CU 97-30, but applicant modified its application to ask for a change to condition 2 to allow certain activities within the 150′ setback and to reduce the setback along Crooked Finger Road to 20′. The reduced buffer along Crooked Finger Road is intended to allow the registration and check in building with accompanying small parking area and overflow parking area to be closer to Crooked Finger Road. Applicant also asks for hiking area, and other camp-related activities to be allowed in the buffer area.**

Applicant points out that the Crooked Finger Road right-of-way provides an additional buffer to properties across the road from Camp Dakota and asks to reduce the setback in this area for two specific purposes. Rather than reduce the setback as a whole to 20′ along approximately 2,000′ of roadway, it is preferable to reduce the setback by the approximate right-of-way width (the right-of-way width varies from 50′ to 60′ and more at the corner of the property). Reducing the setback along Crooked Finger Road by 60′ will allow the ten overflow parking spaces to be placed within the area delineated on applicant's site plan without compromising the 150′ of separation from surrounding properties. This will allow applicant to place its ten overflow parking spaces within the westerly portion of the delineated parking area on the site plan in a 60′ by 60′

area that should accommodate ten parking spaces. (Under MCZO 118.070, parking spaces shall be nine feet wide and 17′ long with 20′driveways. A 60′ by 60′ space should provide ample room for ten parking spaces.)

The second requested use along Crooked Finger Road is the reception/ incidentals building with parking spaces. Applicant states that the incidentals structure will be no more than 400 square feet and will have three parking spaces. Applicant points out that the placement of the incidentals building will enhance security. It makes sense having persons check into the campground prior to accessing the campground proper to help keep uninvited persons out of camping areas. The question is one of protecting neighboring properties while accommodating the camp's plan to enhance security.

If vehicle spaces are 9′ by 17′ and the building is 400 square feet, it does not appear that a huge area is needed for the building and parking area that would justify reducing the setback to 20′ along the whole Crooked Finger Road frontage. The building should still be setback far enough from the roadway to allow vehicle queuing if the parking spaces are full or if a vehicle will not fit in a standard space (recreational vehicle with car or motorcycle trailer for example), and far enough to keep noise interference (car radios, car doors, etc.) to a minimum. The registration/incidentals building and parking area must be setback at least 40′ from the public right-of-way along Crooked Finger Road. This will allow occasional vehicle queuing within a 20′ area in front of the building and parking area and will help offset noise impacts. The entrance/parking area design will need to be submitted to the Marion County Department of Public Works Engineering and Permit section for review and approval. Outside of the registration/incidentals building and parking area (the area includes the existing woodshed), the 90′ buffer must be maintained.

Applicant also asks to allow forest practices within the buffer area because that portion of property is actively managed for forest use. Forest practices are allowed in the FT zone. The original purpose of the 150′ buffer was to protect impacts from camping on neighboring parcels in forest use. Forest practices within the 150′ buffer will not impact forest use of neighboring properties but the 150′ setback is also being used to attenuate sound and help integrate the facility into the forest environment. As long as selective harvest rather than clear cutting is practiced, the dual purpose of the 150′ buffer can be maintained while allowing forest management of the area.

Lastly, applicant asks for a limited amount of recreational use within the buffer area. Applicant asks that incidental recreational uses such as hiking, biking, walking, and throwing Frisbees be allowed within the buffer area. Fire breaks and to a minimal extent, camp roadways are within the buffer area. Allowing the firebreak to be used as walking, bicycling paths should not create difficulties with the neighboring forest parcels. As applicant points out, Longview Fibre Company allows public access to its parcel for recreational use. Noise from these activities should not be significant because most of the requested uses are transitory, hiking, biking, walking, and the use will not concentrate gatherings within the area. It is difficult to define incidental

activities and to try to ensure there will be no "use creep" that will result in disturbingly noisy activities into the buffer area. Two ways to help control noise and prevent interference with forest uses is to prohibit organized activities and motorized recreational vehicle use in the buffer area. With these prohibition, incidental uses in the nature of hiking, biking, walking, etc., can be allowed within the buffer area.

30. Applicant asks to convert the mobile office structure to a permanent structure and to allow it to be placed within the 150' buffer area. In the previous order, the hearings officer analyzed whether the hearing notice was defective by not mentioning the conversion of the mobile to permanent structure and found it at least potentially analogous to the case of *Bigley v. City of Portland*, 168 Or App 508 (2000). In *Bigley*, the court of appeals found that conversion of a temporary parking lot to a permanent parking lot required notice. Applicant believes the situation here is not analogous to *Bigley* because the use is not going from temporary to permanent, but from a mobile to permanently placed structure. The hearings officer agrees with applicant on this matter. A temporary use has the expectation that it will go away after a time and making it a permanent use takes away that expectation and makes any impacts permanent. Here, there is no expectation that the structure would go away and there is essentially no impact from the conversion to a fixed structure. Impacts of changing the location were addressed in the setback discussion above. Notice is not a problem as to the mobile structure. The conversion is more akin to a ministerial building permit issue than a land use issue. There will be no greater impact on surrounding properties as a structure on a permanent foundation than one on wheels. The conversion is allowed.

31. Applicant asks to clarify the recreational uses allowed on the site. Applicant asks for several additions and activities in conjunction with the park, playground, campground facility. Three covered picnic areas and activities such as orienteering, Frisbee, football, singing around the campfire, volleyball, archery and paintball. Applicant also notes that sometimes people book campsites for weddings, reunions, church outings and even a medieval reenactment. It is difficult to say exactly what activities campers might engage in. As noted above, some of the concerns with the level of activity can be addressed by limiting the day use parking, limiting special events to five per year, and making sure day users are associated with camp tenants. With these limitations, and with the caveat that uses requiring development (tag football in a grassy area versus constructing a formal football field), applicant's proposed activities are acceptable.

VARIANCE

32. Applicant constructed a viewing platform in memory of a friend of the Winslow family who was also an employee of the camp. The friend frequented the place where the platform is built and died in the valley below. The viewing platform is setback three feet from the property line. Under MCZO 139.100(b), the minimum setback for "all new structures" is 20' (with a limited exception for structures on property of one half acre or less). Under MCZO 110.555, structure is defined as that "which is built or constructed, an edifice or building of any kind, or any piece of

work artificially built up or composed of parts joined together in some definite manner . . ." The deck is a piece of work composed of parts joined together and fits within the definition of structure and must be set back 20' from the property line unless a variance is granted. Applicant asks to reduce the setback from the property line for the structure from 20' to three feet.

Under MCZO 122.010, subject to the restrictions and provisions contained in the MCZO, the hearings officer has the power to vary or modify the strict application of any of the standards of the MCZO in any case where such strict application would result in practical difficulties or unnecessary hardships with reference to requirements governing: lot area, lot width, percentage of lot coverage and number of dwelling units or structures permitted on a lot, height of structures, location, yards, signs, parking and loading space, vision clearance and other standards. Variances to allow uses or new uses not otherwise allowed are prohibited. Variances to criteria and definitions are also prohibited.

The requested variance is to a setback standard, and is of the same nature as the standards listed in MCZO 122.010. The variance may be considered.

33. Under MCZO 122.020, the hearings officer may permit and authorize a variance when it appears from the application and facts presented that:

(a) There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; and

(b) There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and

(c) The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and

(d) The variance will not have a significant adverse affect on property or improvements in the neighborhood of the subject property; and

(e) The variance will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and

(f) The variance will maintain the intent and purpose of the provision being varied.

34. Applicant believes this requirement is met because the topography of the subject property and the Abiqua basin makes it necessary to place the deck near the property line to view the basin where the Winslow family

friend died. The Planning Division responded that applicant had not shown why the platform could not be raised or the ground filled to provide a similar view from the standard setback. Applicant explained that in order to achieve the same view at 20' back, the platform would have to be raised, engineered and building permits obtained. Additionally trees would have to be removed to achieve a view of the basin below.

The subject structure was constructed without building permits and placed within three feet of the property line. Had building permits been obtained as required, the structure could have been appropriately placed. The hardship from relocating or removing the structure is not unnecessary or unreasonable because it is self-imposed. Whether there is a practical difficulty is a closer call. It would be a hassle surely to move the apparently sound, well-built, heavy structure, and to raise it or build up the earth to achieve the desired view. But, achieving the desired view seems akin to seeking a specific intensity of use, and in *Wentland v. City of Portland*, 22 Or LUBA 15, 24-26 (1991), LUBA found that the unnecessary hardships or practical difficulties standard is not met simply because the particular intensity of use applicants proposed would otherwise be frustrated. Applicant's desired level of viewing does not dictate the need for a variance. MCZO 122.020(a) is not satisfied.

35. Applicant states that the unusual circumstance and conditions applying to this land are that the property is where the Winslow family friend was employed and the view sought is the place where the friend died. As noted in *Bates v. City of Cascade Locks*, 38 Or LUBA 349, 351 (2000), the "'exceptional and extraordinary circumstances' standard is a demanding, traditional variance standard." The county could interpret the criterion more leniently than LUBA and the courts, but "it must articulate and adopt such an interpretation." *Bates*, at 352. The county has traditionally interpreted this criterion consistently with LUBA and the courts, and the hearings officer finds no compelling reason to interpret the standard more liberally here. The unusual circumstances or conditions applicant refers to are not circumstances with the land but with the family's friend. There is no unusual circumstance with the subject property, the buildings or residential use of FT zoned property. MCZO 122.020(b) is not satisfied.

36. The proposed use can be interpreted as the campground/park facility or as the memorial viewing platform. The primary application is for a campground/park facility and the hearings officer views this as the proposed use. Since the platform is private, development of the campground/park facility does not depend on allowing the platform at its current location. Applicants could remove trees and relocate the structure. While the property may not be developed in the manner the applicants would like, the property is still developed for applicant's main purpose. The degree of variance from the standard requested is not the minimum necessary to permit development of the property for park, playground or campground use. MCZO 122.020(c) is not satisfied.

37. Applicant points out that the deck cannot be seen from the neighboring residence. The neighboring property owner complains that the deck is used by campers who throw their beverage containers from the platform onto the neighboring property. Applicant responds that it is difficult to know who

produced the litter and that the property line is now fenced and that should take care of the problem. It seems reasonable to believe that the source of the litter on the neighboring property is the Camp Dakota property and it is difficult to see how fencing the property line will prevent litter from being either tossed or dropped inadvertently onto the neighboring property when the platform is only three feet from the property line. At a minimum, applicant should post no littering signs along with the "no trespassing" signs on the property line. With the posting, no significant adverse affect should result from the current placement of the memorial viewing platform on property or improvements in the neighborhood of the subject property. As conditioned, MCZO 122.020(d) can be satisfied.

38. The viewing platform is a passive use structure and is isolated from most property in the area. The property owner directly neighboring the platform location does not complain of health or safety issues associated with the platform. The variance will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity. MCZO 122.020(e) is satisfied.

39. The intent of required setbacks is not clearly stated in the MCZO, but, in general, setbacks provide buffers to reduce conflicts such as noise and odor, provide access between structures for maintenance, and provide for improved safety. According to the neighboring property owner, placing the structure near the property line encourages gatherings at this site that end up in litter and other interfere with her property. Reducing the setback to the extent requested will not maintain the intent and purpose of the provision being varied in this case. MCZO 122.020(f) is not met.

VI. Order

It is hereby found that applicant has not met the burden of proving the applicable standards and criteria for approval of an application to vary the required 20' structure setback have been met. Therefore, the variance application is **DENIED.**

It is hereby found that applicant has met the burden of proving the applicable standards and criteria for approval of an application to expand an existing campground and to establish a private park or playground have been met. Therefore, the conditional use application is **GRANTED**, subject to the conditions set forth below. These conditions are necessary for the public health, safety and welfare.

1. Applicant shall obtain all necessary permits from the Marion County Building Inspection Division.

OK JF 9/25/97

2. Prior to issuance of any permits or expanding the campground, the applicant shall submit a final detailed site plan to the Planning Division, showing compliance with all the conditions of approval, for review and approval of the Planning Manager.

OK JF 9/9/97

3. Prior to issuance of any permits or expanding the campground, applicant shall provide written proof that a fire protection plan for the expanded

campground has been reviewed and approved by the Oregon Department of Forestry.

4. Prior to issuance of any permits or expanding the campground, the applicant shall remove the memorial viewing platform or set it back at least 20' from the property line.

OK per letter dated 9/17/07

5. Four of the new campsites may contain yurts, the remaining 26 must be unimproved.

6. Prior to issuance of any permits or construction of the expansion, applicant shall pave its driveway a distance of 20' from the paved surface of Crooked Finger Road, remove sight distance obstructions, obtain a driveway permit from the Public Works Engineering and Permit Section approving the parking and queuing plan for the park/campground entrance and ensuring it is adequate to park automobiles and stage recreational vehicles coming to the facility, provide stormwater detention and a site drainage/grading plan for review and approval by the Public Works Engineering and Permit Section.

7. A 150' buffer must be maintained from all property lines except that along the Crooked Finger Road right-of-way, the buffer area shall be 90'. Only incidental recreational activities such as walking, hiking and bicycling are allowed within the buffer.

8. Operation of the campground shall continually comply with the Marion County Noise Ordinance.

9. Camping and recreational activities except those noted above are limited to the area outside the 90' and 150' buffer area. Day use is not permitted except to the extent that it is associated with campsite users.

10. The swimming pool shall be for the private use of the residents of the dwelling and shall remain off limits to users of the campground. Fencing, locks and "No Trespassing" signs shall be continuously maintained.

11. Special events such as weddings, exhibitions, reenactments or concerts shall be limited to five events per year.

12. No amplified sound (public address systems, amplified music, etc.) is allowed.

13. A maximum of ten day use parking places are allowed in the designated parking lot on the east side of the property.

14. Three new covered picnic shelters are allowed as shown on applicant's site plan.

15. The registration/incidentals building may be converted from a mobile to a permanently fixed structure and may be placed within the 90' buffer area. The building and standard parking spaces must be setback 40' to allow the recreational and other vehicle queuing area to be set back 20' from the Crooked Finger Road right-of -way.

16. Applicant shall maintain a "do not feed the deer" policy and shall inform users of the policy.

17. There shall be no additional individual water, sewer, or electrical hook ups.

18. Use of the campground by a camper or camper's vehicle is limited to a total of 30 days or less during any consecutive six-month period.

19. This permit shall expire two years from the effective date of this order if the development action is not initiated in that period. The Planning Director may grant an extension period of up to 12 months if:

    (1) An applicant makes a written request for an extension of the development approval period.

    (2) The request is submitted to the county prior to expiration of the approval period.

    (3) The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.

    (4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

    Approval of an extension granted under this section is not a land use decision described in ORS 197.015 and is not subject to appeal as a land use decision. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

VII. Other Permits

The applicant herein is advised that the use of the property proposed in this application may require additional permits from other local, state or federal agencies. The Marion County land use review and approval process does not take the place of, or relieve the applicant of responsibility for, acquiring such other permits, or satisfy any restrictions or conditions thereon. The land use permit approved herein does not remove, alter or impair in any way any covenants or restrictions imposed on this property by deed or other instrument.

VIII. Effective Date

The application approved herein shall become effective on the 2nd day of January 2007, unless the Marion County Board of Commissioners, on their own motion or by appeal timely filed, is asked to review this order. In case of Board review, this order shall be stayed and shall be subject to such final action as is taken by the Board.

IX. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (Marion

County Courthouse, 100 High Street NE, Salem) by 5:00 p.m. on the 2nd day of January 2007. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of $500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, $300 of the appeal fee will be refunded.

DATED at Salem, Oregon, this 20th day of December 2006.

Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Donald M. Kelley
Attorney at Law
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Silverton, OR 97381

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Scotts Mills, OR 97375

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Jon Mayer - Recreation Coordinator
Oregon Department of Forestry
Cascade District
Santiam Unit
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Lyons, OR 97358

The Shepherd Family
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Doris Mills
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Scott and Carla Hadsall
2151 Western Heights Loop NW
Salem, OR 97304

Agencies Notified
Planning Division
Assessor's Office
Building Inspection
AAC Member No. 8

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Deanna Verboort
655 Birch Street
Mt. Angel, OR 97362

by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the _____ day of December 2006, and that the postage thereon was prepaid.

Joanna Ritchie
Secretary to Hearings Officer