multco.us

Charles BEASLEY <charles.beasley@multco.us>

Re: May 2nd PC Meeting.

Christopher H. Foster <foster@europa.com> **Thu, Apr 28, 2011 at 9:33 AM**
To: FISHER Kathy <kathy.fisher@co.multnomah.or.us>
Cc: BEASLEY Charles <charles.beasley@co.multnomah.or.us>

Kathy & Fellow PC Members-

I will be unable to attend the May 2nd meeting, but in the interest of moving the agenda, would like to express support for forwarding all items including the EFU implementation of the two changes embodied in OAR 660-033-130 and HB3099 "as is" or as currently proposed by Staff. It may be that we may need other minor changes to our local code to enact them, but I agree that they need to be in place.

I have not heard any other argument for or against at this point other than from Ms. Cofield (it's Thursday morning), so here's my current thinking on one of the substantive issues:

The Cofield position argues against the OAR implementation on at least two different levels. I put aside the most recent argument that OAR 660-130 (2)(c) possibly violates federal RLUIPA law (I doubt it, but I will leave this to others).

Another attack is on the state level where the argument relies on this contention: "Non Conforming Use Alterations Are A Statutory Right". (April 5 Cofield memo, page 3) The contention is that the LCDC and/or County proposed implementation unlawfully takes this right away; one that is guaranteed by statute. The statute is cited, but not printed for all to read.

Does Oregon state law grant non-conforming uses "expansion

rights" under ORS 215.130 (5) & (9)?

215.130

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.

(9) As used in this section, "alteration" of a nonconforming use includes:

(a) A change in the use of no greater adverse impact to the neighborhood; and

(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

As I said at the last meeting, my view is that 215.130 and our local code implementation in non-conforming use sections identify two types of alterations or expansions. This distinction is important here.

The first is for reasons of health and safety or general maintenance and those types "shall" be allowed by statute. This guarantees the use can continue and is the extent of the "rights". I do not believe

anything in the OAR revision or the proposed implementation takes issue with this sort of alteration/expansion. My view is that in this instance, the non-conforming use provisions in our local code should continue to apply under a reasonable interpretation of the most recent LCDC OAR action and the earlier addition of 215.135 (HB 3099). These types of alterations (no increased capacity) do not raise questions.

The second is the discretionary type that is of primary concern. These are the types of alterations that expand the building or increase capacity. I believe there there are no "rights" guaranteed in 215.130 as the language is plainly permissive; It reads that discretionary type expansions "may" be allowed subject to conditions. I see this as giving the LCDC authority to limit or not allow expansions in certain circumstances just as they have done in OAR 660-033-130(2)(c). Regarding "rights", there is a recognized and important legal distinction in the terms "shall" and "may" which the Cofield position seems to overlook.

The same applies to ORS 215.135 (which HB 3099 created). Again, the language is permissive and the OAR does not take away any guaranteed rights.

Bottom line: I'm not seeing any legal conflicts in adopting the change. We are obligated to do so.

For reference:

The relevant local non-conforming use code within compliance of 215.130 is in this chapter on page 233 :

http://www2.co.multnomah.or.us/counsel/code/ch36.pdf

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Chris

Tonight' PC meeting and the Proposed Amendments to

Inbox [redacted] X

Reply

Michelle Gregory to me, john.ingle show details May 2

Hello Chuck, Chair Engle and fellow Commissioners,

I am unable to attend the planning commission meeting this evening owing to a family event. However, I wanted to express my considered support for proceeding with adoption of amendments (as proposed by staff) to the Multnomah county zoning code, to move the schools use in the EFU zone from the allowed to the conditional use category. Given county counsel's interpretation that the proposed code amendments are appropriate, necessary and consistent with the intent of HB 3099; and DLCD's memo dated 4/25/2011, that the proposed amendments do in fact provide consistency with LCDC's adopted rule amendments on RLUIPA at OAR 660-033-0130(2)(a-c); I believe the Planning Commission should proceed with adoption of the amendments.

The position presented by representatives of the Open Door Baptist Church - that the nonconforming use statute ORS 215.130 offers contrary legislative intent, and that their status as a nonconforming use is thereby protected, is in my view, a matter that the church must take up with DLCD directly. While I can surely appreciate the frustration this presents for the Open Door community, I believe we have a duty to amend our code for consistency with state law in a manner that can be applied soundly and broadly throughout the county's unincorporated areas, rather than chiseled to accommodate a single location within the county.

I also think they have other options for continued operation, alteration, maintenance and even growth of their facilities. The new state provisions limit what they may do under current jurisdictional circumstances, but it appears not to prohibit what they may do. It seeks to preserve the viability of remaining high value farmland within 3 miles of the UGB, it does not seek to abolish the church or the school as functional community service uses. Among their options, is also the possibility of annexation of a portion of their site into Troutdale at some point in the future (ergo inclusion into the UGB).

I visited the site recently (drive by, no ex parte contact) and observed that the non farm portions of it (which include the school and church) are quite intensively developed. They are situated directly across the street from the Troutdale boundary and its residential land uses. While I cannot speak to the mechanics of such a boundary adjustment, I can certainly see why it would make sense. This approach may present a new regulatory framework for the Open Door community, but it also clears them of the 'within 3 miles of a UGB' provision that accompanies their situation outside the UGB right now.

Thank You,

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VIA ELECTRONIC MAIL
REVISED APRIL 5, 2011 CONSISTENT WITH ORAL TESTIMONY AT APRIL 4, 2011 PC MEETING

April 5, 2011

Chair John Ingle and Members of the
Multnomah County Planning Commission
Multnomah County Building, Room 100
501 SE Hawthorne Blvd
Portland Oregon

Re: *Agenda Item 6- Continued Hearing: Amendments to the EFU Zone Regarding Consistency with the Religious Land Use Institutionalized Persons Act (RLUIPA), PC-2011-1395 and Implementation of HB 3099 (2007), PC 10-006*

Dear Chair Ingle and Members of the Planning Commission:

I represent Open Door Baptist Church (hereinafter "Church"). At your March 7, 2011 meeting, the Commission heard from a representative of the Church. The representative, RJ Turner, asked for a continuance so that our law office would have sufficient time to review the County's proposed ordinance changes and make suggestions. As Mr. Turner testified, Open Door Baptist Church includes a church and school facilities. Therefore, the county's proposed changes to school and church expansions apply to both of its uses.

To that end, we have reviewed the proposed ordinance changes and make recommendations in this letter to the Commission.

Introduction:

The Church's primary concern is that Multnomah County (hereinafter "County") is taking away its nonconforming Church use expansion rights which are guaranteed under ORS 215.130(5) and (9). The County's position appears to be that the LCDC rule amendments in OAR 660-33-130(2)(c) require the County not to allow "expansions" or

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alterations for existing non-conforming use churches within three miles of the urban growth boundary (UGB).[1]

The Land Conservation and Development Commission (LCDC) passed the following provision at its June 7, 2010 meeting:

> "Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule." OAR 660-033-130(2)(c).

The staff report interprets "existing facilities" to mean all existing uses, whether outright permitted or nonconforming use facilities and takes the position that they cannot be expanded within the three mile area. It is important to note that churches are a nonfarm use that are permitted outright on low value farmland pursuant to ORS 215.213(1)(a) and 215.283(1)(a) and until LCDC enacted its administrative rule in 1997 that prohibited churches on high value farmland, were an outright permitted use on high value farmland. *See Table 1 under OAR 660-033-120*. Therefore, there are both permitted and nonconforming churches that can be found within three miles of a UGB and subject to the amended administrative rule under staff's interpretation.

In 2003, DLCD enacted its "three mile rule" which prohibited new churches within three miles of an UGB. *1000 Friends v. Clackamas County*, 46 Or LUBA 375, 2004 WL 2554312 (Or LUBA). There are many existing churches that are outright permitted and these are the "existing facilities" amended OAR 660-33-130(2) refer to, not nonconforming uses. Staff has taken the position that an existing nonconforming use within three miles of a UGB can continue, but any additional new use would not be allowed on high value farmland. PC Minutes, p. 4, March 7, 2011.

In Clackamas County, the county has concluded differently in updated its exclusive farm use zone to comply with the DLCD amended administrative rule. Clackamas County understands OAR 660-33-0130(2)(c) to prohibit new churches to be sited within 3 miles of an Urban Growth Boundary. *See Attached* ZDO 401.05(A). Clackamas County then provide that all other legally established preexisting uses and structures not specifically permitted in Section 401 shall be nonconforming uses subject to Section 1206. ZDO 401.08(F). Clackamas County also understands that pre-existing uses on High Value Farmland may be "maintained, enhanced or expanded" on the same tract subject to Section 1206 [nonconforming use review]. The county amended its

[1] The administrative rule is directly applicable to county decisions (however it is interpreted) under ORS 197.646(3) until the county's proposed changes are acknowledged. *DLCD v. Clackamas County*, 33 OR LUBA 675, 678 (1997).

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Chapter 401 provisions on November 4, 2010. Presumably, the ZDO amendments have been acknowledged by DLCD as correctly implementing the OAR 660-33-120 and 130 amended rules and allow nonconforming use churches to expand within three miles of the UGB if the nonconforming use criteria for an alteration are met. *See Attachment* for Complete ZDO EFU Updated Regulations.

Non-Conforming Use Alterations Are A Statutory Right

The problem with staff's interpretation is that it reads away statutory rights in ORS 215.130(5) and (9). Those nonconforming use statutory rights were granted by the legislature and cannot be taken away by an administrative rule. See e.g. *Ackerley Communications v. Multnomah County*, Multnomah Cty Cir Ct No A8307-04375. In *Ackerley*, the County enacted an ordinance which amortized (disallowed) billboards over time. The ordinance was struck down by the court because it conflicted with the statute allowing continuance of nonconforming uses in ORS 215.130(5).

The Oregon Supreme Court has determined that LCDC is given broad powers to provide special protection to high value farmland, but LCDC cannot prohibit a use that is statutorily allowed in another statute unrelated to the protection of high value farmland. *Lane County v. LCDC*, 325 Or 569, 942 P2d 278 (1997). In *Lane County*, the narrow issue was whether LCDC could enact rules that required $80,000 income production on high value farmland in Lane and Washington Counties, the marginal lands counties. The Court concluded that under ORS Chapter 197, in the absence of any contrary intent, LCDC has the authority under ORS chapter 197 to provide special protection to high value farmland. *Lane County* at 581. We believe the nonconforming use statute at ORS 215.130 is contrary legislative intent that nonconforming uses are protected and those rights cannot be limited by the county implementing LCDC's administrative rule to prohibit alterations within three miles of the UGB.

Nonconforming School Use:

In the case of expansion of nonconforming schools within three miles of an UGB, the legislature has emphatically shown an intent to allow those nonconforming uses to expand. ORS 215.135 was enacted in the 2009 legislature[2] and provides:

"Expansion of nonconforming school use in exclusive farm use zone. (1) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, may be expanded subject to:

(a) The requirements of subsection (2) of this section and

(b) Conditional approval of the county in the manner provided in ORS 215.296.

[2] HB 3099.

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(2) A nonconforming use described in subsection (1) of this section may be expanded under this section if:

(a) The use was established on or before January 1, 2009; and

(b) The expansion occurs on:

(A) The tax lot on which the use was established on or before January 1, 2009; or

(B) A tax lot that is contiguous to the tax lot described in subparagraph (A) of this paragraph and that was owned by the applicant on January 1, 2009.

Thus, at least for nonconforming schools, it is clear there is a legislative intent not to take away nonconforming use expansion rights. The LCDC three mile rule was passed before HB 3099 in 2003. *See former* OAR 660-33-0120, Table 1. Therefore, it is assumed the legislature knew the three mile rule was in place and did not exclude nonconforming schools within three miles of an UGB from expanding.

The county has proposed amending its code to prohibit nonconforming schools to expand beyond the 100-person capacity within three miles of the UGB. *See e.g. draft* MCC 33.2630(V)(1). School expansions outside the three-miles would be reviewed as a Community Service Use (hereinafter "CSU"), subject to review for ORS 215.296 (farm/forest conflicts analysis). The CSU review requires compliance with the applicable policies of the Comprehensive Plan as well as Design Review Approval.

If the County were to allow nonconforming use schools within three miles of the UGB to expand, it should not be reviewed under the CSU process. The CSU review requires a public hearing, additional design review approvals and stricter criteria than the nonconforming use review because, rather than measure the difference between the existing nonconforming use and the alteration, it requires a showing that the alteration is consistent with the character of the area, will not adversely impact natural resources, will not require public services other than those existing or programmed for the area. Because there are no public services outside the UGB programmed for the area, the alteration request would likely fail. There is no reason for the County to impose the additional review process of the Community Service use criteria and it is an undue burden. With the addition of ORS 215.296 (farm/forest impacts analysis) required by the LCDC rule amendments, the County will be consistent with state law.

Open Door Baptist Church is therefore recommending that the Commission not adopt the language in Part IV(J) 33.26.40(C) and allow nonconforming schools existing as of January 1, 2009 (pursuant to HB 3099) to apply for an alteration under MCC 33.7214 as Clackamas County has done in its updated EFU code section.

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Nonconforming Church Use

The staff report takes the position that LCDC rule amendments in OAR 660-33-0130(2)(c) do not allow the Church to expand as a nonconforming use beyond the 100 person design capacity rule.

We believe staff is incorrect on several of its interpretations. First as explained above, an existing (outright permitted) church is subject to (2)(C) and cannot expand if it is within the three mile area. A nonconforming use is not an "existing" use and may expand within the three mile area, subject to the requirements in ORS 215.130(5) and (9).

The Oregon Court of Appeals has held that a nonconforming use and vested right are basically the same except for the fact a vested right needs to be finished and a nonconforming use is complete but is being maintained even though newer regulations do not permit the use. *Fountain Village v. Multnomah County*, 176 Or App 213 (2001). Nonconforming use status is recognized because of the belief that it is excessively harsh if not unconstitutional to require property owners to give up an existing use, to their detriment, to satisfy the "greater good." Oregon State Bar Land Use, Vol. II, Section 19-3.

Besides the constitutional problem with not allowing a nonconforming use the right to apply for an alteration pursuant to ORS 215.130(5) and (9), the county is incorrect on its interpretation that the capacity of existing structures is added to a new structure within three miles of the UGB. Staff Report, March 7, 2011, p. 9. The administrative rule allows independent structures with a design capacity of less than 100 people as long as they are ½ mile away from the other existing structures. If the capacity of the existing structures were cumulative, then there would be no reason for the ½ mile rule. In this case, the Church could develop a second church building if the capacity were less than 100 and situated ½ away from the current facility.

Also, the planning commission should consider defining the uses that are a church use and the uses that are a school use. For instance is a day care for Church related uses a church use or a school (if it serves children age K-12)? If it is determined to be a school, it may expand as a nonconforming use even under the county's staff report interpretation.

The county's proposed amendments to implement the LCDC rule amendments prohibit what the legislature in ORS 215.130(5) and (9) has permitted. The county's disallowance of any alterations of a nonconforming Church flatly contradicts what the nonconforming use statute permits. The proposed ordinance amendments do not merely fill in legislative gaps and prohibit what ORS 215.130(5) and (9) allow. Although LCDC has broad authority to protect high value farmland, it has no legislative authority to prohibit the alteration of a nonconforming use in the guise of protecting all farmland

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within three miles of an UGB and the county cannot rely on LCDC's delegated authority to prohibit nonconforming use alterations within three miles of the UGB.

For these reasons, the Commission should conclude that OAR 660-33-130(2)(c) does not require the county to prohibit alterations of nonconforming churches (and other facilities listed in Div 33). First because the plain text of OAR 660-33-130(2)(c) applies to "existing (outright) permitted" uses and secondly, it is unconstitutional to take away a statutorily conferred right.

To clear up any uncertainties, the Planning Commission should provide a definition of "existing facilities" as that term is used in Part IV(J)(C) to exclude nonconforming uses existing on January 1, 2009.

Conclusion:

Multnomah County should follow the lead of Clackamas County and allow pre-existing churches on high value farmland within three miles of the UGB to expand if they meet the County's nonconforming use standards and the requirements of ORS 215.296.

We plan on being at the continued hearing on April 4, 2011 if the planning commission has any comments or questions.

Sincerely,

COFIELD LAW OFFICE

_____

Dorothy S. Cofield

DSC:dsc
Attachment: As Stated
cc: Client

Notes from RLUIPA meeting of April 13, 2010

Attending: Greg MacPherson, Chair; Richard Whitman; Michael Morrissey; Ron Campbell; Millie Eder; Laurie Craighead; Art Schlack; Amanda Rich, Steve Shipsey; James Johnson; and James H. Bean

Greg was the chair but Richard Whitman seems to be in charge. Comments from the Park people had been provided prior to the meeting. Similar comments from METRO, (an intergovernmental agency primarily involved with land use matters impacting the large Portland and surrounding cities and counties metropolitan areas) which is very similar to the suggestions made by the Parks department. (permit development of 100 person facilities on the basis of the size of the tract involved – eg; < 240 acres = one building; 240 to 360 acres – two buildings; >360 but < 1,000 acres =3 buildings; > 1,000 acres = max of 4 buildings.

Spent a lot of time discussing whether it was important to refer to the "designed capacity" as the "permitted capacity". Finally agree on using "permitted design capacity".

Discussed the proposed limits on square footage. Did not like my observation that arbitrarily limiting the square footage may well create a different type of RLUIPA challenge for being "unreasonably" limiting to both religious assemblies and to structures under RLUIPA Sec 2 (b) (3) (B). However Amanda Rice expressed concern that putting a limitation on the square footage of the structure might make it difficult to have a building large enough for "Exhibits" etc. so she just wanted it to limit the number of people. One of the members (James Johnson???) did not want to allow more than 50 people but was willing to accept a limitation of 75. The group settled on allowing a maximum of 100 as set out in the staff draft.

Several members commented on the need to keep the "feeling" of the structures being "Rural" if it was outside the Urban Growth Boundary.

Laurie Craighead was "greatly worried" that allowing up to 400 people would cause an unacceptable impact on a "rural" through noise, traffic, and other bad things.

Richard Whitman worried that a Church might find it less expensive to purchase 1,000 acres of less expensive farm land for 400 people to assemble in than it would be to build their structure inside the city.

Greg opined that farm land at $3,500 per acre was – because of Oregon's Land Use regulation – so much cheaper than land inside the urban growth boundary that it might be attractive to purchase a larger amount of land and thereby take even more land out of farm use. (I considered, but rejected, suggesting if they just quit worrying about allowing 5 to 10 acres being used for a church site the incentive would work the other way and they could "save" more of the "farmland" from being required for churches.) Ron Campbell, from the Parks Department, asked if "YURTS" were going to be considered as "structures" under this proposed rule. The Park Department has a lot of

Yurts in various parks around the State. Greg said he thought they had to consider Yurts to be structures. Richard Whitman suggested the Parks Department might consider doing "Master Plans" for all of their Park areas as he thought Division 34 of the Rules makes developments with an approved Master Plan exempt from compliance with Division 33, which is the division covering the rule we are all working on. Steve Shipsey, (from the Attorney General's Office) confirmed that what Richard had said was correct. (Note to myself: Maybe we could do a Master Plan for building Churches all over Oregon and avoid this whole thing.)

There was extended discussion on the proposed additional wording intended to prohibit any expansion of existing churches. Some did not want them to be able to expand at all. Richard thought they had to allow them to expand up to the size that would be permitted under the new rule.

I reminded them of the Castle Hills First Baptist Church v. City of Castle Hills case and the Westchester Day School v. Village of Mamaroneck cases which I had previously referenced for them and which confirm the likelihood of creating a "substantial burden" if they prohibit a Church from expanding to meet a legitimate religiously motivated reason to alter the use of the property.

Craig & Richard guided the meeting to a close with instructions for the legal counsel to prepare a draft (and submit it by day after tomorrow) for consideration by the LCDC Board at their next meeting on June 3, 2010 at John Day, Oregon.

Craig then, very graciously, acknowledged that I might want to reiterate to the Board my concerns that: While the proposed new rule may satisfy the problem identified in the Young case (where LUBA found a violation because other "assembly uses" were allowed but church related assemble uses were denied) it was my opinion we made a mistake to ignore how the proposed new rule still left open other possible RLUIPA challenges based on another section of RLUIPA, but that the committee felt they should limit their discussions to the problem identified in the Young case. He then asked if I had other concerns. I told them I was significantly concerned at the frequently expressed assumption that a Church use was an "Urban" use and was ipso facto not appropriate in a "rural" area. Richard, Michael, and Craig all said they understood that concern and that I had reminded everybody of that concern in all of the meetings and they encouraged me to share that concern either during the comment period or at the hearing on the proposed new rule. I told them I probably would do both.

Summary: We did not yet get what we had hoped for, but we have made some friends, and gained some respect from others who disagree with us (or don't yet understand us). I think this effort has been helpful, even if it is only in laying some ground work to let some of the officials see more clearly how their "rules" tend to created burdens on the exercise of religion. (And to alert them that there are citizens out there who do care about it.) I will send you the final draft of the proposed rule as soon as I get it. Please feel free to share any suggestions you may have on any of this. Best wishes, Jim Bean

Dorothy Cofield

From: james bean [jameshbean@msn.com]
Sent: Monday, April 11, 2011 5:00 PM
To: cofield@hevanet.com
Subject: Fw: Oregon: Committee to review new Land Use related Rule(s) raising potential RLUIPA claims

From: james bean
Sent: 09/09/2009 3:19 PM
To: Matthew Richards
Subject: Oregon: Committee to review new Land Use related Rule(s) raising potential RLUIPA claims

Matt: I attended the meeting sponsored by the Oregon Department of Land Conservation and Development. It was also attended by Richard Whitman & Michael Morrissey, (from DLCD); Steve (? I lost his card - from the Attorney General's Office), Dave Hunnicutt, (Oregonians in action), Ed Sullivan and Carrie Richter (Garvey Schubert Barer - law firm representing many local governments in this area of practice). Except for Dave and I those in attendance tend to view the object of the proposed committee work to be "How do we avoid losing cases brought on a RLUIPA basis without changing our control over land use approaches in Oregon" There is a sense there should be an assumption that if a land use regulation exists it must be to protect a "compelling interest" - at least in Oregon. There is also, in this group, (again, excepting me and Dave) a visceral feeling that while we may need to give some consideration to treating disparate applicants the same, there is not much concern about avoiding placing "burdens" on all applicants. Just so we burden them all equally.

The principal reason for the concern now being raised is the LUBA decision in Young and James vs.. Jackson County, LUBA 2008-076 decided (remanded to the County after the County had denied an application to use an existing house as a "Church") on December 23 (Joseph's birthday!) 2008. I suspect you have or can easily get a copy of that decision. (They also cited our West Linn Cases) One of the discussion points will likely be whether or not to drop the "3 mile" factor currently a part of the criteria for restriction on Churches on farm land. I was bothered by the ease with which most of those in the meeting yesterday assumed it was ok to distinguish between a "Rural use" and an "Urban use" based on where the people who attend the Church have their residence. I am also bothered by the recollection of an assistant county clerk in Washington County some twenty years ago who decided we were not entitled to build a chapel midway between Banks, Verboort, and Gates Creek after he secured a list of the addresses of all of the members of a proposed new Branch and then plotted the addresses on a map to justify denying the application on the basis more than fifty percent of the proposed members lived inside of city limits of those three towns and that he felt that made the church an "Urban use" not allowed in a "Rural area"

The end result was a decision to have Richard and Michael and Steve recommend a committee to review possible changes in the Rules promulgated by DLCD. It is likely Dave and I will be appointed. It is also likely a couple of County Planning Directors will be appointed, a couple of (generic) Church representatives, some farmers, both those who might want farm land "preserved" and those who think other uses are appropriate, a couple of city or county attorneys, and perhaps a couple of legislators. I will let know what is happening. Please let me know if you have ideas or concerns you want to share with me. Best wishes, Jim Bean (sort of retired).

LINN COUNTY BOARD OF COMMISSIONERS

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Commissioner

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RALPH E. WYATT
Administrative Officer

1/26/2010

Chair Macpherson and RLUIPA Workgroup

C/O DLCD
635 Capital Street NE, Suite 150
Salem, Oregon 97301-2540

Re; Draft RLUIPA rules and concepts

Mr. Chairman and Members,

This is the written response that the Chairman asked me to write at the RLUIPA (Religous Land Use and Institutionalized Persons Act) meeting on Jan 14th. The Linn County Board has not discussed this matter and this letter reflects my opinion based upon my observations.

Linn County is one of the few counties in the State of Oregon that as a regular policy has aggressively pursued the development of recreation opportunities for its citizens. When looking at our parks you will note that usage and location vary greatly throughout the county. Some are placed as resource dependent and some are placed as geographically dependent.

For example, over the last 5-6 years Linn County has developed a new river front park and campground on the south fork of the South Santiam River, developed and constructed a new day use park and boat facility on Foster Reservoir, taken over and refurbished Clear Lake Resort and expanded and remodeled several of our other existing facilities.

All of our park developments are based upon what our citizens think we should provide and not what other entities around the state believe we should provide. Local policy is much more effective and efficient than the standard top-down one size fits all approach. For this, we enjoy an enormous amount of citizen support.

Linn County provides recreation not only for our citizens but also for people from all over Oregon and elsewhere. We currently are developing a large regional facility to fill a much needed use that is not available in Oregon. We are also working with our federal partners to plan for the continued maintenance and enhancement of their facilities and in the future designing and building new facilities in a joint effort for recreation in the region.

Almost all of Linn County's facilities lay within 3 miles of a UGB (urban growth boundry). The 3 mile planning area is arbitrary and capricious and it does not make common sense. Generally, the UGB is a way to ensure that prime farm soils in Oregon are developed. Of Linn County's 1,477,736 acres, 24,383 are class 1 of which a large amount lays within cities and UGB's. The preservation of prime farm ground in general does not dictate state land use policy. As with all state land use, the size and experience of one's law firm dictates policy. If the legislature was serious, Oregon land use laws would be very different.

The "three mile rule" does not take into consideration uses on properties near a UGB. For example: Detroit is on a reservoir and is surrounded by campgrounds and recreation, McDowell Creek Falls is within 3 miles of Sweet Home and Camp Sherman/Black Butte impacts many facilities. In fact, most of Oregon's parks appear to be within 3 miles of a UGB.

Limiting the size of a facility on park land is unacceptable and does not take into account the ever changing face of recreation and community needs. The prohibition on structures that was suggested at the meeting is unacceptable and a limitation on size is unreasonable.

At the RUIPLA work group meeting on Jan 14th, it was suggested that facilities not let more than 100 people gather. This is so ridiculous on so many levels it shouldn't be necessary to even discuss it. The Deschutes county representative that was on the phone, I believe, shared many of the same concerns but was bound by the same restrictions as state parks personnel present, to not be candid. All of the proposals on the table would be prohibitive of developing and maintaining recreation facilities in our counties. The size limitation put forward by Art Schlack of the AOC (Association of Oregon Counties) is not acceptable. Mr. Schlack is not a county policy maker nor does he speak for Linn County. The fact is that any restriction on public park uses within 3 miles of an UGB is unreasonable.

After reading through the material provided by DLCD staff including proposed rules, memos, the Jackson County LUBA decision and the Federal Act I find the supposed purpose of the RLUIPA work group a bit perplexing and its apparent purpose a bit more disturbing.

Speaking as John Lindsey citizen, and not county commissioner, I found the work group's line of discussion more and more troublesome when thinking about things that were said. One of the suggestions included trying to figure out how to limit the number of religious individuals using a facility. It was even questioned what to do if someone leads a prayer in an open EFU zoned piece of land and I heard derogatory statements about native religions. For the life of me, I cannot understand how a prayer might end agriculture across Oregon.

This whole argument smells of the technocratic San Diego land use case in which city planners determined that a minister's prayer group in his home was a violation of zoning laws. He was handcuffed and jailed. The courts are having a ball with this one. A prayer cannot take place outside of the box that government allows it ?!?!

What I learned from reading the Jackson County LUBA case is that they actually followed the law. Period. What I also learned from the work group's discussion on Jan 14th is that there is apparently some hurt feelings that those darn shamans were given the same protections as all those other religious people. I observed members of the LUIPA committee at times engaging in not only ant-religious discussion but also racist discussions.

This regulatory discussion was instructive not just because of the poor policy proposals but rather as an exercise in using land use to control personal behaviors. I read recently that the Portland area is comprised of 52% non-religious people. That number explains a lot, but it does not reflect Linn County or the rest of Oregon. I still remember some of the arguments and derogatory comments made about Christians when then House Speaker Snodgrass worked on addressing these kinds of issues.

I think Oregon has an over abundance of rules, regulations and regulators. I also think that the RUILPA work group was a response created by a government of religious bigotry.

The Land Conservation and Development Commission and the LUIPA Committee can best serve the citizens of Oregon by taking no action and writing no more rules on this issue.

Respectfully,

John K. Lindsey
Commissioner
Linn County

Cc: Barnhart, Sprenger, Olson,Thompson, Morse, Boquist, Girod,Morrisette, LCDC Commission, Counties

Gregory H. Macpherson
322 Second Street
Lake Oswego, OR 97034

February 8, 2010

Commissioner John K. Lindsey
Linn County Courthouse
PO Box 100
Albany, OR 97321

Subject: RLUIPA Work Group

Commissioner Lindsey:

Thank you for attending part of the January 14 meeting of the work group formed by the Land Conservation and Development Commission to consider how to bring one of the Commission's rules into compliance with the Religious Land Use and Institutionalized Persons Act (RLUIPA). It was helpful to get first hand information on park projects from a county commissioner. As a native of rural Linn County and a co-owner of our family farm in Oakville, I appreciated hearing what's happening in the county.

Thanks too for the observations in your letter of January 26 about the land use program and the work group's project. However, I am concerned that you do not understand the role of the work group. Because you did not attend the first two meetings of the work group you came into a discussion that had already sorted larger issues and was focusing on the details of potential solutions. Furthermore, by leaving before the end of the January 14 meeting you missed the summation of where the work group's project stood when we wrapped up.

The following explanation should help orient you to what we're doing. In *Young v. Jackson County* the Land Use Board of Appeals (LUBA) held that the Commission rule that does not permit churches in an exclusive farm use (EFU) zone within three miles of an urban growth boundary (UGB) violates the provision of RLUIPA prohibiting a land use regulation that treats a religious assembly on less than equal terms with a nonreligious assembly. LUBA concluded that the rule violates RLUIPA because some nonreligious assembly uses are allowed in such a zone. To bring the rule into compliance with RLUIPA, the restrictions on assembly uses in an EFU zone within three miles of a UGB must apply equally to churches and to nonreligious uses. The discussion at the January 14 meeting focused on several types of restrictions that would have this equal application.

I was quite surprised by your impressions of the work group discussion, as reported in your letter. You stated that you heard "derogatory statements about native religions" and "racist discussions." I recall no statement made by anyone in attendance at the meeting that could conceivably be regarded as racist or derogatory about any religion. I have checked my recollection with others who attended the meeting and they are equally baffled by your impressions. I also must disagree with your suggestion that the work group reflects attitudes in

one part of the state. In fact, the work group members come from a number of parts of Oregon and bring a variety of perspectives to the process.

Your letter also states that members of the work group engaged in "anti-religious discussion". The focus of the discussion was how to place religious assemblies on an equal footing with nonreligious assemblies. You appear to regard this equal treatment as inherently anti-religious. On this point, I will simply say that I disagree.

Thank you for providing comments on our work group's effort, which will be considered as we shape a recommendation to LCDC on an amendment to the rule.

Sincerely,

G. H. Macpherson

Gregory H. Macpherson

cc with January 26, 2010 letter:
Members of RLUIPA Work Group (*via email*)
Sen. Brian Boquist
Sen. Fred Girod
Sen. Bill Morrisette
Sen. Frank Morse
Rep. Phil Barnhart
Rep. Andy Olson
Rep. Sherrie Sprenger
Rep. Jim Thompson
LCDC Chair John VanLandingham
LCDC Commissioner Hanley Jenkins
LCDC Commissioner Tim Josi
LCDC Commissioner Chris Pellett
LCDC Commissioner Marilyn Worrix

LINN COUNTY BOARD OF COMMISSIONERS

JOHN K. LINDSEY
Commissioner

Linn County Courthouse
P.O. Box 100, Albany, Oregon 97321
(541) 967-3825 FAX: (541) 926-8228

RALPH E. WYATT
Administrative Officer

1/26/2010

Chair Macpherson and RLUIPA Workgroup

C/O DLCD
635 Capital Street NE, Suite 150
Salem, Oregon 97301-2540

Re; Draft RLUIPA rules and concepts

Mr. Chairman and Members,

This is the written response that the Chairman asked me to write at the RLUIPA (Religous Land Use and Institutionalized Persons Act) meeting on Jan 14th. The Linn County Board has not discussed this matter and this letter reflects my opinion based upon my observations.

Linn County is one of the few counties in the State of Oregon that as a regular policy has aggressively pursued the development of recreation opportunities for its citizens. When looking at our parks you will note that usage and location vary greatly throughout the county. Some are placed as resource dependent and some are placed as geographically dependent.

For example, over the last 5-6 years Linn County has developed a new river front park and campground on the south fork of the South Santiam River, developed and constructed a new day use park and boat facility on Foster Reservoir, taken over and refurbished Clear Lake Resort and expanded and remodeled several of our other existing facilities.

All of our park developments are based upon what our citizens think we should provide and not what other entities around the state believe we should provide. Local policy is much more effective and efficient than the standard top-down one size fits all approach. For this, we enjoy an enormous amount of citizen support.

Linn County provides recreation not only for our citizens but also for people from all over Oregon and elsewhere. We currently are developing a large regional facility to fill a much needed use that is not available in Oregon. We are also working with our federal partners to plan for the continued maintenance and enhancement of their facilities and in the future designing and building new facilities in a joint effort for recreation in the region.

Almost all of Linn County's facilities lay within 3 miles of a UGB (urban growth boundry). The 3 mile planning area is arbitrary and capricious and it does not make common sense. Generally, the UGB is a way to ensure that prime farm soils in Oregon are developed. Of Linn County's 1,477,736 acres, 24,383 are class 1 of which a large amount lays within cities and UGB's. The preservation of prime farm ground in general does not dictate state land use policy. As with all state land use, the size and experience of one's law firm dictates policy. If the legislature was serious, Oregon land use laws would be very different.

The "three mile rule" does not take into consideration uses on properties near a UGB. For example: Detroit is on a reservoir and is surrounded by campgrounds and recreation, McDowell Creek Falls is within 3 miles of Sweet Home and Camp Sherman/Black Butte impacts many facilities. In fact, most of Oregon's parks appear to be within 3 miles of a UGB.

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The Land Conservation and Development Commission and the LUIPA Committee can best serve the citizens of Oregon by taking no action and writing no more rules on this issue.

Respectfully,

John K. Lindsey
Commissioner
Linn County

Cc: Barnhart, Sprenger, Olson,Thompson, Morse, Boquist, Girod,Morrisette, LCDC Commission, Counties

Dorothy Cofield

From: james bean [jameshbean@msn.com]
Sent: Monday, April 11, 2011 5:33 PM
To: Dorothy Cofield
Subject: Fw: Oregon committee on RLUIPA

From: james bean
Sent: Saturday, February 06, 2010 6:47 PM
To: Matthew Richards ; Karina Landward
Subject: Oregon committee on RLUIPA

Dear Matt & Karina:

Last night I got a phone call from Greg MacPherson who is the Chair of the committee considering modifications to the Oregon Land Use Rules as a result of the LUBA decision (*Young case*) which held a church related "assembly" could not be prohibited within three miles of and Urban Growth Boundary while other forms of "assembly" were permitted. Greg is a member of the LCDC committee which promulgates the land use rules.

Greg was calling me because he had received a three page letter from John Lindsay (whom I identified in an earlier e-mail as being a County Commissioner from Linn County, Oregon. I also identified him as one of three people in attendance at the committee meeting who had expressed preferences for not trying to create unnecessary restrictions on Church structures). Commissioner Lindsay (according to Greg MacPherson) claims the majority of the RLUIPA committee was biased against and had made statements derogatory towards Native Americans, religious organizations, and minority races. (He did not read me the whole letter. He just summarized it in that manner.) Greg said he wanted to respond to Commissioner Lindsay by telling him none of the other persons in attendance at the last meeting had observed or recalled anything that could be considered as showing a bias against Native Americans, any specific religious organization, or any racial groups. He asked if I would agree with his proposed response.

I told him I had no recollection of any inappropriate comments about or involving Native Americans, any specific religious organization, or any racial group, BUT, I was aware of, and did recall, numerous comments, not only in the most recent meeting, but in all of the prior meetings on this subject, that I believe demonstrate a sometimes subtle, but still very real, bias against giving appropriate local governmental recognition to the legislative intent behind RLUIPA. I told Greg it was my opinion free exercise of religion, (which RLUIPA says includes the right to be free of land use restrictions that are unreasonable, - especially when such regulations are, as in the case at hand, being specifically worded or formed with a stated goal of preserving a regulation designed to make it more difficult to construct a "church" in an area), was being discriminated against. I told him RLUIPA was found necessary because the right to free exercise of religion was not being granted the high level of respect it should be accorded in order to comply with constitutionally protected

rights or privileges. He said the committee was only supposed to focus on the "equal treatment" issue raised in the *Young* case. I responded that I knew that was his position but I thought it was not wise to ignore other likely reasons for RLUIPA based challenges and I felt obligated to bring those concerns to the attention of the committee.

Greg said he understood my concerns but he only wants to work on the "equal treatment" problem at this time. He also said he understood my position that while I did not think the committee had demonstrated bias against Native Americans, or against any particular religion, or minority race, that I did believe they had indicated a bias against full compliance with RLUIPA. He said he would think about it and might change his response to Commissioner Lindsay accordingly.

Belatedly it occurs to me I might have given him another example that he could perhaps understand. We have a constitutionally protected right of free speech. In the Oregon Constitution it is called "freedom of expression" and has been interpreted by our State Courts to protect such things as pornography stores and sexually explicit publications in such a manner that it is almost impossible to prevent "sex shops" from being built in local communities or pornography from being published - because to prohibit them would be an infraction of "free expression". There would have to be a "substantial governmental interest" at stake to justify denying a smut dealer the right to open and operate one of his enterprises or to publish and sell his products. The idea that the smut dealer can insist on his "right" to "expression" or publication, but a religious institution can be specifically denied the right to build a structure (without showing any "substantial interest" is thereby being preserved) is hard to understand.

I will be in Washington DC (if they start letting airplanes land there) for a few days. If Greg does send out anything to or from the Linn County Commissioner I will send you a copy. Best wishes, Jim

Dorothy Cofield

From: james bean [jameshbean@msn.com]
Sent: Monday, April 11, 2011 5:31 PM
To: Dorothy Cofield
Subject: Fw: Concept draft from third RLUIPA workgroup meeting

From: james bean
Sent: Tuesday, January 26, 2010 7:49 PM
To: Matthew Richards ; Karina Landward
Subject: Fw: Concept draft from third RLUIPA workgroup meeting

Mollie is a nice lady. She really does not understand "treating everybody equally" may not be enough to avoid violations of RLUIPA. I will send you anything else that shows up on this. Jim Bean

From: Tuttle, Casaria R.
Sent: 01/26/2010 4:27 PM
To: 'Amanda Rich' ; 'Art Schlack' ; Rindy, Bob ; 'Bruce Ronning' ; 'Luis Caraballo' ; Tuttle, Casaria R. ; 'Dave Hunnicut' ; 'David Corsi' ; 'Greg MacPherson' ; 'Gillian K. Bearns' ; JOHNSON James W ; 'James H. Bean' ; 'Kate Kimball' ; Daniels, Katherine ; 'Peter Kenagy' ; 'Laurie Craghead' ; Morrissey, Michael ; 'Mollie Eder' ; Whitman, Richard ; CAMPBELL Ron ; 'Ron Eber' ; SHIPSEY Steve
Subject: Concept draft from third RLUIPA workgroup meeting

Comments received from Mollie Eder.

From: Mollie [mailto:mollie622@cbbmail.com]
Sent: Thursday, January 21, 2010 9:28 PM
To: Daniels, Katherine
Subject: Re: Concept draft from third RLUIPA workgroup meeting

Hi, Katherine, Michael, and whomever else is reading this:

As a member of the Citizen Input Advisory Committee, I do not see anything alarming about these concepts. It appears that existing rights of citizens to participate in any decisions pertaining to structure applications will be maintained as they now exist.

I am wondering, however, as a rancher on EFU land, whether either of these concepts (especially B with the square footage limit) will impact building of farm structures? Is this wording, replacing 660-033-0130(2), in a place in the OAR where it does not apply to farm structures? Just checking! :-)

I am in favor of B, in that it would presumably minimize impacts on farm lands. It seems like limiting in this way the size, number, and occupancy of structures on tracts of land within 3 miles of a UGB, without treating religious assemblies unequally, is what we are trying to accomplish. (Of course, I am not a lawyer!)

Thanks!

Mollie Eder

mollie622@cbbmail.com
541-280-6767

On Thu, Jan 14, 2010 at 4:38 PM, Daniels, Katherine <katherine.daniels@state.or.us> wrote:
I am actually in tomorrow, if anyone would like to discuss the concepts.

Katherine Daniels | Farm and Forest Lands Specialist
Planning Services Division
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Office: (503) 373-0050 ext. 329 | Fax: (503) 378-5518
katherine.daniels@state.or.us | www.oregon.gov/LCD

From: Tuttle, Casaria R.
Sent: Thursday, January 14, 2010 4:36 PM
To: 'Amanda Rich'; 'Art Schlack'; 'Bruce Ronning'; CAMPBELL Ron; Daniels, Katherine; 'Dave Hunnicut'; 'David Corsi'; 'Gillian K. Bearns'; 'Greg MacPherson'; 'James H. Bean'; JOHNSON James W; 'Kate Kimball'; 'Laurie Craghead'; 'Luis Caraballo'; 'Mollie Eder'; Morrissey, Michael; 'Peter Kenagy'; Rindy, Bob; 'Ron Eber'; SHIPSEY Steve; Tuttle, Casaria R.; Whitman, Richard
Subject: Concept draft from third RLUIPA workgroup meeting

I am turning this around today in the interest of timeliness. Katherine and I are both out tomorrow (Friday), Monday is a holiday and LCDC meets next week.

Option A. is a bare-bones rendition of what Greg Macpherson read at the end of the meeting. It move the core concept from Option B of the previous work sheet to Option C of that worksheet.

Option B. contains several elements that were mentioned, by the workgroup but which did not necessarily get unanimous agreement. Option B adds the element of size of structure in terms of floorspace. It adds the concept of a total number of such structures on a tract of land. It adds the concept of separation of structures on a tract of land. Finally it adds the element brought up by staff at the end of the meeting regarding expansion of existing structures within the 3 mile boundary. The metrics for the elements are suggestions, not recommendations, and relate to discussion at the meeting. Please e-mail comments and preferences to me or Katherine Daniels (Katherine.Daniels@state.or.us by January 23.

Best, Michael Morrissey

<< File: Concept draft 1.14.2010.doc >>

Michael Morrissey, Policy Analyst
Department of Land Conservation and Development
635 Capitol St. NE Ste 150
Salem, OR 97301-2540
(503)-373-0050x320
Michael.Morrissey@state.or.us

January 26, 2010

TO: Greg MacPherson, Chair
Members of the RLUIPA Work Group

FROM: Tim Wood, Director

Cc: Michael Morrissey, Senior Policy Analyst
Katherine Daniels, Farm and Forestland Specialist
Richard Whitman, DLCD Director

Subject: Comments on RLUIPA Rule Concepts

OPRD appreciates your continued efforts to address the needs of parks in formulating rules that achieve equity between churches and other types of "assemblies" under the regulations for farmlands near UGBs. This is clearly not an easy task, as we can see from the wide range of opinions among the work group members. OPRD staff reviewed the most recent preliminary draft rule language. Unfortunately, we found that the current concepts are unnecessarily problematic for parks, and appear to reach beyond the purpose of the rule amendments. We ask that you give serious consideration to the following comments.

Capacity Limits
We believe that the actual number of people allowed is the most direct and workable measure for controlling the size of assemblies. For now, we are withholding further comments regarding the number of people that should be allowed. Currently the number used in the draft rule language is 75 people, so we have used that number in the examples below. We will be participating further in the discussion of allowed capacities.

Emphasis on Single Structures
Currently the draft rule language would allow only single enclosed structures of a given capacity (with a minimum distance from similar structures, which is discussed separately below). This approach is problematic for common park uses as well as other types of uses. In order to adequately limit assembly sizes while continuing to allow reasonable uses within the capacity limits, the capacity limits should be applied not just to an allowance for single structures, but also to an allowance for groups of structures that are collectively meeting the same capacity requirement as applied to a single structure, provided that the group of structures serves a single purpose. Examples are discussed below.

Example 1: Many state parks offer alternative camping structures called camper cabins. These are enclosed structures that provide camping opportunities during both favorable and inclement weather conditions, and they are very popular. Camper cabins also provide a more pleasant camping experience for the elderly and disabled. They are not allowed to have plumbing or permanent foundations if located in a farm or forest zone. The standard cabin size accommodates a maximum of 8 occupants. They are situated in clusters, sometimes in a section of a camp loop, but often in a separate cabin village. The cluster design allows them to be rented individually or as a group. A cabin village has a separate

restroom building, and commonly has a separate cooking shelter, also enclosed. An important point related to the current rule-making is that the shelter is only available to the cabin occupants, and does not have its own parking.

For example, a cabin village with 9 camper cabins, a restroom/shower building and a cooking shelter has a total of 11 enclosed structures. The total cabin capacity is 72 (9 cabins x 8 occupants each). The shelter is designed for the same capacity (72), but that capacity is not added to the cabin capacity because the shelter is only available to the cabin occupants, who are already counted.

How is the total number of cabin village occupants controlled?

1) Like all substantial development in a state park, the development is reviewed and approved through a Conditional Use Permit (CUP) process. The CUP application states, and illustrates, a total design capacity of 72 people for the cabin village development, and the local government CUP approval conditions allow only what is presented in the application and allowed by rule.
2) The total parking for the village is based on the total cabin capacity (typically 2 car spaces per cabin), with no additional parking provided for the shelter. Available parking is reviewed in the CUP process. Here also, the application states and illustrates the total number of parking spaces, and the CUP conditions require the same.
3) Cabin occupants are given a set of rules for cabin and shelter use, which include maximum occupancy limits, at the time of rental and upon arrival.

Example 2: This same approach would be applicable to a park day use area that has multiple enclosed shelters that do not meet distance requirements. (Distance requirements are discussed separately below.) It is common for all such shelters to be occupied simultaneously, usually by separate groups. In this example, because distance requirements are not met, the building capacities would be added, totaling no more than 75. Here also, the CUP process would provide the means of review and approval conditions.

Example 3: Now consider the comments of Kate Kimball regarding churches at the last work group meeting. Kate was concerned about the total capacity of a church that has separate buildings used as sanctuary, rectory, day care center, etc. A similar approach could be applied. If the buildings are likely to be in use simultaneously, the building capacities would be added.

Structure Sizes

We do not agree with using building size (square footage) as a means of limiting assembly size. Building capacities vary substantially based on the uses they serve and how they are designed for such uses. Here again, a building's design capacity approved through the CUP process and reflected in the approval conditions is the appropriate means of controlling assembly size. Additionally, limiting buildings to the suggested size of 1200 square feet unreasonably limits buildings that are not used for assemblies, such as a park manger residence that is sized to accommodate a family. This limitation reaches beyond the purpose of the rule-making process.

Distance Between Structures

We agree that a minimum distance between structures (or groups of structures serving a single purpose as discussed above) is necessary in order to limit assembly size. However, we believe a minimum distance of 1000 feet is excessive. This distance requirement also unnecessarily limits opportunities to use the most suitable land areas within parks. In siting facility development in state parks, OPRD is required by rule to protect the most important resource areas, and facilities are situated in the more

disturbed areas. Requiring an excessive minimum distance between developments would, in many cases, unnecessarily limit opportunities to make use of the most suitable areas for park development.

Number of Structures on a Tract
Limiting the number of enclosed structures (or groups of structures as discussed above) on a single tract is also unnecessary and reaches beyond the purpose of the rule-making process. Tract sizes vary substantially, and some parks are quite large. This would place an unnecessary restriction on large parks. The purpose of limiting assembles is accomplished by building capacities and distance requirements.

Suggested language
Based on the above comments, we are offering the following draft rule language for your consideration:

> *No enclosed structure with a permitted design capacity greater than __ people, or group of structures designed and used as a unit with a total permitted design capacity of greater than __ (same number) people, shall be approved on a tract within 3 miles of a UGB .....*
> *Further, any new enclosed structure, or group of enclosed structures designed and used as a unit, meeting these requirements shall be situated no less than _____ feet from other similar existing and new structures or groups of structures on the same tract.*

Thank you once again for the opportunity to participate. We hope these comments are productive in providing direction to your ruling-making effort.

Dorothy Cofield

From: james bean [jameshbean@msn.com]
Sent: Monday, April 11, 2011 5:30 PM
To: Dorothy Cofield
Subject: Fw: OPRD Comments on RLUIPA rules

Attachments: RLUIPA comments2.doc

RLUIPA
ments2.doc (32

From: "james bean" <jameshbean@msn.com>
Sent: Tuesday, January 26, 2010 7:46 PM
To: "Matthew Richards" <mrichards@kmclaw.com>; "Karina Landward" <klandward@kmclaw.com>
Subject: Fw: OPRD Comments on RLUIPA rules

> The Farm people continue to express their own analysis of the problems
> with the proposed rules, but they still don't understand how RLUIPA
> operates to offer a different kind of shield from rules designed to
> further non compelling Gov't interests that, even if they are rules of
> a general applicability, will work a burden on on the free exercise
> of religion.
> They just focus on whether everybody is treated the same and therefore
> all suffer burdens equally. I will keep you copied with anything else
> that comes up on this. Jim Bean
>
> ---
> From: "Tuttle, Casaria R." <casaria.r.tuttle@state.or.us>
> Sent: 01/26/2010 4:25 PM
> To: "'Amanda Rich'" <amanda@orpa.org>; "'Art Schlack'"
> <aschlack@aocweb.org>; "Rindy, Bob" <bob.rindy@state.or.us>; "'Bruce
> Ronning'" <bruce@bendparksandrec.org>; "'Luis Caraballo'"
> <caraballo_luis@salkeiz.k12.or.us>; "Tuttle, Casaria R."
> <casaria.r.tuttle@state.or.us>; "'Dave Hunnicut'" <dave@oia.org>;
> "'David Corsi'" <dcorsi@grantspassoregon.gov>; "'Greg MacPherson'"
> <ghmacpherson@stoel.com>; "'Gillian K. Bearns'" <gkbearns@yahoo.com>;
> "JOHNSON James W" <james.wallace.johnson@state.or.us>; "'James H. Bean'"
> <jameshbean@msn.com>; "'Kate Kimball'" <kate@friends.org>; "Daniels,
> Katherine" <katherine.daniels@state.or.us>; "'Peter Kenagy'"
> <kenagy@proaxis.com>; "'Laurie Craghead'" <laurie@co.deschutes.or.us>;
> "Morrissey, Michael" <michael.morrissey@state.or.us>; "'Mollie Eder'"
> <mollie622@cbbmail.com>; "Whitman, Richard"
> <richard.whitman@state.or.us>; "CAMPBELL Ron" <ron.campbell@state.or.us>; "'Ron Eber'"
> <ronaldeber@comcast.net>; "SHIPSEY Steve" <steve.shipsey@state.or.us>
> Subject: OPRD Comments on RLUIPA rules
>
>> Good afternoon. Attached are the comments received from Oregon Parks
>> and Recreation Department.
>>
>>
No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.449 / Virus Database: 271.1.1/3568 - Release Date: 04/12/11 06:34:00

Dorothy Cofield

From: james bean [jameshbean@msn.com]
Sent: Monday, April 11, 2011 5:29 PM
To: Dorothy Cofield
Subject: Fw: RLUIPA matters

From: james bean
Sent: Friday, January 22, 2010 10:47 AM
To: Matthew Richards ; Karina Landward
Subject: Fw: RLUIPA matters

Mike is polite and friendly to me and is really a nice guy, but he works for an agency that has an almost "religious fervor" about "preserving farmland" even when there is no rational indication it is or could really be used as "farmland". If it has been designated farmland by the broad brush planner - (within three miles of an urban growth boundary) it is thought to be a sacrilege to use it for an "urban" purpose - and church structures have been indentified in the minds of most LCDC personnel as "urban". It does not look like we will be having further meetings on this. When the staff finishes their review they will likely issue a notice of their proposed new rule. I will send you a copy of it as soon as it comes out and we can consider what response we might want to make during the "comment" period. Thank you both for all your help and for your interest in this matter. Best wishes, Jim Bean.

From: Morrissey, Michael
Sent: 01/22/2010 9:26 AM
To: 'james bean'
Subject: RE: RLUIPA matters

Message received. Thank you for your very thoughtful comments. I highly appreciate your participation.

Michael

From: james bean [mailto:jameshbean@msn.com]
Sent: Tuesday, January 19, 2010 5:54 PM
To: Michael.Morrissey@state.or.us; Katherine Daniels
Subject: RLUIPA matters

Dear Michael & Katherine: Pursuant to your counsel for committee members to avoid exchanging E-mails on this subject outside of our official meetings (so we don't run afoul of Oregon's open hearing/meeting rules) I have prepared the following short reminders of things I have raised before in our public meetings or have considered since we last met.

1. I think it is helpful to reiterate that the reasoning behind the passage of RLUIPA (by a unanimous vote) was influenced by a significant record of demonstrated bias (both overt, convert, and in some occasions probably inadvertent, but none the less, clearly determined to be bias) against traditionally and constitutionally respected attempts to exercise the free exercise of religion. It was at least in part a recognition that various state land use regulations were being drafted or applied in a manner that, in a very real sense, impairs the free exercise of religion, that a federal statute was necessary to protect that very basic right. While the "Young" case may be the cause for this committee's existence and hard work, it seems counterproductive to produce a "solution" to the problem confirmed in "Young" where the solution specifically creates more potential, and I think very likely, additional problems.

2. I previously noted in our earlier meetings that RLUIPA in Section 2. (2) (3) (B) clearly suggests the proposed approach to limiting the construction of a church within three miles of an Urban Growth Boundary may well be subject to attack as another violation of RLUIPA, on different grounds than those used in "Young". If a limitation on religious assemblies,.... or structures is found to be "unreasonable" it is a violation of RLUIPA. I am advised there are already casis indicating the proposed language imposing limitation on square feet or occupancy and the preemptive denial of expansion is vulnerable to a RLUIPA challenge under either the 'unreasonable limits" or the substantial burden" provisions of RLUIPA.

Rocky Mountain Christian Church v. Board of County Commissioners of Boulder County held that a county's zoning regulations "unreasonably limit(ed) religious assemblies, institutions, or structures" within the county in part because the county imposed conditions on churches that "reduce(d) either the number of people permitted or the number of square feet permitted in a facility." 612 F. Supp.2d 1163, 1176 (D. Colo. 2009) (emphasis added)

3. The denial of the right to expand violates the "substantial burden" provision where renovations are necessary for a church to fulfill its religious mission because "(p)laces of worship, unlike other land users, will have religiously motivated reasons to alter the use of property, even in some instances when a prior permit specifies the permissible use." Castle Hills First Baptist Church v. City of Castle Hills, 2004 WL 546792, **9, 10 (W.D. Tex. March 17, 2004) (city's refusal of church's application to renovate religious school worked a substantial burden because it significantly limited "the number of children who can be educated and the quality of the educational programs offered") (emphasis added) *accord Westchester Day Sch. v. Vill. of Mamaroneck,* 417 F. Supp. 2d 4777, 548 (S.D.N.Y. 2006) *aff'd* , F. 3d 338 (2d Cir. 2007)

I respectfully renew my suggestions that we either add a provision that excludes the provisions of this rule if the hearing officer finds applying the rule would violate RLUIPA, or that we adopt the "Option D" which last suggestion simply eliminates the three mile rule. (Which would, as noted by Ron Campbell in our last meeting, avoid the thus far not considered problem of what to do with all of the park facilities that are not now within such a three mile limit, but clearly will be so as the UGB boundaries move in the future.)

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Dorothy Cofield

From: james bean [jameshbean@msn.com]
Sent: Monday, April 11, 2011 5:27 PM
To: Dorothy Cofield
Subject: Fw: Concept draft from third RLUIPA workgroup meeting

From: Karina Landward
Sent: Monday, January 18, 2010 12:07 PM
To: 'james bean'
Cc: Matthew Richards
Subject: RE: Concept draft from third RLUIPA workgroup meeting

Jim:
I would just emphasize to the committee that there are cases indicating the proposed language (in particular, the limitation on square feet/occupancy and the preemptive denial of expansion) is vulnerable to a RLUIPA challenge under the "unreasonably limits" and "substantial burden" provisions:

As to section (b)(3)'s "unreasonably limits" provision, *Rocky Mountain Christian Church v. Board of County Commissioners of Boulder County* held that a county's zoning regulations "unreasonably limit[ed] religious assemblies, institutions, or structures" within the county in part because the county imposed conditions on churches that "reduce[d] either the number of people permitted or the number of square feet permitted in a facility." 612 F.Supp.2d 1163, 1176 (D. Colo. 2009) (emphasis added).

And the denial of expansion, in particular, violates the "substantial burden" provision where renovations are necessary for a church to fulfill its religious mission because "[p]laces of worship, unlike other land users, will have religiously motivated reasons to alter the use of property, even in some instances when a prior permit specifies the permissible use." *Castle Hills First Baptist Church v. City of Castle Hills*, 2004 WL 546792, **9, 10 (W.D. Tex. March 17, 2004) (city's refusal of church's application to renovate religious school worked a substantial burden because it significantly limited "the number of children who can be educated and the quality of the educational programs offered") (emphasis added); *accord Westchester Day Sch. v Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 548 (S.D.N.Y. 2006), *aff'd* ,504 F.3d 338 (2d Cir. 2007).

Thanks, let us know how it goes.

-Karina

From: james bean [mailto:jameshbean@msn.com]
Sent: Thursday, January 14, 2010 10:25 PM
To: Matthew Richards
Cc: Karina Landward
Subject: Fw: Concept draft from third RLUIPA workgroup meeting

Matt: This just came in from the DLCD Policy Analyst with a short fuse for any desired response. FYI : The new concept of prohibiting expansion of existing structures could keep an existing church located within the three mile exclusion zone

from expanding. Under the current rules such a Church would not be prohibited from expansion. While the new rule treats churches the same as other structures I am a little paranoid about their motives when I see their willingness to prohibit enhancement of all the structures previously thought "appropriate" just so they can achieve their goal to prohibit churches. I keep thinking it is this very type of anti church (or anti religion) bias that makes RLUIPA necessary. If you or Karina have any thoughts or suggestions you want to send to me by early next week I will be happy to add them to my own previously noted comments.

From: Tuttle, Casaria R.
Sent: 01/14/2010 4:35 PM
To: 'Amanda Rich' ; 'Art Schlack' ; Rindy, Bob ; 'Bruce Ronning' ; 'Luis Caraballo' ; Tuttle, Casaria R. ; 'Dave Hunnicut' ; 'David Corsi' ; 'Greg MacPherson' ; 'Gillian K. Bearns' ; JOHNSON James W ; 'James H. Bean' ; 'Kate Kimball' ; Daniels, Katherine ; 'Peter Kenagy' ; 'Laurie Craghead' ; Morrissey, Michael ; 'Mollie Eder' ; Whitman, Richard ; CAMPBELL Ron ; 'Ron Eber' ; SHIPSEY Steve
Subject: Concept draft from third RLUIPA workgroup meeting

I am turning this around today in the interest of timeliness. Katherine and I are both out tomorrow (Friday), Monday is a holiday and LCDC meets next week.

Option A. is a bare-bones rendition of what Greg Macpherson read at the end of the meeting. It move the core concept from Option B of the previous work sheet to Option C of that worksheet.

Option B. contains several elements that were mentioned, by the workgroup but which did not necessarily get unanimous agreement. Option B adds the element of size of structure in terms of floorspace. It adds the concept of a total number of such structures on a tract of land. It adds the concept of separation of structures on a tract of land. Finally it adds the element brought up by staff at the end of the meeting regarding expansion of existing structures within the 3 mile boundary. The metrics for the elements are suggestions, not recommendations, and relate to discussion at the meeting. Please e-mail comments and preferences to me or Katherine Daniels (Katherine.Daniels@state.or.us by January 23.

Best, Michael Morrissey

Michael Morrissey, Policy Analyst
Department of Land Conservation and Development
635 Capitol St. NE Ste 150
Salem, OR 97301-2540
(503)-373-0050x320
Michael.Morrissey@state.or.us

DRAFT
1/14/2010
MM

660-033-0130(2)

A. No enclosed structure with a permitted occupancy greater than 75 shall be approved on a tract within 3 miles of a UGB, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 004. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law.

B. No enclosed structure with a permitted occupancy greater than 75 or a floor space exceeding 1,200 sq. feet shall be approved on a tract of land within 3 miles of a UGB, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 004. New structures meeting these requirements must be situated more than 1000 feet from other similar existing and new structures on the same tract, and no new structures may cause the total number of like structures on a tract to exceed 3. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of a UGB may not be expanded beyond the requirements of this rule."

Oregon
Theodore R. Kulongoski, Governor

Parks and Recreation Department
725 Summer Street NE, Suite C
Salem, OR 97301-1266
(503) 986-0707
FAX (503) 986-0794
www.oregonstateparks.org

January 14, 2010

TO: Greg McPherson, Chair
Members of the RLUIPA Workgroup

FROM: Tim Wood, OPRD Director

CC: Michael Morrissey, Policy Analyst, DLCD
Katherine Daniels, Farm and Forest Specialist, DLCD

RE: OPRD Comments on Concepts for RLUIPA-Related Rule Amendments

The Oregon Parks and Recreation Department (OPRD) appreciates the opportunity to participate in the workgroup discussions regarding amendments to land use regulations for farmlands near Urban Growth Boundaries (UGB). We understand rule amendments for these areas are necessary to reconcile state and local land use regulations with recent case law. Our understanding is that the purpose is to achieve consistency in how land use regulations for farmlands within three miles of UGBs apply to churches in comparison to other land uses that have similar impacts. Our Department is very interested in the outcome of this rule amendment process, because of the potential affects of the rules on our roles in providing needed outdoor recreation opportunities. Our hope is that the amendments will achieve their purpose without unreasonably restricting uses which are currently allowed and needed, such as parks.

The comments below respond to the concepts presented and discussed so far by the working group. We intend to provide additional input as this process moves forward toward rule-making.

Potential Affects of Rule Amendments on Existing Parks

Many of our existing state parks overlap the areas in question. While we presume existing uses in state parks would not be affected by new rules, there are needs and opportunities for new development within existing parks that could be affected. For example, four of the five most prominent rural state parks on the Willamette River are zoned farmland, and are located mostly or entirely within three miles of UGBs. Future development is planned or anticipated for all four of these parks. There are numerous other examples of existing parks across the state that could be affected.

Potential Affects of Rule Amendments on New Parks

The impacts of rule amendments on new parks also deserve careful consideration. There is a growing need for more park lands and facilities to serve the growing population. Lands that make good parks are often located outside of, but close to urban areas, and in many cases these lands are within farmland zones. Land features that are suitable for inclusion in the state park system are most often located in rural areas, are often zoned as farmland, and many are within three miles of UGBs.

Affects of Options Discussed by the Workgroup

Option A
Option A simply prohibits "assemblies" related to the various land uses discussed in the LUBA case. Because of the broad definition of "assembly" cited in the LUBA case, this option appears to have the greatest impacts on future park development.

Option B
Option B focuses on "covered structures," eliminating all covered structures that potentially serve as places of assembly. This would eliminate structures commonly offered for public use in parks, including shelters that are popular in day use and overnight areas, as well as other buildings such as interpretive centers.

Under Option B, accessory structures such as restrooms, informational kiosks and storage sheds would be exempt from the restrictions. If this option is chosen, allowances should also be made for other structures that do not accommodate assemblies and that are needed for park administration, management and oversight. In particular, many parks have structures needed for visitor registration, staff offices and staff and caretaker residences.

Option C
Option C would limit the capacities of structures to a maximum100 people, thereby limiting the sizes of assemblies in these structures. This option would allow reasonably-sized shelters that are common in park day use and overnight camping areas, and would perhaps allow other structures such as small interpretive centers.

However, as currently proposed, Option C would also put capacity limits on other "facilities." Depending on how "facility" would be defined, this could have a more serious affect on future park development than would the limit on structures. Several related questions would also need to be answered regarding how capacity limits would be defined for facilities such as parking areas and campgrounds. And, how would this limitation be applied to a large park where multiple small parking areas or campgrounds are proposed?

Option D
Option D would simply eliminate the 3-mile limitation on the affected land uses. This option would clearly have the least impacts on parks.

Thank you again for the opportunity to comment, and for your consideration of how parks could be affected by rule amendments. We look forward to assisting you as you continue to move forward with this process.

Dorothy Cofield

From: james bean [jameshbean@msn.com]
Sent: Monday, April 11, 2011 5:17 PM
To: Dorothy Cofield
Subject: Fw: Oregon: Committee to review new Land Use related Rule's) raising potential RLUIPA claims

From: Matthew Richards
Sent: Friday, December 04, 2009 2:08 PM
To: 'james bean'
Subject: RE: Oregon: Committee to review new Land Use related Rule's) raising potential RLUIPA claims

Thanks for the report. Merry Christmas to you, too.

Best,

Matt

From: james bean [mailto:jameshbean@msn.com]
Sent: Friday, December 04, 2009 2:05 PM
To: Matthew Richards
Subject: Re: Oregon: Committee to review new Land Use related Rule's) raising potential RLUIPA claims

Matt: At the RLUIPA meeting yesterday the group spent most of the time focusing on how they can modify the rule to overcome the problem LUBA found with regard to improper discrimination against churches by prohibiting Churches within three miles of an Urban Growth Boundary (UGB) while allowing other "assemblies" in the same areas. They focused on the proposed wording of the modification suggested by the DLCD staff, eg: "No Structure etc" for assembly use within three miles of a UGB. Dave Hunnicutt suggested they simply remove the "2" currently currently listed after the letter "R" just in front of "Churches" in the Table under OAR 660-033-120. The effect of that simple approach would be to remove the disallowance of Churches. with the three mile limit. I liked that approach but no one else -except Dave Hunnicutt - liked it. They wanted to prohibit structures in that area.

When I noted Section 2 (b) (3) (B) specifically prohibits "unreasonably (limiting) religious ... structures within a jurisdiction" there was quite a bit of confusion on the part of most of those in attendance. They spent a lot of time talking about how they could allow open air "assemblies" but not allow anything with a roof or enclosed walls. I suggested they might be able to avoid future RLUIPA challenges by simply including a provision acknowledging a RLUIPA based exclusion would be permitted if denial would create a substantial burden on the applicant. They did not want to talk about substantial burden or address anything other than correcting the LUBA identified "discrimination" problem.

They did not want to prohibit all "assemblies", just those that required a "building" (which they seem to think may avoid a problem caused by direct reference to "structure"). I suggested Section 8 (7) (B) specifically identifies the use, building or conversion of real property for the purpose of religious exercise is considered in itself to be "religious exercise" of the person intending to use the property for that purpose, and that subsection (A) of that same Section 8 provides a very broadly protected definition of religious exercise.

I told them it was not appropriate for a State Agency to decide whether or not a religious assembly

could simply hold its meetings ("assemble") out of doors. I suggested it could even be another form of discrimination to allow "assemblies" by groups that do not require a structure while prohibiting assemblies by those who do need a Structure. I felt this argument was strengthened by the comments from the Attorney General representative (Steve Shipsey) that the rational for the three mile exclusion was based on three factors: Avoiding Growth Generating uses, preserving compatibility with farming practices, and avoiding traffic generation.

Open air assemblies generate at least as much traffic as those inside structures and are likely to present at least as much potential for incompatibility with farming practices. (There is a feeling that creating a school or a Church will bring or encourage more residential development and they do not want residential development out side of UGB's) My response to this expressed concern is that they already have very restrictive limits on residential development outside of a UGB and RLUIPA specifically recognizes there may be less burdensome means for the local government to achieve its goal (here that seems to be preventing rapid growth of residential facilities outside of the UGB) than simply prohibiting churches.

Greg MacPherson - a member of DLCD and the Chair for this committee, asked the staff to take another try at drafting a revised rule. I fully expect the new proposed form with still focus only on the very narrow problem of discrimination found by LUBA in the Young case. The next meeting is set for January 14, 2010. I should get a copy of the new proposed wording for the rule change before Christmas. I will send it to you when it comes. After the committee makes its recommendation for the new rule it will have to go to DLCD for a vote and then be published with an opportunity for comment before it becomes final. I will keep you advised. Thanks for all your help. Best wishes & Merry Christmas, Jim

From: Matthew Richards
Sent: 11/10/2009 4:36 PM
To: 'james bean'
Subject: RE: Oregon: Committee to review new Land Use related Rule's) raising potential RLUIPA claims

Thank you for the note. I will review this and get back to you as soon as possible. We can get you materials you can use in your next meeting. I am interested in seeing the draft when it is circulated so we can provide specific, targeted comments.

From: james bean [mailto:jameshbean@msn.com]
Sent: Tuesday, November 10, 2009 12:28 PM
To: Matthew Richards
Subject: Fw: Oregon: Committee to review new Land Use related Rule's) raising potential RLUIPA claims

On November 9, 2009 the second meeting of the "Work Group" charged with initiation of Rulemaking Regarding Religious Land Use and Institutionalized Persons Act (RLUIPA) was held to begin review of possible resolutions to the "problem" caused by LUBA's determination in *Young v. Jackson County (Young 2)* LUBA No. 2008-076 that the Rule adopted by LCDC (OAR-660-033-0130 (prohibiting churches within a three mile area outside of an Urban Growth Boundary) violated the "equal terms" provisions of RLUIPA as the Rule prohibited churches in those areas while allowing other forms of "assembly" uses. Those in attendance were: Greg MacPherson (Chairman) one of the LCDC commissioners; Richard Whitman, Executive Director of LCDC; Michael Morrissey, Policy Analyst for LCDC; Casaria R. Tuttle, Rules, Records and Policy Coordinator/Asst to Deputy Director; Steve Shipsey, Oregon Attorney General's Office; Art Schlack, Association of Oregon Counties; Amanda Rich, Parks Department; James W. Johnson, Agriculture Department; Louis Caraballo (?); Kate Kimball, citizen; Katherine Daniels, Parks ?; Laurie Craghead, some assignment to preserve or protect farm land from "urbanization"; Peter Kenagy (?). Ed Sullivan, legal counsel for several local governments (and not a RLUPIA fan) is on a sabbatical in Europe for Six months or so and will not be attending. Dave Hunnicut of Oregonians in Action (not a fan of LCDC) was absent but is expected to play an active role in the Work Group. James H. Bean - listed as "Citizen" on my name plate, but Richard Whitman, the Exec. Director, announced he had tried (unsuccessfully) to get a couple of "Church" representatives on the committee and since he knew I had been involved in a number of Church related land use matters he would appreciate it if I would share my own observations as we go through this process. I told him I was willing to share my own opinions, but could not "represent" my opinions as being those of any specific religious organization. I asked if any of those present had any institutional recollection of the

reasoning behind the LCDC prohibition against Churches (under the OAR Rule) when the enabling legislation (ORS 215.283 (1) (b) specifically allowed Churches as an appropriate use in "any area zoned for exclusive farm use". The response was that the Oregon Courts had determined LCDC had the authority to make more restrictive rules than those imposed by the legislature. I noted I knew what the court decisions had said, but my question was "Why" had LCDC made that distinction for churches? No one had a simple explanation but there is a two fold generalized presumption that churches will use up a lot of choice farm land and that the church use is an "urban use" located in a "rural" area. which is contrary to the "compelling interest" Oregon has in keeping rural areas reserved for rural uses. I noted while there may be some justification for the government determining a school district might be "urban" or "rural" since the government sets the boundaries for school districts, I thought they were asking for trouble if they try to classify a church as "rural" or "urban" by deciding where the members of that church must live in order to be allowed to attend church..

The Work Group will meet next on December 3, 2009. Steve Shipsey and Katherine Daniels were assigned to coordinate with Michael Morrissey the preparation of a draft outline of a new rule that would prohibit any assembly use that requires a structure (other than toilets) within three miles of an Urban Growth Boundary. A copy of the draft proposal will be sent to all members of the work group prior to the next meeting. I will send you a copy as soon as I get it. I will also be talking to Dave Hunnicut about the draft proposal. If you have anything on the Rural vs. Urban issue it might be helpful. I am concerned about the assumption, by nearly all of the work group, that a church can - and probably would be - automatically categorized as an "urban" use if a significant number of the members live within an urban growth boundary. I am also concerned at (my impression) the cavalier attitude of most of the people in the work group that this process will not work an unacceptable hardship on a church because (1) the rule is intended to protect the "compelling governmental interest" of preserving farm land or preventing urbanization of rural areas. and anyway, (2) even if the government does not have such a "compelling" interest, the church can go through an "exception" process - so there is no hardship. I do not agree no hardship has been imposed simply because you can (or might be able to) correct a wrong result by starting all over and going through another time consuming and expensive process.

Best wishes, Jim Bean

From: Matthew Richards
Sent: 09/09/2009 2:30 PM
To: 'james bean'
Subject: RE: Oregon: Committee to review new Land Use related Rule(s) raising potential RLUIPA claims

Thank you for the update. I'm not surprised by the perspective of RLUIPA shared by most at the meeting. I'm grateful you were there.

We're very interested in this development. As you well know, we've had our share of resistance to land use projects in Oregon and would hate to lose any ground gained by RLUIPA or our West Linn decisions. The task force may also be an opportunity to help drive home key points.

Let me know if and when the committee is formed. In the meantime, we'll look up the LUBA decision and identify cases that respond to the rural vs. urban use issue, the substantial burden issue, and related matters. When the time comes we'll share this with you so that you are prepared with the latest and greatest and we can counsel together about how best to find allies and get these points heard. It will be interesting to know who the "church" representatives might be.

Matt

From: james bean [mailto:jameshbean@msn.com]
Sent: Wednesday, September 09, 2009 4:19 PM
To: Matthew Richards
Subject: Oregon: Committee to review new Land Use related Rule(s) raising potential RLUIPA claims

Matt: I attended the meeting sponsored by the Oregon Department of Land Conservation and Development. It was also attended by Richard Whitman & Michael Morrissey, (from DLCD); Steve (? I lost his card - from the Attorney General's Office), Dave Hunnicutt, (Oregonians in action), Ed Sullivan and Carrie Richter (Garvey Schubert Barer - law firm representing many local governments in this area of practice). Except for Dave and I those in attendance tend to view the object of the proposed committee work to be "How do we avoid losing cases brought on a RLUIPA basis without changing our control over land use approaches in Oregon" There is a sense there should be an assumption that if a land use regulation exists it must be to protect a "compelling interest" - at least in Oregon. There is also, in this group, (again, excepting me and Dave) a visceral feeling that while we may need to give some consideration to treating disparate applicants the same, there is not much concern about avoiding placing "burdens" on all applicants. Just so we burden them all equally.

The principal reason for the concern now being raised is the LUBA decision in Young and James vs.. Jackson County, LUBA 2008-076 decided (remanded to the County after the County had denied an application to use an existing house as a "Church") on December 23 (Joseph's birthday!) 2008. I suspect you have or can easily get a copy of that decision. (They also cited our West Linn Cases) One of the discussion points will likely be whether or not to drop the "3 mile" factor currently a part of the criteria for restriction on Churches on farm land. I was bothered by the ease with which most of those in the meeting yesterday assumed it was ok to distinguish between a "Rural use" and an "Urban use" based on where the people who attend the Church have their residence. I am also bothered by the recollection of an assistant county clerk in Washington County some twenty years ago who decided we were not entitled to build a chapel midway between Banks, Verboort, and Gates Creek after he secured a list of the addresses of all of the members of a proposed new Branch and then plotted the addresses on a map to justify denying the application on the basis more than fifty percent of the proposed members lived inside of city limits of those three towns and that he felt that made the church an "Urban use" not allowed in a "Rural area"

The end result was a decision to have Richard and Michael and Steve recommend a committee to review possible changes in the Rules promulgated by DLCD. It is likely Dave and I will be appointed. It is also likely a couple of County Planning Directors will be appointed, a couple of (generic) Church representatives, some farmers, both those who might want farm land "preserved" and those who think other uses are appropriate, a couple of city or county attorneys, and perhaps a couple of legislators. I will let know what is happening. Please let me know if you have ideas or concerns you want to share with me. Best wishes, Jim Bean (sort of retired).

Dorothy Cofield

From: james bean [jameshbean@msn.com]
Sent: Monday, April 11, 2011 5:06 PM
To: cofield@hevanet.com
Subject: Fw: Oregon: Committee to review new Land Use related Rule's) raising potential RLUIPA claims

From: Matthew Richards
Sent: Tuesday, November 10, 2009 5:36 PM
To: 'james bean'
Subject: RE: Oregon: Committee to review new Land Use related Rule's) raising potential RLUIPA claims

Thank you for the note. I will review this and get back to you as soon as possible. We can get you materials you can use in your next meeting. I am interested in seeing the draft when it is circulated so we can provide specific, targeted comments.

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On November 9, 2009 the second meeting of the "Work Group" charged with initiation of Rulemaking Regarding Religious Land Use and Institutionalized Persons Act (RLUIPA) was held to begin review of possible resolutions to the "problem" caused by LUBA's determination in *Young v. Jackson County (Young 2)* LUBA No. 2008-076 that the Rule adopted by LCDC (OAR-660-033-0130 (prohibiting churches within a three mile area outside of an Urban Growth Boundary) violated the "equal terms" provisions of RLUIPA as the Rule prohibited churches in those areas while allowing other forms of "assembly" uses. Those in attendance were: Greg MacPherson (Chairman) one of the LCDC commissioners; Richard Whitman, Executive Director of LCDC; Michael Morrissey, Policy Analyst for LCDC; Casaria R. Tuttle, Rules, Records and Policy Coordinator/Asst to Deputy Director; Steve Shipsey, Oregon Attorney General's Office; Art Schlack, Association of Oregon Counties; Amanda Rich, Parks Department; James W. Johnson, Agriculture Department; Louis Caraballo (?); Kate Kimball, citizen; Katherine Daniels, Parks ?; Laurie Craghead, some assignment to preserve or protect farm land from "urbanization"; Peter Kenagy (?). Ed Sullivan, legal counsel for several local governments (and not a RLUPIA fan) is on a sabbatical in Europe for Six months or so and will not be attending. Dave Hunnicut of Oregonians in Action (not a fan of LCDC) was absent but is expected to play an active role in the Work Group. James H. Bean - listed as "Citizen" on my name plate, but Richard Whitman, the Exec. Director, announced he had tried (unsuccessfully) to get a couple of "Church" representatives on the committee and since he knew I had been involved in a number of Church related land use matters he would appreciate it if I would share my own observations as we go through this process. I told him I was willing to share my own opinions, but could not "represent" my opinions as being those of any specific religious organization. I asked if any of those present had any institutional recollection of the reasoning behind the LCDC prohibition against Churches (under the OAR Rule) when the enabling legislation (ORS 215.283 (1) (b) specifically allowed Churches as an appropriate use in "any area zoned for exclusive farm use". The response was that the Oregon Courts had determined LCDC had the authority to make more restrictive rules than those imposed by the legislature. I noted I knew what the court decisions had said, but my question was "Why" had LCDC made that distinction for churches? No one had a simple explanation but there is a two fold generalized presumption that churches will use up a lot of choice farm land and that the church use is an "urban use" located in a "rural" area. which is contrary to the "compelling interest" Oregon has in keeping rural areas reserved for rural uses. I noted while there may be some justification for the government determining a school district might be "urban" or "rural" since the government sets the

boundaries for school districts, I thought they were asking for trouble if they try to classify a church as "rural" or "urban" by deciding where the members of that church must live in order to be allowed to attend church..

The Work Group will meet next on December 3, 2009. Steve Shipsey and Katherine Daniels were assigned to coordinate with Michael Morrissey the preparation of a draft outline of a new rule that would prohibit any assembly use that requires a structure (other than toilets) within three miles of an Urban Growth Boundary. A copy of the draft proposal will be sent to all members of the work group prior to the next meeting. I will send you a copy as soon as I get it. I will also be talking to Dave Hunnicut about the draft proposal. If you have anything on the Rural vs. Urban issue it might be helpful. I am concerned about the assumption, by nearly all of the work group, that a church can - and probably would be - automatically categorized as an "urban" use if a significant number of the members live within an urban growth boundary. I am also concerned at (my impression) the cavalier attitude of most of the people in the work group that this process will not work an unacceptable hardship on a church because (1) the rule is intended to protect the "compelling governmental interest" of preserving farm land or preventing urbanization of rural areas. and anyway, (2) even if the government does not have such a "compelling" interest, the church can go through an "exception" process - so there is no hardship. I do not agree no hardship has been imposed simply because you can (or might be able to) correct a wrong result by starting all over and going through another time consuming and expensive process.

Best wishes, Jim Bean

From: Matthew Richards
Sent: 09/09/2009 2:30 PM
To: 'james bean'
Subject: RE: Oregon: Committee to review new Land Use related Rule(s) raising potential RLUIPA claims

Thank you for the update. I'm not surprised by the perspective of RLUIPA shared by most at the meeting. I'm grateful you were there.

We're very interested in this development. As you well know, we've had our share of resistance to land use projects in Oregon and would hate to lose any ground gained by RLUIPA or our West Linn decisions. The task force may also be an opportunity to help drive home key points.

Let me know if and when the committee is formed. In the meantime, we'll look up the LUBA decision and identify cases that respond to the rural vs. urban use issue, the substantial burden issue, and related matters. When the time comes we'll share this with you so that you are prepared with the latest and greatest and we can counsel together about how best to find allies and get these points heard. It will be interesting to know who the "church" representatives might be.

Matt

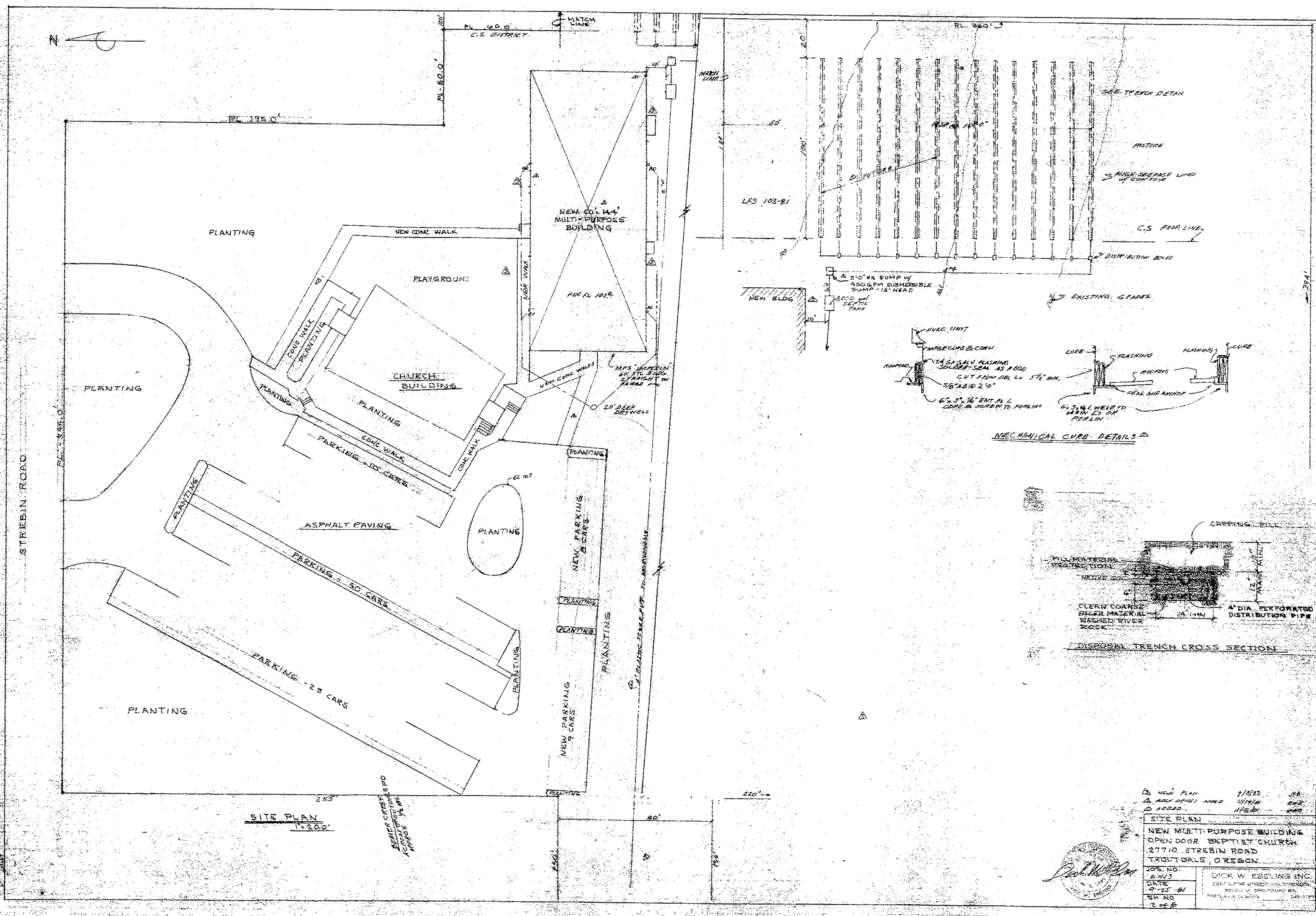
From: james bean [mailto:jameshbean@msn.com]
Sent: Wednesday, September 09, 2009 4:19 PM
To: Matthew Richards
Subject: Oregon: Committee to review new Land Use related Rule(s) raising potential RLUIPA claims

Matt: I attended the meeting sponsored by the Oregon Department of Land Conservation and Development. It was also attended by Richard Whitman & Michael Morrissey, (from DLCD); Steve (? I lost his card - from the Attorney General's Office), Dave Hunnicutt, (Oregonians in action), Ed Sullivan and Carrie Richter (Garvey Schubert Barer - law firm representing many local governments in this area of practice). Except for Dave and I those in attendance tend to view the object of the proposed committee work to be "How do we avoid losing cases brought on a RLUIPA basis without changing our control over land use approaches in Oregon" There is a sense there should be an assumption that if a land use regulation exists it must be to protect a "compelling interest" - at least in Oregon. There is also, in this group, (again, excepting me and

Dave) a visceral feeling that while we may need to give some consideration to treating disparate applicants the same, there is not much concern about avoiding placing "burdens" on all applicants. Just so we burden them all equally.

The principal reason for the concern now being raised is the LUBA decision in Young and James vs.. Jackson County, LUBA 2008-076 decided (remanded to the County after the County had denied an application to use an existing house as a "Church") on December 23 (Joseph's birthday!) 2008. I suspect you have or can easily get a copy of that decision. (They also cited our West Linn Cases) One of the discussion points will likely be whether or not to drop the "3 mile" factor currently a part of the criteria for restriction on Churches on farm land. I was bothered by the ease with which most of those in the meeting yesterday assumed it was ok to distinguish between a "Rural use" and an "Urban use" based on where the people who attend the Church have their residence. I am also bothered by the recollection of an assistant county clerk in Washington County some twenty years ago who decided we were not entitled to build a chapel midway between Banks, Verboort, and Gates Creek after he secured a list of the addresses of all of the members of a proposed new Branch and then plotted the addresses on a map to justify denying the application on the basis more than fifty percent of the proposed members lived inside of city limits of those three towns and that he felt that made the church an "Urban use" not allowed in a "Rural area"

The end result was a decision to have Richard and Michael and Steve recommend a committee to review possible changes in the Rules promulgated by DLCD. It is likely Dave and I will be appointed. It is also likely a couple of County Planning Directors will be appointed, a couple of (generic) Church representatives, some farmers, both those who might want farm land "preserved" and those who think other uses are appropriate, a couple of city or county attorneys, and perhaps a couple of legislators. I will let know what is happening. Please let me know if you have ideas or concerns you want to share with me. Best wishes, Jim Bean (sort of retired).


SITE PLAN
1"=20.0'
STREBIN ROAD
NEW CO. 144' MULTI-PURPOSE BUILDING
CHURCH BUILDING
PLAYGROUND
NEW CONC WALK
CONC WALK
PLANTING
ASPHALT PAVING
PARKING - 10 CARS
PARKING - 50 CARS
PARKING - 25 CARS
NEW PARKING 8 CARS
NEW PARKING 9 CARS
20' DEEP DRYWELL
MATCH LINE
C.S. DISTRICT
LFS 103-81
NEW BLDG
SEE TRENCH DETAIL
PASTURE
HIGH SEEPAGE LINES W/ CONTOUR
C.S. PROP. LINE
DISTRIBUTION BOXES
EXISTING GRADES
MECHANICAL CURB DETAILS
DISPOSAL TRENCH CROSS SECTION
CAPPING FILL
NATIVE SOIL
CLEAN COARSE FILLER MATERIAL WASHED RIVER ROCK
4" DIA. PERFORATED DISTRIBUTION PIPE
SITE PLAN
NEW MULTI-PURPOSE BUILDING
OPEN DOOR BAPTIST CHURCH
27710 STREBIN ROAD
TROUTDALE, OREGON
JOB NO. 8-H13
DATE 9-25-81
SH NO 2 of 8
DICK W. EBELING INC.

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VIA ELECTRONIC MAIL
Attachments via separate electronic mail

April 19, 2011

Chair John Ingle and Members of the
Multnomah County Planning Commission
Multnomah County Building, Room 100
501 SE Hawthorne Blvd
Portland, Oregon
c/o Charles.beasley@multco.us

Re: *For May 2, 2011 Continued Hearing: Amendments to the EFU Zone Regarding Consistency with the Religious Land Use Institutionalized Persons Act (RLUIPA), PC-2011-1395 and Implementation of HB 3099 (2007), PC 10-006*

Dear Chair Ingle and Members of the Planning Commission:

I represent Open Door Baptist Church (hereinafter "Church"). At your April 4, 2011 meeting, the Commission continued the public hearing to address additional issues.

This letter will address your issues and comments and hopefully provide answers and clarification. This letter also adds a new discussion on possible RLUIPA violations by the amendments to OAR 660-33-130(2)(a-c).

Open Door Baptist Church's Non-Conforming Use Status

The Church was initially approved as a Community Service Use on EFU land. *See CS4-88-598*. The approval allowed a 40' by 80' church/school classroom, shown as Building A on the attached site plan; Parking Lot (area 1) containing asphalt, curbs, lighting and landscaping. In 1981, the Church was approved for a 60' x 125' multi-purpose building (shown as G-1) for use as a gymnasium, auditorium and Sunday school classrooms and a baseball field (area 8). Additional land use approvals for design review are DR 6-98, DR 87-01-03, CS 4-88. In 2004, the Church was approved for a design review permit to convert the existing gymnasium into classrooms, fellowship hall and warming kitchen with the addition of a new parking area. *See T2-04-060*.

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In 2009, with the passage of HB 3099, the legislature made churches and schools a conditional use, rather than an outright permitted. The Legislature also enacted ORS 215.135 which made all existing schools on EFU as of January 1, 2009 a nonconforming use:

"A use formerly allowed pursuant to ORS 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, may be expanded subject to:

****

(2) A nonconforming use described in subsection (1) of this section may be expanded under this section if:

(a) The use was established on or before January 1, 2009***"

The Church and its school have been in use since 1976 when it was first approved as a Community Service Use. Therefore, the Church and school have historically been a permitted use, albeit under the conditional use Community Service process, and became nonconforming when the Legislature made churches and schools a conditional use under ORS 215.283(2) rather than an outright permitted use as it has historically been under ORS 215.283(1)(a). When LCDC adopted its 3-mile 100 person structure rule amendments in June, 2010 it became even more non-conforming because no expansion or alterations are allowed.

LCDC Amendments to OAR 660-33-0130(2)(a-c) – Text and Context Analysis

In June, 2010, LCDC passed amendments to OAR 660-33-0120 (Table) and -0130(2)(c) which no longer allow churches and schools to expand beyond a structure with a design capacity of 100 people. As explained above, the rule and statute changes make the Church a nonconforming use.

The LCDC amended rule at OAR 660-33-0130(2)(a-c) are a bit confusing as to whether they prohibit a nonconforming use from expanding under ORS 215.130(5) and (9). In our previous letter to the planning commission dated April 2, 2011 and revised April 5, 2011, we posited that formerly outright permitted uses that became nonconforming due to changes in the EFU statutes under state law fell under the 3-mile no expansion rule while nonconforming uses that began prior to Senate Bill 100 were still protected by ORS 215.130(5) and (9).

Upon further review of HB 3099, the transcript for the LCDC amendments to -130(2)(a-c) and the RLUIPA working group notes, it is clear there is no distinction between using the term "existing facilities", pre-existing facilities and non-conforming uses" as those three terms are used inter-changeably in the legislative history. Therefore, the text and context of OAR 660-33-130(2)(c) which does not allow expansions of an

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existing use (either historically nonconforming or made nonconforming through HB 3099 as adopted in ORS 215.135) apply to Open Door Baptist. However, as argued previously and again in this letter, the prohibition violates RLUIPA and the nonconforming use rights in ORS 215.130(5) and (9).

Clackamas County Zoning Ordinance

In talking to Clackamas County Counsel, the county has not implemented the changes to OAR 660-33-0130(2)(c) (capacity limit within three miles of the UGB). The ZDO 401 changes are limited to implementing HB 3099.

Legislative History on HB 3099

In reviewing the audio tapes for HB 3099, it is unclear why the amendment allowing nonconforming use schools to expand as a nonconforming use (now ORS 215.135) was added to the bill. *See Attached Senate Committee on Business and Transportation Agenda*. From the time the bill had its first reading (March 9, 2009) to the "Do Pass with Amendments" on May 6, 2009, Section 14 (now ORS 215.135) was added to the bill.

The bill was first dropped as LC 1779 and Senator Clem carried it. Prior to LC 1779, a working group met during the interim session to develop the changes to ORS 215.213 and .283, moving many of the outright permitted nonfarm uses to make them conditional uses. As of the date of this letter, the Church has not been able to find legislative history on whether the Legislature intended nonconforming uses within the 3-mile area to be able to expand, as was the case when ORS 215.135 (Section 14) was passed. *See attached* OAR 660-33-013(2) (November 2009) cf. amended OAR 660-33-130(2)(a-c), March, 2011.

OAR 660-33-0130(2)(a-c) Amendment (LCDC June 7, 2010 John Day Meeting)

The Church is in the process of transcribing the LCDC meeting audio tapes for the 3-mile rule amendment, (disallowing nonconforming uses from expanding within 3 miles of the UGB). A partial transcript is attached. The transcript shows that many members of the Commission were concerned about taking away nonconforming use rights. *See attached Transcription to follow*, 42:35, 44.36, 50:13, ****59:12, 1:07:54, 1:27:41. A full transcript will follow prior to the Planning Commission's May 2, 2011 meeting as a separate attachment.

RLUIPA Workgroup Meetings

Prior to LCDC's passage of the changes to OAR 660-33-0120 (Table) and -0130 to fix the problems articulated in Young v. Jackson County, a working group comprised

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of a variety of interests (government, religious, non-profit, environmentalist, business, schools and parks) met to address the RLUIPA defects caused by singling out churches from not being allowed on high value farmland. The notes from the working group, as obtained from Attorney Jim Bean (a participant) are attached.

The issue was raised in the work group that the equal terms portion of RLUIPA could arguably be fixed by adding other nonfarm uses that LUBA identified as getting preferential treatment (community centers, golf courses, schools, parks) to the prohibition of being sited on exclusive farm use soil. However, the working group notes point out that there is still a "substantial burden" violation of RLUIPA (which LUBA did not reach in *Young* because it reversed the denial based on the equal terms provision).

Specifically, Jim Bean raised the issue in the work group writing that:

> "RLUIPA in Section 2 (2)(3)(B) clearly suggests the proposed approach to limiting the construction of a church within three miles of an Urban Growth Boundary may well be subject to attack as another violation of RLUIPA on different grounds than those used in 'Young'. If a limitation on religious assemblies …. or structures is found to be 'unreasonable' it is a violation of RLUIPA. I am advised there are already cases [sic] indicating the proposed language imposing limitation on square feet or occupancy and the preemptive denial of expansion is vulnerable to a RLUIPA challenge under either the 'unreasonable limits' or the 'substantial burden' provisions of RLUIPA.
>
> *Rocky Mountain Christian Church v. Board of County Commissioners of Boulder County* held that a county's zoning regulations 'unreasonably limited(ed) religious assemblies, institutions, or structures' within the county in part because the county imposed conditions on churches that 'reduced(d) either the number of people permitted or the number of square feet permitted in a facility'. 612 F. Supp 2d 1163, 1176 (D.Colo 2009) (emphasis added)[.]
>
> The denial of the right to expand violates the 'substantial burden' provision where renovations are necessary for a church to fulfill its religious mission because '(p)laces of worship, unlike other land users, will have religiously motivated reasons to alter the use of property, even in some instances when a prior permit specifies the permissible use.' *Castle Hills First Baptist Church v. City of Castle Hills*, 2004 WL 546792, **9, 10 (W.D. Tex. March 17, 2004)(city's refusal of church's application to renovate religious school worked a substantial burden because it significantly limited 'the number of children who can be educated and the quality of the educational programs offered.')(emphasis added) *accord Westchester Day Sch. V. Viii of Mamaroneck* 417 F. Supp. 2d 4777, 548 (S.D.N.Y 2006) aff'd, F. 3d 338 (2d Cir. 2007)." *See RLUIPA Work Group Notes, electronic mail dated January 19, 2010 James Bean to Michael Morrissey.*

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Mr. Bean then asked the working group to delete the 3-mile prohibition on expansion of churches and schools. *Id*. The minutes from the LCDC meeting confirm the Commission staff only reviewed the new amendments to narrowly cure the *Young* problem of unequal treatment, not whether the new amendments would substantially burden a religion because it denies it the right to expand. *See LCDC Transcript, 25:34*.

Besides the substantial burden provision, the new amendment also may violate the equal terms provision because is very similar to the facts in *Rocky Mountain Christian Church* case. In that case, the county commissioners denied an existing church the right to expand, but allowed a similarly situated school to expand. The 10th Circuit, on appeal and rehearing, recently affirmed the lower courts ruling that the treatment violated RLUIPA. 613 F.3d 1229, 1237. The Appeals Court rejected the county's rational basis defense because the court found the Free Exercise Clause of the First Amendment (codified into RLUIPA) requires that regulations which discriminate require a strict scrutiny review. *Id*. at 1237.

The LCDC amendments allow public parks to expand within three miles of the UGB if they have a master plan. A church is not given the option of developing a master plan and is prohibited outright from any expansion. The so-called "compelling state interest" of allowing parks to expand on high value farmland would probably not survive the strict scrutiny test listening to the attorney for LCDC explain that the "rational basis" for allowing a master planned park to expand within 3 miles is because "there are legitimate policy reasons like parks need to be located within 3 miles of the UGB." *See Transcript*, 17:47. Specifically, the attorney for LCDC explained the State's compelling interest in its preferential treatment of master planned parks as:

> "Yes, when they go through the master planning process for the parks, they would have either gone through the exceptions process or gone through an equivalent type of a process essentially establishes the same purpose as going through the goal 14 exception to locate there. They may not have gone through exactly that process but it's a function process. So they are being treated differently because they are a different use that is location ally dependent that does serve a different purpose. The whole goal with these is that the regulation has to be facially? neutral. You cannot put a substantial burden on one group as opposed to another unless there is a compelling state reason to do so. Now with the state park situation there is a compelling reason and they have gone through that master planning process.
>
> Well, I was going to say, probably like for direction, go back to the court decision that focuses on equal protections portion of LUBA decisions, and in that equal protections Ginny is correct. It says that unless you have state-wide compelling reason why that you treat that place of assembly differently, and so that's what

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> we've done here. We've treated it differently because there's a state-wide policy … so I think it's covered. On its face it appears though we're treating parks differently again, and it's not , but I think the court decision makes it very clear that you can go this way.
>
> I will just say that the law on these issues is very unsettled still. We do not have a 9th Circuit controlling case from the federal courts at this point. We have looked carefully at recent cases coming from other circuits and from district courts in the 9th circuit, so this could change as we get more court decisions, but we've worked very closely with counsel in crafting this over the last several months."

As can be learned from the above quotes, the law on RLUIPA is unsettled; the LCDC staff was uncertain that its rule amendment would not violate RLUIPA and the so-called "compelling interest" to allow master planned parks to expand within 3 miles, but not pre-existing Church and School campuses, would not survive a strict scrutiny review, and even lacks a rational basis.[1]

In the case of Open Door Baptist Church, there are also legitimate reasons to allow it to expand within 3 miles of the UGB because that is the only place it can expand – it is already a 35 year old established Church and School campus. *See Attached Site Plan with all the approved buildings and uses.* Similar to a master plan requirement, the Church, when it desires to expand, would have to show it would generate no new adverse impacts (that could not be mitigated).

For these reasons, the new LCDC rule amendments the county seeks to implement into its code, not even allowing the Church to apply for an alteration under ORS 215.130(5) and (9) (and the county's nonconforming use code provisions) violate the equal terms provision of RLUIPA because they treat the church differently than a similarly situated master planned public park.

Conclusion

This letter just scratches the surface of the problems with the new LCDC rule amendments the county is seeking to implement into its code. While the defects pointed out in this letter are "facial," if and when the Church makes a land use application to expand under ORS 215.130(5) and (9), the Church reserves the right to bring these and other legal challenges to the 3 mile prohibition.

[1] Other uses in Table 1 of OAR 660-33-120, such as wineries, farm stands and county fairgrounds are allowed to expand within 3 miles of the UGB where churches and schools cannot and thus potentially violate RLUIPA because even though classified as a "farm use," these uses serve an urban population. See e.g. *1000 Friends of Oregon v. Clackamas County* 46 Or LUBA 375 (2004).

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Representatives from the Church will be at the continued hearing on May 2, 2011 if the planning commission has any comments or questions.

Sincerely,

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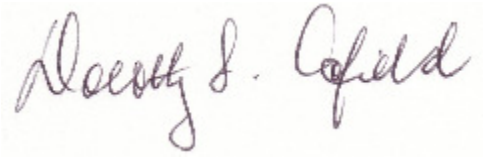

_____

Dorothy S. Cofield

DSC:dsc
Attachments: Under Separate Cover - As Stated

cc: Client

HOUSE COMMITTEE ON LAND USE

March 31, 2009
3:00 P.M.

Hearing Room E

MEMBERS PRESENT:
Rep. Mary Nolan, Chair
Rep. Sal Esquivel, Vice-Chair
Rep. Chris Garrett, Vice-Chair
Rep. Brian Clem
Rep. Mitch Greenlick
Rep. Jean Cowan
Rep. Bruce Hanna
Rep. Matt Wingard

STAFF PRESENT:
Cheyenne Ross, Committee Administrator
Joshua Hoyt, Committee Assistant

MEASURES/ISSUES HEARD:
HB 2227 – Work Session
HB 3099 – Public Hearing

This recording log is in compliance with Senate and House Rules. For complete contents, refer to the digital audio recording.

HLU
3/31/2009 3:09:31 PM

3:09:37 PM Meeting Called to Order
3:09:43 PM Chair Nolan
3:09:47 PM HB 2227 - Work Session
3:10:29 PM MOTION: Vice-Chair Garrett moves -9 amendments
3:10:30 PM {Exhibit} 1: Vice-Chair Garrett
3:10:36 PM Chair Nolan
3:14:06 PM MOTION: Vice-Chair Esquivel moves -10 amendments
3:14:45 PM Chair Nolan
3:14:57 PM Vice-Chair Esquivel
3:19:14 PM Chair Nolan
3:19:30 PM Rep. Clem
3:19:57 PM Chair Nolan
3:20:14 PM Rep. Clem
3:20:48 PM Chair Nolan
3:21:01 PM Vice-Chair Esquivel
3:21:20 PM Chair Nolan
3:21:33 PM VOTE: 3-5-0 (-10)
3:21:34 PM Ayes: Hanna, Esquivel, Wingard; Nays: Cowan, Clem, Garrett, Nolan, Greenlick
3:22:04 PM Chair Nolan
3:22:08 PM Rep. Clem
3:23:44 PM Chair Nolan
3:23:46 PM Vice-Chair Garrett
3:24:22 PM Chair Nolan
3:24:25 PM Rep. Cowan
3:25:01 PM Chair Nolan
3:28:41 PM Rep. Wingard
3:28:48 PM Chair Nolan
3:28:52 PM Rep. Wingard
3:29:18 PM Chair Nolan
3:29:30 PM Rep. Clem
3:29:59 PM Rep. Wingard
3:30:34 PM Chair Nolan
3:30:58 PM Rep. Wingard
3:31:03 PM Chair Nolan
3:31:09 PM Rep. Hanna
3:31:46 PM Chair Nolan
3:32:04 PM Rep. Hanna
3:32:41 PM Chair Nolan

3:32:54 PM Richard Whitman, Director, Department of Land Conservation & Development
3:33:26 PM Rep. Greenlick
3:33:37 PM Whitman
3:33:39 PM Chair Nolan
3:33:40 PM Whitman
3:34:34 PM Chair Nolan
3:34:36 PM Rep. Hanna
3:35:40 PM Chair Nolan
3:35:50 PM Rep. Hanna
3:36:46 PM Chair Nolan
3:37:32 PM Vice-Chair Esquivel
3:39:38 PM Chair Nolan
3:39:43 PM Rep. Clem
3:39:57 PM Chair Nolan
3:40:12 PM VOTE: 5-3-0 (-9)
3:40:12 PM Ayes: Cowan, Clem, Garrett, Nolan, Greenlick; Nays: Hanna, Esquivel, Wingard
3:40:38 PM MOTION: Vice-Chair Garrett moves HB 2227 DO PASS as AMENDED
3:40:59 PM Rep. Wingard
3:41:34 PM Chair Nolan
3:41:52 PM Whitman
3:43:07 PM Chair Nolan
3:43:09 PM Rep. Wingard
3:45:25 PM Chair Nolan
3:45:35 PM Rep. Hanna
3:48:40 PM Chair Nolan
3:49:01 PM Rep. Greenlick
3:50:07 PM Chair Nolan
3:50:11 PM Vice-Chair Esquivel
3:50:38 PM Chair Nolan
3:52:50 PM VOTE: 5-3-0
3:52:50 PM Ayes: Cowan, Clem, Garrett, Nolan, Greenlick; Nays: Hanna, Esquivel, Wingard
3:52:51 PM CARRIER: CHAIR NOLAN will lead discussion on the floor
3:53:37 PM HB 3099 - Public Hearing
3:54:35 PM Rep. Clem
3:56:34 PM {Exhibit} 2: Shawn Cleave, Lobbyist, Oregon Farm Bureau
3:58:58 PM Chair Nolan
3:59:20 PM Jim Johnson, Land Use & Water Quality Planning Coordinator, Oregon Department of Agriculture
3:59:50 PM Chair Nolan
3:59:54 PM Rep. Clem
4:01:00 PM Chair Nolan
4:01:09 PM Johnson

4:03:15 PM Chair Nolan
4:03:18 PM Johnson
4:03:44 PM Chair Nolan
4:04:26 PM Mike Wagner, resident, Clackamas County
4:06:24 PM Chair Nolan
4:06:28 PM Stephen Kafoury, Lobbyist, Land Use Planners, American Chapter
4:08:10 PM Chair Nolan
4:08:12 PM {Exhibit} 3: Bruce Chapin, resident, Marion County
4:11:28 PM Chair Nolan
4:11:56 PM {Exhibit} 4: Ed Chotard, President, Jefferson County Farm Bureau
4:14:28 PM Chair Nolan
4:14:29 PM {Exhibit} 5: Jim Gilbert, President, Molalla Community Planning Organization
4:16:21 PM Chair Nolan
4:16:24 PM {Exhibit} 6: John DiLorenzo, Jr., Attorney, Western Fireworks Display
4:18:48 PM Chair Nolan
4:19:13 PM Rich Angstrom, Lobbyist, Aggregate Association
4:22:14 PM Chair Nolan
4:22:17 PM Rep. Clem
4:22:22 PM Chair Nolan
4:22:27 PM Kevin Wolf, Technical Services Manager, Glacier Northwest
4:24:58 PM Chair Nolan
4:25:01 PM {Exhibit} 7: Paul Hribernik, resident, Portland, Oregon
4:28:18 PM Chair Nolan
4:28:19 PM Rep. Clem
4:28:20 PM Chair Nolan
4:28:55 PM Dave Hunnicut, President, Oregonians in Action
4:31:50 PM Chair Nolan
4:31:51 PM Peter Kanagy, farmer, Benton County
4:33:30 PM Chair Nolan
4:33:43 PM {Exhibit} 8: Marge Easley, Lobbyist, League of Women Voters
4:35:44 PM Chair Nolan
4:36:17 PM {Exhibit} 9: Kate Kimball, Lobbyist, 1000 Friends of Oregon
4:38:21 PM Chair Nolan
4:38:56 PM Randy Tucker, Legislative Affairs Manager, Metro
4:40:17 PM {Exhibit} 10: Kathleen Brennan Hunter, Natural Areas Program Director, Metro
4:42:24 PM Vice-Chair Garrett
4:42:28 PM Rep. Clem
4:42:53 PM Tucker
4:43:11 PM Rep. Clem
4:43:40 PM Hunter
4:43:45 PM Rep. Clem
4:43:47 PM Hunter
4:44:03 PM Rep. Clem

4:44:14 PM Vice-Chair Garrett
4:44:42 PM {Exhibit} 11: Laurie Freeman Swanson, farmer, Clackamas County
4:47:37 PM {Exhibit} 12: Sam Sweeney, resident, Yamhill County
4:49:50 PM Vice-Chair Garrett
4:49:54 PM {Exhibit} 13: Paul Mather, Regional Manager, Oregon Department of Transportation
4:51:30 PM Vice-Chair Garrett
4:51:35 PM Rep. Clem
4:51:59 PM Mather
4:52:16 PM Rep. Clem
4:53:07 PM Mather
4:53:34 PM Rep. Clem
4:53:45 PM Vice-Chair Garrett
4:54:27 PM Nunzie Gould, resident, Deschutes County
4:57:14 PM Vice-Chair Garrett
4:57:16 PM Vice-Chair Esquivel
4:57:25 PM Gould
4:57:32 PM Vice-Chair Garrett
4:57:34 PM Brock Howell, Transportation Land Use Advocate, Environment Oregon
4:59:22 PM Vice-Chair Garrett
4:59:23 PM The following written testimony was submitted for the record without public testimony:
4:59:23 PM {Exhibit} 14: John P. Gallagher, resident, Marion County
4:59:23 PM {Exhibit} 15: Jimmy MacLeod, Executive Director, Rogue Advocates
4:59:23 PM {Exhibit} 16: Catherine Lesiak, Oregon Citizen, city & county not provided
4:59:23 PM {Exhibit} 17: Christine Scarzello, resident, Portland Oregon
4:59:23 PM {Exhibit} 18: Rosalie Pedroza, resident, Marion County
4:59:23 PM {Exhibit} 19: Molly Ellis, Board member of the Stafford Hamlet
4:59:23 PM {Exhibit} 20: Michael Patrick Bidwell, resident, Portland Oregon
4:59:23 PM {Exhibit} 21: Larry Kelley, resident, Portland Oregon
4:59:23 PM {Exhibit} 22: Michael JamesLong, resident, Lane County
4:59:23 PM {Exhibit} 23: Jack Remington, resident, Deschutes County
4:59:23 PM {Exhibit} 24: Nancy Charlton, resident, Washington County
4:59:23 PM {Exhibit} 25: Jim & Dory Delp, residents, Deschutes County
4:59:23 PM {Exhibit} 26: Nancy Nichols, resident, Lane County
4:59:23 PM {Exhibit} 27: Bruce Sahagian, resident, Yamhill County
4:59:23 PM {Exhibit} 28: Ann & Patrick Frodel, residents, Hood River County
4:59:23 PM {Exhibit} 29: Joan Batten, resident, Clackamas County
4:59:23 PM {Exhibit} 30: Jack Hallin, resident, Portland Oregon
4:59:23 PM {Exhibit} 31: Fran Greenlee, resident, Deschutes County
4:59:23 PM {Exhibit} 32: Terry & Mark Weiss, residents, Benton County
4:59:23 PM {Exhibit} 33: Jerrilynn Nall, Oregon Citizen, city & county not provided

4:59:23 PM {Exhibit} 34: Brent Carpenter, Oregon Citizen, city & county not provided
4:59:23 PM {Exhibit} 35: Harry Ketrenos, resident, Deschutes County
4:59:23 PM {Exhibit} 36: Michael & Karen Lippsmeyer, residents, Polk County
4:59:23 PM {Exhibit} 37: Nicole Stephens, resident, Deschutes County
4:59:23 PM {Exhibit} 38: Pat Wolter, resident, Washington County
4:59:23 PM {Exhibit} 39: Linda Sebring, resident, Benton County
4:59:23 PM {Exhibit} 40: James Gindlesperger, resident, Deschutes County
4:59:23 PM {Exhibit} 41: Leigh Anderson, resident, Washington County
4:59:23 PM {Exhibit} 42: Chrisandra Sarda, Oregon Citizen, city & county not provided
4:59:23 PM {Exhibit} 43: Scott Sinn, Oregon Citizen, city & county not provided
4:59:23 PM {Exhibit} 44: Ralph L. Reed, resident, Benton County
4:59:23 PM {Exhibit} 45: David Peter, resident, Clackamas County
4:59:23 PM {Exhibit} 46: Martin Seybold, resident, Josephine County
4:59:23 PM {Exhibit} 47: Leslie Ketrenos, resident, Deschutes County
4:59:23 PM {Exhibit} 48: Jenny Owen, Oregon Citizen, city & county not provided
4:59:23 PM {Exhibit} 49: Tony Oliver, resident, Deschutes County
4:59:23 PM {Exhibit} 50: Bob Horning, resident, Deschutes County
4:59:47 PM Meeting Adjourned

HLU
3/31/2009 3:09:31 PM

3:10:30 PM {Exhibit} 1: HB 2227, -9 amendments, staff, 7 pp
3:56:34 PM {Exhibit} 2: HB 3099, written testimony, Shawn Cleave, 3 pp
4:08:12 PM {Exhibit} 3: HB 3099, written testimony, Bruce Chapin, 6 pp
4:11:56 PM {Exhibit} 4: HB 3099, written testimony, Ed Chotard, 1 p
4:14:29 PM {Exhibit} 5: HB 3099, written testimony, Jim Gilbert, 1 p
4:16:24 PM {Exhibit} 6: HB 3099, written testimony, John DiLorenzo, 1 p
4:25:01 PM {Exhibit} 7: HB 3099, written testimony, Paul Hribernik, 110 pp
4:33:43 PM {Exhibit} 8: HB 3099, written testimony, Marge Easley, 1 p
4:36:17 PM {Exhibit} 9: HB 3099, written testimony, Kate Kimball, 4 p
4:40:17 PM {Exhibit} 10: HB 3099, written testimony, Kathleen Brennan Hunter, 22 pp
4:44:42 PM {Exhibit} 11: HB 3099, written testimony, Laurie Freeman Swanson, 3 pp
4:47:37 PM {Exhibit} 12: HB 3099, written testimony, Sam Sweeney, 2 pp
4:49:54 PM {Exhibit} 13: HB 3099, written testimony, Paul Mather, 2 pp
4:59:23 PM {Exhibit} 14: HB 3099, written testimony, John P. Gallagher, 1 p
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4:59:23 PM {Exhibit} 31: HB 3099, written testimony, Fran Greenlee, resident, 1 p
4:59:23 PM {Exhibit} 32: HB 3099, written testimony, Terry & Mark Weiss, 1 p
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#2 enjoyed

Senate Committee on Business and Transportation

Room 331, **503-986-1508**

2009 Members

Chair
Sen. Rick Metsger

Vice-chair
Sen. Bruce Starr

Members
Sen. Larry George
Sen. Martha Schrader
Sen. Joanne Verger

1 p.m., May 21, 2009 Audio
ROOM: HR B

Agenda

1: Work Session, HB2233, *Increases insurance coverage required for applicant or holder of commercial driver training school certificate.*

2: Work Session, HB2950, *Changes name of Residential Structures Board to Residential and Manufactured Structures Board.*

3: Public Hearing and Work Session, HB2564, *Modifies requirements relating to hours of operation for testing stations that conduct motor vehicle pollution control system inspections.*

4: Public Hearing and Work Session, HB2569, *Establishes consular corps registration plates for use on motor vehicles.*

5: Public Hearing and Work Session, HB3099, *Modifies conditional and outright permitted uses of land zoned for exclusive farm use.*

» Return to committee page

2009 SESSION

House Bill 3099

RSS FEED FOR THIS BILL COMMENT ON THIS BILL

RELATING TO USE OF LAND ZONED FOR EXCLUSIVE FARM USE.

Modifies conditional and outright permitted uses of land zoned for exclusive farm use.

BILL PROGRESS

INTRODUCED IN HOUSE | PASSED HOUSE | PASSED SENATE | SIGNED INTO LAW

Sponsor

By Representative CLEM (at the request of Oregon Farm Bureau)

Full measure text

FROM THE OFFICIAL LEGISLATURE SITE

- » Introduced (PDF)
- » House Amendments (PDF)
- » A-Engrossed (PDF)
- » Senate Amendments to A-Engrossed (PDF)
- » B-Engrossed (PDF)
- » Conference Committee Amendments to B-Engrossed (PDF)
- » Enrolled (PDF)
- » Measure summaries and impact statements

Measure activity

HOUSE SENATE

- **Mar 9, 2009:** First reading. Referred to Speaker's desk.
- **Mar 16, 2009:** Referred to Land Use.
- **Mar 31, 2009:** Public Hearing held.
- **Apr 2, 2009:** Public Hearing held.
- **Apr 21, 2009:** Work Session held.
- **Apr 23, 2009:** Work Session held.
- **Apr 28, 2009:** Work Session held.
- **May 6, 2009:** Recommendation: Do pass with amendments and be printed A-Engrossed.
- **May 7, 2009:** Rule suspended. Second reading.
- **May 8, 2009:** Third reading. Carried by Clem. Passed.
- **May 11, 2009:** First reading. Referred to President's desk.
- **May 13, 2009:** Referred to Business and Transportation.
- **May 21, 2009:** Public Hearing held.
- **May 28, 2009:** Work Session held.
- **Jun 2, 2009:** Recommendation: Do pass with amendments to the A-Eng. bill. (Printed B-Eng.)
- **Jun 3, 2009:** Second reading.
- **Jun 4, 2009:** Carried over to 06-05 by unanimous consent.
- **Jun 5, 2009:** Carried over to 06-08 by unanimous consent.
- **Jun 8, 2009:** Carried over to 06-09 by unanimous consent.
- **Jun 9, 2009:** Third reading. Carried by Schrader. Passed.
- **Jun 9, 2009:** Boquist declared potential conflict of interest.
- **Jun 11, 2009:** House refused to concur in Senate amendments.
- **Jun 15, 2009:** Representatives Nolan, Esquivel, Garrett appointed House conferees.
- **Jun 15, 2009:** Senators Metsger, Boquist and Schrader appointed Senate conferees.
- **Jun 26, 2009:** Work Session held.
- **Jun 26, 2009:** Conference Committee Recommendation: House concur in Senate amendments dated June 2, 2009 and bill be further amended and repassed.
- **Jun 27, 2009:** Conference Committee Report read in Senate.

Committee meetings on this measure

House Land Use Committee
3:00 pm, March 31, 2009
Public Hearing
Room: HR E
Agenda item: 2
AUDIO

House Land Use Committee
3:00 pm, April 2, 2009
Public Hearing
Room: HR E
Agenda item: 1
AUDIO

House Land Use Committee
3:00 pm, April 21, 2009
Work Session
Room: HR E
Agenda item: 4
AUDIO

House Land Use Committee
3:00 pm, April 23, 2009
Work Session
Room: HR E
Agenda item: 5
AUDIO

House Land Use Committee
3:00 pm, April 28, 2009
Work Session
Room: HR E
Agenda item: 4
AUDIO

Senate Business and Transportation Committee
1:00 pm, May 21, 2009
Public Hearing and Work Session
Room: HR B
Agenda item: 5
AUDIO

Senate Business and Transportation Committee
1:00 pm, May 27, 2009
Work Session

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

SA to A-Eng. HB 3099

LC 1779/HB 3099-A10

SENATE AMENDMENTS TO
A-ENGROSSED HOUSE BILL 3099

By COMMITTEE ON BUSINESS AND TRANSPORTATION

June 2

On page 1 of the printed A-engrossed bill, delete lines 6 through 28 and delete pages 2 through 25 and insert:

' { + SECTION 1. + } ORS 215.213 is amended to read:

' 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

' { - (a) Public or private schools, including all buildings essential to the operation of a school. - }

' { - (b) - } { + (a) + } Churches and cemeteries in conjunction with churches.

' { - (c) - } { + (b) + } The propagation or harvesting of a forest product.

' { - (d) - } { + (c) + } Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

' { - (e) - } { + (d) + } A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

' { - (f) - } { + (e) + } Nonresidential buildings customarily provided in conjunction with farm use.

' { - (g) - } { + (f) + } Primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

' { - (h) - } { + (g) + } Operations for the exploration for and production of geothermal resources as defined by ORS 522.005

and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

' { - (i) - } { + (h) + } Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

' { - (j) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation. - }

' { - (k) - } { + (i) + } One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph { - (t) - } { + (q) + } of this subsection.

' { - (L) The breeding, kenneling and training of greyhounds for racing in any county with a population of more than 200,000 in which there is located a greyhound racing track or in a county with a population of more than 200,000 that is contiguous to such a county. - }

' { - (m) - } { + (j) + } Climbing and passing lanes within the right of way existing as of July 1, 1987.

' { - (n) - } { + (k) + } Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

' { - (o) - } { + (L) + } Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

' { - (p) - } { + (m) + } Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

' { - (q) - } { + (n) + } A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

' { - (r) - } { + (o) + } Creation { - of - } , restoration { - of - } or enhancement of wetlands.

' { - (s) - } { + (p) + } A winery, as described in ORS 215.452.

' { - (t) - } { + (q) + } Alteration, restoration or replacement of a lawfully established dwelling that:

' (A) Has intact exterior walls and roof structure;
' (B) Has indoor plumbing { + , + } consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system { + , that is, if not in compliance with current building codes or construction standards, consistent with the customary construction techniques used during or after the era in which the dwelling was constructed + };
' (C) Has interior wiring for interior lights { + that is, if not in compliance with current building codes or construction standards, consistent with the customary construction techniques used during or after the era in which the dwelling was constructed + };
' (D) Has a heating system { + that is, if not in compliance with current building codes or construction standards, consistent with the customary construction techniques used during or after the era in which the dwelling was constructed + }; and
' (E) In the case of replacement:
' (i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and
' (ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.
' { - (u) - } { + (r) + } Farm stands if:
' (A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than

25 percent of the total annual sales of the farm stand; and

' (B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

' { - (v) - } { + (s) + } An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, 'armed forces reserve center' includes an armory or National Guard support facility.

' { - (w) - } { + (t) + } A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. { + An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. + } As used in this paragraph, 'model aircraft' means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

' { - (x) - } { + (u) + } A facility for the processing of farm crops, or the production of biofuel as defined in ORS 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

' { - (y) - } { + (v) + } Fire service facilities providing rural fire protection services.

' { - (z) - } { + (w) + } Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

' { - (aa) - } { + (x) + } Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

' (A) A public right of way;

' (B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

' (C) The property to be served by the utility.

' { - (bb) - } { + (y) + } Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or

silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

' (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

' (a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

' (A) Consists of 20 or more acres; and

' (B) Is not smaller than the average farm or woodlot in the county producing at least $2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

' (b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

' (A) Has produced at least $20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $20,000 in annual gross farm income; or

' (B) Is a woodlot capable of producing an average over the growth cycle of $20,000 in gross annual income.

' (c) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection { - (1)(x) - } { + (1)(u) + } of this section.

' (d) Operations conducted for:

' (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection { - (1)(h) - } { + (1)(g) + } of this section;

' (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

' (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

' (D) Processing of other mineral resources and other subsurface resources.

' (e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, 'yurt' means a round, domed shelter of cloth or canvas on a collapsible frame

with no plumbing, sewage disposal hookup or internal cooking appliance.

' (f) Golf courses { + on land determined not to be high-value farmland as defined in ORS 195.300 + }.

' (g) Commercial utility facilities for the purpose of generating power for public use by sale.

' (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

' (i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

' (j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

' (k) Dog kennels { - not described in subsection (1)(L) of this section - } .

' (L) Residential homes as defined in ORS 197.660, in existing dwellings.

' (m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

' (n) Home occupations as provided in ORS 215.448.

' (o) Transmission towers over 200 feet in height.

' (p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

' (q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

' (r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

' (s) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

' (t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

' (u) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary. As used in this paragraph:

' (A) 'Living history museum' means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

' (B) 'Local historical society' means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

' (v) Operations for the extraction and bottling of water.

' { - (w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks. - }

' { - (x) - } { + (w) + } A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the

business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

' { + (x) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located. + }

' (3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

' (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

' (b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding,

location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

' (c) Complies with such other conditions as the governing body or its designee considers necessary.

' (4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

' (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

' (b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

' (c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

' (5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

' (a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

' (b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

' (6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

' (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

' (a) Only one lot or parcel exists if:

' (A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

' (B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

' (b) 'Contiguous' means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

' (8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around

the dwelling.

' (9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

' (10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

' (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

' (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

' { + SECTION 2. + } ORS 215.283 is amended to read:

' 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

' { - (a) Public or private schools, including all buildings essential to the operation of a school. - }

' { - (b) - } { + (a) + } Churches and cemeteries in conjunction with churches.

' { - (c) - } { + (b) + } The propagation or harvesting of a forest product.

' { - (d) - } { + (c) + } Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

' { - (e) - } { + (d) + } A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

' { - (f) - } { + (e) + } Primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

' { - (g) - } { + (f) + } Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

' { - (h) - } { + (g) + } Operations for the exploration for

minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

' { - (i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation. - }

' { - (j) The breeding, kenneling and training of greyhounds for racing. - }

' { - (k) - } { + (h) + } Climbing and passing lanes within the right of way existing as of July 1, 1987.

' { - (L) - } { + (i) + } Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

' { - (m) - } { + (j) + } Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

' { - (n) - } { + (k) + } Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

' { - (o) - } { + (L) + } A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

' { - (p) - } { + (m) + } Creation { - of - } , restoration { - of - } or enhancement of wetlands.

' { - (q) - } { + (n) + } A winery, as described in ORS 215.452.

' { - (r) - } { + (o) + } Farm stands if:

' (A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

' (B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

' { - (s) - } { + (p) + } Alteration, restoration or replacement of a lawfully established dwelling that:

' (A) Has intact exterior walls and roof structure;

' (B) Has indoor plumbing { + , + } consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system { + , that is, if not in compliance with current building codes or construction standards, consistent with the customary construction techniques used during or after the era in which the dwelling was constructed + };

' (C) Has interior wiring for interior lights { + that is, if not in compliance with current building codes or construction standards, consistent with the customary construction techniques used during or after the era in which the dwelling was

constructed + };

' (D) Has a heating system { + that is, if not in compliance with current building codes or construction standards, consistent with the customary construction techniques used during or after the era in which the dwelling was constructed + }; and

' (E) In the case of replacement:

' (i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

' (ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

' { - (t) - } { + (q) + } A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. { + An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. + } As used in this paragraph, 'model aircraft' means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

' { - (u) - } { + (r) + } A facility for the processing of farm crops, or the production of biofuel as defined in ORS

315.141, that is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

' { - (v) - } { + (s) + } Fire service facilities providing rural fire protection services.

' { - (w) - } { + (t) + } Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

' { - (x) - } { + (u) + } Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

' (A) A public right of way;

' (B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

' (C) The property to be served by the utility.

' { - (y) - } { + (v) + } Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

' { - (z) - } { + (w) + } A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

' (2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

' (a) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection { - (1)(u) - } { + (1)(r) + } of this section.

' (b) Operations conducted for:

' (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection { - (1)(g) - } { + (1)(f) + } of this section;

' (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

' (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

' (D) Processing of other mineral resources and other subsurface resources.

' (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for

overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, 'yurt' means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

' (d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

' (e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

' (f) Golf courses { + on land determined not to be high-value farmland, as defined in ORS 195.300 + }.

' (g) Commercial utility facilities for the purpose of generating power for public use by sale.

' (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

' (i) Home occupations as provided in ORS 215.448.

' (j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

' (k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of

Environmental Quality together with equipment, facilities or buildings necessary for its operation.

' (L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection { - (1)(s) - } { + (1)(p) + } of this section.

' (m) Transmission towers over 200 feet in height.

' (n) Dog kennels { - not described in subsection (1)(j) of this section - } .

' (o) Residential homes as defined in ORS 197.660, in existing dwellings.

' (p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

' (q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

' (r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

' (s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

' (t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

' (u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

' (v) Operations for the extraction and bottling of water.

' (w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

' (x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

' (A) 'Living history museum' means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

' (B) 'Local historical society' means the local historical society recognized by the county governing body and organized under ORS chapter 65.

' { - (y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks. - }

' { - (z) - } { + (y) + } A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

' { + (z) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located. + }

' (3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

' (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

' (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

' { + SECTION 2a. + } { + The provisions of ORS 197.047, 215.503 and 215.513 concerning notice of a new or amended statute, ordinance or administrative rule do not apply to section 16 of this 2009 Act, to the amendments to ORS 215.213 and 215.283 by sections 1 and 2 of this 2009 Act or to any other amendments to or repeal of statutes by sections 3 to 13 and 17 of this 2009 Act. + }

' { + SECTION 3. + } ORS 197.065 is amended to read:

' 197.065. (1) Prior to each legislative session, the Land Conservation and Development Commission shall submit to the appropriate legislative committee a written report analyzing applications approved and denied for:

' (a) New and replacement dwellings under:

' (A) ORS 215.213 { - (1)(e) and (g) - } { + (1)(d) and (f) + }, (2)(a) and (b), (3) and (4), 215.283 { - (1)(e) and (f) - } { + (1)(d) and (e) + }, 215.284 and 215.705; and

' (B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

' (b) Divisions of land under:

' (A) ORS 215.263 (2), (4) and (5); and

' (B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

' (c) Dwellings and land divisions approved for marginal lands under:

' (A) ORS 215.317 or 215.327; and

' (B) Any land zoned for forest use under any statewide planning goal that relates to forestland; and

' (d) Such other matters pertaining to protection of agricultural or forest land as the commission deems appropriate.

' (2) The governing body of each county shall provide the Department of Land Conservation and Development with a report of its actions involving those dwellings, land divisions and land designations upon which the commission must report to the appropriate legislative committee under subsection (1) of this section. The department shall establish, after consultation with county governing bodies, an annual reporting period and may establish a schedule for receiving county reports at intervals within the reporting period. The report shall be on a standard form with a standardized explanation adopted by the commission and shall be eligible for grants by the commission. The report shall include the findings for each action except actions involving:

' (a) Dwellings authorized by ORS 215.213 { - (1)(e) - } { + (1)(d) + } or 215.283 { - (1)(e) - } { + (1)(d) + }; or

' (b) Land divisions authorized by ORS 215.263 (2) creating parcels as large as or larger than a minimum size established by the commission under ORS 215.780.

' (3) The governing body of each county shall, upon request by the department, provide the department with other information necessary to carry out subsection (1) of this section.

' { + SECTION 4. + } ORS 215.203 is amended to read:

' 215.203. (1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

' (2)(a) As used in this section, 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. 'Farm use' includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. 'Farm use' also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. 'Farm use' also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. 'Farm use' includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. 'Farm use' does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).

' (b) 'Current employment' of land for farm use includes:

' (A) Farmland, the operation or use of which is subject to any farm-related government program;

' (B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

' (C) Land planted in orchards or other perennials, other than land specified in subparagraph (D) of this paragraph, prior to maturity;

' (D) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

' (E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

' (F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 { - (1)(x) - } { + (1)(u) + } and 215.283 { - (1)(u) - } { + (1)(r) + } and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

' (G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

' (H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

' (I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;

' (J) Any land described under ORS 321.267 (3) or 321.824 (3);

' (K) Land used for the primary purpose of obtaining a profit in money by breeding, raising, kenneling or training of greyhounds for racing; and

' (L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

' (i) Only the crops of the landowner are being processed;

' (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or

' (iii) The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

' (c) As used in this subsection, 'accepted farming practice ' means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

' (3) 'Cultured Christmas trees' means trees:

' (a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

' (b) Of a marketable species;

' (c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

' (d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

' { + SECTION 5. + } ORS 215.246 is amended to read:

' 215.246. (1) The uses allowed under ORS 215.213 { - (1)(bb) - } { + (1)(y) + } and 215.283 { - (1)(y) - } { + (1)(v) + }:

' (a) Require a determination by the Department of Environmental Quality, in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.

' (b) Are not subject to other provisions of ORS 215.213 or 215.283 or to the provisions of ORS 215.275 or 215.296.

' (2) The use of a tract of land on which the land application of reclaimed water, agricultural or industrial process water or biosolids has occurred under this section may not be changed to allow a different use unless:

' (a) The tract is included within an acknowledged urban growth boundary;

' (b) The tract is rezoned to a zone other than an exclusive farm use zone;

' (c) The different use of the tract is a farm use as defined in ORS 215.203; or

' (d) The different use of the tract is a use allowed under:

' (A) ORS 215.213 { - (1)(c), (e) to (g), (k), (m) to (q), (s) to (u), (x), (z) or (aa) - } { + (1)(b), (d) to (f), (i) to (n), (p) to (r), (u), (w) or (x) + };

' (B) ORS 215.213 (2)(a) to (c), (i), (m) or (p) to (r);

' (C) ORS 215.283 { - (1)(c), (e), (f), (k) to (o), (q) to (s), (u), (w) or (x) - } { + (1)(b), (d), (e), (h) to (L), (n) to (p), (r), (t) or (u) + }; or

' (D) ORS 215.283 (2)(a), (j), (L) or (p) to (s).

' (3) When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by the Department of Environmental Quality, the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.

' (4) The uses allowed under this section include:

' (a) The treatment of reclaimed water, agricultural or industrial process water or biosolids that occurs as a result of the land application;

' (b) The establishment and use of facilities, including buildings, equipment, aerated and nonaerated water impoundments, pumps and other irrigation equipment, that are accessory to and reasonably necessary for the land application to occur on the subject tract;

' (c) The establishment and use of facilities, including buildings and equipment, that are not on the tract on which the land application occurs for the transport of reclaimed water,

agricultural or industrial process water or biosolids to the tract on which the land application occurs if the facilities are located within:

' (A) A public right of way; or

' (B) Other land if the landowner provides written consent and the owner of the facility complies with ORS 215.275 (4); and

' (d) The transport by vehicle of reclaimed water or agricultural or industrial process water to a tract on which the water will be applied to land.

' (5) Uses not allowed under this section include:

' (a) The establishment and use of facilities, including buildings or equipment, for the treatment of reclaimed water, agricultural or industrial process water or biosolids other than those treatment facilities related to the treatment that occurs as a result of the land application; or

' (b) The establishment and use of utility facility service lines allowed under ORS 215.213 { - (1)(aa) - } { + (1)(x) + } or 215.283 { - (1)(x) - } { + (1)(u) + }.

' { + SECTION 6. + } ORS 215.249 is amended to read:

' 215.249. Notwithstanding ORS 215.263, the governing body of a county or its designee may not approve a proposed division of land in an exclusive farm use zone for the land application of reclaimed water, agricultural or industrial process water or biosolids described in ORS 215.213 { - (1)(bb) - } { + (1)(y) + } or 215.283 { - (1)(y) - } { + (1)(v) + }.

' { + SECTION 7. + } ORS 215.251 is amended to read:

' 215.251. Nothing in ORS 215.213 { - (1)(bb) - } { + (1)(y) + }, 215.246 to 215.249 or 215.283 { - (1)(y) - } { + (1)(v) + } affects whether the land application of a substance not described in ORS 215.213 { - (1)(bb) - } { + (1)(y) + }, 215.246 to 215.249 or 215.283 { - (1)(y) - } { + (1)(v) + } is a farm use as defined in ORS 215.203.

' { + SECTION 8. + } ORS 215.263 is amended to read:

' 215.263. (1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body or its designee of the county in which the land is situated. The governing body of a county by ordinance shall require such prior review and approval for such divisions of land within exclusive farm use zones established within the county.

' (2) The governing body of a county or its designee may approve a proposed division of land to create parcels for farm use as defined in ORS 215.203 if it finds:

' (a) That the proposed division of land is appropriate for the continuation of the existing commercial agricultural enterprise within the area; or

' (b) The parcels created by the proposed division are not smaller than the minimum size established under ORS 215.780.

' (3) The governing body of a county or its designee may approve a proposed division of land in an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or 215.283 (2) if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing body may establish other criteria as it considers necessary.

' (4) In western Oregon, as defined in ORS 321.257, but not in

the Willamette Valley, as defined in ORS 215.010, the governing body of a county or its designee:

' (a) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:

' (A) The nonfarm dwellings have been approved under ORS 215.213 (3) or 215.284 (2) or (3);

' (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

' (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780;

' (D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and

' (E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

' (b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:

' (A) The nonfarm dwellings have been approved under ORS 215.284 (2) or (3);

' (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

' (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;

' (D) The parcels for the nonfarm dwellings are:

' (i) Not capable of producing more than at least 50 cubic feet per acre per year of wood fiber; and

' (ii) Composed of at least 90 percent Class VI through VIII soils;

' (E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and

' (F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

' (5) In eastern Oregon, as defined in ORS 321.805, the governing body of a county or its designee:

' (a) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:

' (A) The nonfarm dwellings have been approved under ORS 215.284 (7);

' (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

' (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established

under ORS 215.780;

' (D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and

' (E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

' (b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:

' (A) The nonfarm dwellings have been approved under ORS 215.284 (7);

' (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

' (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;

' (D) The parcels for the nonfarm dwellings are:

' (i) Not capable of producing more than at least 20 cubic feet per acre per year of wood fiber; and

' (ii) Either composed of at least 90 percent Class VII and VIII soils, or composed of at least 90 percent Class VI through VIII soils and are not capable of producing adequate herbaceous forage for grazing livestock. The Land Conservation and Development Commission, in cooperation with the State Department of Agriculture and other interested persons, may establish by rule objective criteria for identifying units of land that are not capable of producing adequate herbaceous forage for grazing livestock. In developing the criteria, the commission shall use the latest information from the United States Natural Resources Conservation Service and consider costs required to utilize grazing lands that differ in acreage and productivity level;

' (E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and

' (F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

' (6) This section does not apply to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.

' (7) This section does not apply to divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property.

' (8) The governing body of a county may not approve any proposed division of a lot or parcel described in ORS 215.213 { - (1)(e) or (k) - } { + (1)(d) or (i) + }, 215.283 { - (1)(e) - } { + (1)(d) + } or (2)(L) or 215.284 (1), or a proposed division that separates a processing facility from the farm operation specified in ORS 215.213 { - (1)(x) - } { +

(1)(u) + } or 215.283 { - (1)(u) - } { + (1)(r) + }.

' (9) The governing body of a county may approve a proposed division of land in an exclusive farm use zone to create a parcel with an existing dwelling to be used:

' (a) As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7); and

' (b) For historic property that meets the requirements of ORS 215.213 { - (1)(q) - } { + (1)(n) + } and 215.283 { - (1)(o) - } { + (1)(L) + }.

' (10)(a) Notwithstanding ORS 215.780, the governing body of a county or its designee may approve a proposed division of land provided:

' (A) The land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels; and

' (B) A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.

' (b) A parcel created pursuant to this subsection that does not contain a dwelling:

' (A) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

' (B) May not be considered in approving or denying an application for siting any other dwelling;

' (C) May not be considered in approving a redesignation or rezoning of forestlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and

' (D) May not be smaller than 25 acres unless the purpose of the land division is:

' (i) To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or

' (ii) To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.

' (11) The governing body of a county or its designee may approve a division of land smaller than the minimum lot or parcel size described in ORS 215.780 (1) and (2) in an exclusive farm use zone provided:

' (a) The division is for the purpose of establishing a church, including cemeteries in conjunction with the church;

' (b) The church has been approved under ORS 215.213 (1) or 215.283 (1);

' (c) The newly created lot or parcel is not larger than five acres; and

' (d) The remaining lot or parcel, not including the church, meets the minimum lot or parcel size described in ORS 215.780 (1) and (2) either by itself or after it is consolidated with another lot or parcel.

' (12) The governing body of a county may not approve a division of land for nonfarm use under subsection (3), (4), (5), (9), (10) or (11) of this section unless any additional tax imposed for the change in use has been paid.

' (13) Parcels used or to be used for training or stabling facilities may not be considered appropriate to maintain the

existing commercial agricultural enterprise in an area where other types of agriculture occur.

' { + SECTION 9. + } ORS 215.275 is amended to read:

' 215.275. (1) A utility facility established under ORS 215.213 { - (1)(d) - } { + (1)(c) + } or 215.283 { - (1)(d) - } { + (1)(c) + } is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

' (2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 { - (1)(d) - } { + (1)(c) + } or 215.283 { - (1)(d) - } { + (1)(c) + } must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

' (a) Technical and engineering feasibility;

' (b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

' (c) Lack of available urban and nonresource lands;

' (d) Availability of existing rights of way;

' (e) Public health and safety; and

' (f) Other requirements of state or federal agencies.

' (3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

' (4) The owner of a utility facility approved under ORS 215.213 { - (1)(d) - } { + (1)(c) + } or 215.283 { - (1)(d) - } { + (1)(c) + } shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

' (5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 { - (1)(d) - } { + (1)(c) + } or 215.283 { - (1)(d) - } { + (1)(c) + } to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

' (6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

' { + SECTION 10. + } ORS 215.417 is amended to read:

' 215.417. (1) If a permit is approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293

or 215.317 to 215.438 or under county legislation or regulation, the permit shall be valid for four years.

' (2) An extension of a permit described in subsection (1) of this section shall be valid for two years.

' (3) For the purposes of this section, 'residential development' only includes the dwellings provided for under ORS 215.213 { - (1)(t) - } { + (1)(q) + }, (3) and (4), 215.283 { - (1)(s) - } { + (1)(p) + }, 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3).

' { + SECTION 11. + } ORS 215.452 is amended to read:

' 215.452. (1) A winery, authorized under ORS 215.213 { - (1)(s) - } { + (1)(p) + } and 215.283 { - (1)(q) - } { + (1)(n) + }, is a facility that produces wine with a maximum annual production of:

' (a) Less than 50,000 gallons and that:

' (A) Owns an on-site vineyard of at least 15 acres;

' (B) Owns a contiguous vineyard of at least 15 acres;

' (C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or

' (D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or

' (b) At least 50,000 gallons and no more than 100,000 gallons and that:

' (A) Owns an on-site vineyard of at least 40 acres;

' (B) Owns a contiguous vineyard of at least 40 acres;

' (C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or

' (D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph.

' (2) The winery described in subsection (1)(a) or (b) of this section shall allow only the sale of:

' (a) Wines produced in conjunction with the winery; and

' (b) Items directly related to wine, the sales of which are incidental to retail sale of wine on-site. Such items include those served by a limited service restaurant, as defined in ORS 624.010.

' (3) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards, described in subsection (1)(a) and (b) of this section, have been planted or that the contract has been executed, as applicable.

' (4) A local government shall adopt findings for each of the standards described in paragraphs (a) and (b) of this subsection. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:

' (a) Establishment of a setback, not to exceed 100 feet, from all property lines for the winery and all public gathering places; and

' (b) Provision of direct road access, internal circulation and parking.

' (5) A local government shall also apply local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access, airport safety or other regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

' { + SECTION 12. + } ORS 215.780 is amended to read:

' 215.780. (1) Except as provided in subsection (2) of this section, the following minimum lot or parcel sizes apply to all counties:

' (a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;

' (b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and

' (c) For land designated forestland, at least 80 acres.

' (2) A county may adopt a lower minimum lot or parcel size than that described in subsection (1) of this section in any of the following circumstances:

' (a) By demonstrating to the Land Conservation and Development Commission that it can do so while continuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning goals adopted under ORS 197.230.

' (b) To allow the establishment of a parcel for a dwelling on land zoned for forest use or mixed farm and forest use, subject to the following requirements:

' (A) The parcel established shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;

' (B) The dwelling existed prior to June 1, 1995;

' (C)(i) The remaining parcel, not containing the dwelling, meets the minimum land division standards of the zone; or

' (ii) The remaining parcel, not containing the dwelling, is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone; and

' (D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal.

' (c) In addition to the requirements of paragraph (b) of this subsection, if the land is zoned for mixed farm and forest use the following requirements apply:

' (A) The minimum tract eligible under paragraph (b) of this subsection is 40 acres.

' (B) The tract shall be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321.

' (C) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

' (d) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of subsection (1)(c) of this section or paragraph (a) of this subsection. Parcels created pursuant to this subsection:

' (A) Shall not be eligible for siting of a new dwelling;

' (B) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;

' (C) Shall not, as a result of the land division, be used to justify redesignation or rezoning of resource lands;

' (D) Shall not result in a parcel of less than 35 acres, except:

' (i) Where the purpose of the land division is to facilitate an exchange of lands involving a governmental agency; or

' (ii) Where the purpose of the land division is to allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland; and

' (E) If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than the minimum lot or parcel size of the zone.

' (e) To allow a division of a lot or parcel zoned for forest use or mixed farm and forest use under a statewide planning goal protecting forestland if:

' (A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

' (B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213 { - (1)(t) - } { + (1)(q) + } or 215.283 { - (1)(s) - } { + (1)(p) + };

' (C) Except for one lot or parcel, each lot or parcel created under this paragraph is between two and five acres in size;

' (D) At least one dwelling is located on each lot or parcel created under this paragraph; and

' (E) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this paragraph shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use.

' (f) To allow a proposed division of land in a forest zone or a mixed farm and forest zone as provided in ORS 215.783.

' (3) A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed under subsections (2)(e) and (4) of this section. The record shall be readily available to the public.

' (4) A lot or parcel may not be divided under subsection (2)(e) of this section if an existing dwelling on the lot or parcel was approved under:

' (a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

' (b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under a statewide planning goal protecting forestland.

' (5) A county with a minimum lot or parcel size acknowledged by the commission pursuant to ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under ORS 197.628 to 197.650 that is smaller than those prescribed in subsection (1) of this section need not comply with subsection (2) of this section.

' (6)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this section shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. An applicant for the creation of a parcel pursuant to subsection (2)(d) of this section shall provide evidence that a restriction on the newly created parcel has been recorded with the county clerk of the county where the property

is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under subsection (2) of this section.

' (b) A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forestland.

' (c) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this subsection. The record shall be readily available to the public.

' (7) A landowner allowed a land division under subsection (2) of this section shall sign a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

' { + SECTION 13. + } ORS 308A.056 is amended to read:

' 308A.056. (1) As used in ORS 308A.050 to 308A.128, 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by:

' (a) Raising, harvesting and selling crops;

' (b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees or the produce thereof;

' (c) Dairying and selling dairy products;

' (d) Stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows;

' (e) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

' (f) On-site constructing and maintaining equipment and facilities used for the activities described in this subsection;

' (g) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products raised for human or animal use on land described in this section; or

' (h) Using land described in this section for any other agricultural or horticultural use or animal husbandry or any combination thereof.

' (2) 'Farm use' does not include the use of land subject to timber and forestland taxation under ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood).

' (3) For purposes of this section, land is currently employed for farm use if the land is:

' (a) Farmland, the operation or use of which is subject to any farm-related government program;

' (b) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

' (c) Land planted in orchards or other perennials, other than land specified in paragraph (d) of this subsection, prior to maturity;

' (d) Land not in an exclusive farm use zone that has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

' (e) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with farm use land and that is not currently being used for any economic farm use;

' (f) Except for land under a single family dwelling, land under buildings supporting accepted farming practices, including the processing facilities allowed by ORS 215.213 { - (1)(x) - } { + (1)(u) + } and 215.283 { - (1)(u) - } { + (1)(r) + } and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

' (g) Water impoundments lying in or adjacent to and in common ownership with farm use land;

' (h) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

' (i) Land lying idle for no more than one year when the absence of farming activity is the result of the illness of the farmer or a member of the farmer's immediate family, including injury or infirmity, regardless of whether the illness results in death;

' (j) Land described under ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood);

' (k) Land used for the primary purpose of obtaining a profit in money by breeding, raising, kenneling or training greyhounds for racing; or

' (L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

' (i) Only the crops of the landowner are being processed;

' (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or

' (iii) The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

' (4) As used in this section:

' (a) 'Accepted farming practice' means a mode of operation that is common to farms of a similar nature, necessary for the operation of these similar farms to obtain a profit in money and customarily utilized in conjunction with farm use.

' (b) 'Cultured Christmas trees' means trees:

' (A) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

' (B) Of a marketable species;

' (C) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agricultural Marketing Service of the United States Department of Agriculture; and

' (D) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices:

' (i) Basal pruning;

' (ii) Fertilizing;

' (iii) Insect and disease control;

' (iv) Stump culture;
' (v) Soil cultivation; or
' (vi) Irrigation.
' { + SECTION 14. + } { + (1) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213 (1)(a) or (2)(w) or 215.283 (1)(a) or (2)(y), as in effect before the effective date of this 2009 Act, may be expanded subject to:
' (a) The requirements of subsection (2) of this section; and
' (b) Conditional approval of the county in the manner provided in ORS 215.296.
' (2) A nonconforming use described in subsection (1) of this section may be expanded under this section if:
' (a) The use was established on or before January 1, 2009; and
' (b) The expansion occurs on:
' (A) The tax lot on which the use was established on or before January 1, 2009; or
' (B) A tax lot that is contiguous to the tax lot described in subparagraph (A) of this paragraph and that was owned by the applicant on January 1, 2009. + }
' { + SECTION 15. + } { + A permit or approval to construct a replacement dwelling under ORS 215.213 or 215.283 issued by a county on or after January 1, 1990:
' (1) Is valid even if the permit or approval has expired.
' (2) May be used for construction that is begun on or before January 2, 2020. + }
' { + SECTION 16. + } { + On or before December 31, 2010, a county shall amend its land use regulations to conform to the amendments to ORS 215.213 by section 1 of this 2009 Act or ORS 215.283 by section 2 of this 2009 Act, whichever is applicable. Notwithstanding contrary provisions of state law or a county charter relating to public hearings on amendments to an ordinance, a county may adopt amendments to its land use

regulations required by this section without holding a public hearing and without adopting findings if:
' (1) The county has given notice to the Department of Land Conservation and Development of the proposed amendments in the manner provided by ORS 197.610; and
' (2) The department has confirmed in writing that the only effect of the proposed amendments is to conform the county's land use regulations to the amendments to ORS 215.213 by section 1 of this 2009 Act or ORS 215.283 by section 2 of this 2009 Act, whichever is applicable. + }
' { + SECTION 17. + } { + ORS 215.297 is repealed. + }
' { + SECTION 18. + } { + The amendments to ORS 215.213 and 215.283 by sections 1 and 2 of this 2009 Act apply to uses established on or after the effective date of this 2009 Act. + }
' .

MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
http://www.co.multnomah.or.us/dbcs/LUT/land_use

NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

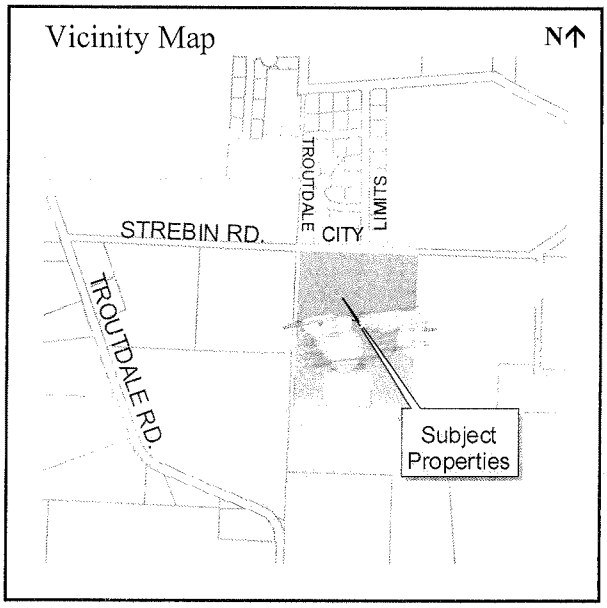
Case File: T2-04-060

Permit: Design Review Permit

Location: 27710 SE Strebin
TL 800 & 900, Sec 01D, T1S, R3E, W.M.
Tax Account # R993010580 &
R993010610

Applicant: Dan Symons
Symons Engineering Consultants
12805 SE Foster Road
Portland, OR 97236

Owner: Open Door Baptist Church
c/o C.M. Tittle
27710 SE Strebin Rd.
Troutdale, OR 97060



Summary: To convert an existing gymnasium into classrooms, fellowship hall and warming kitchen with the addition of a new parking area in the Exclusive Farm Use (EFU) Zone District. The application includes an exception request to keep an existing hedge north of the proposed parking area and not meet the requirements for three foot maximum shrub height and the planting of trees in that area.

Decision: Approved with conditions with an exception to MCC 36.7055(C)(3)(c) as described here in.

Unless appealed, this decision is effective Wednesday, November 24,2004 at 4:30 PM.

Issued by:

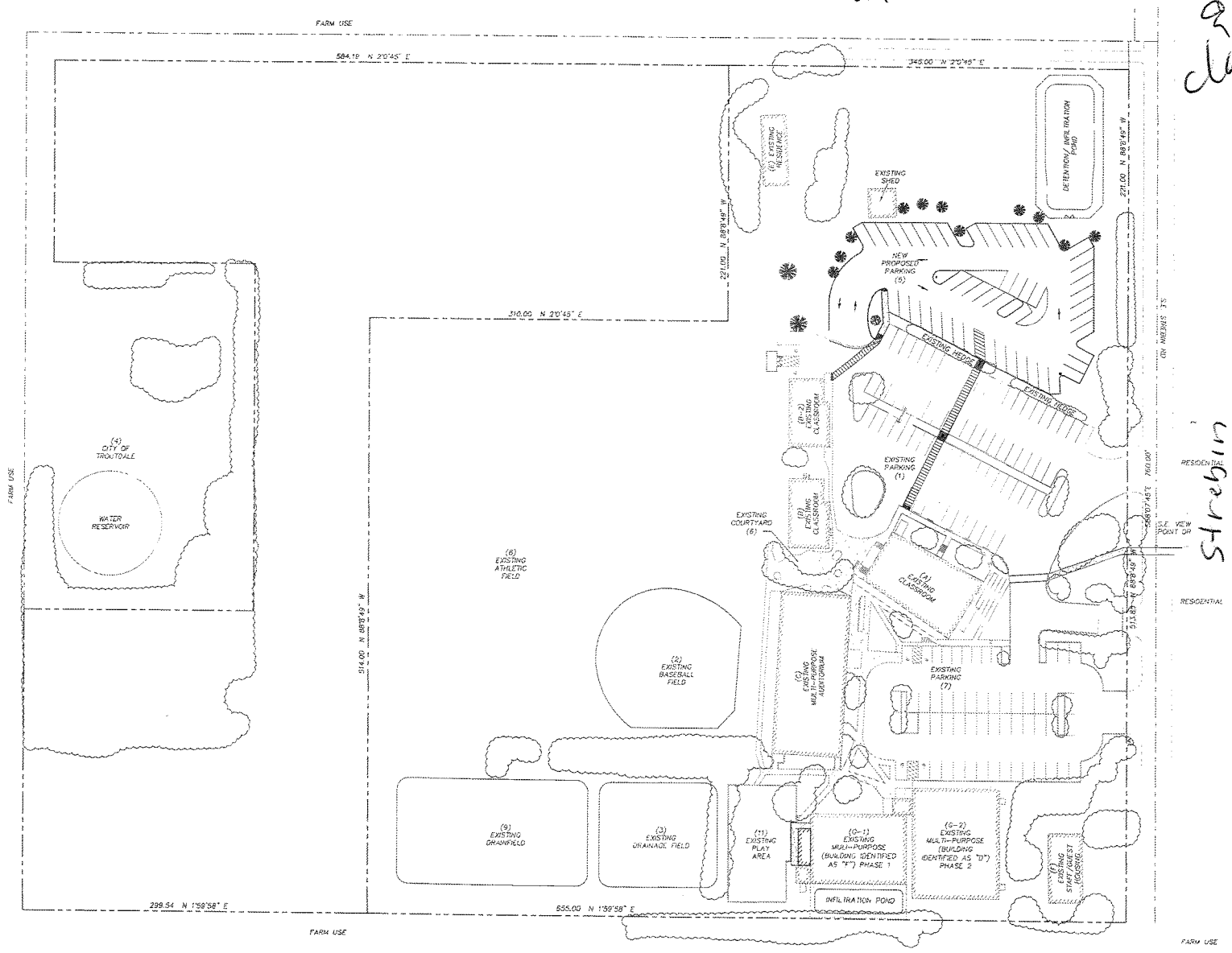
By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Thursday, April 14, 2011

Gresham on line

lunchroom & classroom



NORTH

OVERALL SITE PLAN

SCALE: N.T.S.

Site plan

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact George A. Plummer, Staff Planner at 503-988-3043.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a $250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, November 24,2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37: Administration and Procedures, MCC 36.2600 et al: Exclusive Farm Use Zone District, MCC 36.4100 et. al: Off-Street Parking and Loading, MCC 36.7000 et al: Design Review, MCC 36.7400 et. al: Signs and Comprehensive Plan Policy 38: Fire Protection

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at http://www.co.multnomah.or.us/dbcs/LUT/land_use.

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

2. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. The property owner shall provide for and maintain off-street parking and loading facilities without charge to users (MCC 36.4115). All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan, and such marking shall be continually maintained (MCC 36.4180 (C)).

2. The property owner shall provide a designated, labeled loading space available for the loading and unloading of vehicles concerned with the transportation of goods or services for the use associated with the loading space (MCC36.4125 (C)). The loading area shall not be used for any purpose other than loading or unloading (MCC36.4125 (D)). The property owner shall not store or accumulate equipment, material or goods in a loading space in a manner which would render such loading space temporarily or permanently incapable of immediate use for loading operations (MCC36.4125 (E)). The loading space shall meet the dimensional requirements of MCC 36.4175 (C).

3. The property owner shall combine the two properties listed in this approval into one property (MCC36.4130 (A) and (C)).

4. No parking or loading shall be allowed in a public street (MCC 36.4170(B)).

5. All signs and sign structures shall be erected and attached totally within the site. No sign may be located within a vision clearance area as defined in subsection MCC 36.7465 (C)(2). No support structure(s) for a sign may be located in a vision clearance area unless the combined total width is 12 inches or less and the combined total depth is 12 inches or less. Unless otherwise provided by law, accessory signs shall be permitted on parking areas in accordance with the provisions specified in each district, and signs designating entrances, exits or conditions of use may be maintained on a parking or loading area. Any such sign shall not exceed four square feet in area, one side. There shall not be more than one such sign for each entrance or exit to a parking or loading area. (MCC 36.7465)

6. Directional signs shall comply with the standards in MCC 36.7490. The temporary construction sign shall comply with the standards in MCC 36.7495.

Note: Once this decision is final, application for building permits may be made with the City of Gresham, Building Department. When ready for building permit signed off, the applicant shall call the Staff Planner, George Plummer, at (503) 988-3043, for an appointment for zoning review plan check and to sign the building permit form. Please note, Multnomah County must review and sign off the building permit form and plans before the applicant submits building plans to the City of Portland. Four (4) sets the plans and site plan of the building area are needed for building permits signed off.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:
ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

FINDINGS AND CONCLUSIONS

This decision is based on the findings and conclusions in the following section.

Staff Report Formatting Note: To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. Staff conclusions follow the findings and are labeled **Conclusion**. At the end of the report, Exhibits are described. The applicant's submittal is included and made part of this decision as exhibits labeled 1.x.

1. DESCRIPTION OF THE PROPOSAL:

Applicant: *Application to construct a 51 space parking lot expansion, and conversion of old gymnasium (Building G-1) into a two floor classroom and fellowship hall adding 5,714 s.f. to a second floor within the existing building.*

General Description: *In accordance with Conditions of Approval #1 DR-6-98 and #3 DR-#87-01-03 "...No development is to occur under this permit other than that which is specified..." Open Door Baptist Church proposes to expand parking lot 51 spaces, including paving, curbs, landscaping, on-site storm water treatment and disposal. Open Door Baptist also proposes to expand the floor area of old gymnasium (Building G-1); converting space to classrooms and fellowship hall including warming kitchen and restrooms without increasing the existing building height. Footprint of the older gymnasium will remain unchanged except for exiting stairs area and elevator. Both of their uses are previously specified under earlier approvals.*

Parking Lot Expansion: *The overflow parking lot (area 5) is to be used for off-street parking of vehicles for activities conducted at the church and school. The design and circulation for the new parking will compliment the flow from the existing paved parking lot (area 1) and will have a natural access route into the new overflow parking area as the existing lot fills up. The proposed onsite pedestrian access enhancements will improve safety for pedestrians approaching the buildings from either the existing or proposed parking lots. The proposed improvements to the overflow parking area will provide proper aisle spacing, striped individual parking spaces, clear circulation patterns for safer access throughout, and preservation and enhancement of landscape area.*

The design and programming will promote the reduction of congestion, protect the character of the surrounding property, design per development standards, and maintain off-street parking and loading area.

Open Door Baptist Church is expanding building area in old gymnasium. The parking requirements for the current existing uses and the expanded new uses are as follows:

New Fellowship hall: 2400 s.f. = 40 parking spaces required.
Existing Auditorium: One space for four seats required (225 seats) = 56 parking spaces required.

Building G-1 Gymnasium Conversion into Classroom and Fellowship Hall Amenities & Activities
Fellowship Hall: The expanded operation of the fellowship hall is for banquets, weddings and pot-

lucks, there will be no "hot-lunch" services. The Hall or Dining room seating capacity is approximately 150. The intended uses of this room are for meetings, wedding receptions, banquets, and school lunches.
Warming Kitchen: The new kitchen facility proposed will include kitchen equipment. The expanded operation of the kitchen service is for banquets, weddings and pot-lucks, there will be no school "hot-lunch" service. School lunch times are between 11:00 a.m. and 1:00 p.m. The new kitchen facility, like the existing kitchen facility operations, consist of one (1) refrigerator; two (2) stoves; eight (8) microwave ovens. The existing kitchen facility will remain operational as an option for the teacher's lounge and/or for parties.
Classrooms: The proposed expansion would affect the upper levels 7th grade through high school. It will allow room in the upper grades for more comfortable classes and additional new students.
Teacher's Lounge: This lounge will serve the teachers instructing in the classrooms of this building for breaks, meetings and preparing for class.
Toilet Facilities: The number of fixtures, shower and restroom facilities proposed is in accordance with UBC requirements for the occupancy and ADA requirements for the building.
Student Lounge: The student lounge entrance will provide social gathering and student study opportunity.
Storage: The storage will provide storage for chairs, tables, and similar related items, janitor's closet for sinks, cleaning, maintenance supplies, and storage for gymnasium equipment.
Elevator: Installed per UBC and ADA requirements.
Stairs: Two means of exiting for upper level, with area of rescue, installed per UBC exiting requirements.
Halls/Corridors: Provide transition and circulation between classrooms; provide storage lockers and providing student study/meeting area and designed per UBC exiting requirements.

Project Statistics:
44 net new full size spaces
3 new compact
47 net new total spaces
23,450 s.f. new driveway access
1,457 s.f. new landscape
29,590 s.f. total new site work at parking lot
29,590 s.f. Total new parking lot site work
5714 s.f. of new occupied Building space
703 s.f. increase in Building footprint (Egress Tower)

137 Spaces Required.
Proposed parking including new and existing parking
167 standard parking
3 compact spaces
6 ADA Accessable spaces
176 total spaces proposed

2. DESCRIPTION OF EXISTING USE

Applicant: ***Approval Summary****: Approved October 19, 1976 (CS4-88-598):*
40'x80' church/school classroom, shown in drawings as Building A.
Parking Lot (area 1) containing asphalt, curbs, lighting and landscaping.
Ancillary sidewalks, approaches and utilities.
Approved approx. September 8, 1981:

60'x125' (7,500 s.f.) multi-purpose Building G-1 (C) for use as a gymnasium, auditorium and Sunday school classrooms.
Baseball field 240'x240' (area 8)
Past Cases: *DR 6-98, DR 87-01-03, CS 4-88*
Service Area: *Troutdale's residential geographic area is the original church service area and remains unchanged.*
Operating Standards: *There are no requirements for membership; it is open to the community at large.*
Community Benefits: *The church/school provides use of their facilities for other community needs outside of church services and education, including flag football, men's basketball and a kids club.*

- *Septic drain field 100'x100', (area 3) south and east of multi-purpose building.*
- *Caretakers residence Building E (mobile home) located 180' +/- west of proposed ball field.*
- *Tax Lot 172 (area 4) 2.03+/- acres was acquired by the City of Troutdale as a site for and development of a water tower facility and is now owned by the Troutdale Water District.*
- *Approved CS 4-88 (per staff notes in #2, Existing Conditions, DR 6-98)*
- *50'+/-x70'+/- playground (area 11) with structures and recreational equipment. Playground is enclosed by a 5' high chain linked fence and is located directed south of phase 1 Building G, known as G-1. (Approved April 25, 1996 per staff notes in #2, Existing Conditions, DR 6-98.)*
- *24'x60' Auxiliary Classroom Building B located 30' directly west of multi-purpose facility. Courtyard and patio (area 6) with trees, lights, and benches between multi-purpose (Building G-1 (C)) and the auxiliary classroom (Building B).*
- *Parking Lot (area 7) located 15' east of original church/classroom (Building A) along with approach to Strebin Rd.*
- *Additional land approved for sanitary sewer drain field replacement (area 9)*
- *Additional Ancillary classroom (Building B-2) approved 5-95.*
- *Phase 1 Building G-1 approved as phase developed gymnasium activities structure.*

Approved DR 6-98
Phase II Building G-2 75' x 96' (7500 s.f.) multi-purpose gymnasium building.

- *Existing church was 312 lf. of bench seating, 312/8 = 39 required.*
- *Two residential guest facilities with a total of 7 occupants; 1 space / 10 persons, 1 space for each building = 2 spaces required.*
- *The current parking lot has 123 spaces and 6 ADA Accessible for a total of 129 spaces. We are proposing 51 additional spaces and losing 4 to the creation of the pedestrian access path.*

3. SITE AND VICINITY CHARACTERISTICS

Staff: The northeastern portion of the property is developed with the existing church, school, parking and a dwelling. The northwestern portion of the property is where the proposed new parking area is as well as the stormwater detention/infiltration pond will be located. This area is relatively flat with about a three percent slope dropping from the south of the proposed parking area to the northern end of the proposed lot. There is an additional dwelling located south of the proposed development area. The central part of the property is a sports field. The rest of the property is farmed (Exhibit 2.3).

The property is located in an area which is predominately farmed in vineyards. There are vineyards adjacent to the property to the east, west and south. On the southern boundary of the property is a small parcel with a public water tank. To the north directly across the road there is an area within the Troutdale City boundary that is a developed as a residential subdivision with urban densities. The property to the northwest across the road while still in vineyard use is within the Troutdale Urban Growth Boundary. The property to the northeast across the road is not within the UGB and is in vineyard use (Exhibit 2.3).

4. OWNERSHIP

MCC 37.0550: Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser.

Staff: County Assessment records show the property owners as Open Door Baptist Church (Exhibit 2.1). The applicant has submitted from C. M. Tittle, Senior Pastor, property owner representative of Open Door Baptist Church, authorizing Dan Symons of Symons Engineering to be named the applicant in making application for Design Review (Exhibit 1.?).

5. TYPE II CASE PROCEDURES

Staff: The application was submitted March 15, 2004 and was deemed incomplete April 14, 2004. Further materials were submitted April 26, 2004. The application was deemed complete as of April 26, 2004. Opportunity to Comment notice was mailed May 11, 2004. The notice was mailed to all owners of properties within 750 feet of the subject property; property owners were provided a 14-days period to submit comments on the application (MCC 37.0530). No comments were received.

6. EXCLUSIVE FARM USE ZONE DISTRICT

6.1., Allowed Uses in EFU District

6.1. MCC 36.2620 (N) Public or private schools, including all buildings essential to the operation of a school wholly within an EFU district may be maintained, enhanced or expanded:

- **(1) Except that no new use may be authorized within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4; and**
- **(2) No new use may be authorized on high value farmland; and**
- **(3) Must satisfy the requirements of MCC 36.4100 through MCC 36.4215, MCC 36.6020 (A), MCC 36.7000 through MCC 36.7060 and MCC 36.7450.**
- **(4) The maintenance, enhancement or expansion shall not adversely impact the right to farm on surrounding EFU lands.**

MCC 36.2620 (O) Churches and cemeteries in conjunction with churches, consistent with ORS 441, wholly within an EFU district may be maintained, enhanced or expanded:

- **(1) Except that no new use may be authorized within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4; and**
- **(2) No new use may be authorized on high value farmland; and**
- **(3) Must satisfy the requirements of MCC 36.4100 through MCC 36.4215, MCC 36.6020 (A), MCC 36.7000 through MCC 36.7060 and MCC 36.7450.**

(4) The maintenance, enhancement or expansion shall not adversely impact the right to farm on surrounding EFU lands.

(5) Activities customarily associated with the practice of religious activity include worship services, religion classes, weddings, funerals, child care and meal programs, but do not include private or parochial school education for prekindergarten through grade 12 or higher education.

Applicant: *The church and school facilities occupy a tract of land owned by the Open Door Baptist Church, known as Tax Lot 61 and a portion of Tax Lot 58, Section 1 T1S, R3E, W.M. Multnomah County, Oregon. The specific existing church/school facilities as shown on the Master Plan are as follows:*

Per MCC Section 36.2620 (n) private schools, and MCC Section 36.2620 (o) churches are allowed to be maintained, enhanced, or expanded as an allowed use. Open Door Baptist Church is proposing the following expansion:

Existing Building G-1 square footage is approximately 5,000 s.f.
Additions to Building G-1 square footage is approximately 5,714 s.f.
Total Building G-1 size is approximately 10,714 s.f.; plus an additional 51 parking spaces.

(1) No new uses are proposed, only the expansion of existing and previously approved uses is being applied for.

(2) No new uses are proposed, only the expansion of existing and previously approved uses is being applied for.

(3) Demonstration of compliance with these sections is given further on in this narrative.

(4) This County ordinance addresses the Oregon's Statewide Planning Goals and Guideline for Agricultural Lands through the setback to the edge of adjacent EFU farm. The surrounding property is farm land in the EFU zone, and the residential neighborhood across the street is zoned R10. In the planning process of Open Door Baptist Church's expansion, the existing setbacks were respected which will allow the proposed expansion to occur without adversely impacting adjacent farm uses.
The street fronting the subject property is Strebin Rd. This street abuts the urban growth boundary with the Briarwood East subdivision to the north and shares it with other EFU farm land owners. The conclusion drawn by Multnomah County Transportation Department, from traffic counts given to the Department and included in the Reports Section, finds the traffic impact to this street from this expansion will be minimal to adjacent owners and emergency uses; they will not be adversely affected. The vehicular traffic from this property should not have any significant impact on the use of farm equipment on this rural road; the time and duration of access to and egress from the site should be relatively unchanged. The paved lot will help prevent oil and other containments from entering into the soils. Whereas if not improved, patrons may tend to park in on street shoulder areas, and unimproved areas, by which safety and soils quality are adversely affected.

Staff: The proposal includes modifying an existing gymnasium building space into to classrooms and fellowship hall including warming kitchen and restrooms for an existing private school and for the existing Open Door Baptist Church (Exhibit 1.1, 1.3 and 1.4). MCC 36.2620 (N) allows existing private schools within an EFU district, including all buildings essential to the operation of

a school, to be maintained, enhanced or expanded. MCC 36.2620 (O) allows existing churches within an EFU district, consistent with ORS 441 to be maintained, enhanced or expanded. However, the request for the building conversion and the additional parking must be reviewed to determine if they meet the requirements of MCC 36.2620 (N) (1) through (4) and MCC 36.2620 (O) (1) through (5). Where MCC 36.2620 (O) refers to ORS 411 is a typo in which the 215 was left off; it should read ORS 215.411.

The proposed uses are not new uses, they expansions of existing school and church uses, thus meet the standards for allowed uses. The proposed uses must be reviewed to determine whether they meet the requirements of MCC 36.4100 through MCC 36.4215: Off-Street Parking and Loading (addressed in Section 9 of this decision), MCC 36.6020 (A): Restrictions (addressed in Section 7 of this decision), MCC 36.7000 through MCC 36.7060: Design Review (addressed in Section 8 of this decision) and MCC 36.7450: Signs Generally in the EFU Zone (addressed in Section 10 of this decision).

MCC 36.2620 (N)(4) and MCC 36.2620 (O)(4) requires the proposal not adversely impact the right to farm on surrounding EFU lands. The additional classrooms and fellowship will be within an existing building. The back of the building to be converted is located about 30 feet from the property and is currently used for school and church purposes. The proposed conversion should not result in any impacts since the building is currently used by students and there has been no indication of any impacts resulting from its current use.

MCC 36.2620 (O)(4) defines Activities customarily associated with the practice of religious activity as they are defined in ORS 215.411. The proposed church use and school use are provided for under this definition. The applicant states that the converted building will be school classrooms, a fellowship hall for banquets, weddings and pot-lucks, there will be no "hot-lunch" services. The Hall or Dining room seating capacity is approximately 150. The intended uses of this room are for meetings, wedding receptions, banquets, and school lunches. These uses are related to the church and the school uses. The proposed use meets the definition of use of real property for religious activity.

6.2. EFU District Dimensional Requirements

6.2.1. MCC36.2660 (C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height - 35 feet

Applicant: *All dimensional requirements are met.*

Staff: The setback from the property lines will remain the same with the closest property line being the east sideyard at 30 feet. The building to be converted meets the 35 foot maximum height limitation.

6.2.2 MCC36.2660 (D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall

determine the necessary right-of-way widths and additional yard requirements not otherwise established by Ordinance.

Staff: In a memo dated November 8, 2004 Alison Winter, County Transportation Planning Specialist state that, "No right of way dedication are required."

* * *

6.2.3 **MCC36.2660 (F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the lot.**

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The applicant has submitted a Certification of On-Site Sewage Disposal dated 2/5/04 signed by Michael Ebeling City of Portland Sanitarian demonstrating the proposal meets the requirements for a septic system (Exhibit 1.5). The City contracts with Department of Environmental Quality to review septic systems for the entire County.

6.2.4 **MCC36.2660 (G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

Staff: The applicant has applied for a Grading and Erosion Control Permit.

7. RESTRICTIONS

MCC 36.6020 A building or use approved under MCC 36.6015 through 36.6050 shall meet the following requirements:

(A) Minimum yards in EFU, CFU, MUA-20, RR, OCI, OR and PH-RC, Districts:

(1) Front yards shall be 30 feet.

(2) Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.

(3) Rear yards shall be as required in the district.

Staff: While the proposed uses are not approved under MCC 36.6015 through 36.6050, the requirements of the EFU District under MCC 36.2620(N)(3) and (O)(3) requires uses to meet these requirements. The front-yard meets the 30 foot front yard requirement, the sideyard meets the 25 foot requirement, and the rear-yard exceeds the required yard (Exhibit 1.??). The proposed uses meet these requirements.

8. DESIGN REVIEW

8.1. Design Review Plan Contents

8.1.1. **MCC 36.7030 (A) Any preliminary or final design review plan shall be filed on forms provided by the Planning Director and shall be accompanied by such drawings, sketches and descriptions as are necessary to describe the proposed development.**

MCC 36.7030 (B) Contents:

(l) Preliminary Site Development Plan;
(2) Preliminary Site Analysis Diagram;
(3) Preliminary Architectural Drawings, indicating floor plans and elevations;
(4) Preliminary Landscape Plan;
(5) Proposed minor exceptions from yard, parking, and sign requirements; and
(6) Design Review Application Fee, as required under the applicable fee schedule in effect at time of application;

MCC 36.7030 (C) A preliminary site analysis diagram may be in freehand form and shall generally indicate the following characteristics:

(l) Relation to adjacent lands;
(2) Location and species of trees greater than six inches in diameter at five feet;
(3) Topography;
(4) Natural drainage;
(5) Significant wildlife habitat;
(6) Information about significant climatic variables, including but not limited to, solar potential, wind direction and velocity; and
(7) Natural features and structures having a visual or other significant relationship with the site.

MCC 36.7030 (D) A preliminary site development plan may be in freehand form and shall generally indicate the following as appropriate to the nature of the use:

(1) Access to site from adjacent rights-of-way, streets, and arterials;
(2) Parking and circulation areas;
(3) Location and design of buildings and signs;
(4) Orientation of windows and doors;
(5) Entrances and exits;
(6) Private and shared outdoor recreation spaces;
(7) Pedestrian circulation;
(8) Outdoor play areas;
(9) Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;
(10) Areas to be landscaped;
(11) Exterior lighting;
(12) Special provisions for handicapped persons;
(13) Surface and storm water drainage and on-site waste disposal systems; and
(14) Other site elements and spaces which will assist in the evaluation of site development.

MCC 36.7030 (E) The preliminary landscape plan shall indicate:

(1) The size, species, and approximate locations of plant materials to be retained or placed on the site; and

Applicant: *This proposal contains information listed ... Construction drawings and final calculations necessary to permit the parking lot expansion and gymnasium conversion shall be prepared by an engineer registered in the State of Oregon.*

Staff: The applicant has submitted the required materials (Exhibit 1.??).

8.2. Design Review Criteria.

MCC 36.7050(A) Approval of a final design review plan shall be based on the following criteria:

8.2.1. MCC 36.7050(A)(1): Relation of Design Review Plan Elements to Environment.

8.2.1.1. MCC 36.7050(A)(l)(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.

Applicant: *The parking lot design preserves a row of trees near the west edge of the expansion area and is appropriate distance from the buildings. An existing mature hedge along S.E. Strebin will also be preserved and will naturally screen the parking lot expansion area from the street and the neighbors to the north. A mature row of shrubbery will also be preserved and serve as a delineation between the existing parking lot and the new parking lot. This new lot design relates to the site conditions as much as possible while still meeting the needs for the additional parking. The proposed hard surface material at vehicular travel areas and drainage control inherently provides better environmental control over unregulated overflow parking in unimproved areas. The gymnasium conversion is mostly accomplished within the volume of the existing building. The only addition is for the egress tower located on the south side of the building to house exit stairs and elevator. The elements of the additional overflow parking lot and gymnasium conversion are in scale with and relate harmoniously to the natural environment, existing buildings and structures.*

The school's impact to natural resources may amount to an upgraded larger and possibly more environmentally friendly a/c unit than the existing units in place. Additional toilet facilities will be added to the building which will be managed by an on-site septic system. See Service Provider Forms in Service Provider Forms Section of this application.

Staff: The building conversion will be predominately within the existing frame of the gymnasium with the exception of a tower added onto the south side of the building to house stairs and elevator. The plans show the addition will match the design of the existing building. The stair and elevator tower will be added on the south end of the building in an area that is currently landscaped lawn that surrounds the existing structure thus it will not impact the natural environment. The proposed additional parking area will be built in a relatively flat area.

The stormwater will flow to a vegetated detention pond were it will infiltrate into the groundwater. The parking area will be surrounded with landscaped areas including existing trees and shrubs and newly planted shrubs and lawn. The remaining landscaping and new landscaping will provide a harmonious transition from the built environment into the natural environment. The proposed development meets this standard.

8.2.1.2. MCC 36.7050(A)(l)(b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.

Applicant: *The design of overflow parking lot attempts to preserve as much significant existing mature landscape as possible promoting as much energy conservation and protection from adverse conditions as a parking lot can. Shade, wind break, sound attenuation, and absorption of air pollutants will be provided by existing and new landscape in quantities that exceed minimum design standards. Contaminants contained in parking lot runoff will be treated with accepted natural filtration processes.*

The noise level change for the gymnasium conversion is believed to be minimal. The existing use of exercising activities will be accommodated in the newer gymnasium with a revised time schedule. The change of use in the original gymnasium building (G-1) from a gymnasium to fellowship hall and classrooms is described below. With the increase of a projected 40 students, 15% in the total student population is not expected to cause any significant additional noise in open areas and surrounding buildings from the campus. Utilization and remodel of the existing structure to improve classroom conditions is, by itself, an energy conserving approach over total demolition and/or erection of a new building structure.

The traffic patterns during the day should not change in time frame or significant duration, but the number of vehicles may increase over time for the church parking and may have an increase trip loads. Some parents may individually drive or carpool groups of children to the school. This increase in the community service use is projected to be minimal compared to the general traffic increase to the area. Upon further discussion with Multnomah County Transportation Department and documentation of Open Door Baptist traffic counts samples, the County concluded no significant impact would occur to warrant a modification to existing driving patterns, right-of-way improvements or driveway construction. Per Multnomah County Transportation Department's request, the existing deteriorated fence at bus parking area will be repaired or replaced as required to deter pedestrian and vehicle travel through landscape opening.

Staff: The proposed additional parking will reduce the vehicle circulation of drivers searching for available parking thus providing some energy conservation and reduce air pollution. The applicant is proposing using existing nearby lighting for the additional parking area . This area will be predominately used for daytime uses thus minimal lighting is all that is needed. The proposed changes in the building will need to meet building code energy conservation measures and wind requirements. The proposed use should not change the minor noise level of the existing development. The stormwater system for the runoff from the new parking area is designed for the 10 year storm event (Exhibit 1.7) . This standard is met.

8.2.1.3. MCC 36.7050(A)(l)(c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.

Each element of the additional overflow parking lot effectively, efficiently, and attractively serves its function. The new overflow parking meets circulation; proper width of the roadway and parking spaces per code requirements, and its circular driving pattern allows for maximum parking while giving a variety of parking patterns.

Each element of the gymnasium conversion shall be in accordance to the fire/life/safety requirement per Uniform Building C for the occupancy group it serves.

Staff: The design for the proposed parking area is interrelated with the existing parking lots. Traffic will flow through the existing lot to get to the proposed lot. The pedestrian walkway connects to a pedestrian walkway through the existing lot. The existing landscaping will blend with the new lot and the new landscaping proposed. The lot is design for a looped traffic flow to provide for efficient movement of vehicles. The proposed new lot is located about 150 feet from the area were the buildings are located and provide a short walking distance to the destination. The conversion of the existing building will provide classrooms and a meeting hall to meet the functions of the school and church. The addition for the stairs and elevator will match the architecture of the existing building. The proposed uses meet this standard.

8.2.2. MCC 36.7050 (A) (2) Safety and Privacy - The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.

Applicant: *The additional overflow parking lot is designed to provide a safe parking environment for members and attendees of the church and school. Transitions from public to private spaces remain largely unchanged although onsite pedestrian circulation from the parking lot to the building has been improved. The vegetative screening around the overflow parking gives natural separation between onsite activities and the EFU and residential uses surrounding the site affording opportunity for privacy and transition from public to private spaces.*

The gymnasium conversion to classrooms will meet all UBC Fire/Life/Safety codes. The classroom expansion will provide better separation between the younger and older children; although this is not a site planning issue, it will promote a better educational environment.

Staff: The proposed parking area will provide for a looped flow limiting vehicle conflict. A pedestrian walkway will be provided with crossing area marked with stripping (Exhibit 1.??). Additionally the applicant is proposing a pedestrian walkway access to the property just adjacent to the east of the Strebin Road and Viewpoint Drive intersection. The applicant is proposing a crosswalk across Strebin Road at this location (Exhibit 1.11). In a memo dated November 8, 2004 Alison Winter, County Transportation Planning Specialist discusses the proposed crosswalk and requirements for its establishment (Exhibit 2.5). Existing landscaping including trees, hedges, and shrubs a buffering transition between public right of way and the private church/school development area. The applicant states proposed building conversion to classrooms will meet all UBC Fire/Life/Safety codes. The proposal includes two stairways in the converted building to provide for better emergency access (Exhibit 1.4). The proposed uses meet this standard.

8.2.3. MCC 36.7050 (A) (3) Special Needs of Handicapped - Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and braille signs.

Applicant: *In regards to the parking lot expansion, handicapped parking stalls will be provided near the building, not in the outlaying areas of the overflow parking lot. An ADA compliant pedestrian connection will be from the parking lot to the existing onsite sidewalk system. The gymnasium conversion will provide the following ADA enhancements in accordance with UBC Chapter 13:*

At the gymnasium conversion, Open Door Baptist Church will provide:
A second floor "Area of Rescue",
ADA elevator,
ADA accessible thresholds, door size and levers, clearance access to door approaches,
ADA counters and sinks access in warming kitchen,
ADA restroom access at each level including sinks, stalls, urinals and showers, as required per UBC code.
Egress complying with UBC requirements for corridors and stairs.

Staff: The proposed development provides for handicap access with marked parking spaces located nearest the building, elevator access to the proposed second floor classrooms, handicap restrooms, and other ADA and building code handicap requirements (Exhibit 1.???). This standard is met.

8.2.4. MCC 36.7050 (A) (4) Preservation of Natural Landscape - The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.

Applicant: *The mature landscape and existing grade will be modified as little as possible by design in the execution of this project. Preserved trees and shrubs will be protected during construction according to nursery standard. The design preserves existing landscape on three sides of the expanded parking lot while accommodating additional parking needs. The required minimum landscaping is proposed to be exceeded. See Drawings Section C1 for plant schedule.*

Staff: The proposed parking area expansion is located in a relatively flat area requiring minimal grading. Existing vegetation at the edge of the existing parking lot will be preserved as well as several trees skirting the proposed lot. The design incorporated some existing trees into divider areas to prevent their removal (Exhibit 1.10). The construction plans show that existing trees that will remain will be fenced at the drip line to protect their roots from damage. The proposed uses meet this standard.

8.2.5. MCC 36.7050 (A) (5) Pedestrian and Vehicular circulation and Parking - The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.

Applicant: *The location and number of points of access to the site will remain unchanged. The location and number of points of access to the expanded parking lot will be located from the existing parking lot will be as follows:*

The new overflow parking has a natural access point coinciding the existing parking lot roadway design, away from main entry and exiting of the site, and promoting safe travel within the circulation of the parking lot. The entrance into the overflow parking area is 35', exceeding the 20' minimum requirement, and the interior circulation patterns will be consistent with the existing patterns of travel so not to confuse the drivers. Given the constraints of the existing site layout, the separation between pedestrians and moving vehicles will be accomplished with dedicated and delineated pedestrian walkways providing a direct route from the expanded parking area to the existing onsite sidewalk system as well as a link for the existing west parking lot.

Per Multnomah County Transportation Department's request, the existing deteriorated fence at bus parking area will be repaired or replaced as required to deter all pedestrian or vehicular travel through the landscape opening.

Staff: The access to the site will not be changed by the proposal. The proposed parking area has one access point with a looped circulation plan reducing opportunities for vehicular conflict. The proposed lot is reasonably close to the building at a distance of about 150 feet it is the most practical location for additional parking and provides a harmonious transition between the existing development and the new lot. The proposed plans provide a convent and marked pedestrian walkways for safe access between parking and the building as well as access to the property (Exhibits 1.?? and 1.??). This standard is met by the proposal.

8.2.6. MCC 36.7050 (A) (6) Drainage - Surface drainage and stormwater systems shall be designed so as not to adversely affect neighboring properties or streets. Systems that insure that surface runoff volume after development is no greater than before development shall be provided on the lot.

Applicant: *The 25-year storm event from the expanded parking lot is collected, treated, detained, and disposed of onsite through a detention/infiltration pond to be located adjacent to the new parking lot. Existing surface drainage patterns will not be altered in a way that adversely affects neighboring properties. This project meets the requirements of the County, See Report Section of this application for the Preliminary Storm Water report.*

A portion of the existing site improvements drains to a small infiltration pond, which has performed adequately. Therefore, stormwater runoff from the proposed parking improvements, will be collected and discharged into a new infiltration pond. The runoff will be routed through a forebay pond, to trap sediment and other debris, prior to discharge into the infiltration pond. Runoff from the adjacent property to the south, will continue in its present direction, through the existing parking area, which is located east of this proposed new parking area.

Infiltration will be provided for the 25 year design storm and lesser events. The pond will allow the excess runoff from larger events to pass through the pond, into the existing roadside ditch along SE Strebin Road. Water Quality requirements will be met by using appropriate landscaping material in the infiltration and forebay ponds.

Staff: The applicant, Dan Symons, Registered Engineer prepared the stormwater report and designed a stormwater infiltration pond to the 25 year storm event standard (Exhibit 1.??). This standard has been met by the proposal.

8.2.7. MCC 36.7050 (A) (7) Buffering and Screening - Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.

Applicant: *Existing vegetative screening at the expanded parking lot will be enhanced to buffer or screen adverse impacts on the site and neighboring properties. Future trash enclosure shall be designed to meet the same intent.*

Staff: The proposed parking is screened with existing vegetation. That vegetation will be enhanced with additional landscape plantings as shown on the plans (Exhibit 1.??). The proposal meets this standard.

8.2.8. MCC 36.7050 (A) (8) Utilities - All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.

Applicant: *An existing electrical service box located near the center of the new proposed overflow parking area will be relocated. No other above ground utilities are proposed.*

Staff: No above ground utilities are proposed. The proposal meets this standard.

8.2.9 MCC 36.7050 (A) (9) Signs and Graphics - The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.

Applicant: *Parking Lot (area 3): One directional sign will be provided.*
Old Gymnasium (G-1): Existing building Identification Signage is in compliance with requirement of Section 36.7450. No new identification signage proposed, existing to remain.

Staff: The proposed directional sign and building identification signs will be compatible with the existing development signage on site. The proposal meets this standard.

8.3. <u>Required Minimum Design Review Standards.</u>

* * *

8.3.1. MCC 36.7055 (C) Required Landscape Areas: The following landscape requirements are established for developments subject to design review plan approval:

8.3.1.1. MCC 36.7055 (C) (I) A minimum of 15% of the lot area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.

Applicant: *In the area of expanded development, 21% is landscaped; exceeding 15% requirement.*

Staff: The proposed development exceeds the 15 percent required landscape area standard. This standard is met by the proposal.

8.3.1.2. MCC 36.7055 (C) (2) All areas subject to the final design review plan and not otherwise improved shall be landscaped.

Applicant: *All area of new work disturbed but not slated for surface improvements will be landscaped with similar materials. Portions of property not being developed that are currently being farmed will remain in farm use.*

Staff: The proposal includes landscaping for all disturbed areas. The remainder of the property is either landscaped or is employed as farmland. The proposal meets this standard.

8.3.1.3. MCC 36.7055 (C) (3) The following landscape requirements shall apply to parking and loading areas:

(a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totaling no less than 25 square feet per parking space.

(b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.

(c) A landscaped strip separating a parking or loading area from a street shall contain:

1. Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;

2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and

3. Vegetative ground cover.

(d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.

(e) A parking landscape area shall have a width of not less than 5 feet.

Applicant: *(a) Landscaping regulations requires 25 s.f./parking spaces with 51 spaces, 1275 s.f. of landscaping is required. This project proposes 1,457 s.f. new interior landscaping in the expanded parking lot.*

(b) Landscaping strip at parking lot is approximately 30' on the North, 5' on the West and 5' at the South of paved lot, with the existing 9' planter to remain between the new and the existing lots.

(c)(i) Parking lot expansion area has existing mature landscaping with large hedge and a tree on the north side of property adjacent to S.E. Strebin Road. We are requesting that the mature landscaping as it exists remain unchanged to meet the intent of this section. See MCC 36.7060 (5) for minor exceptions.

(c)(ii) Parking lot expansion area has existing mature landscaping with large hedge and a tree on the north side of property adjacent to S.E. Strebin Road. We are requesting that the mature landscaping as it exists remain unchanged to meet the intent of this section. See MCC 36.7060 (5) for minor exceptions. Any new shrubs planted will meet the above requirements

(c)(iii) Ground cover proposed at landscaped areas and where soil is disturbed at school and parking lot construction area will be planted with like materials, or drought resistant native plants. See Drawings Section C1 for the plant schedule.

(d) New landscaping occurs in curbed peninsulas at the new parking area and are evenly distributed.

(e) All parking landscape strips meet or exceed the 5 foot requirement.

Staff: The proposed addition of 51 parking spaces requires 1,275 sq. ft of landscaping at 25 sq. ft. per additional parking space. The proposed development includes 1,457 sq. ft. of new landscaping meeting the 25 sq. ft. The proposal meets the yard setbacks required by with 30 foot front yard and substantial sideyard setbacks (Exhibit 1.??). The applicant is requesting an exception to MCC 36.7055 (C)(3)(c) to maintain existing mature landscaping (Exhibit 1.??). The proposed landscaping is distributed throughout the parking area and all landscaped areas are at least five feet in width. This standard is met except for the standard under MCC 36.7055 (C)(3)(c) for which the applicant is requesting an exception. The exception request will be addressed under Section 8.4 of this report.

8.3.2. MCC 36.7055 (C) (4) Provision shall be made for watering planting areas where such care is required.

Applicant: *No irrigation system is proposed, draught tolerant native species will be utilized and watered manually during the establishment period. Hose bibs in vicinity shall be relocated to central planter island.*

Staff: Drought tolerant native species will be used. A water outlet will be located in the central island should it be needed. This standard has been met.

8.3.3. MCC 36.7055 (C) (5) Required landscaping shall be continuously maintained.

Applicant: *Existing landscaping will remain under current maintenance plan; new landscaping will be integrated into existing maintenance schedules.*

Staff: The proposal meets this requirement.

8.3.4. MCC 36.7055 (C) (6) Maximum height of tree species shall be considered when planting under overhead utility lines.

Applicant: *Existing trees will remain and do not conflict with utility lines.*

Staff: No trees are proposed under utility lines. This requirement has been met.

8.3.5. MCC 36.7055 (C) (7) Landscaped means the improvement of land by means such as contouring, planting, and the location of outdoor structures, furniture, walkways and similar features.

Applicant: *Parking lot will establish new landscaping where disturbed.*

Staff: The definition has been used for standards addressing landscaping.

8.4. <u>Minor Exception to Landscape Requirements</u>

8.4.1. MCC 36.7060 (A) In conjunction with final design review plan approval, the Planning Director may grant minor exceptions from the following requirements:

* * *

(5) In the case of a proposed alteration, standards for landscaped areas under MCC 36.7055 (C).

Applicant: *We are proposing that the existing mature landscaping consisting of tall hedge and tree at street (north) property line remain unchanged. We feel this alternative is consistent with the intent of Multnomah County's regulations to provide buffering and screening. The existing mature hedge and tree areas located along the street frontage already blocks vehicular headlights and buffers sounds from street and from neighbors in both directions. The existing frontage is in aesthetically pleasing proportion as is requested to be acceptable in lieu of a street tree every 50'. This request is allowed minor exception per MCC 36.7060 Minor Exceptions: Yard, Parking, Sign, and Landscape Requirements.*

Staff: The applicant is requesting an exception to the requirements of MCC 36.7055(C)(3)(c). This code requires:

"A landscaped strip separating a parking or loading area from a street shall contain:
1. Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;
2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average;"

The applicant proposed to keep the existing hedges that are nine feet tall to meet this requirement instead of replacing it with shrub not more than three feet tall and trees. The applicant has requested an exception to allow them to keep the existing hedge.

* * *

8.4.2. MCC 36.7060 (C) Approval of a minor exception shall be based on written findings, as required in this subpart.

* * *

(4) In the case of a minor exception to the standards for landscaped areas, the Planning Director shall find that approval is consistent with MCC 36.7000, considering the extent and type of proposed alteration and the degree of its impact on the site and surrounding areas.

Applicant: *Open Door Baptist Church proposes that the existing landscaping meets the intent of the code. See response to 36.7060.A.5.*

Staff: The purpose of the required landscaping is to provide buffering of the proposed uses and to provide a transition from public to private space. The proposed exception will meet that purpose. The proposed alteration is to provide an additional parking area for the church and school. The proposed parking area is located across the street from a residential subdivision within the City of Troutdale. The existing hedges will provide screening of the proposed parking lot, screen headlamp light of arriving and departing vehicles. The vegetation will buffer noise associated with arrival and departure of vehicles from the lot. Replace the existing vegetation with three foot shrubs and trees would result in more off-site impact to the adjacent properties across the street. The shorter shrubs would allow visual impacts including the view of the –parking lot and headlamp glare. The shorter shrubs would result in less buffering of parking associated noise. Allowing the existing vegetation to remain will reduce the minor off-site disturbances involved with the development. We can not foresee a negative impact and the benefits of allowing the vegetation to remain outweigh any benefits of removing the vegetation to plant shorter shrubs and trees. The exception request meets the standards for granting an exception. The exception is approved.

9. OFF-STREET PARKING

9.1 General Provisions

MCC36.4105 In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section.

Staff: The proposal includes a conversion of an existing gymnasium into classrooms, a fellowship hall and a warming kitchen. The application includes an additional parking lot area reviewed for compliance in the following sections of this decision.

9.2. Continuing Obligation

MCC 36.4115: The provision for and maintenance of off-street parking and loading facilities without charge to users shall be a continuing obligation of the property owner. No building or any other required permit for a structure or use under this or any other applicable rule, ordinance or regulation shall be issued until satisfactory evidence in the form of a site development plan, plans of existing parking and loading improvements, a deed, lease, contract or similar document is presented demonstrating that the property is and will remain available for the designated use as a parking or loading facility.

Staff: A condition of approval will include these requirements.

9.3. Plan Required

MCC36.4120A plot plan showing the dimensions, legal description, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit, or for a change of classification to O-P.

Applicant: *See Drawing Section of this application for Master Plan, Site/Landscape, Grading/Erosion Control and Utility Plans intended to fulfill plan requirements.*

Staff: The applicant has submitted a set of plot plan maps showing the required features.

9.4. Use of Space

9.4.1. MCC36.4125 (A) Required parking spaces shall be available for the parking of vehicles of customers, occupants, and employees without charge or other consideration.

Applicant: *The parking lot is to be used for parking vehicles for activities for the church and school and will not charge any fees for parking.*

Staff: The existing and proposed parking lots will be used for church and school patrons. This standard is met.

9.4.2. MCC36.4125 (B) No parking of trucks, equipment, materials, structures or signs or the conducting of any business activity shall be permitted on any required parking space.

Applicant: *This parking is for the sole use of the occupants of the facilities.*

Staff: The applicant states the parking area will be solely used by the patron of the church and school. This standard is met.

9.4.3. MCC36.4125 (C) A required loading space shall be available for the loading and unloading of vehicles concerned with the transportation of goods or services for the use associated with the loading space.

Applicant: *No loading spaces are required. The existing parking lot is not to change beyond pedestrian improvements.*

Staff: The plans do not include a designated loading and unloading space, however there is enough area for a loading space to be designated. A condition of approval will require that a loading space be designated to meet this standard.

9.4.4. MCC36.4125 (D) Except for residential and local commercial districts, loading areas shall not be used for any purpose other than loading or unloading.

Applicant: *Not Applicable.*

Staff: This requirement will be included in the condition discussed in the previous finding (Section 9.4.3. of this decision).

9.4.5. MCC36.4125 (E) In any district, it shall be unlawful to store or accumulate equipment, material or goods in a loading space in a manner which would render such loading space temporarily or permanently incapable of immediate use for loading operations.

Applicant: *Not Applicable.*

Staff: This requirement will be included in the condition discussed in the finding under Section 9.4.3. of this decision.

9.5. <u>Location of Parking and Loading Spaces.</u>

9.5.1. MCC36.4130 (A) Parking spaces required by this Section shall be provided on the lot of the use served by such spaces.

Applicant: *Parking lot expansion will serve as overflow parking. It's location is on the property and adjacent to the existing parking lot which serves the property.*

Staff: The church owns two parcels with the uses crossing the parcel lines. The proposed parking lot also crosses the property lines with some of the parking on a different lot than some of the buildings. This standard can be met by the properties being combined into one lot. A condition of approval will require these properties be combined to meet this standard.

* * *

9.5.2. MCC36.4130 (C) Loading spaces and vehicle maneuvering area shall be located only on or abutting the property served.

Applicant: *All loading and vehicle maneuvering is on the property.*

Staff: The EFU District would not allow this type of loading space and maneuvering uses on a lot that does contain the church or school. Therefore the uses must be on the same lot as the church

and school. Loading spaces and vehicle maneuvering area will be entirely on the subject property once the properties are combined. A condition of approval will require these properties to be combined to meet this standard.

9.6 Improvements Required

MCC 36.4135 (A) Required parking and loading areas shall be improved and placed in condition for use before the grant of a Certificate of Occupancy under MCC 36.0525, or a Performance Bond in favor of Multnomah County equivalent to the cost of completing such improvements shall be filed with the Planning Director.

MCC 36.4135 (B) Any such bond shall include the condition that if the improvement has not been completed within one year after issuance of the Certificate of Occupancy, the bond shall be forfeited.

Any bond filed hereunder shall be subject to the approval of the Planning Director and the County Attorney.

Applicant: *A bond issuance is not expected.*

Staff: The applicant does not anticipate the need for a bond. If one becomes necessary we will follow the procedures required.

9.7. Change of Use

MCC 36.4140 (A) Any alteration of the use of any land or structure under which an increase in the number of parking or loading spaces is required by this Section shall be unlawful unless the additional spaces are provided.

MCC 36.4140 (B) In case of enlargement or change of use, the number of parking or loading spaces required shall be based on the total area involved in the enlargement or change in use.

Applicant: *Open Door Baptist Church will not change use of land or buildings which would surpass parking requirements without providing needed parking under a future permit. Open Door Baptist Church shall conform with all requirements in regards to a change of use. See proposed parking in Section MCC 36.4120.*

Staff: The proposed conversion of the gymnasium while it continues to be used by the church and school is a change in use. The submitted plans show 171 spaces the number of spaces required by the existing and proposed changed uses is 165 spaces. The number of parking spaces required for the kindergarten program is unknown but can not be more than a couple of additional spaces. The proposed 171 spaces will exceed the number of parking spaces required.

* * *

9.8. Standards of Measurement

MCC 36.4160 (A) Square feet means square feet of floor or land area devoted to the functioning of the particular use and excluding space devoted to off-street parking and loading.

MCC 36.4160 (B) When a unit or measurement determining the number of required off-street parking or off-street loading spaces results in a requirement of a fractional space, any fraction up to and including one-half shall be disregarded, and any fraction over one-half shall require one off-street parking or off-street loading space.

Applicant: *This application complies with standards of measurement per Section MCC 36.4160.*

Staff: This standard is met by the submitted application.

9.9. **Design Standards: Scope**

MCC 36.4165 (A) The design standards of this section shall apply to all parking, loading, and maneuvering areas except those serving a single or two-family residential dwelling or mobile home on an individual lot.

MCC 36.4165 (B) All parking and loading areas shall provide for the turning, maneuvering and parking of all vehicles on the lot. After July 26, 1979 it shall be unlawful to locate or construct any parking or loading space so that use of the space requires a vehicle to back into the right-of-way of a public street.

Applicant: *This applicant meets the design standards listed below. Parking and loading design will not cause any backing of vehicles into the public right-of-way. Access into this overflow parking will have a safe distance separating it from the street access to the property. This will allow entrance in and exit out of the property in a forward motion.*

Staff: The design standards apply to the proposed parking, loading and maneuvering areas. The proposed parking includes areas provides for turning, maneuvering, and parking of all vehicles. With the proposed design there will be no need to back into the right of way. This standard is met by the proposal.

9.10. **Access**

MCC 36.4170 (A) Where a parking or loading area does not abut directly on a public street or private street approved under MCC 36.7700 et seq., the Land Division Chapter, there shall be provided an unobstructed paved drive not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.

MCC 36.4170 (B) Parking or loading space in a public street shall not be counted in fulfilling the parking and loading requirements of this section. Required spaces may be located in a private street when authorized in the approval of such private street.

Applicant: *The entrance into the overflow parking area is 35', exceeding the 20' minimum requirement with a clear direction of travel. This application shall meet the parking requirement with all off-street parking. The expanded parking lot plans to avoid or alleviate any on-street parking that could occur.*

Staff: The entrances are not proposed to change as part of this proposal. The existing accesses exceed the minimum width requirements. The plans do not show the directional markings for the accesses. This requirement will be included as a condition of approval.

9.11. Dimensional Standards.

9.11.1. MCC 36.4175 (A) Parking spaces shall meet the following requirements:

(l) At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.

(2) Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.

(3) For parallel parking, the length of the parking space shall be 23 feet.

(4) Space dimensions shall be exclusive of access drives, aisles, ramps or columns.

Applicant: *48 of 51 spaces, (94%), of the parking are full size parking stalls.*
3 of 51, (6%) of the parking is compact parking.
No new parallel parking is proposed.
Parking spaces are proposed to be clear open spaces not to interfere with vehicle maneuvering or other solid elements. Existing electrical service meter will be relocated outside of vehicle maneuvering area.

Staff: The proposed plan meets this standard.

9.11.2. MCC 36.4175 (B) Aisle width shall be not less than:

(l) 25 feet for 90 degree parking,

(2) 20 feet for less than 90 degree parking, and

(3) 12 feet for parallel parking.

(4) Angle measurements shall be between the center line of the parking space and the center line of the aisle.

Applicant: *(1) No 90 degree parking is proposed.*
(2) One way travel is provided through the parking lot expansion area with a minimum 20' aisle width.
(3) No new parallel parking is proposed.
(4) This application complies with standards of measurement per Section MCC 36.4175

Staff: The proposed plan meets this standard.

9.11.3. MCC 36.4175 (C) Loading spaces shall meet the following requirements:

(l)

District	Minimum Width	Minimum Depth
All	12 Feet	25 Feet

(2) Minimum vertical clearance shall be 13 feet.

Applicant: *Not Applicable.*

Staff: A condition of approval will require a designated loading space of these dimensions. This standard is met through the condition of approval.

9.12. Improvements

9.12.1. MCC 36.4180 (A) Surfacing

(l) All areas used for parking, loading or maneuvering of vehicles shall be surfaced with two inches of blacktop on a four inch crushed rock base or six inches of portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds.

Applicant: *Hard surface area is proposed for new parking spaces for Open Door Baptist Church. This will provide adequate off-street parking for the church events. Surface of lot will be a min. of two inches of asphalt on a four inch crushed rock base. This improvement will eliminate the need for vehicles parking in a non-paved overflow area and prevent soil tracking to paved area. This proposal shall promote erosion control. See Report Section in this narrative for Preliminary Storm Water Report.*

Staff: The applicant proposes to pave the parking, loading and maneuvering areas with two inches of black top on four inches of crushed rock. This standard is met.

9.12.2. MCC 36.4180 (B) Curbs and Bumper Rails

(l) All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.

(2) The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height and at least three feet from the lot line or any required fence.

Applicant: *(1) The perimeter of a parking will have a 6" high curb with required setback from the lot line protecting landscaping and preventing unrestricted access and egress. (2) The perimeter of a parking will have a 6" high curb with setback from the lot line which exceeds the requirement.*

Staff: The submitted plans show parking, loading, and maneuvering of vehicles will be physically separated from public streets or adjoining property by landscaped strips. The perimeter of the parking area will have six inch high curb which will be more than three feet from the property lines. This standard is met.

9.12.3. MCC 36.4180 (C) Marking - All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 36.4120, and such marking shall be continually maintained.

Applicant: *Open Door Baptist Church will provide and maintain striping of individual parking spaces for proper aisle and stall spacing, and directional markings for a clear direction of travel.*

Staff: The applicant states the proposed parking area will be marked according to this standard. A condition of approval will require that the lot's marking will be continually maintained. This standard will be met through a condition of approval.

9.12.4. MCC 36.4180 (D) Drainage - All areas for the parking and maneuvering of vehicles shall be graded and drained to provide for the disposal of all surface water on the lot.

Applicant: *Hard surfacing will be provided at new vehicular travel areas to prevent soil erosion and to control surface runoff. All new areas for the parking and maneuvering of vehicles will be graded to provide for the drainage, collection, and disposal of all surface water on the lot. This will allow any vehicle generated pollutants to be collected and treated before stormwater disposal.*

Construction drawings and final calculations necessary to permit the parking lot expansion shall be prepared by a civil engineer registered in the State of Oregon. See Report Section in this narrative for preliminary drainage report.

Staff: The proposed parking lot will be designed to drain to a detention/infiltration pond. This standard is met.

9.13. Lighting

MCC 36.4185Any artificial lighting which may be provided shall be shielded or deflected so as to not shine into adjoining dwellings or other types of living units, and so as not to create a hazard to the traveling public on any street.

Applicant: *As not to disrupt the natural environment, and maintaining the spirit of a rural environment, additional exterior lighting is not proposed to be added to the site. With the low crime of the area, and considering the primary use for the overflow parking area occurring in daytime hours, the church feels this choice an appropriate approach for this project. All existing artificial lighting is shielded or deflected so as to not shine into adjoining dwellings or other types of living units, and will not to create a hazard to the traveling public on any street.*

Staff: No additional lighting is proposed for the development. This standard is met.

9.14. Signs

MCC 36.4190 Signs, pursuant to the provisions of MCC 36.7465.

Staff: The only signs proposed will be directional and building identification signs. These signs will be required to meet MCC 36.7465. See section 10 of this decision.

9.15. Design Standards: Setbacks

9.15.1. MCC 36.4195 (A) Any required yard which abuts upon a street lot line shall not be used for a parking or loading space, vehicle maneuvering area or access drive other than a drive connecting directly to a street.

Applicant: Existing drives are to remain unchanged. No new parking is proposed in the required 30' yard setback from property line at the street.

Staff: The proposed parking lot will be setback 30 feet from the front property line. This standard is met.

9.15.2. MCC 36.4195 (B) A required yard which abuts a street lot line shall not be paved, except for walkways which do not exceed 12 feet in total width and not more than two driveways which do not exceed the width of their curb cuts for each 150 feet of street frontage of the lot.

Applicant: *Of the 735' of road frontage, Open Door Baptist Church has only two existing curb cuts. They are to remain unchanged with no new curb cuts requested. The yard between the street and the parking area is fully landscaped with existing mature vegetation. The distance between the existing driveways exceed 150'.*

Staff: The required yard is and will continue to be landscaped with vegetation. This standard is met.

9.16. Landscape and Screening Requirements

MCC 36.4200 (A) The landscaped areas requirements of MCC 36.7055 (C) (3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 36.4165 (A).

Applicant: *Within the scope, a large stand of existing trees and a substantial hedge is maintained in the lot while accommodating additional parking adjacent to the existing parking lot. The required minimum landscaping has been exceeded. The church and school grounds have ample mature landscaping. Any disruptions to soil will be replaced with similar material. See civil plans for plant schedule. Per Multnomah County Transportation Department's request, the existing deteriorated fence at bus parking area will be repaired or replaced as required to deter pedestrian or vehicle travel through landscape opening.*

Staff: The findings for landscaped areas requirements of MCC 36.7055 (C) (3) to (7) are in Section 8.3.1.3 of this decision. The proposed plans meet this standard.

9.17. Minimum Required Off-Street Parking Spaces

MCC 36.4205 (B) Public and Semi-Public Buildings and Uses

(1) Auditorium or Meeting Room (except schools) - One space for each 60 square feet of floor area in the auditorium or, where seating is fixed to the floor, one space for each four seats or eight feet of bench length.

Applicant: *Fellowship hall: 2400 s.f. = 40 parking spaces required.*
Auditorium: one space for four seats (225 seats) = 56 parking spaces required.

* * *

(2) Church - One space for each 80 square feet of floor area in the main auditorium or, where seating is fixed to the floor, one space for each four seats or eight feet of bench length.

Applicant: *Per DS 6-98, 39 spaces required.*

(3) Church Accessory Use - In addition to spaces required for the church, one space for each ten persons residing in such building.

Applicant: *Per DS 6-98, 1 space required.*

* * *

(7) Primary, Elementary, or Junior High and Equivalent Private or Parochial School - One space for 84 square feet of floor area in the auditorium, or one space for each 12 seats or 24 feet of bench length, whichever is greater.

Applicant: *Auditorium: one space for 12 seats (225 seats) =19 parking spaces required (dual uses, see auditorium above for controlling number of required parking).*

(8) Kindergarten, Day Nursery, or Equivalent Private or Parochial School - One driveway, designed for continuous flow of passenger vehicles for the purpose of loading and unloading children plus one parking space for each two employees.

Applicant; *There will be no changes to the existing kindergarten program. The parochial school driveway provides existing continuous flow of traffic through passenger drop offs in two separate areas, east and west passenger drop offs. There are 19 employees, and 10 parking spaces required (dual uses, see auditorium above for controlling number of required parking).*

Staff: The applicant has calculated the number of parking spaces required according this section of the Code. The number of parking spaces required is 165 plus a couple for the kindergarten teachers. The applicant proposes a total of 171 spaces.

10. **SIGNS GENERALLY IN THE EFU ZONE**

MCC 36.7450: For all uses and sites in the above listed zones, the following types, numbers, sizes and features of signs are allowed. All allowed signs must also be in conformance with the sign development regulations of MCC 36.7460 through 36.7500.

10.1. MCC 36.7450 (D) Additional Signs Allowed - In addition to the sign amounts allowed based on the site and building frontages, the following signs are allowed in all zoning districts for all usages:

(1) Directional signs pursuant to MCC 36.7490.

Applicant: *One directional sign is planned in the new parking lot for this phase of work and will be in accordance with 36.7490 standards.*

Staff: Applicant is proposing one sign for direction purposes.

10.2. MCC 36.7465 Sign Placement.

(A) Placement

All signs and sign structures shall be erected and attached totally within the site except when allowed to extend into the right-of-way.

* * *

(C) Vision Clearance Areas

(1) No sign may be located within a vision clearance area as defined in subsection (C)(2) below. No support structure(s) for a sign may be located in a vision clearance area unless the combined total width is 12 inches or less and the combined total depth is 12 inches or less.

(2) Location of vision clearance Areas - Vision clearance areas are triangular shaped areas located at the intersection of any combination of rights-of-way, private roads, alleys or driveways. The sides of the triangle extend 45 feet from the intersection of the vehicle travel area (See MCC 36.7505 Figure 2). The height of the vision clearance area is from three feet above grade to ten feet above grade.

* * *

(F) Required Yards and Setbacks

Signs may be erected in required yards and setbacks.

(G) Parking Areas

(1) Unless otherwise provided by law, accessory signs shall be permitted on parking areas in accordance with the provisions specified in each district, and signs designating entrances, exits or conditions of use may be maintained on a parking or loading area.

(2) Any such sign shall not exceed four square feet in area, one side. There shall not be more than one such sign for each entrance or exit to a parking or loading area.

Applicant: *One directional sign is planned in the new parking lot for this phase of work and will be in accordance with 36.7490 standards.*

Staff: A condition of approval will require that these standards be met.

10.3. MCC 36.7490: Directional Signs.

Directional signs shall comply with the following provisions:

Maximum Sign Face Area:	**Six Square Feet**
Types of Signs Allowed:	**Free Standing, Fascia, Projecting, Painted Wall**
Maximum Height:	**Free Standing 42 Inches Fascia and Projecting 8 Feet**
Extensions into R/W:	**Not Allowed**
Lighting:	**Indirect or Internal**

Flashing Lights:	**Not Allowed**
Electronic Message Centers:	**Not Allowed**
Moving or Rotating Parts:	**Not Allowed**

Applicant: *One directional sign is planned for this phase of work and will be in accordance with 36.7490 standards.*

Staff:. A condition of approval will require this standard be met.

10.4. MCC36.7495 Temporary Signs.

(A) Time Limit

Temporary signs and support structures, if any, must be removed within six months of the date of erection.

(B) Attachment

Temporary signs may not be permanently attached to the ground, buildings, or other structures.

* * *

(E) Temporary Rigid Signs

(1) Type - Rigid signs may be free-standing or placed on building sides.
(2) Size - The maximum size of a rigid sign is 32 square feet.
(3) Number - One rigid sign is allowed per site frontage.
(4) Height - Rigid signs on buildings may not be placed above roof lines. The maximum height free standing is eight feet.
(5) Extensions into the Right-of-Way - Rigid signs may not extend into the right-of-way.
(6) Lighting and Movement - Rigid signs may not be illuminated or have moving or rotating parts.

Applicant: *One construction sign is planned for this of work and will be in accordance with 36.7495 standards.*

Staff: The applicant proposes a temporary construction sign. A condition of approval will require the sign met these standards.

11. <u>COMPREHENSIVE PLAN, POLICY 38</u>

Facilities: Fire Protection

(B) There is adequate water pressure and flow for fire fighting purposes; and
(C) The appropriate fire district has had as opportunity to review and comment on the proposal.

Applicant: *See <u>Service Provider Section</u> of this application for the letter from the Fire Department.*

Staff: The applicant has provided a Fire district Review Form signed by Mike Kelly, Deputy Fire Marshall, Gresham Fire and Emergency Services. Mr. Kelly has marked the line indicating that the existing access to the proposed development is adequate and that there is adequate water pressure and flow for fire fighting purposes. This policy requirement has been met.

12. CONCLUSION

Staff: The applicant has demonstrated that the proposed development meets requirements of MCC 36.2600 et al: Exclusive Farm Use Zone District and meets the standards required by the MCC 36.7000 et al: Design Review, MCC 36.4100 et. al: Off-Street Parking and Loading MCC 36.7400 et. al: Signs and Comprehensive Plan Policy 38: Fire Protection. Additionally the application demonstrated the request met the requirement of MCC 36.7060 (C) for an exception to the landscape rules in MCC 36.7055(C)(3)(c). This review followed the requirements of MCC Chapter 37: Administration and Procedures.

Considering the findings of this decision staff concludes this request meets the requirements to gain an approval for the conversation of the gymnasium into classrooms, fellowship hall and warming kitchen and the addition of a new parking area with an exception to keep the existing hedge north of the proposed parking area and not meet the requirements of MCC 36.7055(C)(3)(c) for three foot maximum shrub height and the planting of trees in that area, subject to compliance with conditions of approval.

13. EXHIBITS

13.1 Exhibits Submitted by the Applicant:

Exhibit 1.1: Application form submitted 6/30/04 (1 page);
Exhibit 1.2: Property owner authorization for application submitted 6/30/04 (1 page);
Exhibit 1.3: Narrative submitted 6/30/04 (30 page);
Exhibit 1.4: Preliminary drawings and site plan map, submitted 6/30/04 (11 page);
Exhibit 1.5: Service provider forms submitted 6/30/04 (14 pages);
Exhibit 1.6: Maps of the subject property and vicinity submitted 6/30/04 (7 pages);
Exhibit 1.7: Storm Water Report dated March 2004 by Dan Symons PE submitted 6/30/04 (21 pages)
Exhibit 1.8: Symons Engineering Consultants, Inc traffic study submitted 6/30/04 (6 pages);
Exhibit 1.9: Fax memo containing addendum to the narrative (1 page);
Exhibit 1.10: Parking Lot Site/Landscaping Plan submitted 8/11/04 (1 page);
Exhibit 1.11: Fax memo showing plan revision to add an pedestrian walkway and applicant requested crosswalk crossing Strebin Road submitted 11/4/04 (2 pages0.

13.2 Exhibits Provided by the County

Exhibit 2.1: County Assessment Record for the subject property (1page);
Exhibit 2.2: Current County Zoning Map with subject property labeled (1 page);
Exhibit 2.3: County 2002 Aerial (1 page);
Exhibit 2.4: Memo dated February 19, 2004 from Alison Winter, County Transportation Planning Specialist (2 page).
Exhibit 2.5: Memo dated November 9, 2004 from Alison Winter, County Transportation Planning Specialist (2 page).

LCDC John Day Commission Meeting, ~~June 7, 2010~~ June 3, 2010
Item 7
Transcribed by Katie Butterfield, Secretary for Open Door Baptist Church

MM – Chairman Nottingham and commission members, I am Michael Morrissey, I am the rural policy analyst for the department. This agenda item is a rule making hearing to consider the adoption of amendments within division 33 the agricultural lands that relate to uses allowed on EFU lands within 3 miles of an urban growth boundary. The reason that we're here is to respond and address a LUBA opinion that arose out of Jackson County that had to do with an application by a church for expansion and LUBA found that our rules with regard to what is allowed within 3 miles were not consistent with their LUBA rules, our LUBA being religious land use institutionalized persons act it is federal law, federal regulation. You appointed a rules advisory committee last fall that advisory committee was chaired by Greg MacPherson. The committee met four times and these proposed rules recommend the results of those meetings. We're going to make a staff presentation that I think MacPherson will want to follow up with some comments. The Director Richard Whitman attended two of those meetings and we have some additional votes to add. So what we're talking here is about the rules in 660-0330120 and 0130. I hope you've had a chance to review the material. The rule language itself is in 0130 that we're proposing to revise and how that is applied is in the table in 0120 and we'll go over that if you need to. As you may remember the current rules do not allow churches or schools within 3 miles and those are uses among many other uses but these uses are clustered within a group of other uses that are referred to as public or quasi-public parks. It's a set of uses that are kind of clustered together with their particular purpose. I should say that there is, besides some obvious legal issues here, the policy issues that really are involved here are the applications of the goal and rules of agricultural lands vis a vis rule 14 and where urban uses are allowed. And so the part of the nut of trying to come up with a solution here there was trying to find what the committee could define or apply as a rural use vis a vis an urban use within this 3-mile area. Because of the nature of the LUBA decision discussion focused around assemblies and structures, what kind of assemblies were allowed in structures. And again that's part of why the ultimate recommendation does not apply to all uses that are in that table but only to certain uses that could involve assemblies and structures. I should say that the rules advisory committee did involve a number of parties and particularly especially at the end of our discussion parks but also schools were represented it is at one point it didn't continue as a member of the religious community who also was an attorney who is involved in litigation and there were several parks representatives and 1000 Friends and a member of our citizen advisory committee so we had a fairly wide group of people who were able to …

4:42

Do you remember the names?

MM: Good question. I may have mentioned them in here. Amanda Rich was a member of a state-wide private organization of parks although they represented public parks as well as private parks providers. Ron Campbell from the state parks dept; Jim Bean who was the private attorney who has done work on behalf of a particular church branch, the Mormons; Dave Hunnicutt, Oregonians in Action. Jim Just some friends who's our CICAI. Molly Eader from Crook County.

Any local government people?

MM - Not as a representative on the committee. We had attendance by some local government people from time to time.

A planner from Lynn County was one of those commissioners attended it at one point.

MM – I think that's about it. The discussion took a while to revolve around the uses, what type of uses, the size of structures, how far structures should be apart from one another, what would amount to a rural use, and eventually the discussion focused around enclosed structures, and a lot of the discussion, I have to say, was how to involve parks uses many state parks, but not only state parks, in fact it turned out we found from some input from parks some mapping that just abutted or crossed either the UGB or the 3 mile boundary and so when we the committee were trying to discuss OK, structures and assemblies the parks had quite a big involvement so that the discussion focused around enclosed structures with a design capacity of not over 100 people , and I'll get to that in a minute. As one basic concept of the solution here the other basic concept was the distance that structures should be from one another , and the point was, okay this would allow you to build a structure over here that holds no more than 100 but then what's to stop you from having yet another structure and yet another structure and another structure. And so the second part of the solution in the rule that we'll come to in a sec has to do with distance on a tract. And that suggested, recommended distance is half a mile. And again I think that point here no matter what we say about the moving parts of this rule, the ultimate goal was to find something that would satisfy a definition or an application of something that is a rural use within this 3 mile. And I should say that I assume most of you know that this 3 mile rule application has to do with protecting the UGB from certain types of growth that would either not be consistent with agricultural practices or would not be consistent with trying to protect land outside the UGB for eventual possible consideration for bringing into the UGB.

8:23

It's very easy to get lost in the weeds on fiscal making and I think actually the rules advisory committee and myself very much included, we all got lost in the weeds at times on this, so I think it helps to keep in mind what the fundamental policy purposes are of this rule, and so I want to describe those and I also want to note that it really wasn't the task of this rule making to revisit some of those policy choices that were made by the commission quite some time ago. That there are two major policy purposes that are in play here. One is the long-standing state land use policy that urban uses should generally be located within urban growth boundaries. The second policy, major underlying policy is conservation, protection of agricultural lands for agricultural uses and to minimize conflicting non-agricultural uses. So some time ago, this commission adopted a rule that requires certain types of uses that might normally be allowed on agricultural land to not be allowed within 3 miles of an urban growth boundary because those uses were deemed to be essentially urban or often urban in nature, and both to protect the farm uses and to make sure that uses that really should be located within an urban growth boundary weren't taking advantage of lower land values immediately outside of a UGB and then serving an urban population. So that's sort of the long-standing policy basis for this approach and state law. So the state has had a general rule substantially limiting what uses can occur within 3 miles of an urban growth boundary for some time. The court case that motivated this role making identified that there are some uses that the state was continuing to allow within 3 miles of an urban growth boundary private parks, I think I might have that wrong. I can't remember the detail which uses were being allowed and which weren't, but basically the fact that the state was not flatly prohibiting everything within 3 miles involving a large assembly of people created problems under our LUBA, at least as implied in that case. So the purpose of this rule making wasn't to revisit the 3 mile rule, it was to look at the existing rule and see

what needed to be done to tweak it basically to make sure that it was a prohibition of general applicability on urban-type uses within 3 miles of UGB . And so that really was the focus of the rules advisory committee . One thing that I think we've learned through that process is we've got at least one use which is neither fish nor fowl, and that's parks. You've got in particular public parks that are involving or located in a particular place to take advantage of our resource that is at a particular location. They are both serving an urban population , but they're also locationally dependent, and so parks are allowed under state law through a master planning process that involves at that local level or state level adopting comprehensive plan provisions or administrative rules to do planning for park facilities. So those are the one use really involving assembly of a large number of people in a structure that would continue to be allowed if they go through the master plan in the process that's set out elsewhere in state law. We think there are good policy reasons for doing that because of the nature of the parks' uses that really distinguish them from the other types of uses that we're looking at. Right now there's simply too much ?. It's very easy to get lost and the rules are extremely complicated, and it's important to understand those two general policy purposes toward this effort going into this point.

13:41

So, from 30,000 feet we've got the two policies and the two tweaks and people in the cluster?

Yes, and also to include a number of uses that were not previously limited in terms of structures in the limitations, so those would include … I'll let you go through that detail.

MM - So, I didn't want to get too far into the LUBA decision because they are not trained to do that and it would take too long, but I will say that when we get into the table of where we apply these uses, they are uses the LUBA did call out of where they said, "Hey, you allow this but you don't allow churches or schools." And they've called out parks, they've called out golf courses , they called out community centers, they've called out living history museums, and so all of those are going to now be subject to if you adopt these rules, and they previously weren't , and most importantly, LUBA said those are assemblies for the purposes of our LUBA discussion. Let's turn real quick, if you would, to if you have it in front of you, I enclose the entire rule which is long, but I didn't want to look as if we were hiding something if someone wanted to refer to the first other part of the rule, so the whole rule is attached. It's 0330130, but the part that fits revision applies to is actually quite small. It's section 2. So you see what we have just crossed out and that language applies to uses and the language that we're adding in underline 2a and 2b talks about structures and assemblies, enclosed structure with design capacity of better than 100 people, or a group of structures with a total of a capacity of greater than 100 people shall be approved in connection within 3 miles of an UGB unless an exception is approved pursuant to, and then the next clause is important, or unless the structure is described within the master plan adopted under revisions of. The exception language already had existed. That language is carried over even though it's underlined here. So one can still apply for an exception under circumstances to get the use that you're desiring to. The second subsection B here again relates to the distance between structures. It also defines on a tract.

May I ask you a question?

Sure.

Getting back to if the structure is part of the master plan, doesn't that put you back in violation of the LUBA decision?

No, we don't think so. Ginny may want to comment on this more. But again we don't think it does because you've got a rule that generally prohibits structure serving, for policy purpose, structures serving an urban use. With one exception for parks (a) it has to go through a master planning process, so it's not allowed outright. There's a significant process in showing it has to be gone through for parks, and (b) perhaps more importantly, there are legitimate policy reasons like parks need to be located within 3 miles of the UGB. They don't have the locational alternative that the other uses that we're looking at here do. If you've got a large-scale park on a river. You can't have that same function …

Does this only apply to parks?

Yes

17:47

So

Ginny, do you want to say anything more?

Ginny: Yes, when they go through the master planning process for the parks, they would have either gone through the exceptions process or gone through an equivalent type of a process essentially establishes the same purpose as going through the goal 14 exception to locate there. They may not have gone through exactly that process but it's a function process. So they are being treated differently because they are a different use that is locationally dependent, that does serve a different purpose. The whole goal with these is that the regulation has to be facially? neutral. You cannot put a substantial burden on one group as opposed to another unless there is a compelling state reason to do so. Now with the state park situation there is a compelling reason and they have gone through that master planning process.

Well, I was going to say, probably like for direction, go back to the court decision that focuses on equal protections portion of LUBA decisions, and in that equal protections Ginny is correct. It says that unless you have state-wide compelling reason why that you treat that place of assembly differently, and so that's what we've done here. We've treated it differently because there's a state-wide policy … so I think it's covered. On its face it appears though we're treating parks differently again, and it's not , but I think the court decision makes it very clear that you can go this way.

I will just say that the law on these issues is very unsettled still. We do not have a 9th Circuit controlling case from the federal courts at this point. We have looked carefully at recent cases coming from other circuits and from district courts in the 9th circuit, so this could change as we get more court decisions, but we've worked very closely with counsel in crafting this over the last several months.

20:24

So I'll just add a couple more points and then maybe a Greg MacPherson would like to comment. So the rule language itself we just looked at. The application of that ruling language which is in this table which I hope you all have, and they go together. And if you don't put them together it gets very confusing very fast. Because people worry, does this apply to barns? Does this apply to the farm? No, it does not. If you look at that table on the 3rd page, down at the bottom, it says "parks, public or parks quasi-public."

Notice there are certain codes in front of those uses, and where you see the #2, on the left, that starts with public/private schools, for example, has an R2. The 2 relates to this ruling which we're just discussing here. So you'll see that the 2 will remain, they're not changed, for public/private schools and for churches, this rule language will be added to the usage there is an underlying 2 that includes private parks, public parks, community centers, golf courses, living history museums, firearms training and armed forces reserves centers. Now, we've just talked about parks so you might wonder why is the 2 here. Well, it's because when you go into the rural, you'll see that a park is not master planned, and will be subject to these limitations. The rule will say if it is master planned structure then it will be okay. So that's how these two things work together . Then last I'd like to point out something that was just handed out, which gets to a little bit about why 100 is the structure size. So the committee was discussing what would be something that would appear to be a rural size and that rural talk about the LUBA decision about community centers and that gave us an option to go look at community centers. I did do an admittedly unscientific survey of a number of them. You'll see here the occupancy I actually called people and asked them to go look at or give me some evidence that this building says, "Can't hold more than x-size" and so you'll see the size is here, often these are grain halls? but not only, but they were in active use as community centers and so you can see that the hundred is at probably the lower end of this list of sites that I was able to check. So that's kind of where we are.

Greg, you want to add anything?

GM: Yea, I think this was a successful process of outreach to various stateholders. We had quite diverse representation. It took several meetings to sort out a direction to go with it, but we got to something that could reasonably be called a concensus product subject to this caveat: the advocate for religious organizations who was on our group continues to believe that the land use planning in various ways violates a different provision of our LUBA by imposing a substantial burden on religious practices. We chose as a work group to not take that issue on because it was one that was not decided on in the Young Case in Jackson County. Instead we focused on the question of equal or unequal treatment and came up with this configuration. We did consider several considerations that were on the table. One would be to look at uses broadly whether they're in a structure or not, and decided that would be too restrictive of the things that might normally be held in parks, religious gatherings in open fields, whatever. And we also considered, at one point, covered structures rather than enclosed so that, but that created issues , under sort of family reunion picnics, like shelters, that sort of thing. So we finally settled on enclosed structures figuring that things that are done in the open air may have an impact that run counter to the broader policies that Richard described earlier but that they wouldn't have such an enduring impact as an enclosed structure would. So that's why this configuration of enclosed structures and the distance between them was decided on simply as a protective measure so you don't have people trying to end run the rule by configuring their several satellite structures with a covered walkway or something like that in close proximity. So I think the effort was a successful outcome in terms of dealing with a relatively narrow issue.

25:34

Thank you for doing it.

I would second that and add one thing which we did have a local government representive, I believe, on the advisory committee. Wasn't that

Yes, Arch Slack? was on the committee. That's exactly right.

New public hearing. Do you want to do it before?

Go.

So I have 3 things. First is Michael pointed out that in addition of 2 to rule 0120 on the table is in the list. I wanted to make it very clear that that is for non high value agricultural lands The left-hand column is high value lands and that list is not changing. And that list includes the opportunity to expand existing places of assembly on high value, not add new. So this opportunity is being provided for on lands that are not high value agricultural soils. So that's one point, I think we need to make that distinction. The second thing that I have is in the various additions of the rule that we got and the staff report, initially there was a reference to a section 2c which again dealt with existing facilities and it is not there now, and it's not in the staff report, and I thought maybe you could talk about that.

I can. And then Richard may …

Why don't we do that?

So there was a C up until pretty close to the end that the committee had discussed and that c related to an existing non-conforming uses. We were able to take that out of the rule, and the staff report partially, but that note escaped my attention, so that was there. The issue is what should be the reference or what should be the guide to non-conforming uses. Should it be in this rule or should it be in a statute. And the director felt like that the statutory link was the correct way to go. I guess that's the best way I can say it.

So let me elaborate on that a little bit. I'm concerned that if the commission keeps putting in specific references to how it wants to deal with non-conforming uses in the division 33 rules, it's going to raise significant questions about how the general rule and statute are non-conforming uses ?, so as a general matter, I'm , and we'll look at this in the house-making and rule-keeping revision that we're proposing to do on revision 33, we go back to relying on the general non-conforming use provisions in state statutes that everybody's familiar with and administers on a day-to-day basis rather than having specific slightly different language and 20 different rules and nobody really knows how they all fit together. That's why we took it out.

29:27

So on high-value soils we've clearly said that existing facilities in 18a, existing facilities wholly within the farm zone may be maintained, enhanced, or expanded on the same tract subject to requirements of law. So we've clearly said that if it's high-value soils, you can expand.

Yep.