

CROOK COUNTY

BEFORE THE PLANNING COMMISSION

IN THE MATTER OF AN APPLICATION
FOR CONDITIONAL USE APPROVAL IN
AN EXCLUSIVE FARM USE ZONE EFU-3

NO. C-CU-2337-07
FINAL DECISION

APPLICANT/OWNER: Robert F. Vasa, Bishop
Roman Catholic Bishop
of the Diocese of Baker, Inc.
PO Box 5999
Bend OR 97708

AGENT: Karen Swirsky
David Evans and Associates Inc.
320 SW Upper Terrace Drive Suite 200
Bend OR 97702

ATTORNEY: Jeff Wilson
Miller Nash LLP
446 NW Third Street Suite 230
Prineville OR 97754

PROPERTY LOCATION: 14427 SW Alfalfa Road, Powell Butte
(T 16 S R 14 EWM Sec 20 TL 100)

PROPOSAL: An application for conditional use approval for a chapel (church), a Catholic Community Center with camping facilities (retreat and gathering center), and a chancery (business office); and for outright use approval for a Bishop's manse (replacement residence) in an Exclusive Farm Use zone EFU-3.

FINAL DECISION: APPLICATION IS APPROVED IN PART AND DENIED IN PART: THE APPLICATION IS APPROVED FOR ALL USES PROPOSED EXCEPT THE CHANCERY BY A VOTE OF 4-3; THE APPLICATION FOR THE CHANCERY IS DENIED BY A VOTE OF 4-3.

THE ABOVE ENTITLED MATTER came before the Crook County Planning Commission at its regularly scheduled meetings of July 25, 2007, August 15, 2007, September 26, 2007, October 23, 2007, and November 14, 2007.

LEGAL CRITERIA

CROOK COUNTY CODE: The property is zoned Exclusive Farm Use EFU-3. A church is permitted as a conditional use in the EFU-3 zone under CCC 18.24.020(3) (Although a Church is an outright permitted use in an EFU Zone under ORS 214.283(1)(b) the Crook County Code has not been amended to reflect this change in State law) . A community center owned and operated by a nonprofit community organization, or a private park or campground, is permitted as a conditional use in this zone in accordance with CCC 18.24.020(7) .

CCC 18.24.040 states that a conditional use may be permitted in the EFU-3 zone where the county finds that the use will not:

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

(2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

CCC 18.160.050(4) contains additional requirements for churches. It states that:

(a) [A church] may be authorized as a conditional use only after consideration of the following factors:

- (i) Sufficient area provided for the building, required yards, and offstreet parking (related structures and uses such as a manse,...or parish house are considered separate principal uses and additional lot area shall be required therefore).
- (ii) Location of the site relative to the service area.
- (iii) Probable growth and needs therefore.
- (iv) Site location relative to land uses in the vicinity.
- (v) Adequacy of access to and from principal streets, together with the probable effect

on the traffic volumes of abutting and nearby streets.

- (b) Such uses or related buildings shall be at least 30 feet from a side or rear lot line.
- (c) Such (a use) may be built to exceed the height limitations of the zone in which it is located to a maximum height of 50 feet if the total floor area of the building does not exceed the area of the site, and if the yard dimensions in each case are equal to at least two-thirds of the height of the principal structure.

Under CCC 18.160.050(5), a community center, or a private park or campground, may be permitted as a conditional use after assurance that the following is to be provided:

- (a) Adequate access from principal streets.
- (b) Adequate offstreet parking.
- (c) Adequate building and site design provisions to minimize noise and glare from the building and site.

CCC 18.128 contains requirements for parking. A church is required to have one space per six seats or eight feet of bench length in the main auditorium (sanctuary), or one space for each 75 feet of floor space in a main auditorium not containing fixed seats. There are no specific requirements for community centers.

CCC 18.160.050(14) contains requirements for recreation vehicle (RV) parks. It states that current state standards must be followed in addition to the requirements of this section.

A replacement residence may be permitted as an outright use in accordance with CCC 18.156.010(4).

CCC 18.24.100(1) states that in an EFU-3 zone, a minimum setback of 100 feet must be maintained between a residence or habitable structure and a property line.

In accordance with CCC 18.24.100(2)(a), minimum setbacks of 30 feet from a property line fronting on a major collector right-of-way (*Alfalfa Road is a major collector*); 20 feet from a side property line, and 25 feet from a rear property line must be

maintained for an accessory (*non-habitable*) structure.

COMPREHENSIVE PLAN: Pages 40-47 of the Crook County-Prineville Area Comprehensive Plan contain policies for agricultural areas of the County.

OREGON REVISED STATUTES: ORS 215.283(1) permits churches in EFU zones as an outright use. ORS 215.283(2) allows the County to approve private parks and campgrounds, and community centers as a conditional use in EFU zones. ORS 215.441(1-2) requires the County to permit activities customarily associated with churches, excluding parochial schools if allowed under state laws and rules and local zoning ordinances and regulations.

TRANSPORTATION IMPACT ANALYSIS

A TIP for the proposed church/community center was completed by Ferguson & Associates, PO Box 1336, Bend, OR 97709 on April 30, 2007, and submitted to Crook County on May 1, 2007.

The study focuses on the weekday commuter peak hour (4-6 p.m.); the Friday midday peak hour (12-2 p.m.); and the Saturday afternoon peak hour (2-6 p.m.). Traffic counts were conducted at the intersection of the Powell Butte Highway and Alfalfa Road for 15 minute intervals during these time periods.

The study also forecasts the traffic impact of four large area developments: Brasada Ranch, Pronghorn Resort, Hidden Canyon, and Remington Ranch.

The analysis was conducted for the years 2007 and 2012 for conditions with and without the proposed church/community center. The study addresses key transportation issues such as roadway capacity, site distance, traffic signal warrants, left-turn lane warrants, and site access.

The study is based upon the *Crook County Transportation Impact Analysis Requirements (TIA Requirements)*.

The study assumes eight full-time and eight part-time Diocesan staff; an office and part-time residence for the Bishop; meeting rooms and conference facilities for up to 225 people; summer camp facilities; and cabins and RV parking for summer camp use. The planned functions of the facility will include offices for Diocesan operations; retreats and meetings for parishioners; and

youth and family summer camps.

The proposed chancery offices would be occupied on most weekdays throughout the year. Retreats and meetings will occur throughout the year, with the peak event that will attract more than 200 people occurring on a Saturday. The summer camp will operate during the summer months only.

TRAFFIC STUDY RECOMMENDATIONS AND CONCLUSIONS:

The combined activities are projected to generate 6 weekday commuter peak hour trips; 112 Friday midday peak hour trips (summer only, less in other seasons); and 197 Saturday afternoon peak hour trips. Because existing traffic volumes on Alfalfa Road are very small, the increase in trips may be noticeable to property owners to the east of the facility. No functional or safety-related traffic problems are anticipated from the forecast traffic volume.

All studied intersections were forecast to meet Crook County Level of Service (LOS) standards in both the years 2007 and 2010 for each peak hour time period, both with and without the proposed church/community center. No mitigation measures will be required through 2012 if the proposal is approved.

The Crook County Roadmaster stated (July 25, 2007) that her review of the TIP submitted by the applicant indicates that the additional traffic impact of the proposed church and community center falls below the 10 percent threshold.

Therefore, no mitigation will be required at the intersection of Alfalfa Road with the Powell Butte Highway, and review of additional intersections will not be required.

REVIEW COMMITTEE MEETING

A Review Committee meeting regarding the proposal was held at 11:00 a.m. on Tuesday, August 14, 2007. The Crook County Roadmaster, a representative of Crook County Fire and Rescue, and a representative of the applicant were present, in addition to Planning staff.

ACCESS: The Roadmaster and the representative of Crook County Fire and Rescue indicated that an emergency access to the property from the Powell Butte Highway should be placed in the

northwestern corner of the property. They indicated that this would provide for better access in cases of emergency, as the access could be used if Alfalfa Road becomes blocked. Also, it would provide easier access for emergency vehicles coming from Deschutes County under the Fire Department's reciprocal aid agreement.

The existing access to Alfalfa Road is to be closed, and a new primary entrance put in to the south. The emergency access to the Powell Butte Highway is to be gated with a Knox Box, for emergency use only. It would be connected to the main retreat complex by an all-weather graveled drive to be approved by Fire and Rescue.

The applicant's representatives indicated they are in general agreement with this. However, they indicated that the proposed drive will probably require removal of some irrigation water, as well as requiring the removal of some existing trees they wish to keep.

The Roadmaster also indicated that a right turn lane will be needed on Alfalfa Road adjacent to the proposed new primary entrance to the property. It would be on the applicant's property. She indicated that it can be a condition of approval.

EXISTING PROPERTY CHARACTERISTICS

ACREAGE: The property measures 37.89 acres.

CURRENT USE OF THE PROPERTY: A residence, barn, and several outbuildings are located on the property. Lowland pasture occupies the western portion of the property. The remainder of the property is unused at this time.

AREA LAND USE: Area land uses include large agricultural parcels, BLM lands, and nonfarm residences on lands zoned Exclusive Farm Use EFU-3. The Powell Butte View Estates subdivision, and adjacent parcels zoned Rural Residential R-5, are located within one-half mile to the east. The Brasada Ranch destination resort is located within one mile to the east.

Lands to the north and south of the property are largely irrigated, with a number of pivots. Lands beyond a short distance to the east and west are hilly, and covered by junipers and other native vegetation.

Parcels zoned EFU-3 within one mile of the property include 15 parcels measuring less than 40 acres, including 12 with residences (including the subject property). There are 12 parcels measuring between 40 and 80 acres, including 8 with residences. There are 5 parcels measuring 80 acres or larger, including the Brasada Ranch destination resort.

There is a potential for up to three additional nonfarm residences on vacant parcels measuring less than 40 acres, eight additional nonfarm residences if vacant parcels measuring 40-80 acres are partitioned, eight additional nonfarm residences if parcels measuring 40-80 acres with one residence are partitioned, and eight additional nonfarm residences if parcels measuring 80 acres or larger, not including Brasada Ranch, are partitioned to the maximum extent permitted. Combining all of the above, there is a possibility for up to 27 additional nonfarm residences on EFU-3 lands within one mile. This total includes lot-of-record residences.

SUMMARY OF POTENTIAL NONFARM RESIDENCES WITHIN ONE MILE

	<u>No. Residences</u>
Vacant parcels < 40 acres	3
Vacant parcels 40-80 acres	8
Parcels 40-80 acres w/one residence	8
Parcels > 80 acres	8
Total	27

This total does not include potential residences on lands zoned R-5, or potential destination resort residences. It also does not include potential residences resulting from Measure 37 claims.

There is a possibility of additional churches or community centers being developed within one mile, but this cannot be adequately quantified, as almost any of the parcels in the study area, presently developed or not, might be used for this purpose, and the demand is very uncertain.

FARM DEFERRAL: The property is not under farm deferral.

IRRIGATION: The property has 33.0 acres of irrigation water rights from Central Oregon Irrigation District (COID). COID indicates that water must be removed permanently from any area being developed prior to development. They require that an electronic AutoCAD site plan be submitted to them for water rights removal determination.

COID states that a waste channel runs close to the western edge of the property.

Tail water runoff is the responsibility of the property developer.

All irrigation conveyances must not be encroached upon without written permission, and must be shown on all plans.

Irrigation water must not be used for human consumption. All irrigation district fees must be paid.

TOPOGRAPHY: The eastern two-thirds of the property slopes downward from east to west, with moderately steep slopes on the eastern edge of the western third of the property. The western third of the property has a slight down-slope from east to west.

VEGETATION: Junipers and other native vegetation are present on the eastern two-thirds of the property, primarily on and adjacent to the slopes on the property. Grasses are predominant on other parts of the property, especially the western one-third.

WEEDS: The Crook County Weedmaster indicates that there are no noxious weeds on the property.

WILDLIFE: The property is not in a critical wildlife area, according to the Prineville representative of ODFW.

SURFACE WATER: A pond is located near the center of the property.

FLOOD ZONE: A portion of the lower western one-third of the property, where development is not to take place, is within Flood Zone A, a 100 year flood zone where minimum elevations have not been set.

The remainder of the property, including all of the area to be developed, is in Flood Zone X, outside the 500 year Flood Zone.

All structures are to be located a minimum of 15 feet above the area in Flood Zone A, and will not be at any risk from flood.

WETLANDS: There are no designated wetlands on the property.

DESCRIPTION OF PROPOSAL

The approved facilities are to include a retreat and gathering place for the Roman Catholic Diocese of Baker, which includes a number of Central and Eastern Oregon counties. It will be used for retreats, educational programs, and religious activities.

They are also to include a chapel (church), and a manse (Bishop's residence) which is to replace the existing residence on the property.

A chancery (business office for the entire diocese) was proposed to be placed on the property, but has been denied.

Facilities are to be constructed in two phases. Phase 1 is to include:

- Chapel
- Retreat center (in existing barn to be renovated) and playing field
- Manse (Bishop's residence), to replace the existing residence. (It is to include a small separate unit for junior clergy and staff.)
- Staff house (no kitchen)
- Five bunkhouses (overnight accommodations, no kitchens)
- Bathhouse (restroom/shower building)
- Campfire circle
- RV camping area (12 spaces)
- Pole barn (existing)
- Improved hiking trail

- *(The chancery, which has been denied, was proposed to be a part of Phase 1.)*

The Bishop's manse is to be occupied on a part-time basis by the Bishop, and sometimes by other clergy and staff.

The retreat center is to include kitchen and dining facilities. All meals for retreat and conference attendees and summer camp participants will be prepared and served there.

The RV camping area will have full hook-ups, and will be used by retreat and conference attendees.

The chapel will be used for services for conference and retreat and summer camp participants, and for staff. Services will be conducted by clergy in residence, or by those participating in activities. It will not be a parish church for Powell Butte residents.

The above structures will be constructed in a farm and ranch style which reflects the traditional architecture of the Powell Butte area.

The facility will serve Catholic Church members from throughout Central and Eastern Oregon, rather than specifically serving the Powell Butte Community.

Phase 2 is to consist of a parish church, with parish hall and associated parking; and another building with parking.

It will be oriented to serving church members in the Powell Butte area.

PROPOSED INFRASTRUCTURE

ACCESS: The property is adjacent to Alfalfa Road on the east. The existing access to the property from Alfalfa Road has 3-4 foot walls on either side which limit intersection sight distance and stopping sight distance when measured from 15 feet from the edge of the roadway. The applicant's traffic engineer states that the entrance meets guidelines when measured from 5 feet from the roadway, but he states that both intersection and stopping sight distance can be met by moving the entrance 150 feet to the south. The applicant's agent states that the walls are to be removed, and the access will be moved approximately 150 feet to the south

to improve intersection and stopping sight distance.

The new access is proposed to be in the southeast corner of the property.

An emergency access to the Powell Butte Highway is to be constructed in the northeastern corner of the property. It is to be connected with the retreat facilities by a 20 foot wide secondary access road.

Alfalfa Road connects to the Powell Butte Highway to the north of the property.

UTILITIES: Electricity is to be provided by Central Electric Coop. Land line telephone service is to be provided by QWest.

DOMESTIC WATER: The applicant proposes to obtain domestic water from the Avion Water Company.

SEWAGE: Sewage disposal is to be by septic systems on the property. An existing septic system in the southern part of the property is to be expanded to serve the proposed Phase 1 development, and a second system will be developed on the north side of the property to serve the proposed parish church in Phase 2.

PARKING: Three asphalt parking areas with capacities of 72, 64, and 40 parking spaces respectively, are to be provided in connection with Phase 1. Additional parking is to be provided in connection with the parish church and the additional structure proposed for Phase 2.

FIRE: The proposed facility is in the Powell Butte Fire District. Sprinklers are to be used for fire protection.

The representative of Fire and Rescue submitted the following written requirements:

- (1) Fire Department approved access roads and safety precautions are to be in place at the time combustible materials are brought to the site.
- (2) The required water supply for fire suppression shall be 1250 gallons per minute at 20 psi residual pressure. This flow requirement is based on Type V-B building

construction not to exceed 8126 square feet.

(3) A reduction of fire flow may be allowed for this project if an approved fire suppression system is installed. No commodities, furniture, goods, merchandise, wares, materials, or possessions shall be stored or used within this structure until the fire sprinkler or suppression system is completed, tested, and operational, unless otherwise approved by the Code Official and the Building Official.

(4) The minimum amount of fire hydrants needed shall be 5, spaced no more than 300 feet from the most remote portion of the building measured by an approved fire access route around the exterior of the facility or building. Fire hydrants shall be provided where required by the Fire Code Official.

(5) Fire hydrants shall be located along the route of the fire apparatus access roadway, and spacing of the hydrants shall not exceed 180 feet.

(6) A 3 foot clear space shall be maintained around the circumference of each fire hydrant. When exposed to vehicle damage, concrete curbing, sidewalks, or 4 inch concrete-filled bollards placed 3 feet from hydrants shall be used to protect hydrants. Hydrants shall be painted in appropriate colors with markings.

(7) Approved numbers and addresses are to be placed on all new and existing buildings so as to be plainly visible from the street or road in front of the property. Numbers are to be a minimum 4 inches high with a minimum stroke width of 0.5 inch, and are to contrast with their background and be visible at night. A residence or foster home located off street frontage is to have a visible approved reflective address sign posted at its driveway entrance. (Signs are available through the Building Department).

(8) Streets and roads are to be identified with approved signs. Signs are to be of approved size, and weather-resistant construction.

(9) Approved signs or other approved notices shall be provided for fire apparatus access roads to identify them or prohibit their obstruction. Such signs or notices shall be

legible at all times. Fire land curbs shall be painted bright red with white letters. The stroke shall be 1 inch with letters 6 inches high to read "No Parking Fire Lane". Signs shall be placed 50 feet apart.

(10) Fire apparatus access roads are to be placed within 150 feet of all exterior walls of the first floor of all buildings. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet, designed with a uniform all-weather driving surface to support the gross imposed vehicle weight (GVW) of 75,000 lbs., and a vertical clearance of not less than 13 feet 6 inches. Turning radius shall not be less than 45 feet, and gradient shall not exceed 10 percent, unless the authorities having jurisdiction approve a variance. Dead-end access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus. A 96 foot diameter cul-de-sac, a 120 foot hammerhead, or other means for the turning around of fire apparatus may be approved.

(11) A key box (Knox Box) is required to be installed at an approved location. An application for the Knox Box is available through the Knox Company at knoxbox.com.

(12) Fire extinguisher rating and travel distance shall be in accordance with the Oregon Structural Code OFC 906.3.

(13) Dumpsters and containers with an individual capacity of 1.5 cubic yards or more shall not be stored in buildings, or placed within 5 feet of combustible walls, openings, or combustible roof eaves unless the area is protected by an approved automatic fire sprinkler system.

(14) Aboveground gas meters, regulators, and piping exposed to vehicular damage due to proximity to alleys, driveways, or parking areas shall be protected in an approved manner.

(15) Installation and maintenance of fire alarm systems shall be in accordance with Section 907 and NFPA 72.

(16) Fire extinguishing systems shall be installed in accordance with the Building and Fire Codes. Fire hose threads used in connection with fire extinguishing systems shall be national standard hose thread. Fire sprinkler systems shall be installed in accordance with

2007 OFC, OSSC, and NFPA 13.

(17) Plans for Fire Department Connection (FDC) and Indicating Shutoff Valves (WIV or PIV) for fire suppression systems shall be submitted to the Fire Department for approval prior to construction.

(18) Approved fire suppression equipment systems shall be provided for the protection of commercial-type food heat-processing equipment when grease-laden vapors are present. A portable fire extinguisher shall be provided within 30 feet travel distance of commercial cooking equipment, and any cooking equipment involving vegetable or animal oils or fats shall be protected by a Class K rated portable extinguisher as required in 2007 OFC Section 904.11.8.

(19) Smoke detectors shall be in compliance with Oregon State Laws and the Oregon Structural Code, OFC 907.2.10.

Fire flows are reduced 50% due to the use of NFPA sprinkler systems. Water storage is 1250 gpm x 120 minutes = 150,000 gallons. This is only for the chancery, chapel and retreat center separated as deemed by the Crook County Building Department. As shown in the Master Plan as one building, the fire flow would be 3700 gpm for three hours = 337,500 gallon storage.

The staff housing and bunk houses will need to be sprinkled with at least an NFPA 13R system. This is due to the R classification and the Fire Department response time. The Bishop's residence will not need sprinklers due to the R3 occupancy.

IRRIGATION: The irrigation water on the property is to be kept, and most of the irrigated land will be leased for agricultural use.

The Central Oregon Irrigation District (COID) indicates that an irrigation plan will be required for the property, but that it can be required as a condition of approval.

STAFF ANALYSIS

(1) Will the proposed use force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or

forest use?

The one-mile area study conducted by Planning staff indicates that there is potential for no more than 27 additional nonfarm residences on EFU land in this area, excluding destination resort residences and Measure 37 claims. In any case, the proposed community center will serve Catholic Church members from throughout Central and Eastern Oregon, rather than serving the local community specifically. Therefore, it is unlikely to spur much additional residential development in the area. At most, some of the chancery office staff (8 full-time and 8 part-time employees) may wish to live nearby. However, without the chancery office there would be even less impact.

The proposed Phase 2 parish church will serve the local Catholic community, but can be expected to meet the needs of residents who will move to Powell Butte for other reasons, rather than attract people there. It will probably have no more than two or three paid employees.

There may be a potential for other, similar facilities to locate in the area, but this would be very difficult to quantify.

(2) Will the proposed use significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use?

The proposed use is in close proximity to irrigated agricultural operations on the north and east. It is separated from those to the north by the Powell Butte Highway.

The proposed use is to include one residence, which will be occupied by the Bishop, and occasionally other clergy and staff, on a part-time basis. The chancery office staff consisting of up to eight full-time and eight part-time employees was proposed to work on the property during the week, but not live there. However, without the chancery primary occupancy will occur on weekends throughout the year, and throughout the week during the summer months, as a result of retreats and conferences, and summer camp activities.

As the above activities will involve very little permanent residency, they are no likely to seriously conflict with area agricultural operations.

There may be more impacts from the proposed Phase 2 parish church, but it can be expected to occur primarily on Sundays, and will primarily involve traffic impacts. The parish church should result in no more than one or two permanent residents on the property.

Irrigated pasture is located in the western part of the property, but no structures or activities are proposed for that area. It could potentially be used for grazing while the proposed facilities are in operation in the eastern part of the property. Therefore, no agricultural land will necessarily be taken out of production by the proposed uses.

(3) Is the proposed facility to have adequate access?

The Transportation Impact Study (TIP) submitted by the applicant's representative projects that no transportation improvements will be required to accommodate the proposed church/retreat center. However, it does not address the transportation impacts of the parish church proposed as a part of Phase 2.

(4) Is the proposed facility to have adequate off-street parking?

The applicant proposes three asphalt parking areas, with a total capacity of 176 parking spaces, as a part of Phase 1. Additional parking is proposed for Phase 2. There will also be parking for 12 RV's as a part of Phase 1.

The County Code sets forth parking requirements for churches, but not for community centers or campgrounds. The proposed chapel will be relatively small, and will serve activity participants and staff. The parking needs of the parish church proposed in Phase 2 will be significant.

(5) Are the proposed site design provisions adequate to minimize noise and glare from the site?

Noise will probably only be an issue during daylight hours at summer camps. The primary source of noise is likely to be the proposed sports field, which is not in close proximity to residences on other parcels.

There is no potential for significant glare from the site.

(7) Will a Flood Hazard Permit be required?

A flood hazard area is located on the western part of the property, where no structures or activities are proposed. As a result of the topography of the property, the proposed structures and activities will be located at a significantly higher elevation than the flood zone, and will be at no risk from flooding.

TESTIMONY

WRITTEN TESTIMONY

PROPONENT TESTIMONY: The applicant submitted written testimony in support of the proposal. He quoted ORS 215.441 concerning the reasonable use of church property for activities customarily associated with religious practice. He made the case that all of the facilities applied for are in this category.

The applicant's attorney submitted written testimony. He stated that the present application is different from the Timberline Baptist Church case, and argued that denial of the proposed uses would impose a substantial burden on the religious practices of the diocese.

He also submitted written testimony stating that Commissioner Arlene Curths should recuse herself because she had indicated bias against rural development by signing a petition requesting a moratorium of destination resort development.

The applicant's representatives submitted written testimony stating that the applicant is in favor of providing an emergency access from the property to the Powell Butte Highway, and questioning whether the 10 feet additional road right-of-way requested by the Roadmaster can be provided in the form of an easement. They submitted a revised site plan showing the proposed emergency access.

OPPONENT TESTIMONY: One letter was received in opposition to the proposal. The writer stated that he is concerned about impacts on traffic and area agriculture. He stated that the proposal will take irrigated land out of production.

ISSUES RAISED BY 1000 FRIENDS OF OREGON

The Central Oregon Advocate for 1000 Friends of Oregon (July 25, 2007), called attention to a 2002 LUBA decision (42 Or LUBA 204) which held that the term "church" in ORS 215.283.(1)(b) should be interpreted to exclude residences and other housing, and retreat facilities. In the same decision LUBA held that local ordinances cannot expand on the uses allowable under the above ORS subsection.

In the present case, however, the proposed retreat and gathering center with camping facilities is proposed to be approved as a community center/private park rather than as a church, in accordance with Subsection 18.160.050(5), which specifically permits these as conditional uses in the EFU-3 zone. Only the chapel is proposed to be approved as a church.

Under the above decision, the Bishop's manse cannot be approved as a use in conjunction with a church, as initially proposed by Planning staff. However, the manse is to replace an existing residence on the property, and can be approved on that basis under CCC 18.156.010(4).

In the same communication, the 1000 Friends Advocate stated that the proposal cannot be approved because it represents an urban level of development, and an exception to Goal 3 (Agricultural Lands) has not been requested. She also stated that location of the facility in the proposed location is not essential to serve the area as required by the conditional use standard under CCC 18.160.050, and will have adverse impacts on agriculture and on the livability, value, and appropriate development of surrounding properties, and the surrounding area compared to the impact of development which is permitted outright. She stated that it will therefore not be consistent with the Comprehensive Plan, and with the objectives of the Zoning Ordinance and other applicable county policies and regulations, as required by CCC 18.160.020. In an earlier communication of July 24, 2007, the 1000 Friends Central Oregon Advocate called attention to ORS 215.283(2)(e). This statute indicates that the following are permitted: "Community centers owned by a governmental agency or a nonprofit community organization and operated *primarily by and for residents of the local rural community.*"

The Advocate pointed out that the facility is to serve the entire Roman Catholic community of Central and Eastern Oregon, and will not be operated primarily by and for residents of the local rural

community (Powell Butte).

The Advocate also stated that the proposed church (chapel) is not necessary, as the Powell Butte community is adequately served by nearby churches of the same denomination. However, churches in EFU zones are addressed by ORS 215.283(b), and ORS 215.441(1-2). Neither of these statutes states that a church must be necessary to serve the local community in order to be approved.

VERBAL TESTIMONY

OFFICIAL TESTIMONY: Crook County Attorney Dave Gordon stated that an important question is whether adverse county action on the proposal would place an undue burden on religious practice. He said that legal precedent indicates that land use laws in themselves are not a burden on religion, and that the question of whether the facility will serve the local area is legitimate. He said that a church is an outright use in an agricultural zone under state statutes.

Gordon stated that the decision on whether or not to recuse herself is up to Commissioner Curths. He said that her participation in the discussion on the issue may influence other commissioners, even if her vote is not decisive.

PROPONENT TESTIMONY: A representative of the applicant stated that the diocese looks upon the proposal as a single unit. She said that the Diocese of Baker includes 19 counties in Oregon, and is looking for a central location in the area it serves. She said that the proposed chancery was to be an administrative center for the diocese.

She discussed the ORS regulations pertaining to churches, and to private parks and campgrounds, in agricultural zones. She said that the applicant is not seeking approval for a parish church at this time, as the approved chapel is to mainly serve summer camp and retreat participants on the property.

Another representative of the applicant reiterated that the chapel is not a parish church.

Another representative testified that the chancery for the diocese is presently in Bend, while the cathedral is in Baker City. She said that this is the only diocese in the United States where the chancery is so far from the cathedral.

Another representative discussed provision for open space on the site. He stated that lighting will be directed downward as to not impact adjacent properties, and that the buildings will be designed to resemble traditional farm and ranch structures in the Powell Butte area. He also addressed the phasing of the project.

The applicant's attorney reiterated his request that Commissioner Curths recuse herself. He said that her failure to do so could jeopardize the Commission decision on appeal. He discussed the Bechtold 2002 LUBA case, and the Federal Freedom of Religion Act. He said that only the chapel is being applied for as a church. He also discussed the relevance of RLUIPA to the application.

The applicant discussed the service area of the Diocese, the retreat system, youth camps, the proposed number of employees, and the search for alternative sites. He discussed the purpose and functioning of the proposed chancery, the roles and specific work of the employees at the chancery, and intended use of the facilities by Catholic and other groups.

Two other persons testified in support of the application. One stated she supports the application as it is consistent with the rural area and is a quiet use of the property.

OPPONENT TESTIMONY: The owner of a neighboring parcel testified against the proposal. He said that the applicant had told him that the chapel would not be built for ten years, and that there would be only one week of summer camp per year. He said that the proposal will have a serious impact on his cattle. He said that the Brasada destination resort is causing more traffic in the area, and the present proposal will worsen traffic problems. He said that it does not seem fair to the farmer and rancher.

Another person testified in opposition. She said that she owns over 132 acres on the west side of the property. She said that she supports the church, but not the rest of the proposal. She said that it will affect her farm operation and increase traffic. She said that she is concerned about the proposed RV park. She said that she does not want children on her property, and wants the applicant to be required to put up an eight-foot fence if the proposal is approved.

Another person testified against the proposal. She said that she bought property in the area with her sisters four years ago in order to farm it, and the proposal will interfere with their farm operation.

Another person stated that she is against the proposal because of the extensive amount of uses on the property, including playgrounds, cabins, and the chancery.

Another person stated that she is opposed to the business element of the chancery, and is also concerned about lighting and the effect the proposal will have on residents and livestock in the area.

Another person stated that he has no objection to a church, but is opposed to the rest of the proposal because of its possible effect on traffic and the agricultural nature of the area, particularly if large events are held.

COMMISSION-STAFF DISCUSSION

At the beginning of the hearing Commissioner Curths responded to the bias challenge and stated that she interprets planning law impartially, regardless of her personal feelings, and will not recuse herself. Commissioner Weberg said that he did not recuse himself in a similar situation.

Commissioner Kambak indicated that she observed a lot of traffic during the Commission site visit. She stated that the property is not a good place for a summer camp and retreat center, because children attending functions will be in danger from traffic. She said that safety has not been adequately discussed.

County Attorney Gordon discussed his legal opinion that a chapel and manse could be related to religious practice. However he indicated that the Commission should consider this issue as well as whether the chancery could be considered related to religious practice as it is a business office which may not have to be located in proximity to religious facilities.

Commissioner Wells stated that the Commission is not in a position to decide whether the chancery is related to religious practice, but that that determination should be left up to the religious denomination concerned.

Kambak said that the facilities will not primarily serve local residents. She said that some diocesan functions will continue to take place in Baker City and in Bend if the proposal is approved.

Wells said that the Powell Butte Community Church has a business office.

Curths said that the Catholic Dictionary defines a chancery as a business office, which is a use not allowed on EFU land. She said that the other uses can be allowed in a farm zone.

Wells said that there is no agreement on what constitutes religious practice, and that the Commission should not dictate what a religion should do.

Kambak said that the County Code permits some things and not others. She said that testimony indicates that religious services will not be held in the chapel every week. She said that the County has other nonresource lands which could be used for the proposed uses, and that area farmers have legitimate concerns. She said that the manse is permissible as a replacement residence, but that she is not comfortable with the retreat center in the proposed location. She said that the area is not safe because of traffic, and children should not be there. She said that the entire proposal does not have to be approved as a unit. She said that the Commission must think of the needs of Crook County.

Commissioner McDermott stated her opinion that, if religious activity is permitted on the site, the chancery cannot be denied. She said that the chancery will generate a low level of activity. She stated that the term "community" is not necessarily restricted to the immediate area of the proposed use. She said that there has been heavy traffic in the area for 45 years. She added that traffic generated by the Lord's Acre Sale does not create a problem because it is well managed, and that traffic generated by retreat center activities can also be managed.

Gordon stated that a church is an outright use, and anything which is a part of religious practice is also an outright use. He said that a key question is whether not allowing the chancery would constitute a "significant burden" on religion.

Commissioner Payne said that apparently no other location has been found which is better. He said that traffic and other impacts have been addressed, and he is in favor of approval.

Kambak said that she has seen better parcels, on nonirrigated land. She said no evidence about other locations has been submitted. Payne said that testimony about an extensive search has been submitted, and denial would be a significant burden on religion.

Weberg stated that the motion for approval must reflect the Commission discussion. He stated that most churches have a business office, and he does not see how the chancery can be denied. He stated that he does not think this is the right place for the facility, but that no other place has been found.

DECISION

Curths moved for denial in part and approval in part, as follows:

"I move that we approve and deny in part C-CU-2337-07, the Roman Catholic Church application so that the chancery offices are denied and the remainder is approved for the following reasons:

The Chapel is an outright permitted use in the EFU as a Church under ORS 215.283.1(b).

That the retreat and community center and campground are conditional uses under ORS 215.283(2) (e) and the Crook County Code § 18.24.020(7).

That the applicant has shown compliance with regard to State law and the Crook County Code for the retreat, community center and campground elements based on testimony and substantial evidence in the record. The applicant has provided a traffic impact analysis for total buildout; the road master has limited the access to minimize impacts; the large open field on subject property provides buffer exceeding the 100 ft separation of dwellings in an EFU zone.

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

That the Chancery, an administration and business office of the Diocese, is not an outright or conditional use in the EFU zone or an "activity customarily associated with the practices of the religious activity" under ORS 215.441. Furthermore, the administration and business offices are not allowed in the EFU zone pursuant to ORS 215.283 or ORS 215.441 under the *Bechtold* case.

Additionally the administration and business offices do not

constitute a "religious institution", "religious assembly", or "religious exercise", and therefore there is no substantial burden on the Roman Catholic Church under State or Federal law that require their approval under RLUIPA.

This approval is based upon the submitted site plan minus the location of the chancery, with the requirement that no structural uses are to be allowed within the open space area along the western side of the property, except for the construction of the emergency access point along the Bend - Powell Butte Highway."

McDermott seconded the motion. It was approved by a 4-3 vote of the Commission.

CONDITIONS AND REQUIREMENTS

The subject application is hereby **APPROVED**, subject to the following **CONDITIONS** and **REQUIREMENTS**:

- (1) The staff analysis is hereby incorporated in the decision.
- (2) Development is to be in accordance with the final site plan submitted by the applicant, except that the chancery is not to be included.
- (3) The necessary building permits are to be obtained prior to any construction.
- (4) DEQ requirements for a sewage system are to be adhered to.
- (5) Domestic water is to be obtained from Avion Water Company.
- (6) All requirements of the Crook County Roadmaster are to be adhered to.

Dated this 14th Day of November, 2007

W.R. Gowen, COMMISSION CHAIRMAN

Gordon Moore, COMMISSION
SECRETARY

NOTICE TO APPLICANTS

Building permits are to be obtained no earlier than 8:00 a.m. on Tuesday, **November 27, 2007**, and no later than 5:00 p.m. on **November 14, 2011**. This permit is to expire at 5:00 p.m. on **November 14, 2011** unless building permits are force, or reasonable construction has taken place. An extension must be applied for prior to the above expiration date and time.

NOTICE TO PERSONS PROVIDING TESTIMONY

The above approval may be appealed in writing to the Crook County Court no later than 5:00 p.m. on Monday, **November 26, 2007** on payment of an appeal fee of \$1850.00 + 20% of the initial application fee. The appellant must also provide transcripts of the relevant meeting tapes at the appellant's expense. Cassette tape dubbing is available at \$5.00 per tape.

Appeals must be submitted to the Crook County Planning Department, 300 NE Third Street, Prineville, Oregon; and must be received, together with the appeal fee and advance deposit, by the Planning Department no later than the above time and date.