Crook County Community Development
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FINDINGS AND DECISION
Modification of Conditional Use
PLANNING FILE #: 217-24-000047-PLNG

DECISION DATE: September 26, 2024

OWNER: The Roman Catholic Bishop of the Diocese of Baker
PO Box 5999
Bend, OR 97708

APPLICANT: Sunshine Behavioral Health Group, LLC

AGENT: D. Adam Smith
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond Street, Suite 500
Bend, Oregon 97702

LOCATION: The subject property is 14427 SW Alfalfa Rd., Powell Butte, OR 97753. The property is identified by the Crook County Tax Assessor as Map and Taxlot: 1614200000100.

REQUEST: The Applicants request of modification of C-CU-2337-07 under Crook County Code 18.172.100.

ZONING: Exclusive Farm Use Powell Butte Area, EFU-3

I. APPLICABLE CRITERIA

Title 18, Zoning (Present and 2007)

18.172	Administration Provisions
18.24	Exclusive Farm Use Zone, EFU-3 (2007)
18.160	Conditional Uses
18.180	Transportation

Crook County-Prineville Area Comprehensive Plan, Chapter III, Land Use, Agriculture, Pages 40-47
Oregon Revised Statutes 215.283(2)(e)
Americans with Disabilities Act, 42 U.S.C. § 12102 et seq.
Fair Housing Amendments Act, 42 U.S.C. § 3601 et seq.

II. BACKGROUND INFORMATION

ZONING: The property is zoned Exclusive Farm Use, EFU-3 (Powell Butte area). The property is designated Agricultural in the Crook County Comprehensive Plan. In 2007 it was approved as a church

(ORS 215.283(1)(b)); community center and campground (ORS 215.283(2)(e), ORS 215.441, and CCC 18.24.020(7)), and replacement dwelling (CCC 18.156.010(4)).

SITE DESCRIPTION: The subject tract is developed with the conditionally approved retreat center including cabins, chapel, maintenance shop, and recreational vehicle spaces. The western side of the property slopes down into mapped flood zone A and consists of open pasture/hay ground.

SURROUNDING LAND USES: Surrounding properties are zoned Exclusive Farm Use, EFU3. There are a mix of parcel sizes and farm uses. The Powell Butte Area in general is a mix of dryland and irrigated farm use. Much of the property to the west of the subject parcel is owned by the Bureau of Land Management. The properties to the east of the subject parcel are a mix of Rural Residential (exception lands) and small farm acreages. The subject property is located along the eastern edge of a drainage basin and the resulting valley provides irrigated pastures and mostly hay production. Properties to the north and south of the subject parcel also run parallel to the farm use in the valley area. Due to the nature and availability of water, those parcels with no water rights and poor soils in the area nonfarm dwellings may be approved. Below is a table of adjoining parcels with uses.

Taxlot	Property Owner	Acreage	Dwelling Type	Land Use	Farm Use
1614160000204	Toaks	4.80	Replacement Dwelling – 2006 associated with 1614160000203	C-SR-1911-05	Non Farm Permanent Disqualification
1614160000202	Davis	9.27	1973 Dwelling		Farm Zone EFU Improved
1614210000201	Redman	6.63	Replacement Dwelling	SP-09-0140	Farm Zone EFU Improved
1614210000200	Marshall	31.97	1994 Manufactured Farm Dwelling	C-CU-711-94	Farm Zone EFU Improved
1614210000300	Gangwer	34.85	1992 Farm Dwelling	C-CU-677-92	Farm Zone EFU Improved
1614200000200	Pickhardt	4.41	1920's Dwelling	C-LP-289-80	Farm Zone EFU Improved
1614200000202	Burgess	31.22	1979 Farm Dwelling	C-LP-289-80	Farm Zone EFU Improved
1614200000400	Moe	132	Replacement Dwelling	217-17-000099-PLNG	Farm Zone EFU Improved
1614170000301	Dry River Ranch LLC	68.47	1973 Farm Dwelling	217-SP-14-0192	Farm Zone EFU Improved
1614170000400	Faulkner	68.97	2022 Replacement Dwelling	217-21-000335-PLNG	Farm Zone EFU Improved

LEGAL PARCEL: The subject property was created in 1958. The subject property is a legal parcel.

ROAD ACCESS: Road access has been reviewed with 217-RP-08-0184.

WATER: Domestic is supplied by an existing well.

WASTEWATER: The onsite system is regulated by Oregon Department of Environmental Quality – DKAA0000-002.

IRRIGATION: There are water rights on the subject property.

FIRE PROTECTION: The property is located within the Crook County Fire and Rescue District.

III. FINDINGS OF FACT

Crook County Code

Title 18 Zoning

Chapter

18.172.100 Revocation or modification of permit.

(1) The hearing authority may revoke or modify any permit granted under the provisions of this title on any one or more of the following grounds:

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(c) The use for which such permit was granted has ceased to exist or has been suspended for one year or more.

FINDING: The applicant provides the following response:

> [T]he Applicant has executed an agreement to purchase the Property and is proposing an SUD treatment center on the Property. While the Applicant's SUD treatment program includes the 12 Step methodology, a methodology inspired by spiritual ideals, there will be no church activities continuing on the Property rooted in any particular religion. Therefore, part of the use for which the CUP was granted will cease to exist such that a modification is appropriate. This criterion is met.

Staff agrees and finds this criterion is met.

(e) The proposed modification will result in a change to the original proposal sought by the permittee or permittee's successor and meets the applicable standards specified in subsection (3) of this section.

FINDING: The applicant provides the following response:

> As described above, the Applicant signed a purchase and sale agreement to purchase the Property and is proposing utilizing the existing facilities for an SUD treatment center on the Property, including modifying those facilities to provide temporary housing rather than camping and RV parking. *See* Exhibit C (site plan). Specifically, the only physical modification the Applicant is proposing is replacing the seven existing RV spots with cabins; this modification will result in about the same number of beds that are currently present on site once accounting for beds in the permitted RVs. The changes to the use characteristics of the Property will be minimal from a land

use perspective as both uses are appropriately classified as "community centers." Notably, although the Catholic Church is not using the facility to run camps for up to 225 participants 365 day a year, the existing CUP allows such an intensity of uses on the property. The Applicant's proposed uses will be of similar scope and intentions, such that the only quantifiable changes are to the physical structures. Consistent with this criterion, the Applicant demonstrates how this modification application meets the applicable standards specified in CCC 18.172.100(3) below. This criterion is met.

Staff agrees that the modification request will result in a change in the original proposal. The analysis for conformance with subsection (3) is below.

> ***(3) The hearing authority shall hold a public hearing on any proposed revocation or modification after giving written notice to the permittee and other affected persons as set forth in this title. The hearing on the decision, which is subject to revocation or modification, is subject only to either the standards, criteria and conditions that were applicable when the original permit was issued or in effect at the time of the revocation or modification, whichever is less restrictive. The hearing authority shall render its decision within 45 calendar days after the conclusion of the hearing.***

FINDING: The County Board of Commissioners (the "Board") did approve the applicant's request for a procedural accommodation under the FHAA/ADA, excepting the public hearing requirement and processing the application administratively, with any appeal to be heard directly by the Board *de novo.* To reach that decision, the Board applied the FHAA/ADA accommodation factors to find that, ultimately, the procedural accommodation request would impose no significant administrative burdens on the County or fundamentally alter the nature of the County's Chapter 18.172.

The applicant requests that the County apply the Code when the original permit was issued, at least as to the criteria found in CCC 18.24.020(7) in 2007. That provision read:

> **18.24.020 Conditional Uses Permitted**
> **In an EFU-3 zone, the following use and their accessory uses are permitted when authorized in accordance with the requirements of Chapter 18.160 CCC and this chapter.**
> **….**
> **(7) Public and private parks, playgrounds, hunting and fishing preserves and campgrounds, and community centers owned and operated by a government agency or a nonprofit community organization.**

The applicant also asks the County to incorporate the definition of "community center" provided by the original applicant, as that term was and is undefined in our Code. In relevant part, the proffered definition was: "Community centers are typically locations where members of a group of people may gather for learning, activities, social support, and events." As there is no contradicting interpretation evident in the original decision, Staff will apply the proffered definition for "community center."

The applicant provides the following justification for the proposed use to qualify as a "community center":

> Much like the existing community center, the Applicant proposes utilizing the permitted facilities for an SUD treatment center on the Property, and modifying the lodging provided as part of the

> community center to reflect the differing services provided. *See* Exhibit C (site plan). Although the Applicant proposes modifying the lodging on site by replacing RV spots with cabins, the modification will result in the same, or less, number of beds on site as are currently present. Currently, the following "buildings" contain approximately 124 beds on site: main residence, staff housing, duplex cabins, and RV spots. Exhibit C (Site Plan). As noted above, the Applicant will serve about 100 to 130 clients on site at any one time. Additionally, the SUD treatment center will still serve as a location where individuals suffering from SUD will receive therapy and other clinical treatment." Therefore, the proposed modification to allow an SUD treatment center meets the definition of a "community center," as defined by the Owner in the CUP and accepted by the County at that time.

When the Crook County Court (now the Board of Commissioners (the "Board")) approved applicant's request for a procedural modification on February 23, 2024, it designated the Planning Director to process the current application, with the assistance of County Counsel. Accordingly, Staff requested a legal analysis from Assistant County Counsel, John Eisler, regarding certain aspects of this application, particularly the effect of superseding federal law. A legal memorandum, titled *Planning File # 217-24-000047-PLNG FHAA/ADA Accommodation Requests* (the "Memo"), was provided and is incorporated and adopted herein, in full.

As part of the Memo's analysis, a consideration of the characterization of the original approval with respect to this modification request was required. Relevant to applicant's reasoning above, the original approval involved no less than three separate categories for the Property—a church, a replacement dwelling, and "retreat and community center and campground." Staff agrees the proposed use of the Property properly falls under the proffered definition of "community center," as a "location where members of a group of people may gather for learning, activities, social support, and events." Whether such definition is appropriate for the entirety of the Property and all of its structures is discussed below in the accommodation analysis.

The County also applied the statutory language of ORS 215.283(2)(e) (2007) to the original application, which added a requirement that the community center be "operated primarily by and for residents of the local community." As the original application's central focus was religious assembly and exercise, and because the chapel was approved outright as a church under ORS 215.283(1), which triggered ORS 215.441's mandate for the approval of "activities customarily associated with the practices of the religious activity," the 2007 Planning Commission found:

> The Community Center element, while not being primarily by and for local residents as required by ORS 215.283(2)(e), may serve local residents in some form and such a use would be allowed outright pursuant to ORS 215.441 as an "activity customarily associated with the practices of the religious activity."

Such language remains in ORS 215.283(2)(e), along with additional language inserted via House Bill 2932 (2005). And though the County has the flexibility within its own Code to apply the "least restrictive" standards, criteria, and conditions between the time of original approval and a modification request, any such approval must still comply with state law. As such, ORS 215.283(2)(e) currently reads:

> **215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules.**
>
> **…**
>
> **(2) The following nonfarm uses may be established, subject to the approval of the**

governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

…

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

Much of this provision is now dedicated to service to veterans, which the applicant is not proposing. The applicant provides the following on this point:

> The new language quoted above regarding community centers specifically for veterans does not bar Applicant's proposal. In 2005, the Oregon legislature through House Bill 2932 created the state Department of Veteran's Affairs and allowed the new department to operate clinics under the definition of a community center, provided that the clinics did not provide substance abuse treatment services. This bill became effective on January 1, 2006. In 2007, when Owner's CUP application was approved, the County Code had not yet been amended to incorporate the language from House Bill 2932. The 2007 CUP also did not address the revisions introduced in House Bill 2932. Presumably, the CUP did not address the new statutory language because it was determined to be inapplicable because the revisions to ORS 215.283(2)(e) apply only to community centers operated by the newly created state Department of Veteran's Affairs. The community center at issue in the 2007 CUP was a center operated by the Catholic Church and not the Department of Veteran's Affairs. Similarly, Applicant's proposed community center will also not be run by the state Department of Veteran's Affairs, but by a private entity. Should the County disagree with this interpretation, Applicant submits that its modification request must be processed under the 2007 County Code pursuant to CCC 18.172.100(3). In 2007, CCC 18.24.020(7) did not include language prohibiting substance abuse treatment services in community centers. Therefore, Applicant's proposal meets the criteria of the less-restrictive County Code in effect at the time the original CUP was approved. As explained in more detail below, using the revisions to ORS 215.283(2)(e) to deny Applicant's modification request would be a discriminatory zoning practice prohibited by federal law.

Focusing solely on the non-discriminatory arguments provided by the applicant, Staff agrees. The statutory language permits "[c]ommunity centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community"—full stop. The second sentence of ORS 215.283(2)(e) states that such community centers "authorized under this paragraph *may* provide services to veterans…." The use of the permissive "may" denotes that service to veterans by a community center is optional. *Should* a community center provide such services to veterans, the remainder of the language in the provision applies. This includes the prohibition of "direct delivery of medical, mental health, disability income replacement or substance abuse services"[1] in the final sentence of ORS 215.283(2)(e).

[1] Staff agrees with the applicant that singling out and excluding services to those with substance use disorders would amount to discrimination under federal law, discussed below.

Such intent is evident in the use of the word "services" in both the second and third paragraphs—i.e., "A community center … may provide *services* to veterans…" and "The *services* may not include…." In other words, for those community centers *not* providing services to veterans, the provision, properly read, should only involve the first sentence of ORS 215.283(2)(e): "Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community," which is substantively the same language applied in the original decision, listed in current CCC 18.16.010, and that which will be applied herein.

The applicant acknowledges that interpretive issues remain. For those, the applicant has requested accommodations/modifications under both Title II of the Americans with Disabilities Act (the "ADA") and the Federal Fair Housing Amendments Act (the "FHAA").[2] These Acts supersede state and local land use laws via the Supremacy Clause in Article IV, Paragraph 2 of the United States Constitution. *See also, e.g.,* 42 U.S.C. 3615 (stating any law of a State or political subdivision that purports to require any action that would be a discriminatory housing practice shall to that extent be invalid). Both the application and Memo provide in-depth discussion of the accommodation analysis. In this decision, Staff will focus on the most relevant parts.

The applicant has requested three interpretive accommodations. When faced with an accommodation request under the ADA and FHAA:

> a municipality commits unlawful discrimination if it refuses to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford the disabled equal opportunity to use and enjoy a dwelling. 42 U.S.C. §3604(f)(3)(B); 28 C.F.R. § 35.130(b)(7). The FHAA and ADA apply identical standards whether the term used is reasonable accommodation or reasonable modification. The FHAA and the ADA impose an affirmative duty on municipalities to reasonably accommodate disabled residents. Whether a municipality must alter its policies to accommodate the disabled is a question where answers will vary depending on the facts of a given case. The reasonable accommodation inquiry is highly fact-specific, requiring case-by-case determination.
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> To establish a claim of discrimination on a theory of failure to reasonably accommodate, a plaintiff must demonstrate that (1) plaintiff or his associate suffers from a disability; (2) defendants knew or reasonably should have known of the disability; (3) accommodation of the disability may be necessary to afford the disabled person an equal opportunity to use and enjoy the dwelling; (4) the accommodation is reasonable; and (5) defendants refused to make the requested accommodation.

Rise, Inc. v. Malheur Cty., No. 2:10-cv-00686-SU, 2012 U.S. Dist. LEXIS 44994, at *43-46 (D. Or. Feb. 13, 2012) (quotations and some internal citations omitted). Accordingly, local governments are instructed to apply the first four elements of a claim for discrimination on a theory of failure to reasonably accommodate.

1. Does the applicant suffer from a disability?

The applicant provides the following response under this element:

[2] The FHAA provides for "reasonable accommodations"; the ADA for "reasonable modifications." As federal courts often do, and for the sake of readability, Staff will refer to both such requests simply as "reasonable accommodations."

> Applicant is making these accommodation/modification requests on behalf of its current and future residents with disabilities—a practice that is allowed under Ninth Circuit case law. *Socal Recovery, LLC,* 56 F4th at 812, 814 n.22 (9th Cir 2023) (quotations and citations omitted). The FHAA defines handicap as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." 42 U.S.C. § 3602(h). Persons recovering from drug and/or alcohol addiction are defined as "persons with disabilities" under the ADA and FHAA. *See City of Edmonds v. Washington State Bldg. Code Council,* 18 F3d 802, 803, 804 (9th Cir.1994); *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F3d 1142, 1156–57 (9th Cir. 2013); *Hernandez v. Hughes Missile Systems Co.*, 362 F.3d 564, 568 (9th Cir.2004); 42 U.S.C. § 3602(h); 42 U.S.C. § 12132; 42 U.S.C. § 12102(1). The impairment cannot include "current, illegal use of or addiction to a controlled substance." 42 U.S.C. § 3602(h). Applicant has policies in place to prevent the people it serves from using controlled substances while in residence in the SUD. Exhibit H. "Sober living homes and other dwellings intended for occupancy by persons recovering from alcoholism and drug addiction are protected from illegal discrimination against the disabled without the need for Appellants to present individualized evidence of the 'actual disability' of their residents." *Socal Recovery,* 56 F4th at 813. Therefore, this criterion is met.

Staff agrees that the proposed use of the subject property by its clients satisfies this element. "Alcoholism and drug addiction are 'impairments' under the FHAA, 24 C.F.R. § 100.201(a)(2), and the ADA, 28 C.F.R. § 35.108(b)(2)." *SoCal Recovery, LLC v. City of Costa Mesa*, 56 F.4th 802, 813; *See also Pac. Shores Props.,* 730 F.3d at 1156 ("It is well established that persons recovering from drug and/or alcohol addiction are disabled under the FHA and therefore protected from housing discrimination."). Moreover, there is no issue that the application is on behalf of a business entity instead of the individual residents with disabilities, as "sober living home operators can satisfy the 'actual disability' prong on a collective basis by demonstrating that they serve or intend to serve individuals with actual disabilities." *Socal Recovery,* 56 F4th at 814. Thus, applicant is able to step into the shoes of its current and future residents for the purpose of the ADA/FHAA.

2. Does the County know or should it reasonably know of the disability?

The applicant provides the following argument for this element:

> As stated in this Application, the County now knows (or reasonably should know) that the Applicant's proposed facility will serve a population with a disability. As discussed above, this Application concerns utilizing existing facilities on the Property for the Applicant's SUD treatment center, which is to provide treatment to individuals with SUD. Therefore, this criterion is met.

Staff agrees that this element is satisfied. "In the context of zoning discrimination against a home that aims to serve people with disabilities, we hold that courts must look at the evidence showing that the home serves or intends to serve individuals with actual disabilities on a *collective basis*, including the home's policies and the standards the municipality uses to evaluate the residence." *SoCal Recovery, Ltd. Liab. Co. v. City of Costa Mesa*, 56 F.4th 802, 819 (9th Cir. 2023) (emphasis in original). In *SoCal Recovery*, the court considered "admissions criteria and house rules, testimony by employees and current residents, and testimony by former residents" to satisfy this element. *Id.* at 815. Here, the applicant provided sufficient documentation of its policies and standards in its procedural accommodation request and at Exhibit H of the application to establish and provide notice to the County that, on a collective basis, it intends to serve individuals with actual disabilities, which may require reasonable accommodations or modifications.

3. May accommodation of the disability be necessary to afford the disabled person an equal opportunity to use and enjoy the dwelling?

The applicant provides the following argument under this element:

> Granting exceptions from the zoning code to allow the existing community center to be used as an SUD treatment center is necessary to provide approximately 100 to 130 individuals suffering from SUD with a treatment center in Central Oregon. Without the accommodation, the Applicant will be unable to provide these necessary services at the existing and approved community center to disabled individuals seeking SUD treatment in a location of their choosing.

Staff agrees that without exceptions to ORS 215.283(2)(e) and CCC 18.16.010, the present application cannot be approved, and the SUD treatment facility would not be permitted to operate and serve its clients. However, federal courts often ask more than whether or not the accommodation is necessary for approval of an application under this element. As described in *Valencia v. City of Springfield*, 883 F.3d 959, 968 (2018):

> Whether the requested accommodation is necessary requires a showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability. In other words, the plaintiffs must show that without the required accommodation they will be denied the equal opportunity to live in a residential neighborhood. This has been described by courts essentially as a causation inquiry.

(internal quotations and citations omitted). Thus, the applicant needs demonstrate how living in the proposed location will affirmatively enhance the life of its clients by ameliorating the effects of drug and/or alcohol addiction. Along those lines, the application describes SUD treatment facilities as centers that "provide relapse management, engaging outdoor activities, and individualized programs for each patient." The applicant also states in the application materials the treatment center is necessary to provide approximately 100- to 130 individuals suffering from SUD with a treatment center in Central Oregon (pg. 11 of the applicant's Narrative Statement). . As the FHAA and ADA are to be construed broadly, the applicant has met its burden on this element.

4. Is the accommodation request reasonable?

The applicant provides the following argument under this element:

> The FHAA "prohibits local governments from applying land use regulations in a manner that will . . . give disabled people less opportunity to live in certain neighborhoods than people without disabilities." *Oconomowoc Residential Programs, Inc.*, 300 F3d at 784 (citing *Smith & Lee Assoc. v. City of Taylor*, 102 F3d 781, 795 (6th Cir 1996) (internal citation omitted)). The original Fair Housing Act was specifically enacted "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. The amendments to the Fair Housing Act, as contained in the FHAA, specifically prohibit discrimination in housing on the basis of disability. 42 U.S.C. § 3604(f).
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> An accommodation is reasonable under the FHAA "when it imposes no fundamental alterations in the nature of the program or undue financial or administrative burdens." *Myers v.*

> *Highlands at Vista Ridge Homeowners Ass'n, Inc.*, 6:20-CV-00562-MK, 2022 WL 4452414, at *23 (D Or Sept 8, 2022), *report and recommendation adopted*, 6:20-CV-00562-MK, 2022 WL 4447495 (D Or Sept 23, 2022) (quoting *Giebeler*, 343 F.3d at 1157 (citations and quotation marks omitted)).
>
> Some burdens "may be more subjective and require . . . [an] . . . appreciati[on of] the intangible but very real human costs associated with the disability in question." *Valencia v. City of Springfield, Illinois*, 883 F3d 959, 968 (7th Cir 2018), *citing Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F3d 737, 752 (7th Cir 2006). This refers to "those intangible values of community life that are very important if that community is to thrive and is to address the needs of its citizenry." *Id.* "Whether the requested accommodation is necessary requires a 'showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability.'" *Id.* (citing *Dadian v. Vill. of Wilmette*, 269 F.3d 831, 838 (7th Cir. 2001) (quoting *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995)). "In other words, [applicants] must show that without the required accommodation they will be denied the equal opportunity to live in a residential neighborhood." *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F3d 775, 784 (7th Cir 2002). In the context of a zoning waiver, "'equal opportunity' means the opportunity to choose to live in a residential neighborhood." *Id*.
>
> ….
>
> Further, Applicant's request does not fundamentally alter the County's operations and imposes no undue financial or administrative burdens on the County. The County regularly processes land use permits administratively and is equipped with staff sufficient to review and decide on this application. Approving a CUP modification will not cause the County to bear any administrative or financial burdens. As such, this criterion is met.

Staff agrees that the applicant's request imposes no undue financial or administrative burdens, as the County regularly processes complex land use applications. As is typical in the land-use context, consideration of the reasonableness of the accommodation request comes down to a highly fact-specific inquiry into whether granting the accommodation would fundamentally alter the County's EFU-3 zoning scheme or "is so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change." *Valencia v. City of Springfield,* 883 F.3d at 968. To make this determination, Staff will begin by analyzing each textual accommodation request, individually, before considering the effect of the proposal in full.

The applicant's accommodation request to except out the prohibition of substance abuse treatment in the last sentence of ORS 215.283(2)(e) is unnecessary. As explained above, that sentence should be read to only apply to those community centers applying services to veterans, which the applicant is not proposing. In any event, a land use rule that states a community center is a "location where members of a group of people may gather for learning, activities, social support, and events," unless that group of people are those with substance use disorders would be discriminatory on its face and precisely the type of land use law the ADA/FHAA are meant to prevent.

The applicant's second textual accommodation request concerns the type of entity that may own a community center. The relevant statutory language of ORS 215.283(2)(e) is:

> Community centers owned by a governmental agency or a nonprofit community organization….

On this point, the applicant states only that it is a private entity. The original applicant was a religious entity, which is a not a profit seeking entity. The intent behind this statutory language is clearly to limit the purpose of community centers to be locations for "learning, activities, social support, and events" as opposed to commercial enterprises with a profit motive. However, in the context of the equal treatment mandates of the ADA/FHAA, such an exclusion of one group over another appears to be discriminatory. On its own, this textual accommodation request is not unreasonable.

The applicant's third accommodation request concerns the remainder of the first sentence of ORS 215.283(2)(e):

> … and operated primarily by and for residents of the local rural community.

The applicant makes the following argument for this request:

> [T]he Applicant seeks a reasonable accommodation under the ADA and FHAA to allow a community center as a conditional use in an EFU-3 Zone where that community center will likely have employees from within and outside of the local rural community and serve members from within and outside of the local rural community. Although the continued use of the permitted community center facilities will employ and provide services to residents of the local rural community, those services and employment opportunities are not contemplated to be restricted to only residents of the local community.

Like the other language identified, certain groups or types of groups are permissible—residents of the local rural community—while others are not. The intent behind the language makes sense in the context of Oregon's farm use zones and the purpose of a community center. These are to be locations where the local agricultural community can congregate for learning, activities, social support, and events. But again, like above, the effect of the rule is to allow one group of people to enjoy the benefits of a community center to the exclusion of others. Under the ADA/FHAA those with a disability must be given equal opportunity to enjoy a dwelling or utilize programs as others.

Moreover, this language was applied to the original application. There, like here, the community center element was not to be "operated primarily by and for" local residents. Facing arguments that a denial would substantially burden religious exercise under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the 2007 Final Decision found:

> The Community Center element, while not being primarily by and for local residents as required by ORS 215.283(2)(e), *may serve local residents in some form* and such a use would be allowed outright pursuant to ORS 215.441 as an "activity customarily associated with the practices of the religious activity."

(emphasis added). Similarly, the present application would be operated primarily by local resident employees and will likely serve *some* local residents over time. On its own, this textual accommodation request is not unreasonable.

Stepping back, this application and the accommodation request present other issues that must be addressed. First is the very basic notion that this is properly a "modification" of an existing CUP as opposed to a brand new application. Our code, at CCC 18.172.100(1) allows a modification "when the proposed modification will result in a change to the original proposal." At what point does a "change to the original

proposal" constitute a *new* use as opposed to a modification of the current use?

Unlike many jurisdictions, our code does not define or limit the term "modification." Staff has not identified the Board defining or limiting the term in prior land use decisions. Websters defines "modification" as "the act or action of changing something without fundamentally altering it." Webster's New Third New International Dictionary 1452 (1986). Staff finds this definition appropriate, and, coincidentally, strikingly similar to the current analysis of whether the accommodation request is reasonable—i.e., a fundamental alteration in the nature of the program.

As discussed at length in the Memo, the central focus in the original application was the exercise of religion. The chapel building was approved outright as a church under ORS 215.283(1), and most of the remaining structures were also seen as an outright use under ORS 215.441, as facilities to be used "for activities customarily associated with the practices of the religious activity" and meeting the broad terms of CCC 18.160.050(5) (2007), as a "retreat and gathering center with camping facilities" to be approved as a "community center/private park." On that basis, applicant's proposed use suggests a change that fundamentally alters the existing use, necessitating a new application as opposed to a modification of the original CUP.

The applicant, in its Applicant's Response to April 23, 2024 Incomplete Letter, requests that the chapel "be considered as a facility approved as part of the broader community center" and states that the chapel will "continue to be used by staff and clients to engage in religious and spiritual services as part of the community center, and will also be used by clients to engage in similar religious and spiritual activities such as yoga, meditation, and group discussions." The applicant does not ask the County to retain the chapel's approval as a church and makes no claim under RLUIPA.

The applicant presents the entire modification request as a request to modify a community center, defined herein as a "location where members of a group of people may gather for learning, activities, social support, and events." ADA protections extend to the application of laws and the availability of programs; the FHAA, however, is limited to "dwellings." Thus, under state and county land use law, the applicant characterizes the application as a place where members of a group will "gather," but a focus of the federal accommodation request is that the accommodation is necessary to provide the clients an equal opportunity to use the dwelling of their choosing. Can the same structures be categorized as a community center for gathering under state/County law and dwellings under federal law?

Staff finds doing so is appropriate in this case. The administrative regulations for the FHAA define prohibited discrimination to include "limiting the use of privileges, services or facilities *associated with* a dwelling." 24 C.F.R. 100.65(b)(4) (emphasis added). A federal court considered a similar issue with a nine-bedroom sober living facility's use of a separate carriage house to be used for weekly twelve-step program meetings attended by residents and others. The court applied the administrative regulation above to find the carriage house was a facility used for services in connection with the dwelling. *Drazen v. Town of Stratford*, 2013 U.S. Dist. LEXIS 113870, *2. The same definition should apply here to the chapel building, as it will be used in connection with and as a central component to the clients' overall treatment services. The community center, bathhouse, and other structures should also be characterized as facilities associated with a dwelling, considering many of the dwellings have no bathroom facilities and all food will be prepared and served in the community center building. Thus, it is appropriate to consider the structures on the Property as dwellings for the purpose of the federal exemptions of the FHAA and a community center for the purpose of state and local land use law. It is also appropriate to consider the modification request as changing the existing CUP without fundamentally altering it.

Moreover, the physical changes to the Property should be viewed as not fundamentally altering the original CUP. Other than minor interior improvements to some of the structures, the only physical change to the significantly developed Property is to convert seven RV pads into either cabins or a bunkhouse. On that basis, the application seeks to change the physical characteristics of the Property without fundamentally altering it.

The use of the land itself, in both intensity and frequency, poses another interesting question. The 2007 CUP envisioned conferences and camps with 225 overnight guests. The present application envisions approximately 100-130 clients and 30 employees at the Property at any one time. This reduction in approved intensity of use would not fundamentally alter the existing CUP or the County's EFU-3 scheme.

From another view, the original application presented these high-intensity events with 225 overnight guests as infrequent, occurring primarily over the summer. Yet, the CUP contains no conditions of approval so limiting the frequency of these high-intensity events. In other words, the current CUP holder has the property right, should it wish, to host such high-intensity events at any time during the year. Similarly, it can be assumed that the intensity of use by roughly 100-160 people at the Property would remain fairly consistent day-by-day, season-by-season by the applicant. As to the rights granted in the CUP and applicant's proposal, this change would not fundamentally alter the existing CUP or the County's EFU-3 scheme.

But considering the alteration in intensity and frequency from the perspective of neighbors and the surrounding community would be much different. As evident from public comment, the existing CUP has *not* been exercised as originally proposed, let alone to the extent permitted without any limiting conditions of approval. One comment noted that, though there may be 124 beds on site, she has never seen even so many as 50 of those beds being used. Instead, the Property has, over the years, been primarily used for day use activities like quilting clubs. Public comment regarding impacts on traffic, pedestrian access, farm use, and more demonstrates a concern that the influx of consistent occupancy by clients and staff will be a fundamental and unreasonable change to the reality on the ground. Such concerns do not go unnoticed by Staff. However, the existing CUP is a valid property right, as its owner has invested significant capital and effort to construct the facilities and maintain its conditional use. It is the property right that must be considered in the modification and reasonable accommodation requests, not the recent lack of intensity or frequency.

Turning to the goals and purpose of Oregon's farmland and the County's EFU-3 Zone presents yet another interesting question. The purpose of farm zones in Oregon, under Goal 3, is the preservation of farmland for continued production of food and fiber. The County's Comprehensive Plan lists, as its first objective in agricultural lands, "[t]o maintain a viable agricultural base, preserve agricultural lands for agriculture, and protect agriculture as a commercial enterprise." Common sense dictates that a 100+ person commercial substance abuse center is antithetical to such objectives, and thus represents a fundamental and unreasonable change to the state and county's comprehensive land use scheme. Comments from the public express this point quite effectively.

And yet, federal courts instruct that—for the circumstances present here—the preservation of farmland is irrelevant. In *Kulin v. Deschutes County*, 872 F. Supp. 2d 1093 (2012), the local hearings officer rejected an accommodation request under the ADA/FHAA regarding a commercial warehouse that had already been constructed. The hearings officer denied the accommodation request on the grounds that it would fundamentally alter the county's land use regulations in that approval would "be inconsistent with the purpose of the home occupation standards and the comprehensive goals, objectives, and policies to preserve and protect EFU-zoned land for agricultural uses," as well as "open the door for the establishment

of non-farm related businesses on EFU-zoned parcels in contravention of those policies." *Id.* at 1105.

The federal judge disagreed, borrowing from an earlier case involving an already constructed barn that had been converted into a church:

> As far as the state is concerned, whatever impact the building had on high value farmland occurred when it was first built. Whether the plaintiffs store pallets, tractors, or Bibles and sacred relics inside the building no longer matters in terms of the impact the building has on the land it occupies. The Hearings Officer expressly found that the use of the building as a church would not present any significant impact on farm use or farming practices in the area.

Id. at 1104 (citing *Cam v. Marion County,* 987 F. Supp. 854, 860 (1997)). The judge similarly dismissed the hearing officer's concerns that approving the accommodation request would open the door to non-farm related development on EFU-zoned parcels. The judge reasoned that each and every ADA/FHAA accommodation request required a highly fact-specific, case by case analysis.

And, so it is here. The majority of the Propery lost its agricultural nature with the original CUP and subsequent development. The Property, its pre-existing development, and existing CUP are unique to the County's EFU-3 Zone. Were the applicant requesting approval for such a facility on undeveloped farm ground, this analysis would be far different. Staff concedes that accommodating this request is unlikely to open the floodgates and allow others to circumvent our land use code, considering the unique circumstances present on the subject property. As noted in the *Cam* case, rejecting this application and thus leaving the existing structures mostly empty does not advance a legitimate state or County interest. *Cam*, 987 F. Supp. at Fn. 4.

What remains to consider are the impacts to surrounding farmlands and farm practices, which are discussed below. Accordingly, Staff finds, should the modification application's impacts to surrounding farmlands and farm practices be sufficiently mitigated through the implementation of appropriate conditions of approval, applicant's request for reasonable accommodations under the ADA/FHAA are granted and this criterion will be met.

Chapter 18.24 Exclusive Farm Use Zone, EFU-3 (Powell Butte Area) (2007)

18.24.040 Limitations on specific conditional uses.
In addition to the general standards and conditions that may be attached to the approval of a conditional use as provided by Chapter 18.160 CCC, the following limitations shall apply to a conditional use permitted in CCC 18.24.020. A use allowed under CCC 18.24.020 may be approved where the county finds that use will not:

(1) Force a significant change in accepted farm or forest practices on surround lands devoted to farm or forest use; or

(2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
An applicant for use allowed under CCC 18.24.020 may demonstrate that the standards under subsections (1) and (2) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

FINDING: The applicant engaged Rand Campbell of Hopper LLC and Back Forty LLC to provide a Farm

Impacts Analysis. Mr. Campbell is a land use attorney with a hay farm in Tumalo and cattle ranch in Grant County. Mr. Campbell provided the following response for area land uses:

> A study of all properties in the area surrounding the subject property was performed with a focus on properties within one mile of the subject property. The subject property is within the Exclusive Farm Use EFU-3 Zone applicable to the Powel Butte Area. The majority of the land surrounding the subject property is also zoned EFU-3, primarily consisting of farm and ranch tracts. A number of smaller residential properties, zoned R10 and R5, are located to the east of the subject property. Brassada Ranch [sic] destination resort is located approximately 1.2 miles to the southeast. Large tracts of BLM land lie to the west and south of the subject property.
>
> Farm uses occurring in the area primarily consist of hay and grain crop production and livestock production. Private farm parcels in the area range in size from approximately 5 acres to 310 acres. Most of the farm parcels are developed with dwellings and other structures typically associated with farm uses.

Mr. Campbell identified the following potential impacts to surrounding lands devoted to farm use:

(1) Visual impacts, such as outdoor lighting or glare;
(2) Auditory impacts, such as increased noise or outdoor music;
(3) Traffic impacts, such as increased traffic that impacts movement of farm equipment or dust from increased use of unpaved roads;
(4) Trespass onto farmlands, typically due to an increased number of people in the area and the increased potential that people may drive or walk onto nearby farmlands either accidentally or intentionally, as well as the potential for garbage to trespass onto farmlands; and
(5) Complaints against farm practices, such as complaints against herbicide or pesticide use on nearby farmlands, or complaints against smoke, dust, or smells generated by farm uses.

Mr. Campbell then described the current approved structures and uses before comparing those to the modification request, as follows:

> The existing facilities and proposed nonfarm uses will be concentrated in the center and on the north and east sides of the property. This layout provides an exceptionally large buffer space between surrounding farmland and areas of the subject property where nonfarm uses will occur. The buffer space in this case is sufficiently large to even accommodate additional structures in the future if the property owner elected to pursue additional permits allowing the nonfarm uses to expand. Continuing to concentrate nonfarm uses in a manner preserving this buffer space will continue to reduce potential impacts to surrounding farm uses.
>
> The only physical alteration to the subject property contemplated at this time will be the replacement of a seven-space RV park with small cabins. Replacing the RV spaces with cabins, if anything, will reduce the traffic impact on surrounding farm uses because farm-related traffic will not be impacted by slow moving RVs traveling to and from the subject property. Replacing the RV spaces with cabins will also reduce the visual impacts associated with the property since the cabins will be similar in appearance to other structures typically found in the EFU zone and will not be bright white like most RVs. There are no other visual impacts that are likely to result from the proposed modification.
>
> The Applicant is proposing a SUD treatment facility which will be a place for its clients to receive

therapy and other clinical treatment. As such, the proposed use will not introduce loud noises or outdoor music to the area. Therefore, the proposed modification is not likely to result in auditory impacts to surrounding farm uses.

The proposed modification will reduce the total number of individuals using the facilities on the subject property. Treatment center clients will typically reside at the property for approximately one to three months. During their treatment, clients will stay at the property each day and night, with occasional group trips away from the subject property. The Applicant will transport clients to and from the subject property in groups using its own vehicles which will further reduce the traffic associated with the proposed modification. Due to less individuals using the subject property facilities and the Applicant arranging transportation of its clients in groups, the proposed modification is likely to result in less traffic impact to surrounding farm uses than the traffic impacts associated with the current use.

Under the proposed modification, there is little to no chance that the proposed use will result in trespass onto farmland. As noted above, the Applicant will transport clients to and from the subject property which will reduce the chances that visitors would mistakenly drive onto nearby farm properties. Additionally, the facility will be easy for drivers to find since it is clearly visible from Alfalfa Road, the property has a dedicated right turn lane, and the entrance to the property will be clearly marked. Likewise, there is little to no chance that treatment center clients will trespass onto nearby farmland since the clients will be under close supervision of staff at all times.

Public comment opposed to the application identified several impacts to farm practices. Ed Burgess owns property immediately to the north of the Property and runs cattle and harvests hay, often utilizing large machinery. He noted that the Property is not fenced. Mr. Burgess is concerned that clients of the applicant could wander onto his property and be harmed by the machines or cattle or complain of the use of fertilizer and weed control products. He is also concerned, as he's observed from the Property's current use, that clients will want to take walks along the adjoining roads, which have no sidewalks or adequate shoulders. Mr. Burgess mentions the two deaths from rollover accidents, as well as another rollover accident on August 13, 2024, and states that neither Powell Butte Highway nor Alfalfa Road can hold up to even one more car being added. Finally, Mr. Burgess is concerned with the precedent approving the application will set, "open[ing] the door for investors to buy up farm property, dry it out and build subdivisions."

Linda Stelle echoed the concerns over traffic impact to farm use, noting it is already difficult to move farm machinery from field to field with angry drivers yelling at them for slowing the flow of traffic, especially during hay season. Ms. Stelle also mentions the difficulty in cattle drives with current speed and congestion of traffic. She too has observed and is concerned with clients of the applicant using the busy roads for walks along the shoulders with no sufficient pedestrian access.

Staff finds the visual impacts can be reduced from current levels with appropriate conditions of approval. Mr. Campbell is correct that the replacement of the seven RV spots with a bunkhouse or cabins, constructed in a style to blend in with the other facilities on the Property and with shielded, downcast and dark-sky compliant, timed lighting would reduce the visual impacts to farm practices.

Staff finds the auditory impacts will be minimal. The current approved use includes camps and conferences, with some guests camping outside or utilizing RVs. There will be no outdoor camping or large outdoor gatherings under the current proposal

Staff finds traffic impacts remain a concern. While it is true that RVs will no longer access the Property and

clients will be escorted in via applicant vehicles, the consistent frequency of the proposed use may have a greater impact on surround farm use. Additionally, the adjoining roads do not have pedestrian access. A condition of approval that limits client escorts in and out of the property will minimize traffic impacts from the use. A condition of approval that requires applicant to adopt and enforce a policy which restricts clients from leaving the Property on foot or bicycle will minimize the potential for pedestrian accidents.

Staff finds trespass onto farmlands remains a concern. The concentration of facilities in center and north and east sides of the Property does provide a helpful buffer. However, the consistent occupancy of the Property by a large number of clients and the lack of fencing increases the chances of potential conflict. Conditions of approval requiring close client supervision, and the installation of appropriate fencing should mitigate such conflict.

Finally, though there is a buffer on the Property between the facilities and farm use, there remains the potential that clients could complain about neighboring farm practices. A conditional of approval that requires clients to acknowledge and accept neighboring farm practices before admittance to the Property would minimize or eliminate the chance of such conflict.

Staff finds, with the imposition of the above proposed conditions of approval, the proposed use will not significantly change or increase the cost of surround farm practices.

Chapter 18.16 Exclusive Farm Use Zones, EFU-3 (Powell Butte Area)

18.16.010 Use table.

Community centers are listed at 7.7 of the Use Table as a type "C" use, meaning a conditional use, which "are permitted subject to county review, any specific standards for the use set forth in CCC 18.16.015, the conditional use review criteria in CCC 18.16.020, the general standards for the zone, and specific requirements applicable to the use in Chapter 18.160 CCC." Community centers are subject to CCC 18.16.015(20) and (24).

(20) A community center may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

FINDING: This criterion is not applicable as the applicant will not be providing services specifically for veterans.

(24) Three-Mile Setback. For uses subject to this subsection:
(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and Chapter 660 OAR, Division 4, or unless the structure is described in a master plan adopted under the provisions of Chapter 660 OAR, Division 34.
(b) Any enclosed structures or group of enclosed structures described in subsection (24)(a) of this section within a tract must be separated by at least one-half mile. For purposes of this subsection, "tract" means a tract that is in existence as of June 17, 2010.
(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the

same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this chapter.
(d) Comply with other conditions as deemed necessary.

FINDING: The Subject Property is greater than three miles from an urban growth boundary. No new facilities with a design capacity greater than 100 people will be constructed within three miles of an urban growth boundary. This criterion is met.

Chapter 18.160 Conditional Uses
18.160.050 Standards governing conditional uses.
A conditional use shall comply with the standards of the zones in which it is located and with the standards and conditions set forth in this section.
…
(5) Clinics, Clubs, Lodges, Fraternal Organizations, Community Centers and Grange Halls, Golf Courses, Grounds and Buildings for Games or Sports, Country Clubs, Swimming, Boating, Tennis Clubs, and Similar Activities, Governmental Structures and Land Use, Parks, Playgrounds. In considering the above, the planning director or planning commission may authorize the conditional use after assurance that the following is to be provided:

(a) Adequate access from principal streets.

FINDING: The applicant provides the following response:

> The Property has existing access off Alfalfa Road and additionally has an emergency access road off S Powell Butte Highway. Exhibit C (site plan). Additionally, as discussed in more detail below, the Applicant anticipates providing an updated Transportation Impact Analysis which will show that the center will have adequate access from principal streets. Therefore, this criterion is met.

Staff agrees. The applicant's Transportation Impact Analysis was submitted July 23, 2024 (the TIA). The Property has access off Alfalfa Road, which is a Major Collector with a southbound right-turn deceleration lane to access the Property. There is sufficient site access spacing and clear and unobstructed sight lines. There is also a gated emergency access off Powell Butte Highway. This criterion is met.

(b) Adequate off-street parking.

FINDING: The applicant provides the following response:

> In 2007, CCC 18.128 contained no specific community center parking requirements. Regardless, there are currently 153 parking spots located on the Property. As explained above, the proposed facility would be staffed by approximately 75 employees across three shifts, with approximately 30 staff members on site from 6:00 a.m. to 10:00 p.m. daily. Clients receiving services at the Property will not typically utilize off-street parking because the Applicant typically transports clients to and from the facility, with 1-2 daily drives. Therefore, there is more than adequate offstreet parking available on the Property. This criterion is met.

Staff agrees. Off-street parking demand at the Property, of primarily shift employees, will easily be satisfied by the existing 153 parking spots. This criterion is met.

(c) Adequate building and site design provisions to minimize noise and glare from the building and site.

FINDING: The applicant provides the following response:

> An updated site plan is attached hereto as Exhibit C. The Applicant will accept a condition of approval requiring it to minimize noise and glare from any new buildings. Therefore, this criterion is met.

The applicant provided an updated site plan as Exhibit C, as well as "Preliminary Site Plan" packet in its *Applicant's Response to April 23, 2024 Incomplete Letter* (the "Response to Incomplete Letter), which depicts how existing buildings on the Property plan to be used. The Response to Incomplete Letter also included an example of the proposed bunkhouse to replace RV pads. The existing structures were built in a manner to minimize noise and glare. The applicant states it will accept a condition of approval for any new buildings. With an appropriate condition of approval, this criterion can be met.

Chapter 18.180 Transportation
18.180.010 Transportation Impact Analysis

(2) When a Transportation Impact Analysis Is Required. The county or other road authority with jurisdiction may require a transportation impact analysis (TIA) as part of an application for development, a change in use, or a change in access. A TIA shall be required where a change of use or a development would involve one or more of the following:

FINDING: Staff requested a Transportation Impact Analysis in its Incomplete Letter to applicant on April 23, 2024. The applicant provided the Transportation Impact Analysis (the "TIA") to the County on July 23, 2024.The TIA provides an Executive Summary, a Trip Generation report, the required analysis in CCC 18.180.010(2), a Transportation Analysis Letter, certain Transportation Impact Analysis Criteria (Existing Conditions, Transportation Safety, and the review criteria of CCC 18.180.010(13).

(a) The development generates 25 or more peak-hour trips or 250 or more daily trips.

FINDING: The applicant's engineer provides the following response:

> As noted above, the proposed use generates less than 25 weekday p.m. peak hour trips (18 total), or approximately 12 new trips. The prior study also assumed up to 278 daily trips, so the proposed change of use does not meet the County's +250 trip threshold.

Trip estimates were prepared based on the most current edition of the Institute of Transportation Engineers' (ITE) standard reference *Trip Generation, 11th Edition.* ITE 620: Nursing Home was selected as the facility type most similar to a SUD treatment center, with nearly all trips associated with employees as opposed to clients or guests. Figures were selected based upon 130 clients receiving overnight service, concluding the development would generate 398 weekday daily trips ends and 18 weekday a.m. and p.m. peak hour trip ends, as shown in the TIA's Table 1:

Table 1. Estimated Trip Generation (Source: ***ITE Trip Generation, 11th Edition***)

Land Use	ITE Code	Size (Beds)	Weekday Daily Trips	Weekday AM Peak Hour			Weekday PM Peak Hour		
				Total	In	Out	Total	In	Out
Nursing Home	620	Up to 130	398 *3.06/Bed*	18 *0.14/Bed*	13 *72%*	5 *28%*	18 *0.14/Bed*	6 *33%*	12 *67%*

The present application is a modification the 2007 decision, which also included a Transportation Impact Analysis, prepared by Scott Ferguson, PE (the "prior TIA"). The prior TIA identified the facility would accommodate 200 to 225 person events with 112 Friday midday trips, 197 Saturday afternoon trips, and 6 weekday commute hour trips. The TIA notes that the prior TIA did not account for daily trip rates for certain other approved facilities. The TIA summed these non-community center trip counts to generate a collective ITE-based rate of about 166 weekday daily trips, as follows:

- Seven-stall RV park – 3-4 weekday p.m. peak hour trips; 30-40 weekday daily trips
- Chapel – 24 weekday daily trips
- Manse – 10 weekday daily trips
- Six cabins – 57 weekday daily trips

The TIA went on to discuss the trip rates from the prior decision for the community center. The prior TIA assumed the larger events would take place during peak summer months when traffic is highest on the system. The prior TIA considered events such as summer camps with up to 80 attendees and 112 daily event-related trips. Combining the non-community center daily trips (166) and the event related community center trips (112), the TIA concludes the existing use approved 278 total daily trips. The TIA then netted out the existing approved daily trips (278) from the proposed 398 daily trips to find the proposed modification would generate an additional 120 daily trips.

Staff finds, based on the analysis in the TIA described above, the applicant's change of use will generate fewer than 25 peak-hour trips and 250 daily trips. This threshold is not met.

(b) An access spacing exception is required for the site access driveway(s) and the development generates 10 or more peak-hour trips or 100 or more daily trips.

FINDING: The applicant's engineer provides the following response:

> The site will utilize the existing [approved] access for primary and emergency access. As no changes, and as the spacing of approximately 1,870 feet from the Powell Butte Highway/Alfalfa Road intersection exceeds County access spacing standards this does not apply.

Staff agrees there is no change in access and the current spacing exceeds County standards. This threshold is not met.

(c) The development is expected to impact intersections that are currently operating at the upper limits of the acceptable range of level of service during the peak operating hour.

FINDING: The applicant's engineer provides the following response:

> There are no locations within the site vicinity identified as deficient today. This criterion does not apply.

Staff agrees this threshold is not met.

(d) The development is expected to significantly impact adjacent roadways and intersections that have previously been identified as high crash locations or areas that contain a high concentration of pedestrians or bicyclists such as school zones.

FINDING: The applicant's engineer provides the following response:

> There are very low reported crashes within the area, with no crashes at the access location or the Powell Butte Highway/Alfalfa Road intersection (and low crashes associated with the curve). Neither area is identified within ODOT's SPIS list.

Staff agrees this threshold is not met.

(e) A change in zoning or a plan amendment designation.

FINDING: The applicant's engineer provides the following response:

> The site was previously approved as a conditional use; this criterion does not apply.

Staff agrees the application does not involve a change in zoning or a plan amendment. This threshold is not met.

(f) A TIA is required by ODOT.

FINDING: The applicant's engineer provides the following response:

> ODOT does not have jurisdictional authority over any of the surrounding roads. A copy of the report will not be provided to ODOT as it is assumed that they will have no comments outside of their jurisdictional boundary.

Staff agrees a TIA is not required by ODOT as the surrounding roads are outside its jurisdiction. This threshold is not met.

(3) When a Transportation Assessment Letter (TAL) Is Required. If the provisions of subsections (2)(a) through (f) of this section do not apply, the applicant's traffic engineer shall submit a transportation assessment letter to Crook County planning department demonstrating that the proposed land use action is exempt from TIA requirements. This letter shall outline the trip-generating characteristics of the proposed land use and verify that the site-access driveways or roadways meet Crook County's sight-distance requirements and roadway design standards.

FINDING: Based on the analysis above, the provisions of subsections (2)(a) through (f) do not apply and thus the applicant's traffic engineer is required to submit a Transportation Analysis Letter, which shall outline the trip-generating characteristics of the proposed land use and verify the site-access driveways or roadways meet the County's sight-distance requirements and roadway design standards. The applicant's traffic engineer provided the following pertaining to safety, access, and sight distance:

- No changes are proposed to site access. The existing access location onto Alfalfa Road will continue to serve the proposed Sunshine Behavioral Health Facility, with gated/secondary access onto the

Powell Butte Highway.

- There are no reported crashes at the existing Alfalfa Road access point within the time period from January 2017 to December 2021 (the most recent five-year period available). No crashes were reported at the Powell Butte Highway/Alfalfa Road intersection, though there were crashes surrounding the intersection associated with the curve, and crashes to the west attributed to excessive speeds (including a fatality). The frontage and adjacent portions of the Powell Butte Highway are not identified within ODOT's Safety Priority Index System list.
- Access into the retreat center includes a southbound right-turn deceleration lane, separating through and turning traffic. The access is located on a straight and flat section of road that provides extensive sight lines in either direction. As the access has previously been approved by Crook County further review was not conducted.
- No operational or capacity issues were observed within this rural area; historical counts (2017) show bi-directional volumes on Alfalfa Road of about 86 vehicles, or one car passing the access driveway every 42 seconds today. While high growth in the surrounding destination resorts is planned, there is ample capacity within the system to support the continued activity within this site.

Staff finds, based on the above and further analysis below, that this criterion is met.

(4) Preparation of a TIA or TAL. A professional engineer registered by the state of Oregon, in accordance with the requirements of the road authority, shall prepare the TIA or TAL. If preparing a TIA, the content and methodologies of the analysis shall conform to the requirements of subsections (5) to (13) of this section.

FINDING: A professional engineer registered by the State of Oregon, Joe Bessman, PE, from Transight Consulting, LLC prepared the TIA. The TIA established that the thresholds of CCC 18.180.010 were not met and a formal TIA was not required. The TIA acknowledged that, even though not limited by conditions of approval in the 2007 decision or otherwise, the traffic impacts envisioned in the 2007 decision were less consistent on a daily basis than those of the present application. At the request of the County, the engineer elevated the Trip Generation Report to include formal elements of a Transportation Impact Analysis to provide additional safety and operational information on the surrounding system.

The TIA considered existing conditions. The included study area follows County standards. The two major transportation facilities are Powell Butte Highway and Alfalfa Road, both under County jurisdiction, as shown on Table 2:

Table 2. Existing Transportation Facility Characteristics

Roadway	Jurisdiction	Functional Classification	Cross Section	Speed
Powell Butte Highway	Crook County	Minor Arterial	2-lanes	55 mph
Alfalfa Rd	Crook County	Major Collector	2-lanes	55 mph

As a major collector street, the required access spacing along Alfalfa Road is 500 feet, which is met, as shown on the TIA's Figure 2. The TIA noted that the roads within the study area are rural in nature with no designated bike lanes, limited shoulders, no sidewalks, and no on-street parking.

Transportation safety was reviewed within the study area through the ODOT crash database and verification of intersection sight distance. Historical crash data was obtained from the time period of January 2018 to December 2022, reflective of the most recent five-year period available. The data shows

five single-vehicle incidents, all with fixed objects or wildlife, including a double fatality rollover in 2019. The TIA notes the "two rollover crashes indicate the need for continued efforts to improve the clear zones and shoulder recovery areas surrounding the Powell Butte Highway, particularly within the right-of-way constrained areas where fencing is situated close to the edge of pavement."

The TIA also included an assessment of intersection sight distance. Applying the standards of AASHTO's 2018 Green Book, minimum recommended sight distances are a height of 3.5 feet, 14.5 feet from the edge of travel way at the access point serving the proposed development. The topography of the area is generally flat, with the driveway situated within the low point of a mild sag vertical curve. The AASHTO minimum standards are exceeded for both sight distances and stopping sight distance, as shown on TIA Figures 3 – 6.

The site access connection to Alfalfa Road has been improved with a southbound right-turn deceleration lane to separate higher speed southbound through motorists from those decelerating to turn into the site. The Powell Butte Highway/Alfalfa Road intersection is stop-sign controlled, with a single perpendicular connection with the Powell Butte Highway and advanced wayfinding signage. Alfalfa Road includes separate right- and left-turn lanes at the intersection.

Traffic counts were collected on July 2, 2024, between 7-9 a.m. and 4-6 p.m. at the Powell Butte Highway/Alfalfa Road intersection. The TIA's Figure 7 shows historical and current traffic volumes. The 2024 traffic counts show little overall change with the 2017 counts, other than the 2017 peak occurring earlier in the evening.

The traffic counts also demonstrated a 30% higher peak in the p.m. window, which consistent with the County's Transportation System Plan, is the focus of an operational analysis. Results of the operational assessment during the peak fifteen minutes of the peak hour show fairly low stop-controlled delays at the Powell Butte Highway/Alfalfa Road intersection (Level of Service "B" on the stop-controlled Alfalfa Road approach) and limited queuing (95th percentile queue of one vehicle).

Future build-out year traffic conditions were developed by applying a 3.5% annual growth rate to the observed 2024 traffic volumes (the historical rate is generally less than 2%). Site operations are expected to be complete in 2025. Traffic volume estimates both with and without the project are include in the TIA's Figures 8 – 9 and Table 3. Both the Powell Butte Highway/Alfalfa Road intersection and the site access driveway contain adequate capacity to support increased traffic volumes from the application with operation standards remaining at Level of Service "B" or better.

(13) Review Policy and Procedure. The following criteria should be used in reviewing a transportation impact analysis as part of a subdivision or site plan review:

(a) The road system is designed to meet the projected traffic demand at full build-out.

FINDING: The applicant's engineer provides the following response:

As included within this report, all of the study intersections operate acceptably with the proposed tenant change.

Staff agrees. As detailed above, at full build-out, the Powell Butte Highway/Alfalfa Road intersection will remain at a Service Level of "B" or better. This criterion is met.

(b) Adequate intersection and stopping sight distance is available at all driveways.

FINDING: The applicant's engineer provides the following response:

> Clear and unobstructed sight lines are available at the driveway that extend beyond the minimum recommended AASHTO Intersection Sight Distance dimensions. The available sight lines on both approaches also extend beyond the minimum recommended AASHTO Stopping Sight Distance dimensions.

Staff agrees. As detailed above, intersection and stopping sight distance both exceed AASHTO minimum recommended dimensions. This criterion is met.

(c) Proposed driveways meet the county's access spacing standards in Chapter 18.176 CCC, Access Management Standards, or sufficient justification is provided to allow a deviation from the spacing standard.

FINDING: The applicant's engineer provides the following response:

> The site contains a single [existing] driveway that is located 1,870 feet from the Powell Butte Highway/Alfalfa Road intersection. This easily exceeds the County's 500-foot access spacing dimension. A gated/emergency access is also available to the Powell Butte Highway, but as a gated emergency only connection would not be subject to the County's access spacing standards.

Staff agrees. The driveway access spacing exceeds County standards. This criterion is met.

(d) Opportunities for providing joint or crossover access have been pursued.

FINDING: The applicant's engineer provides the following response:

> The existing access is not located at a point where shared or crossover access would be viable. For safety and security, no crossover easements are recommended for this site.

Staff agrees. This criterion is met.

(f) The site does not rely upon the surrounding roadway network for internal circulation.

FINDING: The applicant's engineer provides the following response:

> The existing campus has an extensive internal transportation network that can support patient, employee, and visitor needs. This site will not be reliant on the County roadway system for internal site circulation.

Staff agrees. The existing internal campus transportation network is sufficient. This criterion is met.

(g) The road system provides adequate access to buildings for residents, visitors, deliveries, emergency vehicles, and garbage collection.

FINDING: The applicant's engineer provides the following response:

The site was previously designed to support large events, and contains substantial off-street parking within paved lots. The layout of the site also provides looped access systems that allow larger vehicles (such as trucks) to make a safe "U-turn" within the site.

Staff agrees. This criterion is met.

(h) A pedestrian path system is provided that links buildings with parking areas, entrances to the development, open space, recreational facilities, and other community facilities consistent with the requirements of CCC 18.184.010, Pedestrian access and circulation.

FINDING: The applicant's engineer provides the following response:

> As an approved event center there are extensive walkways that are separate from the vehicular system. These pathways connect the parking to the internal buildings. Marked crossings are provided within the main parking area.

Staff agrees. This criterion is met.

IV. DECISION

Approved, subject to the conditions of approval identified below.

V. CONDITIONS OF APPROVAL

1. This approval is based upon the application, site plan, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.

2. This approved land use application is non-transferable. If the proposed use is transferred to a new operator or the property is sold, a new land use application may be required prior to continuing operations. This condition does not apply to a transfer to an operator serving clientele eligible for ADA and FHAA protections as described in the decision and that is implementing the same policies, as described above and included in the record.

3. The accommodation/modification is limited to the service of those recovering from drug and/or alcohol addiction. Changes to the clientele may require additional land use review.

4. All requirements of the Building and Onsite departments are to be adhered to. All necessary permits are to be obtained.

5. The proposed development is to be placed as shown on the site plan submitted with the application. Property owners are responsible for verifying the location of property lines.

6. To limit impact to surrounding farm uses, the outside portions of the property that clientele are allowed to access shall be fenced.

7. The applicant shall institute a policy that clients are not allowed to walk, bike, or otherwise travel

along Alfalfa Road and Powell Butte Highway for purposes other than normal arrival and departure from the facility.

8. All clients arriving at the Redmond airport shall be shuttled by applicant's staff or commercial transportation provider to and from the airport to limit vehicle trips.

9. All applicable provisions of CCC 18.126 (Outdoor Lighting) shall apply.

10. The property owner shall sign a letter of non-remonstrance to area farm operations, which will prohibit complaints made by the applicant or its clientele about nearby farm operations.

NOTICE TO PROPERTY OWNERS: The above approval may be appealed to the Board of County Commissioners no later than 4:00 p.m. on **October 8, 2024**. An appeal must be filed with the Crook County Planning Department at 300 NE Third Street, Prineville, Oregon, on a form provided by the Planning Department, and must be accompanied by the appeal fee of $250.00.

DURATION OF APPROVAL: The applicant shall meet all conditions of this approval within **four (4) years** from the date this decision is final. This approval Expires: **October 8, 2028.**

Will Van Vactor

Community Development Department.

CC: Owner/Agent
Property Owners 750ft
CC Depts.
CC Fire & Rescue