



February 4, 2025

VIA ELECTRONIC MAIL: ASeifer@co.marion.or.us

Marion County Hearings Officer
c/o Alex Seifer
5155 Silverton Road NE
Salem, Oregon 97305

RE: Conditional Use Permit 24-043 (14398 Union School RD NE, Woodburn)
Our File No: 45249-00001

Dear Madame Hearings Officer:

My office represents **MKI Construction LLC**, an Oregon limited liability company, and **Leo Needs Construction LLC**, an Oregon limited liability company (collectively the "**Applicant**") regarding that certain conditional use permit for a non-farm dwelling located on that certain 8.4 acres of property (the "**Property**") located along the 14400 block of Union School Road NE (the "**Application**"). The Application was designated by Marion County as Conditional Use Case No. 24-043 and was approved, subject to four (4) conditions, by the Planning Director on January 13, 2025 (the "**Decision**"). The Decision was subsequently appealed by 6h4 neighboring property owners, Bernhard and Patricia Hitz (collectively the "**Appellant**"), on January 27, 2025 (the "**Appeal**"). Please accept this letter into the record as the Applicant's response to the letter accompanying the Appeal.

The Applicant first would like to object to the Appeal on a jurisdictional basis. When appealing a land use decision the Appellant is obligated to state (1) how the decision is factually or legally incorrect; (2) present new facts material to the decision; or (3) provide the specific reason for the appeal. The Appellant failed to raise any inaccuracies with in the Application or the Decision; did not provide any additional facts that

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would have materially impacted the Decision; and did not provide with reasonable specificity the Appellant's reason for the Appeal. This leaves the Applicant to guess at the arguments being raised by the Appellant and, therefore, as these requirements are jurisdictional, the Applicant requests that the Hearings Officer dismiss the Appeal.

In the event that the Hearings Officer proceeds with hearing this matter, the Appellant provided four (4) statements in its Appeal, which we have set forth in italics and bold with the Applicant's response following in regular type.

Findings and Conclusions Number 5: We object to adjusting the EFU guidelines of setback requirements of 200 feet for non-farm dwellings and 100 feet for accessory structures. These EFU rules were in place when this property was purchased as farm ground.

Applicant's Response: The Applicant believes that the Appellant is objecting to the adjustment of the setback requirements because the Appellant believes that the Applicant failed to demonstrate that the Applicant satisfied the applicable approval criteria for an adjustment to the setbacks for the proposed dwelling and shop (the "**Improvements**") proposed as part of the Application. As indicated in the record associated with the Decision (the "**Record**"), the Applicant provided an independent soil assessment that established that the majority of the soils (75.7%) present on the Property are not high-value soils, allowing the Applicant to apply for a non-farm dwelling. In identifying the location of the Improvements, the Applicant selected its location based on its soil analysis, striking a balance between locating the Improvements on a portion of the Property that would allow it to retain a significant portion of the Property as undeveloped while complying with the setbacks associated with the creek running through the Property, leaving adequate space for the a neighboring well (identified on the site plan), and the setback associated with Union School Road NE. As part of this response, the Applicant has generated a new site plan, which shows a proposal that brings the Improvements further into compliance with the setbacks in an attempt to appease the Appellant. This modification moves the proposed Improvements to the very top of a slope and, as outlined below, is the furthest the Applicant is able to move the Improvements to avoid other constraints on the Property.

The Applicant had originally proposed dwelling setback 96 feet from the northern property line and 55 feet from the eastern property line and the shop 35 feet from the eastern property line and 96 feet from the northern property line. Under the updated proposal, the Applicant has reoriented the buildings so that the shop is located 96 feet from the northern property line and 100 feet from the eastern property line and the dwelling will be located more than 200 hundred feet from the northern setback and approximately 100 feet from the eastern property line. This reconfiguration reduces the need for the adjustment to the setbacks to four (4) feet for the encroachment of the shop into the northern property line setback and to 100 feet for the dwelling from the eastern property line. There is no restriction on the placement of septic systems or drainage fields within the setbacks, so the Improvements will otherwise comply with the Marion County Code ("**MCC**" or the "**Code**").

The purpose of the adjustment process in the Code is to allow for flexibility in the application of the Code where, in scenarios like this, the application of the Code would result in an unintended consequences that could result in an unjust result. In the event the Applicant is not able to receive and adjustment to the setbacks, the Property is not developable due to the way that the setbacks apply to the Property. As established in the record below, the Property is not usable for commercial agriculture due to the soils on

the Property. This has resulted in several attempts to make a profit on the Property through commercial farming that have been unsuccessful and have led to the Property being unused and falling into disrepair over the past decade. The Applicant has spent considerable time and effort in clearing the Property of invasive species and cleaning up the derelict outbuildings. In the event that it is not able to develop the property with the Improvements, this property does not have a viable use within the EFU zone. In the event that there is not a viable use, the application of the Code in this way would result in a regulatory taking.

The Applicant's proposal, as revised, places the maximum amount of space between the Improvements and the neighboring farm operations as is possible while also complying with the setbacks along the western property line and the constraints on the development of the septic system on this particular property. This site has been selected so as to have the least amount of impact on the adjacent farm operations possible given the area needed for the development of a septic system, the slopes, location of the creek and its associated setbacks, and neighboring land uses. The orientation of the buildings will provide some additional buffering for the residential use on the property and the Applicant is willing to install vegetative screening to the existing fencing to further buffer the dwelling from the adjacent farm uses. The Applicant will comply with the County's requirement to develop a management plan for wildfire reduction, as conditioned in the Decision, and, as the Property will be the Applicant's home, is incentivized to take actions that mitigate fire risk. Further, Oregon right to farm laws prevent the Applicant or future property owners from objecting to the impact that farming uses will have on the Property. As conditioned, the Applicant has demonstrated that the Application meets the Applicable approval criteria, and the Appellant has not raised any evidence to the contrary.

Findings and Conclusions Number 9: There seems to be an option of building in the SW portion of the property thus saving the most agricultural friendly land and meeting the requirements of EFU zoning.

Applicant's Response: It is not clear to the Applicant whether the Appellant is raising the same argument addressed in response to the findings set forth above, or if it is raising a different issue. As addressed in the Decision, the Application, and above, developing the Improvements in the SW portion of the Property would require locating the Improvements within the setback along Union School Road, the required setback from a neighbor's existing well and the required setback along the Creek. These constraints have resulted in the Applicant's proposed location, which the Applicant has revised to the extent possible in a further attempt to comply with the special setbacks.

Additionally, as stated above, only a small amount of the Property is comprised of high value soils according to the soil testing performed for the applicant. As shown in the soil report, the available high value soils are approximately 1.58 acres of WuA Woodburn located in the southeast corner of the property and 0.68 acres of WuC Woodburn located in the northeast corner of the property. The Appellant's proposal would result in the Applicant moving the Improvements into the largest portion of the High Value Soils available on the Property. The Applicant considered the soil quality and capacity as well as the historic productivity on the Property when locating the Improvements. The Applicant's proposal is to preserve as much of the available high class soils as possible in hopes that it will be able to utilize those soils for small scale agricultural uses. The Applicant has demonstrated that the Application meets the Applicable approval criteria, and the Appellant has not raised any evidence to the contrary.

Findings and Conclusions Number 7: The mention of three neighboring smaller parcels with dwellings serves as the exact reason EFU zoning was put in place, to stop the mix of residential and farming.

Applicant's Response: Again, the Applicant is not certain which applicable approval criteria the Appellant is objecting to with this objection. The Applicant has applied for a conditional use permit. Conditional uses are defined in the Code as "any use that is permitted in a particular zone only after review and approval as a conditional use and includes, where not excepted, conditional uses established under previous zoning ordinances." MCC 17.110.156. The general concept of a conditional use is to allow particularized review and approval of activities similar to other, permitted uses in a zone, to insure that the proposed use will be "in consonance with the purpose and intent of the zone." MCC 17.119.010. As the Property is zoned EFU, the purpose and intent of the zone is "to provide areas for continued practice of commercial agriculture." MCC 17.136.010. The purpose statement goes on to acknowledged that while these activities are intended to be sited on properties with high value soils, there will necessarily be areas included in the zone with non-high value soils to avoid conflicting uses and that "the EFU zone is also intended to allow other uses that are compatible with agricultural activities." *Id.* The conditional use process is designed to determine whether a proposed use is "compatible with agricultural activities."

This compatibility is based on a variety of factors, several of which have been addressed already, but which generally include traffic, noise, water usage, and other similar constraints that limit compatibility with a given location. The Applicant is proposing one additional dwelling and an associated outbuilding. The ITE Traffic Engineering manual estimates that an additional dwelling unit will result in ten (10) additional daily trips. There is no indication that the surrounding transportation system cannot accommodate these additional trips, and Appellant has not provided any evidence to the contrary. The noise generated by household uses is generally expected to be in the 50-135 dba range while commercial uses, including the operation of farm machinery are expected to be within the 95-150 dba range. The area surrounding the Property is a mix between agricultural and residential uses, the addition of the Improvements will be consistent with the ambient noise levels in the area. The area is not served by water or sewer services so the Applicant will be adding a domestic well and septic system in conjunction with the Improvements. The Applicant will be required to comply with the applicable rules and regulations for both systems and, given the presence of the creek and the lack of concern regarding the presence and availability of water in the surrounding area, the availability of water in the quantity the Applicant will be allowed to access as an exempt domestic use under Oregon's water law is not in question.

Staff's findings and Applicant's statements regarding the residential uses in the area indicate that the proposed Improvement are consistent with the development pattern in the area. The presence of these residential uses, and the lack on conflicts associated with them, is simply one more factor indicating that the addition of the Improvements is consistent with what is already occurring in the area. Without additional evidence from the Appellant to the contrary, the Applicant has satisfied its burden of proof. The Applicant respectfully requests that the Hearings Officer affirm the Planning Director's Decision.

Staff finds that two potential new non-farm dwellings are unlikely to materially alter the stability of the existing land use pattern within the area, so long as the dwellings are sited away from neighboring farming operations and in locations that maintain as much historically farmed land as possible.

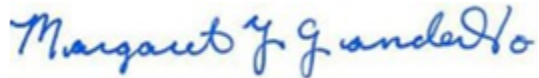
Applicant's Response: Again, the Applicant is not certain which applicable approval criteria the Appellant is objecting to. It appears this is related to several of the items that the Applicant has already addressed,

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and the Applicant's modified proposal moves the Improvements further from the adjacent farming operation.

In conclusion, based on the evidence the Applicant has submitted into the record, the Applicant has met all of the applicable approval criteria. The Applicant respectfully requests that the Hearings Officer reject the appeal, as outlined above. In the alternative, the Applicant requests that the Hearings Officer affirms the Decision, subject to the modifications set provided in the Applicant's updated site plan.

Sincerely,

A handwritten signature in blue ink that reads "Margaret Y. Gander-Vo". The signature is written in a cursive style.

MARGARET Y. GANDER-VO
margaret@sglaw.com
Voice Message #374

MYG:
Enclosures
cc: Client

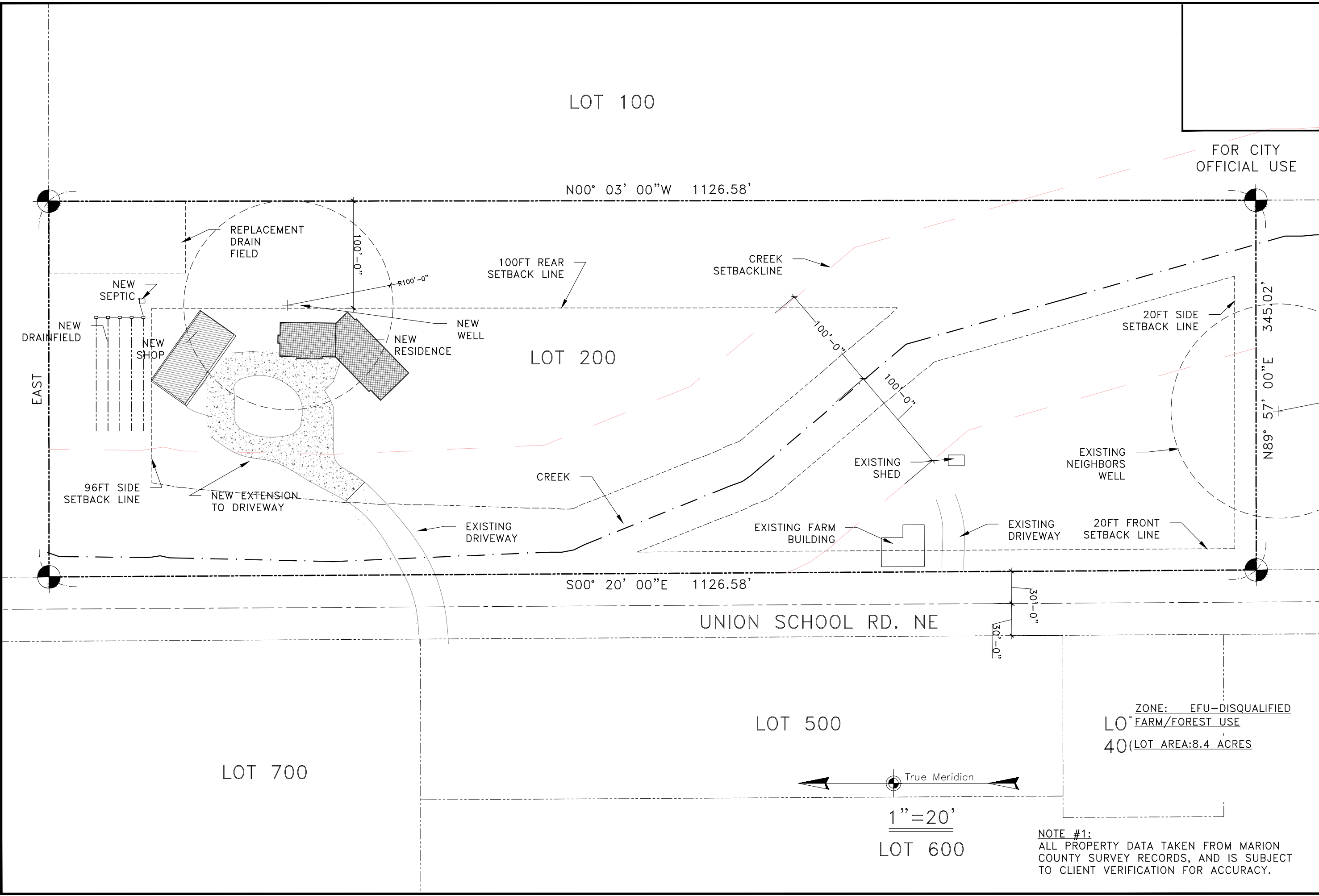
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LNC LOT 200
Account ID #514029
Woodburn, OR 97071

DATE: 3/4/2025
SCALE: 1"=80'
DRAWN: ES
CHECKED: ES
JOB: 24-109
SHEET:

SITE



NOTE #1:
ALL PROPERTY DATA TAKEN FROM MARION COUNTY SURVEY RECORDS, AND IS SUBJECT TO CLIENT VERIFICATION FOR ACCURACY.

1"=20'
LOT 600

ZONE: EFU-DISQUALIFIED
LO FARM/FOREST USE
40 (LOT AREA: 8.4 ACRES)

Noise Level Statistical Information

Points of Reference (measured in dBA or decibels)

0	The softest sound a person can hear with normal hearing
10	Normal breathing
20	Whispering at 5 feet
30	Soft whisper
50	Rainfall
60	Normal conversation
110	Shouting in ear
120	Thunder

Home

50 refrigerator
50 - 60 electric toothbrush
50 - 75 washing machine
50 - 75 air conditioner
50 - 80 electric shaver
55 coffee percolator
55 - 70 dishwasher
60 sewing machine
60 - 85 vacuum cleaner
60 - 95 hair dryer
65 - 80 alarm clock
70 TV audio
70 - 80 coffee grinder
70 - 95 garbage disposal
75 - 85 flush toilet
80 pop-up toaster
80 doorbell
80 ringing telephone
80 whistling kettle
80 - 90 food mixer or processor
80 - 90 blender
80 - 95 garbage disposal
110 baby crying
110 squeaky toy held close to the ear
135 noisy squeeze toys

Work

40 quiet office, library
50 large office
65 - 95 power lawn mower
80 manual machine, tools
85 handsaw
90 tractor
90 - 115 subway
95 electric drill
100 factory machinery
100 woodworking class
105 snow blower
110 power saw
110 leafblower
120 chain saw, hammer on nail
120 pneumatic drills, heavy machine
120 jet plane (at ramp)
120 ambulance siren
125 chain saw
130 jackhammer, power drill
130 air raid
130 percussion section at symphony
140 airplane taking off
150 jet engine taking off
150 artillery fire at 500 feet
180 rocket launching from pad

Recreation

40 quiet residential area
70 freeway traffic
85 heavy traffic, noisy restaurant
90 truck, shouted conversation
95 - 110 motorcycle
100 snowmobile
100 school dance, boom box
110 disco
110 busy video arcade
110 symphony concert
110 car horn
110 - 120 rock concert
112 personal cassette player on high
117 football game (stadium)
120 band concert
125 auto stereo (factory installed)
130 stock car races
143 bicycle horn
150 firecracker
156 capgun
157 balloon pop
162 fireworks (at 3 feet)
163 rifle
166 handgun
170 shotgun