

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 17-06-13-06 In the Matter of Electing Whether or Not to Hear an Appeal of a Hearings Official Reconsidered Decision Approving in Part, and Denying in Part, a Verification and Alteration of a Non-Conforming Use Application (File No. 509-PA13-05201/Lost Valley Center).

WHEREAS, the Lane County Hearings Official has issued a reconsidered decision verifying the extent of the subject property's non-conforming use status and denying the request for a modification of the previously approved alteration/expansion (509-PA91-02433), in Department File No. 509-PA13-05201; and

WHEREAS, the Lane County Planning Director has received an appeal of the Hearings Official's reconsidered decision to the Board of County Commissioners pursuant to LC 14.515(3)(f)(ii); and

WHEREAS, the Lane County Hearings Official has affirmed his reconsidered decision on the application after reviewing the appeal in File No. 509-PA13-05201; and

WHEREAS, Lane Code 14.600 provides the procedure and criteria that the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. That the appeal does not comply with the criteria of Lane Code 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A."
2. That the Lane County Hearings Official reconsidered decision dated April 17, 2017, and the letter affirming the decision dated May 2, 2017, attached as Exhibit "B," which found that the allegations of error are addressed, are affirmed and adopted by the Board of County Commissioners as the County's final decision. The Board of County Commissioners has reviewed the appeal and the Hearings Official reconsidered decision and expressly agrees with and adopts the interpretations of Lane Code 16.251 made by the Hearings Official in the decision.

ADOPTED this 13th day of June, 2017.



Pat Farr, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date



LANE COUNTY OFFICE OF LEGAL COUNSEL

ORDER EXHIBIT "A"

FINDINGS IN SUPPORT OF THE ORDER

1. The Applicant in this matter is the Lost Valley Center. The property subject to this application, hereinafter referred to as the "subject property," has an address of 81868 Lost Valley Lane, Dexter, Oregon and is located about one-half mile south of the Community of Dexter. It is 76.4 acres in size and can be identified as tax lot 105, assessor's map 19-01-29. The property is designated Forest in the Rural Comprehensive Plan and is zoned Impacted Forest Lands (F-2), consistent with the Plan designation. Anthony Creek, a Class I stream, runs through the western portion of the property. The property is developed with a number of structures, roads, and other retreat-related improvements.
2. The subject property lies between Lost Valley Lane and Anthony Creek Road. Properties to the east, northeast, and southeast are zoned Rural Residential (RR-5) and are, to a degree, relatively densely developed with residences. Properties to the west and northwest are zoned Impacted Forest Lands (F-2) and are developed with residences. Properties to the south and southwest are zoned Impacted Forest Lands (F-2) and Non-impacted Forest Lands (F-1) and are used for timber management and pasture.
3. The retreat/educational center was initially established in 1969 as the Shiloh Youth Revival Center and later the Shiloh Retreat Center. About 30 structures were built on the property in the early 1970s, including housing facilities of various types for 150 individuals and 35 families, dining facilities, a clinic, classrooms, offices, a community store and various agricultural and miscellaneous buildings. During the early 1980s, the use of the subject property evolved into a study and retreat center that served a broader population base and included the sponsoring of conferences and seminars. Eventually, the use of the property as a youth revival facility was discontinued but its use for conferences and seminars continued. Shiloh hosted an average of 3,000 guests per year as a retreat center. Lane County tax records for the Shiloh Youth Revival Center show the existence of at least 22 structures prior to March 5, 1971. These structures included three general purpose sheds, eight cabins, three pump houses, a pole shed, a dining hall, a bath house, a milk house, two barns/feeders, a poultry house and a shop.
4. Historically, the subject property was not subject to land use regulation by Lane County until County's adoption of a comprehensive land use plan for the Lower Middle Fork Subarea on November 27, 1974. The Subarea Plan depicted the subject property as "Rural Woodland and Grazing," a designation appropriate for living in rural and undeveloped areas and for the conduct of agricultural activities. Rural residential and recreation uses had the potential to conform to this designation. Unzoned Area Development Permits were first required on August 15, 1973, but were generally only required for new uses or activities. Zoning for the area first occurred on November 12, 1975 when it was zoned AGT-5 and then subsequently rezoned to F-2. The AGT zoning made churches, schools and similar activities conditional uses.
5. In 1989, the property was acquired by Seven Generations Land Trust for the use by the Lost Valley Center, Inc. Lost Valley continued the prior use of the property for seminars and conferences, gradually increasing this use and the residential occupancy.
6. On November 25, 1991, the Planning Director approved a Verification and Increase of a Non-Conforming Use for a retreat/educational facility on the subject property (Planning File 509-PA91-02433). The 1991 application showed 22 structures on the property, that included 3 general purpose sheds, 8 cabins, 3 pump houses, a pole shed, dining hall, bath house, milk house, 2 barns/feeders, poultry shop, and shop. The application listed

20 structures to be built. A cabin, mobile home site, and staff housing (4-plex, 12 bedrooms) have been built. The two mobile homes have been replaced by yurts, and the staff housing is less than a 4-plex. Greenhouses, a yurt, and a storage shed not authorized by the 1991 decision have also been built.

7. The 1991 decision concluded that the uses identified in the application predated potentially restrictive ordinances enacted in 1973 and 1975 and limited the nonconforming use to 150 resident students, 35 staff members and families, and 3,000 annual guests, and approved an increase in the nonconforming use consisting of specific improvements listed on an exhibit and depicted on a site plan. The staff report of PA 91-02433 seems to indicate that August 15, 1973 was that date that the use became nonconforming as development was required to authorized through the issuance of an "unzoned area" development permit. The staff opined that no Development Permit would have been required because of the extensive and existing development on the subject property. Nevertheless, had the development not existed it is likely that it would have needed an unzoned area development permit.
8. The record contained in PA 91-02433, which is adopted into the record by reference, establishes that the property had continuous threads of agricultural and forestry uses, counseling, educational uses, seminars, conferences, retreats, religious uses, and residential uses as early as 1969/1970. There were extensive on-site construction projects that served as vocational training and education and there was a store, a carpentry shop, and a mechanic shop as well. The Applicant's submitted materials for this application indicate that, since 1991, activities on the subject property have included following types of uses: Agriculture Workshops, Agroecology, Permaculture Design, Land Stewardship, Ecological Living, Energy Efficient Economical Construction, Solar Design, Sustainable Construction, Carpentry, Craft Workshops, Basketry Workshops, Food and Cooking Workshops, Personal Growth Workshops, and Spiritual and Healing Workshops.
9. Currently, the Lost Valley Center has 23 staff members and their families and 29 resident students. On an annual basis, the Center has about 120 resident students and entertains upwards of 2,300 guests; whose occupancy varies with the seasons.
10. Testimony in the record substantiates that the Center has been operating continuously since 1991. Most of this testimony, however, does not address the intensity of the uses during the years that they were involved in the Center. Thus, the annual number of staff members, resident students and guests is not addressed in any detail. Justin Michelson, Executive Director of the Center, points to the IRS 990 Forms that are in the record to demonstrate that the intensity of the use has not waived significantly except for the impact of the 2008 recession.
11. In general, the 990 Forms show an increase in program revenue from 1990 to 1999, a 61 percent increase in program revenue between 1999 and 2000, with a pretty constant annual increase until 2008, when program revenue decreased each year until 2012. A rebound to 2004-2005 levels occurred in 2014. While the 990 Forms do give an indication of the continuous program activity of the Center, they are not a reliable indicator of actual staffing. For instance, the 2000 and 2001 Form 990s show a three-fold increase in program revenue, adjusted to 2015 dollars, from the 1990 and 1991 Form 990s. If program revenue was an accurate indicator of the intensity of the nonconforming use then the Form 990s would be an indication that the intensity of the use has drastically increased since it was verified in 1991. There is no evidence from the 990s that the number of staff and residents have increased proportionately to the increase in program revenue.
12. An examination and analysis of the supplemental information was more revealing than the 990s. It showed that during the 21-year period between 1993 and 2013, the center

- entertained over 2,000 guests per year during 10 of those years and more than 1,500 individuals per year during 15 of those years. It averaged 1,725 guests per year during this period. During this period, the Center operated over 100 days per year on eight of these years and averaged 89 days per year during this period. These figures are conservative as the only way that a reliable count could be made was through the event invoices that were submitted by the Applicant. Some of these invoices did not have a guest count and other information indicated that there were events that were scheduled but no invoices were submitted.
13. With a couple of exceptions, the data showed a large decline in guest attendance for five of the years between 2004 and 2011. A large part of this decline can be attributed to the recession. If these years are excluded from the calculations, then the Center would have averaged over 2050 guests per year. The data also indicated that the staffing during the examination period was steady and close to what the Applicant currently claims. However, the data does not support a finding that the annual number of guests was anywhere near the 3,000 guests per year. Only during two years during this 21-year period did the client population exceed 3,000 guests and generally the documented number was in the high 1,000's or low 2,000's. Therefore, the annual guest population of the non-conforming use should be around 2,000; plus or minus a few hundred individuals. This is more generous than the Applicant's estimate of 1,713 based upon Form 990 tax returns but probably more accurate. Nevertheless, it is two-thirds of that verified by the County in 1991.
 14. Over the years, the Lost Valley Educational Center has hosted various on-site businesses. Testimony indicates that these businesses have supported the broader educational agenda of the organization and have all originated with staff who brought those businesses with them to the centers. One example given concerned Ananda Reeves, who had been teaching personal growth for over 40 years, had her own website, and her own business name. After she joined Lost Valley Educational Center as staff in 2015, she rented space from the Center for her business and taught marketing skills to Lost Valley Center students. An examination of the business invoices submitted by the Applicant, document that the Center has always served as a location for outside organizations for training. Sometimes the training is provided by Center staff and sometimes it is provided by an outside organization, with the Center only providing lodging, meals and meeting rooms. Arguably, there is little difference between a situation where training is provided by a Center staff's business or by an outside organization, and it is common for the Center to host well-known speakers who use the Center's facilities for training and educational purposes.
 15. The wells used by the Center have been monitored by the Oregon Health Authority. The EPA recommended threshold for E.coli bacteria is 410 per cfu/100 mL. The Center had a positive E.Coli test in November of 2014 although no positive test has been registered since that time. However, in December of 2015, one the Appellants, Mr. Senkovich, had samples of surface water from a large ditch that drains about 50 acres of the subject property into Anthony Creek tested by Analytical Laboratory Group (ALG) of Eugene. One of the samples tested at 2400 MPN/100mL and five of the samples taken from three locations on three different days showed an E.coli count exceeding the EPA threshold. A January 5, 2016 sample of the Center's well water, tested by ALG, was 82 per cfu/100 mL. The water system's treatment system was found to be in good working order in a 2013 evaluation by a Eugene-based engineering firm. The surface waters that flow across the subject property originate across miles of other properties.
 16. The subject property is located within and is served by the Dexter Rural Fire Protection District. The District has a Type 1 fire engine with an 1,800-gallon water tank and a 1,000 gallon per minute pump; a Type 1 fire engine with a 1,000-gallon water tank and a 1,250 gallon per minute pump; and a Type 1 fire tender with a 2,000-gallon water tank and a

500 gallon per minute pump. The District's fire-fighting equipment has accessed the subject property in the past to do joint fire training for a prescribed burn. The roads on the subject property are a minimum of 16-feet in width, with a few areas that are 12-feet in width, and are surfaced with gravel. No road grades exceed 8 percent and there are turnarounds for the fire equipment located throughout the property. All buildings on the subject property are equipped with fire extinguishers and the Center has an Emergency Response Plan. The State Fire Marshall has visited the Center on a regular basis and has had the Center replace a kitchen hood, maintain electrical equipment, clear fuel breaks, and ensure the fire extinguishers are current. The Applicant has proposed to create a 60-foot fuel break around new structures and a 30-foot vegetative buffer at the border of neighboring properties.

17. The Applicant has six on-site subsurface sewage disposal systems, including drainfields. The drainfields are over 1,000 feet from any active well. Concern has been expressed by the Webers that the Applicant's lift pump station is located 60 feet upslope from their property and about 220 feet from their well. Surface water runoff across the subject property empties into a large ditch that dumps it into Anthony Creek.
18. In 2005, one of the Applicant's septic tank pumps malfunctioned and a septic tank overflowed. In 2006, HBH Consulting inspected the system and found it good working order but susceptible to rainwater infiltration in several sections of concrete piping. No subsurface septic system failure has been documented since. In 2013, the Center's septic systems were evaluated by Boeger & Associates, LLC, a civil and environmental engineering firm located in Eugene, Oregon. The systems six septic tanks, with a combined capacity of 12,000 gallons, coupled with a 2,000-gallon dose tank with duplex pumps, pump effluent into two separate drain fields. Using conservative estimates, the firm found that the Center's septic tank capacity can serve 150 people per day and the drain fields have a capacity to serve 111 people per day. Currently, the Center has a bed capacity from its existing structures for 89 people. However, there have been a few events over the past few years where between 150 and 250 people have been hosted. While the system is generally adequate to serve the existing needs of the Center, the construction and use of the proposed expansion would exceed its capacity.
19. The Center's water system was also evaluated by Boeger & Associates, LLC in 2013. The water system consists of one well (Well #2) that provides potable water and has a 3,000-gallon storage tank and treatment facilities, another well that serves the irrigation system (Well #3), and a third well that is not in service (Well #1). The evaluation found that the pumps and treatment system were working well. A pump test on Wells #2 and #3 was also performed during this evaluation. A neighboring well, located about 1,700 feet from these wells, was observed during the test. The pump test found no measurable drop in the water surface at the closest well (Well #1) or the neighbors well. Well #2 tested at 7.1 and 22 gallons per minute and Well #3 at 20 gallons per minute. The 3,000-gallon storage tank was found to be adequate to handle the current loads of the Center but the firm estimated that if the intensity of the use increased to match the potential of the proposed expansion a tank large enough to handle a daily flow of 7,000 to 8,000 gallons per day would have to be constructed.
20. The subject property is not located within a water quantity limited area as identified by Lane Manual 13.010(2). The Applicant's wells are in a "confined aquifer" with cracked rock that makes hydrological impact on neighbors or groundwater less likely. Hydrological impact is rare in these aquifers over 200 feet and it is not even considered at 1,000 feet. Wells of concerned citizens are over 1,200 feet or farther away.
21. Boeger & Associates, LLC found that the existing aquifer that served Wells #2 and #3 has a capacity to yield between 8,400 and 10,800 gallons per day. Conservatively, it was estimated that Wells #2 and #3 could provide 3,800 gallons per day for irrigation and

serve between 115 and 175 people per day. The firm estimated that if storage system was increased, the aquifer had the capacity to serve 300 people per day. It was also found that Well #1 was on a different acquirer and had a capacity of between 7,200 and 9,600 gallons per day or the ability to serve an additional 180 to 240 people per day. Total on-site capacity from on-site wells is between 275 and 415 people per day.

22. While several nearby residents, including the Webers, have voiced concern about noise emanating from the activities held on the subject property, the Center has a "Quiet Hours" policy between the hours of 10:00 pm and 7:00 am. Specifically mentioned in the complaints are air compressors and power equipment used in workshop activities that occur in early morning and in the evening. Activities that are included within the scope of the non-conforming use are allowed but are still subject to Lane County and DEQ noise regulations.
23. The Appellants suggest that the 99-year transferable ground leases are a change in use. These leases are offered to staff as an incentive to stay with the Center. It is unclear how the financial arrangements for the same accommodations have any bearing on the scope or intensity of the non-conforming use. The staff will live on the subject property regardless and the method of how they pay for that privilege is irrelevant.
24. On April 15, 2013, the applicant submitted a request for Director Approval of a Verification and Alteration of a Nonconforming in order to re-verify and alter the non-conforming use approved in 1991 by planning action 509-PA91-02433. The application was reviewed and accepted as complete on May 15, 2013. On May 16, 2013, referral responses were solicited from affected agencies, service providers and surrounding property owners. During the referral period, the Land Management Division received comments from 16 parties. The applicant provided responses to the referral comments on May 31, 2013, December 10, 2013, and May 1, 2015. On April 1, 2015, staff conducted a site visit of the subject property.
25. The applicant provided multiple timeline extensions, including a full waiver to the statutory timeline requirements of ORS 215.427 and the associated right to seek mandamus as provided by ORS 215.429(1) submitted on November 18, 2013.
26. On October 28, 2015, the Director approved the application and mailed notice of the decision to surrounding property owners. The notice provided an appeal deadline of November 11, 2015.
27. On November 6 and November 9, 2015, timely appeals were submitted by Ed & Diane Avila and Larri Wheeler, respectively. On December 17, 2015, the Lane County Hearings Official conducted a public hearing on the matter.
28. On March 4, 2016, the Hearings Official issued a decision denying the application on the basis that the Applicant had not carried the burden of proof in establishing the current permitted intensity and scope of the use under nonconforming use law.
29. On March 16, 2016, the Applicant submitted a timely appeal requesting that the Hearings Official reconsider the March 4, 2016 decision. On March 21, 2016, the Hearings Official agreed to reconsider the decision and reopened the record for additional testimony regarding the levels and scope of the use of the subject property. The record ultimately closed on July 7, 2016.
30. On April 17, 2017, the Hearings Official issued a reconsidered decision. In his reconsidered decision, the Hearings Official verified the extent of Lost Valley Center's non-conforming use status and found that the Lost Valley Center has 23 staff members and their families, and on an annual basis, has about 120 resident students and

entertains upwards of 2,300 guests, which varies with the seasons. The Hearings Official also denied the request for a modification of the alteration/expansion previously approved in 1991 by planning action 509-PA91-02433 because that permit has expired.

31. On May 1, 2017, Sean Malone submitted a timely appeal on behalf of 30 neighbors and nearby property owners.
32. On May 2, 2017, the Hearings Official affirmed the reconsidered decision without further consideration pursuant to Lane Code 14.535(1).
33. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - *The issue is of Countywide significance.*
 - *The issue will reoccur with frequency and there is a need for policy guidance.*
 - *The issue involves a unique environmental resource.*
 - *The Planning Director or Hearings Official recommends review.*
34. The Board finds that the issues raised in this appeal are not of countywide significance. The issues in this appeal involve a narrow set of circumstances specific to the subject property, including past and present non-conforming uses of the property and an ambiguous 1991 land use decision documenting historic uses and approving future development. The Hearings Official's reconsidered decision presents a reasonable interpretation of the Non-conforming Use regulations at Lane Code 16.251. Additionally, the Hearings Official's reconsidered decision includes a reasonable assessment of the disposition of the 1991 Verification and Increase of a Non-Conforming Use contained in Planning File 509-PA91-02433.
35. The Board finds that the issues involved in this appeal will not reoccur with frequency and that there is not a need for further policy guidance. The issues in this appeal are confined to circumstances specific to the subject property. Generally, non-conforming uses are uncommon in the county. The Hearings Official's reconsidered decision presents a reasonable interpretation of the Non-conforming Use regulations at Lane Code 16.251. Additionally, the Hearings Official's reconsidered decision includes a reasonable assessment of the disposition of the 1991 Verification and Increase of a Non-Conforming Use contained in Planning File 509-PA91-02433. In the event that a comparable proposal and fact pattern comes before the Land Management Division, the Hearings Official's reconsidered decision provides sufficient guidance.
36. The Board finds that the subject property does not constitute a unique environmental resource. The issues raised in this appeal do not relate to, or involve, a unique environmental resource. The property does not contain any unique or notable environmental resources. Anthony Creek, a Class I stream subject to the regulations at Lane Code 16.253, traverses the western portion of the property. Though protected, Class I streams do not constitute unique environmental resources.
37. The Planning Director does not recommend review of the appeal on the record for the reasons cited above. The Hearings Official's reconsidered decision and letter of affirmation does not include a recommendation that the Board of Commissioners conduct an on the record hearing for the appeal.
38. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.

39. The Board has reviewed this matter at its meeting on June 13, 2017, finds that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3), declines further review, and elects not to hold an on the record hearing for the appeal.
40. The Board affirms and adopts the Lane County Hearings Official reconsidered decision dated April 17, 2017, the letter affirming the decision dated May 2, 2017, as the County's final decision in this matter, and expressly agrees with and adopts the interpretations of Lane Code 16.251, the disposition of the 1991 Verification and Increase of a Non-Conforming Use contained in Planning File 509-PA91-02433, made by the Hearings Official in the reconsidered decision.



April 17, 2017

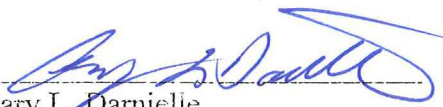
Ms. Lydia McKinney, Manager
Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: Reconsidered Hearings Official's decision regarding the appeal of the Planning Director's approval of the Lost Valley Center's request (PA 13-05201) for a verification of a nonconforming retreat/educational facility and the alteration of the same.

Dear Ms. McKinney:

Please find the Lane County Hearings Official's reconsidered decision affirming the Planning Director's decision (PA 13-05201) verifying the Lost Valley Center's non-conforming use status and reversing the Planning Director's approval of the request for a modification of the alteration/expansion approved in 1991.

Sincerely,



Gary L. Darnielle
Lane County Hearings Official

cc: Rafael Sebba (file)

**LANE COUNTY HEARINGS OFFICIAL
RECONSIDERATION OF A HEARINGS OFFICIAL DENIAL OF THE RE-
VERIFICATION AND ALTERATION OF A NONCONFORMING USE**

Application Summary

This reconsidered decision concerns an appeal of a re-verification and alteration of a nonconforming retreat/educational facility known as the Lost Valley Center, Inc.¹

On April 15, 2013, the Applicant submitted a request for Planning Director Approval of a Verification and Alteration of a Nonconforming to re-verify and alter the non-conforming use approved in 1991 by planning action 509-PA91-02433. The application was reviewed and accepted as complete on May 15, 2013. On May 16, 2013, referral responses were solicited from affected agencies, service providers and surrounding property owners.

The Applicant provided multiple timeline extensions, including a full waiver to the statutory timeline requirements of ORS 215.427 and the associated right to seek mandamus as provided by ORS 215.429(1). On October 28, 2015, the Director approved the application and mailed notice of the decision to surrounding property owners. On November 6 and November 9, 2015, timely appeals were submitted by Ed & Diane Avila, Larri Wheeler, et al, respectively.

On December 17, 2015, the Hearings Official heard the appeal of the Planning Director's decision. A decision was subsequently issued on March 4, 2016, reversing the Planning Director's approval. The Hearings Official decision was subsequently appealed by the Applicant and the Hearings Official agreed to reconsider his decision on March 21, 2016 and reopened the record to receive additional evidence and argument.

Parties of Record

See Attachment A.

Application History

Reconsidered Decision Date: April 17, 2017

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

¹ Since the submittal of this application, the Applicant has changed its name to the Lost Valley Education and Events Center.

Statement of Criteria

LC 16.211(4)(b-b)
LC 16.251

Findings of Fact

1. The Applicant in this matter is the Lost Valley Center. The property subject to this application, hereinafter referred to as the "subject property," has an address of 81868 Lost Valley Lane, Dexter, Oregon and is located about one-half mile south of the Community of Dexter. It is 76.4 acres in size and can be identified as tax lot 105, assessor's map 19-01-29. The property is designated Forest in the Rural Comprehensive Plan and is zoned Impacted Forest Lands (F-2), consistent with the Plan designation. Anthony Creek, a Class I stream, runs through the western portion of the property. The property is developed with a number of structures, roads, and other retreat-related improvements.

The subject property lies between Lost Valley Lane and Anthony Creek Road. Properties to the east, northeast, and southeast are zoned Rural Residential (RR-5) and are, to a degree, relatively densely developed with residences. Properties to the west and northwest are zoned Impacted Forest Lands (F-2) and are developed with residences. Properties to the south and southwest are zoned Impacted Forest Lands (F-2) and Non-impacted Forest Lands (F-1) and are used for timber management and pasture.

2. The retreat/educational center was initially established in 1969 as the Shiloh Youth Revival Center and later the Shiloh Retreat Center. About 30 structures were built on the property in the early 1970s, including housing facilities of various types for 150 individuals and 35 families, dining facilities, a clinic, classrooms, offices, a community store and various agricultural and miscellaneous buildings. During the early 1980s, the use of the subject property evolved into a study and retreat center that served a broader population base and included the sponsoring of conferences and seminars. Eventually, the use of the property as a youth revival facility was discontinued but its use for conferences and seminars continued. Shiloh hosted an average of 3,000 guests per year as a retreat center. Lane County tax records for the Shiloh Youth Revival Center show the existence of at least 22 structures prior to March 5, 1971. These structures included three general purpose sheds, eight cabins, three pump houses, a pole shed, a dining hall, a bath house, a milk house, two barns/feeders, a poultry house and a shop.

Historically, the subject property was not subject to land use regulation by Lane County until County's adoption of a comprehensive land use plan for the Lower Middle Fork Subarea on November 27, 1974. The Subarea Plan depicted the subject property as "Rural Woodland and Grazing," a designation appropriate for living in rural and undeveloped areas and for the conduct of agricultural activities. Rural residential and

recreation uses had the potential to conform to this designation. Unzoned Area Development Permits were first required on August 15, 1973, but were generally only required for new uses or activities. Zoning for the area first occurred on November 12, 1975 when it was zoned AGT-5 and then subsequently rezoned to F-2. The AGT zoning made churches, schools and similar activities conditional uses.

In 1989, the property was acquired by Seven Generations Land Trust for the use by the Lost Valley Center, Inc. Lost Valley continued the prior use of the property for seminars and conferences, gradually increasing this use and the residential occupancy.

On November 25, 1991, the Planning Director approved a Verification and Increase of a Non-Conforming Use for a retreat/educational facility on the subject property (Planning File 509-PA91-02433). The 1991 application showed 22 structures on the property, that included 3 general purpose sheds, 8 cabins, 3 pump houses, a pole shed, dining hall, bath house, milk house, 2 barns/feeders, poultry shop, shop. The application listed 20 structures to be built. A cabin, mobile home site, mobile home site, and staff housing (4-plex, 12 bedrooms) have been built. The two mobile homes have been replaced by yurts, and the staff housing is less than a 4-plex. Greenhouses, a yurt, and a storage shed not authorized by the 1991 decision have also been built.

The 1991 decision concluded that the uses identified in the application predated potentially restrictive ordinances enacted in 1973 and 1975 and limited the nonconforming use to 150 resident students, 35 staff members and families, and 3,000 annual guests, and approved an increase in the nonconforming use consisting of specific improvements listed on an exhibit and depicted on a site plan. The staff report of PA 91-02433 seems to indicate that August 15, 1973 was that date that the use became nonconforming as development was required to authorized through the issuance of an "unzoned area" development permit. The staff opined that no Development Permit would have been required because of the extensive and existing development on the subject property. Nevertheless, had the development not existed it is likely that it would have needed an unzoned area development permit.

The record contained in PA 91-02433, which is adopted into the record by reference, establishes that the property had continuous threads of agricultural and forestry uses, counseling, educational uses, seminars, conferences, retreats, religious uses, and residential uses as early as 1969/1970. There were extensive on-site construction projects that served as vocational training and education and there was a store, a carpentry shop, and a mechanic shop as well. The Applicant's submitted materials for this application indicate that, since 1991, activities on the subject property have included following types of uses: Agriculture Workshops, Agroecology, Permaculture Design, Land Stewardship,

Ecological Living, Energy Efficient Economical Construction, Solar Design, Sustainable Construction, Carpentry, Craft Workshops, Basketry Workshops, Food and Cooking Workshops, Personal Growth Workshops, and Spiritual and Healing Workshops.

3. Currently, the Lost Valley Center has 23 staff members and their families and 29 resident students. On an annual basis, the Center has about 120 resident students and entertain upwards of 2,300 guests; whose occupancy varies with the seasons.

Testimony in the record substantiates that the Center has been operating continuously since 1991.² Most of this testimony, however, does not address the intensity of the uses during the years that they were involved in the Center. Thus, the annual number of staff members, resident students and guests is not addressed in any detail. Justin Michelson, Executive Director of the Center, points to the IRS 990 Forms that are in the record to demonstrate that the intensity of the use has not waived significantly except for the impact of the 2008 recession.

In general, the 990 Forms show an increase in program revenue from 1990 to 1999, a 61 percent increase in program revenue between 1999 and 2000, with a pretty constant annual increase until 2008, when program revenue decreased each year until 2012. A rebound to 2004-2005 levels occurred in 2014. While the 990 Forms do give an indication of the continuous program activity of the Center, they are not a reliable indicator of actual staffing. For instance, the 2000 and 2001 Form 990s show a three-fold increase in program revenue, adjusted to 2015 dollars, from the 1990 and 1991 Form 990s. If program revenue was an accurate indicator of the intensity of the nonconforming use then the Form 990s would be an indication that the intensity of the use has drastically increased since it was verified in 1991. There is no evidence from the 990s that the number of staff and residents have increased proportionately to the increase in program revenue.

An examination and analysis of the supplemental information was more revealing than the 990s. It showed that during the 21-year period between 1993 and 2013, the center entertained over 2,000 guests per year during 10 of those years and more than 1,500 individuals per year during 15 of those years. It averaged 1,725 guests per year during this period. During this period, the Center operated over 100 days per year on eight of these years and averaged 89 days per year during this period. These figures are conservative as the only way that a reliable count could be made was through the event invoices that were submitted by the Applicant. Some of these invoices did not have a guest count and other information indicated that there were events that were scheduled but no invoices were submitted.

² Testimony of Justin Michelson, Robert Miller, Chris Roth, Colin Doyle, Larry Kaplowitz, Marc Tobin, Melanie Rios, Rick Valley,

With a couple of exceptions, the data showed a large decline in guest attendance for five of the years between 2004 and 2011. I attribute a large part of this decline to the depression. If these years are excluded from the calculations, then the Center would have averaged over 2050 guests per year. The data also indicated that the staffing during the examination period was steady and close to what the Applicant currently claims. However, the data does not support a finding that the annual number of guests was anywhere near the 3,000 guests per year. Only during two years during this 21-year period did the client population exceed 3,000 guests and generally the documented number was in the high 1,000's or low 2,000's. Therefore, the annual guest population of the non-conforming use should be around 2,000; plus or minus a few hundred individuals. This is more generous than the Applicant's estimate of 1,713 based upon Form 990 tax returns but probably more accurate. Nevertheless, it is two-thirds of that verified by the County in 1991.

4. Over the years, the Lost Valley Educational Center has hosted various on-site businesses. Testimony indicates that these businesses have supported the broader educational agenda of the organization and have all originated with staff who brought those businesses with them to the centers. One example given concerned Ananda Reeves, who had been teaching personal growth for over 40 years, had her own website, and her own business name. After she joined Lost Valley Educational Center as staff in 2015, she rented space from the Center for her business and taught marketing skills to Lost Valley Center students. An examination of the business invoices submitted by the Applicant, document that the Center has always served as a location for outside organizations for training. Sometimes the training is provided by Center staff and sometimes it is provided by an outside organization, with the Center only providing lodging, meals and meeting rooms. Arguably, there is little difference between a situation where training is provided by a Center staff's business or by an outside organization. Indeed, it is very common for the Center to host well-known speakers who use the Center's facilities for training and educational purposes.
5. The wells used by the Center have been monitored by the Oregon Health Authority. The EPA recommended threshold for E.coli bacteria is 410 per cfu/100 mL. The Center had a positive E.Coli test in November of 2014 although no positive test has been registered since that time. However, in December of 2015, one the Appellants, Mr. Senkovich, had samples of surface water from a large ditch that drains about 50 acres of the subject property into Anthony Creek was tested by Analytical Laboratory Group (ALG) of Eugene. One of the samples tested at 2400 MPN/100mL and five of the samples taken from three locations on three different days showed an E.coli count exceeding the EPA threshold. A January 5, 2016 sample of the Center's well water, tested by ALG, was 82 per cfu/100 mL. The water system's treatment system was found to be in good working order in a 2013 evaluation by a Eugene-based engineering firm. The surface waters that flow across the subject property originate across miles of other properties.

6. The subject property is located within and is served by the Dexter Rural Fire Protection District. The District has a Type 1 fire engine with an 1,800-gallon water tank and a 1,000 gallon per minute pump; a Type 1 fire engine with a 1,000-gallon water tank and a 1,250 gallon per minute pump; and a Type 1 fire tender with a 2,000-gallon water tank and a 500 gallon per minute pump. The District's fire-fighting equipment has accessed the subject property in the past to do joint fire training for a prescribed burn. The roads on the subject property are a minimum of 16-feet in width, with a few areas that are 12-feet in width, and are surfaced with gravel. No road grades exceed 8 percent and there are turnarounds for the fire equipment located throughout the property. All buildings on the subject property are equipped with fire extinguishers and the Center has an Emergency Response Plan. The State Fire Marshall has visited the Center on a regular basis and has had the Center replace a kitchen hood, maintain electrical equipment, clear fuel breaks, and ensure the fire extinguishers are current. The Applicant has proposed to create a 60-foot fuel break around new structures and a 30-foot vegetative buffer at the border of neighboring properties.
7. The Applicant has six on-site subsurface sewage disposal systems, including drainfields. The drainfields are over 1,000 feet from any active well. Concern has been expressed by the Webers that the Applicant's lift pump station is located 60 feet upslope from their property and about 220 feet from their well. Surface water runoff across the subject property empties into a large ditch that dumps it into Anthony Creek.

In 2005, one of the Applicant's septic tank pumps malfunctioned and a septic tank overflowed. In 2006, HBH Consulting inspected the system and found it good working order but susceptible to rainwater infiltration in several sections of concrete piping. No subsurface septic system failure has been documented since. In 2013, the Center's septic systems were evaluated by Boeger & Associates, LLC, a civil and environmental engineering firm located in Eugene, Oregon. The systems six septic tanks, with a combined capacity of 12,000 gallons, coupled with a 2,000-gallon dose tank with duplex pumps, pump effluent into two separate drain fields. Using conservative estimates, the firm found that the Center's septic tank capacity can serve 150 people per day and the drain fields have a capacity to serve 111 people per day. Currently, the Center has a bed capacity from its existing structures for 89 people. However, there have been a few events over the past few years where between 150 and 250 people have been hosted.³ While the system is generally adequate to serve the existing needs of the Center, the construction and use of the proposed expansion would exceed its capacity.

8. The Center's water system was also evaluated by Boeger & Associates, LLC in 2013. The water system consists of one well (Well #2) that provides potable water and has a 3,000-gallon storage tank and treatment facilities, another well that serves the irrigation system (Well #3), and a third well that is not in service (Well #1). The evaluation found that the pumps and treatment system were working well. A pump test on Wells #2 and #3

³ The Davi Rios event in September of 2013 and the Blues Recess Contingent in July of 2012.

was also performed during this evaluation. A neighboring well, located about 1,700 feet from these wells, was observed during the test. The pump test found no measurable drop in the water surface at the closest well (Well #1) or the neighbors well. Well #2 tested at 7.1 and 22 gallons per minute and Well #3 at 20 gallons per minute. The 3,000-gallon storage tank was found to be adequate to handle the current loads of the Center but the firm estimated that if the intensity of the use increased to match the potential of the proposed expansion a tank large enough to handle a daily flow of 7,000 to 8,000 gallons per day would have to be constructed.

The subject property is not located within a water quantity limited area as identified by Lane Manual 13.010(2). The Applicant's wells are in a "confined aquifer" with cracked rock that makes hydrological impact on neighbors or groundwater less likely. Hydrological impact is rare in these aquifers over 200 feet and it is not even considered at 1,000 feet. Wells of concerned citizens are over 1,200 feet or farther away.

Boeger & Associates, LLC found that the existing aquifer that served Wells #2 and #3 has a capacity to yield between 8,400 and 10,800 gallons per day. Conservatively, it was estimated that Wells #2 and #3 could provide 3,800 gallons per day for irrigation and serve between 115 and 175 people per day. The firm estimated that if storage system was increased, the aquifer had the capacity to serve 300 people per day. It was also found that Well #1 was on a different acquirer and had a capacity of between 7,200 and 9,600 gallons per day or the ability to serve an additional 180 to 240 people per day. Total on-site capacity from on-site wells is between 275 and 415 people per day.

9. While several nearby residents, including the Webers, have voiced concern about noise emanating from the activities held on the subject property, the Center has a "Quiet Hours" policy between the hours of 10:00 pm and 7:00 am. Specifically mentioned in the complaints are air compressors and power equipment used in workshop activities that occur in early morning and in the evening. Activities that are included within the scope of the non-conforming use are allowed but are still subject to Lane County and DEQ noise regulations.
10. The Appellants suggest that the 99-year transferable ground leases are a change in use. These leases are offered to staff as an incentive to stay with the Center. It is unclear to me how the financial arrangements for the same accommodations have any bearing on the scope or intensity of the non-conforming use. The staff will live on the subject property regardless and the method of how they pay for that privilege is irrelevant

Decision

THE PLANNING DIRECTOR'S DECISION (PA 13-05201) VERIFYING THE NON-CONFORMING USE STATUS OF THE LOST VALLEY EDUCATION CENTER IS AFFIRMED BUT THE REQUEST FOR A MODIFICATION OF THE ALTERATION OF THE NONCONFORMING USE IS REVERSED AS THAT PERMIT HAS EXPIRED.

Justification for Decision (Conclusion)

In the initial appeal, the Planning Director characterized the application as a request for the re-verification and alteration of the non-conforming use that exists as the Lost Valley Center to allow for the reconfiguration of buildings and uses on the property approved in 1991 by Department File 509-PA 91-02433. Specifically, the Applicant asked the Planning Director to confirm the intensity of the nonconforming use as it was verified in 1991 and approve the re-orientation of the structures approved in that year to serve the nonconforming use. By way of summary, the 1991 Planning Director decision characterized the intensity of the use at the time that it became nonconforming as consisting of 35 staff members and families, 150 resident students, and 3,000 guests per year and the Applicant asserts that the current annual status of the use is 23 staff members and families, an estimated 120 resident students and about 2,300 guests.

The March 4, 2016 Hearings Official's decision found fault with the Planning Director's approval in two respects. First, while the Hearings Official found that the non-conforming use had continued, he did not find sufficient information in the record to verify that the scope of non-conforming use was substantially the same as it was in 1991. Second, the Hearings Official believed that the Applicant's plans for various outbuildings, approved as an alteration to the non-conforming use, was lost through discontinuance (interruption) under Lane Code 16.251(5) as many of them were never constructed. These issues will be addressed in this reconsideration and, if supplemental evidence supports the Applicant's appeal, then the merits of the application will be examined.

Was the non-conforming use lost or lessened through discontinuance?

The Applicant submitted over 3,000 pages of supplemental information on this issue. This information often took the form of receipts for meetings held, but also lists of volunteers and calendars showing future events to be held on the subject property. Again, by way of summary, the intensity of the use at the time that it became nonconforming consisted of 35 staff members and families, 150 resident students, and 3,000 guests per year

The supplemental information showed that during the 21-year period between 1993 and 2013, the center entertained over 2,000 guests per year during 10 of those years and more than 1,500 individuals per year during 15 of those years. It averaged 1,725 clients per year during this period. During this period, the Center operated over 100 days per year on eight of these years and averaged 89 days per year during this period. These figures are conservative as some of these invoices did not have a person count and other information indicated that there were events that were scheduled but no invoices were submitted.

On the average, the annual guest population of the non-conforming use was around 2,000, plus or minus a few hundred individuals. In terms of staff, the main information relied upon by both the Applicant and the Hearings Official has been from information on the Center's 990 tax returns. These returns show that the staff has grown from 5 in 1993 to 23 in 2015. The average over this period is 16 staff members per year; less than half of the number verified in 1991.

During the eleven–year period between 1989 to 1999, the staff number never increased beyond 11 and averaged about 7.5 staff members per year.

Using the Applicant’s estimate during the 11–year period between 1993 and 2015, the number of students averaged 84 per year, about 56 percent of the annual students verified by the 1991 action. Between the period of 1989 and 2000, however, the average number of students was just under 53 per year.

In a general sense, the nonconforming use was not been abandoned nor has it been interrupted as the record demonstrates that its educational activities occurred every year since 1991. A more pointed question is whether the scope and/or intensity of the nonconforming use has declined through abandonment or interruption since it was first verified in 1991. The record indicates that the fluctuations in the intensity of the Lost Valley Center has been associated with business conditions. This does not constitute an impermissible change in the use.⁴ Some years it has been able to attract more guests, with the concomitant ability to hire more staff, and some years less. However, there has not been any time where a significant aspect of the nonconforming use has been completely discontinued, either through disuse or by conscious abandonment. Nor have any of its core activities been relocated. Each year the use has hosted educational events, many on a recurring annual basis, while providing sleeping, workshop and cooking facilities for staff, interns, and guests.

Because the fluctuation of intensity of the nonconforming use was due to business–related conditions rather than through a conscious decision–making process by the Applicant, I must conclude that the scope and intensity of the 1991 verification decision must be confirmed.

Was the approved alteration lost through reasons other than by interruption or discontinuance?

The Appellants have argued that the approval of the 1991 nonconforming use and its alteration was unwarranted. Whether this is true or not is irrelevant as I agree with the Applicant that that decision may not be collaterally attacked in this proceeding.

The approval of the alteration of the non–conforming use through PA 91–02433 was the issuance of a permit, as defined by ORS 215.402(4). In such a situation, I believe that the conditions of the permit control the duration of the permit, not non–conforming use law.⁵

The 1991 decision approving the expansion/alteration of the non–conforming use included a plot plan that showed the approved buildings and their location on the subject property. The decision can be considered as a conditional approval as it required, in part, that the Applicant bring the existing water system into compliance with OAR 333–61–005. The approval did not specify an

⁴ *Coonse v. Crook County*, 22 Or LUBA 138, 148 (1991)

⁵ *Heidgerken v. Marion County*, 35 Or LUBA 313, 318–19 (1998).

expiration date nor did it state that it was perpetual. Therefore, Lane Code 14.700(4), which became effective September 14, 1983 with the passage of Ordinance No. 16–83, was and is applicable. This provision provides:

“Unless provided otherwise in the approval of an application or by other Chapters of Lane Code, conditional or tentative approval of an application shall be valid for a two–year period during which all conditions of tentative approval or the development authorized by the conditional approval must be completed. Such approval shall become null and void after two years from the adate of approval, unless extended through the provisions for extensions contained in other applicable chapters of Lane Code. Not all applications have extension provisions in Lane Code and therefore cannot be extended.”

Lane Code 14.700(4) is somewhat ambiguous as it applies to the 1991 decision. The decision contains both the approval of specified development and a condition of approval that is not dependent upon the occurrence of that development. The Code language is written in the disjunctive, where either all conditions of approval or the authorized development must be completed within two years from final approval, which was December 5, 1991. Since the development clearly did not occur by December 5, 1993, the Applicant was required to have brought the existing water system into compliance with OAR 333–61–005 by that date. There is no evidence that this had occurred and the Applicant did not request an extension of the permit.

Where the underlying approval is a permit, the extension of that permit is also a permit.⁶ On October 28, 2015, the Interim Lane County Planning Director re–verified the Applicant’s non–conforming use and approved an alteration of the expansion of the non–conforming use granted in late 1991. With this decision (PA 13–05201), the Planning Director attached a two–year deadline within which the Applicant had to perfect the previously approved expansion. I do not believe that the Interim Planning Director had the authority to authorize an extension for the completion of the approved expansion. No rationale was given for the “waiver” of the extension deadline and the action was not permissible because the permit had expired 20 years earlier.⁷

Conclusion

As noted above, this decision affirms the Interim Planning Director’s re–verification of the 1991 non–conforming use status of the Lost Valley Education Center but reverses the approved modification of the alteration/expansion approved in 1991 because that permit has expired. The Applicant may reapply for the alteration/expansion of the development plan for the Center and I believe that this will benefit all parties, including the Applicant. The applicable criterion, found in Lane Code 16.251(12), requires that the proposed changes in the use and structures be measured against the impact to the neighborhood.

The verified intensity of the non–conforming use is probably one–third greater than that seen at any one time on the subject property for more than 20 years. Indeed, the 1991 decision largely

⁶ *Thalman v. Marion County*, 58 Or LUBA 23, 28 (2008)

⁷ *Michaels v. Douglas County*, 53 Or LUBA 16, 23 (2006)

relied upon the intensity of the Shiloh Youth Revival Center and later the Shiloh Retreat Center at its maximum, which occurred in the 1970s and the 1980s. While the build-out of the neighborhood has not been substantial since that time, the neighborhood has become quieter due to the improvements to Rattlesnake Road, which eliminated significant traffic on Lost Valley Lane, and the replanting of vegetation along that road.

The new decision-making process will allow for a more structured analysis of the quality of storm-runoff entering and leaving the subject property, will enable the County to ensure that the Applicant's water system has the capacity to serve a level of development that will now accommodate the verified level of the non-conforming use, and will require the Applicant to address the traffic concerns on Lost Valley Lane.⁸

Respectfully Submitted,



Gary Darnielle
Lane County Hearing Official

⁸ Lost Valley Lane is only 18 feet wide in places.

**ATTACHMENT A
(PA 13-05201)**

Lost Valley Education Center
Justin Michelson
Eastern Lane Fire District
John Weber
David Senkovich
Peter & Gretchen Stolpe
Larri Wheeler
Bob Holland, Dexter Fire
Chris Roth
Don Schneider
Marc Tobin
Valerie Osborne
Wylde & Steven Cafferrta
Connie & Larry Chavarria
Brett & Laurie Bushnell
Diane Schell-Engdahl
Dawn Contreras
Pamela Driscoll

Ed & Diane Avila
Marty Curtis
Liam Sherlock
Carol Wheeler
Clarisse Heinhorst
Gordan Drake
Lawrence Chanarria
Robert Tyler
Robert Miller
Jude Hobbs
Melanie Rios
Chuck Gammell
Dale Heffron
Denise Clark
Shanon Drake
Dennis & Lorna Pearman
Don Schneider

Sean Malone
Lauri Segel
Beth & Stan Oberst
Hollice Oberst
Rolf & Carol Jung
Marry Ann Creel
Martha Neuman
Lanfear Consulting
Colin Doyle
Larry Kaplowitz
Rick Valley
Lauri Costa
Brian Clark
Dona Holmes
Brad & Mary Hucka
Adelaide Nalley
Rick Valley

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Via Hand Delivery

May 1, 2017

Public Works Department
3050 North Delta Highway
Eugene OR 97408
(541) 682-3577

Re: Appeal of a Hearings Official's decision on reconsideration in PA 13-05201

Appellants Names

David Senkovich, Bob Holms, Bob Tyler, Brad Hucka, Brian Clark, Carol Jung, Carol Wheeler, Clarisse Heinhorst, Connie Chavarria, Denise Clark, Dianne Avila, Donald Anderson, Ed Avila, Gordon Drake, Gretchen Stolp, Holice Oberst, Jan Tyler, Jim Curtis, Larri Wheeler, Larry Chavarria, Linda Anderson, Martha Newman, Mary Hucka, MaryAnn Creel, Peter Stolp, Rolf Jung, Shannon Drake, Stan Oberst, Steven Cafferrta, Wylda Cafferrta

Authorized Representative for Appellants:

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Identification of the Decision Sought to Be Reviewed

Appellants hereby appeal the Hearings Official's April 17, 2017, decision affirming the Planning Director's decision (PA 13-05201) verifying the Lost Valley Center's non-conforming use status and reversing the Planning Director's approval of the request for a modification of the alteration/expansion approved in 1991.

Appeal Option

Appellants request Option 2 as set forth in the County's appeal form. Appellants request that the Board not conduct a hearing on the appeal and deem the Hearing's Official decision the final decision of the County pursuant to LC 14.515(3)(f)(ii).

Standing

Appellants have standing to appeal because appellants appeared before the Hearings Officer in writing and in person, as well as through aforementioned counsel, at the hearing on the application, as well as during the open record period.

Grounds for Appeal

For an option 2 appeal, Appellants note that the form does not require that an appellant raise all issues in the appeal from the Hearings Official's decision. However, Appellants set forth the following alternative grounds for denial on appeal, including but not limited to the following:

- The Hearings Official misconstrued applicable law and criteria and made inadequate findings not supported by substantial evidence, as outlined below:
 - The Hearings Official erred in affirming the Planning Director's verification of the scope and intensity of the nonconforming use. The scope and intensity of the nonconforming use has diminished by more than one 1/3 and almost 1/2 since the 1991 verification. Therefore, the Hearings Official erred in affirming the 1991 verification.
 - The Hearings Official erred in determining the 1991 verification levels of 150 resident students, 35 staff members and families, and 3,000 annual guests and their subsequent deviations in scope since the 1991 verification was due to business-related conditions. Where the scope and intensity significantly lessens over the course of 20 years, the Hearings Official erred in determining that the diminished scope and intensity resulted from normal business-related conditions.
 - The Hearings Official's findings that the surface waters that flow across the subject property originate across miles of other properties. According to the only expert that opined on the issue, the watershed at issue only drains 75 acres, and, therefore, the E.Coli samples should not have been ruled out.
 - The Hearings Official erred in determining that the 99-year transferable ground leases are not a change in use. Other additional uses identified in the attached comments also constitute changes in use.
 - The Hearings Official erred in determining that the Center has been operating continuously since 1991. As noted in the attached comments, the Center discontinued and significantly diminished the scope and intensity of the use.

- The Hearings Official erred in determining that the decline in guest attendance from 2004 to 2011 was attributable to the depression. The record does not contain substantial evidence to make such a finding.
- The Hearings Officer erred in relying on figures related to students, staff numbers, and annual guests that are not supported by substantial evidence in the record.
- The Hearings Official erred in verifying micro-businesses on the subject property. There is not substantial evidence in the record to support that the Center has always served as a location for outside organization for training. Furthermore, not all of the businesses that have occurred at the property are for training purposes.
- The Hearings Official erred in finding that the septic system is generally adequate to serve the existing needs of the Center. The numbers of visitors, staff, and students far exceeds what is adequate.
- All arguments (both written and oral) submitted on behalf of the appellants and by the appellants themselves are incorporated by reference into this section of the appeal addendum as specific issues on appeal, including all comments and emails. This also includes the audio recording before the hearings official and all written submissions (e.g., attached December 30, 2015, January 13, 2016, June 21, 2016).

Appeal Fee

Please find attached a check in the amount of \$250.00 for the appeal fee.

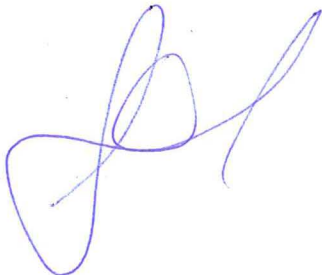
Copy of the Decision

A copy of the decision being appealed is separately attached hereto.

Position of Appellants

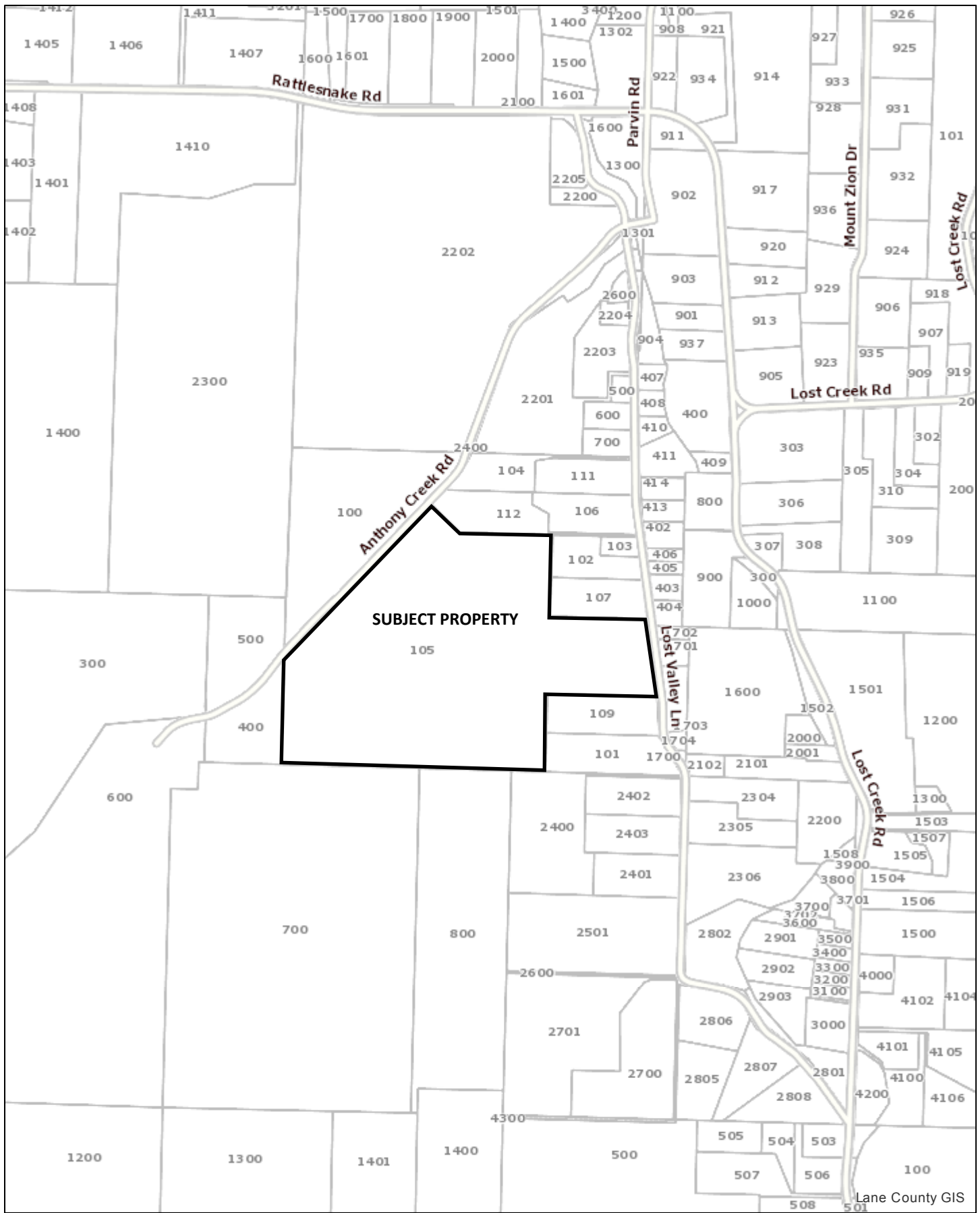
Appellants submitted all information containing all applicable arguments before the close of the record, and, as stated above, appellant incorporates those arguments herein, including but not limited to the attached exhibits.

Sincerely,

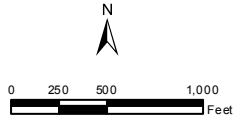


Sean T. Malone
Attorney for Appellants

cc: appellants



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.



Lane County, Oregon

ATTACHMENT 4
PA13-05201
VICINITY MAP

Lane County GIS