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March 10, 2022

Board of County Commissioners
Clackamas County

Members of the Board:

**Adoption of Previously Denied
Comprehensive Plan Amendment**

Purpose/Outcomes	Finalize the denial of a request to amend the Clackamas County Comprehensive Plan
Dollar Amount and Fiscal Impact	<i>None identified</i>
Funding Source	<i>N/A</i>
Duration	<i>Indefinitely</i>
Previous Board Action	<i>Board of County Commissioners (“Board” or “BCC”) held a public hearing on December 8, 2021, which was continued to January 26, 2022, at which time the BCC voted to deny the application and directed staff to draft the Board Order and the findings of fact, both of which are included with this report.</i>
Strategic Plan Alignment	<i>1. Build public trust through good government.</i>
Contact Person	<i>Nate Boderman, 503-655-8364</i>
Contract No.	<i>None</i>

BACKGROUND:

The application for Z0208-21-CP is a Comprehensive Plan amendment for an exception to Statewide Planning Goal 3 (Agriculture), pursuant to OAR 660, for use of the property, including an existing residence and accessory buildings, as an ‘addiction recovery farm’, which is not an allowed use in the County’s EFU zoning district. The use would include long term (8-10 month) residential drug and alcohol addiction recovery treatment for adults, with up to 31 staff and residents living in a dormitory and in an existing dwelling on the property. The proposed use is not a church, not a school or boarding school, not a farm labor dwelling, and not a residential treatment home or facility, per the application materials and regulatory definitions of each use. The subject Comprehensive Plan amendment application was only for an exception to Statewide Planning Goal 3, however, the Board of County Commissioners found that the use is an “urban” use and that an exception to Statewide Planning Goal 14 is also required.

A public hearing was held on November 8, 2021 for Planning Commission consideration of the

proposed Comprehensive Plan amendment for the Goal 3 & Goal 14 exceptions. The Planning Commission voted 6-2 to recommended denial of the proposal, as recommended by staff.

On December 8th, 2021, the Board of County Commissioners held a public hearing to consider the subject Comprehensive Plan amendment, however, due to technical issues with the zoom platform and impacts to the accessibility of virtual public comment, the Board of County Commissioners voted to continue the meeting to a hearing on January 26, 2022. The Board left the record open so public comments could be submitted up until the January 26, 2022 hearing. All comments received during the open record period were included with the record that was made available for the January 26, 2022 hearing.

On January 26, 2022 the continued public hearing was conducted before the BCC to consider the Comprehensive Plan amendment for the Goal 3 and Goal 14 exceptions, during which the BCC orally voted 3-1 to deny the application, as recommended by the Planning Commission and Planning staff.

The Board then directed staff to draft a Board Order and findings consistent with its decision. A copy of the Board Order implementing the oral decision, and findings and conclusions to be adopted by the Board has been attached.

RECOMMENDATION:

Staff recommends the Board approve the Board Order and the findings and conclusions which are attached thereto.

Respectfully submitted,

Nate Boderman
Assistant County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of a
Comprehensive Plan Amendment
proposed by Mission Teens Inc.,
North West Bible Training Center (NWBTC)
for property described as
T3S, R3E, Section 31 Tax Lot 503, W.M.
With situs address 23172 S Bluhm Rd.

} Order No. _____
Page 1 of 2

File No.: Z0208-21-CP

This matter coming regularly before the Board of County Commissioners, and it appearing that Mission Teens, Inc., North West Bible Training Center (NWBTC) made an application for a Comprehensive Plan Amendment for an exception to Statewide Planning Goal 3 (Agriculture), for use of a 7.7-acre property located at T3S, R3E, Section 31 Tax Lot 503, W.M., with situs address 23172 S Bluhm Rd, as an addiction recovery farm.

Whereas, it further appearing that because the proposed use, which would include long term (8-10 month) residential addiction recovery treatment for adults, with up to 31 staff and residents living in a dormitory and in an existing dwelling on the property, is not an allowed use in the EFU (Exclusive Farm Use) zoning district, it is necessary to take an exception to Statewide Planning Goal 3, under the procedure described in the Oregon Administrative Rules (OAR) 660, Division 4, and the applicant has proposed to do so under the “reasons” exception criteria; and;

Whereas, in reviewing the proposed use, and the requested “reasons” exception to Goal 3, the County is required to make findings regarding consistency with Statewide Planning Goal 14, Urbanization. Specifically, findings need to be included in a local government’s action to explain why the proposed use is “rural” and not “urban”. The Board found the proposed use to be “urban” and determined that the use would also need an exception to Goal 14;

Whereas, it further appearing that after appropriate notice a public hearing was held before the Planning Commission on November 8, 2021 at which testimony and evidence was presented, and that, at this hearing, the Commission, voted 6-2 to recommended denial of this request; and

Whereas, it further appearing that after appropriate notice public hearings were held before the Board of County Commissioners on December 8, 2021 and on January 26, 2022 at which testimony and evidence were presented, and that, at the January 26, 2022 hearing, a decision was made by the Board, by the vote of 3-1 to deny the application, with the Comprehensive Plan Amendment, as identified in Order Exhibit A, which is attached to this order and incorporated herein by reference.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of a
Comprehensive Plan Amendment
proposed by Mission Teens Inc.,
North West Bible Training Center (NWBTC)
for property described as
T3S, R3E, Section 31 Tax Lot 503, W.M.
With situs address 23172 S Bluhm Rd.

Order No. _____
Page 2 of 2

File No.: Z0208-21-CP

Based on the evidence and testimony presented this Board makes the following findings and conclusions:

1. The applicant requests approval of a Comprehensive Plan amendment for an exception to Statewide Planning Goal 3, pursuant to OAR 660, for use of the property, including an existing residence and accessory buildings, as an addiction recovery farm.
2. This Board adopts as its findings and conclusions the *Findings of Fact for Z0208-21-CP* document attached hereto and incorporated herein as Order Exhibit A, which finds the application does not comply with the applicable criteria for an exception to Goal 3 or to Goal 14.

NOW THEREFORE, the Clackamas County Board of Commissioners do hereby order that the requested Comprehensive Plan Amendment for an exception to Statewide Planning Goal 3, pursuant to OAR 660, is hereby DENIED, as described Order Exhibit A, which is attached to this order and incorporated herein by reference.

DATED this 3rd day of March, 2022

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



**FINDINGS OF FACT FOR Z0208-21-CP:
COMPREHENSIVE PLAN AMENDMENT**

CASE FILE NO.: Z0208-21-CP

PROPOSAL: A proposed Comprehensive Plan Amendment for an exception to Statewide Planning Goal 3, pursuant to OAR 660, for use of the property, including an existing residence and accessory buildings, as an addiction recovery farm. The use would include long term (8-10 month) residential addiction recovery treatment for adults, with up to 31 staff and residents living in a dormitory and in an existing dwelling on the property. The subject property is 7.7 acres in size and is located outside of the Portland Metropolitan Urban Growth Boundary at 23172 S Bluhm Rd.

LOCATION: 23172 S Bluhm Rd., T3S, R3E, Section 31 Tax Lot 503

APPLICANT(S): Mission Teens Inc., North West Bible Training Center (NWBTC)

OWNER(S): Mission Teens Inc.

TOTAL AREA: Approximately 7.7 acres

ZONING: Exclusive Farm Use, (EFU)

COMPREHENSIVE PLAN DESIGNATION: Agricultural

COMMUNITY PLANNING ORGANIZATION: Hamlet of Beaver creek

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS Chapter 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

APPLICABLE APPROVAL CRITERIA: This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1307, procedures, and the Comprehensive Plan. This application is being processed as a Type III Permit, pursuant to

Section 1307. A Type III Permit is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

APPEAL OF THIS DECISION: Any person who presented evidence, argument, or testimony as part of the record may appeal this decision by filing a notice of intent to appeal with the Oregon Land Use Board of Appeals (LUBA). Filing appeals are governed by the provisions of Oregon Revised Statutes 197.830 and Oregon Administrative Rule 661-010-0015. A notice of intent to appeal shall be filed with LUBA on or before the 21st day after the date the decision sought to be reviewed is mailed to parties. A notice of intent to appeal may be filed by mail with LUBA at the following address: 775 Summer Street NE, Suite 330, Salem, Oregon 97301-1283. Further information on filing appeals and the related process can be found by referencing the statutes and administrative rules referenced above, or by visiting LUBA’s website at <https://www.oregon.gov/luba/Pages/Frequently-Asked-Questions.aspx>.

I. BOARD DECISION

DENIAL of the Comprehensive Plan Amendment (File No. Z0208-21-CP) for an exception to statewide Planning Goals 3 and 14 to allow for the proposed residential substance abuse treatment program in the Exclusive Farm Use (EFU) zoning district.

This denial is based on the findings detailed in Sections II and III of this Staff Report.

II. COMPREHENSIVE PLAN AMENDMENT APPLICATION FINDINGS

This application is subject to Oregon Revised Statutes (ORSs) and Administrative Rules (OARs), Statewide Planning Goals, Comprehensive Plan criteria, and Zoning and Development Ordinance (ZDO) Section 1307 procedures for land use application processing. The Board has reviewed the applicable state and county criteria in conjunction with this proposal and make the following findings and conclusions:

A. Background and Proposed Comprehensive Plan Amendment

Property Land Use and Permitting History

The subject site (tax lot T3S, R3E, Section 31 Tax Lot 503) is located outside of the Portland Metropolitan Urban Growth Boundary, in the Beavercreek area on an Exclusive Farm Use (EFU) zoned 7.7 acre property. The subject tax lot is a legal lot of record, created by a partition in 1975 (MP266-1175-B), when the property was zoned RA-2. The subject property was first zoned RA-2 and retained that zoning until 8/23/79, when it was rezoned General Agricultural District (GAD) as part of the Rural Plan Amendment I (RUPA I), that identified the subject property as agricultural land, and not rural exception

land, based on the property's location, use, size, and prime agricultural land soil capabilities. The subject property was then rezoned Exclusive Farm Use (EFU) on 11/4/93.

The subject property contains one residence and 3 accessory structures. The subject residence was originally built in 1910, with an addition in 1976, according to County tax assessor records. A major remodel of the existing residence was approved by the County in 2011. The structures on the property are described by the applicant as follows:

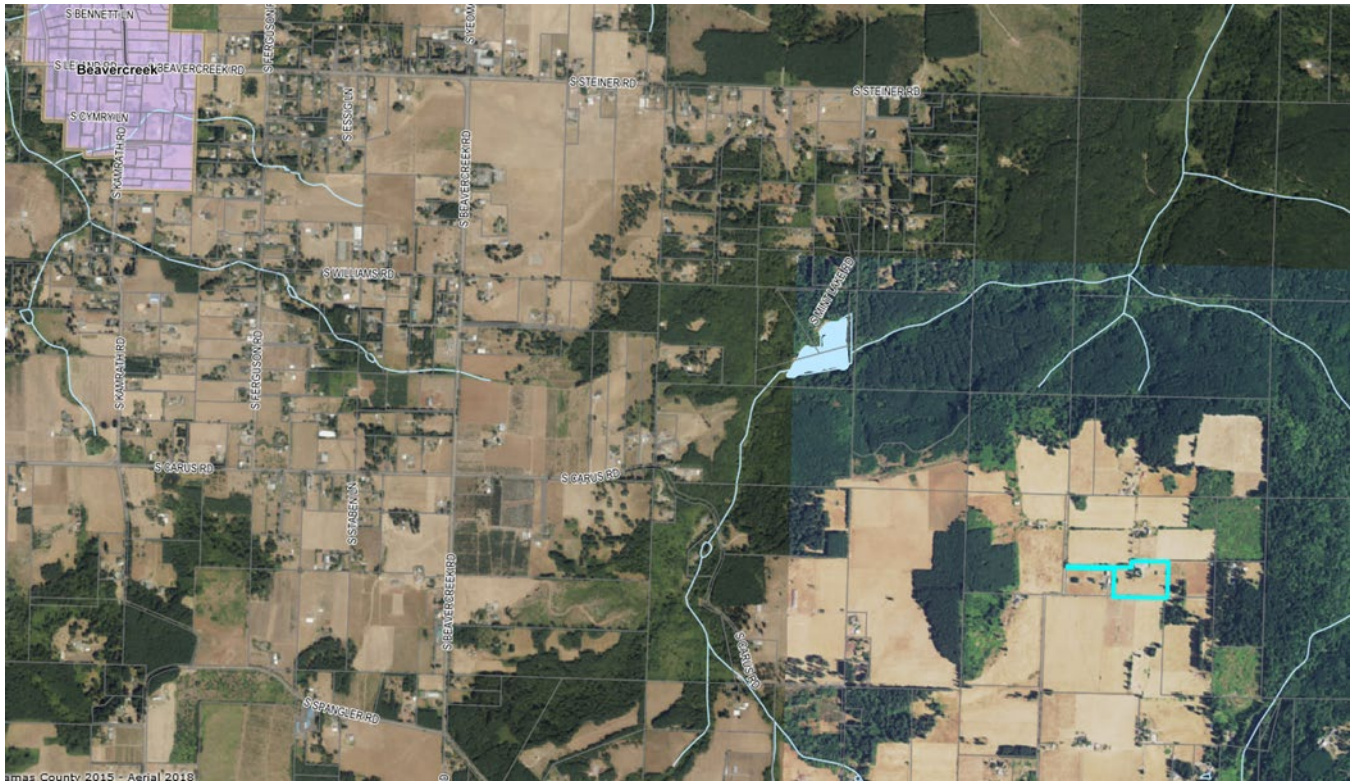
- Existing Accessory Building “Pole Barn” – Used for storage of large farm equipment and canned food.
- Existing Accessory Building “Chicken Coop” – Contains a large coop holding 48 chickens with a large connected outdoor chicken run, a pen housing 3 goats with a large outdoor goat run, and two storage rooms for animal and gardening equipment.
- Single Family Residence – 5 staff bedrooms, 3 bathrooms.
- Existing Accessory Building “Sanctuary” (known to the county as “Shop Building”) – First Floor: One large multi-purpose room to be used for Bible classes and prayer meetings, 3 staff offices for file storage, kitchen, library, a men's dormitory style bedroom w/ accompanying bathroom, a women's dormitory-style bedroom w/ accompanying bathroom, and a laundry room. Second Floor: 3 staff bedrooms and 2 lounges.

The subject property is located in a rural, largely undeveloped, agricultural area of the County surrounded by EFU zoning. The subject site is relatively flat farmland, classified as having prime agricultural soils per the NRCS soil classifications for Clackamas County. There are no wetlands, floodplains, steep slopes, or Goal 5 resources on the subject property. The subject property has an existing well that provides water service and the applicant submitted an email from the state water master explaining that the use was considered exempt from needing a water right unless any farm crops were being sold from farming on the property. Since commercial farming and sale of farm crops is not proposed as part of the described use, no water right was required by the state. The applicant also submitted a land use compatibility statement from Clackamas County's septic department indicating that the on-site septic system could accommodate the proposed use and number of proposed residents.

Figure 1: Property Aerials



Property Aerials, Continued.



Source: Clackamas County Aerial 2018

Code Enforcement Order

The accessory building on the property, proposed for use as part of the residential addiction recovery treatment program, was originally permitted as an agricultural building in 2011 (reference building permit AG010311) and was converted to a residential accessory structure (shop building) in 2013 (reference building permit B0063213). No other building permits were issued for the subject accessory structure. In 2019, the building department became aware of the existing accessory shop building being used as a residential dormitory as part of the Northwest Bible Training program. The building department was required to have the enforcement department open a violation file since the residential use of the building was considered a ‘dangerous building’ per building codes. As such, violation file V0037919 was opened for the dormitory use of the building, as well as unpermitted additions including a kitchen, dormitory style bathrooms, and associated mechanical and electric improvements made without permits. Hearings were held by the code enforcement compliance officer on July 9th, 2020 and on July 28, 2020 for the violation case and the compliance officer found that the Dangerous Building Notice and Notice to Vacate that the Building Official for Clackamas County posted on January 8, 2020 should be upheld. The proposed Comprehensive Plan Amendment and Goal 3 exception request is made in order to get approval to formally convert the accessory building into a dormitory and offices for the Northwest Bible Training Center (NWBTC).

Proposed Use Requiring a Goal 3 Exception

The submitted application explains that NWBTC “uses its property like a church, however, NWBTC is not, in fact, a church” On page 11 of the application it states that NWBTC is seeking a Goal exception for a ‘faith-based addiction recovery farm’. However, there are also references in the application materials comparing the use to a ‘boarding school’ and a ‘farm labor dwelling’. The application draws reference to the need for affordable housing in Clackamas County and explains that “addiction and homelessness are interconnected”. The application states that the program participants would be adults age 18 and over who would spend a 8-10 month period residing in the dormitory on the property as part of the treatment program NWBTC is offering free of charge. The property would not be open to the public and a maximum of 26 residents in the dormitory and 5 in the main home is proposed as part of the use. Additionally, as part of the pre-application meeting, required before the Comprehensive Plan amendment application submittal, the applicant submitted materials explaining that:

“Northwest Bible Training Center is a Christian non-denominational 8-10-month discipleship-training curriculum. During this time, we offer practical, encouraging, and faith-based solutions for anyone with life-controlling problems through Biblical teachings. We are a nonprofit ministry running completely off outside donations receiving no government funding and all our staff are unpaid volunteer missionaries. We do not charge for any of our services. [...] Although NWBTC may resemble a long-term drug and alcohol treatment center in the fact that most of our residents have dealt with those issues, we have never identified as such. [...] We are a congregate family with like-minded beliefs in living, learning, and working the land together. There are no independent units, all meals are eaten together, and everyone does their part farming the land. We are not a medical facility, but we do escort our residents to all their necessary medical appointments”.

The subject applicant, NWBTC, is a satellite branch of Mission Teens, who is the property owner and is classified as a 501(C)(3) faith ministry, according to the NWBTC’s website. Mission Teens was founded in 1969 in New Jersey and there are now 20 different residential treatment facilities spread throughout the US that are owned by Mission Teens and operated under the Mission Teens treatment ideology and program schedule. NWBTC was started in 1994 in North Portland and operated there until 2018, when the applicant states that they relocated to “provide outdoor activities essential to their mission, and to escape growing impacts of population growth, increased availability of drugs and alcohol, and a loss of connection to nature.” The submitted application states that “NWBTC requires a rural tax lot between 5-10 acres outside of the UGB, in a fire protection district staffed 24 hours a day”.

In the submitted application NWBTC states the use in ORS 215.283(2)(o) for “residential homes” is exactly what they are using the property for. However, ORS 215.283(2)(o) relies on the definition for ‘residential treatment home’ in ORS 443.400 as follows:

“Residential treatment home” means a facility that provides for five or fewer individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties.”

In ORS 443.400 A residential treatment facility is defined as follows and allows for more than five individuals:

“Residential treatment facility” means a facility that provides, for six or more individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties.

ORS 197.660 defines a Residential Treatment Facility as follows:

*(1) "Residential facility" means a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, that provides residential care alone or in conjunction with treatment or training or a combination thereof for **six to fifteen individuals** who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.*

While a ‘Residential Home’ as defined in ORS 197.660 would be allowed in the EFU zoning district as a Type II application, ORS 215.283 and the County’s ZDO would require the use to occur only in existing dwellings. Since the proposed use would neither be limited to five or fewer individuals nor be exclusively located within the existing residence it would not meet the definition of a ‘Residential Home’. ORS 443.440 also includes a definition for a ‘residential treatment facility’ that allows for treatment of six or more individuals, however, this is not a use allowed within the EFU zoning district per the County’s ZDO and ORS 215.283. Additionally, ORS 197.660 limits the number of individuals receiving treatment to 6-15.

Furthermore, according to the Oregon Health Authority licensing staff, (Planning staff phone conversation with Melissa Farin, LPC, Licensing and Certification Compliance Specialist, Oregon Health Authority – Health Systems Division on 10/27/21) to be defined as a ‘residential treatment home’ per the ORS definition they would need to be licensed by the state as such. However, she also stated that all residential treatment programs that are licensed by the state are secular and are required to adhere to specific state treatment program guidelines. Per an email from OHA the state does not consider faith-based residential treatment programs to meet the definition of ‘treatment’ in ORS 443.400(12). Per OHA, they do not allow any faith-based residential treatment home or facility to obtain state licensing. That also means though that no faith based substance use recovery organization can meet the definition of a ‘residential treatment home’ or ‘residential treatment facility’ in statute. The Board defers to the OHA’s interpretation of their own statutes and how they define such homes and facilities for the purposes of the findings in these findings.

The Board acknowledges that the submitted application materials provide confusing and sometimes inaccurate descriptions about the nature of the proposed use. Based on a review of the submitted application, relevant state statutes, and County Comprehensive Plan and ZDO, the Board concludes that the proposed use is not a church, not a school or boarding school, not a farm labor dwelling, and not a residential treatment home or facility. The use that the proposed ‘faith-based addiction recovery farm’ most closely resembles is a congregate housing facility, per the County’s ZDO definition in Section 202 as follows:

CONGREGATE HOUSING FACILITY: *A building that contains more than one dwelling unit and provides common facilities and services for residents who require or desire a more supportive living environment than typically afforded to residents in multifamily, three-family, two-family, or single-family dwellings. Regular on-*

premise supervision by a registered physician, registered nurse, or other health care provider may be included.

Dwelling unit as defined in this section of the Code references a building with one or more rooms used for residential occupancy. The use most similar to the proposed facility, which is a congregate housing facility, is allowed only in the urban land use designations and zoning districts of the County within the Urban Growth Boundary.

Proposed Use Requiring a Goal 14 Exception

In reviewing the proposed use, and the requested “reasons” exception to Goal 3, the County is required to make findings regarding consistency with Goal 14, Urbanization. Specifically, findings need to be included in a local government’s action to explain why the proposed use is “rural” and not “urban”. If the proposed use is found to be “urban” the use would also need an exception to Goal 14. What is “urban” and what is “rural” is not explicitly clear in the context of Goal 14; as such, the determination must be made based on a number of factors that include consideration of:

- 1. That public facilities and services providing for the use will be limited to the types and levels of service available and appropriate for rural lands. Or in other words, that the proposed uses on rural lands will not require urban levels of service.*
- 2. The potential impact on a nearby Urban Growth Boundary. Specifically, consideration of whether the proposed use would impermissibly affect the ability of nearby UGBs to perform their urbanization function.*
- 3. Whether the use is appropriate for, but limited to, the needs and requirements of the rural area to be served; whether the type and intensity of use is consistent with those typically found in other rural areas of the County.*
- 4. Whether the use is likely to become a “magnet” attracting people from outside the rural area*

After consideration of such factors (detailed in Section E of these findings), the Board finds that the proposed use is an “urban” use under the context of Goal 14 for the following primary reasons:

- The proposed use will serve a primarily urban population; no need for the service has been demonstrated in the rural area
- The proposed use relies on volunteers/staff/service and essential goods and service providers coming from outside of the rural area
- The proposed use is not appropriate for or limited to the needs and requirements of the Beavercreek rural area
- The proposed use is not a permitted use in the rural area of the County and there are no other similar facilities that have been permitted on EFU zoned land in the County to the Board’s knowledge.

While it is clear that the applicant does not agree with this determination and asserts in the application that the proposed use is a rural use, not an urban use, the application contained no evidence addressing consistency with Goal 14 implementing statutes and associated case law and instead relies upon the assertion that because EFU zoned property is rural that the use itself is rural. The Board would like to clarify that the proposed use is being evaluated for its consistency with Goal 14 on its own merits. Just

because the property is considered rural land does not mean that every use proposed to occur on the property can be determined to be a rural use. Based on the information about the proposed use contained in the record, and consideration of relevant case law, the Board could not determine that the proposed use was a rural use pursuant to Goal 14 and implementing statutes. Therefore, a Goal 14 exception, and the application of OAR 660-004-010(1)(d)(D) and OAR 660-014-0040 would apply to the subject proposal and are addressed in Section D of these findings.

Procedure Background on the Subject Comprehensive Plan Amendment

As noted, the subject property's Comprehensive Plan land use designation is Agriculture and the zoning is Exclusive Farm Use (EFU). The proposed use for a residential addiction recovery treatment facility is not an allowed land use in agricultural resource land in Clackamas County, per statewide planning Goal 3 and implementing state law as well as the EFU section of the County's ZDO. In order to change the Comprehensive Plan Map designation to any plan designation other than Agriculture, or to allow for a use that is not allowed on property designated Agriculture, it is necessary to take an exception to Statewide Planning Goal 3, under the procedure described in the Oregon Administrative Rules (OAR) 660, Division 4. As such, the applicant has requested an exception to Statewide Planning Goal 3, per the exception process outlined in Statewide Planning Goal 2, and implementing state laws. The Board has also determined that the proposed urban use would require a Goal 14 exception. Exceptions are amendments to Comprehensive Plan provisions that set forth facts and reasons authorizing and justifying the necessary departures from the Statewide Planning Goals. In this instance, the applicant has requested "reasons" exceptions to Goal 3. The applicant is applying for a "reasons" exception under ORS 197.732(1)(c). As far as the Board is aware, in the past the County has always required a zone change to accompany a "reasons" exception approval, although there does not appear to be a legal requirement for an accompanying zone change. In this situation the Board is just analyzing the consistency of the proposed use with the "reasons" Statewide Planning Goal exception statutes, other applicable OARs and ORSs and the County's Comprehensive Plan, however, a related Zone change or Land Use designation change is not being proposed or analyzed in this application.

Service Providers:

1. Water: The property would be served by a private well on tax lot 33E31 00503, exempt from state water permit requirements.
2. Septic: The property has a feasibility statement signed by Clackamas County Septic staff stating the site can be accommodated by a septic system.
3. Fire Protection: Clackamas RFPD #1

Noticing

This application has been processed consistent with applicable procedures. Specifically, the County has provided notice to DLCD, 1000 friends, the Community Planning Organization, local governments and property owners within ½ mile of the subject property consistent with State law and Section 1307 of the ZDO. The notification to property owners, public notices and hearings will ensure an opportunity for citizens to participate in the land use process.

Public comments were received prior to the December 8, 2021 BCC hearing and were included in the packet made publically available for the hearing. Due to technical issues with the zoom platform the BCC hearing was continued to January 26, 2022 and the record was left open during that time period to allow for additional public comment. Public comments received up until the January 26, 2022 hearing were included in the packet made publically available for the hearing.

B. Submittal Requirements

Section 1307 of the Zoning and Development Ordinance lists the information that must be included in a complete application for a Comprehensive Plan amendment. State statutes in ORS 197.732 and OAR Chapter 660 also dictate the information that must be submitted to address the proposed “reasons” exception to Statewide Planning Goal 3.

This application includes a completed land use application form, site plan, application fee and completed supplemental application. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1307 are included in the application. The application was submitted on May 11th, 2021 and deemed incomplete on May 27th, 2021. In response to the incomplete notice, the applicant submitted additional application materials on July 20th, 2021 and the application was deemed complete that day. Notice of the Planning Commission and Board of County Commissioner’s hearings was sent out on October 4th, 2021.

The submittal requirements of Subsection 1307 are met.

C. Applicable Standards and Criteria

This application involves amendments to acknowledged county Comprehensive Plan provisions, as well as a “Reasons” exception to Statewide Planning Goals 3 and 14. Under Oregon’s land use statutes and goals, this application must be found to comply with a multitude of standards and criteria, including the following:

1. State Statues (ORSs) and Administrative Rules (OARs)

OAR Chapter 660, Division 4- Interpretation of Goal 2 Exception Process:

OAR 660-004-000 Purpose

OAR 660-004-005 Definitions

OAR 660-004-0010 Application of the Goal 2 Exception Process to Certain Goals

OAR 660-004-0015 Inclusion as Part of the Plan

OAR 660-004-0018 Planning and Zoning Exception Areas

OAR 660-004-0020 Goal 2 Exception Requirements

OAR 660-004-0022 Reasons Necessary to Justify and Exception

OAR 660-004-0030 Notice and Adoption of an Exception

OAR Chapter 660, Division 12 – Transportation Planning

OAR 660-014-0040, Division 14 – Urban Development on Rural Lands

OAR 660-012-0060 Plan and Land Use Regulation Amendments

ORS 197.610 and 197.615 – Post-acknowledgment Amendments
ORS 197.732 - Goal Exception standards
ORS 197.763 – Notice procedures for quasi-judicial hearings

2. Statewide Planning Goals

The following Statewide Planning Goals are implicated by this application:

Goal 1 Citizen Involvement
Goal 2 Land Use Planning
Goal 3 Agricultural Lands
Goal 12 Transportation
Goal 14 Urbanization

3. County Comprehensive Plan Provisions

The following Clackamas County Comprehensive Plan provisions are implicated by this application:

Chapter 2. Citizen Involvement
Chapter 3. Natural Resources and Energy
Chapter 4. Land Use
Chapter 5. Transportation System Plan
Chapter 6. Housing
Chapter 11. The Planning Process

In these findings, applicable standards and criteria are set forth in bold-face headings and/or italicized type followed by the county's findings including facts, reasons and legal conclusions. Often the same or similar criteria are found in more than one source. These findings attempt to minimize repetition and redundancy, using cross-references where possible and adding or repeating material only where necessary.

D. Comprehensive Plan Amendment for an Exception to Statewide Planning Goals

The subject property is designated as natural resource land (Agriculture) on the Comprehensive Plan Map. In order to change the Comprehensive Plan Map designation to any plan designation other than Agriculture, or to allow for a use that is not allowed on property designated Agriculture, it is necessary to take an exception to Statewide Planning Goal 3, under the procedure described in the Oregon Administrative Rules (OAR) 660, Division 4. In reviewing the proposed use, and the requested “reasons” exception to Goal 3, the County is required to make findings regarding consistency with Goal 14, Urbanization. Specifically, findings need to be included in a local government’s action to explain why the proposed use is “rural” and not “urban”. Since the Board found the proposed use to be “urban” (see section A pg. 8-9 of these findings as well as the following findings in Section D), the use would also need an exception to Goal 14.

These departures from the requirements of Goals 3 and from acknowledged comprehensive plan provisions implementing that goal require the approval of "exceptions" to the goals. Exceptions are amendments to comprehensive plan provisions that set forth facts and reasons authorizing and justifying the necessary departures from the goals. In this instance, the applicants have requested a "Reasons"

exception to Goal 3. However, as noted above, the Board has found that an exception to Statewide Planning Goal 14 is also required since the use is urban. The county's approval of this goal exception under the applicable state statutes and rules authorize the proposed amendments despite the fact that the amendments would otherwise conflict with the goals.

1. "Reasons" Exceptions Generally

Goal exceptions are authorized under statewide planning statutes, goals and administrative rules in order to provide flexibility for situations in which a departure from the strict application of the goals is justified based on site-specific and project specific conditions. Approval of a goal exception does not establish precedent for allowing future goal exceptions. Goal 2 defines the term "exception" as follows:

"Exception means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

"(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

"(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

"(c) Complies with standards for an exception."

There are three types of exceptions: (1) "physically developed" exceptions are justified where the property is physically developed to the point where resource use is no longer practicable; (2) "irrevocably committed" exceptions are justified where the nature of nearby physical development makes resource use impracticable; and (3) "reasons" exceptions are justified where there is a need for development at the site in question and where the applicant establishes that reasons justify why the policy embodied in the applicable goals should not apply, the proposed development cannot reasonable locate elsewhere, and the proposed use is compatible with other adjacent uses or can be made compatible through measures designed to reduce impacts.

Application of ORS 197.732 and OAR Chapter 660 Exception Criteria

The application requests a "Reasons" exception to Goal 3. The general criteria for reasons exceptions are set forth in the state statutes at ORS 197.732 and LCDC's administrative rules at OAR 660-004-0020. The rules then provide additional "reasons" that can justify an exception at OAR 660-004-0022, including criteria that must be applied to more specific types of uses.

ORS 197.732 - Goal Exceptions. ORS 197.732 sets for the following criteria for a goal exception based on a "reasons" argument, as follows:

(c) The following standards are met:

a) Reasons justify why the state policy embodied in the applicable goals should not apply;

b) Areas that do not require a new exception cannot reasonably accommodate the use;

c) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

These four standards outline the four-step process an applicant must engage in to demonstrate the proposal (1) is “needed”, (2) cannot reasonably be located on an “alternative” site, (3) will have minimal adverse “consequences”, and (4) is “compatible” with neighboring uses.

The rules under which to assess the above criteria are presented in OAR 660-004-0000 through 0040 in more detail. The requirements established by ORS 197.732 for goal exceptions, as well as the identical requirements of Goal 2, Part II and OAR 660 Divisions 4 are addressed below.

OAR 660-004-0000 through 0010. Purpose, Definitions, and Application of Goal 2 Exceptions Process to Certain Goals

These sections contain the background information and definitions for the goal exception and are informational in nature.

OAR 660-004-0015. Inclusion as Part of the Plan

(1) A local government approving a proposed exception shall adopt, as part of its comprehensive plan, findings of fact and a statement of reasons that demonstrate that the standards for an exception have been met. The reasons and facts shall be supported by substantial evidence that the standard has been met.

(2) A local government denying a proposed exception shall adopt findings of fact and a statement of reasons that demonstrate that the standards for an exception have not been met. However, the findings need not be incorporated into the local comprehensive plan.

Both these criterion are informational in nature and, depending on the outcome of the decision, each will be adhered to as is necessary in the body of the these findings, the findings and recommendations provided in II this report, and as referenced in the land use application narrative.

660-004-0018: Planning and Zoning for Exception Areas. Subsection 660-004-0018(4): “Reasons” Exceptions, applies to this application.

1. 660-004-0018(4)(a): *When a local government takes an exception under the “Reasons” section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.*

If the proposed goal exception is adopted, use of the property would be limited to only those uses approved through the exception, and as noted in any conditions of approval.

This criterion can be satisfied if the goal exception is approved.

2. 660-004-0018(4)(b): *When a local government changes the types or intensities of uses or public facilities and services within an area approved as a “Reasons” exception, a new “Reasons” exception is required.*

This site has not previously been approved as a “Reasons” exception.

This criterion is not applicable.

3. 660-004-0018(4)(c): *When a local government includes land within an unincorporated community for which an exception under the “Reasons” section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.*

The subject property is not located in an unincorporated community.

This criterion is not applicable.

2. Reasons Consistency Findings with 660-004-0020 (Exception Requirements), 660-004-0022 (Reasons necessary to justify an exception), and 660-014-0040 (Establishment of new urban development on undeveloped rural lands).

660-004-0020: Goal 2, Part II(c), Exception Requirements: *If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.*

To evaluate a goal exception there must be a review of OAR 660-004-0022. OAR 660-004-022(1) defers to the reasons exception process in 660-014-0040 for ‘urban development on undeveloped urban rural lands. In *DLCD v. Umatilla County*, 39 Or LUBA 715 (2001) LUBA addressed the interplay between the Division 4 and Division 14 exception criteria where they explained:

“Under this framework, determining which criteria apply requires that the local government identify the character of the use for which a reasons exception is proposed. If the proposed exception involves circumstances or uses not governed by OAR 660-004-022(2) through (10) or OAR 660, division 14 then OAR 660-004-022(1)(a)-(c) provide the applicable criteria for determining whether reasons justify the proposed exception. If, on the other hand, the proposed exception is intended to allow urban development, then OAR 660-004-0022(1) directs the County to OAR 660-014-0040.

The subject application involves an exception that would allow the development of what is most closely defined as a congregate housing facility, which is only an allowed use within in the County’s urban growth boundary. The Board finds in Section E regarding Statewide Planning Goal 14 than the proposed use constitutes an urban use and urban development and thus also requires an exception to Goal 14. As such, based on case law and a close reading of the statutes, the Board finds that the criteria for reviewing the proposed exceptions to Goal 3 and 14 are the Division 14 rules at OAR 660-014-0040, OAR 660-004-0020 and 0022. To avoid repetition in the findings the OARs have been grouped where feasible into the categories of Statewide Planning Goal 2, Part II (c)(1) through 4 and ORS 197.732(C)(2)(c).

Reasons/Need: Reasons justifying why the policy embodied in the applicable Statewide Planning Goals should not apply.

The requirements of OAR 660-004-0020(2)(a), OAR 660-004-0022(1)(a)-(b), and OAR 660-014-0040(2) and (3)(a), are often overlapping in their requirements so the Board has summarized the consistency findings these OAR sections to avoid repetition.

Applicable for a “reasons” exception in general:

660-004-0020(2)(a)

(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;

State law provides further direction on how to address this first criteria (OAR 660-004-0020(2)(a), based on the type of use proposed and what Goal exception(s) may be required.

Applicable for Goal 3 Exception:

OAR 660-004-0022(1)

(1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following: There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either:

(a) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(b) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

Applicable for Goal 14 Exception:

OAR 660-014-0040(2) and (3)

(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

(3) To approve an exception under section (2) of this rule, a county must also show:

(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

The applicant has stated in the application materials that they “require a rural tax lot between 5-10 acres outside of the UGB, in a fire protection district staffed 24 hours a day”. The application materials also state the following: “Originally located in Portland Oregon, NWBTC relocated to rural Clackamas County in 2018 to provide outdoor activities essential to their mission, and to escape the growing impacts of population growth, increased availability of drugs and alcohol, and a loss of connection to nature. The shortcomings of an urban location required a move to a permanent rural location outside of the UGB, but within proximity to essential government and private services”. The application states that in 2019 NWBTC, after their move to the subject location, began partnering with the County probation department as a resource for “low-level parolees”. The application materials explain that passive farming is used as part of the treatment program on site for faith-based addiction recovery. The application states “NWBTC does use the property, to some degree, for farming.” The application materials include pictures of a polytunnel greenhouse with raised beds and beekeeping activities and a site plan showing a goat run and chicken coop. The activities are small scale and similar to not for profit hobby gardening activities.

Neither the submitted application materials nor any additional evidence provided during the hearings explain why the proposed faith based addiction recovery treatment program is *dependent* upon agriculture for its operation. The application states that the proposed use needs a rural location, however, there is no specification as to why the use has to be located on the subject EFU zoned property with agricultural resource lands in order to operate. There is also no market analysis provided to demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon (agricultural resource land in this case) can reasonably be obtained. Based on goal exception statutes and relevant case law, a simple preference for a rural area does not meet the high bar for establishing a “need” pursuant to the criteria above. Additionally, since the agricultural activities described are more akin to hobby gardening and are not for profit it is unclear if they meet the requirements of ORS 308A.050, which defines farm use as follows: “farm use” means the current employment of land for the primary purpose of obtaining a profit in money [...]. the Board does not have enough information to conclude that the proposed use is dependent upon the subject agricultural resource property and a farm use, per OAR 660-014-0040(2).

Regarding Goal 14, the Board has determined that the proposed use is an urban use. One of the reasons for this determination is that there was nothing included in the application that demonstrated why the proposed use is not appropriate for, but limited to, the needs and requirements of the rural area to be served. There is no demonstration that there is a need for an addiction recovery treatment program to serve the rural population of the Beavercreek area, instead the Board concludes from the materials on the record that the proposed use would largely serve an urban population and would at least partially rely on volunteers and/or service providers travelling from the Portland metro area. The proposed urban use would rely on and serve an urban population, however, there is nothing in the submitted application to clearly demonstrate that the proposed addiction recovery treatment program is dependent upon an agricultural resource property. In fact, the record demonstrates that NWBTC operated successfully for 25 years in the Portland metro area, as noted in comment letter that explains that the NWBTC had been located in North Portland on Greeley street since 1996 and over the 25 years of operation there had “seen

many success stories of people finding freedom and a worthwhile lifestyle” (Comment letter from Chris Tento). The hobby gardening occurring on the property can be done in any medium to high density residential zoning districts in the County where congregate housing facilities are allowed and the rural atmosphere of the specific property is not demonstrated to be necessary for the program to function. Livestock would not be allowed in every medium and high density zoning district, however, there are a couple zoning districts where it is also permitted pursuant to the County’s ZDO livestock restrictions. The applicant has not submitted a market or area analysis of urban properties demonstrating that there are no other feasible locations where the use could occur in the UGB. There is also no explanation as to why urban scale hobby gardening would not provide the same benefit to the program participants as the gardening activities on the subject site. The Board does not have enough evidence to demonstrate that the proposed use is dependent upon resource land and cannot be reasonably accommodated within the UGB. As such, the proposal is not consistent with OAR 660-014-0040(2) and (3).

Additionally, while the application references a need for housing in Clackamas County, no findings are included regarding why that an agricultural resource property is necessary for the proposed congregate housing facility to alleviate a Goal 10 housing shortage, as opposed to any other property in the rural or urban area of the County where residential uses are allowed outright. The reasons needed (per either OAR 660-014-0040 or OAR 660-004-022 for rural or urban uses, respectively) to satisfy OAR 660-004-0020(2)(a) are not provided in the subject application.

As such, the requirements of OAR 660-004-0020(2)(a), OAR 660-004-0022(1)(a), and OAR 660-014-0040(2) and (3)(a) are not met.

Alternative Area Analysis: Areas which do not require a new exception cannot reasonably accommodate the use.

The requirements of OAR 660-004-0020(2)(b), and OAR 660-014-0040(3)(a) are often overlapping in their requirements so the Board has summarized the consistency findings these OAR sections to avoid repetition.

Applicable for “reasons” exceptions in general:

OAR 660-004-0020(2)(b)

(b) "Areas that do not require a new exception cannot reasonably accommodate the use". The exception must meet the following requirements:

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;

(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

(C) The “alternative areas” standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

Applicable for Goal 14 Exception:

OAR 660-014-0040(3)(a)

(3) To approve an exception under section (2) of this rule, a county must also show:

(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

The only alternative analysis the applicant submitted in their application was of three rural residential zoned properties with the following analysis:

“For comparison purposes, on several occasions the applicant researched rural properties for comparable 5-acre minimum zoned farmland; less than 10 acres in size, located outside of the UGB. Most were located to close to development, or poorly suited to accommodate NWBTC. None of the survey results met the applicant’s needs.”

In public comment the applicant submitted prior to the January 26, 2022 hearing, they mentioned the alternative analysis requirements, however, the submitted materials remain deficient in addressing the requirements of OAR 660-015-0040(3)(a). Specifically, the following statements from the public comment submitted by the applicant most closely relate to this component of the “reasons” exception:

“A large farming tract, or forest zoning would not be suitable. A location under 5 acres in size would also be unsuitable, and the likelihood of locating one inside or close to the UGB would be nearly impossible.”

“Locating a suitable property with 2 comparable buildings in a local farm zone is unlikely. The applicant has searched for comparable properties to no avail. It's size, large residence

and the accessory building and suitability were primary requirements for the applicant when relocating.”

“The need for the applicant to operate indefinitely as a nonprofit recovery farm, located on a minimum of 5 acres, cannot be ensured by relocating inside the UGB, if a suitable location. Intense development and population growth is rapidly eliminating large tax lots, primarily for residential uses. Housing under construction on Beavercreek Rd near the UGB includes a multifamily project for 700 new residents, and development is occurring on both sides of Beavercreek Road at the 20700 block, and a new residential development is occurring near Beavercreek and Leland Rds. Nearby Cities, Oregon City and Molalla, do not allow zoning for the use, nor would an adequate buffer be possible inside a nearby city.”

This alternative area analysis does not address the requirements of OAR 660-004-0020(2)(b) and OAR 660-014-0040(3)(a). The OARs require the applicant to first make a determination of what the specific needs are for the proposed use- a justification for their siting requirements- and an explanation justifying why they need to be located on the subject property. The application would then also need to explain what the relevant area consists of for purposes of compliance with the alternative area criteria above. There was no analysis included of the urban area, within a UGB, or of any other rural zoning district other than RRFF-5 (rural residential). The applicant makes a blanket statement that the use would not be allowed in the nearby cities, however, no in depth analysis as to why this is the case was provided. To the Board’s knowledge Oregon City, at a minimum, would allow for the proposed use in certain zoning districts.

Only 3 rural residential (RRFF5) properties were included in the analysis and no explanation was provided as to why the properties did not meet NWBTC’s needs, only a conclusion in the application that “none of the survey results met the applicant’s needs”. The additional materials the applicant provided in their public comment prior to the January 26, 2022 hearing stated that (1) a location under 5 acres is unsuitable, (2) a large farming tract is unsuitable, and (3) forest zoning is unsuitable. Based on the information in the record this determination is preferential, not a limiting factor for the ability of the proposed use to occur. The record shows that the subject treatment program was able to function for 25 years within an urban area and no rationale is provided as to why the property cannot remain functional in an urban area. The need for a rural location away from access to addictive substances is documented as a requirement of the treatment program, however, the applicant did not include an analysis explaining why they cannot mitigate this by other methods of treatment, such as access restrictions for residents etc. Additionally, it appears that all of the substance abuse treatment facilities located on the OHA treatment locations map are in urban areas, demonstrating that substance abuse treatment programs can, and frequently do, operate in urban areas. The applicants fail to address “reasonable accommodation;” thresholds of OAR 660-004-0020 (2)(b). The question at hand is whether the proposed use can be accommodated within a UGB. Given the fact that the business was located for many years within the Portland Metropolitan UGB and that the OHA maps show that many residential addiction recovery programs operate and function within the UGB, the Board does see any reason that the proposed uses cannot be reasonably accommodated inside an urban growth boundary. The information submitted as part of the pre-application conference by the applicant states that:

“Since 1969, over 24,000 have entered Mission Teens Centers. We have 20 centers in the United States. The Oregon Center was started in 1994 in North Portland. In our annual review approximately 89% of the graduates and 40% of the non-graduates that report back to us are doing well.”

It is clear from evidence on the record that the NWBTC was able to reasonably function in an urban area. The agricultural activities on the property are described in the submitted materials more as an accessory use to the addition recovery treatment program and the program does not appear to be dependent upon agricultural resource land for its functionality. No definitive information has been submitted that would indicate that the proposed use could not continue to operate within a nearby UGB where zoning may allow for a use similar to a congregate housing facility and where a rural atmosphere and gardening like that currently occurring on the subject property may still be available. The applicant indicates that denser development and population growth within nearby UGBs would impact the ability of the proposed use to operate indefinitely on a 5 acre parcel, however, there is no information provided that demonstrates that the proposed use cannot function in a location adjacent to denser development or larger populations or why there is no ability to have an ‘adequate buffer’ in the UGB. There is also no information provided that would demonstrate why the proposed use must have at least 5 acres to operate and not a lesser amount. Rather, the applicant’s submitted materials indicate that they need at least two separate residential areas and enough space for their gardening operations for the proposed use, which could reasonably be accommodated on a much smaller property that doesn’t necessarily have to be outside of the UGB. Overall, the materials on the record do not show that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

As such, the requirements of OAR 660-004-0020(2)(b), OAR 660-004-0022(1)(a)(A), and OAR 660-014-0040(3)(a) are not met.

The EESE Analysis: The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.

The requirements of OAR 660-004-0020(2)(c) and OAR 660-014-0040(3)(b) are often overlapping in their requirements so the Board has summarized the consistency findings these OAR sections to avoid repetition.

OAR 660-004-0020(2)(c)

(c) “The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.” The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are

specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

OAR 660-014-0040(3)(b)

(b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

As with the alternative areas analysis, the analysis under this rule need only be a “broad review” of similar types of areas. This rule provides that there is not a requirement of needing an alternative sites analysis for the long-term environmental, economic, social and energy consequences for a use at the proposed site unless an alternative site is specifically described with facts to support the assertion that it has fewer adverse impacts through the review process.

Related to this criterion, the applicants provide some findings titled an EESE (environmental, economic, social and energy consequences) analysis, but the information provided in that section of the application does not fully address the requirements of the EESE criterion. The applicants provide no analysis of why the proposed use should be located on the subject property and cannot be located on a different EFU zoned property without non-prime agricultural lands that would result in less impacts to the agricultural resource. The applicants are not farming the property for profit and use the agricultural activities on the property as an accessory use to the addition recovery treatment program. The rule clearly states that the analysis needs to address whether adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a goal exception. In an EESE analysis, each of the four consequences needs to be addressed separately. In the public comment the applicants submitted prior to the January 26, 2022 hearing they provided an expanded ESEE analysis, however, it was still deficient for purposes of complying with the requirements of OAR 660-014-0040(3)(b). To summarize, the additional materials included information about the economic impact the denial of the application would have on the applicant, the way the proposed use would help homeless or houseless members of society to ease the fiscal burden on the County, the energy efficiency of the

existing buildings, response to traffic concerns raised at the December 8, 2021 hearing by neighbors, and the amount of property taxes the applicant is exempt from paying due to their nonprofit status. The Board concurs that this type of use may not have any energy consequences more adverse than those on other undeveloped rural lands, however, the additional submitted information was still deficient in terms of addressing the economic, environmental, and social impacts of the proposed use. The economic impacts that would occur from prime agricultural land being used for the proposed urban use and not farming, was still not addressed. Additionally, the potential impacts of the proposed use on local groundwater supplies, as raised by submitted public comments and public testimony, was not addressed. The applicant provided substantial information about the social benefits the proposed use has (homeless housing, substance abuse recovery etc.), however the context of the analysis was not that required by the OAR. Specifically, the submitted materials as a whole do not address how the long-term environmental, economic, and social consequences resulting from urban development at the proposed site were not more adverse than would typically result from the same proposal being located on other undeveloped rural lands. Given that this criterion was not adequately addressed by applicants, the Board cannot make an affirmative determination relating to this criterion.

This criterion is not satisfied.

Compatibility: The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

The requirements of OAR 660-004-0020(2)(d) and OAR 660-014-0040(3)(c) are often overlapping in their requirements so the Board has summarized the consistency findings these OAR sections to avoid repetition.

OAR 660-004-0020(2)(d)

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

OAR 660-014-0040(3)(c)

(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

The proposed residential addiction recovery treatment program is an urban use per Goal 14 and most closely meets the County's ZDO definition of a congregate housing facility, which is only allowed in urban areas. The proposed urban use would involve long term residency of up to 31 individuals, with more individuals assumed to be coming to and from the property to provide services necessary to accommodate the significant residential population on the property. The proposed use would be out of character with the surrounding EFU zoned agricultural properties, which consist of scattered homesteads and large tracts of cultivated prime agricultural land. That said, the proposed use can rely upon the existing well on the property and can be served by a private septic system. No impacts to the transportation system are expected and the proposal did not require a traffic study, per Clackamas County's engineering staff, due to the low number of trips anticipated. Despite the ability of the proposed use to rely on private utility services, congregate housing facilities inherently result in a larger amount of people coming and going from the property and the use would be most similar to that type of development/use. The impact that this type of housing facility could have on the adjacent agricultural farming operations is unclear and no other congregate housing facilities in resource land exist in the County to the Board's knowledge. Additionally, the requirements of the fire department to provide service to such a facility in a rural location are unclear. The Board does not have enough information to make a finding of consistency with OAR 660-004-0020(2)(d).

The application stated that the proposed use cannot be located on other farmland properties because they are too far from the essential services and vendors the applicant relies upon. It is unclear what 'essential services' the use relies upon, however, it is assumed that some of those services come from surrounding cities. The materials submitted by the applicant also did not provide an analysis of properties that were closer to these 'essential services' but still outside the UGB and in a rural location. The materials submitted by the applicant do not address consistency with OAR 660-014-0040(3)(c) and the Board does do not have enough information to find the proposal consistent with this statute.

As such, the requirements of OAR 660-004-0020(2)(d) and OAR 660-014-0040(3)(c) are not met.

E. Statewide Planning Goal Consistency

Goal 1: Citizen Involvement: To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

This is a quasi-judicial land use application. The Clackamas County Comprehensive Plan and Section 1307 of the Zoning and Development Ordinance (ZDO) contain adopted and acknowledged procedures for citizen involvement and public notification. This application has been processed consistent with the notification requirements in Section 1307 including notice to individual property owners within ½ mile feet of the subject property, notice in the local newspaper, and notice to affected agencies, and dual interest parties. **This application is consistent with Goal 1.**

Goal 2; Land Use Planning: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 requires coordination with affected governments and agencies. Notice of this application has been provided to the following agencies and governments for comments; Hamlet of Beavercreek, Clackamas County RFPD #1, 1000 friends, Oregon City, the Department of Land Conservation and Development (DLCD). The subject property is not located within any Urban Growth Management Areas (UGMA) of any nearby or surrounding cities. The property is not located in a designated urban or rural reserve area. Therefore, this application does not affect any other adopted City Comprehensive Plans.

Goal 2 requires that all land use actions be consistent with the acknowledged Comprehensive Plan. The background information and findings provided by the applicants and within this report, and comments received from agencies and interested parties provide an adequate factual base for rendering an appropriate decision.

However, his proposal requires an exception under Goal 2. As discussed in Section D of these findings, the current proposal does not meet all the relevant criteria for the goal exception and therefore the proposal is not in compliance with this goal.

This application is not consistent with Statewide Planning Goal 2.

Goal 3; Agricultural Land: To preserve and maintain agricultural lands.

The subject property is considered Agricultural land as defined in the Statewide Planning Goals or County Comprehensive Plan. The proposal does not comply with Goal 3 and therefore an exception has been sought. As discussed previously, the current proposal does not meet the criteria for the goal exception.

This application is not consistent with Goal 3.

Goal 4; Forest Land: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture.

The subject property is not considered Forest land as defined in the Statewide Planning Goals or County Comprehensive Plan.

Goal 4 is not applicable.

Goal 5; Open Spaces, Scenic and Historic Areas, and Natural Resources: To conserve open space and protect natural and scenic resources.

Goal 5 resources include open space areas, scenic and historic resources and other natural features. Chapter 3 (Natural Resources and Energy) and Chapter 9 (Open Space, Parks and Historic Sites) of the Clackamas County Comprehensive Plan identifies significant Goal 5 resources within the County.

There are no Goal 5 resources identified in the Comprehensive Plan located on the subject property.

Goal 5 is not applicable.

Goal 6; Air, Water and Land Resources Quality: The County Comprehensive Plan and ZDO include adopted implementing regulations to protect the air, water and land resources. The County also has implementing regulations to accommodate all waste and process discharges in order to protect watersheds, airsheds and land resources. These regulations will be applied to any future development proposals on the property and to ensure the protection of the affected air, water and land resources.

This application is consistent with Goal 6.

Goal 7; Areas Subject to Natural Disasters and Hazards: The subject property is not located within any designated floodplain area. According to the Department of Geology and Mineral Industries (DOGAMI) maps the property does not contain any steep slopes or natural hazards (landslide topography, local slump, earth flow, mudflow or debris flow areas).

Goal 7 is not applicable.

Goal 8; Recreational Needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate to provide for the siting of necessary recreational facilities including destination resorts.

This proposal does not involve any designated recreational or open space lands, affect access to any significant recreational uses in the area, or involve the siting of a destination resort. This proposal will have no impact on the recreational needs of the County or State. **Goal 8 is not applicable.**

Goal 9; Economic Development: "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon's citizens."

This Goal is intended to ensure Comprehensive Plans contribute to a stable and healthy economy in all regions of the state. Goal 9 also requires the County to provide for an adequate supply of sites of suitable sizes, types, locations, and services for a variety of industrial and commercial uses consistent with plan policies.

OAR 660-009 (Industrial and Commercial Development) implements Goal 9. Pursuant to OAR 660-009-0010(1) the requirements and standards in OAR 660-009 are only applicable to areas within urban growth boundaries, which includes the subject property. However, OAR-660-009 would not apply to the subject Comprehensive Plan amendment because the proposed amendment would not change the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or another employment use designation to any other use designation. **Goal 9 is not applicable.**

Goal 10; Housing: "To provide for the housing needs of citizens of the state."

This Goal requires local jurisdictions to provide for an adequate number of needed housing units and to encourage the efficient use of buildable land within urban growth boundaries. OAR 660-007 and 660-

008 defines the standards for determining compliance with Goal 10. OAR 660-007 addresses the housing standards inside the Portland Metropolitan Urban Growth Boundary. OAR 660-008 addresses the general housing standards.

The subject property is not located inside of the Portland Metropolitan Urban Growth Boundary and OAR 660-007 and OAR 660-008 are not applicable to this proposal. This proposal does not include any housing; therefore Goal 10 is not applicable.

Goal 10 is not applicable.

Goal 11; Public Facilities and Services: “To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.”

This proposal will not require the extension of any new public facilities to support rural uses; therefore **Goal 11 is not applicable.**

Goal 12; Transportation: “To provide and encourage a safe, convenient and economic transportation system.”

Oregon Administrative Rule (OAR) 660-012 (Transportation Planning Rule) implements Statewide Planning Goal 12. OAR 660-012-0060 applies to any plan map amendment which significantly affects a transportation facility. OAR 660-012-0060(1) requires any amendments to a functional plan, acknowledged comprehensive plan or a land use regulation (including a zoning map) which significantly affects an existing or planned transportation facility to put in place measures as provided in OAR 660-012-0060(2) unless the amendment is allowed under OAR 660-012-0060(3), (9) or (10).

Pursuant to OAR 660-012-0060(1) a plan or land use regulation amendment is deemed to significantly affect a transportation facility if it;

- a. *Changes the functional classification of an existing or planned transportation facility;*
- b. *Changes standards implementing a functional classification; or*
- c. *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluation projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*
 1. *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
 2. *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan or;*

3. Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

Compliance with OAR 660-012-0060(1) can be achieved by one or a combination of the following:

a. Adopting measures that demonstrate the allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

b. Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

c. Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

d. Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, of the provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards.

Clackamas County Engineering staff determined that the applicant's trip generation estimate – seven trips per day – appears low. It can be expected that trips will be generated not just by staff, but also by service and delivery vehicles, as well as visitors. This could result in two to three times more daily trips than that reported by the applicant. Note that a trip is defined as either originating or terminating at the site, so a delivery vehicle accessing the site is equal to two trips.

The number of trips will certainly increase on Bluhm Rd, and at the intersection of Bluhm and Lower Highland, over current levels. However, even with significantly more vehicle trips than estimated by the applicant, the peak hour trip generation is not expected to exceed 20 trips, which is the County standard threshold indicating the need to provide a traffic impact study. As noted by the applicant, the County told them that they would not need to provide a Traffic Impact Study (TIS).

There are no known safety or operational issues on roadways and intersections in the vicinity, and the proposed amendment would not add sufficient trips to significantly degrade either safety or operations. It

appears that amendment will not result in a significant effect per OAR 660-012-0060 from the information on the record.

This application is consistent with Goal 12.

Goal 13; Energy Conservation: To conserve energy.

This proposal will have no impact on any known or inventoried energy sites or resources. There are no planning or implementation measures under this Goal applicable to this application. **Goal 13 is not applicable.**

Goal 14; Urbanization: To provide for an orderly and efficient transition from rural to urban land uses.
Section OAR 660-004-0040 -- Application of Statewide Planning Goal 14 to Rural Residential Areas

- (1) The purpose of this rule is to specify how Goal 14 “Urbanization” applies to rural lands in acknowledged exception areas planned for residential uses.*
- (2) For purposes of this rule, the definitions in ORS 197.015, the Statewide Planning Goals and OAR 660-004-0005 shall apply. [...]*

...

Comprehensive planning following adoption of the Statewide Planning Goals and the creation of the Department of Land Conservation and Development involved determining which rural lands could accommodate residential development and be acknowledged as rural exception lands, pursuant to an exception to statewide Planning Goals 3 and 4. However, when LCDC became concerned that certain Counties were allowing urban uses on rural land, the application of Goal 14, Urbanization, became an integral part of the comprehensive planning process¹. Specifically, for Clackamas County, the adoption of Rural Exception lands was authorized through the Rural Plan Amendment or RUPA process, which included a number of different Comprehensive Plan amendment packages for different rural areas of the County. The subject property was not included in a rural exception area and was instead determined to be Agricultural resource land, as part of the RUPA I amendment, due to its location, size, use, and soil capabilities. As part of the RUPA process, LCDC and Metro required the County to make Goal 14 compliance findings for the rural exception lands. LCDC determined that the County did not allow any ‘urban uses’ on rural lands and, as such, the County was determined to be compliant with Goal 14.

In reviewing the proposed use, and the requested “reasons” exception to Goal 3, the County is required to make findings regarding consistency with Goal 14. Specifically, findings need to be included in a local government’s action to explain why the proposed use is “rural” and not “urban”. If the proposed use was found to be “urban” the use would need an exception to Goal 14. Specifically, *OAR 660-014-0040 Establishment of New Urban Development on Undeveloped Rural Lands and 660-004-0010 Application of the Goal 2 Exception Process to Certain Goals*, provide the required process for a Goal 14 exception, for new urban development on rural lands (including resource and non-resource rural lands).

¹ 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447.

What is “urban” and what is “rural” is not explicitly clear in the context of Goal 14 since Statewide Planning Goals contain no definition of urban or rural uses. Additionally, while it is clear that OAR 660-004-040 applies to urban development on rural land, “urban development” is not defined in the OARs. That said, the statewide Planning Goals do contain the following definitions of rural and urban land:

RURAL LAND. Rural lands are those which are outside the urban growth boundary and are:

- (a) Non-urban agricultural, forest or open space lands or,*
- (b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use,*

URBAN LAND. Land inside an urban growth boundary.

The meaning of these terms in the context of individual applications has been contemplated in many different case law discussions over the years². According to the Courts, these decisions must be made on a case-by-case basis. In general, the Board’s review of relevant case law suggests that the following main areas of consideration are relevant to this proposed use and must be addressed to make a determination that a use is rural or urban:

- 1. That public facilities and services providing for the use will be limited to the types and levels of service available and appropriate for rural lands. Or in other words, that the proposed uses on rural lands will not require urban levels of service.*

The proposed use involves only well water that does not require a water right or any public water service. There is an onsite septic system currently available for the existing home and the County’s septic department has determined that a system to serve the proposed 31 residents on site would be feasible. As such, the Board finds that the proposed services to a new parcel in this area would still be a rural level of service. No road or traffic improvements have been deemed required to support the proposed use, per Goal 12 and associated statutes. The Board does not have enough information regarding what the required fire service would be to determine if the service required would be any different than that of another rural EFU zoned property without the proposed use.

- 2. The potential impact on a nearby Urban Growth Boundary. Specifically, consideration of whether the proposed use would impermissibly affect the ability of nearby UGBs to perform their urbanization function.*

The proposed use and redevelopment of the accessory structure to a dormitory facility would attract people who would not otherwise locate within the agricultural resource land in the Beaver Creek area. The proposed use also offers similar amenities to the urban amenities found in the UGB because the focus of the proposed use is on an addiction recovery treatment program, which are most commonly found in urban areas of the state (per Oregon Health Authority maps), not on the agricultural resource lands. It is unclear from the application materials whether the addition of the congregate housing facility would impact the ability of nearby UGBs to perform their urbanization function; however, from all the materials on the record the Board finds that the addition of 31 more residents to the rural property would draw people away from urban areas to provide goods and essential support services to a residential facility in a

² See Jackson County Citizens League v. Jackson County, 38 Or LUBA 37, 48 (2000).

rural location. The proposed use, which most closely resembles a congregate housing facility, would not be consistent with the pattern of agricultural homesites in the Beavercreek area. The subject property is located approximately 4 miles from the Oregon City Urban Growth Boundary, so it is not directly adjacent to City limits or located adjacent to any urban uses would rely on a residential population, volunteers, and essential services and vendors that were coming from the urban area, drawing urban residents and urban service providers away from the urban area.

3. Appropriate for, but limited to, the needs and requirements of the rural area to be served. Whether the type and intensity of use is consistent with those typically found in other rural areas of the County.

The materials submitted by the applicant do not provide any materials demonstrating that it would be serving the rural area, instead the proposed use would provide people (many coming from an urban population based on the type of residents described in the application and testimony received) with urban services in a rural location, with hobby farming as an accessory to the main use. The Board have no evidence that the proposed use would be serving the needs and requirements of the rural area and it is reasonable to assume from the application materials that the primary residents of the residential treatment program would be from an urban population that suffers from higher rates of substance abuse/addiction issues. Additionally, the proposed use is not a permitted use in the rural area of the County and there are no other similar facilities that have been permitted on EFU zoned land in the County to the Board's knowledge. As such, the proposed use would not be consistent with the type and intensity of uses typically found in other rural areas of the County.

4. Whether it is likely to become a "magnet" attracting people from outside the rural area

In past cases, LUBA and LCDC have implied that rural commercial and industrial development present as serious a threat to the policies of Goal 14 as do rural residences.[37] LUBA *307 has said that among the factors considered in determining if a particular use is urban are whether it is "appropriate for, but limited to, the needs and requirements of the rural area to be served," and whether it is likely to become a "magnet" attracting people from outside the rural area. *Conarow v. Coos County*, 2 Or. LUBA 190, 193 and n. 4 (1981)

As already noted, the definitions that accompany the goals do not define "urban uses." They do say that "urban land" may have "concentrations of persons who generally reside and work in the area" and "supporting public facilities and services". The submitted application explains that NWBTC could not be located on any alternate farmland in the County since the locations would be "too far from the essential services and vendors the applicant relies upon". Additionally, a comment letter from Chris Tendo (added as part of the file record) states that volunteers that service the proposed use come from many different churches and ministries in the Portland metroplex. A comment letter submitted by Diana Crities states that: "Treatment centers are normally placed in an urban setting for good reason, as they require the infrastructure and planning of an urban environment to handle the complex issues and needs of their patients. [...] Beavercreek is a sleepy hamlet dominated by rural living; it is not a destination, a potential development opportunity, or a service area for large cities." Oregon Health Authority's behavioral health profile for Clackamas County (added as part of the file record), which tracks the levels of behavioral health (including substance abuse) needs in rural and urban areas clearly demonstrates that there is a greater amount of people needing substance abuse treatment in urban areas. Additionally, many of the other submitted public comment letters and public testimony similarly demonstrated that the proposed use relies upon volunteers, service providers, and attendees from the urban area. As such, based on the record

the Board can only assume that a majority of the population of the proposed substance abuse treatment program would be coming from the urban area to this rural area of Beavercreek.

As such, the Board finds that the proposed substance abuse recovery treatment program, which would most closely meet the County's definition of a congregate care facility, would constitute an urban use. Therefore, a Goal 14 exception, and the application of OAR 660-004-010(1)(d)(D) and OAR 660-014-0040 would apply to the subject proposal and are addressed in Section D of these findings.

Goal 15: Willamette River Greenway: To protect, conserve, enhance and maintain the natural scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The subject property is not located within the Willamette River Greenway. **Goal 15 is not applicable.**

Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands), Goal 18 (Beaches and Dunes) and Goal 19 (Ocean Resources).
Goals 16, 17, 18 and 19 are not applicable in Clackamas County.

F. Compliance with Clackamas County Comprehensive Plan Policies

Chapter 2; Citizen Involvement: The purpose of this Chapter is to promote citizen involvement in the governmental process and in all phases of the planning process.

There is one specific policy in this Chapter applicable to this application.

Policy 2.A.1; Require provisions for opportunities for citizen participation in preparing and revising local land use plans and ordinances. Insure opportunities for broad representation, not only of property owners and County wide special interests, but also of those within the neighborhood or areas in question.

The Clackamas County Comprehensive Plan and ZDO have adopted and acknowledged procedures for citizen involvement. This application has been processed consistent with those procedures. Specifically, the County has provided notice to the property owners within ½ mile of the subject property, interested agencies and other interested parties and published public notices in the newspaper consistent with State law and Section 1307 of the ZDO. The Planning Commission and Board of County Commissioners will also hold one or more public hearings, as necessary, consistent with Section 1307 of the ZDO. These public mailings, notices and hearings will ensure an opportunity for citizens to participate in the land use process. **This application is consistent with Chapter 2.**

Chapter 3; Natural Resources and Energy: The purpose of this Chapter is to provide for the planning, protection and appropriate use of the County's land, water and air resources, mineral and aggregate resources, wildlife habitats, natural hazard areas and energy sources.

This Chapter contains eight (8) Distinct Sections addressing; 1) Water Resources; 2) Agriculture; 3) Forests; 4) Mineral and Aggregate Resources; 5) Wildlife Habitats and Distinctive Resource Areas; 6) Natural Hazards; 7) Energy Sources and Conservation and; 8) Noise and Air Quality. Each of these Sections is addressed below.

The subject property is not located in any of the above-mentioned protected areas and does not contain any land planned or zoned for forest uses. Therefore, the only applicable subsection in this Chapter are in subsection 2) Agriculture.

Agriculture: This section of Chapter 3 contains the following goals for agricultural lands in the county:

- *Preserve agricultural lands.*
- *Maintain the agricultural economic base in Clackamas County and the State of Oregon.*
- *Increase agricultural markets, income and employment by creating conditions that further the growth and expansion of agriculture and attract agriculturally related industries.*
- *Maintain and improve the quality of air, water, and land resources.*
- *Conserve scenic areas, open space and wildlife habitats.*

The applicant is proposing a Goal 3 exception to agricultural resource land.. The subject property is prime agricultural land, per the NRCS, and is classified as 45B and 45C Jory silty clay loam. The proposed use would not involve a farming business or a farm use, per the ORS definition. The proposed use is urban in nature and would not preserve agricultural lands or help maintain the agricultural economic base in Clackamas County. Additionally, the proposed use would not increase agricultural markets, income and employment by creating conditions that further the growth and expansion of agriculture and attract agriculturally related industries. The applicants applied for an exception to Goal 3, per the exception criteria in Goal 2, however, the Board finds that the proposed substance abuse recovery treatment program, which would most closely meet the County’s definition of a congregate care facility, would not meet the requirements for a Goal 3 exception per the applicable OARs and the requirements for a Goal exception in Goal 2.

Therefore, this application is not consistent with Chapter 3.

Chapter 4; Land Use: *This Section of the Comprehensive Plan includes the definitions for urban and rural land use categories, and outlines policies for determining the appropriate Comprehensive Plan land use designation for all lands within the County.*

This Chapter contains three Sections addressing; 1) Urbanization; 2) Urban Growth Concepts; and 3) Land Use Policies for the each Land Use Plan designation. Each Section is addressed below.

1. Urbanization Section. This Section of the Plan outlines polices guiding land use in Immediate Urban Areas, Future Urban Areas, Future Urban Study Areas, Urban Reserve Areas, Rural Reserve Areas and Population Coordination.

The subject property is not within an urban growth boundary, immediate urban area, future urban area, future urban study area or urban reserve area. The subject property is partially located in an

area approved for a rural reserve designation. The policies listed in this subsection, however, apply to “*Rural Reserve areas established pursuant to OAR 660, Division 27,*” which requires the reserve areas be acknowledged. The decision designating land in the County as rural reserves has been appealed, and is currently unresolved. As such, the rural reserve areas are not yet considered acknowledged. Therefore, these policies do not yet apply to land in the county.

The Urbanization policies are not applicable.

2. Urban Growth Concept Policies. The Urban Growth Concept policies in this Section of the Plan are intended to implement the Region 2040 Growth Concept Plan. The subject property is not located within the boundaries of the Region 2040 Concept Plan identified on Map IV-8 of the Comprehensive Plan.

The Urban Growth Concept policies are not applicable.

3. Land Use Plan Designations. The subject property is currently designated Agriculture on the Comprehensive Plan map. The proposed amendment is for a limited use overlay to allow the proposed residential substance abuse recovery treatment program. Since the proposal involves a Goal 3 exception for a limited use overlay, no change to the existing Agricultural land use designation is proposed.

This Chapter is not applicable to the proposal.

Chapter 5; Transportation: This Chapter outlines policies addressing all modes of transportation.

Based on the submitted application and trip generation estimates the proposed zone change would be consistent with OAR 660-012-0060(1) and would not significantly affect the transportation facility, since it does not exceed the thresholds or triggers for project conditioning or modification as described in OAR 660-012-0060(1)(a)-(c). See the findings for Goal 12 in section E of these findings. **The proposed Comprehensive Plan amendment and zone change is consistent with Chapter 5.**

Chapter 6; Housing: The purpose of the Housing element of the Plan is to, “Provide opportunities for a variety of housing choices, including low and moderate income housing, to meet the needs, desires, and financial capabilities of all Clackamas County residents to the year 2010.” This Chapter includes a variety of policies regarding housing choices, affordable housing, neighborhood quality, urban infill, multifamily residential housing, common wall units, mobile homes and density bonuses for low cost housing and park dedication. Specifically, Policy 6.A.1 is applicable to the proposed Comprehensive Plan Amendment/Zone Change and states:

6.A Housing Choice Policies

6.A.1 Encourage development that will provide a range of choices in housing type, density, and price and rent level throughout the urban areas of the County.

Chapter 6 focuses on improving housing options and increasing housing density in the urban areas of the County. There are no polices specific to the natural resource lands in the County. **Chapter 6 is not applicable.**

Chapter 7; Public Facilities and Services: The goal of the Public Facilities and Services Chapter is to ensure an appropriate level of public facilities and services are necessary to support the land use designations in the Comprehensive Plan, and to provide those facilities and services at the proper time to serve the development in the most cost effective way.

The Public Facilities Section of this Chapter includes policies regarding Sanitary Sewage Treatment, Water, Storm Drainage, Solid Waste and Street Lighting. The policies regarding Sanitary Sewage Treatment and Street Lighting are not applicable because the property is not located within a public sewer or street lighting district.

There are no policies applicable to this application. Chapter 7 is not applicable.

Chapter 8; Economics: The goal of the Economics element of the Plan is to "Establish a broad-based, stable and growing economy to provide employment opportunities to meet the needs of the County residents." This Chapter contains 4 Sections related to; 1) Existing Industry and Business; 2) New Industry and Business; 3) Coordination; and 4) Target Industries. There are no policies in this Section of the Chapter applicable to this application. **Chapter 8 is not applicable.**

Chapter 9; Open Space, Parks, and Historic Sites: The purpose of this Chapter of the Plan is to protect the open space resources of the County, to provide land, facilities and programs which meet the recreation needs of County residents and visitors, and to preserve the historical, archaeological, and cultural resources of the County. The subject property does not include any lands designated as open space or park land. There are no designated Historic Landmarks, Historic Districts or Historic Corridors on or adjacent to the subject property. **Chapter 9 is not applicable.**

Chapter 10; Community Plan and Design Plans: This Chapter of the Comprehensive Plan includes the Mt. Hood Community Design Plan, Kruse Way Design Plan, Sunnyside Village Plan, Clackamas Industrial Area and North Bank of the Clackamas River Design Plan, Clackamas Regional Center Area Design Plan, Sunnyside Corridor Community Plan, and Mcloughlin Corridor Design Plan.

The subject property is not located within the boundary of any Community Plan or Design Plan area. **Chapter 10 is not applicable.**

Chapter 11; The Planning Process: *The purpose of this Chapter is to establish a framework for land use decisions that will meet the needs of Clackamas County residents, recognize the County's interrelationships with its cities, surrounding counties, the region, and the state, and insure that changing priorities and circumstances can be met.*

Chapter 11 requires coordination with affected governments and agencies. Notice of this application has been provided to the following agencies and governments for comments; Hamlet of Beaver Creek, Clackamas County RFPD #1 and the Department of Land Conservation and Development (DLCD). The subject property is not located within any Urban Growth Management Areas (UGMA) of any nearby or surrounding cities. The property is not located in a designated urban or rural reserve area. Therefore, this application does not affect any other adopted City Comprehensive Plans.

This proposal is a quasi-judicial Comprehensive Plan amendment and public notice was provided consistent with applicable policies of Chapter 11. The Planning Commission and Board of County Commissioners will review this application through one or more public hearings. Notice of the hearings

have been published in the local newspaper and advertised consistent with all ZDO notice requirements. The property owners within 1/2 mile of the subject property were notified as required in Section 1307 of the ZDO. DLCD and other agencies and interested parties were notified of the application on October 4th, 2021, 35 days prior to the first scheduled public hearing before the Planning Commission on November 8th, 2021.

This application has been processed consistent with Chapter 11.

III. RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000 (RLUIPA)

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is a law that prohibits the imposition of burdens on the ability of institutionalized persons to worship as they please and gives churches and other religious institutions a way to avoid discriminatory zoning law restrictions on their property use. Material submitted by the applicant appears to contend that not allowing the proposed faith-based addition treatment center to locate at the proposed site would be a violation of RLUIPA. As such, the Board expects there will be a need to address RLUIPA provisions and offers the following initial findings related to the proposal and RLUIPA.

The first issue to address is whether or not RLUIPA would even apply to the subject proposal, given that the applicant acknowledges that the proposed use is not a church or place of worship and is not accessory to a church that is located on the site. After consultation with County Council and based on review of the law, the Board is confident that RLUIPA would apply in this case; RLUIPA specifically refers to “religious exercise,” not just religious assembly or churches and the Board expects that “religious exercise” could and would be broadly interpreted to include a facility that utilizes religious teachings are part of its treatment program, such as what is proposed.

Since it is likely that RLUIPA would be found to apply to the proposal, the applicants’ contentions related to this law are addressed under the three main components of RLUIPA as follows:

1. Equal Terms: Section §2000cc.2(b)(1) of RLUIPA forbids the treatment of religious assembly or institutions on less than equal terms with non-religious assembly or institutions. The applicant does not appear to contend that the proposed faith-based facility is being treated on unequal terms as any similar non-religious uses. Although the applicant does reference boarding schools as a similar use to what is proposed, schools (either boarding or day) are not allowed in the EFU District on high-value farmland and therefore would not be allowed on the subject property either. In addition, the Goal Exception process is available to and includes the same individual assessment and high bar for evidence and analysis for any potential applicant. Therefore, not allowing the proposed facility to locate in on the subject site in the EFU District is not a violation of the “equal terms” provision of RLUIPA.
2. Discrimination: Section §2000cc.2(b)(1) of RLUIPA forbids a government from discriminating against any assembly or institution on the basis of religion or religious denomination. Again, the applicant does not appear to contend that denying the goal exception for the proposed use would

constitute discrimination under this provision. For the same reasons noted above, the Board concludes that not allowing the proposed facility to locate in on the subject site in the EFU District is not a violation of the “discrimination” provision of RLUIPA.

3. Substantial Burden: Section §2000cc.2(a)(1) of RLUIPA forbids a government from imposing a land use regulation in a manner that imposes a “*substantial burden on the exercise of religion of a person or assembly, unless the government demonstrates that the imposition:*
 - a. *Is in furtherance of a compelling governmental interest; and*
 - b. *Is the least restrictive means of furthering that compelling governmental interest*“

The applicant alludes to RLUIPA and implies that a denial of their application would be a substantial burden, but the applicant does not directly state how their religious practice will be substantially burdened. RLUIPA is very clear that the burden is on the applicant to demonstrate how a particular church or religions institution has been “substantially burdened” by a government’s land use decision, noting that “*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.* (§2000cc-2.(b))[emphasis added]. The applicant has provided no evidence to substantiate a “significant burden” claim; if any such evidence were to be provided, it would need to be very compelling to meet the standards identified in several other cases regarding this provision.

The case cited in the application, *Guru Nanak Sikh Soc. v. County of Sutter* (456 F.3d 978 (9th Cir 2006)), is discussed in *Timberline Baptist Church v. Washington County*, 2011 Ore. App. 437 (2007). *Timberline* relies on *Guru Nanak Sikh Soc.* for the precept that “a land use regulation imposes a substantial burden on religious exercise when it is “‘oppressive’ to a ‘significantly great’ extent” and imposes a ‘significantly great restriction or onus upon such exercise.’” *Timberline* at 449.

Further, both the LUBA (*1000 Friends of Oregon v. Clackamas County*, 2004) and 9th Circuit Court (*International Church of Foursquare Gospel v. City of San Leandro*, 634 F.3d, 9th Cir. 2011) cases have asserted that a “substantial burden” is not one that is based solely on financial or market-based factors. Both cases confirm that the financial ability of a church to acquire property and the existence of market-based constraints that apply equally to religious and non-religious land users have no bearing on whether a jurisdiction has caused a “substantial burden” on a church.

Because there is no evidence to determine whether denial of the goal exception proposal would create a substantial burden on the applicant, the Board must conclude that the “substantial burden” provision of RLUPA has not been violated.

In summary, the Board finds that, based on the evidence provided by the applicant, denying the goal exception and therefore the ability of the proposed use to locate on the subject site would not constitute a violation of RLUIPA.