
AGENDA

**Benton County Planning Commission
Regular Session
August 13, 2024
6:00 P.M.**

Kalapuya Building, 4500 SW Research Way, Corvallis
1st floor Meeting Room

<https://us06web.zoom.us/j/82408116441?pwd=a1Z6cVg4N2wvUTJIRU4wV25OaEdYQT09>

Meeting ID: 824 0811 6441

Passcode: 668580

- | | |
|--|---|
| I. CALL TO ORDER ROLL CALL | Chair Fowler |
| II. MINUTES | Chair Fowler |
| III. PUBLIC HEARING | |
| Appeal St. Martins Church Expansion LU-23-24 | Inga Williams |
| IV. TRAINING | |
| Public Works Permitting Overview | Gordon Kurtz, Associate Engineer
Sheanna Steingass, Environmental Program Coord. |
| Environmental Health Permitting Overview | Scott Kruger, Environmental Health Mngr. |
| V. SUBCOMMITTEE UPDATES | Chair Fowler |
| VI. ADJOURN | Chair Fowler |

***DRAFT* MEETING MINUTES**
Benton County Planning Commission
Regular Session
June 4th, 2024

Benton County Planning Commission Vice Chair Hamann called the meeting to order at 6:00 pm. The meeting was open to the public virtually via a published Zoom link.

COMMISSION MEMBERS

Nicholas Fowler, *Chair (virtual)*
Greg Hamann, *Vice Chair*
Catherine Biscoe
John Wilson
Evelyn Lee
Sara Cash (*virtual*)
Andrew Struthers
Ed Fulford

STAFF

Petra Schuetz, *Planning Official*
Linda Ray, *Recorder*

Absent: Liz Irish

MINUTES

Commissioner Fulford **MOVED** to **APPROVE** the April 30, 2024; Minutes as written.

Commissioner Wilson: **SECOND**.

APPROVED AS WRITTEN 6-0. (Commissioner Struthers abstained)

Commissioner Struthers **MOVED** to **APPROVE** the May 4, 2024; Minutes as written.

Commissioner Lee: **SECOND**.

APPROVED AS WRITTEN 8-0.

TRAINING

Petra Schuetz gave a brief update on the effort to provide training for the planning commissioners. DLCD, as well as other agencies, have been contacted on potential resources for training. At this time, staff has not found any resource that is sufficient for the need but will bring back more ideas in the future.

See exhibits A to D for training documents provided by staff.

QUESTIONS REGARDING TRAINING

Development Code Update Process:

Phase 1 is approximately 9 months. Commission and staff will look over what portion of the code the county would like the contractor to focus on. Contractor MIG will prepare draft code for review at the end of phase 1.

Phase 2 is approximately 18 months. Draft code will be prepared for review through this phase. RFP will be opened for phase 2 contractor applications.

Long Range Planning Update

Commissioners discussed the Comprehensive Plan Update, including unincorporated and incorporated cities. Making note of administrative areas that need corrected. Commissioners can choose what goals are priorities within the code.

Staff's goal is to take the code update to the next level, especially in making sure that the smaller communities are represented in the code, whether incorporated or unincorporated. Benton County has the opportunity to help create a state model. The commission and staff have the responsibility to interact with the local communities, the contractor will be providing technical support. Second deliverable of the RFP contractor is that they will provide a work plan for community outreach. Expectation of staff would be for the consultant to listen to commission feedback on how to reach each individual community.

Commissioners requested a guided discussion through comprehensive plan to help commissioners think more strategically on how they'd like to contribute collaboratively. Staff will send commissioners staff level notes for insight on suggested edits, ask that public request this information via public records request for any staff level notes.

Planning Staff Responsibilities for Meetings

Questions regarding ensuring that public record and legal record showing the comments that refer specifically to the code and those that are more "feeling" based. Those comments will be included but are not used in relation to decision making. The commission is to make decisions from an unbiased position. How can the public be better educated to understand how to prepare their comments in a way that their testimony is part of the legal record vs the public comment. The commission has more flexibility than staff to help the public with the commission's expertise with comments that will make the comment a legally defensible.

Planning commissioner Responsibilities for Meetings

Clarifying discussion regarding questions from commissioners while the record is open and when it is closed regarding documentation for decision making. Commissioners can ask clarifying questions after the record is closed but may not ask for any new evidence. Commissioners requested some clarifying information regarding research by planning commissioners. Staff will follow up with County Counsel for any specific examples.

SUBCOMMITTEE UPDATES

Vice Chair Hamman: Code Update Subcommittee

First Goal: make the development code searchable and available online for more informed and focused conversations regarding applications.

Second Goal: long history of concerns and comments from staff regarding discrepancies and ambiguity in the code. Staff is working to create more consistency within the code itself.

Third Goal: collect and incorporate community involvement in this process, this will begin with the consultant when they are on board. Goal will be to hear those voices that are not typically heard from unincorporated communities.

Staff suggested holding a work session to review items in the code that Commission would like to see the consultant focus on, specifically those things that are missing from the code but applicable now.

Commissioner Fulford: Housing Subcommittee

Working on socialization for the next 3 months or so, continuing to speak with groups and stakeholders in the community. Next phase will then move into meetings and speaking with agency partners. Will conduct a land use inventory in the region and infrastructure gap analysis. Hoping to get some matching funds from the government for the 2025 session, will need to submit that by September/October timeframe for the legislative session.

Discussion among commissioners regarding who socialization should include, to include the bigger employers in the county and have them share in the responsibility of work force housing.

- Are local governments being involved in the socialization process?
- How are the subcommittees tracking recommendations for the greater Planning Commission?
- How is the public able to stay apprised of the work going on in subcommittees?
- Can commission raise the level of public transparency?

Chair Fowler response: Subcommittee operate under the aegis of the Planning Commission. Planning Commission is the governance body for each of these subcommittees. Our sessions now have a standing topic on the agenda, these updates are where the work product is reported to not only the commission, but also becomes part of the public record at that time. Those things that require governance decisions will come to the Planning Commission to make those decisions.

STAFF UPDATES

Schuetz-will send out summary email of meeting:

- Notes on development code references,
- Update on searchable code status on the website.

Vice Chair Hamman **ADJOURNED** at **8:07 pm**.



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Glossary of Land Use and Planning Terms

Acronyms and Abbreviations | 2024

<https://www.oregon.gov/DAS/pages/acronyms.aspx>

[dc_ch_51_amended_12.15.22.pdf \(bentoncountyor.gov\)](#)

Benton County Zones

Exclusive Farm Use (EFU)	Philomath Low-Density Residential (PR-1)
Multi-Purpose Agriculture (MPA)	Philomath Medium-Density Residential (PR-2)
Floodplain Agriculture (FPA)	Philomath High-Density Residential (PR-3)
Forest Conservation (FC)	Philomath General Commercial (PC-2)
Open Space (OS)	Philomath Light Industrial (PLI)
Rural Residential (RR)	Philomath Heavy Industrial (PHI)
Urban Residential (UR)	Village Residential (VR)
Urban Commercial (UC)	Village Commercial (VC)
Rural Commercial (RC)	Special Use (SU)
Urban Industrial (UI)	[Ord 90-0069, Ord 2009-0233; Ord.2012-0247; Ord 2013-0253]
Rural Industrial (RI)	
Agricultural Industrial (AI)	
Landfill Site (LS)	
Public (P)	
Rural Service Center (RSC)	

Overlay Zones

Floodplain Management (/FP)
Greenway Management (/GM)
Willamette River Greenway (/WRG)
Flexible Industrial (/FI)

Airport (/A)

(/U), Natural Hazards (/NH), Natural Resource (/NR)

Goal 5 Resources; Wetland (/W), Surface Mining (/SM), Sensitive Fish and Wildlife Habitat (/FW), Fender's Blue Butterfly, Use

[Ord 97-0131; Ord 2004-0196; Ord 2006-0214, Ord 2009-0233; Ord 2013-0253]

Acronyms

A	Agricultural
AA	Alternative Analysis
ADA	Americans with Disabilities Act (1990)
ADT	Average Daily Trips made by vehicles or persons in a 24-hour period
AADT	Average Annual Daily Traffic
ADU	Accessory Dwelling Unit
AIA	American Institute of Architects
AICP	American Institute of Certified Planners
ALUC	Airport Land Use Commission
AMR	Annual Monitoring Report
APA	American Planning Association
AQMD	Air Quality Management District.
ASCE	American Society of Civil Engineers
BANANA	Build Absolutely Nothing Anywhere, Near Anyone
BAT	Best Available Technology
BFE	Base Flood Elevation
BID	Business Improvement District
BLM	Bureau of Land Management
BMP	Best Management Practices
BMR	Below-Market Rate dwelling unit or interest rate

BOC	Board of Commissioners
BP	Building Permit
BRT	Bus Rapid Transit
C	Commercial zone use of specified intensity
CAA	Clean Air Act
CAC	Citizen Advisory Committee
CAD	Computer Aided Design
CBD	Central Business District
CC&Rs	Covenants, Conditions, and Restrictions
CDBG	Community Development Block Grant
CFM	Certified Floodplain Manager
CIP	Capital Improvements Program Plan
CMAQ	Congestion Mitigation and Air Quality Improvement Program
CMP	Congestion Management Plan
CNEL	Community Noise Equivalent Level
CPI	Consumer Price Index
CO	Certificate of Occupancy
COG	Council of Governments CWCWG Cascades West Council of Governments (serves Linn, Lincoln, Benton Counties)
CRA	Community Redevelopment Agency
CSA	Community Service District
CUP	Conditional Use Permit
CWA	Federal Clean Water Act
dB	Decibel dB(A) Decibel (A-weighted)
DLCD	Department of Land Conservation and Development

DOE	Department of Energy (U.S.)
DOGAMI	Department of Geology and Mineral Industries
DP	Demolition Permit
DU	Dwelling Unit
EDA	Economic Development Administration
EFU	Exclusive Farm Use
EIR	Environmental Impact Report
EIS	Environmental Impact Statement (Federal)
EJ	Environmental Justice Title VI
EPA	Federal Environmental Protection Agency
ESA	Federal Endangered Species Act
EZ	Enterprise Zone
FAA	Federal Aviation Administration
FAR	Floor Area Ratio
FC	Forest Conservation Zone
FEMA	Federal Emergency Management Agency
FHA	Federal Housing Administration
FHLMC F	Federal Housing Loan Mortgage Company “Freddie Mac”
FHWA	Federal Highway Administration
FIA	Fiscal Impact Analysis also Federal Insurance Administration
FIR	Fiscal Impact Report
FIRE	Finance, Insurance and Real Estate
FIRM	Flood Insurance Rate Map
FmHA	Farmers Home Administration

FMV	Fair Market Value
FNMA	Federal National Mortgage Association “Fannie Mae”
FONSI	Finding of No Significant Impact
FTA	Federal Transit Administration
FWS	U.S. Fish and Wildlife Service
GFA	Gross Floor Area
GHG	Greenhouse Gas
GIS	Geographic Information Systems
GLA	Gross Leasable Area
GNMA	Government National Mortgage Association “Ginnie Mae”
GPS	Global Positioning System
HAP	Housing Assistance Plan
HCP	Habitat Conservation Plan
HIA	Health Impact Assessment
HOA	Homeowners’ Association
HOP	Home Occupation Permit
HOV	High-Occupancy Vehicle
HTF	Housing Trust Fund
HUD	U.S. Department of Housing and Urban Development Industrial
ISA	Impervious Surface Ratio
ISTEA	Intermodal Surface Transportation Efficiency Act
ITE	Institute of Transportation Engineers
LAFCO	Local Agency Formation Commission
LCDC	Land Development Commission

LLA	Lot Line Adjustment
LUBA	Land Use Board of Appeals
Ldn	Day-Night Average Sound Level
LEED	Leadership in Energy and Environmental Design LEED-ND LEED for Neighborhood Development
LHA	Local Housing Authority
LID	Low Impact Development Stormwater Management
LOS	Level of Service
LRT	Light-duty Rail Transit
M-1,2	Manufacturing Zone
M37	Measure 37
M49	Measure 49
MEA	Master Environmental Assessment
MEIR	Master Environmental Impact Report
MF	Multifamily
MGD	Millions of Gallons per Day
MH	Manufactured Housing
MOU/A	Memorandum of Understanding Memorandum of Agreement
M-PA	Multipurpose Agricultural Zone
MPD	Master Planned Community
MPO	Metropolitan Planning Organization (federal) Albany, AAMPO & Corvallis, CAMPO
MXD	Mixed Use Development
NAHB	National Association of Home Builders
NAHRO	National Association of Housing & Redevelopment Officials
NCCP	Natural Communities Conservation Plan

NEPA	National Environmental Policy Act
NGO	Nongovernmental Organization
NIMBY	Not In My Backyard
NHPA	National Historic Preservation Act
NOC	Notice of Completion
NOD	Notice of Determination Decision
NOP	Notice of Preparation
NPDES	National Pollution Discharge Elimination System
NRCS	National Resources Conservation Service
OAR	Oregon Administrative Rules
ODA	Oregon Department of Agriculture
ODF	Oregon Department of Forestry
ODFW	Oregon Department of Fish and Wildlife
ODOT	Oregon Department of Transportation
OHCS	Oregon Housing and Community Services
ORS	Oregon Revised Statutes
P&Z	Planning and Zoning
PC	Planning Commission
PCD	Planned Commercial Development
PDR	Purchase of Development Rights
PE	Preliminary Engineering
PHA	Public Housing Agency
PHT	Peak Hour Traffic (or Peak Hour Trips)
PID	Planned Industrial Development

PM	Particulate Matter
PPB	Parts Per Billion
PPM	Parts per Million
PUD	Planned Unit Development
QOL	Quality of Life
R	Residential
R-1,2..	Residential Zone/use of specified intensity
RDA	Redevelopment Agency
RFP	Request for Proposal
RFQ	Requests for Qualifications
RHNA	Regional Housing Needs Assessment Allocation
RLUIPA	Religious Land Use and Institutionalized Persons Act
ROW	Right-of-Way
RR	Rural Residential
SHPO	State Historic Preservation Office
SFD	Single-Family Dwelling
SP	Sign Permit
SPR	Site Plan Review
SRO	Single-Room Occupancy
STIP	State Transportation Improvement Plan
SUP	Special Use Permit
TAZ	Transportation Analysis Zone
TDM	Transportation Demand Management TO Transportation Options (modernized term)
TDR	Transfer of Development Rights

TGM	Transportation Growth Management Program (ODOT & DLCD)
TIA	Transportation Impact Analysis
TIF	Tax Increment Financing
TMA	Transportation Managemnt Area
TMDL	Total Maximum Daily Load
TOD	Transit-Oriented Development
TOT	Transient Occupancy Tax
TSM	Transportation Systems Management
TUP	Temporary Use Permit
UBC	Uniform Building Code
UFA	Urban Fringe Agreement
UGB	Urban Growth Boundary
UHC	Uniform Housing Code
USDA	U.S. Department of Agriculture
USDI	U.S. Department of the Interior
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
V/C	Volume to Capacity Ratio (Transportation)
VAR	Variance
VLf	Vehicle License Fee
VMT	Vehicle Miles Traveled
WQMP	Water Quality Management Plan
ZLL	Zero Lot Line

ZO

Zoning Ordinance



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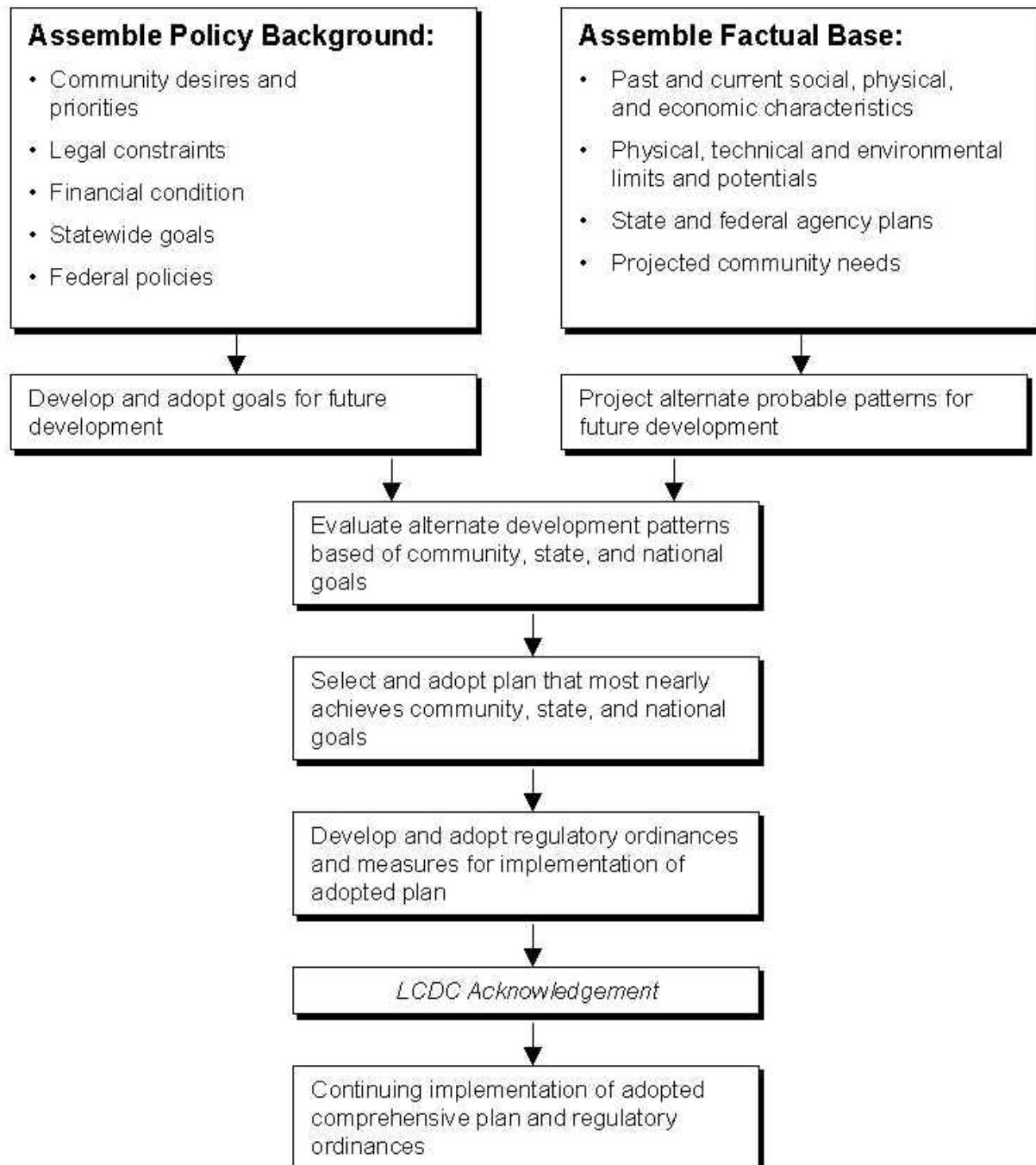
The Comprehensive Plan Update Process in Oregon

- **Develop factual base** - includes inventories of communities' physical and human resources, analysis of past trends, and projections of future trends usually for a 20-year period.
- **Develop functional elements** - this is the main body of the plan where the goals are addressed. Plans are generally (although not always) organized by goals (e.g., land-use, natural resources, transportation, economic development, housing, etc.).
- **Develop local goals** - these determine the relative emphasis a community will place on economic growth, energy conservation, urbanization, alternative transportation modes, and many other matters of local concern.
- **Develop Plan Map and Policies** - local goals are addressed in the physical development pattern and in a set of written plan policies. Specific policies are further reflected in development criteria and standards contained in the communities' implementing ordinances.
- **Citizen Participation and Intergovernmental Coordination** - are required under the Oregon system. Each plan must make specific provisions for citizen involvement and intergovernmental coordination in the planning process.
- **Formal Adoption and Acknowledgment** - the plan must be adopted by the appropriate decision-making bodies. The plan is then forwarded to DLCDC for review and acknowledgment for consistency with Statewide Planning Goals.

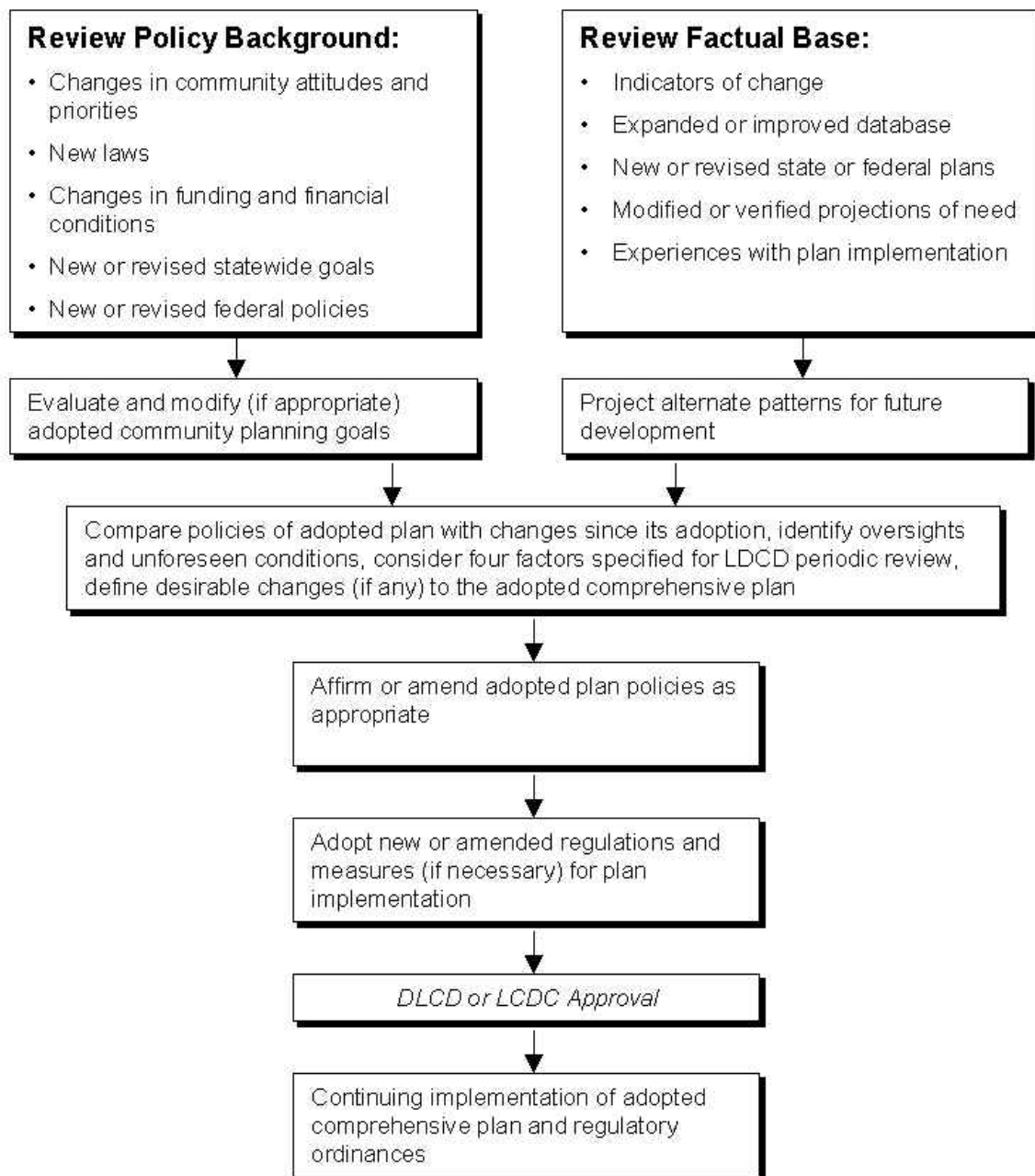
Comprehensive plan components

- | | |
|-----------------------------|----------------------|
| • Citizen Involvement | • Forests |
| • Housing | • Historic Resources |
| • Commercial | • Public Facilities |
| • Industrial | • Transportation |
| • Recreation and Open Space | • Urban Growth |
| • Agriculture | • Land Use Zoning |

Steps in the Comprehensive Planning Process



Steps in the Comprehensive Plan Review and Update Process



Ordinances and measures for comprehensive plan implementation

- Land use regulations—land divisions, zoning, plan map
- Zoning regulations—zoning map, text
- Subdivision regulation

- Nonregulatory approaches

What is Zoning?

1. The division of a municipality (or other governmental unit) into districts, and the regulation within those districts of:
2. The height and bulk of buildings and other structures;
3. The area of a lot which may be occupied and the size of required open spaces;
4. The density of population;
5. The uses of buildings and land for trade, industry, residence, or other purposes.

What special circumstances do zoning ordinances usually address?

- Conditional uses—zoning ordinances specify three types of permitted uses for each zone: outright uses, prohibited uses, and conditional uses. Conditional uses are uses that would not be appropriate throughout the zone but would be beneficial to the community if their number, location, design, and relation to surrounding property were controlled.

Typical review criteria require the use be compatible with and have a minimal impact on the livability of abutting properties and the surrounding neighborhood. Examples of uses that are frequently conditional uses include churches, schools, nursing homes, fraternal organizations, public offices, etc.

- Variances—most zoning ordinances allow deviation for some standards in limited instances. The unique conditions where variances are allowed typically include instances where the application of the standards would cause unnecessary hardship, such as the size or topography of a lot.
- Design review—many communities have design review to ensure that development is consistent with the communities' vision. Under design review, the design of the development, including site design, and sometimes, off-site facilities, is evaluated for compliance with requirements such as density, preservation of light and air, provision of facilities, vehicle access, open space, landscaping, and visual screening.
- Planned unit development (PUD)—most communities have planned unit development ordinances. PUDs typically are applied to larger developments and are intended to allow developers flexibility in meeting standards of building siting, density, access, etc.
- Nonconforming uses—all communities have uses that do not conform with zoning standards when the zoning ordinance is adopted. These uses are called nonconforming uses. Most zoning ordinances have provisions for the continuance, expansion, rebuilding, or discontinuance of nonconforming uses.
- Exclusive farm use zones (EFU)—all counties are required to have exclusive farm use zones. Beyond the intent of preserving agricultural land, EFU zones also allow landowners to have

their property assessed at its value for agriculture. This deferral of taxation reduces the impact of property values on farmers and reduces incentives to convert farmland to urban uses.

Related Zoning Provisions

- Floodplain regulation
- Sign control
- Geologic hazards regulation
- Historic, archaeological, and cultural preservation
- Airport approach control
- Architectural control
- Estuary, beach, dunes, and coastal related regulations

Subdivision Regulations

Controls partitioning of land including standards for:

- Street widths
- Street alignments and grades
- Curbs
- Sidewalks
- Lighting
- Dedication of land

Nonregulatory Measures

- Capital improvement program
- Conservation easements
- Economic development program
- Public and publicly assisted housing
- Land banking and greenbelts

Land-Use Decisions

ORS 197.015 Defines land use decisions to:

(a) Include:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The LCDC Goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation; or

(B) A final decision or determination of a state agency other than the Commission with respect to which the agency is required to apply the goals.

(b) Not include a ministerial decision of a local government made under clear and objective standards contained in an acknowledged comprehensive plan or land use regulation and for which no right to a hearing is provided by the local government.

Types of Land-Use Decisions

Legislative - create and adopt as law general policies and regulations for future land use within a jurisdiction. Examples include the adoption or revision of a comprehensive plan, zoning regulations, or a subdivision ordinance. LCDC goals must be considered for legislative land-use decisions.

Quasi-Judicial - apply the law to specific land development or use proposals. Examples of quasi-judicial decisions include small-tract zoning designations, conditional use permits, and major land divisions. They typically involve the exercise of discretion by the decision-making official or body in applying general criteria of the plan or ordinance to the facts of a land development application. Quasi-judicial decisions always involve the property rights of specific persons.

Ministerial or Administrative - apply "clear and objective standards" for which the local government provides no right to a hearing. These decisions that are delegated to staff with the appropriate safeguards for the rights and interests of the affected parties. Examples include partitions or certain minor variances from standards.

Summary of Decision Requirements

Type of Decision	Notification	Hearings	Findings	Appeal
Legislative	Notice must be provided consistent	All local legislative land -use actions are required to be	Goal 2 requires land-use decisions have an "adequate	Land use decisions are subject to appeal only to

	with local policies—but also to specific groups, agencies and LCDC if application of goals is involved	taken <u>after</u> a public hearing.	factual base". These decisions must be supported by written findings.	LUBA. The scope of review only includes a determination of consistency with LCDC goals and the local comprehensive plan
Quasi-Judicial	Must identify the type of land use decision to be made and the time and place of the hearings	Parties are entitled to present and rebut evidence presented by others. The proponent has the burden of proof. Evidence that is not included in testimony or as part of the record may not be cited as a basis for the decision.	Decisions are not final until written findings have been adopted by the decision-making body. Failure to prepare and adopt "adequate" findings can result in reversal or remand of a decision.	The law requires that a notice of a quasi-judicial decision be sent to all parties of the preceding. Decisions can be appealed directly to LUBA, but jurisdictions can provide more than one level of appeal.
Ministerial or Administrative	No required, but generally provided	Not required.	Not required.	Can be appealed to the appropriate decision-making body.



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Staff Responsibilities for Quasi-Judicial Decision-Making at Planning Commission

A planning commission is a standing committee of appointed responsible for guiding land use and development. The commission works in partnership with Benton County staff, and community members to develop policies and plans that promote orderly and sustainable growth within the community.

The planning commission has two roles; to review and consider land use proposals, such as rezoning requests, land use plans, and subdivision plans. Second, the Planning Commission plays a role providing recommendations development policies. The meetings are public hearings, allowing community members to voice their opinions and concerns regarding proposed development projects.

Staffing an effective planning commission is vital, as it encourages lawful execution of public meetings law, fosters different types of civic engagement.

1. Agenda Setting

At least 10-14 business days before a regularly scheduled meeting, staff sends a draft agenda to the Chair.

The Chair reviews, suggests amendments if needed, and notifies staff with **at least nine (9) business days** before the meeting.

Creating a clear and comprehensive meeting agenda in a timely manner is essential for a successful planning commission meeting. The agenda includes a list of the topics to be discussed and the amount of time allocated for each item.

After agreeing to the final agenda, staff has **four to two (4-2) business days** to develop staff reports, draft meeting minutes from prior meetings, collect written public comment, and coordinate other meeting materials.

2. Posting Notice

At least seven (7) days prior to the meeting, staff distributes meeting materials to members, applicants, and interested parties.

Staff posts meeting Notice to Benton County website **seven (7) days prior** the meeting.

3. Amendments to Agenda

Amendments to an agenda or the meeting materials should be avoided unless there is an emergency because it is confusing to the public, difficult for staff to react to in a timely manner and increases notice mistakes and interferes with staff ability to meet notice requirements of, e.g., the paper of record. These situations invite distrust and optics of unreliability by the public, interested parties, staff and planning commissioners.

4. The Meeting

Staff sets the room, monitors the virtual element, and records the meeting.

Staff is available to answer questions, know the breadth of relevant law, and facilitate when needed.

Planning commission should follow the agenda, avoid conversations not on the agenda.

5. Capture Accurate Meeting Minutes

Staff records and takes meeting minutes, distributes, and posts them to staff and public in a timely manner.

6. Send Post-Meeting Action Items

Following the meeting, staff will send post-meeting action items to all members if necessary. Staff will include a list of action items, deadlines, and all other relevant information. Sending post-meeting action items helps to ensure all members are on the same page and that progress is being made toward the goals discussed during the meeting.

7. What to expect in a Quasi-Judicial Land Use Staff Report

- A. Cover sheet.
- B. Project description, legal description (required for a rezoning).
- C. Factual information about the site and surrounding area, including:
 - the current zoning districts of involved properties
 - description of the site including on a site visit and survey by the planning staff
 - surrounding land use(s)
 - recent land-use actions, including rezonings, conditional uses, code violations, non-conformity, and variances affecting the area
 - existing and proposed public facilities serving the site, including sizes of water and sewer lines, and classification and condition of roads
 - identification of other services, such as public transit traffic counts, if relevant
 - floodplain or wetlands information, if relevant
 - presentation of decision-making criteria from plans or development codes with comment on how the project meets or does not meet criteria (for rezonings, variances, conditional uses)
 - specialized impact analyses, if necessary

- evaluation of consistency of proposed action with all applicable plans, ordinances, and regulations. This section would include statements of comprehensive plan map designations, written policies, and excerpts of relevant sections of ordinances and regulation.

D. Description of information yet to be submitted.

E. Comments from other agencies.

F. Staff recommendations, including conditions, as appropriate.

G. Maps displaying subject property.

H. Photographs of the property, if appropriate.

I. Information submitted by applicant (as attachments).

J. Written comments from citizens (as attachments). Staff should delineate public comments that address Development Code criteria and those that do not. The comments directly related to Code criteria may be used within the legal record.



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Policy on Planning Commission Communications

05 | 21 | 2009; updated 12 | 02 | 2011; 10 | 30 | 2014

The following policy is based on discussion with Benton County Counsel.

Regarding matters – typically land use applications – that are before the Planning Commission:

1. **Communication with Staff.**

Planning Commissioners may communicate with staff, ask questions, request information. Information requests will generally be copied to all Planning Commissioners so that all have the same factual basis upon which to consider the application.

2. **Communication between Planning Commissioners outside of hearings.**

Discussions between Planning Commissioners regarding issues upcoming before the Commission is strongly discouraged.

By law, any discussion involving a quorum of the Planning Commissioners occurring outside a meeting is improper. In the interest of fair, transparent and impartial decision-making, we strongly encourage Planning Commissioners to discuss matters only at public meetings.

Deliberations must occur as part of a duly noticed public meeting. Email discussions that constitute deliberations outside of a noticed meeting are not permitted under Oregon's Public Meeting Law.

3. **Planning Commissioner participation in decision-making.**

To participate, a commissioner must have reviewed the record and heard all testimony presented to the commission. If a commissioner is absent from a hearing that is continued, and the commissioner wishes to participate in the decision at the continued hearing, he/she needs to listen to the audio recording of the missed hearing and review any materials submitted.

Providing input if absent. If a Planning Commissioner is unable to attend a hearing but wants to provide input, he/she may participate at the continued hearing (if there is a Continuance) as described above or, alternatively, may recuse themselves from the

decision-making process and instead provide testimony as a member of the public. A Planning Commissioner providing testimony may not later resume a role in Planning Commission discussion, deliberation, nor decision.

4. Research by individual Planning Commissioners.

Personal research into the applicable law is okay. For example, looking at LUBA (Land Use Board of Appeals) case law to see how a particular law has been interpreted.

Research into the facts is generally improper, because it results in the individual Planning Commissioner having facts that could influence his/her decision and that are not in the record (meaning they are not available to all and are not open to scrutiny and refutation by parties involved).

If Planning Commissioners want information, request it from Staff. Staff will make sure it is properly handled.

5. Site Visits.

Individual Planning Commissioners – such visits are acceptable, provided the Planning Commissioner *discloses* this at the hearing as an ex parte contact. The Planning Commissioner should avoid discussing the matter with the property owner or anyone else encountered during the site visit.

Sub-quorum – This is acceptable, again provided the involved members disclose the visit. We strongly recommend that group site visits be accompanied by a staff member. Limited discussion during the site visit appears to be allowable.

Quorum – This constitutes a meeting of the Planning Commission and must be noticed in the newspaper. Staff should accompany. This is best arranged as part of a regularly scheduled meeting.

6. Ex Parte Contact.

Quasi-judicial: Ex parte contact is contact with one side without the other side being able to hear the conversation and rebut what was presented. Ex parte contact can be grounds for overturning a decision upon appeal. This can be avoided by the member of the decision-making body receiving the contact:

Placing on the record the substance of any written or oral ex parte communications concerning the decision or action; and

Making a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

Note that a communication between county staff and the planning commission or governing body shall not be considered an ex parte contact.

Legislative. The rules regarding ex parte contact do not apply in legislative proceedings. The state statutes lead County Counsel to conclude that the ex parte rules are designed to prevent outside communications from unduly influencing land use decisions or limited land use decisions only (not legislative decisions).

In a legislative proceeding, the governing body is not hearing the case of one side vs. the other (approve or not approve a specific land use action) but is rather considering whether and in what form to adopt a broadly applicable policy or regulation. In a sense, there is no such thing as ex parte contact in such a setting.

7. What constitutes new evidence?

Once the record is closed (public comment closed), the planning commission may not take any more testimony or evidence. That means no new documents may be submitted, no oral testimony presented and no new information may be elicited from prior testifiers. That means as long as the record is closed, the PC may not ask questions of anyone who provided written or oral testimony.

The only way the PC may ask questions of the audience is to reopen the record, ask questions and then ask if anyone else has additional testimony it wishes to present. And then, after that "solicitation" is complete, the PC should probably keep the record open for a period of time to allow anyone to submit evidence or testimony in response to information presented during the question-and-answer session and/or renewed open record period.

Reopening the record to allow the PC to ask questions is really a slippery slope. When does the circle of evidence and response end? I advise not reopening the record to allow the PC to ask questions, because then it'll have to offer anyone else an opportunity to testify, regardless of whether they were asked questions. The good news is that by keeping the record closed and not asking questions of prior presenters, those "foreclosed" presenters still have another opportunity to present testimony - at the Board hearing. So, they have another chance to offer evidence/testimony, not only the Planning Commission.

Questions of staff are encouraged. Such questions typically do not result in new evidence, so they rarely pose a problem.

MEMORANDUM

TO: Planning Commission
FR: Inga Williams, Associate Planner
DT: July 31, 2024
RE: Appeal of Planning Official's approval of the Conditional Use Permit application for St. Martin Orthodox Church

SUMMARY

The Planning Official approved a Conditional Use Permit application for the St. Martin Orthodox Church on May 21, 2024. The approved request makes the church a code compliant use in the Urban Residential zoning district (they were a legal, nonconforming use) and allows them to expand their church and parish hall as well as add a parsonage.

Staff mailed out the Notice of Decision with an Appeal-by date of June 4, 2024, at 5:00 PM. An appeal of the decision was submitted on June 4 by Theresa Stephens, along with other ten other households signing onto the appeal. The appeal of the Planning Official decision requires a public hearing in front of the Planning Commission.

Ms. Stephens lists 5 grounds for the appeal. The appeal does not state that the application should be denied, but requests additional mitigation by revising or including conditions in the Conditions of Preliminary Approval.

- 1) Ms. Stephens' first request is to revise Condition of Preliminary Approval #4 of the staff report to require the applicant to widen and improve both NW Camellia Drive and NW Wild Rose Drive to local residential road standards, and that the improvements occur at the same time the parking lot is expanded.
- 2) The second request is to change Condition #3 to require an 8-foot fence along the north and east sides of the property instead of a 6-foot fence.
- 3) The third request is to add a condition to require a pump test for the church addition and the parsonage.
- 4) The fourth request is to add a condition requiring building code fire protection criteria be met as well as compliance with the Oregon Specialty Structural Code.

- 5) The fifth request is to require the church to apply for a conditional use permit if they intend to use the parish classrooms for school use and limit the days the property is used for religion classes.

PLANNING STAFF RESPONSE TO THESE REQUESTS:

- 1) The county can only require an applicant for a land use and/or building permit to provide improvements commensurate with their impacts or the improvements could be deemed unduly burdensome. Public Works calculated the improvements required based upon the impact of the church expansion. Public Works can address this further at the public hearing.
- 2) Staff has no comments on the second request. The applicant can choose to accept the revision.
- 3) The building permit process for residential development requires an applicant to provide a 4-hour pump test. Adding this as a condition to a land use permit is unnecessary and would be redundant. The timing would also be difficult. Pump tests are only valid for one year and the applicant must comply with conditions of approval prior to beginning development. The parsonage is the last piece of the development to occur and by the time the building permit is submitted, the pump test could be expired. The land development code requires a new public place of occupancy to provide a pump test, not expansions of existing. The pump test for the parsonage will need to show that there is a minimum of 10 gallons per minute, 5 for the parsonage and 5 for the church.
- 4) Additional fire protection is addressed through building permit review. The applicants already have two 10,000-gallon water storage tanks for fire suppression.
- 5) Per state statute and county code, the applicant cannot run a public or private school on the property without conditional use permit approval. It is unnecessary repeat this in the conditions of approval. As for the religion classes, the county cannot impose limits on when religion classes are held.

INFORMATION REGARDING RELIGIOUS USES

Please read the attached US Dept. of Justice letter on the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Oregon Land Use Board of Appeals (LUBA) cases

1) Corporation Presiding Bishop v. City of West Linn, 45 Or LUBA 77 (2003)

Subjective, discretionary conditional use and design review criteria are precisely the type of land use regulations that Congress intended to regulate, as applied to religious practices and institutions, in enacting the Religious Land Use and Institutionalized Persons Act (RLUIPA). Although such standards may be “generally applicable” in the sense that they apply broadly to a number of secular and non-secular uses, their application to approve or deny a proposed church requires an “individualized assessment” and thus is subject to RLUIPA.

- 2) **Tarr v. Multnomah County, 306 Or App 26, 473 P3d 603 (2020)**, Sup Ct review denied
County may not apply local land use standards, including compatibility standards, to proposed religious land use described by subsection (1) of this section, except as provided in in subsection (2) of this section.

<https://law.justia.com/cases/oregon/court-of-appeals/2020/a173800.html>

Oregon Revised Statutes 215.441

Use of real property for religious activity

- (1)** If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including:
 - (a)** Worship services.
 - (b)** Religion classes.
 - (c)** Weddings.
 - (d)** Funerals.
 - (e)** Meal programs.
 - (f)** Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.
- (2)** A county may:
 - (a)** Subject real property described in subsection (1) of this section to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; **or**
 - (b)** Prohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.
- (3)** Notwithstanding any other provision of this section, a county may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations. [2001 c.886 §2; 2017 c.745 §7; 2019 c.640 §19; 2021 c.385 §4; 2021 c.446 §4]

STAFF REVISION TO THE CONDITIONS OF OPERATING APPROVAL.

In compliance with state and federal law, staff withdraws Conditions of Operating Approval #1 and #4

1. Church bells shall not ring before 7 AM or after 8 PM.
4. The church shall provide notice to all homeowners along NW Camellia Drive and NW Wild Rose Drive one week prior to any outdoor event occurring on the subject property.



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 19, 2024

Re: The Religious Land Use and Institutionalized Persons Act

Dear State, County, and Municipal Officials:

I am writing to you today to remind you of the obligation of public officials to comply with the land use provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and to inform you about documents issued by the Department of Justice (Department) that may be of assistance to you in understanding and applying this important federal civil rights law.

The freedom to practice religion according to the dictates of one's conscience is among our most fundamental rights, written into our Constitution and protected by our laws. In our increasingly diverse nation, and at a time when many faith communities face discrimination, the Department continues to steadfastly defend this basic freedom to ensure that all people may live according to their beliefs, free of discrimination, harassment, or persecution.

Over the years, Congress has passed several laws that protect the religious liberties of those who live in America, including the landmark Civil Rights Act of 1964 and the 1996 Church Arson Prevention Act. In 2000, Congress, by unanimous consent, and with the support of a broad range of civil rights and religious organizations, enacted the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. Congress determined that there was a need for federal legislation to protect people and religious institutions from unduly burdensome, unreasonable, or discriminatory zoning, landmarking, and other land use regulations.ⁱ It heard testimony that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected in an adverse way, and in fact were often actively discriminated against by local land use decisions. Congress also found that religious institutions were treated worse than secular places of assembly like community centers, fraternal organizations, and theaters, and that zoning authorities frequently violated the United States Constitution by placing excessive burdens on the ability of congregations to exercise their faiths.

RLUIPA includes a private right of action, which allows individuals to enforce its provisions. Congress also gave the Attorney General the authority to enforce RLUIPA, and the Department of Justice has been active in enforcing this important civil rights law since its enactment. To date, the Department has opened over 155 formal investigations and filed nearly 30 lawsuits related to RLUIPA's land use provisions.ⁱⁱ The Department has also filed 36 "friend-of-the-court" briefs addressing the interpretation and application of RLUIPA in privately-filed lawsuits. Through these efforts, as well as those by private parties, RLUIPA has helped secure for thousands of individuals and institutions the freedom to practice their faiths without discrimination.

Yet, more than twenty-three years after RLUIPA's enactment, far too many people and communities remain unaware of the law, or do not fully understand the scope of its provisions. The Department of Justice implemented its *Place to Worship* Initiative in 2018, through which we continue to work to increase both public awareness and enforcement of RLUIPA's land use provisions.ⁱⁱⁱ As

participants at recent outreach events have indicated, and as the Department’s own investigations have revealed, there are still many municipal, county, and other local officials who are insufficiently familiar with the land use provisions of RLUIPA and with their obligations under this important federal civil rights law. The Department has also received reports that religious groups, particularly those from less widely practiced religious traditions, continue to face unlawful barriers in the zoning and building process. Our work in this area suggests that litigation is far less likely if local officials are aware of RLUIPA and consider its protections early in the process of reviewing land use applications from religious organizations.

In light of this, we are sending this letter to you and other officials throughout the country to ensure that you are aware of your obligations under RLUIPA and its key provisions. Ensuring that our constitutional and statutory protections of religious freedom are upheld requires that federal, state, and local officials work together. To that end, we encourage you to share this letter with your colleagues. We hope that you will continue to work with the Department and view us as a partner in ensuring that no individual in this country suffers discrimination or unlawful treatment because of their faith.

1. RLUIPA provides broad protections for religious individuals and institutions.

RLUIPA’s land use provisions provide several protections for places of worship, faith-based social service providers, and religious schools, as well as for individuals using land for religious purposes. Specifically, RLUIPA provides for:

- *Protection against substantial burdens on religious exercise:* Section 2(a) of RLUIPA prohibits the implementation of any land use regulation that imposes a “substantial burden” on the religious exercise of a person or institution except where justified by a “compelling government interest” that the government pursues using the least restrictive means.
- *Protection against unequal treatment for religious assemblies and institutions:* Section 2(b)(1) of RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.
- *Protection against religious or denominational discrimination:* Section 2(b)(2) of RLUIPA prohibits discrimination “against any assembly or institution on the basis of religion or religious denomination.”
- *Protection against total exclusion of religious assemblies:* Section 2(b)(3)(A) of RLUIPA prohibits governments from imposing or implementing land use regulations that totally exclude religious assemblies from a jurisdiction.
- *Protection against unreasonable limitation of religious assemblies:* Section 2(b)(3)(B) of RLUIPA prohibits governments from imposing or implementing land use regulations that “unreasonably limit” religious assemblies, institutions, or structures within a jurisdiction.

While the majority of RLUIPA cases involve places of worship such as churches, synagogues, mosques, and temples, the law is written broadly to cover a wide range of religious uses and types of religious exercise. The “substantial burden” provision in Section 2(a) of the statute applies to burdens on “a person, including a religious assembly or institution.” The remaining provisions apply to any religious “assembly or institution.” Thus, RLUIPA applies widely not only to diverse places of worship, but also to religious schools, religious camps, religious retreat centers, religious cemeteries, and religious social service facilities such as group homes, homeless shelters, and soup kitchens, as well as to individuals or families exercising their religion through the use of property, such as home prayer gatherings or Bible studies.^{iv}

To be clear, RLUIPA does not provide a blanket exemption from local zoning or landmarking laws. Rather, it contains a number of safeguards to prevent discriminatory, unreasonable, or unjustifiably burdensome regulations from hindering religious exercise. Ordinarily, before seeking recourse under RLUIPA, those seeking approval for a religious land use will have to apply for permits or zoning relief according to the regular procedures set forth in the applicable ordinances, unless doing so would be futile or the regular procedures are themselves discriminatory or create an unjustifiable burden. While zoning is primarily a local matter, where it conflicts with federal civil rights laws such as the Fair Housing Act or RLUIPA, federal law takes precedence.

Each of RLUIPA's protections mentioned above are discussed in greater detail below.^v

2. RLUIPA protects against unjustified burdens on religious exercise.

Land use regulations frequently can impede the ability of religious institutions to carry out their mission of serving the religious needs of their members. Section 2(a) of RLUIPA bars imposition of land use regulations that create a “substantial burden” on the religious exercise of a person or institution, unless the government can show that it has a “compelling interest” for imposing the regulation and that the regulation is the least restrictive way for the government to further that interest. A mere inconvenience to a person or religious institution is not sufficient to constitute a burden, but a burden that is substantial may violate RLUIPA. For example, in a case in which the United States filed a friend-of-the-court brief in support of a Maryland church's challenge to a zoning amendment that prohibited it from building an expanded church on its property, a federal appeals court ruled that the church has “presented considerable evidence that its current facilities inadequately serve its needs,” and that the “delay, uncertainty and expense” caused by the local government's action may create a substantial burden on the church's religious exercise in violation of RLUIPA.^{vi} The court relied on facts showing that the church's current facility was inadequate for its congregation and that it had a reasonable expectation that it could develop its new property. Similarly, the Department of Justice filed suit in a Connecticut federal district court alleging that a city's denial of zoning approval for an Islamic Center to establish a mosque imposed a substantial burden on the congregation.^{vii} The City had required the group to apply for a Special Exception Permit, which it did not require for other types of institutional land uses within the zone, and then denied the permit. The case was resolved by a consent decree in federal court.

If application of a zoning or landmarking law creates a substantial burden on religious exercise, such application is invalid unless it is supported by a compelling governmental interest pursued through the least restrictive means.^{viii} While RLUIPA does not define “compelling interest,” the U.S. Supreme Court has explained that compelling interests are only “interests of the highest order.”^{ix} Further, local governments cannot rely on generalized, “broadly formulated interests,” but instead must “show that the compelling interest test is satisfied through application of the challenged law to . . . the particular claimant whose sincere exercise of religion is being substantially burdened.”^x

3. RLUIPA protects equal access for religious institutions and assemblies.

Section 2(b)(1) of RLUIPA, known as the “equal terms” provision, mandates that religious assemblies and institutions be treated at least as well as nonreligious assemblies and institutions. For example, a federal appeals court ruled that zoning provisions that prohibited religious assemblies on the ground floor of buildings on a city's downtown main street but permitted nonreligious uses, such as theaters, on the ground floor of such buildings violated the equal terms provision.^{xi} In 2019, the Department brought suit under RLUIPA's equal terms provision against a city in Michigan for imposing zoning approval requirements on places of worship that it did not impose on comparable nonreligious assembly uses, and then denying zoning approval to a Muslim group seeking to establish the only

permanent place of Islamic worship in the city.^{xiii} The court granted summary judgment to the United States, finding that the city had violated RLUIPA's equal terms provision by requiring places of worship to abide by more onerous zoning restrictions than "similarly situated" places of nonreligious assembly.^{xiii}

4. RLUIPA protects against religious discrimination in land use.

Section 2(b)(2) of RLUIPA bars discrimination "against any assembly or institution on the basis of religion or religious denomination." Thus, if an applicant is treated differently in a zoning or landmarking process because of the religion represented (e.g., Christian, Jewish, Muslim), or because of the particular denomination or sect to which the applicant belongs (e.g., Catholic, Orthodox Jewish, or Shia Muslim), then RLUIPA will be violated. The Department of Justice filed suit alleging that a Texas city discriminated against an Islamic association in violation of Section 2(b)(2) when it denied the association permission to build a cemetery due to anti-Muslim sentiment, including opposition by citizens who expressed anti-Muslim bias. The case was resolved when the city relented and granted the association permission to develop the cemetery.^{xiv} Similarly, the Department filed suit to challenge a New Jersey township's adoption and application of discriminatory zoning ordinances that targeted the Orthodox Jewish community by prohibiting religious schools and associated dormitories.^{xv} The case was resolved by consent decree which required that, among other things, the township revise its zoning code.

5. RLUIPA protects against the total or unreasonable exclusion of religious assemblies from a jurisdiction.

Under section 2(b)(3) of RLUIPA, a zoning code may not completely, or unreasonably, limit religious assemblies in a jurisdiction. Thus, if there is no place where houses of worship are permitted to locate, or the zoning regulations, viewed as a whole, deprive religious institutions of reasonable opportunities to build or locate in the jurisdiction, even if they don't completely prevent them from doing so, a jurisdiction may run afoul of this provision. For example, a federal appeals court made clear that government land use restrictions can violate RLUIPA's unreasonable limitations provision even if religious uses are not entirely excluded from the jurisdiction, if the jurisdiction makes it more difficult for houses of worship to locate there.^{xvi} Similarly, the Department of Justice filed suit in New Jersey alleging that a township's revisions to its zoning code that significantly reduced both the number of zoning districts in which houses of worship could be located, and the number of sites available for them, unreasonably limited religious assemblies, institutions, and structures in violation of RLUIPA.^{xvii} The case was resolved by consent decree.

* * * *

The Department of Justice is committed to carrying out Congress's mandate and ensuring that religious assemblies and institutions do not suffer from discriminatory or unduly burdensome land use regulations. We look forward to working collaboratively with you and all other stakeholders on these important issues. If you have questions about the contents of this letter, or other issues related to RLUIPA, I encourage you to contact Noah Sacks, the Civil Rights Division's RLUIPA Coordinator, at 202-598-6366 or noah.sacks@usdoj.gov.

Sincerely,



Kristen Clarke
Assistant Attorney General
Civil Rights Division

ⁱ RLUIPA also contains provisions that prohibit regulations that impose a “substantial burden” on the religious exercise of persons residing or confined in an “institution,” unless the government can show that the regulation serves a “compelling government interest” and is the least restrictive way for the government to further that interest. 42 U.S.C. § 2000cc-1.

ⁱⁱ Much of this work is detailed in DOJ reports on enforcement issued in September 2010 (available at https://www.justice.gov/crt/rluiipa_report_092210.pdf), July 2016 (available at <https://www.justice.gov/crt/file/877931/download>) and September 2020 (available at <https://www.justice.gov/media/1096176/dl?inline>).

ⁱⁱⁱ Further information about the Department’s *Place to Worship* Initiative is available at <https://www.justice.gov/crt/place-worship-initiative>.

^{iv} RLUIPA broadly defines religious exercise as “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A). Courts have found that a host of religious activities are protected by RLUIPA, including charitable acts by religious institutions. *See, e.g., Micah’s Way v. City of Santa Ana*, No. 8:23-CV00183, 2023 WL 4680804, at *5 (C.D. Cal. June 8, 2023) (finding that, under RLUIPA, faith-based ministry’s food distribution to those in need was religious exercise).

^v Further information may be found in the *Statement of the Department of Justice on Land Use Provisions of the Religious Land Use and Institutionalized Persons Act* (available at <https://www.justice.gov/crt/page/file/1071251/dl?inline>), and at the Department of Justice Civil Rights Division RLUIPA information page (<https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>).

^{vi} *Bethel Would Outreach v. Montgomery Cnty. Council*, 706 F.3d 548, 557-558 (4th Cir. 2013).

^{vii} *United States v. City of Meriden, Connecticut*, No. 3:20-CV-01669 (D. Conn. filed November 5, 2020).

^{viii} 42 U.S.C. § 2000cc(a)(1).

^{ix} *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

^x *Holt v. Hobbs*, 574 U.S. 352, 363 (2015). When the U.S. Supreme Court later vacated the judgment of the Minnesota Court of Appeals in a different RLUIPA case, which had upheld a County’s requirement that Amish households install modern septic systems despite assertions that their religion forbade the use of such technology, one justice emphasized that “the question in this case ‘is not whether the [County] has a compelling interest in enforcing its [septic system requirement] generally, but whether it has such an interest in denying an exception’ from that requirement to the Swartzentruber Amish specifically.” *Mast v. Fillmore Cnty., Minnesota*, 141 S. Ct. 2430, 2432 (2021) (Gorsuch, J. concurring) (emphasis in original).

^{xi} *New Harvest Christian Fellowship v. City of Salinas*, 29 F. 4th 596, 608 (9th Cir. 2022).

^{xii} *United States v. City of Troy, Michigan* 2:19-CV-12736 (E.D. Mich. filed September 19, 2019).

^{xiii} *United States v. City of Troy, Michigan*, 592 F. Supp. 3d 591, 604 (E.D. Mich. 2022).

^{xiv} *United States v. City of Farmersville, Texas*, 4:19-CV-00285 (E.D. Tex. filed April 16, 2019).

^{xv} *United States v. Township of Jackson*, 3:20-CV-06109 (D. N.J. filed May 20, 2020).

^{xvi} *Rocky Mountain Christian Church v. Board of County Com’rs.*, 613 F.3d 1229, 1238 (10th Cir. 2010).

^{xvii} *United States v. Township of Toms River, NJ*, 3:21-CV-04633 (D. N.J. filed March 10, 2021).

Corporation of Presiding Bishop v. West Linn

192 Or. App. 567 (Or. Ct. App. 2004) · 86 P.3d 1140
Decided Mar 24, 2004

2002-155; A122194.

Argued and submitted October 6, 2003.

Filed: March 24, 2004.

Judicial Review from Land Use Board of Appeals.

Timothy V. Ramis argued the cause for petitioner. With him on the brief was Ramis Crew Corrigan Bachrach, LLP.

I. Franklin Hunsaker argued the cause for respondent. With him on the brief were Bullivant Houser Bailey PC, and James H. Bean and Lindsay Hart Neil Weigler LLP, and Matthew K. Richards and Kirton McConkie.

Lowell V. Sturgill, Jr., argued the cause for intervenor on judicial review. With him on the brief were Mark Stern, Washington, D.C., and Peter D. Keisler, Assistant Attorney General, and Herbert C. Sundby, Department of Justice, Office of U.S. Attorney.

Before LANDAU, Presiding Judge, and
568 ARMSTRONG and BREWER, Judges. *568

BREWER, J.

Remanded with instructions to affirm city's denial
569 of church's application without prejudice to filing
of new or amended application. *569

570 *570

BREWER, J.

The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints (the church) applied to the City of West Linn (the city) for a conditional use permit to build a church meetinghouse in a residential neighborhood of the city. The city denied the application. The church appealed to LUBA, which determined that the city's decision violated certain provisions of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc — 2000cc-5 (2000) (set out in pertinent part below). LUBA also determined that the relevant provisions of RLUIPA are constitutional under the First Amendment and Fourteenth Amendment to the United States Constitution. LUBA remanded the matter to the city for consideration of whether the application could be approved under suitable conditions of approval.

The city seeks judicial review of LUBA's decision, asserting that LUBA erred in applying RLUIPA and in determining that RLUIPA is constitutional.¹ The United States intervenes for the purpose of defending the constitutionality of RLUIPA. We conclude that the city's decision did not violate RLUIPA and therefore remand to LUBA without reaching the constitutional question.²

¹ The church has not challenged RLUIPA on constitutional grounds.

² This case was argued and submitted on October 6, 2003. Following oral argument, the parties stipulated to a stay of the appeal for the purpose of allowing the parties to enter into mediation. The parties

subsequently failed to agree to a stipulation for remand or dismissal of the appeal. On December 22, 2003, this court reactivated the appeal and approved a reasonable extension of the 91-day period for decision provided in [ORS 197.855](#). See [ORS 197.860](#) (authorizing those procedures).

I. THE PROCEEDINGS BELOW

We take the relevant facts from LUBA's order and the record. The subject property is a 5.64-acre tract consisting of two lots zoned Single Family Residential, 10,000-square foot minimum lot size (R-10). There is an existing dwelling in the northwest corner of the property. The property is bordered on the north by a vacant field used for agricultural purposes; on the south by Rosemont Road, a designated arterial; on the east by ⁵⁷¹ Shannon Road, a local street ^{*571} with a treed median; and on the west by Miles Drive, a local street that ends north of Rosemont Road. The surrounding area is generally developed with single-family dwellings.

Under the city's Community Development Code (CDC), certain uses, such as single-family dwellings, are permitted outright in R-10 zones. In addition, "religious institutions" are permitted in R-10 zones, subject to conditional use approval. For conditional uses, CDC 11.080 provides that "the appropriate lot size for a conditional use shall be determined by the approval authority at the time of consideration of the application based upon the criteria set forth in [CDC 60.070.A.1 and CDC 60.070.A.2]." CDC 60.070.A.1 requires in part that the site size and dimensions provide "[a]dequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties or uses." CDC 60.070.A.2 requires a finding that the "characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features."

The church proposed to divide the subject property to create a 3.85-acre parcel on the eastern two-thirds of the property, bordering Rosemont Lane on the south and Shannon Lane on the east. On that 3.85-acre parcel, the church proposed to construct a 16,558-square foot, 28-foot-high, single-story structure, surrounded on three sides by parking lots providing 179 parking spaces. The proposed meetinghouse and parking lots would occupy 2.02 acres, with the remainder of the 3.85-acre parcel consisting of open landscaped areas, buffer areas, and a drainage swale. The setback between the rear property line and the nearest parking area would be 26 feet; a buffer area between the parking lot and Shannon Lane would be as narrow as 30 feet. The meetinghouse was intended to serve two "wards" or congregations with a current membership totaling 949 persons; on Sundays, an estimated 540 persons would attend two staggered services with an approximately one-hour period during which attendees of both services would be present.³ In addition to Sunday services, smaller groups would use the meetinghouse for short periods during the ⁵⁷² week. ^{*572}

³ Most of the members of the congregations currently attend church in Lake Oswego, which borders West Linn. However, the meetinghouses in Lake Oswego and other nearby communities are crowded.

The church submitted a conditional use application accompanied by a proposed site plan. City planning staff recommended that the planning commission approve the application based on various conditions to which the church agreed, including revision of the landscaping plan to screen the parking lot from Shannon Lane more effectively. The planning commission conducted three public hearings at which a number of neighboring landowners testified in opposition. On September 5, 2002, the commission voted to deny the application on the grounds that no buffer could adequately screen the parking lot from surrounding residences; that a building of the

proposed size was not appropriate in a residential zone; that local roads were not adequate to serve the proposed meetinghouse; and that the meetinghouse was not compatible with adjoining residential uses.

The church appealed the planning commission's decision to the city council, which conducted three additional public hearings and, on October 28, 2002, denied the appeal. The city concluded that the proposed use did not comply with CDC 60.070.A.1.b, pertaining to adequacy of a design for purposes of mitigating possible adverse effects on surrounding properties and uses, because, among other reasons, the property was too small and too flat, and the proposed landscaping was insufficient, to provide adequate buffering between the building and its parking lot, on the one hand, and adjacent residential properties, on the other. Again citing the size of the property, its flat topography, and its location in a residential neighborhood, the city also concluded that the proposed design violated CDC 60.070.A.2, pertaining to the suitability of the site's characteristics for the proposed use. The city also concluded that the proposed meetinghouse did not comply with CDC 55.100.B.6.b, pertaining to compatibility with existing development, because the building's scale and mass were substantially greater than those of surrounding residences and those differences were not adequately compensated for by buffering or screening; with CDC 55.100.C, pertaining to the provision of buffers between different types of uses, because, among other buffering deficiencies, the proposed 30-foot buffer between the parking lot and Shannon Lane provided insufficient light, vision, and noise buffering; or with CDC 55.100.D.3, setting out noise standards. *573

The city also addressed the church's argument that denial of its application would violate RLUIPA. The city concluded that denial did not impose a "substantial burden" on the church's religious exercise within the meaning of RLUIPA, because additional land was available to the church around

the site and the church "might have obtained approval if the site were larger"; in addition, according to the city, it would have denied any application having the proposed characteristics. The city also concluded that it had a compelling governmental interest within the meaning of RLUIPA in maintaining the quality of its residential neighborhoods. It therefore concluded that denial did not violate RLUIPA and denied the application.⁴

⁴ The city's complete discussion of the RLUIPA issue is set out in the appendix.

The church appealed to LUBA. It argued that the city's findings of noncompliance with CDC 60.070.A.1.b, CDC 60.070.A.2, CDC 55.100.B.6.b, CDC 55.100.C, and CDC 55.100.D.3 were not supported by substantial evidence in the record.⁵ The church also contended that the city's denial of its application violated RLUIPA. The city responded that substantial evidence supported the city's findings of noncompliance and that denial of the application did not violate RLUIPA. The city also argued that, if interpreted and applied in the manner urged by the church, RLUIPA would violate the Establishment Clause of the First Amendment⁶ and the Enforcement Clause of the

⁵⁷⁴ Fourteenth Amendment.⁷ *574

⁵ The church also argued that the city misconstrued the meaning of CDC 55.100.D.3. The city ultimately conceded that the ambient noise standards specified in that provision were not applicable to the church.

⁶ The First Amendment to the United States Constitution provides, in part, that, "Congress shall make no law respecting an establishment of religion[.]"

⁷ The Fourteenth Amendment to the United States Constitution provides, in part:

"Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"* * * * *

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

LUBA determined that the city's findings pertaining to noncompliance with the described CDC provisions were supported by evidence in the record. It concluded, however, that the city's denial of the church's application violated RLUIPA. In that regard, LUBA first determined that RLUIPA was applicable to the city's decision notwithstanding that the decision was based on application of preexisting standards and criteria. LUBA noted that the city's conditional use standards and criteria were "extremely subjective" and afforded the city "significant discretion to approve or deny the application," "augmented" by the deferential standard of review applicable under [ORS 197.829\(1\)](#) to the city's interpretation of its own ordinances.⁸ LUBA concluded that the city's decision therefore involved an "individualized assessment" within the meaning of that term in RLUIPA. LUBA also concluded that the city's application to the property of its design review criteria implicated a "use" of land and that RLUIPA therefore was applicable to those aspects of the city's decision.

⁸ [ORS 197.829\(1\)](#) provides:

"(1) The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

"(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

"(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

"(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or

"(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

As to whether the city's decision imposed a "substantial burden" on the property, LUBA noted that RLUIPA expressly defines religious exercise to include "[t]he use, building, or conversion of real property for the purpose of religious exercise" and that the "centrality" of a church building to the church's religious exercise therefore is irrelevant. LUBA concluded that the denial of the church's application constituted a substantial burden for several reasons: (1) it was based on "highly discretionary standards"; (2) there were no zones in the city in which the church's proposed use would be permitted outright; (3) the record did not demonstrate ⁵⁷⁵ that larger sites were available in the city or that a new application involving a larger site would be approved; and (4) where the "apparent intent of RLUIPA is to require that local

governments treat proposed land uses more favorably, if necessary, than those proposed by non-religious entities," it was immaterial that the city would have denied a similar application proposed by a nonreligious entity.

Having determined that the city's decision imposed a substantial burden on the church, LUBA concluded that it need not determine whether the city's asserted governmental interest in protecting its residential neighborhoods was "compelling," because the city failed to meet its burden to show that denial of the church's application was the least restrictive means of furthering that interest. LUBA reasoned that available less restrictive means included the imposition of conditions of approval such as additional buffering, expansion of the site beyond 3.85 acres, relocation of the parking lots, and other conditions. LUBA cautioned that it did not "mean to suggest the RLUIPA imposes an obligation on local governments to proactively develop modifications or conditions of approval without the assistance of the applicant." It reasoned, however, that, consistently with RLUIPA, a local government could not, "ignore * * * proposed or apparent * * * conditions of approval that might allow approval as an alternative to denial." Rather, the local government could avoid the "preemptive force" of RLUIPA only by either changing its standards, by retaining its standards but granting an exemption, or by "adopt[ing] any other means that eliminates the substantial burden."

Next, LUBA rejected the city's argument that RLUIPA is unconstitutional. As noted, the city had argued, in part, that RLUIPA exceeded Congress's authority under the Enforcement Clause. The city reasoned that, in *City of Boerne v. Flores*, 521 U.S. 507, 117 S Ct 2157, 138 L Ed 2d 624 (1997), the United States Supreme Court held that Congress's power under the Enforcement Clause is remedial, is limited to enforcing the provisions of the Fourteenth Amendment, and is exceeded when Congress seeks to expand rights protected by that amendment. The city argued that RLUIPA

expands on such rights because it requires application of the "substantial burden/compelling interest" test to neutral ⁵⁷⁶ laws of general applicability in violation of *Employment Div. v. Smith*, 494 U.S. 872, 110 S Ct 1595, 108 L Ed 2d 876 (1990). LUBA disagreed. Noting that RLUIPA applies only to decisions involving land use and institutionalized persons, that Congress had extensively documented the need for remedial measures with respect to land use decisions affecting religious institutions, that the decision in this case involved an "individualized assessment," and that Congress had relied on the spending and commerce clauses as additional authority for its adoption of the law, LUBA concluded that RLUIPA is consistent with *Smith* and does not exceed Congress's Enforcement Clause authority.

LUBA also concluded that, contrary to the city's assertion, RLUIPA does not violate the three-part test of *Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S Ct 2105, 29 L Ed 2d 745 (1971), and therefore does not violate the Establishment Clause. LUBA determined that RLUIPA constrains what ordinarily would be a local government's discretion to deny an application for a nonconforming use — including uses, such as religious ones, that generate controversy and opposition — by requiring local governments to approve such applications under reasonable conditions of approval. LUBA determined that RLUIPA therefore effects a permissible accommodation of religious practices, the purpose and primary effect of which is to alleviate significant governmental interference with religious exercise.

Finally, having determined that the city's decision violated RLUIPA and that RLUIPA is constitutional, LUBA concluded that remand was required for the city to consider whether the church's application "may be approved under suitable conditions of approval." LUBA explained that the city's findings of noncompliance with applicable ordinances "repeatedly suggest" that, if the church utilized a greater portion of the 5.64-

acre "parent" parcel or obtained additional land or an easement from the adjoining 10-acre parcel, the proposed building and parking lot might comply with those ordinances and that the city had "offer[ed] no reason to believe" that such modifications of the parcel size "cannot be converted into reasonable conditions of approval."

577 LUBA stated that, *577

"[w]here the record indicates that the proposed church can comply with applicable criteria if suitable conditions of approval are imposed, we believe that RLUIPA prohibits the city from denying the application without considering more fully whether the proposed use may be approved under such conditions."

In a footnote, LUBA noted that it was "influenced by the applicant's stated willingness" to seek a larger parcel and accept other mitigating conditions. LUBA remanded the matter to the city for further consideration.⁹

⁹ Under [ORS 197.835](#), LUBA may affirm, reverse, or remand the relevant land use decision. Under [OAR 661-010-0071\(1\)](#), LUBA shall reverse the decision if the governing body exceeded its jurisdiction, the decision is unconstitutional, or the decision "violates a provision of applicable law and is prohibited as a matter of law." Under [OAR 661-010-0071\(2\)](#), LUBA shall remand the decision if the findings are insufficient, the decision is not supported by substantial evidence, the decision is flawed by procedural errors that prejudiced the substantial rights of the petitioner, or the decision "improperly construes the applicable law, but is not prohibited as a matter of law." We understand LUBA's remand in this case to encompass the last circumstance — specifically, that the city erred in determining that its conclusion that the parcel was too small did not impose a substantial burden on the church, but that

the city's denial of the church's application for some other reason was not necessarily foreclosed.

The city now seeks judicial review of that decision, assigning error to LUBA's determinations that RLUIPA is applicable to its decision, that its decision violated RLUIPA, and that RLUIPA is constitutional. We review LUBA's legal conclusions in those regards for errors of law. [ORS 197.850\(9\)\(a\)](#); *Cox v. Polk County*, 174 Or. App. 332, 25 P.3d 970, *rev den*, 332 Or. 558 (2001).

RLUIPA is the current culmination of a series of legislative and judicial pronouncements relating to religious exercise. In *Sherbert v. Verner*, 374 U.S. 398, 83 S Ct 1790, 10 L Ed 2d 965 (1963), and cases following it, the Court employed a balancing test to determine whether a legislative enactment violates the Free Exercise Clause of the First Amendment to the United States Constitution, which provides that "Congress shall make no law * * * prohibiting the free exercise" of religion. Under that test, the Court asked whether the law substantially burdened a religious practice and, if it did so, whether the burden was justified by a compelling governmental interest. *Id.* at 403-09. In 1990, however, in *Smith* — involving Oregon's denial of unemployment *578 benefits to persons terminated from employment due to their ingestion of a controlled substance in a religious ceremony, 494 US at 874 — the Court declined to apply that test. Instead, the Court held that laws of general applicability that incidentally burden religion — including the Oregon law at issue — do not offend the Free Exercise Clause. *Id.* at 878-90

In 1993, Congress responded to *Smith* by enacting the Religious Freedom Restoration Act (RFRA), [42 U.S.C. § 2000bb](#) — 2000bb4 (1993). RFRA attempted to restore the *Sherbert* balancing test by requiring that governmental enactments that substantially burden the exercise of religion constitute the least restrictive means of furthering

a compelling governmental interest. In *City of Boerne*, the Supreme Court invalidated RFRA as it applies to states and local governments on the ground that it exceeded Congress's powers under the Enforcement Clause of the Fourteenth Amendment. 521 US at 516-36. (RFRA remains in effect as applied to federal action.) Congress again responded, this time by enacting RLUIPA, which applies to governmental actions affecting religious exercise either by way of a land use regulation or — not at issue here — by way of a regulation applicable to institutionalized persons.

With the foregoing background in mind, we set out pertinent provisions of the statute. 42 U.S.C. § 2000cc provides:

"(a) Substantial burdens

"(1) General rule

"No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution —

"(A) is in furtherance of a compelling governmental interest; and

"(B) is the least restrictive means of furthering that compelling governmental interest.

579 *579

"(2) Scope of application

"This subsection applies in any case in which —

580 "(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

"(B) the substantial burden affects, or removal or that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

"(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

"(b) Discrimination and exclusion

"(1) Equal terms

"No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

"(2) Nondiscrimination

"No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

"(3) Exclusions and limits

"No government shall impose or implement a land use regulation that —

"(A) totally excludes religious assemblies from a jurisdiction; or

*580

"(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction."

Also as pertinent here, [42 U.S.C. § 2000cc-2](#) provides, in part:

"(b) Burden of persuasion

"If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion."

Next, [42 U.S.C. § 2000cc-3](#) provides, in part:

"(e) Governmental discretion in alleviating burdens on religious exercise

"A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

"* * * * *

"(g) Broad construction

"This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution."

[42 U.S.C. § 2000cc-4](#) provides:

"Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the 'Establishment Clause').

581 *581 Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term 'granting,' used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions."

Finally, [42 U.S.C. § 2000cc-5](#) sets out definitions for the purpose of RLUIPA; it provides, in part:

"(7) Religious exercise

"(A) In general

"The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

"(B) Rule

"The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose."

Neither the United States Supreme Court nor the Oregon Supreme Court has considered the meaning or constitutionality of RLUIPA. By its terms, however, it makes clear that it differs in at least one respect from pre-RLUIPA standards for the protection of "religious exercise": under RLUIPA, "religious exercise" is not confined to those practices and beliefs mandated by the particular religion or pertaining to the religion's central precepts. *See, e.g., Thomas v. Review Bd. of Indiana*, 450 U.S. 707, 717-18, 101 S Ct 1425,

67 L Ed 2d 624 (1981) (applying those standards under Free Exercise Clause); *Sherbert*, 374 US at 399 n 1, 404 (same). Rather, RLUIPA expressly 582 defines "religious *582 exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of belief." 42 U.S.C. § 2000cc-5(7)(A).¹⁰

¹⁰ Although, under RLUIPA, a religious entity's practice need not be "central" to its system of religious belief, the belief must be "sincerely held." See *Shepherd Montessori Center Milan v. Ann Arbor Charter Tp.*, 259 Mich App. 315, ___ N.W.2d (2003) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215-19, 92 S Ct 1526, 32 L Ed 2d 15 (1972)).

Moreover, RLUIPA expressly defines "religious exercise" to include "[t]he use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7)(B); see also *Civil Lib. for Urban Believers v. City of Chicago*, 342 F.3d 752, 760 (7th Cir 2003) (*CLUB*) (definition in RLUIPA of "religious exercise" discloses Congress's intent to expand concept of religious exercise contemplated in decisions pertaining to RFRA and the Free Exercise Clause).

The parties agree on that much. They disagree, however, as to whether the city's decision in this case was consistent with RLUIPA in other respects. They also disagree as to RLUIPA's constitutionality. Before considering the statute's constitutionality, we consider the parties' statutory arguments. See *Powell v. Bunn*, 185 Or. App. 334, 354, 59 P.3d 559 (2002), *rev den*, 336 Or. 60 (2003) (court ordinarily considers statutory claim before proceeding to constitutional challenge).

II. ASSIGNMENTS OF ERROR ON APPEAL

A. *Individualized Assessment*

In its third assignment of error,¹¹ the city argues that LUBA erred in determining that its decision was subject to RLUIPA because, according to the city, its decision involved the application of neutral laws of general applicability and, conversely, did not involve an "individualized assessment" as provided in section 2000cc(a)(2)(C). The church responds that, even assuming that the ordinances at issue here are neutral laws of general applicability, the city engaged in an individualized assessment when it applied them to the church's application and that, accordingly, RLUIPA is applicable to the city's decision.

¹¹ The city's first two assignments of error pertain to RLUIPA's constitutionality, which, as noted, we consider only if it is necessary to do so after considering the city's statutory arguments.

As quoted above, RLUIPA provides, in part, that the "general rule" set out in 42 U.S.C. § 2000cc(a) 583 (1) applies in any case in which *583

"the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved."

42 U.S.C. § 2000cc(a)(2)(C). In determining the intended meaning of the quoted provision, we examine the statute's text and structure and, if necessary, its legislative history. See *Department of Revenue of Ore. v. ACF Industries, Inc.*, 510 U.S. 332, 339-46, 114 S Ct 843, 127 L Ed 2d 165 (1994) (examining the text, structure, and legislative history of federal enactment); *Shaw v. PACC Health Plan, Inc.*, 322 Or. 392, 400, 908 P.2d 308 (1995) (when interpreting a federal statute, court follows United States Supreme Court's methodology); *ATT Communications v. City of Eugene*, 177 Or. App. 379, 402, 35 P.3d 1029 (2001), *rev den*, 334 Or. 491 (2002) (same);

see also *Burlington No. R. Co. v. Okla. Tax Comm'n*, 481 U.S. 454, 461, 107 S Ct 1855, 95 L Ed 2d 404 (1987) (Court declined to examine legislative history when text of enactment "plainly declare[d] the congressional purpose").

By its terms, 42 U.S.C. § 2000cc(a)(2)(C) refers to both "a land use regulation or system of land use regulations," on the one hand, and "individualized assessments" made under such a regulation or system of regulations, on the other. Based on that text and structure, we understand the former phrase to refer to preexisting, generally applicable laws and the latter phrase to refer to the application of those laws to particular facts or sets of facts. Thus, even assuming that a governmental entity's enactments are neutral laws of general applicability, their application to particular facts nevertheless can constitute an individualized assessment — particularly where, as here, the application does not involve a mere numerical or mechanistic assessment, but one involving criteria that are at least partially subjective in nature. Other courts have reached the same conclusion regarding the applicability of RLUIPA. See *Freedom Bapt. Church of Del. v. Tp. of Middleton*, 204 F. Supp.2d 857, 868-69 (ED Pa. 2002) (zoning ordinances by their nature impose individual assessment regimes involving case-by-case evaluation of the propriety of proposed activity against extant land use regulations; in referring to individualized assessments, RLUIPA codifies existing jurisprudence regarding that concept); *Shepherd Montessori Center Milan v. Ann Arbor Charter Township*, 259 Mich App. 315, ___ N.W.2d ___ (2003) (local governmental entity's evaluation and subsequent denial of applicant's petition for a variance from local zoning ordinance constituted an "individualized assessment" pursuant to 42 U.S.C. § 2000cc (a)(2) (C)). The city's third assignment of error fails.

B. Immunity from Land Use Regulations

In its fourth assignment of error, the city argues that LUBA erred in interpreting and applying RLUIPA so as to provide religious entities with "immunity" from land use regulations, that is, by relieving religious entities from compliance with land use regulations with which other entities must comply.¹² The church responds that it did not argue below, and LUBA did not conclude, that RLUIPA confers such immunity. It contends that nothing about LUBA's interpretation or application of RLUIPA exempted the church from compliance with the city's procedural requirements for land use applications or with reasonable conditions of approval imposed by the city; it notes that, in fact, LUBA remanded the matter to the city for precisely the latter purpose. The church argues that, rather than conferring immunity to religious entities, RLUIPA merely requires a governmental entity to implement the least restrictive means of furthering a compelling governmental interest.

¹² Before LUBA, the city argued that, "[i]f RLUIPA is held to be applicable in cases like this, applicants who claim to be religious institutions would be able to avoid all land use standards that provide any discretion to the decision-maker, even when that discretion is governed by legislatively adopted standards. A more reasonable interpretation is that RLUIPA protects religious institutions from arbitrary decisions *not based on pre-existing criteria*." (Emphasis added.) As discussed above in regard to the city's third assignment of error, we understand RLUIPA to apply, by its terms, to land use decisions that are based on preexisting, legislatively adopted land use regulations and that involve individualized assessments, such as the one made here.

We agree that, by its terms, RLUIPA does not provide that religious entities are entirely exempt from land use regulations. Rather, RLUIPA provides standards for the imposition of land use regulations (or systems of land use regulations) on

religious entities, namely, that such regulations
 585 *585 not be imposed or implemented in a way that
 imposes a substantial burden on the entity unless
 the government demonstrates that the imposition
 of the burden is the least restrictive means of
 furthering a compelling governmental interest. *See*
CLUB, 342 F.3d at 762 (RLUIPA does not require
 governments to favor religious land uses "in the
 form of an outright exemption from land-use
 regulations"); *Petra Presbyterian Church v.*
Village of Northbrook, No 03 C 1936, 2003 WL
 22048089, at *12 (ND Ill Aug 29 2003) (quoting
 legislative history of RLUIPA in explaining that it
 "does not provide religious institutions with
 immunity from land use regulation, nor does it
 relieve religious institutions from applying for
 variances, special permits * * * or other relief
 provisions in land use regulations, where available
 without discrimination or unfair delay").

Thus, the only sense in which RLUIPA properly
 can be characterized as conferring "immunity"
 from land use regulations is in the sense of partial
 protection from those constraints. *See Webster's*
Third New Int'l Dictionary 1130-31 (unabridged
 ed 1993) (defining immunity both as freedom or
 exemption from otherwise applicable constraints
 and, alternatively, to partial protection from such
 constraints). That understanding of RLUIPA is
 consistent with LUBA's characterization of the
 statute's effect, as well as with its resulting
 disposition: As the church correctly notes, LUBA
 remanded the matter to the city for the city's
 determination whether the church "can comply
 with applicable criteria if suitable conditions of
 approval are imposed." Because LUBA did not
 interpret or apply RLUIPA in a manner entirely
 exempting the church from land use regulations,
 LUBA's order was not erroneous for that reason.

C. Substantial Burden

In its fifth assignment of error, the city contends
 that LUBA erred in characterizing the burden
 imposed on the church by the city's denial of its
 application and in determining that that burden

was substantial. According to the city, the actual
 burden imposed on the church in this case was not
 its inability to construct a building for worship, as
 the city contends LUBA found, but only the
 burden of submitting a new application for a
 586 project that "complies with applicable *586
 standards." The city argues that, consistently with
 the standard for what constitutes a "substantial
 burden" that has been established in pre-RLUIPA
 Free Exercise Clause cases, a regulation that
 merely inconveniences an entity or that has only
 an incidental effect of making religious practice
 more difficult or expensive is not a substantial
 burden. The city notes that church members
 currently are able to attend worship services in an
 adjoining town and that they therefore are not
 prevented from engaging in religious observances
 with fellow church members; conversely, the
 church has not demonstrated that its proposed
 design was the only one that met its requirements
 or, where the proposed building contained areas to
 be utilized for nonreligious purposes, that a
 building of the particular proposed size was
 required for religious purposes. The city argues
 that, consistently with *Vineyard Christian*
Fellowship v. City of Evanston, 250 F. Supp.2d
 961 (ND Ill 2003), and relevant pre-RLUIPA
 cases applying the "substantial burden" test, it is
 not a substantial burden to deny a permit for a
 church building when the only effect is to change
 the location of religious services or to cause the
 church to have to continue carrying out its
 religious practices in existing locations.

In response, the church concedes that a substantial
 burden is more than a mere inconvenience; it
 acknowledges that, instead, it is one that forces
 adherents to refrain from religiously motivated
 conduct. The church nevertheless argues that that
 standard is met here for several reasons. First, the
 church argues that it "critically need[s]" a
 meetinghouse within West Linn for the use of its
 West Linn members and there is no other available
 site within the city, effectively precluding
 residents from worshipping in their own

community and excluding the church from the city; according to the church, it therefore is being "forced" to refrain from religiously motivated behavior, namely, the construction of a new meetinghouse in West Linn. Second, the church argues that submission of a new application is itself a "Herculean" task involving architects, engineers, and other experts and a lengthy and costly hearing process, which, moreover, does not guarantee approval. Third, the church argues that, as a result of the city's denial of its application, its existing meetinghouses are overcrowded and its ability to grow is *587 impaired, in contravention of church doctrine requiring division of congregations once they reach a certain size.

We begin by determining the precise nature of the burden imposed by the city. As noted, LUBA understood the nature of the burden in this case to be impairment of the church's "ability to build a church." For the following reasons, we agree with the city that LUBA's characterization is erroneous. The city's final order states that the church proposed to situate its building on a parcel of 3.85 acres created from two existing lots totaling 5.64 acres and that the 3.85-acre parcel was of insufficient size considering the size, design, setbacks, and other features of the proposed building and parking lot. Although, as a result of those deficiencies, the city denied the church's application, nothing in the city's order indicates that it would not approve an application that met the stated concerns, either by proposing the same building and parking lot on a larger parcel or by modifying the design to suit its location on the currently-proposed 3.85-acre parcel. Thus, this is not a case in which a governmental entity has entirely prevented a religious institution from building any church at all in the desired location. *Cf. Vineyard Christian Fellowship*, 250 F. Supp.2d at 966 (churches were entirely prohibited in zone in which plaintiff sought to build church). Rather, we conclude that the burden imposed on the church in this case is the burden of being prevented from implementing the particular design

proposal at issue plus, logically, the burden of submitting a new application for a modified proposal.¹³ In addition, the church is burdened by conditions of crowding in its existing locations.

¹³ We note that neither party relied below on [ORS 197.522](#), providing that a local governmental entity shall approve an application that is consistent with applicable local law "or shall impose reasonable conditions on the application" to make it consistent with local law.

We turn to the question whether that burden, considered in its entirety, is "substantial" within the meaning of RLUIPA. As several courts have noted, the standard for what constitutes a "substantial burden" on religious exercise — including land use — is the same under RLUIPA as it is under RFRA and the Free Exercise Clause. *See CLUB*, 342 F.3d at 760-61 (so noting; citing ⁵⁸⁸ legislative history of RLUIPA). *588 Accordingly, in applying the "substantial burden" test, we may look for guidance to cases applying that standard in those contexts, as well as cases applying it under RLUIPA itself. Several decisions of the United States Supreme Court that apply the standard under the Free Exercise Clause — albeit not in the context of the regulation of a religious entity's use of its own land — are instructive. We begin with those.

In *Sherbert*, the Court considered whether the denial of unemployment benefits to a Seventh-Day Adventist who was discharged from her employment for refusing to work on her Saturday Sabbath constituted a substantial burden on her free exercise of religion. 374 US at 399-401. The Court concluded that it did because, although "only indirect" in its effect, *id.* at 404 (quoting *Braunfield v. Brown*, 366 U.S. 599, 607, 81 S Ct 1144, 6 L Ed 2d 563 (1961))¹⁴ that denial "force[d] her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning the precepts of her religion in order to accept work, on the other," *id.*

The Court explained that "[g]overnmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against [the employee] for her Saturday worship." *Id.*

¹⁴ In *Braunfield*, the plurality reasoned, in part, that a state law mandating Sunday closure of businesses did not burden the free exercise of persons whose religious beliefs also required them not to conduct business on Saturdays, because the law "simply regulates a secular activity and, as applied to appellants, operates so as to make the practice of their religious beliefs more expensive." 366 US at 605.

In *Thomas*, the Court considered whether a requirement that employees participate in the production of armaments imposed a substantial burden, under the Free Exercise Clause, on the religious exercise of a Jehovah's Witness. 450 US at 709. The Court again concluded that it did, explaining that the employee "was put to a choice between fidelity to religious belief or cessation of work," an impact the Court described as "coercive" and as "putting substantial pressure on an adherent to modify his [or her] behavior and to violate his [or her] beliefs." *Id.* at 717-18; *see also Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 107 S Ct 1046, 94 L Ed 2d 190 (1987) (reiterating statements of test *589 in *Thomas* in concluding that state law violated the Free Exercise Clause).¹⁵

¹⁵ In *Hobbie*, the worker was discharged for refusal to work certain hours, and subsequently was deprived of unemployment benefits, based on "sincerely held religious convictions adopted after beginning employment." 480 US at 137. The Court perceived no meaningful distinction between the worker's situation and that of the workers in *Sherbert* and *Thomas*, despite the fact that the disqualification from benefits was not absolute and therefore was, according to the state, less burdensome, and the fact

that the worker herself caused the post-hiring change in her situation by changing her beliefs. The court rejected those distinctions, concluding that the "immediate" effects — ineligibility for benefits — were identical and substantial and that religious "converts" were no less subject to the protections of the Free Exercise Clause. *Hobbie*, 480 US at 143-44.

A different outcome prevailed in *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 108 S Ct 1319, 99 L Ed 2d 534 (1988). In that case, various Native American groups challenged on Free Exercise Clause grounds the construction of a paved road through federal public land, asserting that the construction would damage sacred areas used for traditional religious rituals. The Court rejected the challenge. It noted that the Free Exercise Clause protects only against laws that "prohibit" the free exercise of religion. 485 US at 456. It concluded that, although the planned road "would interfere significantly with [the plaintiffs'] ability to pursue spiritual fulfillment according to their own religious beliefs," it would neither "coerce" the plaintiffs "into violating their religious beliefs" nor "penalize religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens." *Id.* at 449.

Most recently, in *Locke v. Davey*, 540 US ___, 124 S Ct 1307, ___ L Ed 2d ___ (Feb 25, 2004), the Supreme Court determined that a state program of scholarship assistance that prohibited use of the scholarships for pursuit of degrees in theology did not violate the Free Exercise Clause. The court reasoned that "the State's disfavor of religion (if it can be called that)" was relatively "mild" in that it "impose[d] neither criminal or civil sanctions on any type of religious service or rite," did not "deny to ministers the right to particulate in the political affairs of the community," and did not "require students to choose between their religious beliefs and receiving a government benefit." *Id.* at ___,

590 *590 124 S Ct at _____. "The State has merely chosen not to fund a distinct category of education." *Id.* at ____, 124 S Ct at ____ (citing, *inter alia*, *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 113 S Ct 2217, 124 L Ed 2d 472 (1993); *Hobbie*; *Thomas*; and *Sherbert*). The Court rejected the dissent's argument that "generally available benefits are part of the baseline against which burdens on religion are measured," concluding that the scholarships were generally available only as to "training for secular professions" and that training for religious professions and training for secular professions "are not fungible." *Locke*, 540 US at ____, 124 S Ct at _____. It also reasoned that the state's action was consistent with its "antiestablishment interests," in avoiding the use of tax funds "to support the ministry." *Id.* at ____, 124 S Ct at _____. The court noted that the state program permitted use of the scholarships at accredited religious schools and permitted students to take theology courses, so long as the training did not constitute training for the ministry. It also noted that there was nothing in the scheme that "suggests animus toward religion." *Id.* at ____, 124 S Ct at _____. The Court concluded, finally, that the exclusion of theology degrees from state-supported funding "places a relatively minor burden on" eligible scholars. *Id.* at ____, 124 S Ct at _____.

As noted, the United States Supreme Court has not considered what constitutes a substantial burden on religious exercise in the context of regulation of a religious entity's use of its own real property. However, a number of lower federal courts have done so under either RLUIPA, RFRA, or the Free Exercise Clause. We next consider those decisions, which, as will be seen, come to various conclusions.

In *CLUB*, an association of churches challenged a City of Chicago zoning ordinance, which allowed churches as a matter of right in residential zones but required churches to obtain special use permits in other zones — as violating RLUIPA. The Seventh Circuit noted that, under RLUIPA, the

definition of "religious exercise" has been expanded to include the use and building of real property but that the standard for what constitutes a substantial burden on religious exercise is to be determined by reference to preceding RFRA and First Amendment jurisprudence. 342 F.3d at 760-61 (citing 146 Cong Rec 7774-01, 7776 (July 27, 591 2000)). The *591 court noted that, in an earlier RFRA case, it had held that a substantial burden is one that "forces adherents of a religion to refrain from religiously motivated conduct, inhibits or restrains conduct or expression * * *, or compels conduct or expression that is contrary" to the adherents' religious beliefs. *Id.* at 761. The court concluded, however, that that test was not a correct construction of the substantial burden test under RLUIPA because, given the expanded definition of "religious exercise" in RLUIPA, "the slightest obstacle incidental to the regulation of land use — however minor the burden it would impose" — could be found "substantial." *Id.*

The court concluded that, instead, the proper test for whether a land use regulation imposes a substantial burden on religious exercise is whether it "necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise — including the use of real property for the purpose thereof within the regulated jurisdiction generally — effectively impracticable."¹⁶ *Id.* The court recognized that the challenged city ordinances "may contribute to the ordinary difficulties associated with" compliance with land use regulation, including the scarcity of land in permissible zones and the "costs, procedural requirements, and inherent political aspects" of the approval process. The court also specifically recognized the "considerable time and money" expended by the applicants in that case in successfully locating within the city. *Id.* Nevertheless, the court concluded that the ordinances did not impose a substantial burden on religious exercise because they "d[id] not render impracticable the use of real property in [the city] for religious exercise, much less discourage

churches from locating or attempting to locate in [the city]." *Id.* The court explained that to conclude otherwise would be to "favor" religious exercise with an "outright exemption from land-use regulation. * * * [N]o such free pass for religious land uses masquerades among the legitimate protections RLUIPA affords to religious exercise." *Id.* at 762; ⁵⁹² *see also San Jose Christian College v. City of Morgan Hill*, ___ F.3d ___, 2004 WL 414923 (9th Cir 2004) (for purpose of RLUIPA, "substantial burden" is governmental action that imposes a "significantly great restriction or onus" on the exercise of religion or that renders such exercise "effectively impracticable" (citing *CLUB*, 342 F.3d at 761); city's denial of college's application for rezoning of property purchased for religious educational use did not impose a substantial burden under RLUIPA because it merely required college to comply with requirements applicable to other applicants and the record did not demonstrate that the college was precluded from using alternative sites in the city); *Thiry v. Carlson*, 78 F.3d 1491, 1495, *cert den*, 519 U.S. 821 (10th Cir 1996) (concluding that the relocation of gravesite and the subsequent use of the site for a public highway did not substantially burden religious practices or beliefs in violation of RFRA; although the parents would be "distressed and inconvenienced" by relocation of their child's gravesite, they had also engaged in religious practices at other locations and their beliefs did not render any particular site more sacred than any other or prohibit the moving of gravesites when necessary); *Christian Gospel Church v. San Francisco*, 896 F.2d 1221, 1224 (9th Cir), *cert den*, 498 U.S. 999 (1990) (denial of permit to establish church in residential neighborhood was not a substantial burden for the purpose of the Free Exercise Clause; although the church asserted the importance of "home worship" and insulation from commercial environments, it previously had worshiped in the banquet room of a hotel; the government's action therefore did not restrict current practice but merely prevented a change in practice).

¹⁶ We note that the Seventh Circuit's inclusion of a requirement that the challenged governmental action be the "direct" cause of an effective impracticability of using the real property for religious purposes appears to be inconsistent with the test under the Free Exercise Clause stated by the Supreme Court in *Sherbert*. *See* 374 US at 404 (explaining that, if the purpose or effect of a law is to impede religious practice, the law is constitutionally invalid even though it has such effect only indirectly).

Several federal district courts have also reached the result under RLUIPA that the court reached in *CLUB*. In *Vineyard Christian Fellowship*, the court rejected the plaintiff's RLUIPA challenge to a city ordinance prohibiting churches in certain zones, including a business zone in which the plaintiff church had purchased property. The court explained that a regulation that merely operates so as to make religious exercise more expensive does not constitute a substantial burden; it also noted that, pending construction of the new church, the congregation "ha[d] continued to hold worship services" at its current location in the city. 250 F. ⁵⁹³ *Supp.2d* at 991. The court concluded that, although the church had "undoubtedly suffered serious hardships, first in its attempt to find a suitable property, and, once it found one * * *, in attempting to win approval for the intended uses," the burden imposed by the ordinance nevertheless was not substantial. *Id.* at 991-92; *see also Konikov v. Orange County*, 2004 WL 213179 (MD Fla 2004) (following reasoning of Seventh Circuit in *CLUB* in concluding that denial of special exception under zoning ordinance did not constitute substantial burden); *Petra Presbyterian Church*, 2003 WL 22048089 at *11-13 (relying on reasoning in *Vineyard Christian Fellowship* and *CLUB* in concluding that ordinance prohibiting churches in specified zones did not violate RLUIPA).

Still other federal district courts have found that land use regulations or their application constituted substantial burdens under RLUIPA. For example, in *Elsinore Christian Center v. City of Lake Elsinore*, 291 F. Supp.2d 1083 (CD Cal 2003), the city denied the church's application for a conditional use permit on property the church had contracted to purchase. The district court readily concluded that the denial constituted a substantial burden under RLUIPA:

"The burden on the Church's use of land in this case is not only substantial, but entire. By denying the conditional use permit, the City has effectively barred *any* use by the Church of the real property in question. This is not a case where the Church's proposed use of land — equated with 'religious exercise' by RLUIPA — is restricted in a minor or 'unsubstantial' way (e.g., by limiting a building's size or occupancy). Rather, the denial of the [conditional use permit] bars the Church's use altogether, thereby imposing the ultimate burden on the use of that land."

Id. at 1090 (emphasis in original).¹⁷

¹⁷ The court noted that, to the extent the meaning of the term "substantial" in RLUIPA was ambiguous, another provision of RLUIPA mandates that the act be construed "in favor of a broad protection of religious exercise." *Elsinore Christian Center*, 291 F. Supp.2d at 1091 (citing 42 U.S.C. § 2000cc-3(g) (quoted above)).

Different concerns led to the same result in *Murphy v. Zoning Com'n of Town of New Milford*, 289 F. Supp.2d 87 (D Conn 2003). In that case, a local government ordered the owners of a single-family dwelling in a residential zone to ⁵⁹⁴ cease and desist from using the property as a Sunday meeting place for groups of 25 to 40 persons, including the parking of numerous vehicles on or near the property. After the property owners challenged the order under RLUIPA, the district

court determined that the order constituted a substantial burden on the owners' religious exercise by reason of limiting the number of persons at, and "turning people away from," the Sunday meetings. *Id.* at 113-14.

Similarly, in *Westchester Day School v. Village of Mamaroneck*, 280 F. Supp. 230 (SDNY 2003), the operator of a religious day school sought a permit to construct new school buildings. The local authority denied the application in its entirety, and the school challenged the decision as violating RLUIPA. *Id.* at 232-33. The district court stated the test for whether the city's decision constituted a substantial burden on religious exercise as whether the governmental action "compel[led] action or inaction with respect to [a] sincerely held religious belief; mere inconvenience to the religious adherent or institution is insufficient." *Id.* at 240. The court noted that the school had asserted various ways in which its existing facilities, some more than a century old, were "inadequate for activities plaintiff deems necessary for its educational and religious mission," and that the city had responded that the school had failed to meet its burden because, even in the existing school, the students continued to be able to "gather to pray and be educated." *Id.* 240-41. The court agreed with the school that the burden imposed by the denial of the permit was substantial for three stated reasons: (1) it burdened the "quality" of the school's religious education; (2) the students' "religious experience is limited by the current size and condition of the school buildings"; and (3) denial of the permit prevented the school from accommodating a "growing number of students" wishing to pursue a religious education. *Id.* at 241-42.

Finally, *Cottonwood Christian Center v. Cypress Redev. Ag.*, 218 F. Supp.2d 1203 (CD Cal 2002), also involved a governmental entity's denial of a church's application for a conditional use permit to construct a church building. The court rejected the government's argument that a "substantial burden" for purposes of RLUIPA included only those

actions that coerce an individual into an activity prohibited by his or her religion. The court instead concluded that "[p]reventing a church from building a worship site fundamentally inhibits its ability to practice its religion. Churches are central to the religious exercise of most religions. If Cottonwood could not build a church, it could not exist" and "numerous religious services cannot be performed." *Id.* at 1226.

We also have identified at least one relevant state court decision applying the "substantial burden" standard under RLUIPA.¹⁸ In *Shepherd Montessori Center Milan*, the plaintiff applied for a permit to expand its religious day-care facility by adding a religious primary school. The Michigan Court of Appeals noted that, under United States Supreme Court jurisprudence, "for a governmental regulation to substantially burden religious activity, it must have a tendency to coerce individuals into acting contrary to their religious beliefs" and that, conversely, "a government regulation does not substantially burden religious activity when it only has an incidental effect that makes it more difficult to practice the religion." *Id.*, 259 Mich App. at ___, ___ NW 2d at ___ (citing *Lyng*, 485 US at 450-51). "Thus, for a burden on religion to be substantial, the government regulation must compel action or inaction with respect to the sincerely held belief; mere inconvenience to the religious institution or adherent is insufficient." *Id.* (citing *Werner v. McCotter*, 49 F.3d 1476, 1479 n 1, *cert den*, 515 U.S. 1166 (10th Cir 1995)). The court concluded that the plaintiff's evidence had made a sufficient showing of substantial burden to avoid summary judgment, including evidence that it would be infeasible for it to operate its primary school in a different location from its day care site "because of the burdens of having duplicate administration" and evidence that enrollment at a different location might be insufficient for the primary school to succeed.

¹⁸ This court has considered, at least in passing, the substantial burden standard under RFRA. In *Fence v. Jackson County*, 135 Or. App. 574, 580-81, 900 P.2d 524 (1995), the county challenged on judicial review LUBA's determination that a county ordinance, on its face, violated RFRA. The county argued that LUBA erred because RFRA applied only to a local governmental entity's action on a particular application for a particular land use, not to the law itself. We rejected that argument, noting in passing and without elaboration that LUBA had "determined, at least implicitly, that [the petitioner] had made a *prima facie* showing of substantial burden" resulting from the ordinance. *Id.* at 581.

Having considered the described standards as established by the Supreme Court under the Free Exercise Clause and as applied in relevant contexts by other courts; and keeping in mind the admonition in section 2000cc-3(g) of RLUIPA that we construe the act "in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the act] and the [United States] Constitution," we return to the facts presented here. Again, the church applied for a conditional use permit in an R-10 zone, in which church buildings are permitted subject to conditional use approval. The city determined that, considering the size and, to a lesser extent, the topography of the parcel in relation to the scale and mass of the proposed building and the size of the proposed parking lot, there was insufficient light, vision, and noise buffering (both vegetative and topographical) between the proposed use and neighboring residential properties. In addition, in determining that the proposed use did not meet the requirements of the ordinance provision relating to "site suitability," the city also expressed concern about the fact that, unlike other churches in the city, the proposed meetinghouse would be located in a "purely residential neighborhood" served by a "narrow two-lane road." The city noted that the church had presented evidence that "the building

size and layout are in accord with a set design and therefore, not amenable to alterations such as a smaller structure" and that, conversely, the church had not established that additional area was not available. The city determined that the identified impacts — including, apparently, the traffic impact — would be "mitigated" if the proposed use were situated on a larger parcel, perhaps by using a greater portion of the existing 5.64-acre, two-lot property or a portion of an adjoining, vacant 10-acre parcel immediately to the north of the proposed development site. Nevertheless, the city did not impose as a condition of approval the requirement that the church acquire and use a larger parcel. Rather, the city simply denied the application.¹⁹ *597

¹⁹ The city is authorized to impose conditions of approval under [ORS 227.175\(4\)](#) and [ORS 227.215](#). We note that we are unaware of any authority under which a city may require, as a condition of approval, that an applicant purchase or use a larger parcel than that identified in its application.

As previously discussed, the burden resulting from the city's decision is that the church remains unable to construct the particular design of building and parking lot that it has proposed on the particular parcel it has identified. In addition, assuming that the church continues to wish to construct a meetinghouse in the city, it will be obliged to expend additional time, money, and other resources in order to submit a new application and undertake other necessary aspects of the approval process. Finally, unless and until the church obtains the city's approval of a proposed meetinghouse, church members will be obliged to continue worshiping at the neighboring facilities. Under RLUIPA, the church bears the burden of persuasion on the question whether the challenged government action substantially burdens its exercise of religion. [42 U.S.C. § 2000cc-2\(b\)](#).

For the following reasons, we conclude that the church has not met its burden of persuasion. First, although the church clearly would benefit from having an additional meetinghouse, the record does not reflect that its members are unable at present to engage in worship services — one aspect of religious exercise — at the existing location. *Compare Vineyard Christian Fellowship*, [250 F. Supp.2d at 991](#) (pending construction of new church, members continued to hold services at current location), *with Murphy*, [289 F. Supp.2d at 113-14](#) (local government action resulted in worshipers being turned away from current worship site), and *Cottonwood Christian Center*, [218 F. Supp.2d at 1226](#) (if religious entity could not construct church, it could not exist). *See also Christian Gospel Church*, [896 F.2d at 1224](#) (no violation of Free Exercise Clause where city's action did not restrict current religious practice but merely prevented change in practice). Nor is that location so distant as to result in an unreasonable expense or inconvenience to members who must travel to it. As discussed, the members of the congregations attend church; most attend church in a neighboring community. Although the evidence shows that those meetinghouses are crowded, there is no evidence that that condition prevents any of the members from attending church or that it impairs in any way their ability to worship.

Second, as to the church's current inability to engage in the religious exercise of building a new meetinghouse, *598 even assuming that the church is unable to acquire a larger parcel, we have no reason to believe that the city would not approve an application for a smaller or differently configured building and parking lot that sufficiently addressed the applicable requirements relating to buffers and other forms of impact mitigation. *Cf. Elsinore*, [291 F. Supp.2d at 1090](#) (substantial burden found under RLUIPA where denial of permit "effectively barred any use" of real property as compared to such minor or nonsubstantial restrictions on religious practice as

"limiting a building's size or occupancy" (emphasis in original)). Nor does the record indicate that the particular building size or design proposed by the church was required by its religious beliefs. See *San Jose Christian College*, 2002 WL 971779 (ND Cal 2002), *aff'd*, ___ F.3d ___, 204 WL 414923 (9th Cir 2004) (no substantial burden under RLUIPA where city's action did not prevent religious entity from engaging in conduct "which the faith mandates"). Rather, it appears that the church merely had a preference, albeit a strong one, for obtaining approval of its particular design proposal. Thus, we do not believe that the city's rejection of that proposal was "coercive" or "put substantial pressure on an adherent to modify his [or her] behavior and to violate his [or her] beliefs." See *Thomas*, 450 US at 717-18 (enunciating the quoted tests under the Free Exercise Clause); see also *Locke*, 540 US at ___, ___ 124 S Ct at ___ (state law did not violate Free Exercise Clause because, among other reasons, it did not require students to "choose between their religious beliefs and receiving a government benefit").²⁰

²⁰ More generally, we do not understand RLUIPA necessarily to entitle a religious entity to construct the precise size and design of building of its choosing regardless of local standards and requirements; as previously discussed, RLUIPA does not confer total immunity from land use regulations.

Third, leaving for another day the question whether repeated denials and re-applications eventually can constitute a substantial burden on religious exercise, see *CLUB*, 342 F.3d at 761 (recognizing those detriments), we conclude that the denial of the church's first and only application here, and the resulting need by the church to submit a second application, does not constitute
599 such a burden. See, e.g., *599 *Westchester Day School*, 280 F. Supp at 240 ("mere inconvenience" is insufficient to show substantial burden).

Finally, the church has not asserted, and we do not discern, that any aspect of the city's ordinances or their application in this case "suggests animus toward religion." See *Locke*, 540 US at ___, 124 S Ct at ___ (stating that test under the Free Exercise Clause).

For all of those reasons, we conclude that the city's ordinances, as applied in the city's decision, did not impose a substantial burden on the church's religious exercise. Stated in the terms of the Seventh Circuit's decision in *CLUB*, neither the building of a new church (and the concomitant expansion of the church community) nor, in the meantime, the ability of current members to reasonably conveniently engage in worship has been rendered "effectively impracticable." It follows that the city's decision did not violate RLUIPA and that LUBA erred in concluding otherwise.

Because we conclude that the city's decision did not violate RLUIPA by reason of imposing a substantial burden on the church, we need not consider the city's sixth assignment of error, in which it asserts that LUBA erred in concluding that the city's denial did not constitute the least restrictive means of furthering its interest. The city's seventh assignment of error, challenging LUBA's instruction to the city that, on remand, it consider reasonable conditions of approval, is moot. Finally, because the city's decision did not violate RLUIPA and the city is willing to entertain an amended application from the church, we need not consider the city's first and second assignments of error, concerning the constitutionality of that statute.

Remanded with instructions to affirm city's denial of church's application without prejudice to filing
600 of new or amended application. *600

APPENDIX

Excerpt from West Linn City Council Final Order:

"Applicant has taken the position that the City's ability to deny the application is limited by the Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA contains two sets of provisions relating to local government land use regulations and religion. [42 U.S.C. § 2000cc(a)] prohibits local governments from imposing substantial burdens on the religious exercise of a person or religious assembly or institution unless the government demonstrates that the burden furthers a compelling government interest and is the least restrictive means of furthering that interest. [42 U.S.C. § 2000cc(b)] requires local government land use regulations to treat religious institutions equally and without discrimination. [42 U.S.C. § 2000cc(b)] also prohibits land use regulations that totally exclude or unreasonably limit religious assemblies within a jurisdiction.

"In most situations, it is not a substantial burden to require a religious entity to comply with generally applicable non-discriminatory land use standards. Under the circumstances of this application, where the proposed religious institution use could have used more of the total 5.6 acres and where there is an adjacent vacant 10 acre property, the application could have been for a similar development (same building size and number of parking spaces) on a larger lot that would have allowed a different configuration with additional buffering to meet the standards that were not met. Alternatively, the application could have attempted to enter into an easement or other agreement with the property owner to the north. The City Council finds that the denial based on the failure to meet applicable standards imposes no burdens on religious exercise because the applicant might have obtained approval if the site were larger.

"A substantial burden is imposed only if [the government's action] `burdens the adherent's practice of his or her religion * * * by preventing him or her from engaging in conduct or having a religious experience which the faith mandates. This interference must be more than an inconvenience; the burden must be substantial * * *.' *San Jose Christian College v. City of Morgan Hill*, (ND Cal, Order Granting *601 Motion for Summary Judgment, March 8, 2002). The legislative history of RLUIPA includes the following statement: `[T]his Act does not provide religious institutions with immunity from land use regulation, nor does it relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provisions in land use regulations, where available without discrimination or unfair delay.' To grant this application would be to provide the applicant with immunity from land use regulation because applicant submitted a land use application for a project that does not meet applicable standards and criteria.

601

"Maintaining the quality of residential neighborhoods is one of the prime duties of a municipal government and is a compelling government interest. The City does allow churches in residential areas, but not if they are inconsistent with universally applicable land use rules and adversely affect the quality of the residential neighborhood. While large churches and parking lots may be permitted, even in residential areas, they must be on lots of sufficient size, dimensions and configuration, taking into account topography and vegetation, to avoid a negative impact on the neighborhood. The proposed development (building and parking lot size and design) might have been acceptable on a larger parcel. The City is not placing a substantial burden on the applicant by concluding that the proposed `parcel,' which is not yet a legal lot or parcel, is not large enough to accommodate the proposed development without substantial impacts on surrounding properties.

"The City does not discriminate against or among religious institutions. Any applicant, whether a religious institution of any type or denomination or a non-religious entity, would have been denied if it had proposed the same size building and parking lot on the 3.85 acre site at this location. The City has recently denied an application for a commercial building because of incompatible mass and scale in a situation in which the commercial building was in a commercial area with other commercial buildings. It is not a substantial burden on a religion or religious belief to deny a land use application when any other applicant would have been denied for the same proposal."

602 *602

Tarr v. Multnomah Cnty.

306 Or. App. 26 (Or. Ct. App. 2020) · 473 P.3d 603
Decided Aug 19, 2020

A173800

08-19-2020

Skip TARR and Ruth Tarr, Petitioners Cross-Respondents, v. MULTNOMAH COUNTY, Respondent, and Masjid Ibrahim, Ahmed Omer, and Arshad Ashfaq, Respondents Cross-Petitioners.

Gregory S. Hathaway, Portland, argued the cause for petitioners-cross-respondents. Also on the briefs were Sara Brennan and Hathaway Larson LLP. Katherine Thomas argued the cause and filed the brief for respondent. Robert A. Koch, Portland, argued the cause for respondents-cross-petitioners. Also on the brief were Tonkon Torp LLP, Wendie L. Kellington, and Kellington Law Group, PC.

LAGESEN, P. J.

Gregory S. Hathaway, Portland, argued the cause for petitioners-cross-respondents. Also on the briefs were Sara Brennan and Hathaway Larson LLP.

Katherine Thomas argued the cause and filed the brief for respondent.

Robert A. Koch, Portland, argued the cause for respondents-cross-petitioners. Also on the brief were Tonkon Torp LLP, Wendie L. Kellington, and Kellington Law Group, PC.

Before Lagesen, Presiding Judge, and Egan, Chief Judge, and James, Judge.

28 LAGESEN, P. J.*28 Petitioners Skip and Ruth Tarr petition for judicial review, and respondents Masjid Ibrahim, Ahmed Omer, and Arshad Ashfaq (intervenor)¹ cross-petition for review, of an order of the Land Use Board of Appeals (LUBA). In that order, LUBA affirmed respondent
604 Multnomah County's decision approving *604 intervenors' application to build a proposed mosque on land that they own in the Bethany area of Multnomah County. On review to determine whether LUBA's order is unlawful in substance, [ORS 197.850\(9\)\(a\)](#), we affirm LUBA's decision to affirm the county's order approving the proposed mosque, although our reasons for doing so are different from LUBA's.

¹ Consistent with the requirement in [ORAP 5.15\(1\)](#) for designating parties in briefs, in this opinion we refer to respondents Ibrahim, Omer, and Ashfaq collectively as "intervenor," their designation below.

Intervenors own a 2.2-acre parcel of land in the county's Multiple-Use Agriculture (MUA-20) zone. The surrounding properties, also zoned MUA-20, generally contain large single-family residences on large lots.

Single-family residences are not the only land use permitted in the MUA-20 zone. Among other uses, "Community Service Uses" are allowed as conditional uses in that zone. Multnomah County Code (MCC) 39.4320(A); MCC 39.7520(A)(1). "Community Service Uses" include "church" and "other nonresidential place of worship." MCC 39.7520(A)(1).

One of the general standards for approval for a community service use, including a place of worship, is what the parties and LUBA call the "compatibility standard." That standard, on which this dispute centers, specifies that for a community service use to be approved, it must be one that "[i]s consistent with the character of the area." MCC 39.7515(A).

Intervenors wish to use their land to construct a mosque to serve approximately 150 families living within two to three miles of the property. To that end, they applied to the county for the necessary conditional use and design review approval.*29
29 Petitioners live in a home next to intervenors' land. They are of the view that the proposed mosque and the traffic and other impacts likely to be associated with it are not consistent with the residential character of the area, and oppose its construction. To that end, they participated in the hearing on intervenors' application, contending that intervenors' proposal did not meet the compatibility standard contained in MCC 39.7515(A).

Intervenors responded that [ORS 215.441](#), a state statute governing the permissible use of land for religious purposes, precluded the county from applying its compatibility standard, effectively displacing it. That statute provides:

"(1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including:

"(a) Worship services.

"(b) Religion classes.

"(c) Weddings.

"(d) Funerals.

"(e) Meal programs.

"(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

"(g) Providing housing or space for housing in a building or buildings that are detached from the place of worship, provided:

"(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located;

"(B) The real property is in an area zoned for residential use that is located within the urban growth boundary; and

"(C) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.

"(2) A county may:

"(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

"(b) Prohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public

facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

"(3) Notwithstanding any other provision of this section, a county may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

"(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of a building or any residential unit contained in a building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy."

605 *605

ORS 215.441.

Intervenors contended that, under the plain terms of the statute, a county must allow land to be used for a proposed place of worship and related activities where state law and local zoning ordinances and regulations permit the use of land for a place of worship on the land in question unless the criteria for prohibiting that use, identified in [ORS 215.441\(2\)\(b\)](#), are present. This means, according to intervenors, that the county could not prohibit the use of intervenors' land for a mosque on the ground that the *31 mosque and related religious activity would not be consistent with the character of the area. Alternatively, intervenors argued that the proposed mosque is consistent with the character of the area for

31

purposes of the compatibility standard. They supported that assertion with evidence of uses on nearby properties zoned MUA-20, as well as evidence of uses in close geographic proximity to the site, including uses on differently zoned land contained within the nearby urban growth boundary (UGB).

The county hearings officer agreed with intervenors on both points. He agreed that [ORS 215.441](#) displaced the county's compatibility standard with respect to proposed places of worship in the MUA-20 zone. He also agreed that, in all events, the proposed mosque was "consistent with the character of the area" within the meaning of MCC 39.7515(A). On the latter point, the hearings officer concluded that the proposed mosque met the compatibility standard where the pertinent "area" of consideration included only the surrounding properties zoned MUA-20 (as intervenors had viewed it) or, alternatively, a more expanded area. He reasoned:

"In addition, the plain language of the Code does not limit the 'area' to the surrounding rural zoned properties. The site is not located in an isolated rural area. As shown in Exhibit A.22, the site is in close proximity to the UGB, which contains a variety of more intensive uses, including two schools directly south of the site and another school to the northwest."

Ultimately, the hearings officer issued an order approving the intervenors' application, subject to 27 conditions of approval, including conditions addressing parking and traffic.

Petitioners appealed to LUBA. In four assignments of error, petitioners contended that (1) the hearings officer erred in determining that [ORS 215.441](#) barred application of the compatibility standard; (2) the hearings officer erred in two different ways in determining that the proposed mosque comported with the compatibility standard —by assessing compatibility based on an incorrect

32 area, and by not comparing the *32 impacts of the

proposed mosque to the impacts of single-family residences; and (3) some of the conditions of approval were not supported by substantial evidence.

LUBA sustained petitioners' first assignment of error, agreeing with them that [ORS 215.441](#) did not displace the county's compatibility standard. LUBA nonetheless affirmed the order based on the hearings officer's alternative conclusion that the proposed mosque satisfied the compatibility standard. In so doing, LUBA rejected petitioners' argument that the hearings officer analyzed the 606 wrong area on the merits and rejected as *606 unpreserved their contention that the hearings officer was required to compare the impacts of the proposed mosque with the impacts of single-family residences. LUBA also rejected petitioners' substantial-evidence challenge to the conditions of approval on the merits.

Petitioners then petitioned for judicial review in this court. In four assignments of error, petitioners contend that LUBA erred in multiple respects in upholding the hearings officer's determination that the proposed mosque satisfied the compatibility standard. Intervenors and the county respond that petitioners' arguments are, in the main, not preserved and that, in all events, LUBA correctly affirmed the hearings officer's determination that the proposed mosque comports with the compatibility standard. Intervenors further contend that [ORS 215.441](#) precludes the application of the county's compatibility standard to proposed places of worship, including their proposed mosque.² Intervenors argue that the hearings officer's order should be affirmed on that basis, and that LUBA erred in concluding otherwise.

² Although styled as a cross-petition for review, the argument presents an alternative basis for affirming LUBA's decision, and we treat it that way rather than as a separate cross-petition.

We begin with the [ORS 215.441](#) issue. We end with it too because it is dispositive: [ORS 215.441](#) does not allow a county to condition the approval of a proposed religious land use otherwise allowed in a particular zone on compliance with a compatibility standard like the county's. For that reason, none of petitioners' claims of error—all of
 33 which are *33 predicated on the theory that the compatibility standard applies to intervenors' application—provide a basis for displacing LUBA's ultimate decision to affirm the hearings officer's order.

We review LUBA's order to determine whether it is unlawful in substance, [ORS 197.850\(9\)\(a\)](#), and do not substitute our judgment for LUBA's as to any factual issue, [ORS 197.850\(8\)](#). At issue in this case is LUBA's interpretation of [ORS 215.441](#). That is something we review "for legal error, employing the methodology described in *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610-12, 859 P.2d 1143 (1993), and *State v. Gaines*, 346 Or. 160, 171-73, 206 P.3d 1042 (2009)." *Central Oregon LandWatch v. Deschutes County*, 285 Or. App. 267, 276-77, 396 P.3d 968 (2017). Our role, as always, is to determine the meaning of the provision at issue that the enacting legislature most likely intended. *State v. Robinson*, 288 Or. App. 194, 198-99, 406 P.3d 200 (2017). We do so by examining the statutory "text, in context, and, where appropriate, legislative history and relevant canons of construction." *Chase and Chase*, 354 Or. 776, 780, 323 P.3d 266 (2014). In conducting that examination, we keep in mind what the legislature has told us about how it wants us to read the words it has written: "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted[.]" [ORS 174.010](#).

Here, the plain terms of [ORS 215.441\(1\)](#) and (2), in context, leave no room for the application of the county's compatibility standard—or standards like it—to proposed religious land uses where, as here,

a place of worship is allowed on a particular piece of real property under state law and county zoning laws. And, even if we are wrong about that, and the statutory terms allow for reasonable debate, the legislative history of the statute shows that the point of enacting it was to displace approval standards, like the county's compatibility standard, that were making it difficult for proposed places of worship otherwise permitted to gain approval through the conditional use process due to
 34 neighborhood opposition.*34 We start with the words of [ORS 215.441\(1\)](#). They say that, if a proposed place of worship "is allowed on real property under state law and rules and local zoning ordinances and regulations," then "a county *shall allow* the reasonable use of the real property for activities customarily associated with
 607 the *607 practices of the religious activity." [ORS 215.441\(1\)](#) (emphasis added). The legislature's specification that a county "shall allow" the use of property for such religious activities shows that the legislature did not intend to let counties assess whether such activities and their impacts were "consistent with the character of the area" when called upon to approve a proposed place of worship. A county "shall allow" land to be used for such activities. Period.

We next consider the words of [ORS 215.441\(2\)](#), and we focus on [ORS 215.441\(2\)\(b\)](#) in particular. That provision carves out an exception to the general rule set forth in [ORS 215.441\(1\)](#). It gives a county the discretionary authority to prohibit or restrict the use of real property for religious activities if the public service facilities serving the property are insufficient:

"A county may:

"* * * * *

"(b) Prohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section."

ORS 215.441(2)(b) is important to the understanding of ORS 215.441(1) 's "shall allow" rule for two reasons. First, it shows that the legislature knew how to craft an exception to that rule when it wanted one and, in particular, that it knew how to set forth the scope of any such exception. Second, absent from ORS 215.441(2) is any similar exception authorizing a county to prohibit or restrict the use of real property for religious activities that it finds it to be incompatible with the surrounding area, or otherwise inconsistent with a county's approval standards. If we were to conclude that ORS 215.441 allows a county to reject a proposed religious land use on the grounds that it is not
35 consistent with *35 the character of the area or otherwise does not satisfy the county's approval standards, we would be rewriting ORS 215.441 to include an exception to the "shall allow" rule that the legislature itself did not write. But rewriting statutes "to insert what has been omitted" falls outside of "the office of the judge." ORS 174.010. For that reason, we may not do it under the cloak of interpretation. *Id.*

Concluding our investigation of the text and context of ORS 215.441(1) 's "shall allow" rule, we examine ORS 215.441(3). As intervenors note, it supplies important context for resolving the question before us. That provision states that, in determining whether to allow a parochial school at

a particular site, a county remains free to apply its usual rules of approval, and not the ones contained in the balance of ORS 215.441 :

"(3) Notwithstanding any other provision of this section, a county may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations."

Thus, when the legislature meant for the usual local approval standards to apply, it said so. This confirms what the plain terms of ORS 215.441(1) and (2) signal: The legislature intended to require counties to allow the reasonable use of land for customary religious activities, if the land is located in an area in which state law and local zoning law allow for a place of worship, subject to the specific exceptions set forth in the statute. In other words, when a proposed religious land use falls within the ambit of ORS 215.441(1), the legislature intended for the standard in the statute to displace local approval standards other than those contemplated by ORS 215.441.

LUBA, as noted, reached a contrary conclusion about the operation of ORS 215.441. After reviewing the text and context of ORS 215.441(2) (b), it concluded that the legislature's intentions remained opaque and turned to the statute's legislative history. Although it acknowledged that that history contained some significant gaps, it ultimately determined that the legislature did not
36 intend *608 to displace *36 a county's authority to apply approval standards like the compatibility standard.

We do not agree that the text and context of ORS 215.441(1) and (2) leave the legislature's intentions in doubt. When considered under our methodology for construing statutes, the legislature's word choices and the rule/exception structure it gave ORS 215.441 clearly signal its intentions. Nevertheless, consistent with ORS 174.020(3), we have considered the legislative

history submitted by the parties with their briefs and that considered by LUBA.³ We see nothing suggesting that the legislature intended anything other than what the plain terms of the statute indicate. On the contrary, the legislative history tends to support the conclusion that the legislature intended to displace local approval standards that were making it difficult for proposed places of worship to obtain approval based on neighbor concerns about the impacts on the neighborhood.

Hassen supplied two examples to illustrate the problem that the measure was intended to address:

³ ORS 174.020(3) states that "[a] court may limit its consideration of legislative history to the information that the parties provide to the court. A court shall give the weight to the legislative history that the court considers to be appropriate."

Senate Bill (SB) 470, the measure that became ORS 215.441,⁴ was introduced by Senator Lenn Hannon at the request of John Hassen. Audio Recording, Senate Committee on Natural Resources, Agriculture, Salmon and Water, SB 470, Mar. 28, 2001, at 53:30 (statement of John Hassen), <https://olis.leg.state.or.us> (accessed Aug. 13, 2020). Hassen, a land use lawyer practicing in Medford, had represented churches that had difficulty obtaining necessary land use approvals. *Id.* at 53:30-56:44. He explained that the conditional use permitting process presented an obstacle to approval because the churches would have to prove that a proposed church would have a minimal adverse impact on the surrounding neighborhood, something that was difficult to do when neighbors objected. *Id.*; *see also* Exhibit K, Senate Committee on Natural Resources, Agriculture, Salmon and Water, SB 470, Mar. 28, 2001 (memorandum *37 submitted by John R. Hassen, Hornecker, Cowling, Hassen & Heysell, L.L.P.).

⁴ ORS 215.441 was enacted by the 2001 legislature. 2001 Or. Laws, ch. 886, § 2. Although the legislature has since amended and reorganized it, the operative provisions on which our analysis turns have not been altered in any material way.

"Two examples will help illustrate the problem.

"1. The First Presbyterian Church of Jacksonville has 10 acres of land zoned Border Residential inside the Jacksonville City limits. In Jacksonville, churches are allowed under the conditional use permit process and must meet the minimal adverse impact standard. The property is in Phase II of Pheasant Meadows Subdivision. Phase I of said subdivision is subject to CC&Rs which provide that a church may be built in Phase II under the conditional use permit process. * * * Nevertheless, some homeowners in Phase I of the subdivision, who had bought their properties subject to the CC&R provisions, objected to the new church, and the Jacksonville City Council denied the church a conditional use permit based on the failure to meet minimal adverse impact standards. This result happened despite the Church's attempts to design buildings, reduce lighting, increase parking and enhance buffering to satisfy the neighbors. At one point the City Council indicated it might approve the conditional use permit if the Church would agree not to perform weddings or funerals and other events which are part of a church's mission at the new church facility.

"2. The Church of Jesus Christ of Latter Day Saints (hereinafter 'LDS Church') applied for a conditional use permit for a church on 5.8 acres of land zoned F-5 (Farm Residential) in Jackson County. To be approved the Church had to prove it would cause no more than a minimal adverse impact on the surrounding neighborhood. There was substantial neighborhood opposition based on traffic, noise, impact

609 *609

on view and value of nearby properties, and other reasons. The Jackson County Hearings Officer found that the Church had not carried its burden of proof and denied the application."

Exhibit K, Senate Committee on Natural Resources, Agriculture, Salmon and Water, SB 470, Mar. 28, 2001 (memorandum submitted by John R. Hassen, Hornecker, Cowling, Hassen & Heysell, L.L.P.). He explained that "[t]he purpose of SB 470 is to address the problems" he had identified, including the problems that religious institutions were having in obtaining conditional use approvals over neighbor objections. *Id.* He explained further that the measure was "patterned, in part, after similar legislation" adopted in Massachusetts, noting that the United States Court of Appeals for the First Circuit has sustained that legislation against a First Amendment Establishment Clause challenge in *Boyajian v. Gatzunis*, 212 F.3d 1 (1st Cir. 2000). *Id.*

The legislative history reflects that SB 470 met with substantial opposition, and it is true that the law that the legislature ultimately enacted looked a lot different from the one that Hassen initially proposed and Hannon initially introduced.⁵ But nothing in that history suggests that the statute ultimately adopted by the legislature strayed from SB 470's initial purpose of displacing the local approval standards that were impeding the ability of places of worship to use their land for customary religious activities in zones where places of worship are permissible uses. Although, at one point, one proposed version of the measure contained a provision that would have authorized a county to evaluate a proposed place of worship's adverse impacts and to deny approval in the conditional use permitting process if the county determined that there was "a significant adverse impact on the surrounding area," see SB 470, A-Engrossed, section 2, subsection (3) (May 21, 2001), the legislature ultimately did not enact that

provision. That tends to suggest, consistent with the text of the statute that the legislature actually did enact, that the legislature did not intend to retain for counties the discretion to deny approval for a proposed place of worship based on its
39 neighborhood impacts or *39 perceived consistency with the character of a neighborhood in which the applicable zoning laws make places of worship and related activities allowable land uses.

⁵ As introduced, SB 470, section 2, provided, in relevant part:

"(2) Notwithstanding any statewide planning goals adopted under ORS chapters 195, 196 or 197 that are inconsistent with this section and except as provided in subsection (3) of this section, a local government may not prohibit or restrict the use of real property for religious or educational purposes if the real property is owned or leased by a governmental unit, a religious organization or a nonprofit educational organization.

"(3) A local government may subject real property described in subsection (2) of this section to reasonable regulations concerning the physical characteristics of the authorized uses including, but limited to, site review and design review."

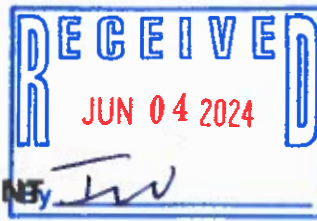
In sum, we conclude that [ORS 215.441](#) precluded the county from applying the compatibility standard to intervenors' application. This means—as petitioners properly and candidly acknowledged at oral argument—that their arguments before LUBA and us challenging the hearings officer's interpretation and application of the compatibility standard provide no basis for displacing the hearings officer's order approving intervenors' application. For these reasons, we affirm LUBA's decision to affirm the hearings officer's order.

Affirmed on petition; cross-petition dismissed as moot.



**Benton
County**

**COMMUNITY DEVELOPMENT
DEPARTMENT**



Community Development Department

Office: (541) 766-6819

360 SW Avery Avenue

Corvallis, OR 97333

co.benton.or.us/cd

APPLICATION

APPEAL OF A DEVELOPMENT DEPARTMENT DECISION

File #

Fee: \$250

Appellant

Name: Theresa Stephens Bus Phone: 541 740-0987

Address: 935 NW Camellia Drive Home Phone: 541 740-0987

City & Zip: Corvallis, OR 97330 Email: theresa.m.stephens@gmail.com

Other individuals to be notified of this application:

Name Address City & Zip

Please see attachment for additional signatures

The appellant hereby requests the Planning Commission to consider the following decision:

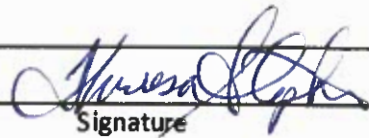
File Number: LU-23-051 Nature of Application: Church Expansion

Decision: Approve Decision Date: May 21, 2024

Assessor's Map & Tax Lot Number: T 11S S, R 5W W, Section(s) 23AB, Tax Lot(s) 1400

REQUIRED: State the reasons for the appeal, citing the specific Comprehensive Plan or Development Code provisions which are alleged to be violated. Failure to cite specific Plan or Code provisions will nullify your appeal. See BCC 51.830. Attach additional sheets if necessary.

see attached appeal narrative


Signature

6/4/24
Date

(For Office Use Only)

Date Application Received: _____ Receipt Number: _____

File Number Assigned: _____ Planner Assigned: _____

Appeal Narrative RE: LU-23-051

Per Section 51.830 of the Benton County Development Code, the following appeal criteria must be addressed:

51.830 Filing an Appeal. The appeal requirements of this section are jurisdictional. Failure to fully comply with the appeal requirements of this section is a jurisdictional defect. An appeal shall be filed with the Planning Official no later than 5:00 p.m. on the final day of the appeal period. The appeal must be filed in writing on the form provided by the Planning Official, and shall include:

- (1) A statement of the reasons for the appeal, citing the specific Comprehensive Plan or Development Code provisions which are alleged to be violated;**
- (2) A statement of the standing to appeal; and**
- (3) Payment of the filing fee established by order of the Board of Commissioners. [Ord 26, Ord 90- 0069, Ord 98-0134]**

Regarding (2) above, the appellant, Theresa Stephens, was notified by mail of the land use action and she provided written testimony to city staff. Therefore, she has standing to appeal.

Regarding (3) above, the appellant will pay the appeal fee of \$250 on or before the appeal deadline.

Regarding (1) above, the appellant offers the following grounds for the appeal:

Grounds for Appeal #1

Road Improvements

BCC 53.215. Criteria. The decision to approve a conditional use permit shall be based on findings that:

- (2) The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area;**

BCC 53.220 Condition of Approval.

The County may impose conditions of approval to mitigate negative impacts to adjacent property, to meet the public service demand created by the development activity, or to otherwise ensure compliance with the

purpose and provisions of this code. On-site and off-site conditions may be imposed. An applicant may be required to post a bond or other guarantee pursuant to BCC 99.905 to 99.925 to ensure compliance with a condition of approval. Conditions may address, but are not limited to:

(2) Road capacities in the area

(6) Fencing, screening and landscape separations

(12) Law enforcement and fire protection (*noted as 11 on staff report)

The applicant states on page 5 of their application narrative "...the proposed development is not intended to increase the number of people using the property and buildings..." and community development department staff report states "average Sunday attendance 35, Saturday 15, weekdays services 5 (page 7).

The appellant challenges that these numbers are low based on actual observations of the number of vehicles and attendees. **To accommodate this number of vehicles, road improvements must be made from NW Highland Drive to the east end of the church property on NW Camellia Drive.**

The applicant states on page 4 of their application narrative that "Phase One will consist of supporting infrastructure: stormwater management system, septic system enhancements, and parking area improvements".

The existing parking lot contains 16 parking stalls. The applicant is proposing to expand the parking lot to provide 46 parking stalls for attendants on Sundays and for special events. The site currently lacks adequate parking and the expansion of the number of parking stalls is almost three times what exists today. Yet staff made the following finding on page 8 of the staff report "Since this is an existing use, the traffic to and from the church is already accounted for". Staff made this finding based on a 288% increase in on-site parking spaces (from 16 to 46). Staff also made this finding based on a 67% enlargement to the church, parsonage, bathroom and parish hall (from 2,944 SF to 7,882 SF). **This significant increase in facilities will result in increased attendance and have a negative impact on the area.**

All church vehicle trips come from NW Highland Drive since this is a single-entry gravel road neighborhood, privately maintained loop. The vast majority of parishioners use NW Wild Rose Drive from NW Highland Drive to NW Camellia Drive to get to the church. Both NW Wild Rose and NW Camellia Drive are not constructed to current Residential Local Road standards and in some locations, there is only a single lane to the church as shown on the following page.

One lane segment of NW Camellia Drive



The County's Residential Local Road standard for NW Camellia Drive consist of two 20-foot wide gravel travel lanes and two 2-foot wide gravel shoulders, totaling 24-feet. Both NW Wild Rose Drive from NW Highland Drive and NW Camellia Drive do not meet the current road standard.

It has also been observed that some of the church traffic uses the single lane Wild Rose Drive for coming and leaving the church services. NW Wild Rose Drive also has segments that are very narrow and only allow for one car.

To mitigate the increase in allowed parking and vehicle impacts to the public gravel roadway, staff has imposed the following condition of approval.

Staff Report condition:

- 4. The applicant shall work with Public Works to identify road improvements to Camellia Drive on a portion of the road between the existing approach and Highland Drive. The road improvements will amount to widening of Camellia Drive to the Residential Local Road standards identified in the Transportation System Plan for a length not to exceed 300 lineal feet.*

Upgrading 300' of NW Camellia Drive does little to address the traffic congestion caused by the attending churchgoers. As stated: at a minimum, the site's 190-foot of frontage along NW Camellia Drive should be upgraded to Residential Local Road standards. That only leaves 110-feet of the remaining 300-feet to be upgraded to the new standard. This condition doesn't imply when the road improvements are to be constructed, although the staff report implies it will be with the third phase of the project, when the residential parsonage is constructed which only requires two parking spaces. All of the parking impacts occur once the additional spaces are added to the parking lot.

The appellant finds this condition of approval to be inadequate in addressing the timing of the improvements and the extent of these improvements along NW Camellia Drive.

The appellant recommends the Planning Commission consider replacing condition #4 with the modified condition of approval below:

Appellant recommended condition:

- 4. The applicant shall widen both NW Camellia Drive and NW Wild Rose Drive to the Residential Local Road standard from the site's eastern most frontage, west to NW Highland Drive. This improvement shall be constructed concurrent with the phase one parking lot improvements. A Benton County Erosion and Sediment Control permit will be required prior to start of ground disturbing activities, and a Stormwater Management permit should be required before construction.*

Grounds for Appeal #2

Fence

The staff report requires an operation condition use for approval for the church to place a 6' solid wall or fence along the rear and east property line: the west side already contains a fence.

Staff Report (3)

The applicant shall construct a continuous, opaque fence or wall at least 6 feet high along the north and east sides of the subject site. Prior to the fence installation, a landscape plan shall be submitted to the Planning Official for review and approval showing existing vegetation.

The appellant recommends the Planning Commission consider adding the additional condition of approval below:

Appellant requests that an 8' solid privacy fence be constructed on all sides.

Grounds for Appeal #3

Water Supply

Below is the applicable Benton County Code criteria for water availability.

- J) 99.810 Water Well Standards for Building Permit. If a well is proposed for a dwelling or place of public occupancy, the applicant shall submit the following evidence that the well yields an adequate flow of microbiologically safe water for each dwelling or use:**

- (3) **A Minor Pump Test pursuant to BCC 99.845 performed within the past year. However, notwithstanding BCC 99.845(4), wells on other properties need not be tested. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 20070223, Ord 2007-0224]**

On page 12 of the staff report, the staff's finding implies that when the parsonage building permit is submitted, a pump test will be required showing that the well can provide enough gallons per minute to service the church and parsonage. Yet there is no condition addressing this matter.

Note that the water well standard for obtaining a building permit applies if a well is proposed for a "dwelling" or a "place of public occupancy." Regarding this conditional use permit, the applicant is requesting an expansion of the church and parish hall (places of public occupancy) along with construction of a new residential parsonage (dwelling). Since the surrounding area has a history of poor well performance, the minor pump test should be required with the phase two improvements (church addition). A second minor pump test should be required with phase three improvements (parish hall and residential parsonage), since the performance standards differ when two separate uses are being served by the same well.

The appellant recommends the Planning Commission consider adding the additional condition of approval below:

7. *Prior to issuance of building permits for phase two construction, the applicant shall provide the results of a minor pump test to ensure adequate water supply is available for the church expansion. Prior to issuance of building permits for phase three construction, the applicant shall provide the results of a minor pump test to ensure adequate water supply is available for the parish hall and residential parsonage.*

Ground for Appeal #4

Fire Protection and Building Code Requirements:

In Staff Report - Conditions for Approval **BCC 53:220 (11) *Fire Protection*** - the appellant does not see any response from Fire Department, yet there are some critical fire protection issues to be met. Conditions for Approval **2022 Oregon Specialty Structural Code (OSSC)**. There are no references to the change in occupancy rating and the appellant is concerned that code requirements may not be addressed in the permit approval.

The entire neighborhood and the church are in the Urban Interface area and there are no public fire hydrants. This is an area of concern to some neighbors. In review of *The Oregon Fire Code and the Corvallis Rural Fire Protection District Requirements*, there are several areas that have not been addressed. For example, the CRFPD requires fire

sprinklers for the size of building the church has proposed. The increase in size appears to increase the number of gallons of dedicated water specifically for fire protection.

The appellant recommends that the Planning Commission require that fire protection criterion be met as well compliance with Oregon Specialty Structural Code (OSSC) and any other building codes that may apply.

The appellant also recommends that church staff are provided a clear definition regarding "special events" size and notification to neighbors.

Ground for Appeal #5

Pre-School and School Use

Below is the applicable Benton County Code criteria for school use in the Urban Residential (UR-5) zone.

64.205 Conditional Uses. The following uses may be allowed in the Urban Residential Zone by conditional use permit approved by the Planning Official:

- (11) A public or private school.**

In the recent past, the church considered using their facility for pre-school and K-12 school programs. Public or private schools are conditional uses, yet once the residential parsonage is constructed, there is a possibility that the church might consider a home school program. If so, the parsonage resident should be the only place the "home school" can occur. If church classrooms are used and operated Monday through Friday, additional impacts to the public road would result that have not been considered with this application.

The appellant recommends the Planning Commission consider adding the additional condition of approval below to address this concern:

Private schools or home school programs on the subject property are only allowed if approved through a conditional use permit. The church school classroom use should be limited to Sundays for Sunday School and two weeknight evenings for Bible Study classes. If homeschooling occurs, it must be contained in the parsonage's home.

sprinklers for the size of building the church has proposed. The increase in size appears to increase the number of gallons of dedicated water specifically for fire protection.

How has the applicant addressed this critical element of the criteria? Without input regarding these issues, the appellant feels this criterion has not been met.

Ground for Appeal #5

Pre-School and School Use

Below is the applicable Benton County Code criteria for school use in the Urban Residential (UR-5) zone.

64.205 Conditional Uses. The following uses may be allowed in the Urban Residential Zone by conditional use permit approved by the Planning Official:

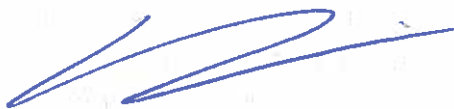
(11) A public or private school.

In the recent past, the church considered using their facility for pre-school and K-12 school programs. Public or private schools are conditional uses, yet once the residential parsonage is constructed, there is a possibility that the church might consider a home school program. If so, the parsonage resident should be the only place the "home school" can occur. If church classrooms are used and operated Monday through Friday, additional impacts to the public road would result that have not been considered with this application.

The appellant recommends the Planning Commission consider adding the additional condition of approval below to address this concern:

- 8. Private schools or home school programs on the subject property are only allowed if approved through a conditional use permit. The church school classroom use should be limited to Sundays for Sunday School and two weeknight evenings for Bible Study classes. If homeschooling occurs, it must be contained in the parsonage's home.*

Sign: 06/04/04



Vincent Gimino

984 NW Camellia Drive



shall submit the following evidence that the well yields an adequate flow of microbiologically safe water for each dwelling or use:

- (3) **A Minor Pump Test pursuant to BCC 99.845 performed within the past year. However, notwithstanding BCC 99.845(4), wells on other properties need not be tested. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 20070223, Ord 2007-0224]**

On page 12 of the staff report, the staff's finding implies that when the parsonage building permit is submitted, a pump test will be required showing that the well can provide enough gallons per minute to service the church and parsonage. Yet there is no condition addressing this matter.

Note that the water well standard for obtaining a building permit applies if a well is proposed for a "dwelling" or a "place of public occupancy." Regarding this conditional use permit, the applicant is requesting an expansion of the church and parish hall (places of public occupancy) along with construction of a new residential parsonage (dwelling). Since the surrounding area has a history of poor well performance, the minor pump test should be required with the phase two improvements (church addition). A second minor pump test should be required with phase three improvements (parish hall and residential parsonage), since the performance standards differ when two separate uses are being served by the same well.

The appellant recommends the Planning Commission consider adding the additional condition of approval below:

7. *Prior to issuance of building permits for phase two construction, the applicant shall provide the results of a minor pump test to ensure adequate water supply is available for the church expansion. Prior to issuance of building permits for phase three construction, the applicant shall provide the results of a minor pump test to ensure adequate water supply is available for the parish hall and residential parsonage.*

Ground for Appeal #4

Fire Protection:

In Staff Report - Conditions for Approval BCC 53:220 (11) *Fire Protection* - the appellant does not see any response from Fire Department, yet there are some critical fire protection issues to be met.

The entire neighborhood and the church are in the Urban Interface area and there are no public fire hydrants. This is an area of concern to some neighbors. In review of *The Oregon Fire Code and the Corvallis Rural Fire Protection District Requirements*, there are several areas that have not been addressed. For example, the CRFPD requires fire



**STAFF REPORT
CONDITIONAL USE PERMIT**

Nature of Application	The leadership of the St. Martin Orthodox Church is applying for a Conditional Use Permit. The request is to make the church use compliant with the UR-5 zone designation and allow expansion of the church and parish hall and the addition of a parsonage.
Applicable Criteria	Benton County Code Chapter 64 Urban Residential; Chapter 53 General Review Criteria and Procedures sections 53.205 to 53.230; Chapter 91 Parking and Loading subsection; Chapter 99 Stormwater Management and Erosion and Sediment Control and Sewage Disposal and Water Supply subsections.
Property Location	A property located at T11S, R5W, Section 23AB, Tax Lot 1400. The subject property assigned address is 925 NW Camellia Drive.
Property Owner & Applicant	St. Martin the Merciful Orthodox Church, Inc.
Zone Designation	Urban Residential, 5 acre minimum (UR-5)
Comprehensive Plan Designation	Low Density Residential (City of Corvallis)
Community Advisory Committee Planning Area	North Benton (not active)
Planning Staff	Inga Williams, Associate Planner Inga.williams@bentoncountyor.gov

I. SUMMARY of DECISION

Based on the findings and conclusions below, and information in the file, the Planning Official decision is to **APPROVE this application** for a conditional use permit for a church. The Applicant shall complete the Conditions of Preliminary Approval and follow the Operating Conditions of Approval listed in Section VII.

II. NOTIFICATION

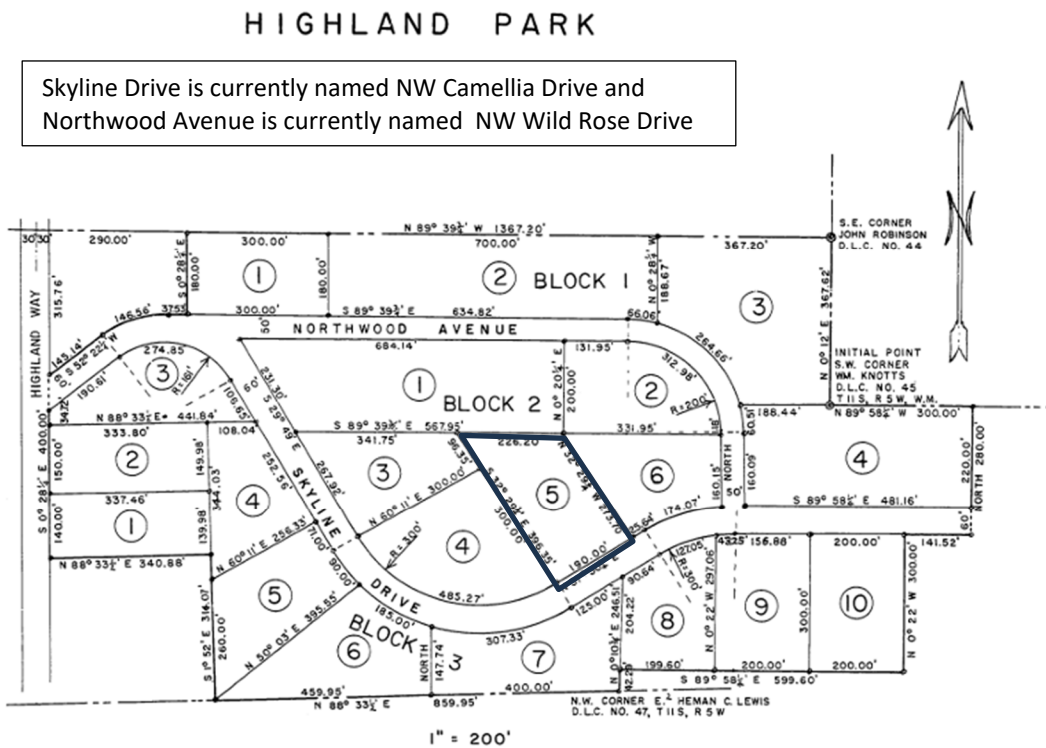
The applicant submitted the Conditional Use Permit application to the Community Development Department (department) on November 20, 2023. The department deemed the application complete on December 6, 2023. The department reviews this application type using the quasi-judicial process pursuant to Benton County Code (BCC, Code) Sections 51.610 through 51.625. In compliance with the BCC, the department sent a Notice of Application to property owners within 250 feet of the property subject to this application (subject property) and, once a decision is made, will send a Notice of Decision to the same property owners. The Notice of Decision will inform adjacent property owners that they have 14 calendar days from the date of the decision to appeal the Planning Official’s decision.

On February 28, 2024, the applicant submitted a 150-day Time Limit Waiver to the Community Development Department to allow additional time of up to 215 days for review of the application.

As part of the staff review of the application, staff sent a request for comments to relevant agencies and other county departments. Nine comments were received from the public. One review with recommended conditions was received from Benton County Public Works and one from the Environmental Health Division. All comments are summarized in Section IV and are attached as Appendix B for public comments and C for department comments.

III. BACKGROUND AND PROPERTY INFORMATION

The subject property is a legal parcel. The subject property is Lot 5 of Block 2 of the Highland Park subdivision recorded November 29, 1956¹.



The subject property is 1.42 acres and is located north of Skyline Drive. It is zoned Urban Residential, and all surrounding properties are also zoned Urban Residential. Lots to the north, south, east, and west are residentially developed. The City of Corvallis city boundary and the county's hospital lie to the southeast and east. The subdivision is in the City of Corvallis' Urban Growth Boundary.

There is no flood zone² on the property. There are no wetlands or creeks. The subject property is covered by the Corvallis Urban Fringe Natural Features Overlay. The highly protected vegetation class where Douglas-fir is the dominant species and Oregon white oak, ponderosa pine, Pacific madrone, Port Orford cedar, and miscellaneous ornamentals are the secondary species is present along the edges of the property. All the areas on the subject property that are already developed and identified for further development are not within the protected natural features class.

¹ SP0005-32

² Panel # 41043C0500G, Effective 9/29/2010

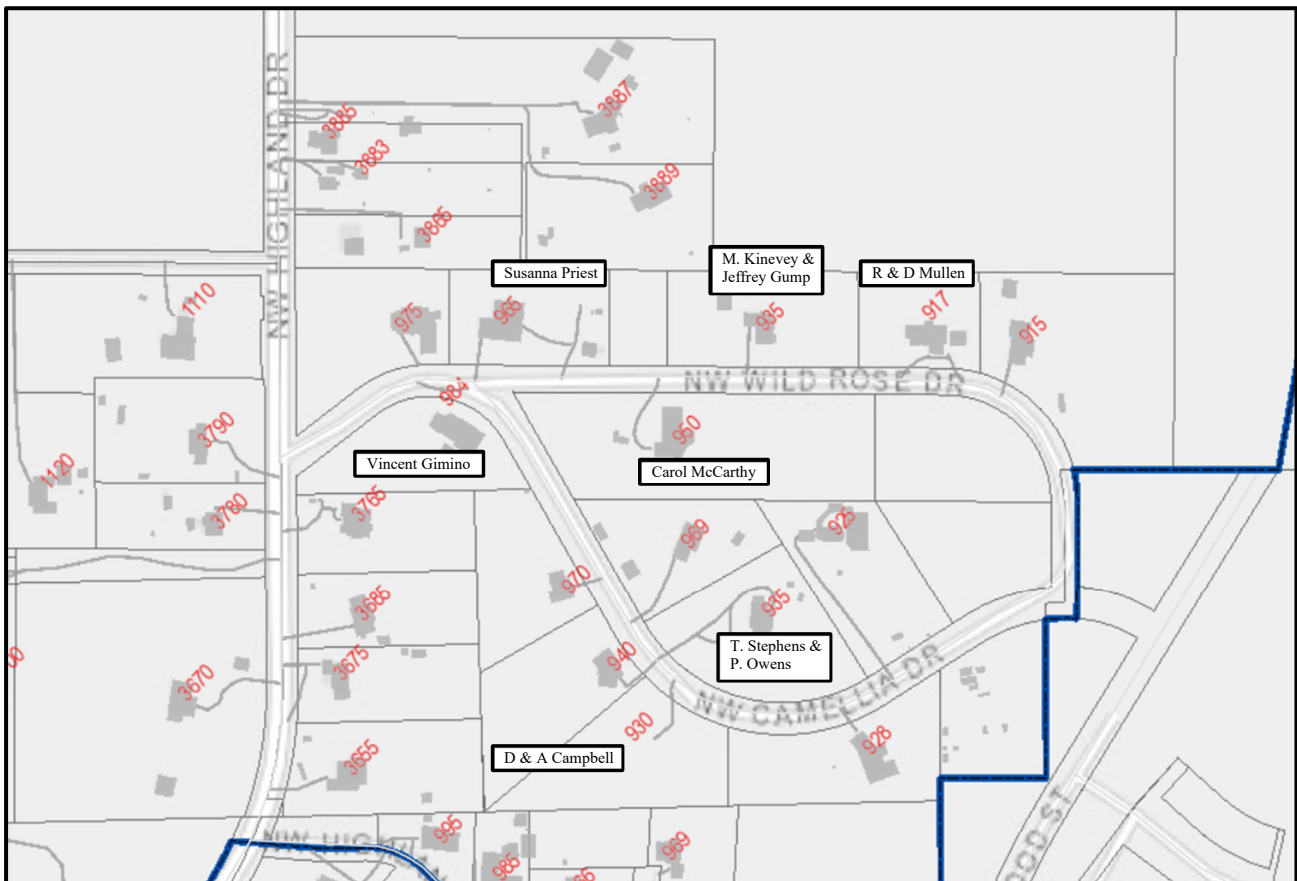
A church was a permitted use in the UR zone when the church was built, renovated, and expanded. It required no planning approval prior to submitting building applications. Chapter 64 was revised in 2014 and a “church, grange hall, community hall, or other similar non-profit community facility” was deleted from the Permitted Uses (BCC 64.105) section and added to the Conditional Uses section. This change to the chapter made the church a legal, non-conforming use. Therefore, in addition to requesting an expansion to the church, the applicant is also requesting that the church use be approved and made a conforming use through approval of this conditional use.

The prior owners, James and Kim Baglien, submitted a building permit for a private family chapel in 1997. The structure was granted a final inspection approval in December 1999. It was subsequently used as a public church, which required the owners to make structural renovations for public use. Restrooms and two 10,000 gallon water storage tanks were added to the property in 2002 for fire suppression. The parish hall was added in 2012. The church uses a well that produces approximately 7 gallons per minute.

The existing church facilities include a parking lot, a 917 square foot church, an 1,827 square foot parish hall, and a 200 square foot bathroom building. The expansion request includes a 1,367 square foot addition to the church, an 896 square foot expansion to the parish hall for two additional classrooms, and a 2,675 square foot parsonage to be created out of the unfinished, parish hall basement with additions. In addition, improvements will be made to the parking lot and septic system, and a stormwater management system will be added.

IV. COMMENTS

The department received comments from property owners on Camellia Drive and Wild Rose Drive.



Comment Summary, Susanna Priest, 965 NW Wild Rose Dr.: Ms. Priest attended the neighborhood meeting held by the church to explain their plans. She mentions that very few community members attended. She thought that the church leaders made good cause and they should be able to use their property as they decide, but that neighbor concerns should be addressed.

Comment Summary, Maureen Kinevey and Jeffrey Gump, 935 NW Wild Rose Dr.: Ms. Kinevey and Mr. Gump are opposed to the request. They are concerned about the difficulty with well water that is already experienced in the neighborhood. They believe that the new proposal is a commercial venue that would allow for weddings and other large gatherings.

Comment Summary, Ron and Donna Mullen, 917 NW Wild Rose Dr.: Mr. and Mrs. Mullens are not opposed to a small church used as a family chapel in their neighborhood but are opposed to the expansion. They have second thoughts about the church's new plans. They state that the road is maintained by the neighborhood and was never intended for public travel to the church. The additional traffic will cause an increase in the road maintenance expense. There will be an increase in noise.

Comment Summary, Carol McCarthy, 950 NW Wild Rose Dr.: Ms. McCarthy is opposed to the request. She has concerns that the expansion will add to the aquifer drawdown, that the existing church facilities are stressing the capacity of the road, and a concern that the expansion will increase noise levels and disrupt adjacent neighbors.

Comment Summary, Dan and Ann Campbell, 940 and 930 Camellia Dr.: Mr. and Mrs. Campbell are opposed to the request. They state that the currently sized building has a negative impact on the small neighborhood. They are opposed to the request. They cite Section 53.215 and say that any additional improvements to the church would interfere with the expectations they had when purchasing their property. The current increase in traffic is noticed. They also state that adding the parsonage is a concern for neighborhood water capacity. They say the church already impacts the neighborhood.

Comment Summary, Vincent Gimino, 984 Camellia Dr.: Mr. Gimino is opposed to the request. He states that this is a significant increase of the business in a tiny residential area and the current infrastructure can't support it. He is concerned about the increase in traffic and the maintenance of the road and the issue of the water shortages reported by his neighbors.

Comment Summary, Theresa Stephens and Peter Owens, 935 Camellia Dr.: Ms. Stephens and Mr. Owens are opposed to the request. They cite Section 53.215(1) and state that the increase in traffic on Sundays, Wednesdays, Fridays, and Saturdays, plus the festivals, weddings and funerals is noticed and more and more impacts the quality of life in the neighborhood. It is also dangerous as the road is mainly one car wide. Citing Section 53.215(2), the testifiers state that adding an additional water user [the parsonage] on the property should be considered another negative impact on the area. The church also uses bells on many occasions.

Comment Summary from Rollie Baxter: He asked if there was a requirement for a functioning, adequate water source. The area is notorious for poor water.

The department received a comment from two county departments.

Comment Summary from Gordon Kurtz, Associate Engineer with Public Works: Camelia Drive is a residential local road that has a 50-foot minimum standard width requirement. The existing right

of way is 60 feet. Average Dailey Traffic based on ITE trip generation methods is 30 vehicles per day with approximately 80 on Sunday. Travel lanes and shoulders of the road do not meet current standards. The applicant has put forth a three-phase approach to the proposed improvements. the third phase will be the construction of a parsonage and classrooms for the parish hall. The applicant will be required to widen Camelia Drive to current Residential Local Road standards for 300 lineal feet in conjunction with the third phase of the development. The cost of road improvements for projects of this scope typically fall in the \$5,000 - \$15,000 range. The church will continue to use the existing drive but must modify the approach to meet commercial, two-way ingress and egress standards. A Benton County Erosion and Sediment Control (ESC) permit will be required prior to start of ground disturbing activities, and a Stormwater Management (SWM) permit will be required before construction can begin on the proposed drainage system.

Scott Kruger, Environmental Health Director: The church qualifies for the Oregon Very Small System public water system classification.

V. FINDINGS APPLYING CODE CRITERIA

All applications are subject to the requirements of the Benton County Development Code. Sections in boldface type below denote relevant Code sections. Sections in regular type denote staff analysis of the application.

CHAPTER 64

A) 64.205 Conditional Uses. The following uses may be allowed in the Urban Residential Zone by conditional use permit approved by the Planning Official:

(13) Church, grange hall, community hall, or other similar non-profit community facility

Statement: The applicant is requesting to make the existing church a legal conforming use through approval of this conditional use permit, gain approval of the expansion of the church and parish hall, and approval of the addition of a parsonage.

CHAPTER 53

Conditional Use Criteria

B) BCC 53.215 Criteria. The decision to approve a conditional use permit shall be based on findings that:

(1) The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone.

Findings, Uses on Adjacent Property: All adjacent properties are zoned Urban Residential, and the majority are developed with single-family residences. The two lots across the street are owned by the original owners and developer of the church property. There are single-family residences to the north, west and south. The lots adjacent on the east and the northeast are two of three vacant residential lots on the Camellia-Wild Rose Drives loop.

Findings, Character of the Area: The character of the area is suburban. The City of Corvallis boundary occurs one lot to the southeast and the Good Samaritan Hospital is developed on the other side of that boundary. The majority of lots in the larger neighborhood area are between 1 and 3 acres.

Findings, Purpose of the Zone: The purpose of the Urban Residential zone is, “provide for the establishment of areas suitable for future urban density residential development.”

Findings and discussion of neighborhood concerns

The subdivision containing the subject property is almost entirely built out and most of the lots range in size from 1 acre to 1.5 acres. The density allowed by the County is one unit per five acres, a zoning designation applied after Highland Park was platted and when it was placed in the Urban Growth Boundary for the City of Corvallis. Were this area to be annexed into the City of Corvallis, the allowed density might be greater, similar to the RS-6³ zoning of the subdivisions south and east of the subject property. Currently, each of the parcels in the subject property neighborhood, and for a large area north and west of the neighborhood, are permitted to have an accessory dwelling unit regardless of the size of the parcel and subject to meeting septic and water requirements. This allowable addition, were it to be used, would increase density and might contribute to facility, utility, and service concerns.

Due to current development patterns, the area of the subject property is best described as suburban. Churches are typical uses tucked in urban and suburban residential communities. Traditionally, those that were developed within or near cities and towns were usually surrounded by residential uses, which may have transitioned into office or low-intensity commercial uses.

The church has been in use for at least 23 years and was a by-right, permitted use when it was developed. Had the owner applied for the correct building permits when developing the church, indicating that non-family members would be attending, no regulatory concern over the use would have occurred. However, the owner did not initially build the structure to public use standards and a code violation was initiated to insist that the owner renovate it to public building requirements. This does not impact the current request.

Neighborhood Concerns

Some of the comments received make mention of the existing conditions. These comments reference noise issues with the church bells and singing, issues with existing traffic to and from the church, and mention that some parking may be occurring on the side of the narrow road which could block emergency access. There are also current concerns over the difficulty experienced by some in the area to access adequate potable water supplies from their wells. The commenters fear that the expansion will cause increased traffic, water usage, and noise issues.

Regarding noise complaints, the church is currently using a tent outside the front the entrance of the church for service overflow, which may attribute to noise issues. Once the expansion of the church is complete and the parishioners are all able to meet indoors, this noise will be blocked. The church bell ringing is a more predictable noise than the typical neighborhood noises of lawn mowing or chainsaw use. It may be annoying while occurring but doesn't last long and is an expected noise from a church. However, as further mitigation of any activities that could occur outside, an Operating Condition of Approval will require the church to place a 6-foot solid wall or fence along the rear and east side property line; the west side already contains a fence. Since these areas are in the significant vegetation overlay, the applicant will be required to plant an equivalent amount of native vegetation to off-set any loss.

The following is information from Father James of St. Martins regarding services:

³ 6 to 24 units per acre, it is intended to provide areas where Single Detached, Duplex, Triplex, Fourplex, Townhouses, and Cottage Clusters may be constructed under various ownership patterns.

We usually have four (4) services per week: Saturday evening, Sunday, and two weekday services. Our schedule of services is public information, posted on our web site.

In terms of the average attendance at our church, little has changed since the pre-application meeting [January 23, 2024]:

Sundays: 35

Saturday evenings: 15

Two weekday services per week: 5

The biggest service of the year is 70-75 around Easter.

The applicant has indicated that the expansions do not mean that the church expects more parishioners, but it is in response to the need for more room for the existing parishioners. The county cannot put a limit on attendance at the church or limit the number of services or number of celebrations to ensure that this remains the case moving forward. However, to address the concerns about parishioners parking on the road, a Condition of Operating Approval will require all vehicles to park within the church grounds.

The applicant indicates that the parish hall was added to support the education and social needs of the parishioners. The applicant states they do not intend to schedule any events or music venues that would bring non-parishioners to the property. The county cannot restrict how the church conducts its worship. However, should the applicant's intent change, an Operating Condition of Approval will require the church to provide notice to all homeowners along NW Camellia Drive and NW Wild Rose Drive one week prior to any outdoor event occurring.

The requested parsonage is a renovation and expansion of the unfinished basement, and this use will not create any impacts to the surrounding uses. At time of building permit application, a pump test will need to show that the subject property can supply the necessary amount of water to supply the dwelling, or the dwelling permit will not be issued.

Conclusion: This criterion is met.

(2) The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area; and

Findings: The applicant states that the expansion is necessitated by a current lack of space and will not increase the number of parishioners but will provide space for existing parishioners. The applicant states they do not intend to increase the number of services or celebrations, so no increase of traffic is expected, nor an increase of water usage except for the addition of the dwelling. The number of parishioners was examined by the Environmental Health Division and they determined that church attendance meets the requirements to classify this as an Oregon Very Small public water system. This requires the applicant to provide a quarterly bacterial sample, an annual nitrate sample, and a one-time arsenic sample. The proposed expansion will not impose an undue burden on public improvements, facilities, utilities, or services.

Conclusion: This criterion is met.

(3) The proposed use complies with any additional criteria which may be required for the specific use by this code.

Findings: Applicable criteria from Benton County Code Chapter 91 and Chapter 99 are addressed below. No other Code criteria are required for this specific use.

Conclusion: This criterion is met.

C) BCC 53.220 Conditions of Approval. The County may impose conditions of approval to mitigate negative impacts to adjacent property, to meet the public service demand created by the development activity, or to otherwise ensure compliance with the purpose and provisions of this code. On-site and off-site conditions may be imposed. An applicant may be required to post a bond or other guarantee pursuant to BCC 99.905 to 99.925 to ensure compliance with a condition of approval. Conditions may address, but are not limited to:

(1) Size and location of site.

Findings: This is an existing use, so the site is already established and is not expanding.

(2) Road capacities in the area.

Findings: Since this is an existing use, the traffic to and from the church is already accounted for. The additions to the church and parish hall are not intended to allow an increase in the parishioners but to accommodate the existing parishioners.

Since the road is below lane width requirements, Public Works requires the church to provide improvements to at least 300 feet of roadway to increase the width of the lanes and provide shoulders.

(3) Number and location of road access points.

Findings: The existing driveway will remain the only access point. Public Works requires the applicant to improve the entry point to commercial access standards.

(4) Location and amount of off-street parking.

Findings: The amount of off-street parking meets the minimum requirements for the use, which is 46 spaces. The calculations are as follows:

Parrish Hall

1,827 – 130 (storage room) = 1,697 existing gross habitable

1,697 + 448 = 2145 total gross habitable

Church

917 + 1,367 = 2,284 gross habitable

4,429 gross habitable total = 44 spaces plus 2 for the residential

(5) Internal traffic circulation.

Findings: Access goes up to the church doors and adjacent to the proposed parsonage.

(6) Fencing, screening and landscape separations.

Findings: There is existing vegetation along the edges of the property. An Operating Condition of Approval will require the applicant to place an opaque wall or fence along the north and east sides of the property. There is an existing fence along the west side. Replanting with native vegetation will be required.

(7) Height and square footage of a building.

Findings: Meets requirements.

(8) Signs.

Findings: One sign exists at the entrance of the property. An Operating Condition of Approval will state that any replacement will be the same as the existing sign.

(9) Exterior lighting.

Findings: An Operating Condition of Approval will require all exterior lighting to have full cut-off fixtures, practical brightness levels, and proper placement and aiming so that no lighting spills onto adjacent properties.

(9) Noise, vibration, air pollution, and other environmental influences.

Findings: An Operating Condition of Approval will require that no bells ring prior to 7 AM or past 8 PM.

(10) Water supply and sewage disposal.

Findings: The applicant intends to update the septic system to account for the parsonage. The evaluation was completed in 2022⁴. Water requirements will need to be met prior to the building permit for the parsonage to be approved.

(11) Law enforcement and fire protection.

Findings: The subject property already contains two, 10,000-gallon water tanks for fire protection.

Conclusion: This criterion is met.

D) 53.230 Period of Validity. Unless otherwise specified at the time of approval, a conditional use permit for a single-family dwelling shall be valid for ten (10) years from the date of decision and other conditional use permits shall be valid for a period of two (2) years from the date of decision.

Statement: The period of validity for the preliminary approval for the expansion of the church and parish hall will be two years. The period of validity for the parsonage will be ten years.

**CHAPTER 91 SPECIFIC USE STANDARDS
PARKING AND LOADING**

E) BCC 91.605 Off-Street Parking. Except as otherwise required by other provisions of the Development Code, structures built, enlarged or increased in capacity shall provide for the following off-street parking space requirements. Gross floor is that area considered to be habitable under the terms of the Benton County Building Code.

(1) A single-family, multi-family dwelling or manufactured dwelling shall provide two (2) spaces for each dwelling unit. Accessory dwelling units are exempt from this requirement. [Ord 2020-0297]

(5) A place of public assembly including church, stadium, arena, club, lodge, auditorium, meeting room, and undertaking establishment shall provide one (1) space for each 100 square feet of gross floor area or one (1) space for each eight (8) seats, whichever is greater.

Findings: The applicant has provided 46 parking spaces, which is the minimum required off-street parking spaces for the church and the parsonage.

Conclusion: This criterion is met.

⁴ 138-22-000060-EVAL

F) 91.635 Lighting. Lighting which may be provided in a parking or loading area shall not create or reflect substantial glare on an adjacent residential area.

Statement: An Operating Condition of Approval will make this requirement.

CHAPTER 99 GENERAL DEVELOPMENT STANDARDS

G) 99.660 Erosion and Sediment Control

(3) Activities Requiring Erosion and Sediment Control Permit.

(a) The responsible party shall obtain an Erosion and Sediment Control (ESC) Permit from Benton County prior to initiation of ground-disturbing activities , if both (A) and (B) are met. Ground disturbing activities listed in subsection (4) of this section are exempt from ESC permitting requirements.

(A) The ground-disturbing activities are associated with:

(i) Construction or land uses that require a permit or other review by Benton County; and

(ii) any of the following:

(a) Construction of a public or private road, driveway, or structure; or

(b) Site preparation, associated installations (such as a septic system drainfield, ground-source heat pump, or tennis court), landscaping, and other ground disturbing activities related to such construction.

(B) The total area disturbed will be 0.25 acre (10,890 square feet) or more.

(b) All activities shall comply with the Benton County Illicit Discharge Detection and Elimination Code, whether or not the activity requires an Erosion and Sediment Control Permit.

(c) The responsible party shall also comply with other local, state and federal erosion control regulations that may apply. Ground disturbance that is part of a common plan of development is required to comply with DEQ permitting even if the ground disturbance alone is below the threshold for requiring a Benton County ESC Permit.

H) 99.670 Post-Construction Stormwater Management

(3) Permit Required. A property owner increasing or replacing the impervious surface on a property shall comply with this section and the technical standards outlined in the Stormwater Support Documents. An individual construction that does not exceed the 0.25-acre threshold on its own shall nonetheless contribute to the cumulative threshold as described in subsection (a)(B) of this section.

(a) An approved Post-Construction Stormwater Permit shall be obtained prior to initiation of ground disturbing activities if both (A) and (B) are met (exceptions are listed in subsection (b):

(A) The plan of development or redevelopment is associated with:

(i) Construction or land uses that require a permit or other review by Benton County; and

(ii) any of the following:

(1) Construction of a public or private road, driveway, or structure; or

(2) Site preparation, associated installations (such as a septic system drainfield, ground-source heat pump, or tennis court), landscaping, clearing vegetation and other ground-disturbing activities related to new development or redevelopment construction.

(B) The total area of proposed new and replaced impervious surface combined with the cumulative total of all impervious surface established since March 1, 2023, will be 0.25 acre (10,890 square feet) or more. For subdivisions and partitions, impervious surface area that will be established through construction on resulting lots/parcels shall be addressed through a Post-Construction Stormwater Permit approved prior to final plat approval, as described in subsection (4)(b).

Statement for G & H: A Condition of Preliminary Approval has been recommended by Public Works and will be applied to this application to meet the requirements of BCC 99.660 and 99.670.

SEWAGE DISPOSAL

99.705 Sewage Disposal. Each proposed dwelling, parcel, lot, or place of public occupancy shall be served by a sewage disposal system which complies with the requirements of the Oregon Department of Environmental Quality requirements.

Statement: Sewage disposal improvements have already been identified by the applicant and the Health Department. These improvements will be required prior to the building permit approval for the parsonage.

WATER SUPPLY

I) 99.805 Water Source. Each proposed dwelling, parcel, lot, or place of public occupancy shall be served by one of the water sources listed in subsections (1) through (4) of this section. A water source for a new dwelling or place of public occupancy shall comply with BCC 99.810 to 99.820. A water source for a proposed lot or parcel shall comply with BCC 99.840 to 99.850.

(1) A new or existing well or improved spring.

(2) An existing well or improved spring that currently serves one or two other dwellings. The applicant shall secure an easement to supply water from the owner of the land on which the water source is located and to permit the maintenance of all physical improvements of the water system. Such easement shall be reviewed and approved by the County Sanitarian.

(3) An existing public water system, if authorized by the water system's representative.

(4) A new or expanded community water system, if approved pursuant to this code, and determined to be in conformance with the standards and plan specifications for water systems by the County Sanitarian and County Engineer.

J) 99.810 Water Well Standards for Building Permit. If a well is proposed for a dwelling or place of public occupancy, the applicant shall submit the following evidence that the well yields an adequate flow of microbiologically safe water for each dwelling or use:

(1) A well log prepared by a licensed well driller and filed with the State Watermaster indicating the well is a drilled, cased well.

(2) A water quality test prepared by an approved testing laboratory showing that the well meets the Environmental Protection Agency (EPA) standards for coliform bacteria and nitrates. If water quality does not meet the EPA standards, the Benton County Health Department must approve plans for water treatment.

(3) A Minor Pump Test pursuant to BCC 99.845 performed within the past year. However, notwithstanding BCC 99.845(4), wells on other properties need not be tested. [Ord 7, Ord 90-0069, Ord 96-0118, Ord 20070223, Ord 2007-0224]

Findings for I & J: The church utilizes a well. When the parsonage building permit is submitted, a pump test is required showing that the well can provide enough gallons per minute to service the church and the parsonage.

Conclusion: These criteria are met.

VI. STAFF RECOMMENDATION

Based on the findings above, as well as information in the file, **the Planning Official approves the Conditional Use Permit to make the existing church a conforming use, the expansion of the church and parish hall, and the addition of a parsonage**, subject to Conditions of Preliminary Approval and Operating Conditions of Approval.

VII. CONDITIONS

Conditions of Preliminary Approval

- 1) Period of validity: The preliminary approval for the expansion of the church and parish is 2 years from the date of decision. The preliminary approval of the parsonage is 10 years from the date of decision. All Conditions of Preliminary Approval shall be completed prior to expiration of the period of validity.
- 2) The applicant shall develop the subject site as indicated in the site plan shown in Attachment A. Any revisions to the site plan shall be reviewed and approved by the Planning Official. The Planning Official shall determine if the revision can be administratively approved or will need to go through a new conditional use permit application process.
- 3) The applicant shall construct a continuous, opaque fence or wall at least 6 feet high along the north and east sides of the subject site. Prior to the fence installation, a landscape plan shall be submitted to the Planning Official for review and approval showing existing vegetation.
 - a. Any vegetation removed to accommodate the fence shall be replaced by an equivalent number of native trees and shrubs. A second landscape plan shall show what will be removed and how the vegetation will be replaced. The vegetation shall be planted and will be irrigated as necessary to allow adequate establishment.
- 4) The applicant shall work with Public Works to identify road improvements to Camellia Drive on a portion of the road between the existing approach and Highland Drive. The road improvements will amount to widening of Camellia Drive to the Residential Local Road standards identified in the Transportation System Plan for a length not to exceed 300 lineal feet.
- 5) The applicant shall apply for and get approval of a road approach permit from Public Works to modify the existing subject site approach to meet commercial standards to accommodate two-way ingress and egress, with a minimum throat width of 20 feet to a point 25 feet from the finished Camellia Drive road edge.
- 6) Since the total impervious area for the project will exceed the one-quarter acre (0.25 ac) threshold, the applicant shall apply, pay fees, and obtain approval for a Benton County Stormwater Management (SWM) permit.

Conditions of Operating Approval

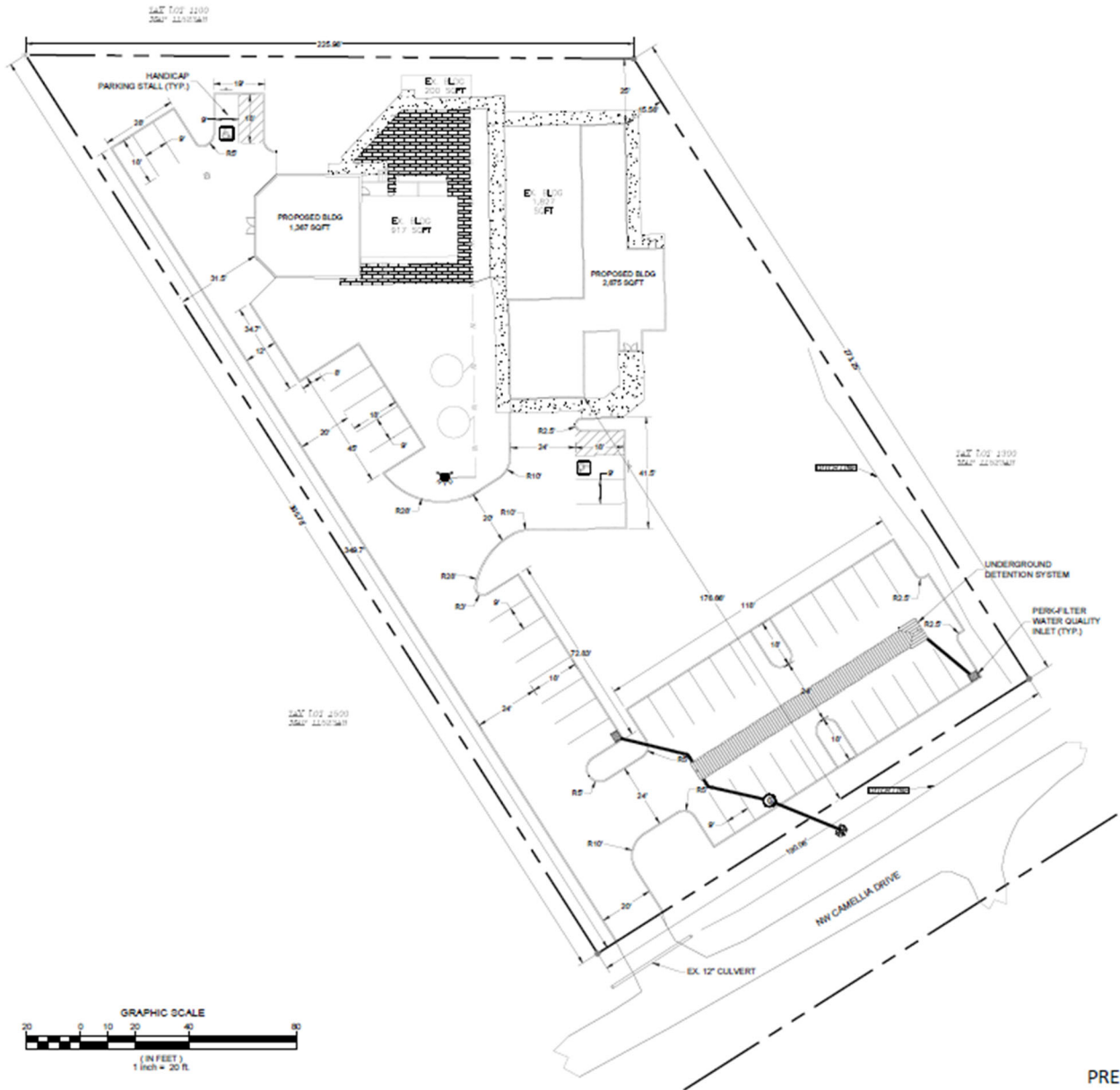
1. Church bells shall not ring before 7 AM or after 8 PM.

2. All attendees at the church shall utilize the off-street parking on the subject property. On-street parking is prohibited.
3. Any exterior lighting to have full cut-off fixtures, practical brightness levels, and proper placement and aiming so that no lighting spills onto adjacent properties.
4. The church shall provide notice to all homeowners along NW Camellia Drive and NW Wild Rose Drive one week prior to any outdoor event occurring on the subject property.
5. Should the sign need to be replaced, the new sign will replicate the existing sign in materials and size.
6. Post-construction stormwater discharge shall conform to the standards and tenets established by Oregon Drainage Law.
7. Post-construction stormwater quantity and quality standards shall conform to all current Oregon Department of Environmental Quality and Benton County stormwater requirements and the most recent edition of the Benton County's Stormwater Support Documents.
8. Any landscape plants that die shall be immediately replaced.

Advisories

1. If proposed construction activity or the proposed common plan of development results in land disturbance of one-acre (1.00 ac) or more on the subject property, the applicant shall apply, pay fees, and obtain approval for an Oregon Department of Environmental Quality (DEQ) 1200-C Construction Stormwater Quality Permit. Upon issuance of the DEQ 1200-C Permit, the applicant shall then apply for a Benton County ESC Permit prior to start of ground disturbing activities.
2. If proposed construction activity or the proposed common plan of development result in land disturbance between one-quarter acre (0.25 ac) and one acre (1.0 ac) the applicant shall apply, pay fees, and obtain approval for a Benton County Erosion and Sediment Control (ESC) permit required prior to start of ground disturbing activities. In this circumstance, a 1200-C permit would not be required.
3. Construction stormwater discharge shall conform to all current Oregon Department of Environmental Quality and Benton County erosion and sediment control standards using Oregon Department of Transportation erosion and sediment control details and best management practices.

Attachment A



WILLIAMS Inga

From: Vincent Gimino <vgimino@netscape.net>
Sent: Sunday, January 21, 2024 6:33 PM
To: WILLIAMS Inga
Subject: Fw: County notice of application -- video & handouts from our 7/30 neighborhood meeting
Attachments: ACFrOgB-oGyloBlpDsFhwtOLS-4WFt1VpD1L7H0h_Hyz_Mtrou0Zv4V5hW0ZmbeBwSsduY46Smra3BErw-916d_FuNnF0aneYCRqw1ICt7oGxdiGPGndrN1GvBCKTyZx07R-i4WAmnSyl0cYp15.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Williams,

Writing you in relation to the county application noted in this email. You should know that I do not recall receiving a hard copy notice in my mailbox, maybe I am mistaken. So I apologize for the 11th hour feedback.

As a resident of the neighborhood I do have concerns that leaves us opposed to most of the components the Church's plan, as it relates to expansion.

1- We are at 984 NW Camellia Drive; therefore we will experience 100% of any traffic flow increase. Our stakeholder'ship in that regard is heightened.

a-This increase in traffic will also include the years of construction traffic that will be ongoing (3 phase plan is slated to go on for years?)

b-If you have not already, please take a drive or better yet, a walk, around the loop that is Wild Rose and Camellia, and then try to imagine traffic flows that would occur.

2- We made road improvements with our own money (surfacing the road with grindings, a significant improvement from gravel, from Highland down to just past our property) that everyone on the loop benefits from. There was no collective fund for that, aside from the 3 residences the improvements faced, and as one of the main investors in that improvement, worry about excess use that will undoubtedly result in greater maintenance. Who will pay for that? I understand the church has continued to do some gravel maintenance of parts of the road, but this is different and more costly. Is this expanding business open to funding the incremental cost of the damage, maintenance and repair?

3- What are the intentions of having the classrooms? Originally the church wanted to have a school but could not due to some zoning restriction at the time. I do not have the details in front of me, but that was the general issue. Opening a school, or daycare, etc. is not just Sunday traffic. 7 day a week increase in traffic would be unsustainable, especially with the known CV traffic on Highland 5 days per week.

4- Neighbors have brought up the water supply problem. Indeed this should not affect our home directly, but there are a number of email threads, initiated by Fr. James, regarding their water shortage and having to dig another well much deeper than their existing one. The emails suggested that we all should be restricting our use of water given the shortage they were experiencing (I can dig those emails up if need be). The problem started after another nearby residential well was

established. Therefore it seems that there is not ample water supply, and there is no way the water supply is sustainable for the local residents if this business expands.

With regards to making a serviceable parking lot to keep the congregation's vehicles off the road: the Church should not be asking for permission; it should be a mandate to do so. Use of the county road for business purposes such as that should have been put in check a long time ago. Having that many vehicles on the road presents a potential obstruction for emergency vehicles.

This is a significant increase in size of this business in a tiny residential area; the infrastructure currently, and for the foreseeable future, cannot support this. The shoe simply does not fit.

It is for these reasons, and others expressed by neighborhood residents, that this expansion should not be allowed.

Thanking you,

Vincent Gimino

From: Theresa Stephens <theresa.m.stephens@gmail.com>

Cc: Byer Family <byer_family@yahoo.com>; Carol McCarthy <carolmcc.wildrose@gmail.com>; Dan & Ann Campbell <dan97330@gmail.com>; Dan Campbell <dan85219@gmail.com>; Jocelyn Krayem <lilpoka@gmail.com>; jsmcgruver GRUVER <jsmcgruver@msn.com>; Laurel Byer <laurel.byer@co.benton.or.us>; Maureen Kinevey <cu hollow@gmail.com>; Nizar Krayem <nizar@nizarkrayem.com>; Pat Allison <allisonpa37@gmail.com>; Ron & Donna Mullen <ron-donna@denhams.org>; Susanna Priest <susannapriest@yahoo.com>; Tom & Katy Griffith <tdgriff@comcast.net>; Vincent & Heather Gimino <vgimino@netscape.net>

Sent: Friday, January 19, 2024 at 04:15:17 PM PST

Subject: Re: County notice of application -- video & handouts from our 7/30 neighborhood meeting

Hello Neighbors,

We all have until Monday to respond to the county regarding the major build-out of the church property. If you are not in favor of all the additional traffic and noise of a busy, larger, and more frequently used church, you need to send an email to Inga Williamson at the county. She has extended the comment period to this Monday, January 22 because I told her some neighbors did not receive the letter. I have attached the letter in case you too missed it. I am opposed to the expansion and will detail my concerns to the county by Monday. If you would like to discuss this further, let me know.

The Campbells and I are meeting today at 5:00 to discuss our approach and you are welcome to join (935 NW Camellia). Alternatively, I would be happy to have another meeting on Sunday if there is interest.

Send comments and concerns to:

Inga.Williams@bentoncountyor.gov

Regards,

Theresa Stephens

541 740-0987

On Sat, Dec 9, 2023 at 12:58 PM St. Martin Orthodox Church <jbaglien@gmail.com> wrote:

Dear neighbors,

You will have received in your mailbox today the formal County notice of our site

improvement application.

Below, and attached, are the video recording and supporting photos and drawings from our July 30 neighborhood meeting, which were distributed previously.

The video is a little over an hour long, but the main presentation and information are about 18 minutes. With respect to the video, some systems may allow you to view it directly in an open browser window; others may require that you download it first, and then view it with an appropriate video app. Let me know if you run into any problems.

Most of the exhibits in the video are visible on-screen, except for the first two. All of them are attached below, for your convenience.

You can access the video at:

https://drive.google.com/file/d/1icrRYhpLC6qYZG3oV_Q6AB7lgeEuktB1/view?usp=drive_link

Please contact me with any questions. My cell is 541-250-9409.

Thank you for your time!

Fr. James

--
Regards,
Theresa Stephens
541 740-0987

Benton County Planning Officials / Inga Williams

RE: Comments on Application File Number: LU-23-051
Saint Martin the Merciful Church, Inc.

FROM: Theresa Stephens and Peter Owens
935 NW Camellia Drive

DATE: January 21, 2024

Thank you for the opportunity to share comments and concerns related to the application of Saint Martin church who once again wants to add and expand buildings on their property.

In 1996, James and Kim Baglien donated the land to the “church”, and began building what they told neighbors was a “chapel” for private family worship. I believe that the church was a permitted use at the time. The private chapel was completed in 2000. James Baglien ensured the neighborhood and the county the 900 square foot building would only be for “very small gatherings and worship” (as a family chapel) that would be used by 27 non-family people.

In 2011 the church proposed adding an 1800 sq ft building to the 900 sq. ft chapel. This definitely was opposed by the Camellia Drive and Wild Rose Drive property owners. Benton County has letters on file from six property owners of the eight properties that had houses on them at the time! All of the comments included legitimate concerns regarding the traffic impact on the narrow graveled road, pedestrian safety, and interruption of serenity of the area. Everyone knew that adding the 1800 sq. ft parish hall was NOT for just the 25 people currently attending the church. All of those property owners requested that the county deny the additional building.

In the October 22, 2017 Gazette-Times newspaper in Local & Regional section, there was a story about the church as they had finished some interior painting. James Baglien (clergy) made several quotable statements. He stated in the story that in 2015 “with the completion of the iconography, the church was truly complete”. Later in the article Baglien goes on to say the church “has almost 80 members”.

In an October 2020 letter to Community Development Director Greg Verret, church leader Baglien presented a letter stating Saint Martin was building a master plan for the site. Baglien again states the church has 80 members. In that letter Baglien identified the church hoped to add considerable square footage to the existing buildings and property including a residence, a church addition, and additional classrooms as “they expand their educational offering” to accommodate various age groups. Anyone reading this surely understands the church is looking to expand. Any expansion of this legal, non-conforming property additionally intensifies the negative impact of a busy and growing church on our neighborhood.

The application file #LU-23-051 increases the property size square footage from 917 sq. ft church to 2280 sq/ft. It also increased the “parish hall” from 1827 sq/ft to 4702 sq. ft with additional classrooms and house (parsonage.) The total square footage of 6936 is almost 300 percent increase in size! The current size building already has a negative impact on the small neighborhood!

In **Section 53.215** of the Benton County Development Code the criteria to approve a conditional use permit shall be based on finding that:

(1) The proposed use does not seriously interfere with uses of adjacent property, the character of the area, or with the purpose of the zone;

As a property owners directly impacted by church happenings, we contend that any additional improvements or additions to the church would definitely interfere with the expectations we had for the church and it being a small congregation. All of the developed properties on this circle are single family dwellings. The increase in traffic on Sundays, Wednesdays, Fridays and Saturdays, plus the festivals, weddings and funerals is definitely noticed and more and more impacts the quality of life around here. Adding more traffic is NOT in character with the area. It is also dangerous as the road is mainly one car wide.

(2)The proposed use does not impose an undue burden on any public improvement, facilities, utilities, or services to the area

The area homes all depend upon well water, and it is a big concern in the area! The most recent construction site at the top of Wildrose was unable to get water from a well and has to pipe it up Wildrose to their house. We are all very concerned about our water table. Adding a family/house/parsonage is like adding an additional water user on the property. This is an additional real concern and should be considered another negative impact on the area. If understood correctly, UR-5 is for ONE DWELLING per five acres not for a church, a parsonage, and a parish hall on 1.4 acres in a quiet neighborhood.

In a letter to James Baglien from Peter Idema dated August 13, 2001, it was noted under water requirements that per the County Sanitarian, *“if there will be more than 10 persons other than family members for more than 60 days per year, the church would need to meet the requirements for a small state water system.”* None of the documents found on file for the property have mentioned this since 2001. It appears that per the State of Oregon this would be necessary for the church. Rough math of 52 Sundays, 3 festive days, and any more than 5 Wednesdays would require some level of “state water system”. What is the impact of such a required system on the neighborhood?

The church uses bells on many occasions as also mentioned in letters to Benton County in response to LU-11-019 from back in 2011. For the church to say no noise goes outside is inaccurate as it does occur.

Camellia and Wild Rose drive is full of property owners that are polite. All the properties are impacted negatively by the Sunday morning, Sunday evening, Wednesday evening, Friday nights and Saturday activities and the traffic wholly related to the church! The property owners moved to this loop for peace, quiet, and minimal traffic – more than 50 percent of owners were here before the private chapel was initially built. A church that grew from a “small private family chapel” then became a public church with 25 members outside of family, was enough growth and intensified impact on our area. Currently the neighborhood puts up with 80 members plus others. If this new application is approved to a “legal, non-conforming property” it is fully expected to intensify and continue to erode the desired livability of the neighborhood. We are asking Benton County to DENY the application based upon BCDC 53.215 criteria.

WILLIAMS Inga

From: Susanna Priest <susannapriest@yahoo.com>
Sent: Sunday, January 21, 2024 5:43 PM
To: WILLIAMS Inga
Subject: Comment on church expansion at 925 NW Camellia Dr, Corvallis, OR 97330

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good evening. I have been advised that comments on the proposed upgrading and expansion of this property should be directed to you. I am **not** writing in hopes you will deny this application. Rather, I am writing to support further discussion on this issue within the community before any decision is reached.

The church leadership held a publicized neighborhood/community meeting to explain the current plans. Very few community members actually turned out for this. I was one of them, because I saw it as a (minor) civic duty and because I was just curious. I am not connected to the church and the meeting was the first time I'd even been on their grounds. I tended to interpret the low turnout to mean few objected to (or perhaps just didn't care about) this action.

This may be correct - most people may be neutral. But it now turns out that some people in the neighborhood are writing to you because they are afraid of the aquifer being drained, the traffic on our little roads becoming uncontrollable, etc. These might be perfectly valid objections. Why, then, were they not at the meeting - or, in a few cases, were they there but mostly quiet?

I'm sure everyone's reasons were different and some may have been quite valid. But the bottom line still seems to be that a community-wide discussion has yet to take place, despite the church's sincere (I assume) effort to initiate that discussion.

I agree that preserving our resources (such as groundwater) and the character of our little neighborhood are important goals. However, I felt the church leadership made a good case that their own expectations did not include major growth. Rather, they want to do a better job of accommodating those who are already active in the church and ensure a smooth transition to a new pastor when the existing one retires (e.g., the new pastor will have to have somewhere to live).

Personally, I believe decisions about the use of the property should be up to those who own and use it, barring demonstrable harm to the rest of us. The tangible concerns being raised should be addressed. Perhaps more discussion should be organized, so a bigger audience can have the opportunity to weigh in with their questions and find out if there are solutions.

Perhaps the expansion should even be scaled down. I don't know. But the church is already there, and clearly is not going away. Church leadership needs to provide another

opportunity to address the concerns raised. Compromise is in order. Solutions should be sought, not just objections. Future plans might include exploring the use of city water, for example, and/or revisiting plans for a new road that serves the church primarily. Either would be administratively complicated, clearly.

But in the end, growth and change are an inevitable part of life, and the goal should be to find solutions. The pastor insists major growth is not an expectation. If it occurs, I see the issue here as managing that growth and limiting any bad impacts, not somehow prohibiting growth. The latter is likely impossible in any event. And new growth occurring *without* making plans to manage it is a very bad choice.

Susanna Priest, Ph.D.

Editor Emeritus, Science Communication: Linking Theory and Practice
965 NW Wild Rose Dr., Corvallis OR 97330.

WILLIAMS Inga

From: Ron & Donna Mullen <ron-donna@denhams.org>
Sent: Saturday, January 20, 2024 10:21 AM
To: WILLIAMS Inga
Subject: Proposed Building Permit for 925 NW Camellia Drive LU-23-051

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Williams,

We were recently made aware that a letter was mailed to residents in our neighborhood regarding the expansion of church facilities on Camellia Drive in Corvallis. We have not received any 'mailed' letter from Benton County requesting public comments.

We have lived in this neighborhood for the past 24 years and were initially not opposed to a small Russian Orthodox Church building being built and used for small gatherings and worship (as a family chapel) in our neighborhood — as was the 'original' plan — now with these grandiose plans for more than doubling the size of the building's footprint, expanding the parking lot, and incorporating a live-in rectory — we have second thoughts!

Ours is a small quiet neighborhood with access on a privately maintained county gravel loop with just one entrance off Highland Boulevard. The residents of our neighborhood are required to maintain this county gravel road at their own expense. This county road was never intended to be used for public travel to-and-from a publicly used building such as a church! The additional traffic burden from vehicles going to-and-from the church property in our neighborhood will cause a significant traffic increase on this narrow gravel road — which in some places allows only one vehicle to pass through at a time — and will require additional road maintenance expense for each resident.

With the proposed expansion of the church facilities, there will be increased traffic, additional activity, and noise around the loop — not just on Sundays, but on other days of the week. Increasing the square footage of the church building, plus increasing the size of the fellowship hall, adding bathrooms, and extra parking area, sounds like there will be a larger/growing congregation using the church facilities in the future. Addition of a rectory with residents living on the church property year-round will also bring changes. Will future plans bring in more church programs such as: a church school or children's program? Expanded facilities = more programs/uses. That is not acceptable in our quiet neighborhood!

We want to be put on record that we are opposed to the proposed expansion of the church property on 925 Camellia Drive, and are requesting Benton County to deny the request for this new conditional use building permit.

Sincerely yours, Ron & Donna Mullen
[917 NW Wild Rose Drive Corvallis, OR]

Ron & Donna Mullen

Sent from my iPad

WILLIAMS Inga

From: Rollie Baxter <rolliebaxter@gmail.com>
Sent: Wednesday, December 6, 2023 3:44 PM
To: WILLIAMS Inga
Subject: LU-23-046; St. Martin the Merciful Orthodox Church

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Is there any requirement for a functioning, adequate water source? If so, you might check their source. This area is notorious for poor water wells. Several have gone dry. Some have drilled deeper to no avail. Some have drilled multiple wells....only to get a nominal flow. Some have added storage tanks.

WILLIAMS Inga

From: Maureen Kinevey <cuhollow@gmail.com>
Sent: Sunday, January 21, 2024 12:41 PM
To: WILLIAMS Inga
Subject: Building Permit for 925 NW Camelia Drive LU-23-051

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Williams,

My husband and I recently learned of a letter concerning the expansion of the church facilities at 925 Camelia Drive in Corvallis. We didn't receive this letter.

We would like to comment on this expansion and voice our opposition to the proposed expansion.

We live on a small circle off Highland Avenue. One side is called Camelia Drive, the other side of the circle is called Wild Rose Drive.

It is a small neighborhood which shares the same water aquifer for our wells. We have no other source of water.

Just this past year more wells were drilled in this small area to support new homes or potential new homes.

One family, which is developing property in the neighborhood, had their well run dry. They dug another well at a lower piece of property on the circle, which they own, and pumped the water up to their home.

After this the church's well ran dry. Then the church had to dig a deeper well.

Because of development or having a well run dry, a total of 4-5 wells were drilled in the last two or three years.

In the summer when we enter a drought, I conserve every drop of water that I can.

I feel certain this is not happening with a church's congregation where they are flushing a toilet after a single use or preparing food and meals for the congregation.

How can the current septic system support this expansion?

The original plan and approval for a church in a residential neighborhood was for a small chapel for a congregation.

What is being proposed is a commercial venue which would provide a facility for weddings and other large gatherings. This was not the original intent or plan.

In this small neighborhood, how can we add another large demand on our already precious water supply?

My husband and I are requesting that Benton County not approve the building permit for this unnecessary expansion. We are opposed to the church expansion at 925 NW Camelia Drive.

Sincerely ,

Maureen Kinevey and Jeffrey Gump
935 NW Wild Rose Drive
Corvallis OR
97330

To whom it may concern,

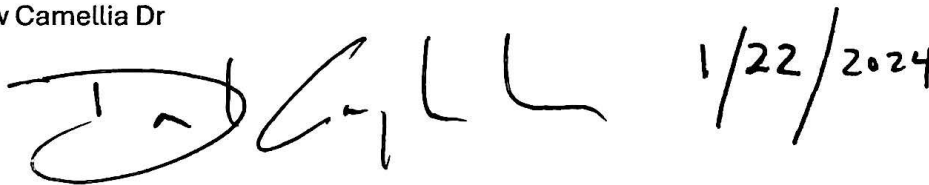
We were recently made aware by neighbors that a letter was mailed to the Wildrose/ Camellia neighborhood requesting public comments pertaining to LU-23-051. We have not received this letter, but are grateful to be allowed to send in comments, although feeling a bit rushed.

My family and I are relatively new to living in the neighborhood, having only been here 1 year. I have however, grown up in this neighborhood- as my Grandparents were here for 30 plus years. This is a small neighborhood with a narrow gravel road loop that is typically unable to let 2 cars pass without one pulling off to the side to allow the other to get by. This road and neighborhood was never intended to support a church congregation. It is already more than maxed out with the traffic we see on midweek services, Saturday nights, Sunday mornings, and special events. To have even more traffic opportunity on our small road would be a huge burden on this neighborhood.

I understand it may not be the intention of the Church to grow, as stated numerous times in meetings and outlined in some of the expansion documents. What I do know is that priorities change, leaders change, and allowing this church to expand when it is already a legal, non-conforming property will interfere with the neighborhood liveability. It is reasonable to not want to see the non-conforming use intensified.

We are against the proposed expansion LU-23-051 and request Benton County deny the application.

Daniel Campbell
940 Nw Camellia Dr

Handwritten signature of Daniel Campbell and the date 1/22/2024.

WILLIAMS Inga

From: Dan Campbell <dan85219@gmail.com>
Sent: Monday, January 22, 2024 4:51 PM
To: WILLIAMS Inga
Subject: LU-23-051

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

TO: Benton County Planning Officials / Inga Williams
RE: Comments on Application File Number: LU-23-051
Saint Martin the Merciful Church, Inc.
FROM: Dan and Ann Campbell -- 930 NW Camellia Drive
DATE: January 21, 2024

Thank you for the opportunity to share comments and concerns related to the application of Saint Martin church who once again wants to add and expand buildings on their property. Many of us living on the NW Wild Rose and Camellia Drive circle desire to comment on this significant expansion that will again intensify the impact our quiet rural residential neighborhood. Neither my wife or I have received any mailed notification from Benton County offering a "time for comments".

The seventeen current properties on Camellia and Wild Rose Drives were platted in 1957. The developer initially included CCR's (covenant, conditions, and restrictions) that limited construction on these properties to one and two family dwellings and included in those CCRS was a list of restricted building types which included churches. These CCRs were identified as lasting from initial plotting for the next 15 years. The obvious intention was to establish this loop of properties as a quiet rural neighborhood.

Sometime in 1996, James and Kim Baglien began building what they told neighbors was a "chapel" for private family worship on property they owned across the street from their property. The Baglien's later donated the property that would eventually become what is now Saint Martins the Merciful church. The private chapel or "private oratory" was completed in 2000. No building permits for this initial project are in the records if they even exist. In 2001, the "private oratory" for family decided to hold "public services" and become a church. This was met by resistance of some in the neighborhood who expressed concern at the dishonesty of the church leadership in "sneaking in a church". James Baglien ensured the neighborhood and the county the 900 square foot building would only be for "very small gatherings and worship" (as a family chapel) that would be used by 27 non-family people.

In 2011 the church proposed adding an 1800 sq ft building to the 900 sq. ft chapel. This definitely was opposed by the Camellia Drive and Wild Rose Drive property owners. Benton County has letters on file from six property owners of the eight properties that had houses on them at the time! All of the comments included legitimate concerns regarding the traffic impact on the narrow graveled road, pedestrian safety, and interruption of serenity of the area. Everyone knew that adding the 1800 sq. ft parish hall was NOT for just the 25 people currently attending the church. All of those property owners requested that the county deny the additional building.

In the October 22, 2017 Gazette-Times newspaper in Local & Regional section, there was a story about the church as they had finished some interior painting. James Baglien (clergy) made several quotable statements. He stated in the story that in 2015 "with the completion of the iconography, the church was truly complete". Later in the article Baglien goes on to say the church "has almost 80 members".

In an October 2020 letter to Community Development Director Greg Verret, church leader Baglien presented a letter stating Saint Martin was building a master plan for the site. Baglien again states the church has 80 members. Is it safe to assume infants and children are not members? (One person I know, said it takes 2-years to become a member of the church.) In that letter Baglien identified the church hoped to add considerable square footage to the existing buildings and property including a residence, a church addition, and additional classrooms as “they expand their educational offering” to accommodate various age groups. Anyone reading this surely understands the church is looking to expand. Any expansion of this legal, non-conforming property additionally intensifies the negative impact of a busy and growing church on our neighborhood.

The application file #LU-23-051 increases the property size square footage from 917 sq. ft church to 2280 sq/ft. It also increased the “parish hall” from 1827 sq/ft to 4702 sq. ft with additional classrooms and house (parsonage.) The total square footage of 6936 is almost 300 percent increase in size! The current size building already has a negative impact on the small neighborhood!

In **Section 53.215** of the Benton County Development Code the criteria to approve a conditional use permit shall be based on finding that:

(1) The proposed use does not seriously interfere with uses of adjacent property, the character of the area, or with the purpose of the zone;

As property owners both adjacent the church property and in the area of the church including Camellia Drive and Wild Rose Drive we contend that any additional improvements or additions to the church would definitely interfere with the expectations we had when purchasing our properties. All of the developed properties on this circle are single family dwellings. Bagliens have the only remaining property not currently in the development phase. The increase in traffic Sundays, Wednesdays, various evenings and festivals in definitely noticed and more and more impacts the quality of life the property owners expect. Adding more traffic is NOT in character with the area.

(2)The proposed use does not impose an undue burden on any public improvement, facilities, utilities, or services to the area

The area homes all depend upon well water and it is a big concern in the area! The impact of the church CURRENTLY with 80 members use of water on Sundays, Wednesday and other evenings or special events likely uses about a similar amount of water as many of the houses on Camellia and Wild Rose, maybe even more! Additional construction promises the potential for more church members. Adding a family/house/parsonage is like adding an additional water user on the property. This is an additional real concern and should be considered another negative impact on the area. If understood correctly, UR-5 is for ONE DWELLING per five acres not for a church, a parsonage, and a parish hall on 1.4 acres in a quiet neighborhood.

In a letter to James Baglien from Peter Idema dated August 13, 2001, it was noted under water requirements that per the County Sanitarian, “if there will be more than 10 persons other than family members for more than 60 days per year, the church would need to meet the requirements for a small state water system.” None of the documents found on file for the property have mentioned this since 2001. It appears that per the State of Oregon this would be necessary for the church. Rough math of 52 Sundays, 3 festive days, and any more than 5 Wednesdays would require some level of “state water system”. What is the impact of such a required system on the neighborhood?

Another concern but to a lesser extent than too much traffic and the concerns about water is noise. The church does use bells and the church does sing and not just on typical Sunday morning services. Property owners adjacent the church have witnessed church members circling the church at or near midnight with candles, while singing. The church uses bells on many occasions as also mentioned in letters to Benton County in response to LU-11-019 from back in 2011. For the church to say no noise goes outside is inaccurate as it does occur.

Camellia and Wild Rose drive is full of property owners that are polite; polite to a fault perhaps. All the properties are impacted negatively by the Sunday morning, Sunday evening, Wednesday evening, and other days of traffic wholly related to the church! It is a steady stream. One property owner counted 30 cars on a Wednesday evening. Most of the

cars had two people or more and the rest were single occupant vehicles. The point being, the church traffic ALREADY impacts our neighborhood. Sundays are much busier! The property owners moved to this loop for peace, quiet, and minimal traffic – more than 50 percent of owners were here before the private chapel was initially built. A church that grew from a “small private family chapel” then became a public church with 25 members outside of family, was enough growth and intensified impact on our area. Currently the neighborhood puts up with 80 members plus others. If this new application is approved to a “legal, non-conforming property” it is fully expected to intensify and continue to erode the desired livability of the neighborhood. We are asking Benton County to DENY the application based upon BCDC 53.215 criteria.

WILLIAMS Inga

From: Carol McCarthy <carolmcc.wildrose@gmail.com>
Sent: Monday, January 22, 2024 4:25 PM
To: WILLIAMS Inga
Subject: Comments on LU-23-051, Expansion of St. Martin Orthodox Church

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing to voice my concerns about the proposed expansion of the St. Martin Orthodox Church located at 925 NW Camellia Dr. in Corvallis, Oregon.

The permit application is a request for a conditional use permit. It is my understanding that conditional use permits are required for development that may be in conflict with typical neighborhood activities. In this case, the main concerns I have are for the increased water use and increased traffic, as well as increased noise. These concerns are discussed below.

In addition, based on the public meeting that was held last July when the development plans were presented to the neighborhood, the expanded enclosed space capacity is projected to accommodate 150 people. I believe that this proposed expansion might also require an exception to the conditional use permit because it exceeds the allowable capacity of no more than 100 people. However, I did not see that this was mentioned in the permit application.

Water

Groundwater wells supply the water in this neighborhood. In recent decades, development has resulted in a substantial increase in the number of houses drawing water from the underlying aquifer. In the time that I have lived here, the number of groundwater wells has increased on the lots around Camellia and Wild Rose Drives from two to at least ten. This includes three water wells that I am aware of that were drilled when existing wells went dry, including the new well at the church. In addition, there are three properties with new houses in the preliminary stages of construction and a fourth with construction plans for the near future.

I worry that the aquifer cannot meet all of this demand that is already allowed outright by the zoning code and existing permits. The church expansion will likely add to the aquifer drawdown. Granting the conditional use permit is dependent on adequate water supply that I do not think is available based on the well drilling history of the neighborhood.

Traffic

A single-lane, mostly-gravel, private road provides access to the residences on Camellia and Wild Rose Drives. This is adequate for our normal residential traffic but it is already being stressed by the existing church traffic. I have heard complaints lately from neighbors about increased mid-week nightly church traffic. The road is also used by residents, and by many hospital workers, as well, during their lunch hours and breaks, as a quiet place to take a walk. This road is a private road that provides access to the homes rather a public road for non-residential use.

Noise

I am concerned that the proposed expansion will increase the level of noise and disrupt the adjacent neighbors thereby diminishing the livability they currently enjoy.

Please add my comments to the record.

Re: LU-23-051, Expansion of St. Martin Orthodox Church

I am writing to voice my concerns about the proposed expansion of the St. Martin Orthodox Church located at 925 NW Camellia Dr. in Corvallis, Oregon.

The permit application is a request for a conditional use permit. It is my understanding that conditional use permits are required for development that may be in conflict with typical neighborhood activities. In this case, the main concerns I have are for the increased water use and increased traffic, as well as increased noise. These concerns are discussed below.

In addition, based on the public meeting that was held last July when the development plans were presented to the neighborhood, the expanded enclosed space capacity is projected to accommodate 150 people. I believe that this proposed expansion might also require an exception to the conditional use permit because it exceeds the allowable capacity of no more than 100 people. However, I did not see that this was mentioned in the permit application.

Water

Groundwater wells supply the water in this neighborhood. In recent decades, development has resulted in a substantial increase in the number of houses drawing water from the underlying aquifer. In the time that I have lived here, the number of groundwater wells has increased on the lots around Camellia and Wild Rose Drives from two to at least ten. This includes three water wells that I am aware of that were drilled when existing wells went dry, including the new well at the church. In addition, there are three properties with new houses in the preliminary stages of construction and a fourth with construction plans for the near future.

I worry that the aquifer cannot meet all of this demand that is already allowed outright by the zoning code and existing permits. The church expansion will likely add to the aquifer drawdown. Granting the conditional use permit is dependent on adequate water supply that I do not think is available based on the well drilling history of the neighborhood.

Traffic

A single-lane, mostly-gravel, private road provides access to the residences on Camellia and Wild Rose Drives. This is adequate for our normal residential traffic but it is already being stressed by the existing church traffic. I have heard complaints lately from neighbors about increased mid-week nightly church traffic. The road is also used by residents, and by many hospital workers, as well, during their lunch hours and breaks, as a quiet place to take a walk. This road is a private road that provides access to the homes rather a public road for non-residential use.

Noise

I am concerned that the proposed expansion will increase the level of noise and disrupt the adjacent neighbors thereby diminishing the livability they currently enjoy.

Please add my comments to the record.

Sincerely,

Carol McCarthy
950 NW Wild Rose Dr.
Corvallis, OR



Virus-free www.avast.com



DATE: December 15, 2023
TO: Inga Williams – Associate Planner
Benton County Community Development
FROM: Gordon Kurtz – Associate Engineer
Benton County Public Works
RE: **LU-23-046 – Conditional Use Application**
St. Martin the Merciful Orthodox Church, Owner
925 Camelia Drive – County Road # P15617 – MP 0.08
T11S – R5W – Section 23AB – Tax Lot 1400

Public Works staff have reviewed the application noted above and have comments and conditions as follows.

FINDINGS OF FACT

The application requests a Conditional Use for a property on the north side of Camelia Drive north of the Corvallis city limits and east of Highland Drive. The property falls within the RR-5 zone and is surrounded by RR-5 Zoned properties on all sides.

Camelia Drive is classified as a Residential Local Road in the Benton County Transportation System Plan. The minimum standard right of way width for this functional classification is 50 feet. The existing right of way is 60 feet wide and thus meets this requirement.

Average daily traffic (ADT) on this segment of Camelia Drive is, at most, 30 vehicles per day based on ITE trip generation standards. As of this writing, traffic counts and classification have not been performed at the intersection of Wild Rose Drive and Highland Drive. On Sundays and religious holidays traffic on this segment of Camelia Drive may conservatively be estimated at ~80 TPD.

The church will continue to take access to the County road system via a permitted approach at Camelia Drive MP 0.08. The existing approach is permitted by Benton County Permit #C9600532.

ROAD IMPROVEMENT ASSESSMENT

Road improvements will be required as a condition of approval for this application. The neighborhood surrounding St. Martin’s is residential and three lots are available for development. One of the three lots is owned by Good Samaritan Hospital and is unlikely to be developed for residential use. The primary uses for this segment of Camelia Drive are residential access coupled with standard support service traffic (delivery, waste pickup, maintenance, etc.). Camelia Drive is a Residential Local Road with an aggregate surface width that varies between 14 and 16 feet. The travel lanes and shoulders of the road do not

*At your service,
every day.*

meet current standards for width. As a result, road improvements will be required at the time of building permit application.

ANALYSIS & CONCLUSIONS

The applicant has put forth a three-phase approach to the proposed improvements. The first phase will address site development needs (grading, drainage, septic drainfields), the second phase will be the construction of an addition to the existing church, finally, the third phase will be the construction of a parsonage and classrooms for the parish hall. Road improvements will be required in conjunction with the third phase of the development and will consist of widening Camelia Drive to the current Residential Local Road standard. The cost of road improvements for projects of this scope typically fall in the \$5,000 - \$15,000 range.

As the applicant has proposed, the facility shall continue to utilize the single existing approach to Camelia Drive. The applicant shall modify the approach to meet a commercial standard, with a minimum throat width of 20 feet, 10-foot aprons and radii. The 20-foot approach width shall extend to a point 25 feet from the improved Camelia Drive road edge so as to accommodate two-way ingress and egress.

STORMWATER

The applicants' Engineer of Record has performed a preliminary site impact assessment, as well as an estimate of final, post construction impervious area. These assessments indicate that a Benton County Erosion and Sediment Control (ESC) permit will be required prior to start of ground disturbing activities, and that a Stormwater Management (SWM) permit will be required before construction can begin on the proposed drainage system.

RECOMMENDED CONDITIONS OF APPROVAL

Public Works recommends the applicant meet the following conditions of approval:

- 1) The applicant shall perform road improvements to Camelia Drive on a portion of the road between the existing approach and Highland Drive. The location of the improvements will be determined at the time of the Phase III building permit application and will amount to widening of Camelia Drive to the current Residential Local Road for a length not to exceed 300 lineal feet.
- 2) The applicant shall modify the existing approach to meet a commercial standard, with a minimum throat width of 20 feet, to a point 25 feet from the finished Camelia Drive road edge, to accommodate two-way ingress and egress to resultant parcels. Modification of the approach will require a new road approach permit. Unless the applicant wishes to perform the approach modifications beforehand, the modification of the approach shall be performed in association with Phase III.
- 3) If proposed construction activity or the proposed common plan of development results in land disturbance of one acre (1.00 ac) or more on the subject property, the applicant shall apply, pay fees, and obtain approval for an Oregon Department of Environmental Quality (DEQ) 1200-C Construction Stormwater Quality Permit. Upon issuance of the DEQ 1200-C Permit, the applicant shall then apply for a Benton County ESC Permit prior to start of ground disturbing activities.
- 4) If proposed construction activity or the proposed common plan of development result in land disturbance between one-quarter acre (0.25 ac) and one acre (1.0 ac) the

applicant shall apply, pay fees, and obtain approval for a Benton County Erosion and Sediment Control (ESC) permit required prior to start of ground disturbing activities. In this circumstance, a 1200-C permit would not be required.

- 5) Since the total impervious area for the project will exceed the one-quarter acre (0.25 ac) threshold, the applicant shall apply, pay fees, and obtain approval for a Benton County Stormwater Management (SWM) permit before construction begins on the proposed drainage system.
- 6) Construction and post-construction stormwater discharge shall conform to the standards and tenets established by Oregon Drainage Law.
- 7) Construction stormwater discharge shall conform to all current Oregon Department of Environmental Quality and Benton County erosion and sediment control standards using Oregon Department of Transportation erosion and sediment control details and best management practices.
- 8) Post-construction stormwater quantity and quality standards shall conform to all current Oregon Department of Environmental Quality and Benton County stormwater requirements and the most recent edition of the Benton County's Stormwater Support Documents.

Please contact me if you have questions.

Memo to file:

Scott Kruger REHS

Benton County Environmental Health

April 29, 2023

RE: St. Martins Church potential public water system

925 NW Camellia Dr, Corvallis, OR 97330

On April 17, 2024, I received correspondence from the Oregon Health Authority Drinking Water Program regarding the average daily population calculation and the appropriate system type category for St. Martins Church located at the above stated address.

The calculation is as follows:

- Days open = 4 (Sunday, Saturday, two weekdays),
- Population = 60 (35+15+5+5)
- Average population/day = $60/4 = 15$ people/day

This would qualify the church for the Oregon Very Small System (OVSS) classification. The four days per week of being open to the public would meet the minimum 60 days.



**Benton
County**

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Office: (541) 766-6819
360 SW Avery Avenue
Corvallis, OR 97333

co.benton.or.us/cd

150-Day Time Limit Waiver

Application: **LU-23-051** Conditional Use Permit for a St. Martin Orthodox Church

Applicant/Owner: St. Martin the Merciful Orthodox Church, Inc.

Application deemed complete on: 12/05/2023

150-day time limit from date deemed complete: 05/03/2024

I hereby waive the time limit applicable to the above application, pursuant to Benton County Code 51.535 and ORS 215.427:

for the maximum time allowed under BCC 51.535
(which is 215 additional days, which is Sunday, October 6, 2024)

until this date: _____
(not to exceed 215 days from 05/03/2024)

I understand that to allow any person time to appeal a decision by the County, the staff report must be finalized at least three months prior to the deadline. I understand that this requires me to contact the County with a decision to withdraw or continue the application at least four months prior to the deadline.

James S. Baylien
Property Owner Signature

28 Feb 24
Date

(for) St. Martin the Merciful Orthodox Christian Church, Inc.
Property Owner Name (print)

V. Rev. James S. Baylien
Rector & President



**Benton
County**

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Community Development Department

Office: (541) 766-6819

360 SW Avery Avenue

Corvallis, OR 97333

co.benton.or.us/cd

**APPLICATION
CONDITIONAL USE PERMIT**

File # _____

Fee: \$ _____
(SEE CURRENT FEE SCHEDULE)

*ALL SECTIONS MUST BE COMPLETED. ATTACH ADDITIONAL SHEETS IF NECESSARY.
REVIEW WILL BEGIN ONLY WHEN THE APPLICATION IS DETERMINED TO BE COMPLETE*

I. Property Owner(s) Information

Name(s): St. Martin the Merciful Orthodox Church, Inc. Phone #1: 541-738-0600

Mailing Address: 928 NW Camellia Drive Phone #2: _____

City: Corvallis State: OR Zip: 97330 Email: smartinorthodoxchurch@gmail.

II. Applicant Information

Name(s): Same as owner. Phone #1: _____

Mailing Address: _____ Phone #2: _____

City: _____ State: _____ Zip: _____ Email: _____

Other individuals to be notified of this application: Name, Address, City & Zip, or Email

Reece Engineering & Survey - contact information provided in attached narrative.

III. Property Information

Site Address: 925 NW Camellia Drive, Corvallis, Oregon 97330

Assessor's Map & Tax Lot Number: T 11 S, R 5 W, Section(s) 23, Tax Lot(s) 1400

Acreage: 1.42 Zoning: UR-5 Fire District: _____

Water Supplied By: Well Sewage Disposal Type: Septic System

Existing Structures: Church, parish hall, restrooms

Current use(s) of the property: Church

IV. Request Summary (Example: "Conditional Use approval to operate a commercial kennel in the RR Zone.")

Conditional Use approval to expand church facilities in UR-5 zone.

V. Attached Documentation: With all land use applications, the "burden of proof" is on the applicant. It is important that you provide **ALL the information listed on the following pages at the time you submit your application. The processing of your application does not begin until the application is determined to be complete.**

JAB

Conditional Use Criteria Please answer in detail on a separate sheet of paper.

1. Describe how the proposed use will not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone.
2. Describe how the proposed use will not impose an undue burden on any public improvements, facilities, utilities, or services available to the area.
3. If the property is zoned EFU or FC, describe how the proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.
4. If the property is zoned EFU or FC, describe how the proposed use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
5. Will the proposed use involve the use of water (plumbing facilities, bathroom, water for processing, etc.)?
Yes If yes:
 - a. Is there an existing well or spring on the proposed parcel(s)? Yes Please attach a copy of a well log or pump test, if available, which identifies the rated yield of this water source.
 - b. Is there an existing septic system on the proposed parcel(s)? Yes An evaluation by Environmental Health may be required of an existing system unless the system was recently installed or repaired. Please attach a copy of any septic system records you may have available.
6. Is the only access or proposed access to the property via a road that crosses a railroad? No
If yes, please draw the location on your map and explain here: _____

Mitigating Measures Please answer in detail on a separate sheet of paper.

1. Describe any special measures you propose to undertake in order to minimize the impacts on adjacent properties and public services, and to ensure compliance with the purpose of the zone. Consider such features as: location of the use on the parcel; road capacities in the area; driveway location; parking area; on-site traffic circulation; landscape or fencing separations; size of structures; signs; exterior lighting; noise; air emissions; drainage.

Attachments

1. A copy of deed(s) covering the subject property.
2. A copy of the easement granting access to any proposed parcel that does not have frontage on a public road.
3. An accurate scale drawing of the property, showing the locations of existing and proposed structures, roads, water supply, subsurface sewage system, easements, and driveways. Label all tax lots.

Signature(s)

I hereby certify that I am the legal owners(s) or contract purchaser of the above noted property; that the information contained herein is accurate to the best of my knowledge; and that the requested conditional use permit would not violate any deed restrictions attached to the property.


Owner/Contract Purchaser Signature

7 Nov 23
Date

Owner/Contract Purchaser Signature

Date

For Office Use Only

Date Application Received: _____ Receipt Number: _____ By: _____

File Number Assigned: _____ Planner Assigned: _____

Date Application Deemed Complete: _____

St. Martin Orthodox Church

Conditional Use Permit Application

Prepared for:

St. Martin Orthodox Church
C/O Fr. James Baglien
925 NW Camellia Drive
Corvallis, Oregon 97330

Submitted to:

Benton County
Community Development Department
360 SW Avery Avenue
Corvallis, Oregon 97333

Prepared by:



REECE
ENGINEERING & SURVEY

November 6, 2023

Project Summary

Request:	Application for a Conditional Use Permit to construct improvements to the St. Martin Orthodox Church.
Location:	925 NW Camellia Drive Corvallis, Oregon 97330 Benton County Assessor’s Map No. 11-5-23AB, Tax Lot 1400
Owner/Applicant:	St. Martin Merciful Church, Inc. C/O Fr. James Baglien 928 NW Camellia Drive Corvallis, Oregon 97330 Email: jbaglien@gmail.com
Engineer/Planner:	Reece Engineering & Survey 321 1 st Avenue Suite 3A Albany OR 97321 541-926-2428 Engineer: David J. Reece, PE Planner: Hayden Wooton dave@reece-engi.com hayden@reece-eng.com

Exhibits

- A – Benton County Assessor’s Map
- B – Aerial Photograph
- C – Benton County Zoning Map

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- II. Existing Conditions4
- III. Conditional Uses5
- V. Conclusions7

I. Project Description

St. Martin Orthodox Church, owner and applicant, is proposing to construct a 1,367 square-foot addition to their church, add an on-site parsonage (dwelling unit), and expand their parish hall to create more classrooms. To support this expansion, St. Martin Orthodox Church is also proposing to improve existing vehicle parking areas, upgrade the existing septic system, and construct a new stormwater management system. Development of these improvements will occur in three phases. Phase One will consist of supporting infrastructure: stormwater management system, septic system enhancements, and parking area improvements (Visual illustration on Sheet 3.1). Phase Two will be limited to development of the 1,367 square-foot addition (Visual illustration on Sheet 3.2). And finally, construction of the on-site parsonage and parish hall expansion will occur in Phase Three (Visual illustration on Sheet 3.3). The applicant would like to emphasize that improvements discussed in this application are not expected to increase the number of people using these facilities. Attendance has been stable for many years, and these improvements have been designed to better serve the existing church membership.

The 1.42-acre parcel is identified as Benton County Assessor's Map No. 11-5-23AB, Tax Lot 1400 (Exhibit A), or it can be found by its address: 925 NW Camellia Drive, Corvallis, Oregon 97330. While the subject property is within the City of Corvallis' Urban Growth Boundary (UGB), Benton County has jurisdiction and applied the Urban Residential – 5 (UR-5) zoning designation to the subject property.

The proposed development conforms to all applicable sections of the Benton County Development Code (BCDC). This application narrative provides findings of fact that demonstrate conformance with all applicable sections of the above-mentioned governing regulations. Applicable criteria of the BCDC will appear in italics followed by the applicant's responses in regular font.

II. Existing Conditions

St. Martin Orthodox Church was constructed during a five-year period between 1996 and 2001 and held its first service in August 2002. Later, in 2014, a parish hall was constructed to serve the educational and social needs of the church community. In addition to those structures, there is an existing parking area consisting of both gravel and asphalt surfaces. Access is provided via a driveway connection to NW Camellia Drive, a local road that while under Benton County's jurisdiction is maintained by the church and their neighbors. NW Camellia Drive is a gravel roadway located within a 50-foot-wide public right-of-way. In 2019, residents of the surrounding neighborhood and the church took efforts to upgrade the width and surface quality of NW Camellia Drive. Since this project, St. Martin Orthodox Church has served as the neighborhood road coordinator and funds an annual budget for on-going maintenance.

The subject property contains moderate slopes with elevations ranging from 376 feet above mean sea level near the northwest corner to 326 feet by the southeast corner. Established trees are located along the north, south, and west property lines. Additionally, vegetation is clustered in the center of the property just south of existing buildings. Most undeveloped portions of the subject property are covered by maintained lawn.

Adjoining zones and land uses (Exhibit B aerial photograph for and Exhibit C for Benton County zoning map):

North: Developed property containing a single dwelling unit zoned UR-5 by Benton County.

South: NW Camellia Drive. Developed property containing a single dwelling unit zoned UR-5 Benton County.

East: Undeveloped property zoned UR-5 by Benton County.

West: Several developed properties each containing a single dwelling unit zoned UR-5 by Benton County.

III. Conditional Uses

The subject property is zoned UR-5 by Benton County, and the proposed development is classified as a “Church, grange hall, community hall, or other similar non-profit community facility,” a use conditionally permitted in this zone per BCDC 64.205(13). This section of the application narrative provides detailed findings of fact in response to the applicable decision criteria set forth in Section 53.215 of the Benton County Development Code.

53.215. *Criteria. The decision to approve a conditional use permit shall be based on findings that:*

- (1) *The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone;*

Response: Adjacent properties are zoned UR-5 by Benton County. As described in Section II of this application narrative, many of these properties contain single-unit dwellings. There are two properties immediately east of the proposed development that are currently under construction and will eventually contain single-unit dwellings.

Compatibility does not require identical appearances or functions, instead it requires the proposed use to exist in harmony with the surrounding built environment. Design elements frequently associated with impacts on surrounding uses are exterior lighting, signage, noise, landscaping, building size and scale, and hours of operation.

Exterior Lighting: The proposed development does not include construction of any exterior lighting.

Signage: The proposed development does not include construction of any signage. There is an existing sign located near the entrance to the property; however, this is a small decorative wooden with minimal visual impact on the surrounding neighborhood.

Noise: All noise generating activities associated with this use will occur inside existing and proposed buildings. These structures will provide adequate noise dampening, so any noise created by use of these buildings will not be noticeable on nearby properties. As previously mentioned, the proposed development is not intended to increase the number of people using the property and buildings; consequently, noises levels post development should be comparable to what currently occurs with use of the property.

Additionally, St. Martin Orthodox Church does not intend to host music events, festivals, or holiday bazars. As such, there will be no unique events that produce disruptive levels of noise.

Landscaping/Screening: Existing vegetation provides a natural landscape buffer along the north, south, and west property line. The applicant intends to preserve these areas where possible. This mature vegetation will continue to provide a buffer between the subject property and nearby residential dwellings, which will increase the compatibility between these uses.

Building Size and Scale: The proposed buildings will be of an appropriate size and scale to comply with the numerical standards UR-5 zoning district. Beginning with setbacks, a visual demonstration of compliance with the required setbacks is provided on Sheet 3.0 of the attached preliminary plan set.

Table 1, Setbacks		
Property Line	Requirement	Proposed Distance
Front	25 ft.	177 ft.
Side (West)	8 ft.	32 ft.
Side (East)	8 ft.	16 ft.
Rear	25 ft.	25 ft.

Compliance with the setbacks in this zoning district ensures a base level of separation that when paired with the existing vegetation decreases the likelihood for conflicts between the proposed development and nearby dwellings. Building height in the UR – 5 zoning district is governed by BCDC 64.350(7), which states “a structure shall not exceed forty (40) feet in height.” The proposed development does not include a structure that will exceed forty (40) feet in height, and proposed structures will not exceed the height of existing structures.

Hours of Operation: As a religious institution, the primary hours of operation are between 8:00 a.m. and 2:00 p.m. on Sundays. A typical Sunday has approximately forty (40) attendants. At its busiest hours, the proposed use will not operate during noise or light sensitive hours for residential uses. While gatherings could occur on the weekday afternoons, these would be small groups that would generate minimal noise, light, or traffic. Other than these gatherings, the proposed use will operate as a dwelling for the rector. The parsonage would be used in the same manner as any other residential use. Consequently, the proposed use will not alter the character of the neighborhood due to its hours of operation.

St. Martin Orthodox Church has operated on this property, in this neighborhood, for two decades. Consequently, it is presumed that with the proposed development the church could continue to operate without interfering with uses on adjacent properties or impacting the character of the area. Therefore, this criterion is satisfied.

- (2) *The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area; and*

Response: A brief analysis of the relevant utilities is provided below. However, the only public improvement affected by the proposed development is NW Camellia Drive. Water, sanitary sewer, and stormwater infrastructure will all be privately owned and maintained.

Water: There is currently an on-site well that produces approximately seven gallons per minute. This well will continue to serve the proposed development. Additionally, there are two 10,000-gallon water tanks that are intended to support fire suppression efforts. No alterations will be made to this system.

Sanitary Sewer: There is an existing septic system that serves the property. This system will be improved and expanded to serve the proposed additions. The applicant will coordinate with the Benton County sanitarian to permit alterations to this system.

Stormwater: The applicant has provided the location, dimensions, and description of the proposed stormwater management system in the attached Stormwater Drainage Report dated November 6, 2023. This report contains a detailed analysis of pre- and post-construction conditions. Findings and conclusions from the above-mentioned report are included herein by reference.

Transportation: The subject property has frontage on NW Camellia Drive, a local access road. As previously discussed, the proposed use will not generate many trips on an average weekday – it is anticipated an average weekday would generate no more than eight vehicle trips. Many of the anticipated vehicle trips will occur on Sundays between the hours of 8:00 a.m. and 2:00 p.m. However, the proposed development is not anticipated to increase the size of a relatively small congregation. A typical Sunday has approximately forty (40) attendants. This represents about eighty (80) vehicle trips and does not exceed the projected average number of daily trips for NW Camellia Drive’s residential local street classification. Since 2019, when residents of this neighborhood began a road improvement project (while NW Camellia Drive is under Benton County’s jurisdiction, the residents maintain it), St. Martin Orthodox Church has coordinated with the County and neighbors to improve the street width and surface. The church continues to set aside approximately \$1,000 per year for on-going maintenance of this street. The applicant’s frequent efforts to improve NW Camellia Drive have ensured it is capable of serving the proposed development.

Therefore, the proposed development will not create an undue burden on nearby public improvements.

- (3) *The proposed use complies with any additional criteria which may be required for the specific use by this code.*

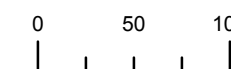
Response: There are no other additional decision criteria associated with this application. The applicant understands that Benton County has the authority to draft conditions of approval regarding the items listed under BCDC 53.220; however, these items have been addressed throughout the application narrative and will not have a negative impact on the surrounding area. Therefore, this criterion is not applicable.

V. Conclusions

This application narrative, accompanying exhibits, and site plan demonstrate that the applicable decision criteria of the Benton County Development Code have been satisfied. Therefore, Reece Engineering and Survey on behalf of the applicant, St. Martin Orthodox Church, respectfully request approval of this application.

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

N.W. 1/4 N.E. 1/4 SEC. 23 T. 11S. R. 5W. W.M.

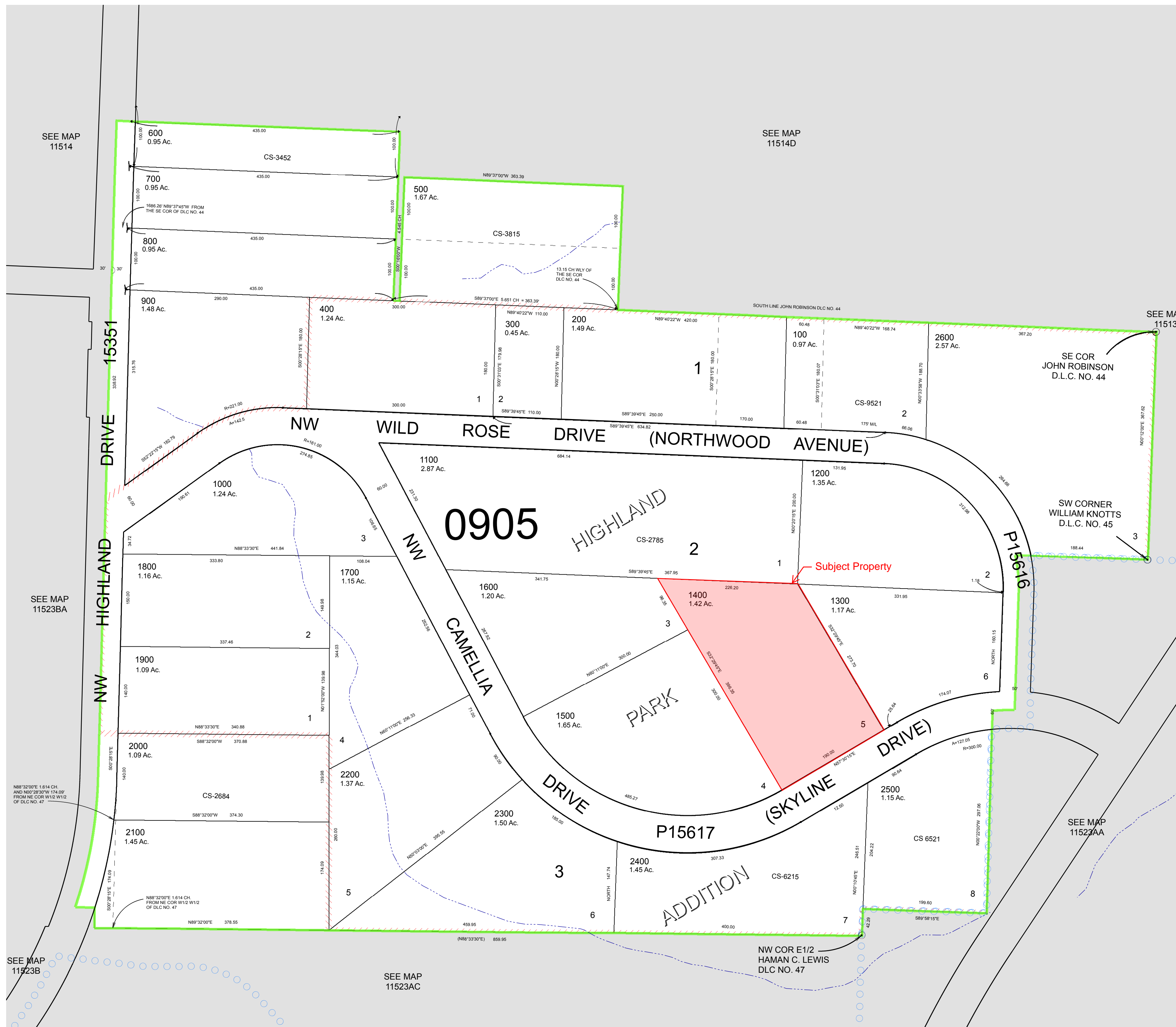


11 5 23AB

7/13/2017
Cancelled Nos.
201
501

BENTON COUNTY

1" = 100'



SEE MAP 11514

SEE MAP 11514D

SEE MAP 11513

SEE MAP 11523BA

SEE MAP 11523AA

SEE MAP 11523B

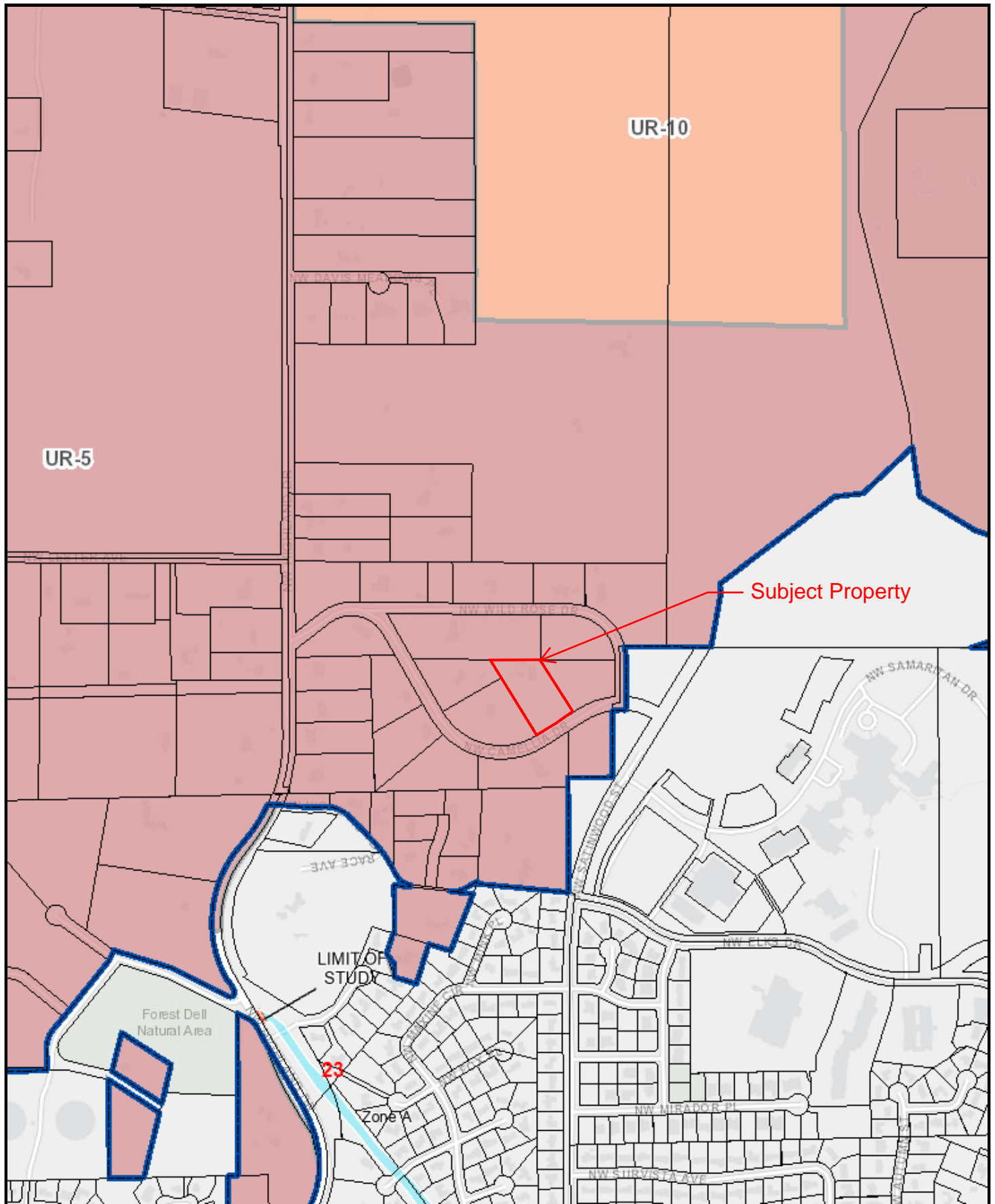
SEE MAP 11523AC

NW COR E1/2
HAMAN C. LEWIS
DLC NO. 47

11 5 23AB

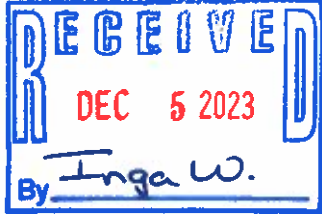
Aerial Photograph





St. Martin Orthodox Church

Conditional Use Permit Application



Revised
Submission

Prepared for:

St. Martin Orthodox Church
C/O Fr. James Baglien
925 NW Camellia Drive
Corvallis, Oregon 97330

Submitted to:

Benton County
Community Development Department
360 SW Avery Avenue
Corvallis, Oregon 97333

Prepared by:



REECE
ENGINEERING & SURVEY

December 5, 2023

St. Martin Orthodox Church

Project Summary

Request:	This application is for a Conditional Use Permit is to bring the existing St. Martin Orthodox Church and proposed improvements to a conformed use. The proposal encompasses improvements outlined in the project description.
Location:	925 NW Camellia Drive Corvallis, Oregon 97330 Benton County Assessor's Map No. 11-5-23AB, Tax Lot 1400
Owner/Applicant:	St. Martin Merciful Church, Inc. C/O Fr. James Baglien 928 NW Camellia Drive Corvallis, Oregon 97330 Email: jbaglien@gmail.com
Engineer/Planner:	Reece Engineering & Survey 321 1 st Avenue Suite 3A Albany OR 97321 541-926-2428 Engineer: David J. Reece, PE Planner: Hayden Wooton dave@reece-eng.com hayden@reece-eng.com

Exhibits

- A – Benton County Assessor's Map
- B – Aerial Photograph
- C – Benton County Zoning Map

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I. Project Description

St. Martin Orthodox Church, owner and applicant, is proposing to construct a 1,367 square-foot addition to their church, add an on-site parsonage (dwelling unit), and expand their parish hall to create more classrooms. To support this expansion, St. Martin Orthodox Church is also proposing to improve existing vehicle parking areas, upgrade the existing septic system, and construct a new stormwater management system. Development of these improvements will occur in three phases. Phase One will consist of supporting infrastructure: stormwater management system, septic system enhancements, and parking area improvements (Visual illustration on Sheet 3.1). Phase Two will be limited to development of the 1,367 square-foot addition (Visual illustration on Sheet 3.2). And finally, construction of the on-site parsonage and parish hall expansion will occur in Phase Three (Visual illustration on Sheet 3.3). The applicant would like to emphasize that improvements discussed in this application are not expected to increase the number of people using these facilities. Attendance has been stable for many years, and these improvements have been designed to better serve the existing church membership.

The 1.42-acre parcel is identified as Benton County Assessor's Map No. 11-5-23AB, Tax Lot 1400 (Exhibit A), or it can be found by its address: 925 NW Camellia Drive, Corvallis, Oregon 97330. While the subject property is within the City of Corvallis' Urban Growth Boundary (UGB), Benton County has jurisdiction and applied the Urban Residential – 5 (UR-5) zoning designation to the subject property.

The proposed development conforms to all applicable sections of the Benton County Development Code (BCDC). This application narrative provides findings of fact that demonstrate conformance with all applicable sections of the above-mentioned governing regulations. Applicable criteria of the BCDC will appear in italics followed by the applicant's responses in regular font.

II. Existing Conditions

St. Martin Orthodox Church was constructed during a five-year period between 1996 and 2001 and held its first service in August 2002. Later, in 2014, a parish hall was constructed to serve the educational and social needs of the church community. In addition to those structures, there is an existing parking area consisting of both gravel and asphalt surfaces. Access is provided via a driveway connection to NW Camellia Drive, a local road that while under Benton County's jurisdiction is maintained by the church and their neighbors. NW Camellia Drive is a gravel roadway located within a 50-foot-wide public right-of-way. In 2019, residents of the surrounding neighborhood and the church took efforts to upgrade the width and surface quality of NW Camellia Drive. Since this project, St. Martin Orthodox Church has served as the neighborhood road coordinator and funds an annual budget for on-going maintenance.

The subject property contains moderate slopes with elevations ranging from 376 feet above mean sea level near the northwest corner to 326 feet by the southeast corner. Established trees are located along the north, south, and west property lines. Additionally, vegetation is clustered in the center of the property just south of existing buildings. Most undeveloped portions of the subject property are covered by maintained lawn.

Adjoining zones and land uses (Exhibit B aerial photograph for and Exhibit C for Benton County zoning map):

North: Developed property containing a single dwelling unit zoned UR-5 by Benton County.

South: NW Camellia Drive. Developed property containing a single dwelling unit zoned UR-5 Benton County.

East: Undeveloped property zoned UR-5 by Benton County.

West: Several developed properties each containing a single dwelling unit zoned UR-5 by Benton County.

III. Conditional Uses

The subject property is zoned UR-5 by Benton County, and the proposed development is classified as a "Church, grange hall, community hall, or other similar non-profit community facility," a use conditionally permitted in this zone per BCDC 64.205(13). This section of the application narrative provides detailed findings of fact in response to the applicable decision criteria set forth in Section 53.215 of the Benton County Development Code.

53.215. *Criteria. The decision to approve a conditional use permit shall be based on findings that:*

- (1) *The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone;*

Response: Adjacent properties are zoned UR-5 by Benton County. As described in Section II of this application narrative, many of these properties contain single-unit dwellings. There are two properties immediately east of the proposed development that are currently under construction and will eventually contain single-unit dwellings.

Compatibility does not require identical appearances or functions, instead it requires the proposed use to exist in harmony with the surrounding built environment. Design elements frequently associated with impacts on surrounding uses are exterior lighting, signage, noise, landscaping, building size and scale, and hours of operation.

Exterior Lighting: The proposed development does not include construction of any exterior lighting.

Signage: The proposed development does not include construction of any signage. There is an existing sign located near the entrance to the property; however, this is a small decorative wooden with minimal visual impact on the surrounding neighborhood.

Noise: All noise generating activities associated with this use will occur inside existing and proposed buildings. These structures will provide adequate noise dampening, so any noise created by use of these buildings will not be noticeable on nearby properties. As previously mentioned, the proposed development is not intended to increase the number of people using the property and buildings; consequently, noises levels post development should be comparable to what currently occurs with use of the property.

Additionally, St. Martin Orthodox Church does not intend to host music events, festivals, or holiday bazaars. As such, there will be no unique events that produce disruptive levels of noise.

Landscaping/Screening: Existing vegetation provides a natural landscape buffer along the north, south, and west property line. The applicant intends to preserve these areas where possible. This mature vegetation will continue to provide a buffer between the subject property and nearby residential dwellings, which will increase the compatibility between these uses.

Building Size and Scale: The proposed buildings will be of an appropriate size and scale to comply with the numerical standards UR-5 zoning district. Beginning with setbacks, a visual demonstration of compliance with the required setbacks is provided on Sheet 3.0 of the attached preliminary plan set.

Property Line	Requirement	Proposed Distance
Front	25 ft.	177 ft.
Side (West)	8 ft.	32 ft.
Side (East)	8 ft.	16 ft.
Rear	25 ft.	25 ft.

Compliance with the setbacks in this zoning district ensures a base level of separation that when paired with the existing vegetation decreases the likelihood for conflicts between the proposed development and nearby dwellings. Building height in the UR – 5 zoning district is governed by BCDC 64.350(7), which states “a structure shall not exceed forty (40) feet in height.” The proposed development does not include a structure that will exceed forty (40) feet in height, and proposed structures will not exceed the height of existing structures.

Hours of Operation: As a religious institution, the primary hours of operation are between 8:00 a.m. and 2:00 p.m. on Sundays. A typical Sunday has approximately forty (40) attendants. At its busiest hours, the proposed use will not operate during noise or light sensitive hours for residential uses. While gatherings could occur on the weekday afternoons, these would be small groups that would generate minimal noise, light, or traffic. Other than these gatherings, the proposed use will operate as a dwelling for the rector. The parsonage would be used in the same manner as any other residential use. Consequently, the proposed use will not alter the character of the neighborhood due to its hours of operation.

St. Martin Orthodox Church has operated on this property, in this neighborhood, for two decades. Consequently, it is presumed that with the proposed development the church could continue to operate without interfering with uses on adjacent properties or impacting the character of the area. Therefore, this criterion is satisfied.

- (2) *The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area; and*

Response: A brief analysis of the relevant utilities is provided below. However, the only public improvement affected by the proposed development is NW Camellia Drive. Water, sanitary sewer, and stormwater infrastructure will all be privately owned and maintained.

Water: There is currently an on-site well that produces approximately seven gallons per minute. This well will continue to serve the proposed development. Additionally, there are two 10,000-gallon water tanks that are intended to support fire suppression efforts. No alterations will be made to this system.

Sanitary Sewer: There is an existing septic system that serves the property. This system will be improved and expanded to serve the proposed additions. The applicant will coordinate with the Benton County sanitarian to permit alterations to this system.

Stormwater: The applicant has provided the location, dimensions, and description of the proposed stormwater management system in the attached Stormwater Drainage Report dated November 6, 2023. This report contains a detailed analysis of pre- and post-construction conditions. Findings and conclusions from the above-mentioned report are included herein by reference.

Transportation: The subject property has frontage on NW Camellia Drive, a local access road. As previously discussed, the proposed use will not generate many trips on an average weekday – it is anticipated an average weekday would generate no more than eight vehicle trips. Many of the anticipated vehicle trips will occur on Sundays between the hours of 8:00 a.m. and 2:00 p.m. However, the proposed development is not anticipated to increase the size of a relatively small congregation. A typical Sunday has approximately forty (40) attendants. This represents about eighty (80) vehicle trips and does not exceed the projected average number of daily trips for NW Camellia Drive's residential local street classification (This is a worst-case scenario. The typical number of vehicle trips is around fifty (50) because members of the congregation often drive together). Since 2019, when residents of this neighborhood began a road improvement project (while NW Camellia Drive is under Benton County's jurisdiction, the residents maintain it), St. Martin Orthodox Church has coordinated with the County and neighbors to improve the street width and surface. The church continues to set aside approximately \$1,000 per year for ongoing maintenance of this street. The applicant's frequent efforts to improve NW Camellia Drive have ensured it is capable of serving the proposed development.

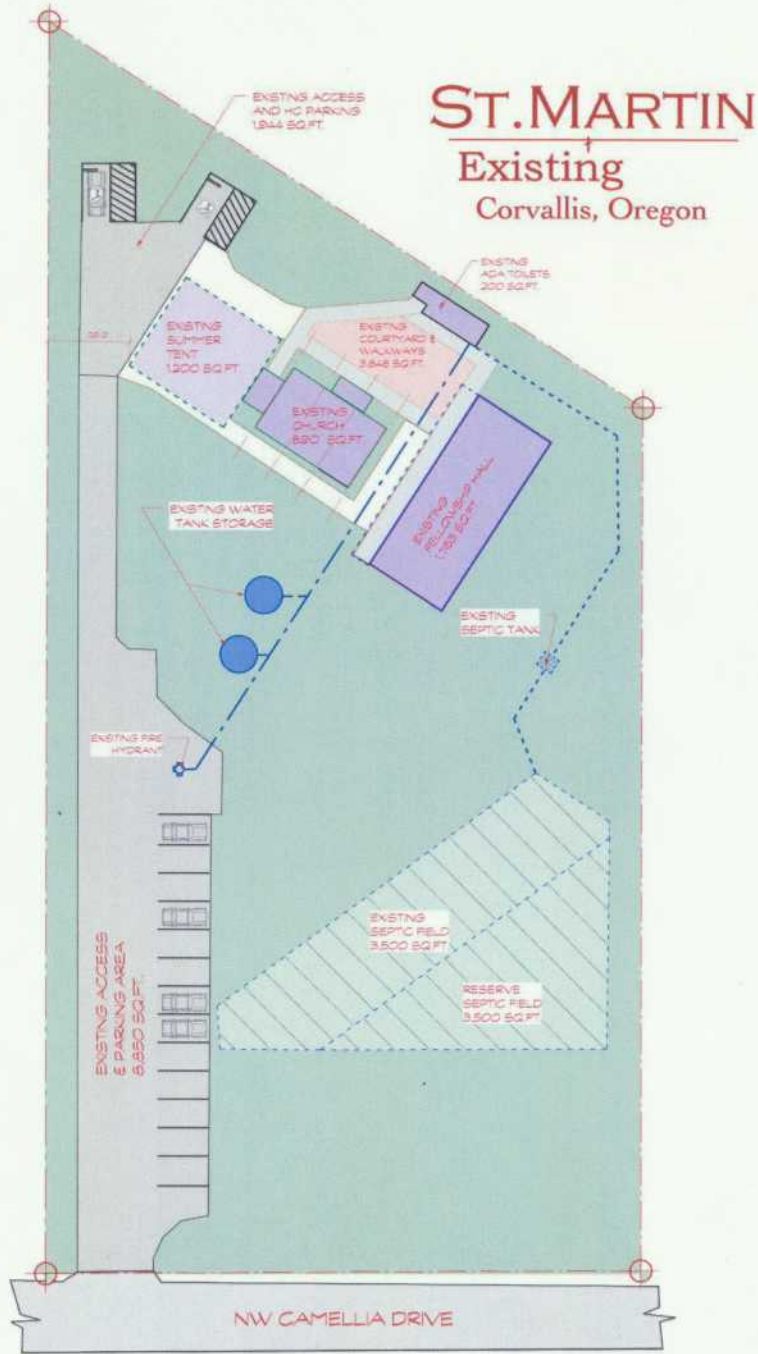
Therefore, the proposed development will not create an undue burden on nearby public improvements.

- (3) *The proposed use complies with any additional criteria which may be required for the specific use by this code.*

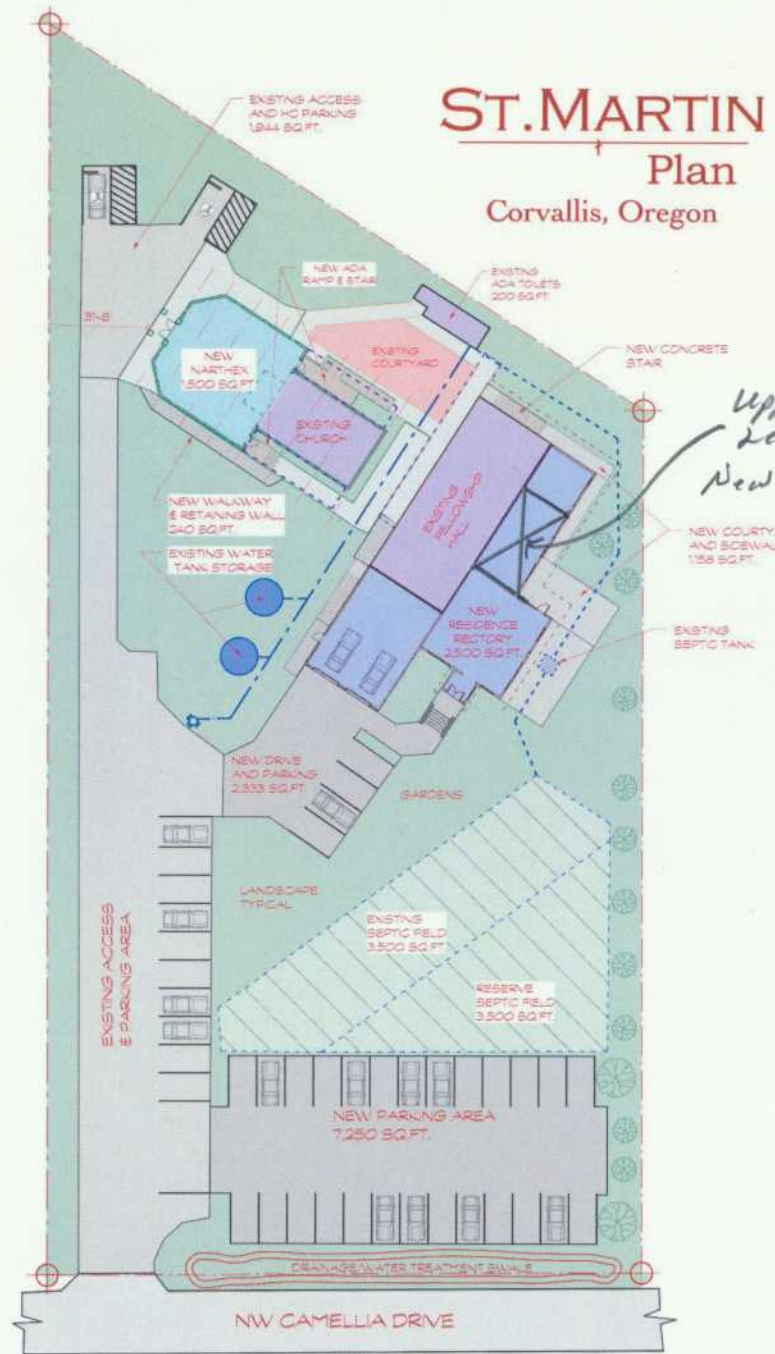
Response: There are no other additional decision criteria associated with this application. The applicant understands that Benton County has the authority to draft conditions of approval regarding the items listed under BCDC 53.220; however, these items have been addressed throughout the application narrative and will not have a negative impact on the surrounding area. Therefore, this criterion is not applicable.

V. Conclusions

This application narrative, accompanying exhibits, and site plan demonstrate that the applicable decision criteria of the Benton County Development Code have been satisfied. Therefore, Reece Engineering and Survey on behalf of the applicant, St. Martin Orthodox Church, respectfully request approval of this application.



2 EXISTING SITE PLAN
A0.1 1" = 20'-0"



1 MASTER SITE PLAN
A0.1 1" = 20'-0"

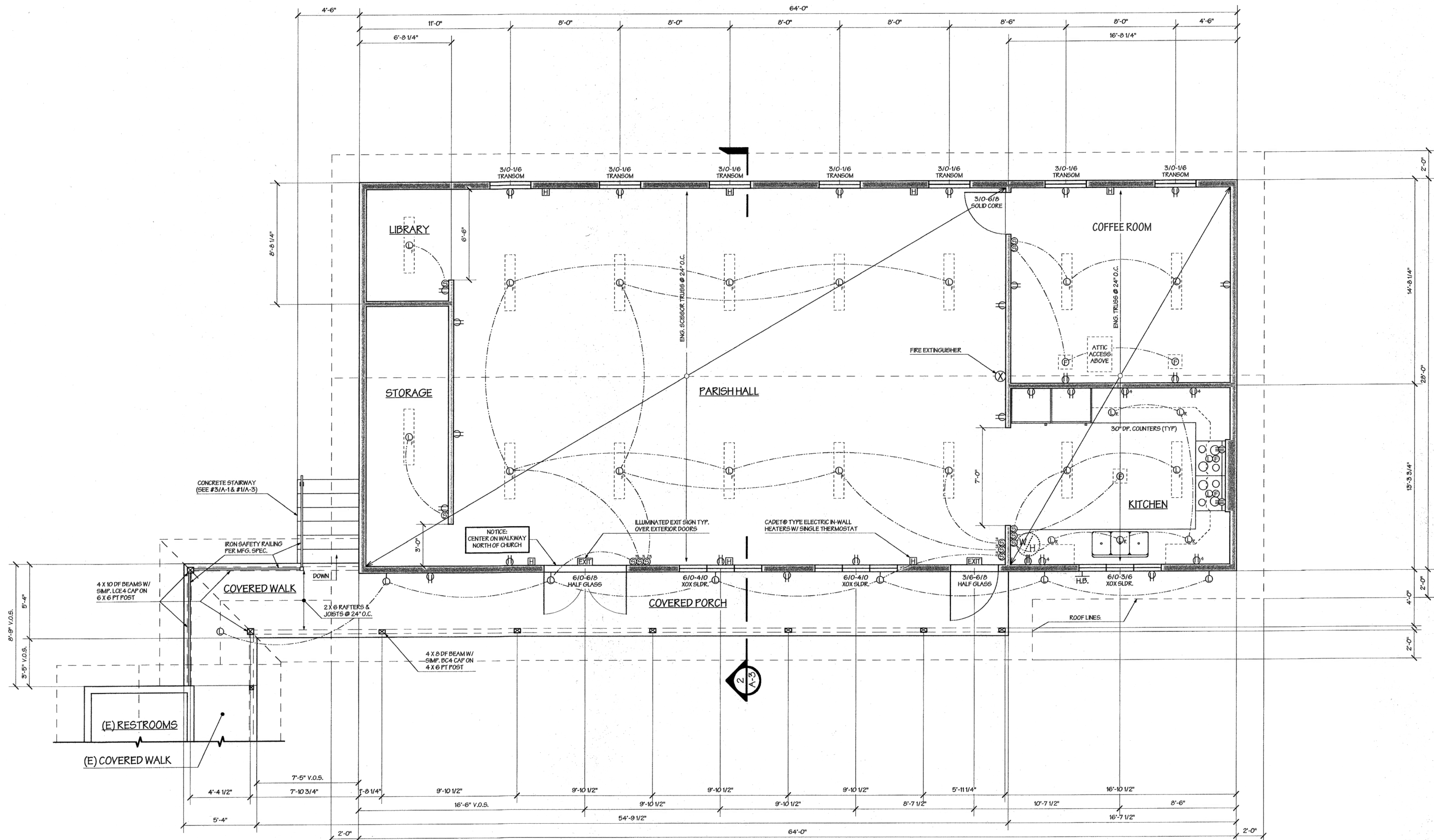


ST. MARTIN
ORTHODOX CHURCH
MASTER PLAN
CORVALLIS, OREGON

MASTER
PLAN

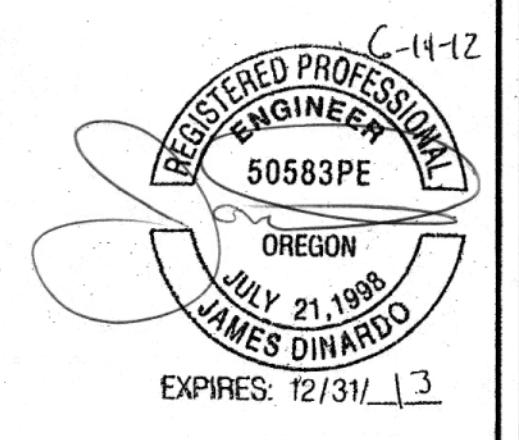


Revisions	By



1
A-2

FLOOR PLAN



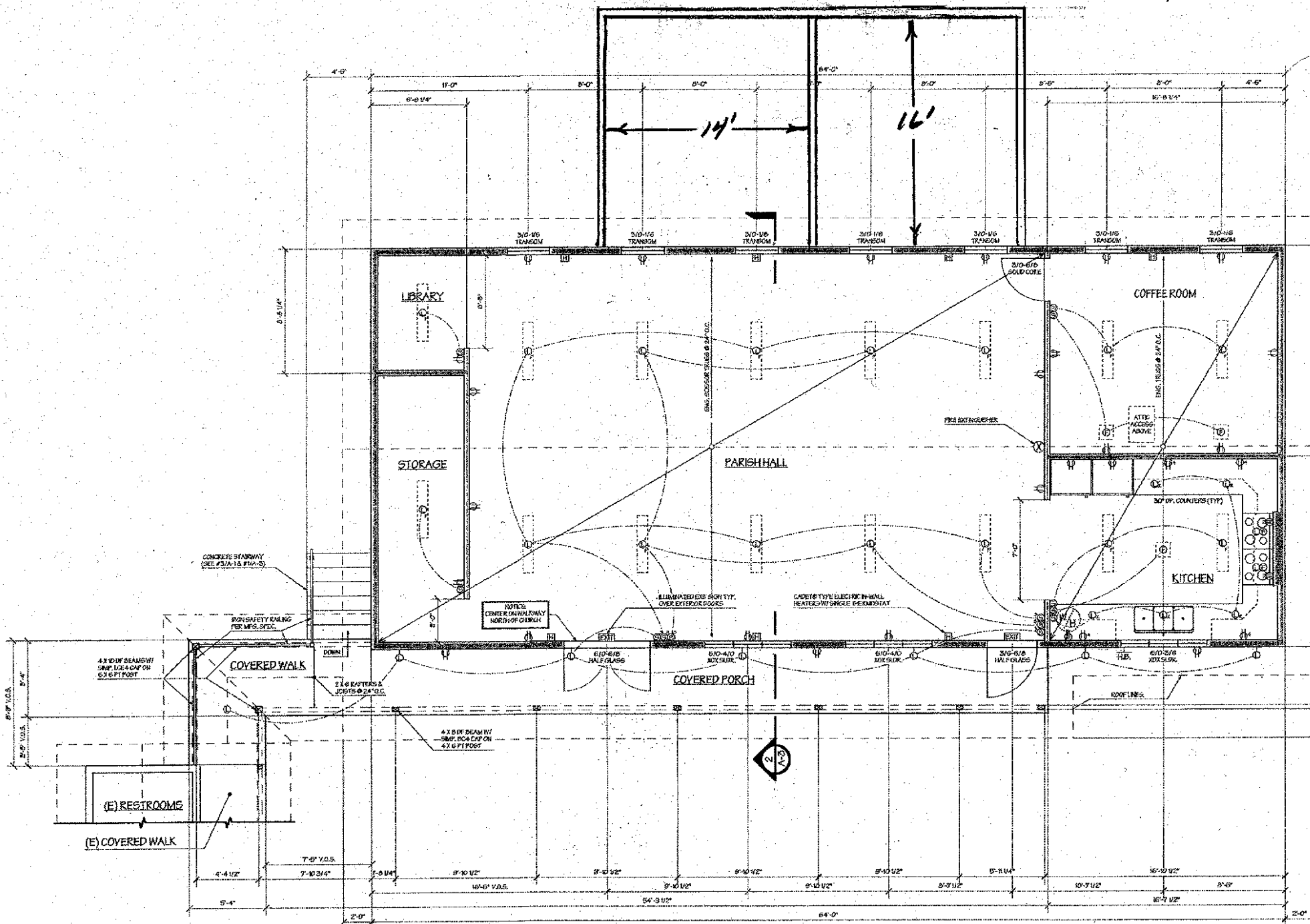
SHEET
FLOOR PLAN

PROJECT
PROPOSED PARISH HALL

PROPERTY OWNER:
ST. MARTIN THE MERCIFUL
ORTHODOX CHRISTIAN CHURCH, INC.
925 NW CAMELLIA DR.
CORVALLIS, OR 97330

Terry F. Johnson
Building Design
(541) 760-6444
P.O. Box 434, Philomath, Oregon 97370

Date: 6-14-12
Scale: 1/4" = 1'-0"
Drawn by: T.F.J.
Job: 383-12
Sheet: A-2
Of 4 Sheets



(1) LAND OWNER Owner Well I.D. _____

First Name _____ Last Name _____
 Company Saint Martin Catholic Church
 Address 925 NW Camellia Dr
 City Corvallis State OR Zip 97330

(2) TYPE OF WORK New Well Deepening Conversion

Alteration (complete 2a & 10) Abandonment (complete 5a)

(2a) PRE-ALTERATION

Casing	Dia	From	To	Gauge	Stl	Plstc	Wld	Thrd
	6"	0'	39'					
Seal								

(3) DRILL METHOD

Rotary Air Rotary Mud Cable Auger Cable Mud
 Reverse Rotary Other _____

(4) PROPOSED USE

Domestic Irrigation Community
 Industrial/ Commercial Livestock Dewatering
 Thermal Injection Other _____

(5) BORE HOLE CONSTRUCTION Special Standard (Attach copy)

Depth of Completed Well 260 ft.

BORE HOLE			SEAL			sacks/lbs	
Dia	From	To	Material	From	To	Amt	lbs
10"	0'	39'	Bentonite	0'	39'	17	SACKS
6"	39'	260'				6	SACKS
						Calculated	

How was seal placed: Method A B C D E
 Other as per OAR 690-210-340 screened
 Backfill placed from _____ ft. to _____ ft. Material 4 1/2" ch.
 Filter pack from _____ ft. to _____ ft. Material _____ Size _____
 Explosives used: Yes Type _____ Amount _____

(5a) ABANDONMENT USING UNHYDRATED BENTONITE

Proposed Amount _____ Pounds Actual Amount _____ Pounds

(6) CASING/LINER

Casing	Liner	Dia	From	To	Gauge	Stl	Plstc	Wld	Thrd
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	6"	0'	39'	250				
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	4"	0'	260'	160				

Shoe Inside Outside Other Location of shoe(s) None

Temp casing Yes Dia _____ From _____ To _____

(7) PERFORATIONS/SCREENS

Perforations Method Stick Saw

Screens Type _____ Material _____

Perforation	Casing/Screen	Dia	From	To	Screen/slot width	Slot length	# of slots	Tele/pipe size
		140'	160'	170'	4"	4"	30	
		240'	260'	260'	4"	4"	60	

(8) WELL TESTS: Minimum testing time is 1 hour

Pump Bailer Air Flowing Artesian

Yield gal/min	Drawdown	Drill stem/Pump depth	Duration (hr)
4 gpm		260'	2 hrs

Temperature 58 °F Lab analysis Yes By _____

Water quality concerns? Yes (describe below) TDS amount 132

From	To	Description	Amount	Units

(9) LOCATION OF WELL (legal description)

County Benton Twp 11S N/S 0 Range 5W E/W WM
 Sec 23 NW 1/4 of the NE 1/4 Tax Lot 1400
 Tax Map Number _____ Lot _____

Lat _____ " or _____ DMS or DD
 Long _____ " or _____ DMS or DD

Street address of well Nearest address

925 NW Camellia Dr Corvallis, OR

(10) STATIC WATER LEVEL

Existing Well / Pre-Alteration	Date	SWL (psi)	+ SWL (ft)
Completed Well	8-14-18		115'

Flowing Artesian? Dry Hole?

WATER BEARING ZONES

Depth water was first found 143'

SWL Date	From	To	Est Flow	SWL (psi)	+ SWL (ft)
8-14-18	143'	145'	4 gpm		115'

(11) WELL LOG

Ground Elevation _____

Material	From	To
Topsoil w/Gravel	0	2
Brown Clay (Sticky)	2	23
Weathered Sand Stone	23	31
Grey Sand Stone (SOSA)	31	34
Grey Sand Stone (MRLD)	34	210
Grey Sand Stone (SOSA)	210	260

Date Started 8-13-18 Completed 8-14-18

(unbonded) Water Well Constructor Certification

I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

License Number _____ Date _____

Signed _____

(bonded) Water Well Constructor Certification

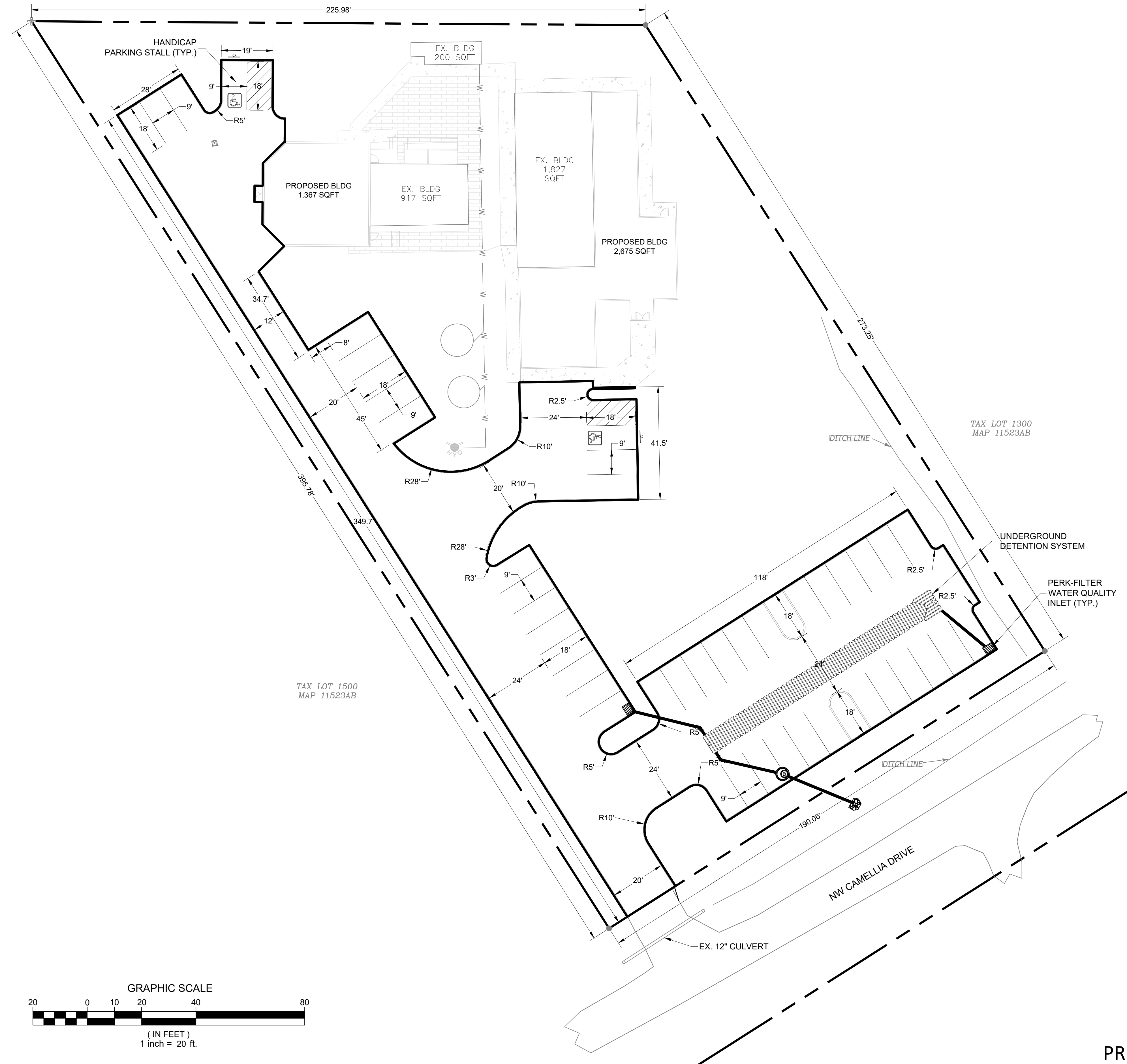
I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

License Number 751 Date 8-14-18

Signed D. Joe Poring

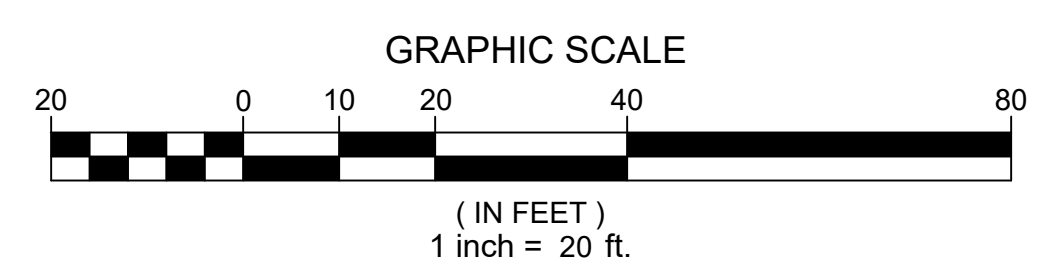
Contact Info (optional) Mid Valley Drilling Inc
541-847-5470 Joe Poring

TAX LOT 1100
MAP 11523AB



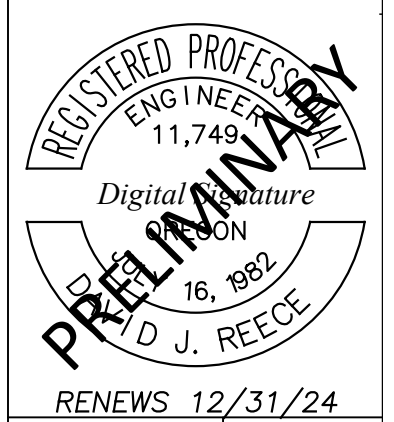
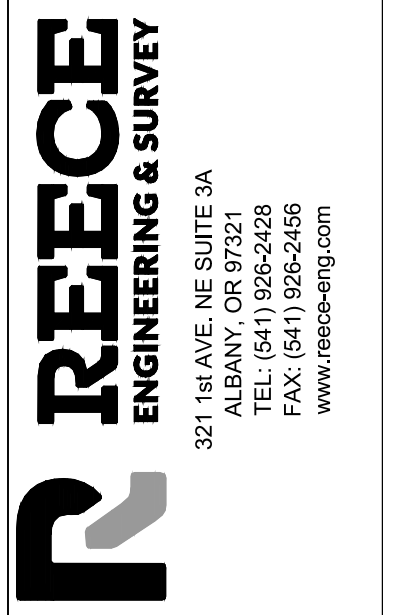
TAX LOT 1500
MAP 11523AB

TAX LOT 1300
MAP 11523AB



SITE PLAN
SCALE: 1" = 20'

PRELIMINARY - NOT FOR CONSTRUCTION



ST. MARTIN NARTHEX
SITE PLAN- PHASE 1
ST. MARTIN THE MERCIFUL ORTHODOX CHRISTIAN CHURCH
CORVALLIS, OREGON

PLAN REVISIONS	DATE	BY

REECE PROJECT NO.
STM2001
DATE 10-04-2023
DESIGNED M. IVEY
ENGINEER D. REECE
CHECKED H. WOOTON
SCALE AS INDICATED

SHEET NUMBER
3.1



Stormwater Management Report

St. Martin Orthodox Church

Corvallis, OR 97330

Reece Project Number: STM2001

Benton County Permit Numbers: TBD

Date: 11/08/2023

I hereby certify that this Stormwater Management Report for this project has been prepared by me or under my supervision and meets the minimum standards of Benton County and normal standards of engineering practice. I hereby acknowledge and agree that the jurisdiction does not and will not assume liability for the sufficiency, suitability, or performance of the drainage facilities designed by me.

Prepared For: _____ Prepared By: _____

St. Martin Orthodox Church
925 NW Corvallis Dr
Corvallis, OR 97330
(541)7380-0600

Reece Engineering & Surveying, LLC
321 1st Ave. East, Suite 3A
Albany, OR 97321
(541)926-2428



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2. [REGULATORY DESIGN STANDARDS](#)
3. [METHODOLOGY](#)
4. [PRECIPITATION](#)
5. [PRE-DEVELOPMENT CONDITIONS](#)
6. [POST-DEVELOPMENT CONDITIONS](#)
7. [WATER QUALITY](#)
8. [CONCLUSION](#)

Plans to Accompany Report

Sheet D1 – Pre-Development Drainage Plan
Sheet D2 – Post-Development Drainage Plan

Exhibit A – USGS Soils Map
Exhibit B – Flogard® Data Sheets

HydroCAD® Report



1- Project Description:

This stormwater drainage report has been prepared for the proposed development of the St. Martin The Merciful Orthodox Christian Church property in Corvallis, Oregon. The subject property totals 1.42 acres and is Tax Lot 1400 on map 11-5-23AB. Located in North Corvallis, the proposed development of the site would include expansion of existing facilities, paving of driveways, and parking spaces, and installation of a storm detention system. Stormwater quality and quantity standards will be met using underground detention, flow control outlet structures, and stormwater-structure filters.

2- Regulatory Design Standards:

Benton County Development Code 99.670 - Long-Term Stormwater Management - Subsection 5 states:

***Stormwater Management Design Criteria.** When required by subsection (3) of this section, the applicant shall implement stormwater management measures as specified in the “Benton County Stormwater Management Guide”, as interpreted by the County Engineer. Within the urban growth boundary of an incorporated city, structural and non-structural requirements will be consistent with the current standards of the pertinent city.*

Since St. Martin Orthodox Church falls within the urban growth boundary of The City of Corvallis, requirements will be consistent with the current standards of The City of Corvallis.

The City of Corvallis requires that stormwater quantity and quality measures be designed in compliance with the *Stormwater Design Standards*. The purpose of these design standards includes, but is not limited to:

- Meet federal and state National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) permit requirements for post-construction stormwater management.
- Minimize the introduction of pollutants and provide water quality treatment of stormwater runoff to preserve the beneficial uses of drainageways, lakes, ponds, wetlands, and other sensitive areas.
- Minimize common effects of urbanization on drainageways and conveyance channels including sediment transport, erosion, and degradation.
- Provide for orderly development by preserving the drainageways and natural conveyance systems created by the existing topography and creating man-made conveyance systems with adequate capacity for future development upstream.

Per the above stated code, proposed detention systems must attenuate post-development runoff rates to the pre-developed rates for the 2-Year, 5-Year, and 10-Year rainfall events. In addition, detention facilities shall be sized to safely pass, without damage to the facility, flows up to the 100-Year, 24-Hour storm event.



3- Methodology:

Stormwater values calculated in this report were determined using HydroCAD®, a computer aided design software used for modeling stormwater runoff and the procedures outlined in (TR-55), Urban Hydrology for Small Watersheds, from the United States Department of Agriculture. This method relies on data gathered from the USDA Soil Conservation Service and standard hydraulics equations. The peak discharges were found using the SCS method, based on the standard Type 1A rainfall distribution for all storm events. Peak 24-Hour rainfall events for the City of Corvallis were taken from Table 3-2 in the *Stormwater Design Standards*.

4- Precipitation:

The design storm events used in this analysis are the Water Quality storm, 2-year, 5-year and 10-year recurrence intervals. All 24-hour design storm quantities for each event are distributed over the NRCS Type 1A rainfall distribution. **Table 1** below lists the 24-Hour rainfall design storms for each recurrence interval as used by the City of Corvallis.

Table 1: City of Corvallis Design Storms

Storm Event	Inches in 24-hrs
2-year	2.55
5-year	2.91
10-year	3.64
100-year	4.73

5- Pre-Development Drainage: (refer to D1: *Pre-development Drainage*)

The pre-development drainage calculations were performed assuming a Curve Number (CN) of 78, and a Time of Concentration (Tc) was found to be 13.2 minutes. This Tc value was based on existing conditions which includes gravel, structures, and wood/grass combination areas.

Soil information for the site was taken from the online version of the United States Department of Agriculture (USDA) web soil survey.¹ Soils on the site consist almost entirely of Santiam Silt Loam, which is classified as a Hydrologic Soil Group type “C/D”. This soil is classified as being moderately well drained, and an HSG of “C” was used for this stormwater analysis.

6- Post-Development Drainage: (refer to D2: *Post-development Drainage*)

The post development drainage calculations were performed assuming the CN increased to 85, and a new Tc of 2.1 minutes was determined based on increased structural and paved surface areas. Underground detention is proposed for this site, in the form of a 54” storage pipe under the southernmost parking lot, adjacent to Camellia Drive. Runoff will be directed to the storage pipe through grading and parking lot catch basins.

¹ <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>



Table 2 below provides the pre- and post-development runoff rates for the site, as well as the runoff rates as the water leaves the detention facility through a flow control outlet structure.

Post-development rates for the 2-, 5-, and 10-year storms have all been attenuated to the pre-development rates per City of Corvallis design standards.

Table 2: HydroCAD® Nodes Summary

Node	Area (Ac.)	CN	Q _{2-Year} (cfs)	Q _{5-Year} (cfs)	Q _{10-Year} (cfs)	Q _{100-Year} (cfs)
Pre-Development (1S)	1.42	78	0.21	0.30	0.50	0.83
Post-Development (2S)	1.42	85	0.40	0.52	0.76	1.14
Pond (1P)	n/a	n/a	0.21	0.24	0.47	0.90
Post-Total (cfs)	n/a	n/a	0.21	0.24	0.47	0.90

7- Water Quality:

Water quality standards will be met using two catch basin filters on site. The standard depth Flogard® filters for the G2 catch basins (24" x 24") allow for up to 1.5 cubic feet per second of filtered flow (see Exhibit B – Flogard® Data Sheets). Post-development rates for the 100-year storm do not exceed 1.5 cubic feet per second, therefore the Flogard® filters will provide adequate treatment of the stormwater runoff for all required storms.

8- Conclusion:

Using catch basins fitted with Flogard® filters, and an underground detention system fitted with a flow control outlet structure, it can be concluded that the stormwater runoff from the proposed developments for the St. Martin The Merciful Orthodox Christian Church will be effectively treated, detained, and subsequently released to meet City of Corvallis standards. Water quantity runoff will be managed using an underground detention system and associated flow control outlet structure. Water quality will be managed using Flogard® filters at the parking lot catch basins.

Plans to Accompany Report

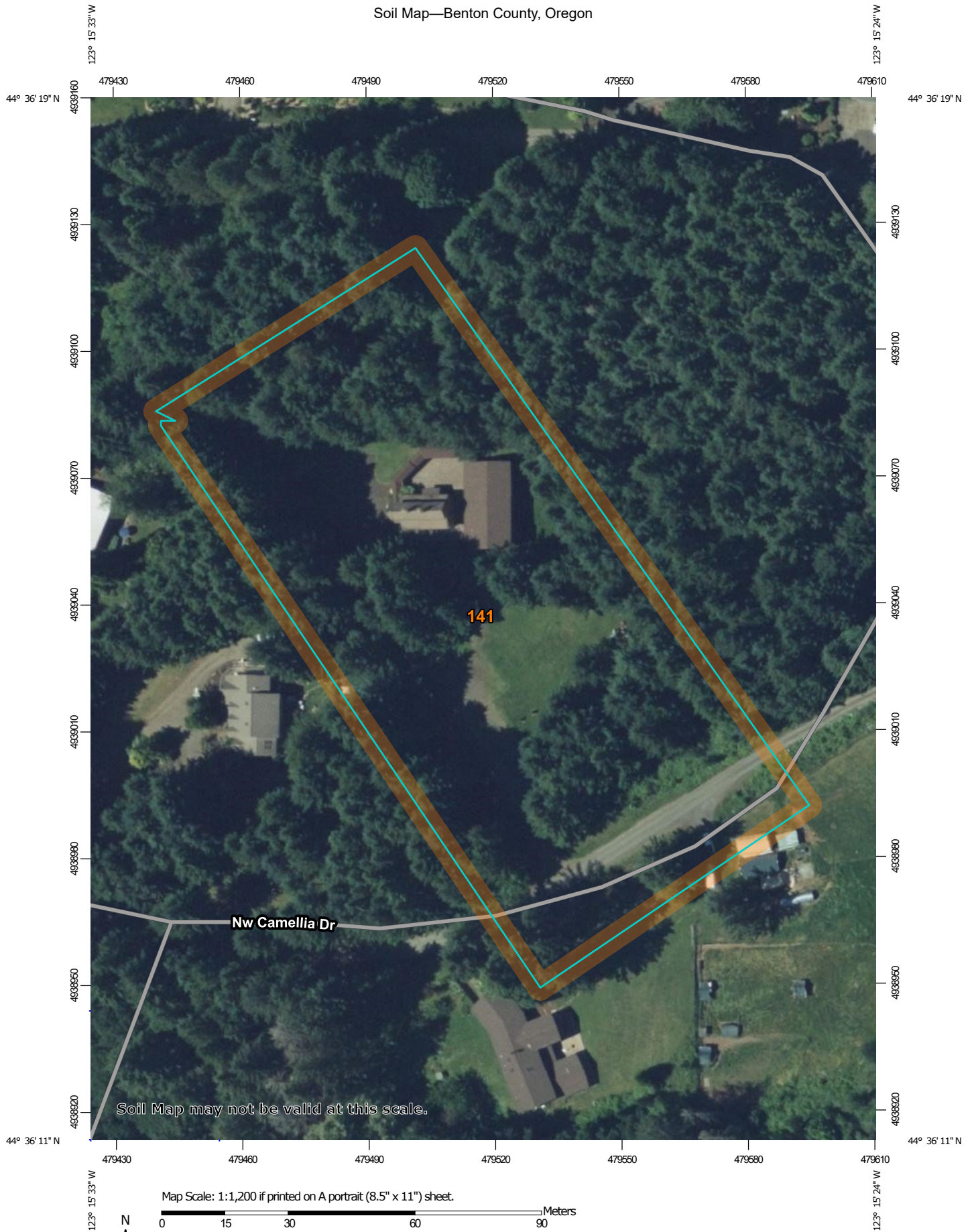
- Sheet D1 – Pre-Development Drainage Plan
- Sheet D2 – Post-Development Drainage Plan

- Exhibit A – USGS Soils Map
- Exhibit B – Flogard® Data Sheets

HydroCAD® Report


EXHIBIT A - USGS SOILS MAP

Soil Map—Benton County, Oregon



MAP LEGEND

Area of Interest (AOI)

 Area of Interest (AOI)




















Soils




 Soil Map Unit Polygons

 Soil Map Unit Lines

 Soil Map Unit Points

Special Point Features






-  Blowout
-  Borrow Pit
-  Clay Spot
-  Closed Depression
-  Gravel Pit
-  Gravelly Spot
-  Landfill
-  Lava Flow
-  Marsh or swamp
-  Mine or Quarry
-  Miscellaneous Water
-  Perennial Water
-  Rock Outcrop
-  Saline Spot
-  Sandy Spot
-  Severely Eroded Spot
-  Sinkhole
-  Slide or Slip
-  Sodic Spot

-  Spoil Area
-  Stony Spot
-  Very Stony Spot
-  Wet Spot
-  Other
-  Special Line Features

Water Features

 Streams and Canals

Transportation

-  Rails
-  Interstate Highways
-  US Routes
-  Major Roads
-  Local Roads

Background

 Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
 Web Soil Survey URL:
 Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Benton County, Oregon
 Survey Area Data: Version 18, Jun 11, 2020

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: May 23, 2020—May 28, 2020

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
141 HSG "C"	Santiam silt loam, 8 to 20 percent slopes	3.0	100.0%
Totals for Area of Interest		3.0	100.0%



STORM WATER FILTER

FLOGARD®

Catch Basin Insert Filter

Catch basin insert designed to capture sediment, gross solids, trash and petroleum hydrocarbons from low ("first flush") flows, even during the most extreme weather conditions

Example Types, Sizes and Capacities: Additional sizes, including regional and custom options are available.

FloGard Combination Inlet SPECIFIER CHART								
MODEL NO.	STANDARD & SHALLOW DEPTH (Data in these columns is the same for both STANDARD & SHALLOW versions)			STANDARD DEPTH -20 Inches-		MODEL NO.	SHALLOW DEPTH -12 Inches-	
	STANDARD DEPTH	INLET ID Inside Dimension (inch x inch)	GRADE OD Outside Dimension (inch x inch)	TOTAL BYPASS CAPACITY (cu. ft. / sec.)	SOLIDS STORAGE CAPACITY (cu. ft.)		FILTERED FLOW (cu. ft. / sec.)	SHALLOW DEPTH
FGP-1633FGO	16 X 33	18 X 36	7.0	2.5	1.7	FGP-1633FGO8	1.4	1.1
FGP-1836FGO	18 X 36	18 X 40	6.9	2.3	1.6	FGP-1836FGO8	1.3	.9
FGP-2234FGO	22 X 34	24 X 36	8.1	3.6	2.1	FGP-2234FGO8	2.1	1.4
FGP-2436FGO	24 X 36	24 X 40	8.0	3.4	2.0	FGP-2436FGO8	1.95	1.15

FloGard Flat Grated Inlet SPECIFIER CHART								
MODEL NO.	STANDARD & SHALLOW DEPTH (Data in these columns is the same for both STANDARD & SHALLOW versions)			STANDARD DEPTH -20 Inches-		MODEL NO.	SHALLOW DEPTH -12 Inches-	
	STANDARD DEPTH	INLET ID Inside Dimension (inch x inch)	GRADE OD Outside Dimension (inch x inch)	TOTAL BYPASS CAPACITY (cu. ft. / sec.)	SOLIDS STORAGE CAPACITY (cu. ft.)		FILTERED FLOW (cu. ft. / sec.)	SHALLOW DEPTH
FGP-12F	12 X 12	12 X 14	2.8	0.3	0.4	FGP-12F8	.15	.25
FGP-16F	16 X 16	16 X 19	4.7	0.8	0.7	FGP-16F8	.45	.4
FGP-18F	18 X 18	18 X 20	4.7	0.8	0.7	FGP-18F8	.45	.4
FGP-1836F	18 X 36	18 X 40	6.9	2.3	1.6	FGP-1836F8	1.3	.9
FGP-21F	22 X 22	22 X 24	6.1	2.2	1.5	FGP-21F8	1.25	.85
FGP-24F	24 X 24	24 X 27	6.1	2.2	1.5	FGP-24F8	1.25	.85
FGP-2436F	24 X 36	24 X 40	8.0	3.4	2.0	FGP-2436F8	1.95	1.15
FGP-2448F	24 X 48	24 X 48	9.3	4.4	2.4	FGP-2448F8	2.5	1.35
FGP-32F-TN	28 X 28	32 X 32	6.3	2.2	1.5	FGP-32F8-TN	1.25	.85
FGP-30F	30 X 30	30 X 34	8.1	3.6	2.0	FGP-30F8	2.05	1.15
FGP-36F	36 X 36	36 X 40	9.1	4.6	2.4	FGP-36F8	2.65	1.35
FGP-3648F	36 X 48	40 X 48	11.5	6.8	3.2	FGP-3648F8	3.9	1.85
FGP-48F	48 X 48	48 X 54	13.2	9.5	3.9	FGP-48F8	5.45	2.25
FGP-1633F	16 X 34	18 X 36	6.9	2.3	1.6	FGP-1633F8	1.3	.9
FGP-2234F	22 X 34	24 X 36	8.0	3.4	2.0	FGP-2234F8	1.95	1.15

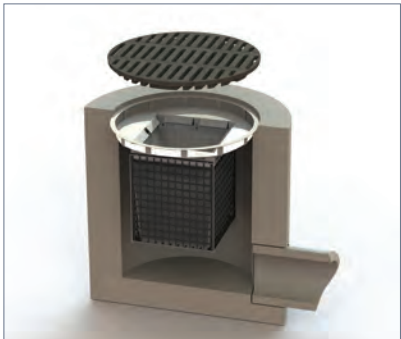
FloGard Circular Grated Inlet SPECIFIER CHART					
MODEL NUMBER	INLET ID (inches)	GRADE OD (inches)	SOLIDS STORAGE CAPACITY (CU FT)	FILTERED FLOW (CSF)	TOTAL BYPASS CAPACITY (CFS)
FGP-RF15F	15	18	0.3	0.4	2.8
FGP-RF18F	18	20	0.8	0.7	4.7
FGP-RF20F	20	23	0.8	0.7	4.7
FGP-RF21F	21	23.5	0.8	0.7	4.7
FGP-RF22F	22	24	0.8	0.7	4.7
FGP-RF24F	24	26	0.8	0.7	4.7
FGP-RF30F	30	32	2.2	1.5	6.1
FGP-RF36F	36	39	3.6	2.0	8.1



Combination Inlet



Flat-Grated Inlet



Circular Frame Inlet

Multi-Purpose Catch Basin Insert Retains Sediment, Debris, Trash and Oils/Grease

FloGard® catch basin insert filters are recommended for areas subject to silt and debris as well as low-to-moderate levels of petroleum hydrocarbons (oils and grease). Examples of such areas include vehicle parking lots, aircraft ramps, truck and bus storage yards, business parks, residential and public streets.

CATCH BASIN FILTER COMPETITIVE FEATURE COMPARISON		
Evaluation of Catch Basin Filters (Based on flow-comparable units) (Scale 1-10)	Oldcastle	Other Insert Filter Types**
Flow Rate	10	7
Removal Efficiency*	80%	45%
Capacity - Sludge & Oil	7	7
Service Life	10	3
Installation - Ease of Handling / Installation	8	6
Ease of Inspections & Maintenance	7	7
Value	10	2

*Approximate, based on field sediment removal testing in urban street application

**Average

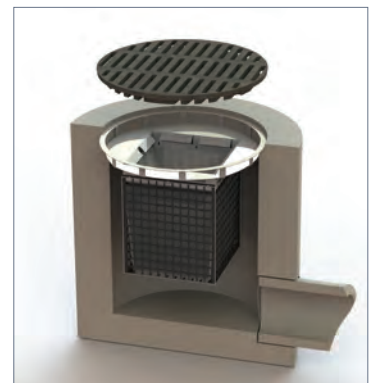
Long-Term Value Comparison (Based on flow-comparable units) (Scale 1-10)	Oldcastle	Other Insert Filter Types**
Unit Value - Initial (\$/cfs treated)	10	4
Installation Value (\$/cfs treated)	10	7
Absorbent Replacement (annual avg (\$/cfs treated))	10	2
Materials Replacement Value (annual avg (\$/cfs treated))	10	10
Maintenance Value (annual avg (\$/cfs treated))	10	7
Total First Year ROI (\$/cfs treated)	10	5
Total Annual Avg Value (\$/cfs treated, avg over 20 yrs)*	10	5



Combination Inlet



Flat-Grated Inlet



Circular Frame Inlet

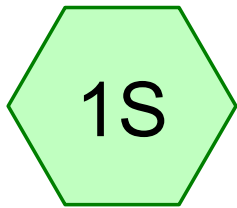


Captured debris from FloGard catch basin insert filter in Dana Point, California.

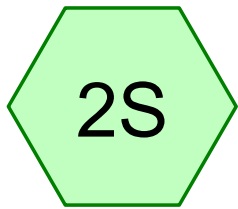


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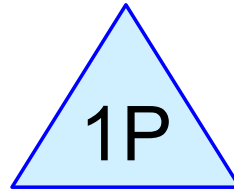
oldcastleinfrastructure.com



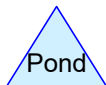
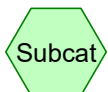
Pre-Development



Post-Eastern Side



Detention Facility



Routing Diagram for STM2001
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STM2001

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Rainfall Events Listing

Event#	Event Name	Storm Type	Curve	Mode	Duration (hours)	B/B	Depth (inches)	AMC
1	2-year	Type IA 24-hr		Default	24.00	1	2.55	2
2	5-Year	Type IA 24-hr		Default	24.00	1	2.91	2
3	10-Year	Type IA 24-hr		Default	24.00	1	3.64	2
4	100-year	Type IA 24-hr		Default	24.00	1	4.73	2
5	Water Quality	Type IA 24-hr		Default	24.00	1	1.60	2

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Area Listing (all nodes)

Area (acres)	CN	Description (subcatchment-numbers)
0.150	89	Gravel roads, HSG C (1S)
0.551	98	Paved (2S)
0.172	98	Paving (1S)
0.063	98	Roof (1S)
0.178	98	Roofs (2S)
1.726	72	Woods/grass comb., Good, HSG C (1S, 2S)
2.840	82	TOTAL AREA

STM2001

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Soil Listing (all nodes)

Area (acres)	Soil Group	Subcatchment Numbers
0.000	HSG A	
0.000	HSG B	
1.876	HSG C	1S, 2S
0.000	HSG D	
0.964	Other	1S, 2S
2.840		TOTAL AREA

STM2001

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Ground Covers (all nodes)

HSG-A (acres)	HSG-B (acres)	HSG-C (acres)	HSG-D (acres)	Other (acres)	Total (acres)	Ground Cover	Subcatchment Numbers
0.000	0.000	0.150	0.000	0.000	0.150	Gravel roads	1S
0.000	0.000	0.000	0.000	0.551	0.551	Paved	2S
0.000	0.000	0.000	0.000	0.172	0.172	Paving	1S
0.000	0.000	0.000	0.000	0.063	0.063	Roof	1S
0.000	0.000	0.000	0.000	0.178	0.178	Roofs	2S
0.000	0.000	1.726	0.000	0.000	1.726	Woods/grass comb., Good	1S, 2S
0.000	0.000	1.876	0.000	0.964	2.840	TOTAL AREA	

STM2001

Type IA 24-hr 2-year Rainfall=2.55"

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Time span=0.00-60.00 hrs, dt=0.01 hrs, 6001 points
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN
Reach routing by Stor-Ind+Trans method - Pond routing by Stor-Ind method

Subcatchment1S: Pre-Development

Runoff Area=1.420 ac 16.55% Impervious Runoff Depth=0.82"
Flow Length=355' Tc=13.2 min CN=78 Runoff=0.21 cfs 0.097 af

Subcatchment2S: Post-Eastern Side

Runoff Area=1.420 ac 51.34% Impervious Runoff Depth=1.22"
Flow Length=275' Slope=0.0900 '/' Tc=2.1 min CN=85 Runoff=0.40 cfs 0.144 af

Pond 1P: Detention Facility

Peak Elev=333.92' Storage=445 cf Inflow=0.40 cfs 0.144 af
Outflow=0.21 cfs 0.144 af

Total Runoff Area = 2.840 ac Runoff Volume = 0.241 af Average Runoff Depth = 1.02"
66.06% Pervious = 1.876 ac 33.94% Impervious = 0.964 ac

Summary for Subcatchment 1S: Pre-Development

Drainage area for entire Project Area 9.35 acre, prior to any development.

Runoff = 0.21 cfs @ 8.08 hrs, Volume= 0.097 af, Depth= 0.82"
 Routed to nonexistent node Pre

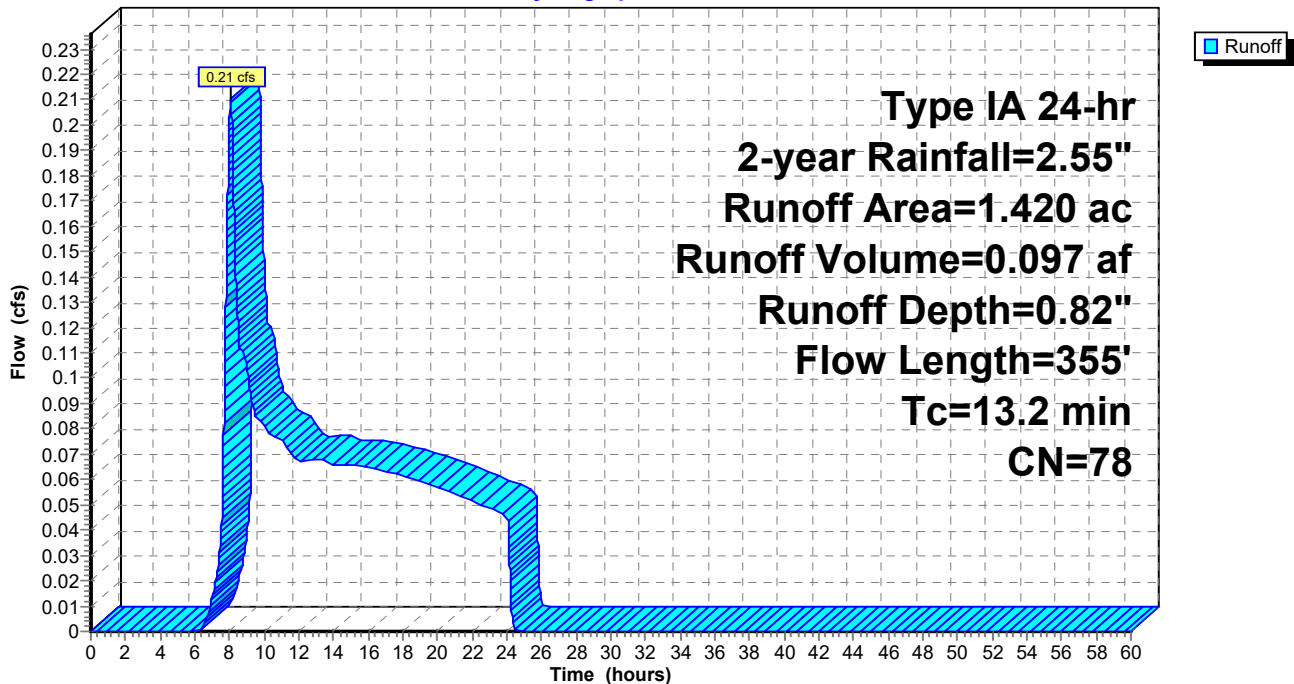
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Type IA 24-hr 2-year Rainfall=2.55"

Area (ac)	CN	Description
* 0.063	98	Roof
* 0.172	98	Paving
0.150	89	Gravel roads, HSG C
1.035	72	Woods/grass comb., Good, HSG C
1.420	78	Weighted Average
1.185	74	83.45% Pervious Area
0.235	98	16.55% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
0.8	70	0.0600	1.38		Sheet Flow, Existing Pave n= 0.015 P2= 2.55"
12.4	285	0.0900	0.38		Sheet Flow, Exist Woods Range n= 0.130 P2= 2.55"
13.2	355	Total			

Subcatchment 1S: Pre-Development

Hydrograph



Summary for Subcatchment 2S: Post-Eastern Side

Existing East Side Developed Area

Runoff = 0.40 cfs @ 7.93 hrs, Volume= 0.144 af, Depth= 1.22"
 Routed to Pond 1P : Detention Facility

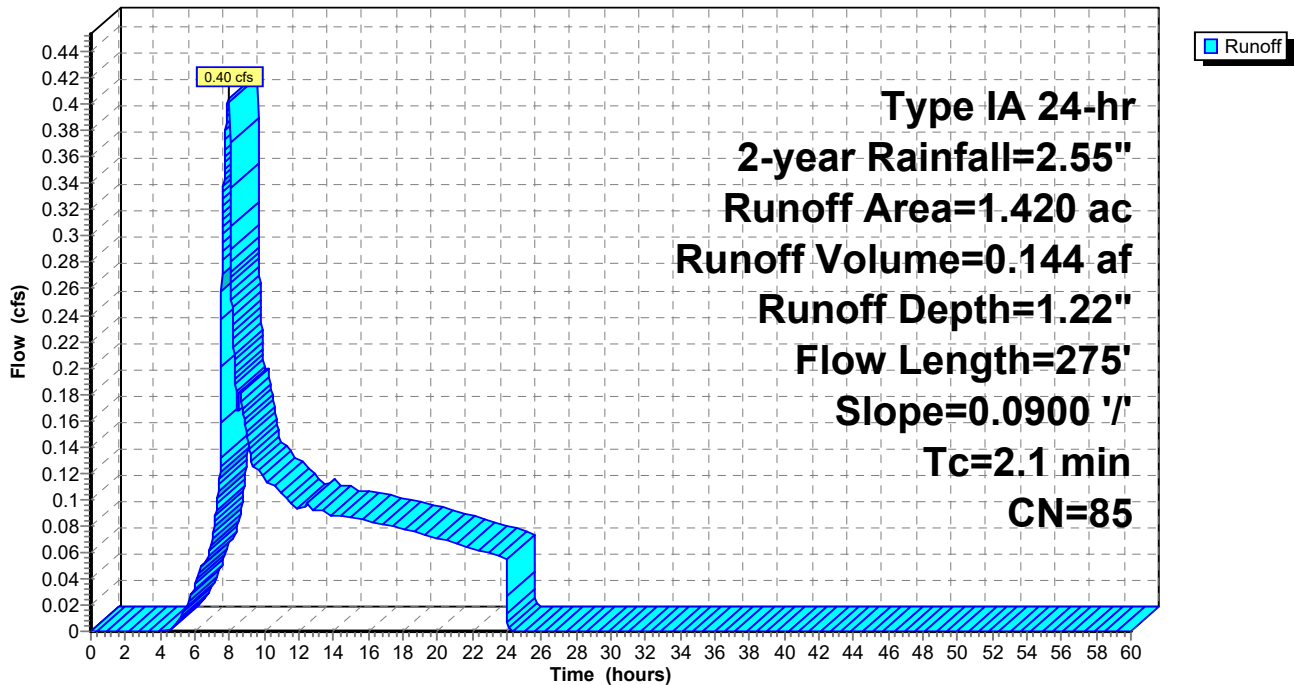
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Type IA 24-hr 2-year Rainfall=2.55"

Area (ac)	CN	Description
* 0.178	98	Roofs
* 0.551	98	Paved
0.691	72	Woods/grass comb., Good, HSG C
1.420	85	Weighted Average
0.691	72	48.66% Pervious Area
0.729	98	51.34% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.1	275	0.0900	2.14		Sheet Flow, New Drive Flow n= 0.015 P2= 2.55"

Subcatchment 2S: Post-Eastern Side

Hydrograph



Summary for Pond 1P: Detention Facility

Underground Detention Facility w/Chambers

Inflow Area = 1.420 ac, 51.34% Impervious, Inflow Depth = 1.22" for 2-year event
 Inflow = 0.40 cfs @ 7.93 hrs, Volume= 0.144 af
 Outflow = 0.21 cfs @ 8.28 hrs, Volume= 0.144 af, Atten= 49%, Lag= 21.5 min
 Primary = 0.21 cfs @ 8.28 hrs, Volume= 0.144 af
 Routed to nonexistent node 1R

Routing by Stor-Ind method, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Peak Elev= 333.92' @ 8.28 hrs Surf.Area= 420 sf Storage= 445 cf

Plug-Flow detention time= 11.8 min calculated for 0.144 af (100% of inflow)
 Center-of-Mass det. time= 11.8 min (816.1 - 804.4)

Volume	Invert	Avail.Storage	Storage Description
#1	332.22'	1,590 cf	54.0" Round 54" Pipe Storage L= 100.0' S= 0.0050 '/

Device	Routing	Invert	Outlet Devices
#1	Primary	332.22'	12.0" Vert. 12" Outlet to Existing C= 0.600 Limited to weir flow at low heads
#2	Device 1	332.25'	2.5" Vert. 2.5" Control C= 0.600 Limited to weir flow at low heads
#3	Device 1	335.00'	4.5" Vert. 4.5" Overflow C= 0.600 Limited to weir flow at low heads

Primary OutFlow Max=0.21 cfs @ 8.28 hrs HW=333.92' (Free Discharge)

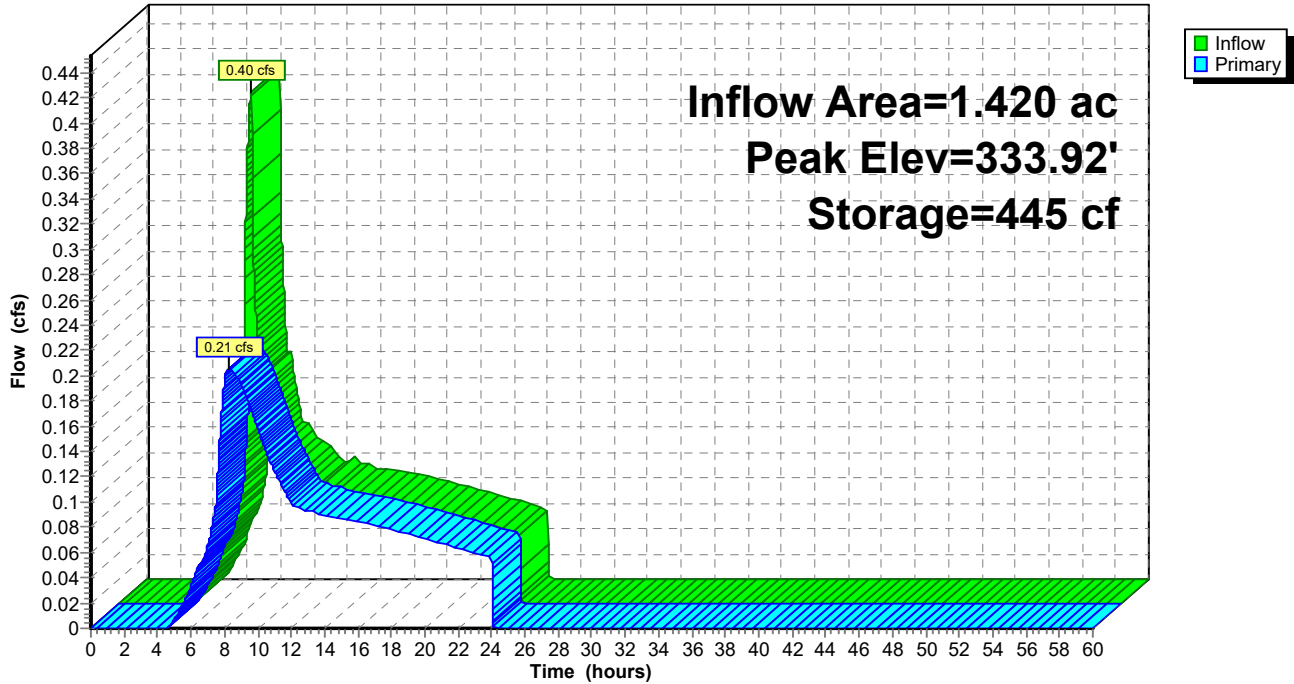
1=12" Outlet to Existing (Passes 0.21 cfs of 4.15 cfs potential flow)

2=2.5" Control (Orifice Controls 0.21 cfs @ 6.03 fps)

3=4.5" Overflow (Controls 0.00 cfs)

Pond 1P: Detention Facility

Hydrograph



STM2001

Type IA 24-hr 5-Year Rainfall=2.91"

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Time span=0.00-60.00 hrs, dt=0.01 hrs, 6001 points
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN
Reach routing by Stor-Ind+Trans method - Pond routing by Stor-Ind method

Subcatchment1S: Pre-Development

Runoff Area=1.420 ac 16.55% Impervious Runoff Depth=1.07"
Flow Length=355' Tc=13.2 min CN=78 Runoff=0.30 cfs 0.126 af

Subcatchment2S: Post-Eastern Side

Runoff Area=1.420 ac 51.34% Impervious Runoff Depth=1.51"
Flow Length=275' Slope=0.0900 '/' Tc=2.1 min CN=85 Runoff=0.52 cfs 0.179 af

Pond 1P: Detention Facility

Peak Elev=334.44' Storage=670 cf Inflow=0.52 cfs 0.179 af
Outflow=0.24 cfs 0.179 af

Total Runoff Area = 2.840 ac Runoff Volume = 0.305 af Average Runoff Depth = 1.29"
66.06% Pervious = 1.876 ac 33.94% Impervious = 0.964 ac

Summary for Subcatchment 1S: Pre-Development

Drainage area for entire Project Area 9.35 acre, prior to any development.

Runoff = 0.30 cfs @ 8.07 hrs, Volume= 0.126 af, Depth= 1.07"
 Routed to nonexistent node Pre

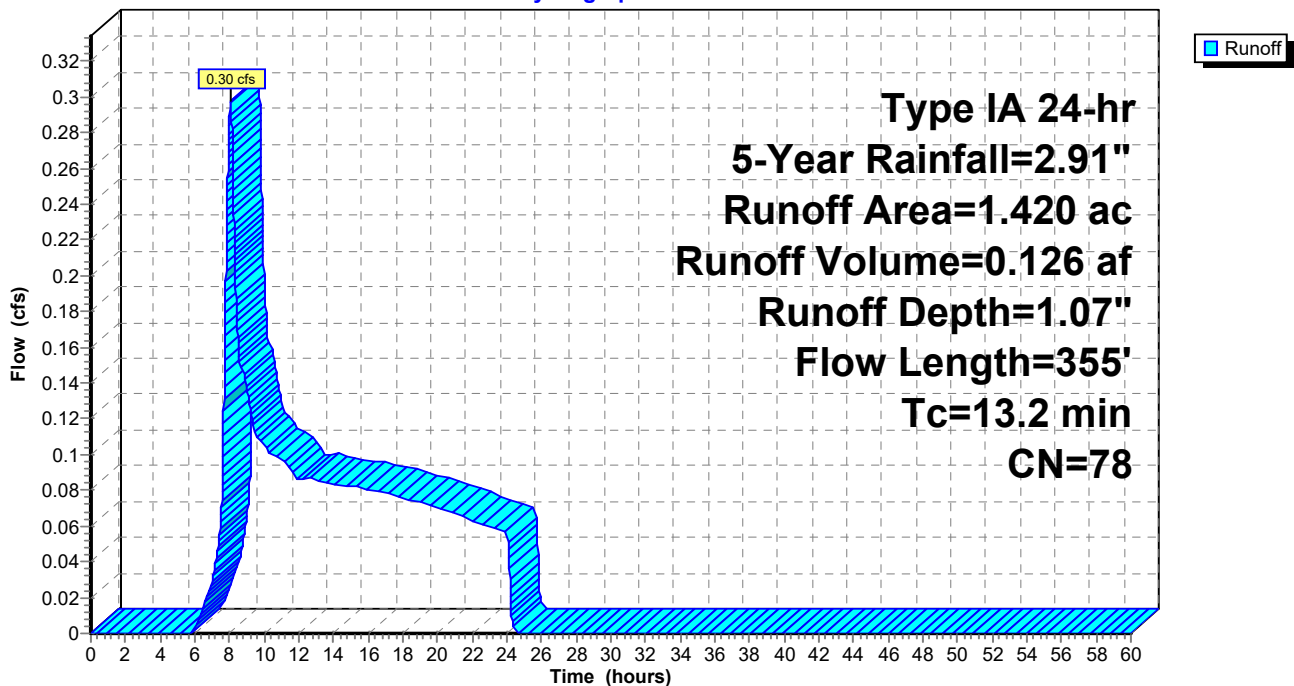
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Type IA 24-hr 5-Year Rainfall=2.91"

Area (ac)	CN	Description
* 0.063	98	Roof
* 0.172	98	Paving
0.150	89	Gravel roads, HSG C
1.035	72	Woods/grass comb., Good, HSG C
1.420	78	Weighted Average
1.185	74	83.45% Pervious Area
0.235	98	16.55% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
0.8	70	0.0600	1.38		Sheet Flow, Existing Pave n= 0.015 P2= 2.55"
12.4	285	0.0900	0.38		Sheet Flow, Exist Woods Range n= 0.130 P2= 2.55"
13.2	355	Total			

Subcatchment 1S: Pre-Development

Hydrograph



Summary for Subcatchment 2S: Post-Eastern Side

Existing East Side Developed Area

Runoff = 0.52 cfs @ 7.91 hrs, Volume= 0.179 af, Depth= 1.51"
 Routed to Pond 1P : Detention Facility

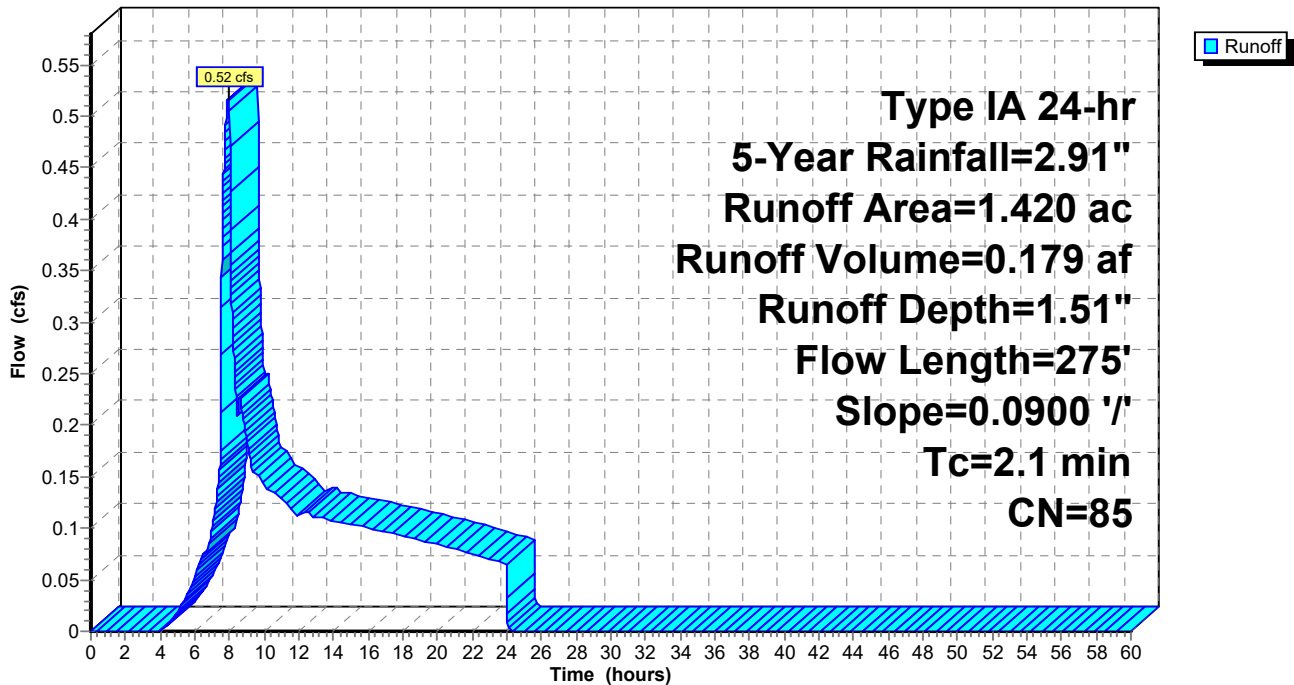
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Type IA 24-hr 5-Year Rainfall=2.91"

Area (ac)	CN	Description
* 0.178	98	Roofs
* 0.551	98	Paved
0.691	72	Woods/grass comb., Good, HSG C
1.420	85	Weighted Average
0.691	72	48.66% Pervious Area
0.729	98	51.34% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.1	275	0.0900	2.14		Sheet Flow, New Drive Flow n= 0.015 P2= 2.55"

Subcatchment 2S: Post-Eastern Side

Hydrograph



Summary for Pond 1P: Detention Facility

Underground Detention Facility w/Chambers

Inflow Area = 1.420 ac, 51.34% Impervious, Inflow Depth = 1.51" for 5-Year event
 Inflow = 0.52 cfs @ 7.91 hrs, Volume= 0.179 af
 Outflow = 0.24 cfs @ 8.36 hrs, Volume= 0.179 af, Atten= 54%, Lag= 26.7 min
 Primary = 0.24 cfs @ 8.36 hrs, Volume= 0.179 af
 Routed to nonexistent node 1R

Routing by Stor-Ind method, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Peak Elev= 334.44' @ 8.36 hrs Surf.Area= 446 sf Storage= 670 cf

Plug-Flow detention time= 17.6 min calculated for 0.179 af (100% of inflow)
 Center-of-Mass det. time= 17.6 min (808.6 - 791.1)

Volume	Invert	Avail.Storage	Storage Description
#1	332.22'	1,590 cf	54.0" Round 54" Pipe Storage L= 100.0' S= 0.0050 '/

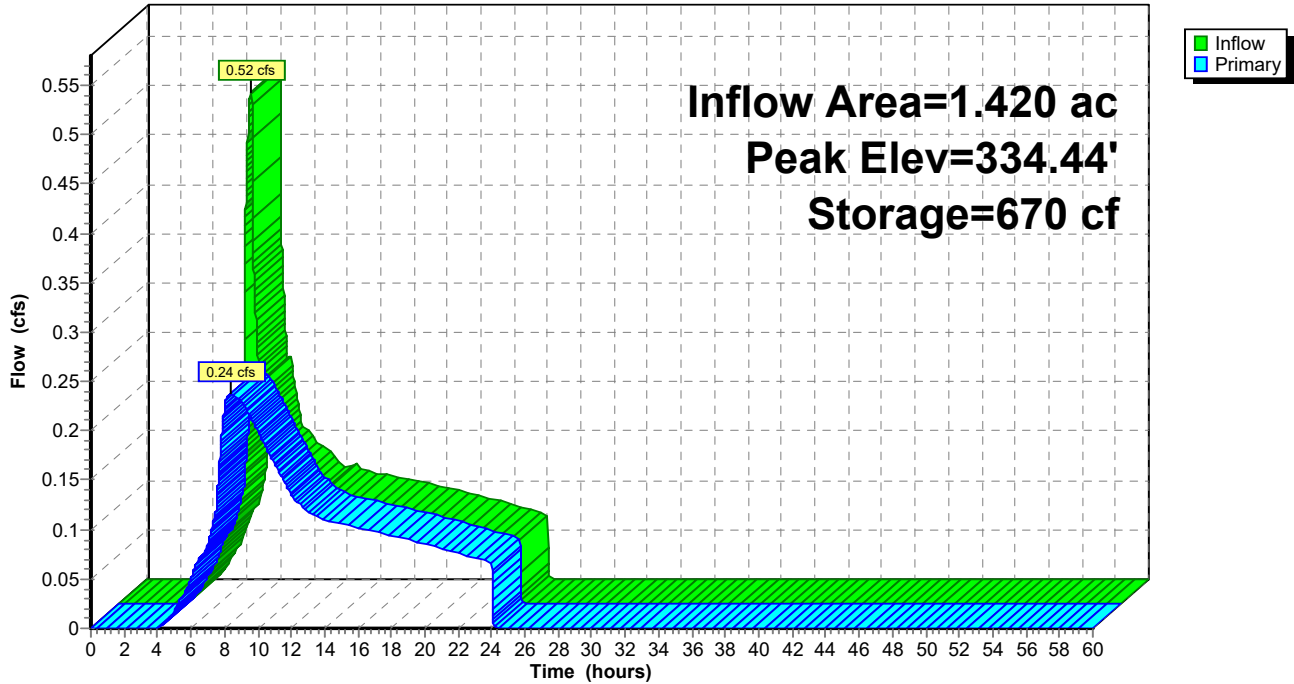
Device	Routing	Invert	Outlet Devices
#1	Primary	332.22'	12.0" Vert. 12" Outlet to Existing C= 0.600 Limited to weir flow at low heads
#2	Device 1	332.25'	2.5" Vert. 2.5" Control C= 0.600 Limited to weir flow at low heads
#3	Device 1	335.00'	4.5" Vert. 4.5" Overflow C= 0.600 Limited to weir flow at low heads

Primary OutFlow Max=0.24 cfs @ 8.36 hrs HW=334.44' (Free Discharge)

- 1=12" Outlet to Existing (Passes 0.24 cfs of 4.96 cfs potential flow)
- 2=2.5" Control (Orifice Controls 0.24 cfs @ 6.95 fps)
- 3=4.5" Overflow (Controls 0.00 cfs)

Pond 1P: Detention Facility

Hydrograph



STM2001

Type IA 24-hr 10-Year Rainfall=3.64"

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Time span=0.00-60.00 hrs, dt=0.01 hrs, 6001 points
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN
Reach routing by Stor-Ind+Trans method - Pond routing by Stor-Ind method

Subcatchment1S: Pre-Development

Runoff Area=1.420 ac 16.55% Impervious Runoff Depth=1.60"
Flow Length=355' Tc=13.2 min CN=78 Runoff=0.50 cfs 0.190 af

Subcatchment2S: Post-Eastern Side

Runoff Area=1.420 ac 51.34% Impervious Runoff Depth=2.14"
Flow Length=275' Slope=0.0900 '/' Tc=2.1 min CN=85 Runoff=0.76 cfs 0.253 af

Pond 1P: Detention Facility

Peak Elev=335.31' Storage=1,058 cf Inflow=0.76 cfs 0.253 af
Outflow=0.47 cfs 0.253 af

Total Runoff Area = 2.840 ac Runoff Volume = 0.443 af Average Runoff Depth = 1.87"
66.06% Pervious = 1.876 ac 33.94% Impervious = 0.964 ac

Summary for Subcatchment 1S: Pre-Development

Drainage area for entire Project Area 9.35 acre, prior to any development.

Runoff = 0.50 cfs @ 8.05 hrs, Volume= 0.190 af, Depth= 1.60"
 Routed to nonexistent node Pre

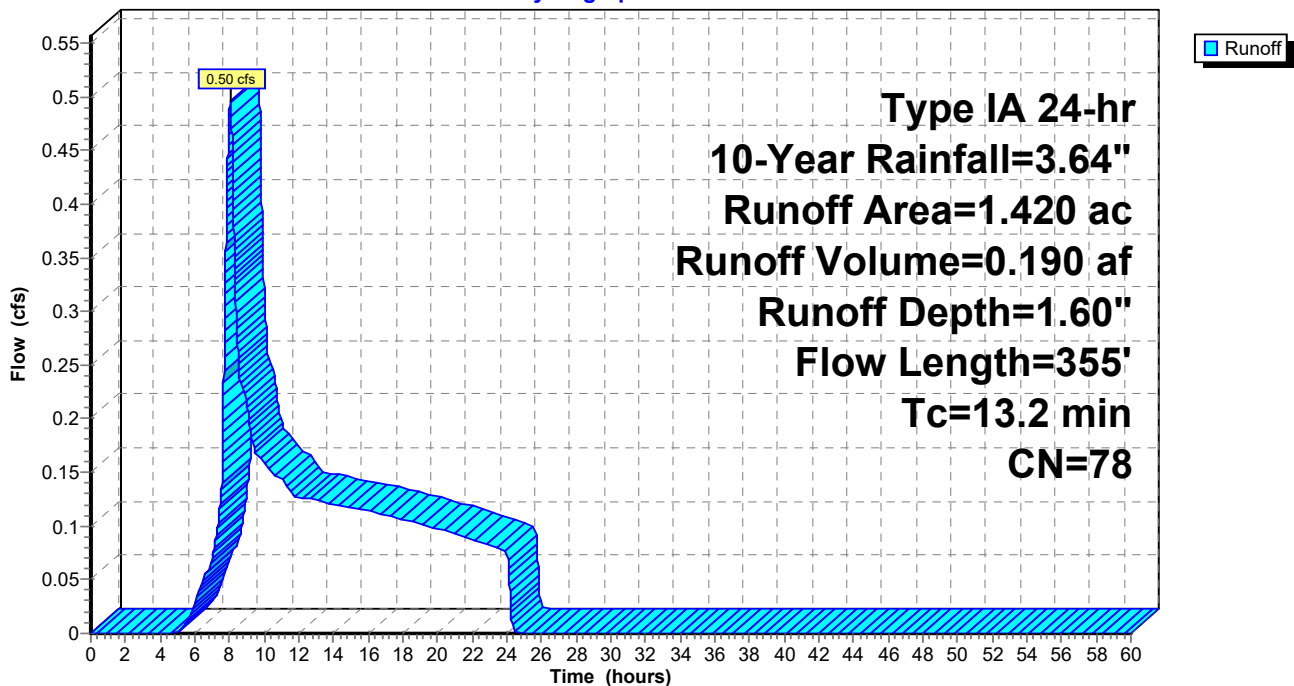
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Type IA 24-hr 10-Year Rainfall=3.64"

Area (ac)	CN	Description
* 0.063	98	Roof
* 0.172	98	Paving
0.150	89	Gravel roads, HSG C
1.035	72	Woods/grass comb., Good, HSG C
1.420	78	Weighted Average
1.185	74	83.45% Pervious Area
0.235	98	16.55% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
0.8	70	0.0600	1.38		Sheet Flow, Existing Pave n= 0.015 P2= 2.55"
12.4	285	0.0900	0.38		Sheet Flow, Exist Woods Range n= 0.130 P2= 2.55"
13.2	355	Total			

Subcatchment 1S: Pre-Development

Hydrograph



Summary for Subcatchment 2S: Post-Eastern Side

Existing East Side Developed Area

Runoff = 0.76 cfs @ 7.89 hrs, Volume= 0.253 af, Depth= 2.14"
 Routed to Pond 1P : Detention Facility

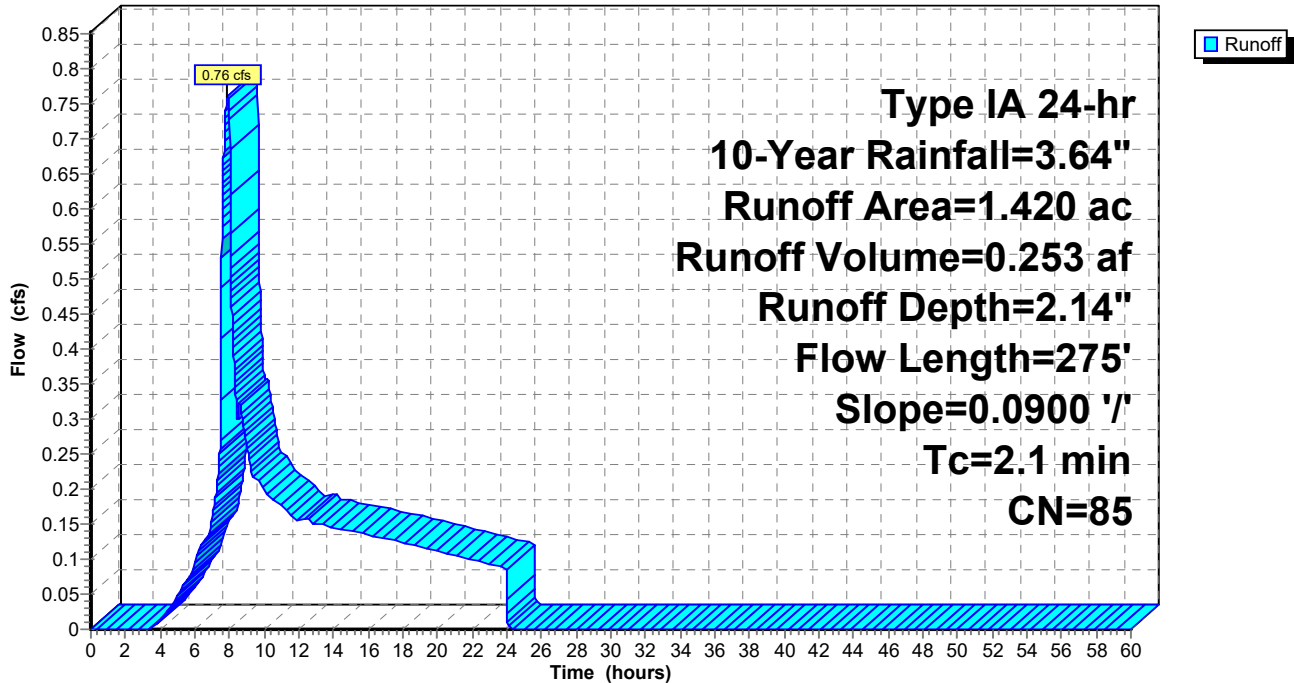
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Type IA 24-hr 10-Year Rainfall=3.64"

Area (ac)	CN	Description
* 0.178	98	Roofs
* 0.551	98	Paved
0.691	72	Woods/grass comb., Good, HSG C
1.420	85	Weighted Average
0.691	72	48.66% Pervious Area
0.729	98	51.34% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.1	275	0.0900	2.14		Sheet Flow, New Drive Flow n= 0.015 P2= 2.55"

Subcatchment 2S: Post-Eastern Side

Hydrograph



Summary for Pond 1P: Detention Facility

Underground Detention Facility w/Chambers

Inflow Area = 1.420 ac, 51.34% Impervious, Inflow Depth = 2.14" for 10-Year event
 Inflow = 0.76 cfs @ 7.89 hrs, Volume= 0.253 af
 Outflow = 0.47 cfs @ 8.11 hrs, Volume= 0.253 af, Atten= 38%, Lag= 13.2 min
 Primary = 0.47 cfs @ 8.11 hrs, Volume= 0.253 af
 Routed to nonexistent node 1R

Routing by Stor-Ind method, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Peak Elev= 335.31' @ 8.11 hrs Surf.Area= 433 sf Storage= 1,058 cf

Plug-Flow detention time= 27.3 min calculated for 0.253 af (100% of inflow)
 Center-of-Mass det. time= 27.3 min (797.8 - 770.5)

Volume	Invert	Avail.Storage	Storage Description
#1	332.22'	1,590 cf	54.0" Round 54" Pipe Storage L= 100.0' S= 0.0050 '/'

Device	Routing	Invert	Outlet Devices
#1	Primary	332.22'	12.0" Vert. 12" Outlet to Existing C= 0.600 Limited to weir flow at low heads
#2	Device 1	332.25'	2.5" Vert. 2.5" Control C= 0.600 Limited to weir flow at low heads
#3	Device 1	335.00'	4.5" Vert. 4.5" Overflow C= 0.600 Limited to weir flow at low heads

Primary OutFlow Max=0.47 cfs @ 8.11 hrs HW=335.31' (Free Discharge)

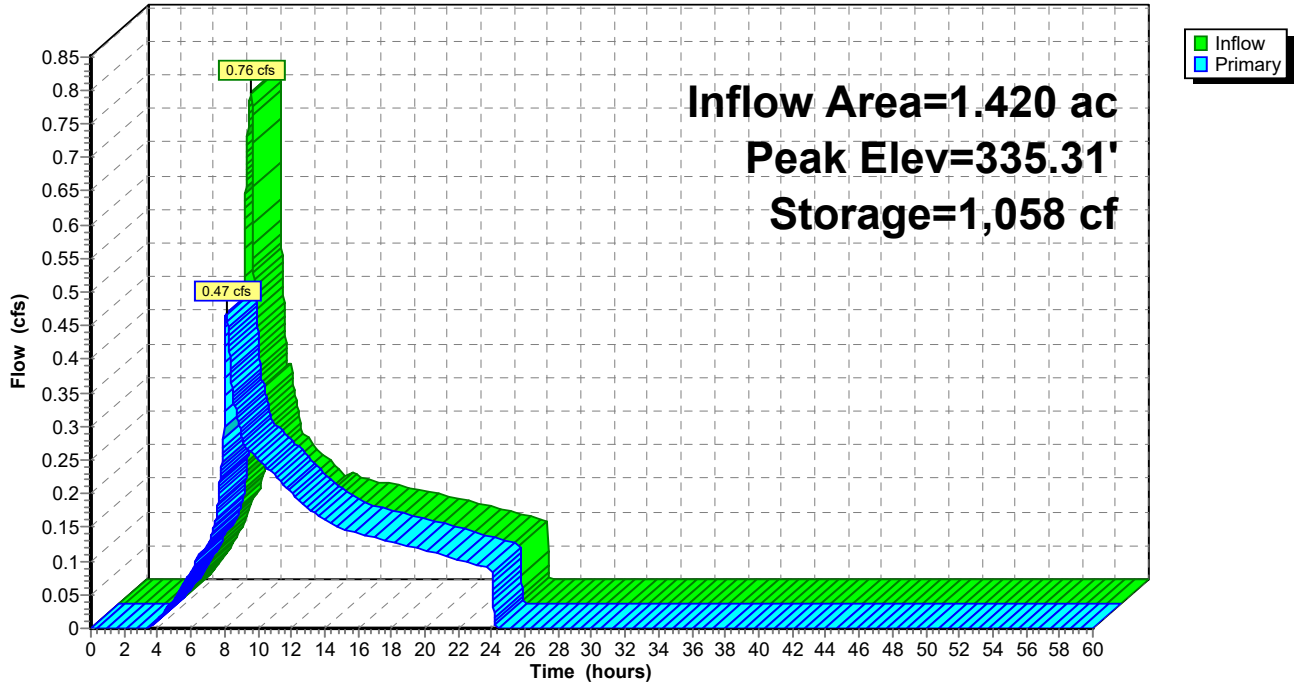
1=12" Outlet to Existing (Passes 0.47 cfs of 6.09 cfs potential flow)

2=2.5" Control (Orifice Controls 0.28 cfs @ 8.28 fps)

3=4.5" Overflow (Orifice Controls 0.19 cfs @ 1.90 fps)

Pond 1P: Detention Facility

Hydrograph



STM2001

Type IA 24-hr 100-year Rainfall=4.73"

Prepared by Emerio Design

Printed 8/28/2023

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Time span=0.00-60.00 hrs, dt=0.01 hrs, 6001 points
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN
Reach routing by Stor-Ind+Trans method - Pond routing by Stor-Ind method

Subcatchment1S: Pre-Development

Runoff Area=1.420 ac 16.55% Impervious Runoff Depth=2.48"
Flow Length=355' Tc=13.2 min CN=78 Runoff=0.83 cfs 0.294 af

Subcatchment2S: Post-Eastern Side

Runoff Area=1.420 ac 51.34% Impervious Runoff Depth=3.12"
Flow Length=275' Slope=0.0900 '/' Tc=2.1 min CN=85 Runoff=1.14 cfs 0.369 af

Pond 1P: Detention Facility

Peak Elev=336.35' Storage=1,456 cf Inflow=1.14 cfs 0.369 af
Outflow=0.90 cfs 0.369 af

Total Runoff Area = 2.840 ac Runoff Volume = 0.663 af Average Runoff Depth = 2.80"
66.06% Pervious = 1.876 ac 33.94% Impervious = 0.964 ac

Summary for Subcatchment 1S: Pre-Development

Drainage area for entire Project Area 9.35 acre, prior to any development.

Runoff = 0.83 cfs @ 8.05 hrs, Volume= 0.294 af, Depth= 2.48"
 Routed to nonexistent node Pre

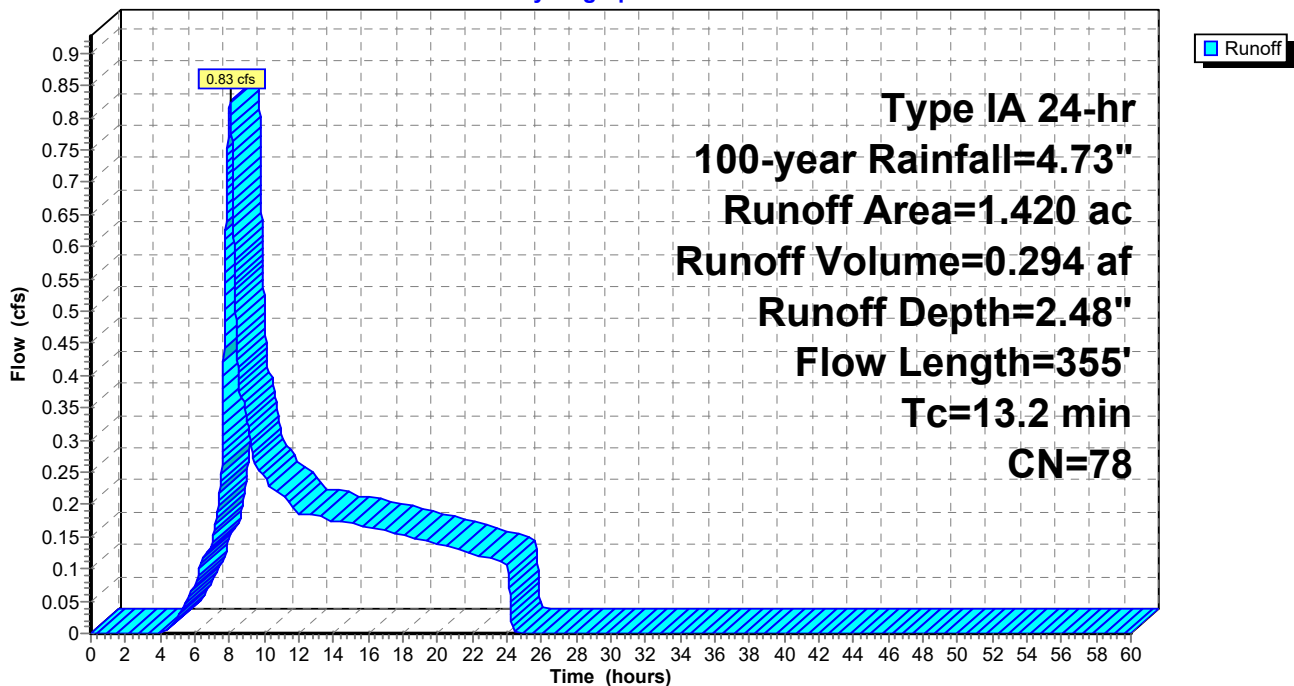
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Type IA 24-hr 100-year Rainfall=4.73"

	Area (ac)	CN	Description
*	0.063	98	Roof
*	0.172	98	Paving
	0.150	89	Gravel roads, HSG C
	1.035	72	Woods/grass comb., Good, HSG C
	1.420	78	Weighted Average
	1.185	74	83.45% Pervious Area
	0.235	98	16.55% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
0.8	70	0.0600	1.38		Sheet Flow, Existing Pave n= 0.015 P2= 2.55"
12.4	285	0.0900	0.38		Sheet Flow, Exist Woods Range n= 0.130 P2= 2.55"
13.2	355	Total			

Subcatchment 1S: Pre-Development

Hydrograph



Summary for Subcatchment 2S: Post-Eastern Side

Existing East Side Developed Area

Runoff = 1.14 cfs @ 7.87 hrs, Volume= 0.369 af, Depth= 3.12"
 Routed to Pond 1P : Detention Facility

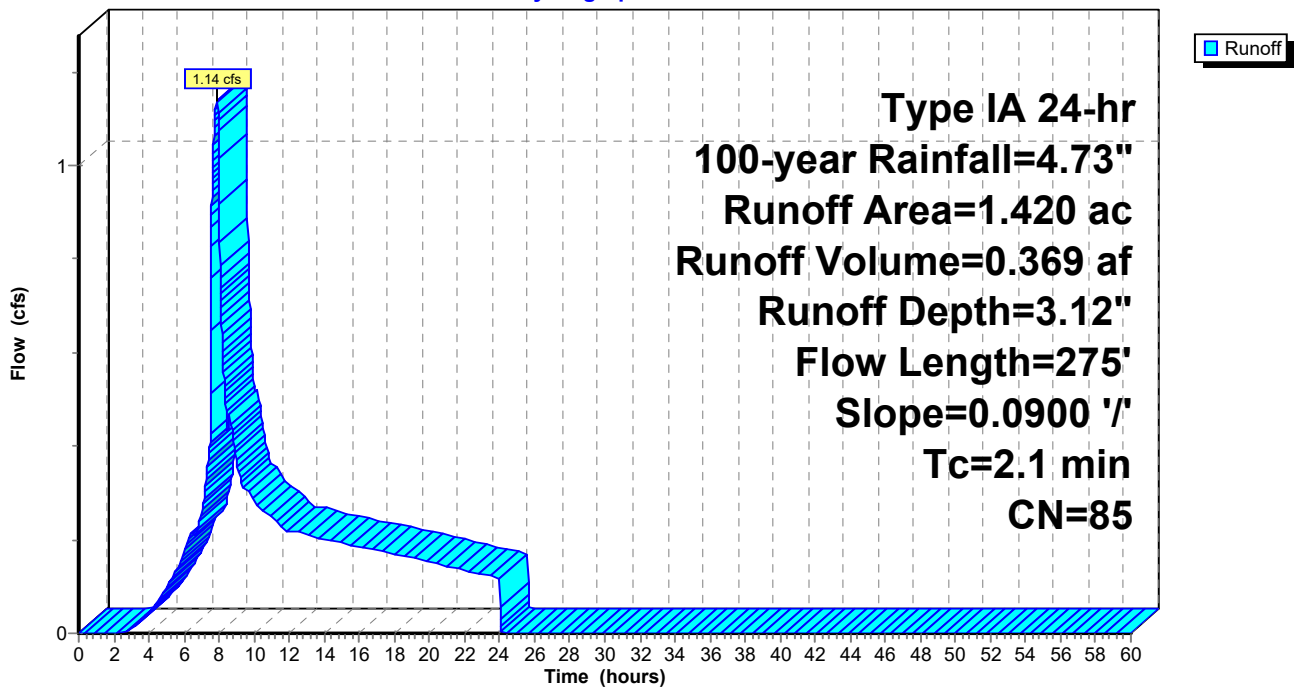
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Type IA 24-hr 100-year Rainfall=4.73"

Area (ac)	CN	Description
* 0.178	98	Roofs
* 0.551	98	Paved
0.691	72	Woods/grass comb., Good, HSG C
1.420	85	Weighted Average
0.691	72	48.66% Pervious Area
0.729	98	51.34% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.1	275	0.0900	2.14		Sheet Flow, New Drive Flow n= 0.015 P2= 2.55"

Subcatchment 2S: Post-Eastern Side

Hydrograph



Summary for Pond 1P: Detention Facility

Underground Detention Facility w/Chambers

Inflow Area = 1.420 ac, 51.34% Impervious, Inflow Depth = 3.12" for 100-year event
 Inflow = 1.14 cfs @ 7.87 hrs, Volume= 0.369 af
 Outflow = 0.90 cfs @ 8.03 hrs, Volume= 0.369 af, Atten= 21%, Lag= 9.6 min
 Primary = 0.90 cfs @ 8.03 hrs, Volume= 0.369 af
 Routed to nonexistent node 1R

Routing by Stor-Ind method, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Peak Elev= 336.35' @ 8.03 hrs Surf.Area= 307 sf Storage= 1,456 cf

Plug-Flow detention time= 34.7 min calculated for 0.369 af (100% of inflow)
 Center-of-Mass det. time= 34.7 min (783.8 - 749.1)

Volume	Invert	Avail.Storage	Storage Description
#1	332.22'	1,590 cf	54.0" Round 54" Pipe Storage L= 100.0' S= 0.0050 '/'

Device	Routing	Invert	Outlet Devices
#1	Primary	332.22'	12.0" Vert. 12" Outlet to Existing C= 0.600 Limited to weir flow at low heads
#2	Device 1	332.25'	2.5" Vert. 2.5" Control C= 0.600 Limited to weir flow at low heads
#3	Device 1	335.00'	4.5" Vert. 4.5" Overflow C= 0.600 Limited to weir flow at low heads

Primary OutFlow Max=0.90 cfs @ 8.03 hrs HW=336.35' (Free Discharge)

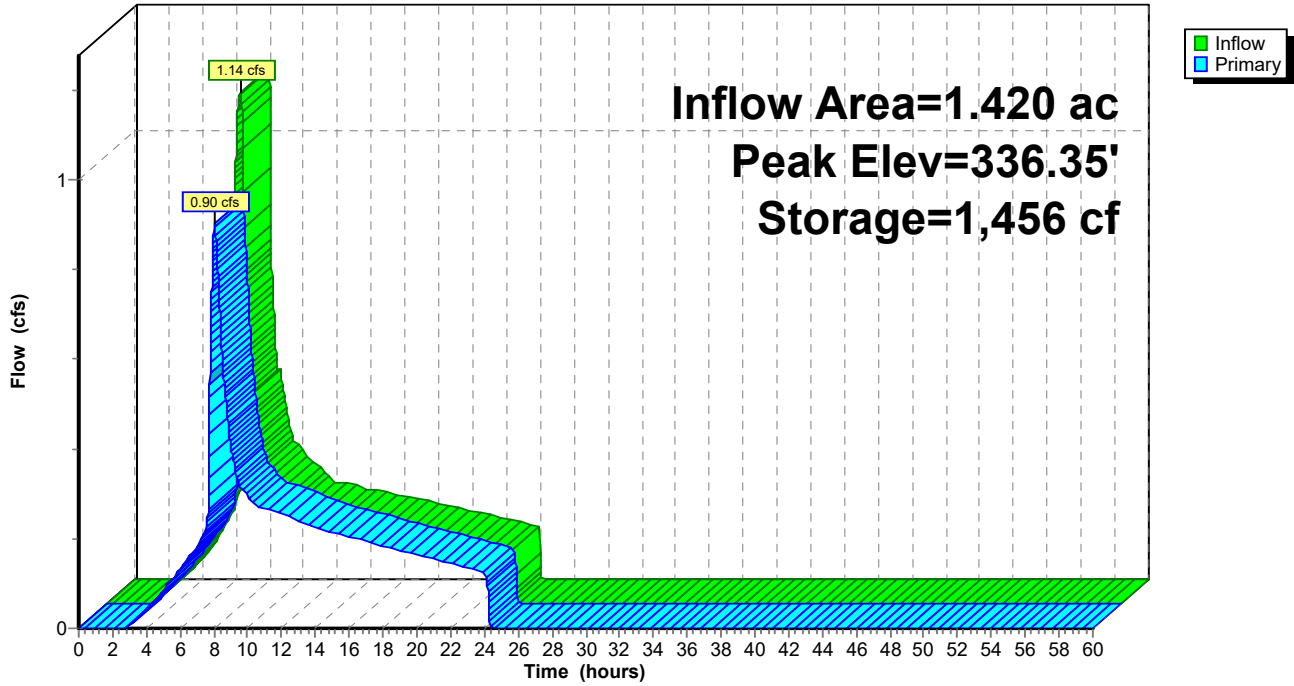
1=12" Outlet to Existing (Passes 0.90 cfs of 7.20 cfs potential flow)

2=2.5" Control (Orifice Controls 0.33 cfs @ 9.62 fps)

3=4.5" Overflow (Orifice Controls 0.57 cfs @ 5.19 fps)

Pond 1P: Detention Facility

Hydrograph



STM2001

Type IA 24-hr Water Quality Rainfall=1.60"

Prepared by Emerio Design

Printed 8/28/2023

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Time span=0.00-60.00 hrs, dt=0.01 hrs, 6001 points
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN
Reach routing by Stor-Ind+Trans method - Pond routing by Stor-Ind method

Subcatchment1S: Pre-Development

Runoff Area=1.420 ac 16.55% Impervious Runoff Depth=0.28"
Flow Length=355' Tc=13.2 min CN=78 Runoff=0.03 cfs 0.033 af

Subcatchment2S: Post-Eastern Side

Runoff Area=1.420 ac 51.34% Impervious Runoff Depth=0.52"
Flow Length=275' Slope=0.0900 '/' Tc=2.1 min CN=85 Runoff=0.14 cfs 0.061 af

Pond 1P: Detention Facility

Peak Elev=332.81' Storage=57 cf Inflow=0.14 cfs 0.061 af
Outflow=0.11 cfs 0.061 af

Total Runoff Area = 2.840 ac Runoff Volume = 0.094 af Average Runoff Depth = 0.40"
66.06% Pervious = 1.876 ac 33.94% Impervious = 0.964 ac

Summary for Subcatchment 1S: Pre-Development

Drainage area for entire Project Area 9.35 acre, prior to any development.

Runoff = 0.03 cfs @ 8.19 hrs, Volume= 0.033 af, Depth= 0.28"
 Routed to nonexistent node Pre

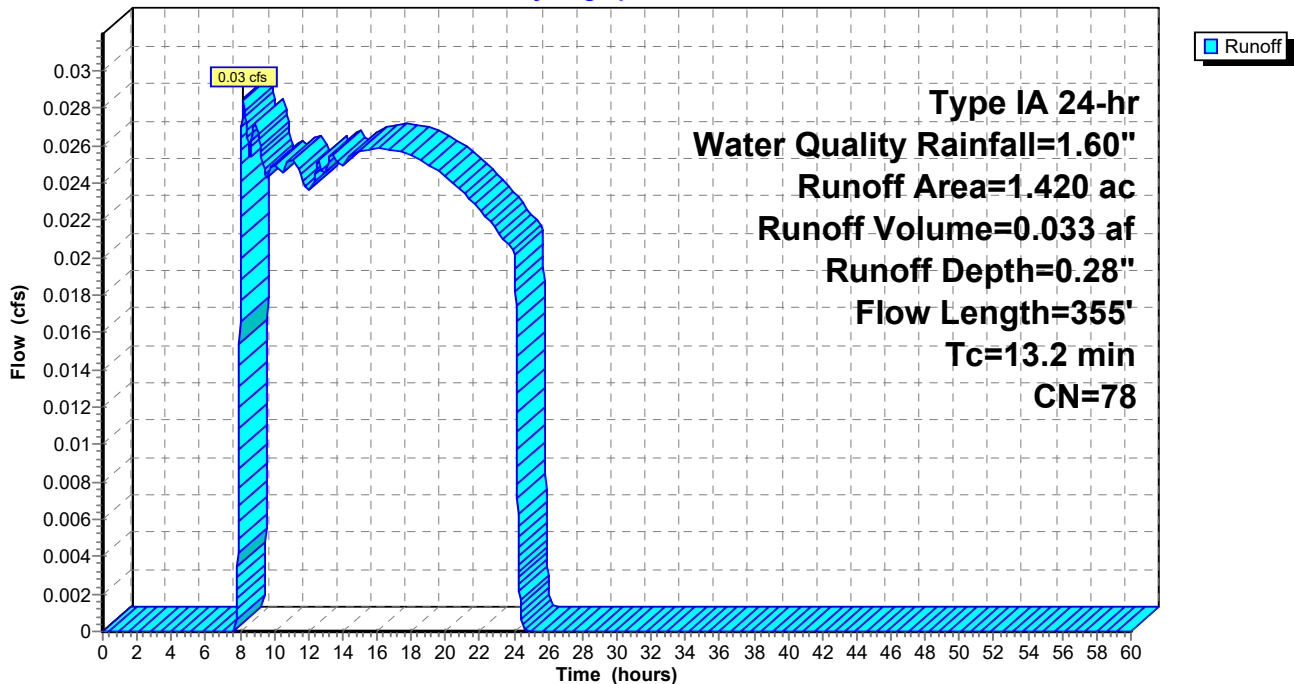
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Type IA 24-hr Water Quality Rainfall=1.60"

Area (ac)	CN	Description
* 0.063	98	Roof
* 0.172	98	Paving
0.150	89	Gravel roads, HSG C
1.035	72	Woods/grass comb., Good, HSG C
1.420	78	Weighted Average
1.185	74	83.45% Pervious Area
0.235	98	16.55% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
0.8	70	0.0600	1.38		Sheet Flow, Existing Pave n= 0.015 P2= 2.55"
12.4	285	0.0900	0.38		Sheet Flow, Exist Woods Range n= 0.130 P2= 2.55"
13.2	355	Total			

Subcatchment 1S: Pre-Development

Hydrograph



Summary for Subcatchment 2S: Post-Eastern Side

Existing East Side Developed Area

Runoff = 0.14 cfs @ 7.99 hrs, Volume= 0.061 af, Depth= 0.52"
 Routed to Pond 1P : Detention Facility

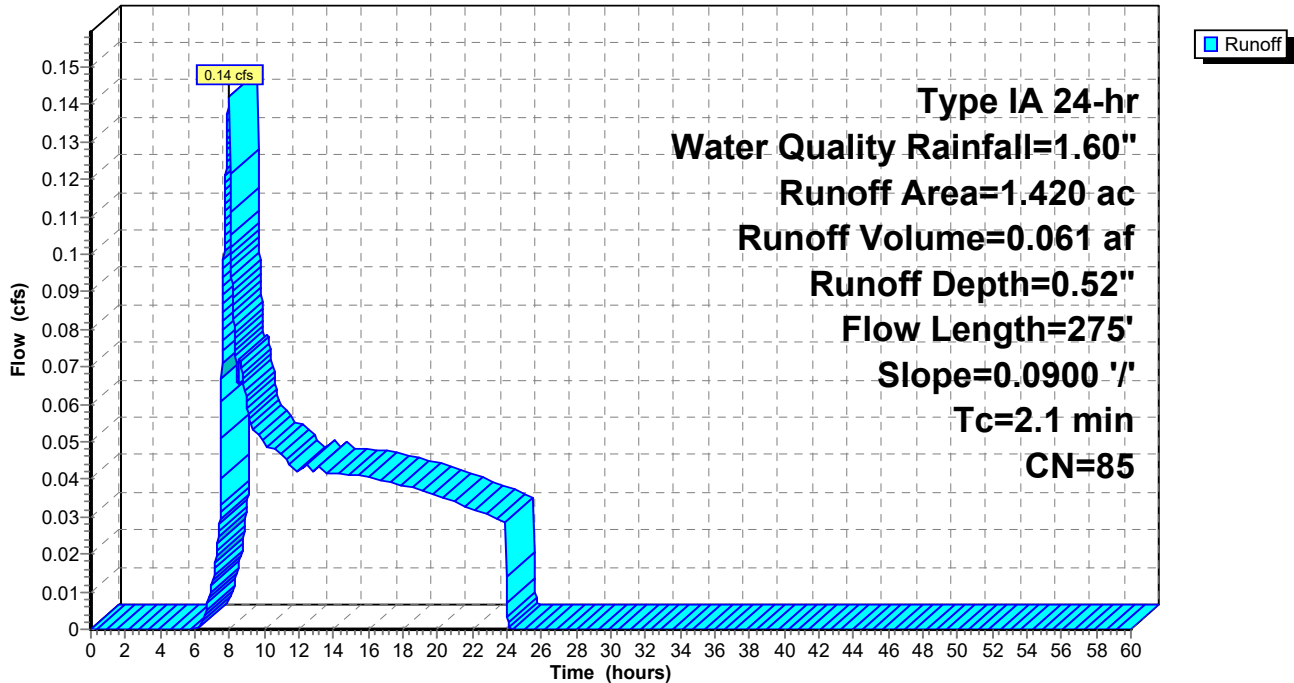
Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Type IA 24-hr Water Quality Rainfall=1.60"

Area (ac)	CN	Description
* 0.178	98	Roofs
* 0.551	98	Paved
0.691	72	Woods/grass comb., Good, HSG C
1.420	85	Weighted Average
0.691	72	48.66% Pervious Area
0.729	98	51.34% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.1	275	0.0900	2.14		Sheet Flow, New Drive Flow n= 0.015 P2= 2.55"

Subcatchment 2S: Post-Eastern Side

Hydrograph



Summary for Pond 1P: Detention Facility

Underground Detention Facility w/Chambers

Inflow Area = 1.420 ac, 51.34% Impervious, Inflow Depth = 0.52" for Water Quality event
 Inflow = 0.14 cfs @ 7.99 hrs, Volume= 0.061 af
 Outflow = 0.11 cfs @ 8.04 hrs, Volume= 0.061 af, Atten= 22%, Lag= 3.0 min
 Primary = 0.11 cfs @ 8.04 hrs, Volume= 0.061 af
 Routed to nonexistent node 1R

Routing by Stor-Ind method, Time Span= 0.00-60.00 hrs, dt= 0.01 hrs
 Peak Elev= 332.81' @ 8.04 hrs Surf.Area= 229 sf Storage= 57 cf

Plug-Flow detention time= 2.3 min calculated for 0.061 af (100% of inflow)
 Center-of-Mass det. time= 2.3 min (862.8 - 860.5)

Volume	Invert	Avail.Storage	Storage Description
#1	332.22'	1,590 cf	54.0" Round 54" Pipe Storage L= 100.0' S= 0.0050 '/

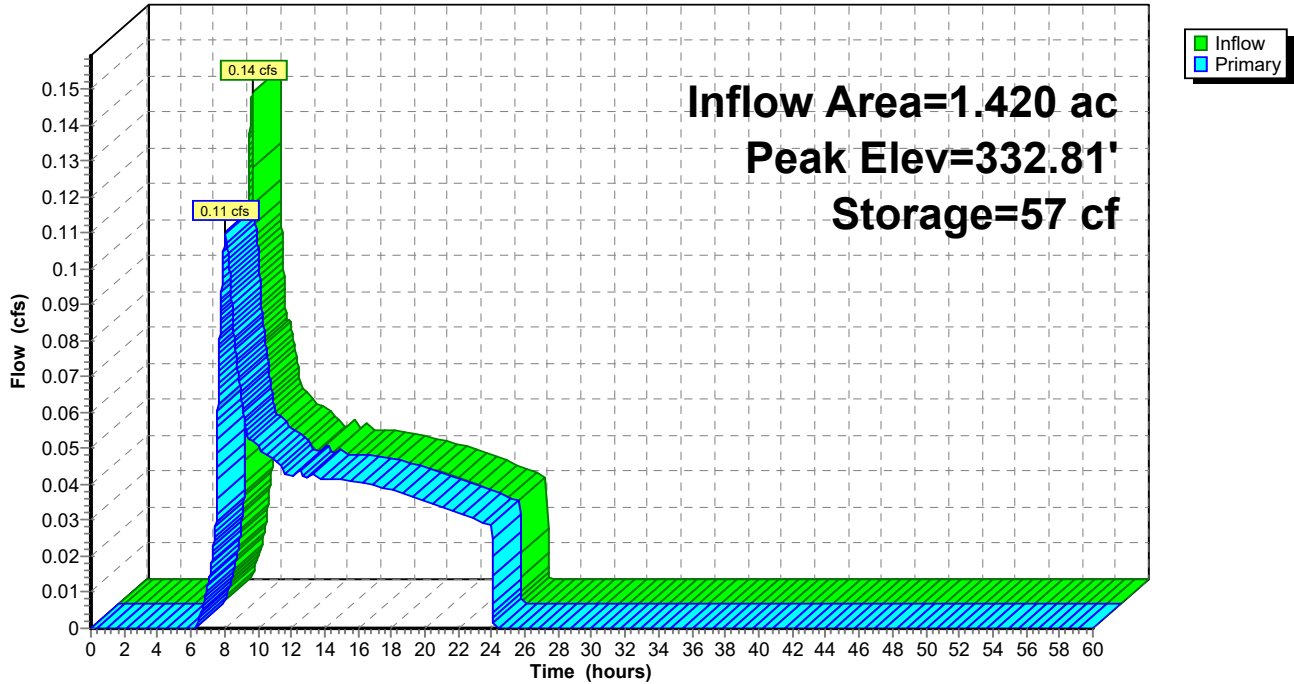
Device	Routing	Invert	Outlet Devices
#1	Primary	332.22'	12.0" Vert. 12" Outlet to Existing C= 0.600 Limited to weir flow at low heads
#2	Device 1	332.25'	2.5" Vert. 2.5" Control C= 0.600 Limited to weir flow at low heads
#3	Device 1	335.00'	4.5" Vert. 4.5" Overflow C= 0.600 Limited to weir flow at low heads

Primary OutFlow Max=0.11 cfs @ 8.04 hrs HW=332.81' (Free Discharge)

- 1=12" Outlet to Existing (Passes 0.11 cfs of 1.25 cfs potential flow)
- 2=2.5" Control (Orifice Controls 0.11 cfs @ 3.24 fps)
- 3=4.5" Overflow (Controls 0.00 cfs)

Pond 1P: Detention Facility

Hydrograph



WARRANTY DEED

M-192514-94

KNOW ALL MEN BY THESE PRESENTS, That KENNETH MAGEE and JULIETTE MAGEE, husband and wife, Grantor s in consideration of \$85,000.00 Dollars, to them paid by the Grantee s herein, do hereby grant, bargain, sell and convey unto JAMES S. BAGLIEN and KIM S. BAGLIEN, husband and wife, and LOREN R. BAGLIEN, not as tenants in common, but with the right of survivorship

Grantee s the following described real property, situated in the County of BENTON and State of Oregon, to wit:
Lot 5, Block 2, HIGHLAND PARK, Benton County, Oregon.

Parcel # 052021

To Have and to Hold the granted premises unto the said Grantee s, their Heirs and Assigns forever. And the Grantors do covenant that they are lawfully seized in fee simple of the above granted premises free from all encumbrances, EXCEPT: Easement for electric transmission and/or distribution line or system, including the terms and provisions thereof, in favor of Consumer Power, Inc., as set forth in instrument recorded June 20, 1956 in Book 155, page 370; Easement for public utilities, 5 feet in width, along any and all boundary lines of said lot, including the terms and provisions thereof, as set forth in instrument recorded November 29, 1956 in Book 157, page 429.

and that they will and their heirs, executors and administrators, shall warrant and forever defend the granted premises, against the lawful claims and demands of all persons, except as above stated.
Witness our hands and seal this 15th day of November, 19 94.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST ANY FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Kenneth Magee by his attorney in fact
Kenneth Magee by his attorney in fact
Juliette Magee

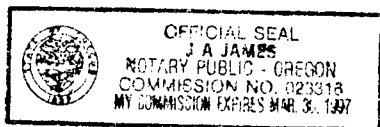
Juliette Magee
Juliette Magee

STATE OF OREGON
County of BENTON } ss.

BE IT REMEMBERED, That on this 15 day of November, 19 94, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named JULIETTE MAGEE

known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that SHE executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



J.A. James
Notary Public for Oregon.
My Commission expires MARCH 30, 1997

UNTIL A CHANGE IS REQUESTED, ALL TAX STATEMENTS SHALL BE SENT TO THE FOLLOWING ADDRESS:

JAMES S. BAGLIEN
928 NW CAMELLIA DRIVE
CORVALLIS, OR 97330

Return to:

JAMES S. BAGLIEN
928 NW CAMELLIA DRIVE
CORVALLIS, OR 97330

STATE OF OREGON
County of _____ } ss.

I certify that the within instrument was received for record on _____ at _____ o'clock _____, and was recorded in Book _____ Page _____ Record of Deeds of said county.

Recorder of Conveyances

By _____ Deputy

11-5-23-AB#1400

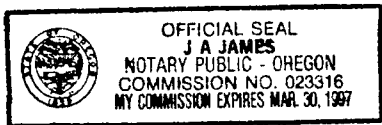
FATW #188900-B

STATE OF OREGON }
County of BENTON } ss.

On this the 15 day of November, 1994 personally appeared JULIETTE MAGEE
who, being duly sworn (or affirmed), did say that s he is the attorney in fact for KENNETH MAGEE

and that s he executed the foregoing instrument by authority of and in behalf of said principal; and she acknowledged said instrument to be the act and deed of said principal.

(Official Seal)



Before me:

[Signature]
(Signature)

NOTARY PUBLIC FOR THE STATE OF OREGON
(Title of Officer)

My commission expires: March 30, 1997

STATE OF OREGON }
County of Benton } ss. **182643**

I hereby certify that the within instrument was received for record.

'94 NOV 16 AM 11 42

AND ASSIGNED No 192514 1994

In the microfilm records of said county Witness My Hand and Seal of County Affixed

DANIEL G. BURK
Director Of Records & Elections

By [Signature] Deputy

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