



Hearings Office

City of Portland

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File Number: LU 22-123436 CU (Hearings Office 4220008)

Applicants: Eric Linman
Multnomah University
8435 NE Glisan Street
Portland, OR 97220
elinman@multnomah.edu

Jeff Enquist
Portland City United Soccer Club
3439 NE Sandy Boulevard #348
Portland, OR 97232
jenquist@pcusc.org

Property Owner: Multnomah University
8435 NE Glisan Street
Portland, OR 97220-5814

Hearings Officer: William Guzman

Bureau of Development Services (BDS) Staff Representative: Andrew Gulizia

Site Address: 8435 NE Glisan Street

Legal Description: BLOCK 3 LOT 9-13 EXC PT IN ST, PARK TERR HMS; BLOCK 3 LOT 14, PARK TERR HMS; BLOCK 3 LOT 15, PARK TERR HMS; BLOCK 3 LOT 16, PARK TERR HMS; BLOCK 3 LOT 17, PARK TERR HMS; BLOCK 3 LOT 18, PARK TERR HMS; TL 7500 19.25 ACRES, SECTION 33 1N 2E

Tax Account Number: R644800360, R644800410, R644800420, R644800430, R644800440, R644800450, R942330160

State ID Number: 1N2E33BC 03400, 1N2E33BC 03900, 1N2E33BC 04000,
1N2E33BC 04100, 1N2E33BC 04200, 1N2E33BC 04300,
1N2E33BC 07500, 1N2E33BC 07500

Quarter Section: 2939 & 3039

Neighborhood: Montavilla

Business District: None

District Neighborhood Coalition: Southeast Uplift

Zoning: C11 – Campus Institutional 1

Land Use Review: Type III, CU – Conditional Use Review

BDS Staff Recommendation to Hearings Officer: Approval with conditions.

Public Hearing: The hearing was opened at 1:31 p.m. on June 27, 2022, via Zoom and also in the third floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 2:33 p.m. The record was held open until 4:00 p.m. on July 5, 2022 for new evidence from anyone; until 4:00 p.m. on July 12, 2022 for rebuttal from anyone; and until 4:00 p.m. on July 19, 2022 for the Applicants' final argument. On July 12, 2022, the Applicants submitted a rebuttal (Exhibit H-13) and on July 13, 2022, the Applicants submitted a motion to waive the final 7-day open record period for submission of a final argument. The Hearings Officer grants this request and closes the record on July 13, 2022.

Testified at the Hearing:

Andy Gulizia
Eric Linman
Travis Lewis
Jeff Enquist

Proposal: The Applicants propose to install four new, 60-foot-tall, LED field lights around a sports field on the north side of the Multnomah University campus. The new lights are designed to focus light narrowly onto the field. While the university use and the sports field are allowed outright in the C11 zone, the new lights require Conditional Use Review approval per Zoning Code Section 33.150.100.B.6.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of Title 33, the Portland Zoning Code. The applicable approval criteria are in Zoning Code Section 33.815.105.

Site and Vicinity: The subject site includes seven contiguous tax lots owned by Multnomah University. The total site area is approximately 20.5 acres. The site abuts three public streets: NE Pacific Street to the north, NE 87th Avenue to the east, and NE Glisan Street to the south. The site is developed with several buildings including classroom buildings, a church, student housing, a library, offices, and recreational facilities. The sports field for which new lights are proposed in this review is located on the north side of the campus. Nearby properties are developed with a mix of residential, institutional, and commercial uses. Montavilla Park abuts the subject site to the west. The neighboring lots nearest the proposed field lights abut NE Pacific Street and are developed with single-dwelling houses.

Zoning: The CI1 (Campus Institutional 1) zone is intended for large colleges and medical centers located in or near low and medium density residential neighborhoods. Development is intended to be internally focused and compatible with the scale of the surrounding neighborhood. Setback and open space requirements create a buffer between the institution and the surrounding community.

II. ANALYSIS

Easements

Kathryn and Josh Hartinger (Hartinger) submitted Exhibit H-4 which explains that a prior land use decision required the Applicants to do the following as part of an Impact Mitigation Plan:

“[T]he University [must] record both North-South and East-West public easements through the site to allow pedestrians, #19 bus riders, strollers and young cyclists to cut through the large campus, as well as to give neighbors direct access to Montavilla Park without needing to navigate either NE Glisan or 82nd Avenue sidewalks with small children.”

Hartinger asserts that the Applicants are not in compliance with that land use decision because the pedestrian easements are now blocked to public access:

“The gate to Montavilla Park was permanently locked nearly a decade ago, and I’ve requested multiple times for it to be opened . . . For a variety of reasons, in the last several years, the entire campus, aside from the Glisan frontage, has been fenced off, and the sidewalks through campus have all been gated, with large no trespassing signs. They have blocked the required public easements.”

Hartinger asks for the following relief:

“I ask that you not approve [Applicant’s proposal] until the University has restored and committed to maintain the required public easements, both as a condition of development and as a condition of ongoing operation of those lights.”

The Applicants submitted Exhibit H-13 in rebuttal to Hartinger's easement-related assertions and states the following:

Regarding the easement, we agree with the position that the easement was attached to the campus mitigation plan and that when the zoning of the campus was changed to a C11 the stipulations of the mitigation plan no longer apply. This coupled with our continued concern with the rise in crime and safety concerns surrounding the park and the areas around our campus student housing on Pacific Street we ask that the easement issue not be a factor in the approval of the lighting. If there are concerns about access to public transportation on Glisan, we believe that this can be mitigated by the public access through our campus that exists from Pacific street to Glisan street on the east side of the athletic field.

This Hearings Officer finds that when the Hearings Officer issued the initial land use decision (LUR 00-00442 IM. 2000 approval of an Impact Mitigation Plan for the campus) designating the pedestrian easements, the subject site was zoned IRd and at the current time it is zoned C11. The change in zoning means that the college institution use was initially subject to conditional use approval but is now allowed outright by the new zone.

Title 33.77.110.B.2.b addresses this situation: "If the use is now allowed by right, the conditions of approval no longer apply . . ." with only a few exceptions. One of those exceptions is for a college in the C11 zone regarding transportation system related conditions:

"Conditions of approval that mandate a Transportation Demand Management plan or address parking, vehicle trips **or any other transportation system related issue continue to apply** until superseded by an approved Transportation Impact review[.]"

The Hearings Officer finds that the Applicants is a college located in the C11 zone. Therefore, the Hearings Officer must determine whether a pedestrian easement is included in the exception under "any other transportation system related issue." The word transportation is not defined in Title 33. Black's Law Dictionary (11th Ed) defines transportation as: "The movement of goods or persons from one place to another by a carrier." The Hearings Officer reasons that a pedestrian easement is related to the transportation system because the safe movement of people from one location to another is relevant to vehicular transportation issues. In support of this conclusion, the Hearings Officer notes that much of Title 33 discusses pedestrian and bicycle networks as part of the transportation issue analysis. The City's Transportation System Plan (TSP) includes designations of various pedestrian walkways:

- Major City Walkway streets are "intended to provide safe, convenient, and attractive pedestrian access along major streets and trails with a high level of pedestrian activity supported by current and planned land uses."

- Neighborhood Walkway streets are “intended to provide safe and convenient connections from residential neighborhoods to Major City Walkways, City Walkways, and nearby destinations such as schools, parks, transit stops, and commercial areas, primarily using routes that have low levels of motor vehicle traffic or do not allow motor vehicle traffic.”
- Local Service Walkway streets are, “intended to serve local circulation needs for pedestrians and provide safe and convenient access to local destinations.”

This conclusion is further bolstered because one of the criteria for this proposal is Transportation related issues and under this heading the language specifically mentions crosswalks and local pedestrian and bicycle networks as part of the transportation related criterion. (See Title 33.815.105.D.2.a and b). The Hearings Officer concludes the pedestrian easements are related to the transportation system. Therefore, Hearings Officer finds that the easements continue to exist under the new zoning.

However, it does not necessarily follow that it is appropriate to premise the approval of current proposal on the condition that the university stop blocking the pedestrian easements. The Hearings Officer’s discretion and role are limited to an assessment of whether the current proposal (installation of field lights) meets the criteria either with or without conditions. Therefore, there must be some nexus between the blocked easement and the installation of the lights. The Portland Bureau of Transportation (PBOT) submitted Exhibit E-2 which includes the following statement:

“The proposed field lighting is internal to the existing campus. The pedestrian and bicycle networks (including along campus’ frontage) will not be impacted by the proposed project. This evaluation factor is satisfied.”

The Hearings Officer finds that the Applicants’ proposal to install field lighting does not impact the pedestrian easements. Hartinger submitted Exhibit H-12 arguing that “if the lights on the western edge of the field would be located in the actual easement in question . . .” The Applicants rebut this suggestion in Exhibit H-13 stating that “the plans for the lighting do not block any access to the sidewalks that run between our Memorial Dorm and the field.”

The Hearings Officer concludes there is not a sufficient nexus between the proposed lighting and the easements to justify a condition that they be unblocked before the approval of the lighting proposal. The record contains reference to a code enforcement action regarding the easements. Without providing any legal advice, it certainly appears that a code enforcement action is the proper avenue to dispute the blocking of the easements. The Hearings Officer will not disturb the code enforcement findings in this land use decision.

APPROVAL CRITERIA

Title 33.815.105 states the relevant approval criteria in the C11 zone are sections B–E. Each of these sections is analyzed below. After thorough review of the Applicants’ and the planner’s materials, the Hearings Officer finds they are mostly in alignment with the analysis and conclusions contained therein. Therefore, the Hearings Officer borrows heavily from the information and text included with the Staff Report (Exhibit H-3) adopting the language as their own.

B. Physical compatibility.

Subsection 1 requires that: “The proposal will preserve any City-designated scenic resources[.]” The Hearings Officer finds this criteria is inapplicable to the proposal because there are no City-designated scenic resources identified in this location in the official zoning maps. Therefore, criterion B.1 is not applicable.

Subsection 2 requires that: “The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, tree preservation, and landscaping; or”

Subsection 3 requires that: “The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, and other design features.”

The four new field lights proposed by the Applicants are 60 feet tall, which is significantly taller than neighboring homes. However, differences in appearance and scale are mitigated by the narrow profile of the light poles. The light poles are additionally mitigated by setbacks of approximately 75 feet from the residential lot line. The Hearings Officer finds that approval criterion B.3 is met. Since B.3 is found to be met, B.2 does not need to be addressed because satisfaction of either of the sections is sufficient for a finding that the criterion is satisfied.

C. Livability.

Subsection C requires that the “proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:

1. Noise, glare from lights, late-night operations, odors, and litter; and
2. Privacy issues.”

In Exhibit H-4, Hartinger explains their objection to the lights addressing these two issues:

“I am concerned not so much about the lights themselves, as the fact that they will facilitate late-night (commercial) operations directly on a residential street. The field is not just for the University students to use, but with Portland City United Soccer Club as a co-applicant, it becomes a commercial venture, and I would expect the field to be programmed as much as possible, including til

late in the evening on a regular basis. This will raise money for the University, but have a dramatic impact on the neighbors, bringing with it new traffic, noise, and litter. Neighbors will absorb the impacts with zero access to, or benefit from, the new amenity.

Further, there really is no spectator area around the field, so I anticipate many spectators sitting on the Pacific Street berm to actually watch games – directly on the residential street, yelling and cheering well into the evening, directly across from people’s homes. This will have a massive impact on livability.”

The Hearings Officer finds that the lighting proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to odor or litter. The impact of the proposal is not measured by the odors and litter of a soccer field with lights. Rather, the inquiry is the difference in impact of odors and litter on a soccer field with lights compared to a soccer field without lights. The fact that the field can be used when it is dark outside is going to only result in a minimal increase in use, which means litter and odor impacts are going to be negligible.

The Hearings Officer finds that the installation of the lighting will allow the field to be used later into the evening. This could reasonably create noise disturbances for the neighboring residences. This concern is offset by the fact that the field lacks spectator seating and the lack of a public address (PA) system. The Hearings Officer finds that this concern about late night noise is valid but is adequately mitigated by a condition requiring the field lights be turned off by 10:00 p.m.

The Hearings Officer now considers whether glare from the lights could impact livability. The four new light poles are tall enough to focus the LED light fixtures almost directly downward onto the field, minimizing light spill into surrounding areas. The Applicants submitted a photometric analysis (Exhibit A-5) showing that glare perceptible at the nearest residential lot lines would not exceed 0.5-foot candles of light, as required by Zoning Code Section 33.262.080.A. A foot candle is the approximate brightness of one candle at a one-foot distance. The Hearings Officer finds the lights will not impact livability by creating unreasonable glare for nearby properties.

Also, at the Hearing oral testimony was submitted by Travis Lewis that the proposal includes references to security cameras. Mr. Lewis raised the concern that these cameras could be oriented to capture activity at the neighboring properties. The only reference to security cameras is in the Applicants’ submission of Exhibits C-2 – C-5 which includes the following reference: “25FT AGL 2” coupling for (1) camera no orientation specified.” The Hearings Officer finds that this concern is mitigated by a condition that requires the security camera couplings be oriented in an appropriate manner to only capture activities on the field and not nearby residential properties.

D. Public services.

Subsection 1 requires that: The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan. PBOT reviewed the proposal and submitted the following response to approval criterion D.1 (Exhibit E-2):

“The Multnomah University campus is surrounded by three streets: NE Glisan St, NE 87th Ave, and NE Pacific St. . . . All of the surrounding streets will continue to function as intended above; the continuation of the site as an institutional use will not impact the classifications or functions of said streets. PBOT finds that the proposed use is supportive of the street designations of the Transportation Element of the Comprehensive Plan.”

After considering the functions of the street classifications associated with the proposal (which includes district collector, transit access, city bikeway, major city walkway, neighborhood walkway, local service walkway, truck access, community corridors, local service) against the impacts of adding lighting to the field, the Hearings Officer concurs with PBOT’s assessment that the proposal is supportive of the street designations of the Transit Element of the Comprehensive Plan.

Subsection 2 contains three subsections categorized as a, b, and c. Each of these categories relates to the transportation system and will be addressed below.

Subsection 2, Section a. requires the following:

“The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated[.]”

Subsection 2, section b states the following:

“Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements,

improvements to the local pedestrian and bicycle networks, and transit improvements[.]”

Subsection 2, section c states the following:

“Transportation improvements adjacent to the development and in the vicinity needed to support the development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed[.]”

The Hearings Officer’s duty is to determine what impact the Applicants’ proposal will have on transportation related issues. The scope of the inquiry is the additional impacts (if any) of adding lighting to a pre-existing soccer field which is allowed by right in the current zone. In other words, it is not a measurement of transportation impacts on a soccer field with lights, but rather the difference between the transportation impacts of a soccer field without lights compared to a soccer field with lights.

The Applicants submitted a transportation study (TIS) prepared by Daniel Stumpf, PE of Lancaster Mobley (Exhibit A-4). This evaluation was reviewed and accepted by PBOT employee Amanda Owings, PE, a registered professional traffic engineer. The Hearings Officer finds that the proposal’s impacts to the transportation system are anticipated to be minimal. As such, no mitigation is necessary. PBOT has no objection to the requested conditional use. Based on these findings from PBOT, the Hearings Officer finds approval criterion D.2 is met.

Subsection 3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

The Hearings Officer finds that no new water service is necessary for the field lights, and the Water Bureau reviewed the proposal and responded with no concerns (Exhibit E-3). The Police Bureau found that police services will be adequate (Exhibit E-5), and the Fire Bureau reviewed the proposal and responded with no concerns, indicating that fire protection services are adequate (Exhibit E-4). The Bureau of Environmental Services reviewed the proposal and found that requirements for sanitary waste and stormwater disposal are satisfied (Exhibit E-1). The Hearings Officer finds that criterion D.3 is met.

E. Area Plans

The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.

The site is within the boundaries of the Montavilla Neighborhood Plan and the Outer Southeast Community Plan, both of which were adopted by the City Council in 1996 as part of the Comprehensive Plan.

City Staff identified the following statement from the Montavilla Neighborhood Plan to be relevant:

“Policy 1 (Housing and Neighborhood Livability), Objective 8: Apply the Institutional Residential (IR) designation on the Cascade College located at NE 91st and Burnside and the Multnomah Bible College located at NE 84th and Glisan. This designation would ensure that future expansions or changes to these colleges will be guided by a Master Plan and also help in reducing adverse impacts on the adjacent surroundings.”

City Staff also identified the following statement from the Outer Southeast Community Plan to be relevant:

“Economic Development Policy, Action ED19: Apply the institutional designation to large institutional uses to encourage them to stay and expand in the area. These are Portland Adventist Medical Center, Franklin High School, David Douglas High School, PCC 82nd Avenue Campus, Marshall High School, and Multnomah Bible College.”

City Staff explains that this Conditional Use Review considers potential impacts on surrounding areas, as intended by Policy 1, Objective 8, above. Staff also notes the approval criteria for a Master Plan would be largely the same as the approval criteria considered in this review (Zoning Code Section 33.820.050).

The Hearings Officer finds that the proposal allows Multnomah University (formerly Multnomah Bible College) to continue to grow in its current location, as intended by Action Item ED19, above.

For these reasons, staff finds the proposal is consistent with the Montavilla Neighborhood Plan and the Outer Southeast Community Plan. The Hearings Officer finds approval criterion E is met.

III. CONCLUSIONS

The Hearings Officer finds the proposed field lights will maintain compatibility between the university campus and the neighborhood. The proposal will not cause significant, negative impacts on neighbors' livability. Public services are adequate to support the proposal, and the proposal is consistent with relevant statements from the Montavilla Neighborhood Plan and the Outer Southeast Community Plan. With the conditions of approval listed below, the Hearings Officer finds the approval criteria for the Conditional Use Review are met with conditions set forth below.

IV. DECISION

Approval of Conditional Use Review for four new, 60-foot-tall, LED field lights around the sports field on the north side of the Multnomah University campus, subject to the following conditions:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-5. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 22-123436 CU."
- B. The field lights must be turned off no later than 10 p.m. on any day they are used.
- C. The security camera couplings must be oriented in such a way that any installation of cameras will only capture images on the campus property and not nearby residential properties.

William Guzman

William Guzman, Hearings Officer

July 28, 2022

Date

Application Determined Complete: April 28, 2022
Report to Hearings Officer: June 15, 2022
Decision Mailed: July 28, 2022
Last Date to Appeal: 4:30 p.m., August 11, 2022
Effective Date (if no appeal): August 12, 2022

Conditions of Approval. This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER’S DECISION MUST BE E-MAILED TO LANDUSEINTAKE@PORTLANDOREGON.GOV. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. If you do not have access to e-mail, please telephone (503) 823-7617 for assistance on how to submit the appeal; please allow one business day for staff to respond. **An appeal fee of \$2,756.50 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000.00).**

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, City Council will hold an evidentiary hearing, one in which new evidence can be submitted to them. Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Community and Civic Life may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the chairperson or other person authorized by the association confirming the vote to appeal was done in accordance with the organization’s bylaws.

Neighborhood associations who wish to qualify for a fee waiver must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Recording the final decision. If this land use review is approved the final decision will be recorded with the Multnomah County Recorder by the Bureau of Development Services. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision,

a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS RECEIVED IN THE HEARINGS OFFICE – SEE NEXT PAGE
(NOT ATTACHED UNLESS INDICATED)

The exhibits in the land use case file are all assigned a letter (example A-1). The Hearings Office accepts exhibits filed online in its case management system. These exhibits are marked in the lower right hand corner that identifies the exhibit as a “Portland Hearings Office” exhibit. All of these exhibits are designated “H Exhibits” (that is, Hearings Office Exhibits). See the BDS Staff Report for a list of exhibits prior to “H.”



Hearing Office

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Exhibits, Orders, and Other Attachments

Number	Title	Status
Exhibit 1	Participation Instructions	Accepted
Exhibit 2	Hearing Notice	Accepted
Exhibit 3	STAFF REPORT	Accepted
Exhibit 4	Hartinger Testimony	Accepted
Exhibit 5	STAFF PRESENTATION	Accepted
Exhibit 6	Planner Memo to Hearings Officer	Accepted
Exhibit 7	Applicant Submission	Accepted
Exhibit 8	Public Walkway Easement Info.	Accepted
Exhibit 9	Hartinger Request to Hold Record Open Email	Accepted
Exhibit 10	Record Closing Information	Accepted
Exhibit 11	Kathryn Hartinger evidence	Accepted
Exhibit 12	Hartinger 7/1/22 Email	Accepted
Exhibit 13	APPLICANT RESPONSE	Accepted
Exhibit 14	LETTER TO WAIVE RIGHT TO FINAL ARGUMENT	Accepted