

PASSED

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.) IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR
05-5-11-3) ARGUMENTS ON AN APPEAL OF A HEARINGS OFFICIAL'S
) DECISION AFFIRMING THE PLANNING DIRECTOR'S
) APPROVAL OF A SPECIAL USE PERMIT AND
) DETERMINATION REGARDING A FIREARMS TRAINING
) FACILITY IN THE IMPACTED FOREST LANDS
) ZONE (PA 03-6300/Izaak Walton League)

WHEREAS, the Lane County Hearings Official has made a decision affirming the Planning Director's approval of a Special Use Permit and determination regarding a firearms training facility in the Impacted Forest Lands, PA 03-6300; and

WHEREAS, the Lane County Planning Director has accepted an appeal of the Hearings Official's decision to the Board of County Commissioners pursuant to LC 14.515; and

WHEREAS, the Lane County Hearings Official has affirmed his decision on application PA 03-6300; and

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

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

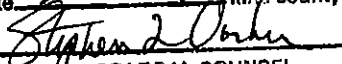
THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds and orders as follows:

1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A".
2. That the Lane County Hearings Official decision dated March 22, 2005, and interpreting ORS 197.770, attached as Exhibit "B", is affirmed and adopted by the Board of County Commissioners as its own interpretation in reaching a final decision on this application.

DATED this 11th day of May, 2005.


Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 5-3-2005 lane county

OFFICE OF LEGAL COUNSEL

Order Exhibit "A"

FINDINGS IN SUPPORT OF THE ORDER

1. Property involved in this action is identified as tax lot 200, assessor's map 18-04-25, located at 30930 Izaak Walton Road, Eugene. The property is approximately 17 acres in size, and is designated F-2/Impacted Forest Lands. The land has been owned by the Eugene Chapter of the Izaak Walton League of America since the 1960's. The League has operated a gun range on the property beginning at that time. It received county approval for a Conditional Use Permit "to operate a facility for recreational shooting" in 1975.
2. Due to nuisance complaints from neighboring properties, the League engaged in discussions with the Land Management Division, and first attempted to rectify its land use issues by applying for a non-conforming use verification in 2001, via PA 01-6266. That application was later withdrawn by the League in January, 2004. Instead, the League claimed that the existing facility was afforded protection under ORS 197.770 as of September 1995, and concurrently applied to the Planning Director for a Special Use Permit (SUP) for a firearms training facility pursuant to Lane Code 16.211(3)(c-c). The SUP proposal was to cover any improvements made after September of 1995 and not covered under ORS 197.770. The facility consists of two main components, a rifle range and a handgun range. The rifle range is located along the eastern portion of the property, contains two shooting shelters, with targets set at 25, 50, 100, and 200 yards distance. The handgun range consists of five shooting pits, with two having covered shelters. This range is located in the northwestern portion of the property.
3. A Planning Director evidentiary hearing was held on April 29, 2004.
4. On October 18, 2004, the Planning Director approved PA 03-6300.
5. A timely appeal of the Planning Director's decision was filed by the appellants (Adam Novik, Derek Jaros, Phil Ziebert, Maureen Hudson, and the Citizens for Responsibility, all represented by Daniel Stotter) on November 1, 2004. The Director accepted the appeal, and affirmed his decision on November 5, 2004.
6. An "on the record" appeal hearing before the Lane County Hearings Official was held on December 16, 2004.
7. On March 22, 2005, the Hearings Official issued a decision, affirming the Planning Director's approval of the proposal.
8. The appellants (same as listed above, but without Mr. Jaros) filed a timely appeal of the Hearings Official decision on April 1, 2005; the appeal was accepted by the Director and forwarded to the Hearings Official.
9. On April 12, 2005, the Hearings Official affirmed the decision approving the request.
10. The appeal states that the Hearings Official misinterpreted the Lane Code and State Law, and that the Board should elect to hear the matter.
11. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - *The issue is of Countywide significance.*
 - *The issue will reoccur with frequency and there is a need for policy guidance.*
 - *The issue involves a unique environmental resource.*

- *The Planning Director or Hearings Official recommends review.*

12. The issues raised on appeal do not appear to be of countywide significance. The fact pattern surrounding the Izaak Walton gun range is site specific, including the site topography, surrounding ownership pattern, and close proximity to the urban center.
13. The issue is not expected to reoccur, as requests for review of firearms training facilities do not occur with frequency.

There is no need for policy guidance, as the Board agrees with the Hearings Official's interpretations regarding ORS 197.770.

14. No unique or rare environmental resources on the property have been identified in the record.
15. Neither the Planning Director nor the Hearings Official recommended review of this appeal.
16. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.
17. The Board has reviewed this matter at its meeting of May 11, 2005 and finds that the appeal does not comply with the criteria of Lane Code Chapter 16.600(3), and elects to not hold an on the record hearing.
18. The Board expressly agrees with the March 22, 2005 decision of the Lane County Hearings Official and his interpretations regarding ORS 197.770, attached here as Exhibit "B". The Hearings Official's decision and interpretations are affirmed and adopted by the Board of County Commissioners as its own interpretation.

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A SPECIAL USE PERMIT
AND DETERMINATION REGARDING A FIREARMS TRAINING FACILITY**

Application Summary

Izaak Walton League, 86673 30930 Izaak Walton Road, Eugene, Or. 97408. The applicant requested that the Planning Director determine that its firearms training facility was sanctioned under ORS 197.770 and that the facility was consistent with CUP 75-079 approved by the Lane County Board of Commissioners on August 27, 1975.¹

The Lane County Planning Director held an evidentiary hearing on the request and issued a decision finding that the training was a firearms training facility in conformance with ORS 197.770 and, subject to conditions of approval, was consistent with CUP 75-079. This decision was appealed on November 1, 2004 by Adam Novick, Derek Jaros, Phil Ziebert, Maureen Hudson, and the Citizens for Responsibility, hereinafter referred to as the appellants.

The Lane County Hearings Official heard the appeal on December 16, 2004. The record was held open to receive into evidence the Limited Judgment of the Lane County Circuit Court of the State of Oregon in the matter of *Citizens For Responsibility, et. al. v. Eugene Chapter, Izaak Walton League of America*, Case No. 16-03-12853.

Parties of Record

Izaak Walton League
Adam Novick
Derek Jaros
Phil Ziebert

Maureen Hudson
Citizens for Responsibility
Daniel Stotter

Applicant History

Hearing Date: December 16, 2004
(Record Held Open Until January 13, 2005)

Decision Date: March 21, 2005

(MAILED ON
3-22-05)

Appeal Deadline

An appeal must be filed within 10 days of the issuance the decision regarding this request, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

ORS 197.770
Lane Code 16.211(3) & (3)(c-c)

¹ Board Order 75-8-20-1

Findings of Fact

1. The property on which the firearms facility is located, hereafter referred to as the "subject property," is identified as Map 18-04-25, tax lot 200. This lot is 17+/- acres in size, and has a site address of 30930 Izaak Walton Road. No contiguous lots are under the same ownership.

The property is zoned F-2 and governed by LC 16.211, the "Impacted Forest Lands" zone. The Eugene Chapter of the Izaak Walton League has run a gun club on the property since the mid-1950's. Present use of the facility is limited to rifle range and handgun use. The former trap shoot area has been discontinued since 1999. Only shotguns using single slugs are now allowed, and those must be shot at the rifle range area.

The facility includes a rifle range along the eastern portion of the property. It contains an "upper" and "lower" range shelter, with the targets set at 25, 50, 100, and 200 yards and 15, 100 and 200 yards, respectfully. Shooting is aimed in a NNE direction. The other main component of the facility is the handgun range (North Pistol Range). This range occurs at five pit areas located next to the midsection of the north lot line. Pit #3 and #4 have covered shelters built in 1996 with county authorized building permits (BP 4180-96 and BP 2319-96). The range and direction of the shooting may be up to a span of 180 degrees at some pits. Earth berms are behind the #2 and #3 pits. The former trap shoot shelter is used for "administrative duties" in conjunction with the handgun range, and the former "trap house" is now used for storage of materials for the handgun range.

The South Fork of Spencer Creek runs in generally northwesterly direction between the North Pistol Range and the Shotgun Range, with the North Pistol Range located north of the South Fork and the Shotgun Range located south of the South Fork. A tributary of the South Fork flows in a southerly direction onto Mr. Novicks property, where it enters a culvert which flows under the North Pistol Range (between Pit #1 and Pit #2). The presence of a significant population of cutthroat trout was documented in the South Fork in 1998 by the Oregon Department of Fish & Wildlife.

The direction of fire from the Shotgun Range and the rifle ranges is toward the South Fork of Spencer Creek. The Shotgun Range "patterning target" is located about 15 yards from the the creek. Bullets, shot and debris from clay tartets are classified as "pollutants" by the Clean Water Act.² Lead bullets and shot are classified as "hazardous waste" under the Solid Waste Disposal Act.³

2. An aerial photograph of the subject property, dated June 17, 1983, shows that all five of the disputed pistol pits were fully established (without the two shelters built via permits BP 2319-96 and BP 4180-96) as of 1993, and these five pits continue to exist. The now abandoned trap range and the rifle range are established to have existed in 1993 based

² 33 U.S.C. §1311(a)

³ 42 U.S.C. §6972(a)(1)(B)

upon the aerial photograph. The area occupied by the pistol pits/trap and the rifle range were both approved for range use under the 1975 CUP 75-079.

A 1975 aerial photograph of the subject property, taken 13 days prior to the effective date of CUP 75-079, shows that the area extending from the trap shoot shelter northeastward to the location of the current pistol pit area was utilized for range use.

3. The following uses were added to the firearms training facility after September of 1995:
- Enclosure of the former shotgun shelter and addition of a woodstove, electrical outlets, workspace.
 - Conversion of a temporary shed next to the shotgun shelter into an office (Note: the record is unclear as to when this structure was built pre- or post-1995).
 - "Temporary" storage shed on the west end of the shotgun shelter (the record is also unclear when after 1975 this structure was built).
 - Secure storage shed(s) at the pistol pits.
 - Two tarp-covered shelters in pistol pit area.
 - Freestanding walls at the pistol pits. Some are alleged to be on the Novik property.
 - Culvert placed on Dahlen Creek
 - Footbridge across South Fork of Spencer Creek
 - Expanded all-weather parking area southwest of the former shotgun shelter (in 2003).
 - Secure storage room attached to the west end of the upper rifle shelter.
 - Baffles added to rifle range shelters.

Also, the applicant began construction of the South Pistol Range in the fall of 1997 or the winter of 1997-98.

4. No forest fires have been reported to have emanated from the subject property.
5. The Eugene Practical shooters Association, which is affiliated with the United States Practical Shooting Association (USPSA), has continuously held monthly target matches at the range from the mid-1980s through at least 1995. The testimony of Oscar Thomsen, Mr. Sam Pitts, Mr. Carl McGlothlin, and Mr. Monty Millican establishes that firearms training and certifications occurred through 1996 and that firearms training continued after that date at the applicant's facility.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE IZAAK WALTON LEAGUE REQUEST (PA 03-66300) PURSUANT TO LANE CODE 16.211(3) IS AFFIRMED AS CONDITIONED.

Justification for the Decision (Conclusion)

The issues raised by the appellants go to whether the applicant's facility qualifies as a firearms training facility under ORS 197.770 and whether the facility complies with the approval criteria contained in Lane Code 16.211(3). These two issues will be addressed separately below.

1. Compliance with ORS 197.770

ORS 197.770 provides:

- (1) *Any firearms training facility in existence on September 9, 1995, shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility.***
- (2) *For purposes of this section, a "firearms training facility" is an indoor or outdoor facility that provides training courses and issues certifications required:***
 - (a) *For law enforcement personnel;***
 - (b) *By the State Department of Fish and Wildlife; or***
 - (c) *By nationally recognized programs that promote shooting matches, target shooting and safety.***

The Planning Director made several interpretations regarding the application of this statute. First, he interpreted ORS 197.770(2) to require that a firearms training facility provide both training and certification to qualify for protection under this statute. I agree with this interpretation.

Second, the Planning Director read Subsection (2) in the disjunctive to require the provision of training courses and the issuance of certifications either to law enforcement personnel, or to the State Department of Fish and Wildlife, or to nationally recognized programs that promote shooting matches, etc. I also agree with this interpretation.

Finally, the Planning Director read ORS 197.770 not to require that the scope and intensity of the training uses be examined, Subsection (1) makes it clear that a facility may not continue operating beyond a time when it "is no longer used as a firearms training facility." This means that a firearm training facility will lose its statutory protection when it no longer meets the definition contained in ORS 197.770(2). Thus, if a training facility does not provide training courses or fails to issue certifications for a significant period of time it can be argued that it no longer qualifies as a firearms training

facility under ORS 197.770. It may, of course, still be a permitted or discretionary use under local government land use regulations.

The appellants argue that (1) the evidence does not support a conclusion that the applicant's facility qualified as an ORS 197.770 firearms training facility on September 9, 1975 and (2) that the evidence supports a conclusion that even if it did qualify on that date it subsequently lost that status for failure to provide the activities required by ORS 197.770(2).

a. **Whether the IWL facility qualified as an ORS 197.770 firearms training facility on September 9, 1995.**

It has been established that as of 1995, there existed an outdoor facility on the subject property that involved the discharge of firearms. This conclusion is based upon an aerial photograph that all five of the pistol pits were established by June of 1993. These pits exist today. The existing rifle range and the abandoned trap range have also been established through the same mechanism. The areas on the subject property that are occupied by the pistol pits/trap uses and the rifle range were approved for range use under CUP 75-079.

The testimony of Oscar Thomsen, coupled with the March 5, 1995 NRA certificate that was introduced into the record, was crucial in the Planning Director's determination that the IWL site was a facility that issued firearms certificates prior to September 9, 1995. Implicit in the Planning Director's decision was a finding, through official notice, that the NRA qualified as a "nationally recognized program that promote shooting matches, target shooting and safety." I believe that this is a recognition of a fact that is obvious and notorious to the average person and therefore admissible evidence that was not otherwise present in the record.

The Planning Director assessed Mr. Thomsen's credibility based upon his testimony which was consistent with the testimony of Mr. Pitts. Mr. Thomsen's explanation regarding the separation of the classroom work and the weapon qualification activity that led up to the issuance of the certificate is evidence that a reasonable person would accept as supporting a conclusion that the IWL issued firearms certificates. Further, the issuance of certificates carries a presumption that it was associated with training and the testimony from Mr. Millican, Mr. Pitts, Mr. McGlothlin and Mr. Thomsen is consistent with this presumption. I conclude that the Planning Director's determination that as of September 9, 1995, the IWL offered training courses and certificates to nationally recognized programs that promote shooting matches, target shooting and safety was supported by substantial evidence.

The appellants argue that the IWL facility could not qualify under the protection of ORS 197.770 because it was an unlawful use since it was limited to "recreational" shooting only. This argument is based upon the faulty premise that

because a use of real property exceeds deed restriction limitations is becomes "unlawful." The violation of a deed covenant or restriction may create a cause of action in favor of those with the legal right to enforce the restriction but does not, per se, violate any regulation. The deed restriction went with the land and benefited and bound the dominate estate. Therefore the heirs or assigns of George and Enid Owen could enforce the restriction. Unless the appellants are heirs or assigns of George or Enid Owen they have no standing to pursue this challenge.

Secondly, it should be pointed out that the restrictive deed language can easily be interpreted to be broader than that suggested by the appellants. The deed stated that the property was to be used for "park, playground, and recreational uses" and specifically included the use of a shooting range. It is for the heirs and assigns of the Owens to determine whether the deed restriction would preclude the use of the property for the Eugene Police Department, the United States Marine Corps., the Oregon State Defense Force, and similar organizations. Again, to my knowledge, none of the appellants have standing to enforce the deed restriction.

b. Whether the IWL facility lost its status as a firearms training facility through disuse.

While the Planning Director concluded that the applicant's facility qualified as a "firearms training facility" under ORS 197.770, he did not address the issue of whether the facility lost that status thereafter through disuse but rather analyzed whether the uses added subsequent to September 1995 were consistent with Lane Code 16.211(3). The statute does not provide a time duration beyond which a firearms training facility can be considered "discontinued" and absent such a guideline, I believe that a "reasonable person" standard should be applied.

I believe that several factors are paramount in a determination of whether a facility is no longer used as a firearms training facility. Primary among these factors are intent to utilize a facility for firearms training, whether the facility has retained the ability to serve in that capacity and, or course, whether the facility has actually served in that capacity. Regarding the first factor, it is clear that the applicant has retained the intent to provide training and certifications to interested organizations. The IWLA Board has approved their range for hunter education courses and for use by the US Marine Corps Reserve, the Emerald Empire gun Club and the Oregon State Defense Force, since October of 2001. (Minutes of IWLA Board) The record also demonstrates that there are several current IWLA members who have taught training courses and awarded certifications in the past and wish to continue to do so in the future at the applicant's facility. Clearly, the applicant intends to use the subject property for a firearms training facility as defined by ORS 197.770.

Second, the applicant has maintained and enhanced its shooting ranges since 1995 and these facilities can be and are used for training and shooter education to this day. Also, the IWLA members who have training experience are available and

willing to utilize the applicant's facility for that purpose. It is obvious that the applicant's facility retains the capacity to operate as a firearms training facility as defined by ORS 197.770.

In regard to the third factor, while there is ample evidence that the facility has been used for firearms training in the last eight years, there is no evidence in the record to support a finding that the applicant has issued training certifications in the last several years. The appellants argue that this failure requires the applicant to lose its statutory protection.

I believe that the appellants' conclusion represents a too restrictive a reading of ORS 197.770(1) and, in this regard, is contrary to the intent implicit in that legislation. I believe that the purpose of the legislation was to ensure the survival of firearms training facilities so that there would remain a reasonable number of choices for the public and agencies that need the services offered by such facilities. I do not believe that a reasonable person would conclude that the applicant's facility no longer qualified as a firearms training facility merely because training certifications have not been issued for a couple of years.

2. **The appellant's second assignment of error is that the Planning Director incorrectly concluded that the applicant had carried its burden to demonstrate that the firearms training facility will not "significantly conflict with the existing uses on adjacent and nearby lands" as required by Lane Code 16.211(3)(c-c).**

This standard applies to firearms training facilities, or portions thereof, that do not qualify for protection under ORS 197.770. The Planning Director restricted his inquiry of this standard to those improvements that were made subsequent to September 9, 1995. I believe that this was the correct application of that code provision.

The Planning Director listed the uses or structures that were added to the firearms training facility since September 9, 1995 (See Finding of Fact #3, above) and analyzed their incremental and collective impact on existing uses on adjacent and nearby lands. The existing uses primarily included forest uses and residential uses. The Planning Director's analysis was implicitly based upon two interpretations of the statute. The first interpretation was that the statute does not concern itself with the intensity of a firearms training facility, as measured by the number of users of that facility. As an implied corollary of the first interpretation, the Planning Director determined that the statute does concern itself with the scope of a firearms training facility and the scope of such a facility must be measured by the nature of its activities existing on September 9, 1995. Thus, if a firearms training facility only provided training and certifications in pistol shooting as of the statutory date then, for instance, training and certifications for rifle shooting provided by that facility in the future would not benefit from the protection of the statute. I believe that these are reasonable and correct interpretations of the statute.

The Planning Director next applied the above-discussed interpretations to the list of uses and "facilities" added since the statutory date and concluded that since they did not

change the scope of the firearms training facility (i.e. the nature of its activities) they were protected by the statute. The new facilities were thus only reviewed against the need for building permit regulation. I agree with the Planning Director's methodology and his conclusion.

The Planning Director's analysis, which is embraced by this decision, essentially makes moot the application of the Lane Code 16.211(3) to this request. The analysis is based upon a determination that the statutory protection of ORS 197.770 has continued and that the statutory protection is based upon the nature of the firearms training and not its intensity. These assumptions are fundamental to the affirmation of the Planning Director's decision and, if incorrect, the resulting land use determination would be quite different.

If the applicant's firearms training facility had lost its statutory protection, then Lane Code 16.211(3)(c-c) would require an inquiry into whether the operation of any of the aspects of the facility significantly conflicted with existing uses on adjacent and nearby lands. This is a test that I believe the applicant's proposal could not pass.

The "significance" of an impact must be determined in relation to the impacts associated with those use permitted outright in the affected zoning district. *Orr v. City of Eugene*, 6 Or LUBA 206 (1982) The test is that the proposed use may not have an impact or impacts significantly greater than those which would be generated by uses permitted outright. Lane Code 16.211(2), for example, allows outright farm uses, private hunting operations that do not provide lodging, and forest operations in the Impacted Forest District.

Farm uses and forest operations include many impacts that include noise, dust and, in some situations, the use of hazardous substances. Excluding chemical spray drift and the occasional fire hazard, these impacts are not perceived as being a threat to personal safety nor do they necessarily threaten adjacent farm and forest uses. Private hunting operations do generate the type of threat that has been complained of in this appeal but generally not on the scale (i.e, diversity of weapons, number of shooters, etc.) as a firearms training facility.

The existing uses on adjacent and nearby lands consist of residential and forest uses. Impacts upon the former include trespass by stray bullets, noise pollution, and contamination of local creeks. Impacts upon the latter include greater costs of cutting timber and processing that timber after it has been cut. Evidence in the record supports a conclusion that it is reasonable for neighbors of the facility to share a substantial amount of concern regarding the operation of the applicant's firearms training facility. Not only have the neighbors endured noise from the constant violations to the hours of operation but also have a concern for their safety every time they hear a shot that originates from the facility. Trees on adjacent properties have bullet holes in locations that suggest they must have originated at the applicant's facility show that these concerns are legitimate. The Lane County Circuit Court has ordered the applicant to clean it up the adjacent creek because of a documented level of lead contamination from its training facility. Finally,

minutes from the applicant's Board of Director's meetings amply document how many abuses occur in regard to safe shooting practices at the applicant's facility. Indeed, the training facility has, at times, served as an attractive nuisance in the sense that it attracts shooters that do not respect the rules of the facility nor the safety or property rights of neighbors.

The record is clear that the operation of the applicant's facility has significantly conflicted with the existing uses on adjacent and nearby lands in the past. If the applicant was subject to a conditional use permit for its firearms training facility it is unlikely that it could secure such a permit without the incursion of financially crippling conditions of approval that would be necessary to guarantee compatibility with neighboring uses.

3. **The appellant's third assignment of error is that the Planning Director has failed to demonstrate that the firearms training facility "will not force a significant change in or significantly increase the cost of accepted farming or forest practices on adjacent and nearby lands."**

Evidence in the record demonstrates that the proposed use has significantly changed the forest practices upon nearby lands and has significantly increased the costs of the forest practices that are applied to those lands. The abundant number of bullet holes found in the trees on adjacent forested property make it very difficult to harvest these trees and, subsequently, to mill these trees after harvest. The trees must be carefully examined prior to cutting and then, again, prior to milling. Cutting during the times that the applicant's facility is being utilized is probably not a good idea on property immediately adjacent and in the direction of fire from the various ranges. Manual examination cannot always detect bullets in the trees and neither can other metal detection techniques. If a bullet damages the milling equipment then it is highly likely that the remainder of the lumber from the same source will be rejected by that mill. All of the above-listed factors have forced significant changes in the manner in which forest practices are conducted on some adjacent properties and have resulted in a significant increase in the cost of those practices.

4. **The appellant's final assignment of error is that the Planning Director has failed to demonstrate that the firearms training facility "will not cause a significant increase of fire hazards, fire suppression costs, or cause significant increased risks to local fire suppression personnel."**

The appellants have pointed to the isolated nature of the applicant's firearms training facility, the limited access to fire vehicles and the concern over near-drought conditions experienced generally in the area. However, there has not been a documented fire caused by or emanating from the facility and I do not believe that a significant increase in fire hazards, fire suppression costs, or cause significant increased risks to local fire suppression personnel has been shown.

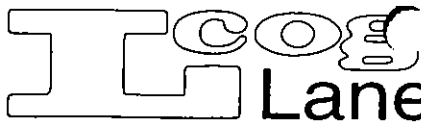
Conclusion

Based upon the foregoing, the Hearings Official concludes that applicant's firearms training facility enjoys the statutory protection offered by ORS 197.700 and that this protection precludes the County from requiring compliance with Lane Code 16.211(3) for those activities that existed on September 9, 1995.

Respectfully Submitted,



Gary Darnielle
Lane County Hearings Official



Lane Council of Governments

99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

March 21, 2005

Mr. Kent Howe, Director
Lane County Land Management Division
Public Service Building
125 E. 8th Ave.
Eugene, OR 97401

Dear Mr. Howe:

Please find the attached Lane County Hearings Official decision affirming the Planning Director decision approving the Izaak Walton League request (PA 03-6300) for the approval of a firearms training facility located on assessor's map 18-04-25, tax lot 200, pursuant to Lane Code 16.211(3).

Sincerely,

Gary L. Darnielle
Lane County Hearings Official

FILE #	PA _____
EXHIBIT #	91A



NOTICE OF PENDING EVIDENTIARY LAND USE DECISION
BY THE LANE COUNTY PLANNING DIRECTOR

LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Mailing Date: Oct 18, 2004

Department File: PA 03-6300
 Property Owner/Applicant: Izaak Walton League
 Agent: Liam Sherlock
 Property Address: 30930 Izaak Walton Rd., Eugene
 Assessor's Map: 18-04-25, tax lot 200
 Acreage: 17+/- acres
 Contiguously owned property: None
 Base Zone: Impacted Forest Lands (F-2/RCP)
 Combining Zone(s): None
 Comprehensive Plan: Lane County Rural Comprehensive Plan (/RCP)

PROPOSAL

Planning Director Review for a firearms training facility pursuant to Lane Code 16.211(3)(c-c), evaluated per LC 16.211(3) & (3)(c-c). An evidentiary hearing was held on April 29, 2004.

You own or occupy property very near the above referenced property, which is the subject of a land use application and pending decision for approval of this application by the Lane County Planning Director. **Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.**

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information, and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official, in an on-the-record proceeding. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

The proposed use that could be authorized by approval of the land use application is: Special Use Permit sanction for the operation of a firearms training facility, per the conditions of approval listed in the decision.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's Evidentiary report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact Jerry Kendall and the telephone number where more information can be obtained is 541/682-4057.

This decision will become final at 5 P.M. on Nov. 1 2004 unless before this time a completed APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR form is submitted to and received by the Lane County Land Management Division. This form is enclosed and must be used if you wish to appeal this decision. BECAUSE THE PLANNING DIRECTOR HELD AN EVIDENTIARY

FILE #	PA
#	<u>27-18</u>

BCC ATT. # 2-1788



HEARING, ANY APPEAL TO THE HEARINGS OFFICIAL WILL BE ONE UTILIZING THE EXISTING FILE RECORD.

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: J. Kendall Date: 10-15-04
Jerry Kendall, Associate Planner

Reviewed by: Thom Lanfear Date: 10-15-04
Thom Lanfear, Associate Planner

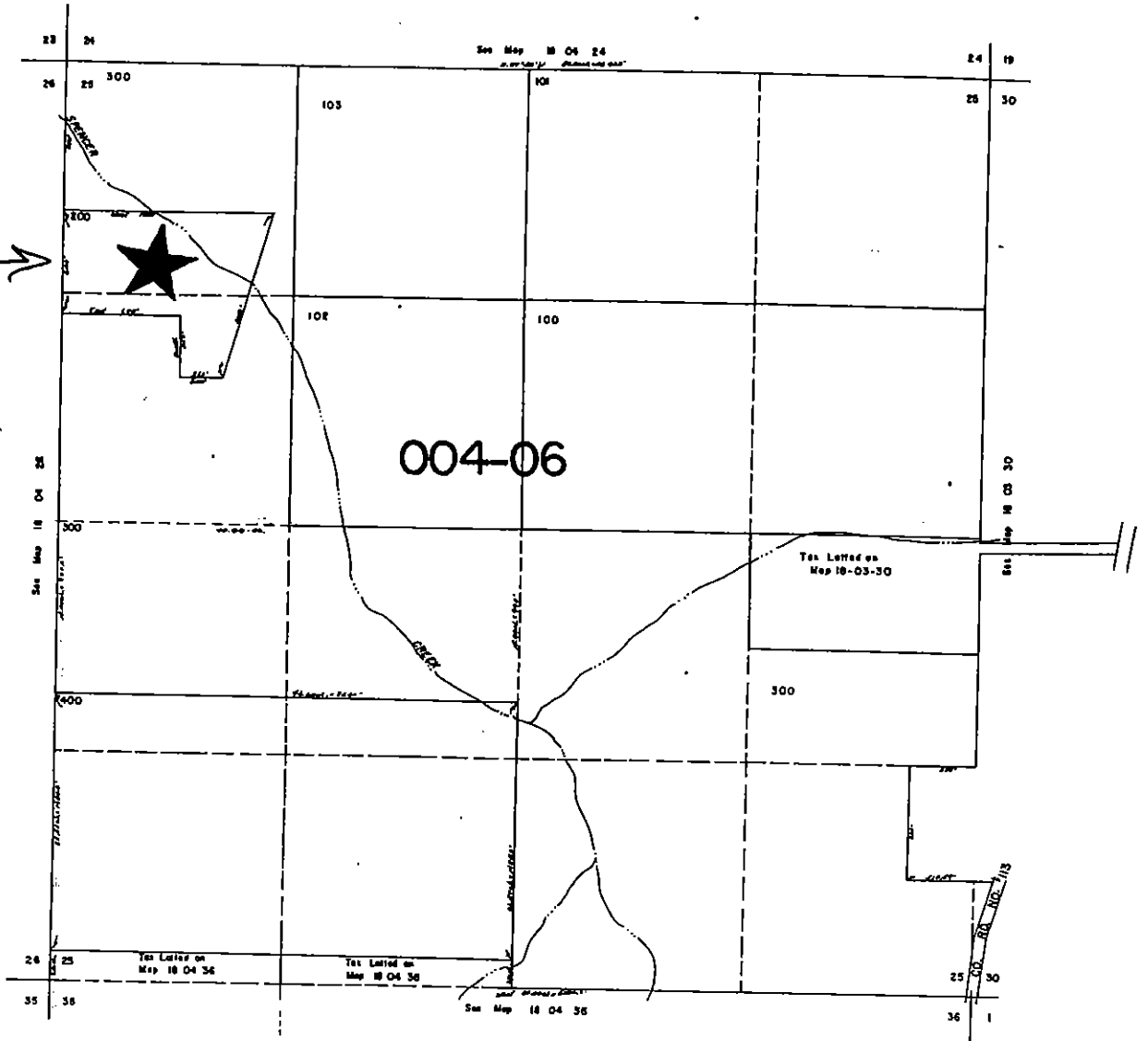
Authorized by: Kent Howe Date: 15 Oct 04
Kent Howe, Planning Director

Section 25 T18S. R4 W.W.M.
LANE COUNTY
1"=400'

18 04 25

SUBJECT
PROPERTY →

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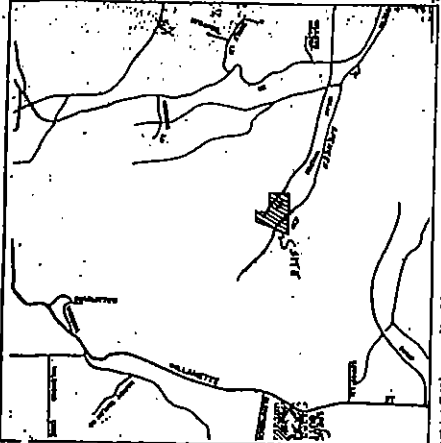
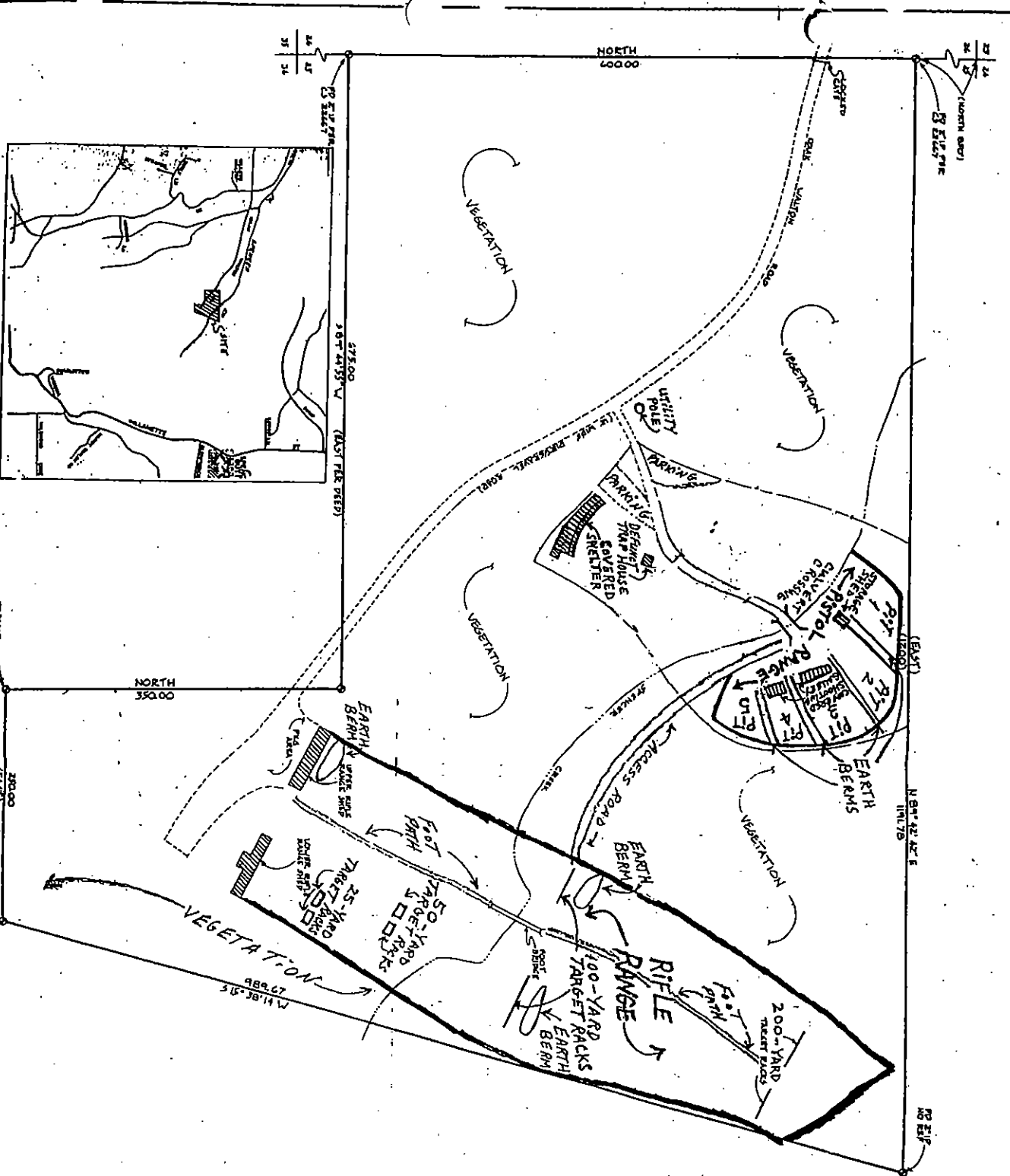
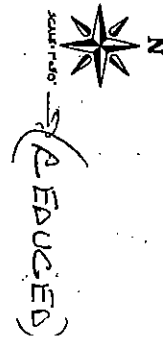


Exhibit A, Pg 1 of 1
to Izaak Walton League's
Land Use Application



REF: 23447
LABORATORY REPORT
DATED AUGUST 8, 1952
(*) = RECORD PAX DATA
[Symbol] = SURVEY



SURVEY
FOR
EUGENE CHAPTER
IZAAK WALTON LEAGUE
OF AMERICA, INC.

FACILITIES
LOCATED IN
1/2 SECTION 26, T. 18 S., R. 4 W., W.
LANE COUNTY
OREGON

- Until May 27, 2004, for the applicant's final rebuttal.

The file record utilized for this decision includes all materials in the file record up to and including the final rebuttal. These materials constitute exhibits 1-76 as indexed on the file record index sheet.

As discussed in the evaluation section below, the primary set of standards for evaluating the proposed firearms training facility (hereafter referred to as "FTF") use is for the applicant to demonstrate that no significant impacts to farm/forest operations on nearby lands occurs; that the cost of conducting such operations is not significantly changed; that there is no significant increase in fire hazard; no significant increase in risk to fire suppression personnel; shall not significantly conflict with existing uses on adjacent and nearby lands; and is subject to the general provisions and exceptions in Lane Code Chapter 16.

The Izaak Walton League (IWL) received a prior land use approval from the county in 1975 via a Conditional Use Permit (CUP) approval #75-079. The CUP became effective on August 27, 1975 via Board of Commissioners Order 75-8-20-1, attachment #1 to this report. The approval had six conditions. Condition #6 required review by the Board "three years from the date of approval". The intent of such review "... will be to ensure compatibility in the neighborhood and to provide for the public safety and welfare". That review has not occurred. That CUP has been incorporated as part of the file record for PA 03-6300 as Exhibit #61).

Another law which is pertinent to this application is ORS 197.770, which reads as follows:

197.770 Firearms training facilities.

(1) Any firearms training facility in existence on September 9, 1995, shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility.

(2) For purposes of this section, a "firearms training facility" is an indoor or outdoor facility that provides training courses and issues certifications required:

(a) For law enforcement personnel;

(b) By the State Department of Fish and Wildlife; or

(c) By nationally recognized programs that promote shooting matches, target shooting and safety.

In making application for PA 03-6300, the applicant maintains that the 1975 CUP established a "baseline" level of use and land use approval for the range, and that ORS 197.770 made lawful any changes which occurred from 1975 to September 5, 1995. The applicant views the FTF Special Use Permit ("SUP") as "...redundant given ORS 197.770 and the broad allowance in the CUP 75-079 to operate a facility for rifles, shotguns, and pistols".

B. Site Description:

The property on which the firearms facility is to be located (hereafter referred to as the "subject property") is identified as Map 18-04-25, tax lot 200. This lot is 17+/- acres in size, with a site address of 30930 Izaak Walton Road. No contiguous lots are under the same ownership. A vicinity map is Attachment #1 to this report.

The property is zoned F-2 and governed by LC 16.211, the "Impacted Forest Lands" zone ordinance. The Eugene Chapter of the Izaak Walton League has run a gun club on the property since the mid-1950's. Current improvements are shown on Attachment #2 of this report. Present use of the facility is limited to rifle range and handgun use. The former trap shoot area has been discontinued since 1999. Only shotguns using single slugs are now allowed, and those must be shot at the rifle range area.

As shown in Attachment #2, the facility includes a rifle range along the eastern portion of the property. It contains an "upper" and "lower" range shelter, with the targets set at 25, 50, 100, and 200 yards distances. Shooting is aimed in a NNE direction.

The other main component of the facility is the handgun range. This range occurs at five pit areas located next to the midsection of the north lot line. Pit #3 and #4 have covered shelters built in 1996 with county authorized building permits (BP 4180-96 and BP 2319-96). All required inspections were obtained for the two

permits. Testimony indicates that the range and direction of the shooting may be up to a span of 180 degrees at some pits. Earth berms are behind the #2 and #3 pits. The former trap shoot shelter (labeled "covered shelter" in Attachment #2) is used for "administrative duties" in conjunction with the handgun range, and the former "trap house" is now used for storage of materials for the handgun range.

The applicant states (p.1, submittal of 12-19-03) that membership in the local chapter of the IWLA is currently 219.

C. Surrounding Zoning

All lands adjacent to the subject property are zoned F-2, Impacted Forest Lands. The Novik property, Map 18-04-25, tax lot 300, is 258+ acres of vacant land adjoining the subject property to the north, east, and south. Multiple tax lots of the northeast portion of Map 18-04-26 are found west of the subject property, with residences on those lots adjoining Izaak Walton Road. The closest dwelling is the Ziebert residence (30856 Izaak Walton Rd.), located approximately 750' west of the pistol pits.

D. Services

Power: Lane Electric Coop
Sewer: "Not applicable", "Porta-potty" used.
Water: "Not applicable"
Fire: Western Lane
Access: Izaak Walton Rd. (county)

E. Referral Responses

Transportation Planning/Phil Fields/April 4, 2004:

Access to this parcel is from Izaak Walton Road. This segment of Izaak Walton Road is a "Local Access Road" and is functionally classified as a local road with a 60' planned right-of-way (LC 15.027).

LANE COUNTY FACILITY PERMIT

A Facility Permit is required for any construction within the right-of-way of roads under County jurisdiction (LC 15.205-1). This includes but is not limited to, such construction as driveway approaches, driveway culverts or street improvements. No work is to be performed within the right-of-way prior to issuance of a Facility Permit. Driveway approaches to paved roads are required to be paved. A Facility Permit is required for existing driveway approaches. Driveway culverts are to be built to County standards. This includes but is not limited to a minimum culvert size of 12" inside diameter. Exact specifications for culverts will be listed on the required Facility Permit. All conditions of Facility Permit(s) must be completed.

STORM WATER RUNOFF

Public Road and Right-of-Way Policies

Lane Manual 15.515 Drainage

- 1) Roadside ditches and other drainage facilities shall be designed solely to promote drainage of the roadway without interfering with natural waterways. Whenever a road crosses a natural channel or waterway, culverts shall be installed to maintain the natural waterflow. Such natural waterway shall be identified by survey of the topography and/or aerial photography of surrounding terrain.
- 2) Water shall not be diverted from a natural channel down a roadside ditch unless it appears beneficial to a new road construction project, in which case the Department of Public Works shall first enter an agreement with the affected property owners regarding the proposed diversion.
- 3) Roadside ditches shall not be used as channels for water diverted from property, except through Facility Permit issued to the landowner on application to the Director, Department of Public Works.

Floodhazard & Wetlands/Jerry Kendall/10-15-04:

While an initial referral (exhibit #8) indicated no inventoried wetlands on the subject property, the record is clear that both the South Fork of Spencer Creek and a feed stream, Dahlen Creek, are located on the League and Novik properties. Because the National Wetland Inventory Map apparently indicated no inventoried wetlands, a subsequent referral was not sent to the Oregon Division of State Lands (DSL). No portion of the subject property is within the FEMA regulated 100 year flood hazard area (per map #41039C1650F, June 1999). As such, the construction of the berms both at the rifle range and the pistol pits required no further floodhazard clearance. Whether or not the DSL is already aware of the earthwork in (i.e, the culverted portion of Dahlen Creek) and the berms proximate to both creeks is unclear. However, DSL will be so notified by staff after this decision becomes final, in order to ensure compliance with DSL requirements, if any.

IV. APPROVAL CRITERIA AND ANALYSIS

A. Conformity with the Applicable Lane Code & State Provisions:

The applicant has chosen to apply under the "firearms training facility" provision found in LC 16.211(3)(c-c). Pertinent portions of the code and state law follow in *boldface italics*.

As stated earlier in this report, the applicant cites ORS 197.770, which took effect in 1995. The provision reads as follows:

197.770 Firearms training facilities.

(1) Any firearms training facility in existence on September 9, 1995, shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility.

(2) For purposes of this section, a "firearms training facility" is an indoor or outdoor facility that provides training courses and issues certifications required:

(a) For law enforcement personnel;

(b) By the State Department of Fish and Wildlife; or

(c) By nationally recognized programs that promote shooting matches, target shooting and safety.

Planning Director Response & Finding of Fact:

Testimony in the record offers various interpretations of this law. Following the Court of Appeals adage of not adding what is not present and not omitting what is present (when reading law), the Planning Director notes that, per subsection (2), both training and certification need to be established for the record. Furthermore, only one of the three parties listed in (a)-(c) need be documented as having used the facility, and that unlike non-conforming use law (ORS 215.130), no language is present in ORS 197.770 which requires an analysis of the scope and intensity of the use(s). Unlike non-conforming use law, this provision does not mandate that disuse ("...no longer used...") of the facility or any component thereof for more than one year negates the ability to continue that use.

The Director notes the aerial photo dated June 17, 1993, included in file exhibit #18B. The photo clearly shows that all five of the disputed pistol pits were fully established (without the two shelters built via permits BP 2319-96 and BP 4180-96) as of 1993, and the record is undisputed in that the five pits continue to exist. The now abandoned trap range also shows in the photo. Likewise, the rifle range is shown to be fully established in the 1993 photo.

It is noted that these two existing areas, that is, that area occupied by the pistol pits/trap uses and the rifle range were both areas approved for range use under the 1975 CUP 75-079. Refer to the approved plot plan in attachment #1 of this report, as well as the aerial photo dated August 14, 1975. Note that the 1975 aerial was taken 13 days before the effective date of the CUP on August 27, 1975. The Director is not making a finding as to whether or not the pistol range use occurred in the area that it does today, but rather that the area extending from the trap shoot shelter northeastward to the location of the current pistol pit area was utilized

for range use, as indicated by those cleared areas on the 1975 photo. The Director finds that the facility existed as of September 9, 1995.

Regarding training courses, exhibit #12 contains affidavits from three parties (Millican, Pitts, and McGlothlin). Mr. Millican testifies that he has been a member of the Eugene Chapter of the IWL from 1988-2004. The Eugene Chapter is an affiliate of the national IWL of America, which promotes shooting matches, target shooting, and safety. Mr. Millican testified that the IWL performed such training during his involvement with the League, and in addition provided training courses and issued certificates required by the ODF&W Hunter Safety Program. Mr. Millican has been the President of the Eugene Practical Shooters Association since 1990. That organization is an affiliate of the United States Practical Shooters Association (USPSA). Mr. Millican testifies that he was also a USPA certified range officer, and has supervised classes in safety and target shooting, as well as monthly shooting competitions held at the subject property since the early 1970's through September of 1995.

The affidavit by Mr. Pitts similarly testifies that he has been a member of the IWL since 1989. He is also associated with National Rifle Association (NRA) and the USPSA and its Eugene affiliate. Mr. Pitts states that he has conducted instruction in firearm safety since 1992 at the League property.

The affidavit by Mr. McGlothlin states that he has been a member of the IWL since 1966, and an ODFW Hunter Safety instructor for almost 25 years. This affidavit is not specific in establishing FTF use explicitly prior to 1995.

While the affidavits mention the issuance of certificates, none have been provided which were issued prior to September 1995. The provided documents consist of example forms, blanks, undated documents, advertisements for 2004 classes, or liability releases. As such, this documentation is not compelling evidence. However, exhibit #37, submitted by Mr. Oscar Thomsen, contains a NRA certificate issued to him on March 5, 1995. Although the place of issuance is listed as Elmira, Oregon, Mr. Thomsen's accompanying letter states that while the class work took place in Elmira, the shooting portion occurred at the IWL property. In addition, Mr. Thomsen submitted documents showing that the Eugene Police Department held a membership at the IWL in 1986 for use of the range, as well as a 1993 purchase order for membership for the Lane County Sheriff's Office.

From the above documentation, the Planning Director can reasonably conclude that the IWL facility provided and continues to provide training courses and certificates for law enforcement, ODF&W, and by nationally recognized programs. As such it is recognized as a FTF per ORS 197.770 (2)(a)-(c).

Since the Director has concluded that the IWL facility is a FTF that existed as of September 9, 1995, it is afforded protection under ORS 197.770 and is allowed to continue to operate until such time that it is no longer so used.

Documentation of use of the IWL property after September of 1995 by the three groups cited in ORS 197.770(2)(a)-(c), aside from what is described in the three affidavits mentioned above, include use by the Marines in 2000 (letter from C. Partridge, exhibit #36), the submittal from S. Pitts (exhibit #66), providing pistol pit attendance use from 1991 (44.3/month) to 2003 (23.3/month), and the affidavit from IWL President Gary Thomsen (exhibit #67) testifying on the League's membership (522 in 1993, 219 in 2003). In addition, Mr. Thomsen stated at the April 29 evidentiary hearing that requests to use the facility were made by Lieutenant Roy Pine of the Oregon Defense Force (as reflected in the IWL minutes of 8-9-01), and request for use of the pistol pits by the Marines on 11-13-01. Mr. C. Moore testified that he received a 1996 certification of training for a concealed carry permit (submitted into the record, exhibit #34). Mr. C. Partridge testified as to the use of the range by the Marines on May 13, 2000 (evidentiary hearing tape #1, side B). While the Director acknowledges conflicting testimony as to discontinuance of use of the FTF by law enforcement and the military since November of 2000 (Exhibit #62, by A. Novik, p.11), continued use by the League itself is well documented.

The scope of PA 03-6300 and the Special Use Permit review is to examine the changes to the FTF since September 5, 1995, and to evaluate those changes (and those changes only) against the standards of LC 16.211(3) and (3)(c-c).

LC 16.211(3)

(c-c) Firearms training facility that shall not significantly conflict with the existing uses on adjacent and nearby lands.

The heading of subsection LC 16.211(3) includes other criteria for a FTF:

(3) The uses in LC 16.211(3)(a) through (f-f) below are allowed subject to compliance with the general provisions and exceptions in LC Chapter 16 and with the specific requirements in LC 16.211(3) below.

The FTF may be allowed if it will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands and excluding LC 16.211(3)(f-f) below if it will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

Planning Director Response & Finding of Fact:

The IWL property is surrounded on three sides by the 258 acre F-2 zoned land owned by Adam Novik and his family. As such, it bears the brunt of impacts from the use of the range. The Novik family uses their land for sustainable forestry, wildlife management, habitat restoration, and nature recreation (exhibit #62). Mr. Novik documents the impacts of lead contamination in his soil and streams, and discusses impacts from range noise (especially the pistol pits), careless shooting, earthwork on his and the League's property, and risk of fire.

The Planning Director has already found (above) that the IWL range is a FTF sanctioned under ORS 197.770. As such, all land uses of the property, whether lawfully or unlawfully established as of September 1995, are now sanctioned under that law. ORS 197.770 does not require an examination of the scope or intensity of the use. The only uses that need to be examined under LC 16.211(3) are those that were added after September of 1995.

These uses include:

- Enclosure of the former shotgun shelter and addition of a woodstove, electrical outlets, workspace
- Conversion of a temporary shed next to the shotgun shelter into an office (note: the record is unclear as to when this structure was built pre or post 1995).
- "Temporary" storage shed on the west end of the shotgun shelter (the record is also unclear when after 1975 this structure was built).
- Secure storage shed(s) at the pistol pits.
- Two tarp covered shelters in pistol pit area (see photo 27.11 in exhibit #62).
- Freestanding walls at the pistol pits. Some are alleged to be on the Novik property.
- Culvert place on Dahlen Creek
- Footbridge across South Fork of Spencer Creek
- Expanded all-weather parking area southwest of the former shotgun shelter (in 2003).
- Secure storage room attached to the west end of the upper rifle shelter.
- Baffles added to rifle range shelters

Since ORS 197.770 does not speak to the number of members/users allowed, the construction of "creature comforts" such as installation of woodstove(s), walling off open structures, creation of a small "office" space, secured storage areas, tarp structures, gravel parking, and the addition of electrical outlets is not seen as significantly conflicting with adjacent and nearby uses; forcing a significant change in or increase in cost of forestry practices. It has been noted previously that attendance and membership has decreased in recent years. As a condition of this approval, LMD staff will conduct a field survey of the facility, and assess which improvements require building, electrical and woodstove permits. Since building codes are formulated to ensure the safety of improvements, including eliminating the risk of fire from woodstoves, no significant

increase in the risk of fire or risk to fire suppression personnel is foreseen from the improvements made since 1995 (Note: although ORS 197.770 provides apparent amnesty for land uses, it does not do so for building code permits).

The culverting of Dahlen Creek took place prior to 1995, as seen in the 1993 aerial photo, along with the footbridge over Spencer Creek. Again, these items will fall under purview of the Oregon Division of State Lands for their review. Since the property is not within the FEMA regulated floodhazard area, no fill or excavation permits were required for berm work.

The walls along the pistol pits will be examined for building code requirements. To the extent that they attempt to serve as physical buffers to the Novik property, they do not represent a "significant change" as per LC 16.211(3). Likewise for the baffles installed in the rifle sheds, whose purpose is to improve safety by limiting the angle of trajectory.

V. MISCELLENEOUS

- The file record does not contain a survey which resolves the exact location of the pistol pit hillside walls and berms (i.e., whether on the Novik or IWL property). This appears to be a civil issue which is connected with the Stipulated Order (exhibit #32) signed by Judge Coffin.
- There was considerable testimony over the language in the deed which originally transferred the property to the IWL. Although it is noted that the deed conveys use of the subject property for recreational use, it also contains a separate clause concerning use as "a shooting range". In any event, enforcement of deed restrictions is not the purview of this office.

VI. CONCLUSION

The IWL facility is a firearms training facility which was existing as of September 5, 1995, and continues to operate as such. It is protected under ORS 197.770. Any improvements made to the facility after that date are not found to have a significantly conflict with adjacent and nearby land uses, force a significant change in or increase the cost of accepted farm or forest practices, or significantly increase fire hazard, the costs of suppression, or significantly increase the risk to fire suppression personnel beyond what existed in September of 1995.

VII. ATTACHMENTS

1. Board Order 75-8-20-1, approving CUP 75-079, including approved plot plan –5pp.
2. Plot plan of IWL facilities current as of 12-03, by applicant.—1p.

REF 82-4010

FILED
AT _____ O'CLOCK _____ M

SEP 3 - 1975

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON, D. M. PENFOLD, Director of the
Clerk of Records and Elections of Lane County

BY *Ruth Bishop*
DEPUTY.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING CONDITIONAL USE PERMIT. ORDER <u>75-8-20-1</u>))))))	IN THE MATTER OF THE APPLICATION OF THE IZAAK WALTON LEAGUE FOR A CONDITIONAL USE PERMIT TO OPERATE A FACILITY FOR RECREATIONAL SHOOTING. CUP 75-079
--	----------------------------	--

WHEREAS, the Izaak Walton League has made application for a conditional use permit (CUP 75-079) in accordance with the provisions of Lane Code 10.320 on a piece of property zoned AGT (Agriculture, Grazing, Timber Raizing), for the purpose of operating a facility for recreational shooting, and

WHEREAS, a conditional use permit may be granted under the authority of LC 10.320 only if the following criteria are met:

- "(1) Conformity with the Comprehensive Plan for Lane County:
- "(2) The location, size, design, and operating characteristics of the proposed use (a) will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, and (b) will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage, and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)"

and

WHEREAS, the Lane County Planning Commission duly considered the above-described application on May 13, 1975 at regular public hearing and denied it, and

WHEREAS, a timely appeal was filed by the Izaak Walton League, thus necessitating a de novo hearing on the conditional use permit application in accordance with LC 10.320-60, and

WHEREAS, the consideration by the Board of County Commissioners is governed by its published rules of procedure (see LM 50.005, Exhibit "A" thereto) which place the burden of proof on the permit applicant and require consideration as a basis for decision of the following:

1. Conformance with the criteria provided by the Lane Code and Lane Manual pertinent to the specific hearing item, including conformance with the comprehensive plan, when applicable;

In the Matter of the Application of the Izaak Walton League for a Conditional Use Permit to Operate a Facility for Recreational Shooting. CUP 75-079

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10 24*

2. The public need for the proposal;

3. If other areas have been previously designated for a use or development submitted in the proposal, then the necessity for introducing the proposal into an area not previously contemplated and why the property owners there should bear the burden, if any, of introducing that proposal into their area;

4. Change in circumstances since adopted comprehensive plan; and

5. Mistake in the adopted comprehensive plan,

and

WHEREAS, on July 2, 1975, at 1:30 p.m., the Board of County Commissioners duly held a public hearing on the permit application described above; received evidence and testimony from the applicant, persons opposed to the application, and other interested persons; incorporated the record of the proceeding of the Planning Commission; closed the public hearing; and continued the hearing on the matter until 1:30 p.m., July 23, 1975, and

WHEREAS, at its regular meeting commencing at 1:30 p.m., July 23, 1975, the Board of County Commissioners approved the conditional use permit applied for subject to additional conditions and directed Planning and Legal staff to prepare a formal order for its consideration,

NOW, THEREFORE, the Board of County Commissioners for Lane County hereby adopts findings of facts, conditions and conclusions of law as follows:

FINDINGS

1. The Lane County Comprehensive Plan for the subject area (1990 Plan) designates the area as "rural". The plan projects a mixture of agricultural and low density (one dwelling unit per five acres) residential land uses in this designation. The "rural" land use designation is consistent with a recreational shooting facility for the reason that problems and hazards associated with such a use are minimized by location in open, rural areas.

2. The subject property was zoned AGT (Agriculture, Grazing, Timber Raising) in 1966, and the facility has operated as a nonconforming use since that time. The Lane Code (10.110-15(30)) would allow such a facility in the AGT zone, subject to securing a conditional use permit, for the reason that the use is not specifically authorized in any zoning district.

3. A need exists in the Eugene/Springfield metropolitan area for a facility to allow recreational shooting. The Izaak Walton League has, since acquiring the subject property in 1956, provided such a recreational facility, primarily for rifles and handguns.

4. Approval of the conditional use permit to allow expansion of the facility to provide a skeet shooting range would help meet a need for recreational shooting areas. No similar facilities exist near the Eugene metropolitan area.

5. The subject property, due to topography and design of the facility and low level of development in the area, is suitable for recreational shooting.

6. Adverse impact on the surrounding area directly attributable to the proposed expansion (i.e., skeet range) would be negligible for the reason it represents a minor increase in activity.

CONCLUSIONS OF LAW

With conditions as imposed, the granting of the permit applied for by the Izaak Walton League in application CUP 75-079 conforms to applicable Lane County plans, ordinances and orders.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Izaak Walton League is granted a conditional use permit based on its application CUP 75-079 subject to the following conditions:

CONDITIONS

1. Permitted activities shall include recreational shooting of rifles, shotguns, and handguns. Shooting shall be confined to areas clearly designed for such purpose and suitable for the caliber and type of weapon used.

2. Shooting activities shall be limited to the hours between 8 a.m. and 7 p.m., or sundown, whichever occurs earlier.

3. Development and improvements associated with the facility shall be limited to those shown on the site plan attached hereto as Exhibit "A".

4. Use of the premises shall be limited to members of the Izaak Walton League and their bona fide guests. Except as provided below, participation in activities by the general public shall not be permitted nor shall such participation be solicited in any manner.

a. The Izaak Walton League may allow the use of the premises after instructions in the use of the ran by other organizations, provided such use shall be limited to members of such organizations and their bona fide guests.

b. The premises be made available to the general public during the three weeks immediately preceding the annual deer hunting season. Such public use shall be limited to sighting-in hunting rifles under the supervision of the Izaak Walton League.

5. The road easement providing access to the premises (deed recorded May 29, 1975, Reel 100, Recorder's Instrument No. 13861) shall be maintained in a condition suitable for travel by standard passenger vehicles at the sole expense of the Izaak Walton League.

6. The use of the property under this conditional use permit and the conditions attached thereto shall be reviewed by the Lane County Board of Commissioners three years from the date of approval. The purpose of such review shall be to determine the appropriateness of the use, along with the conditions and limitations imposed by this permit in light of conditions as they may exist in the surrounding area at the time of review. The intent of the Board in such review will be to ensure compatibility in the neighborhood and to provide for the public safety and welfare.

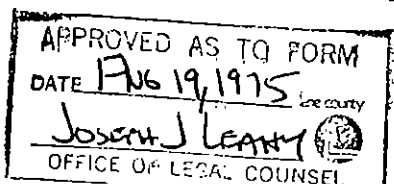
Adopted this 27th day of August, 1975.

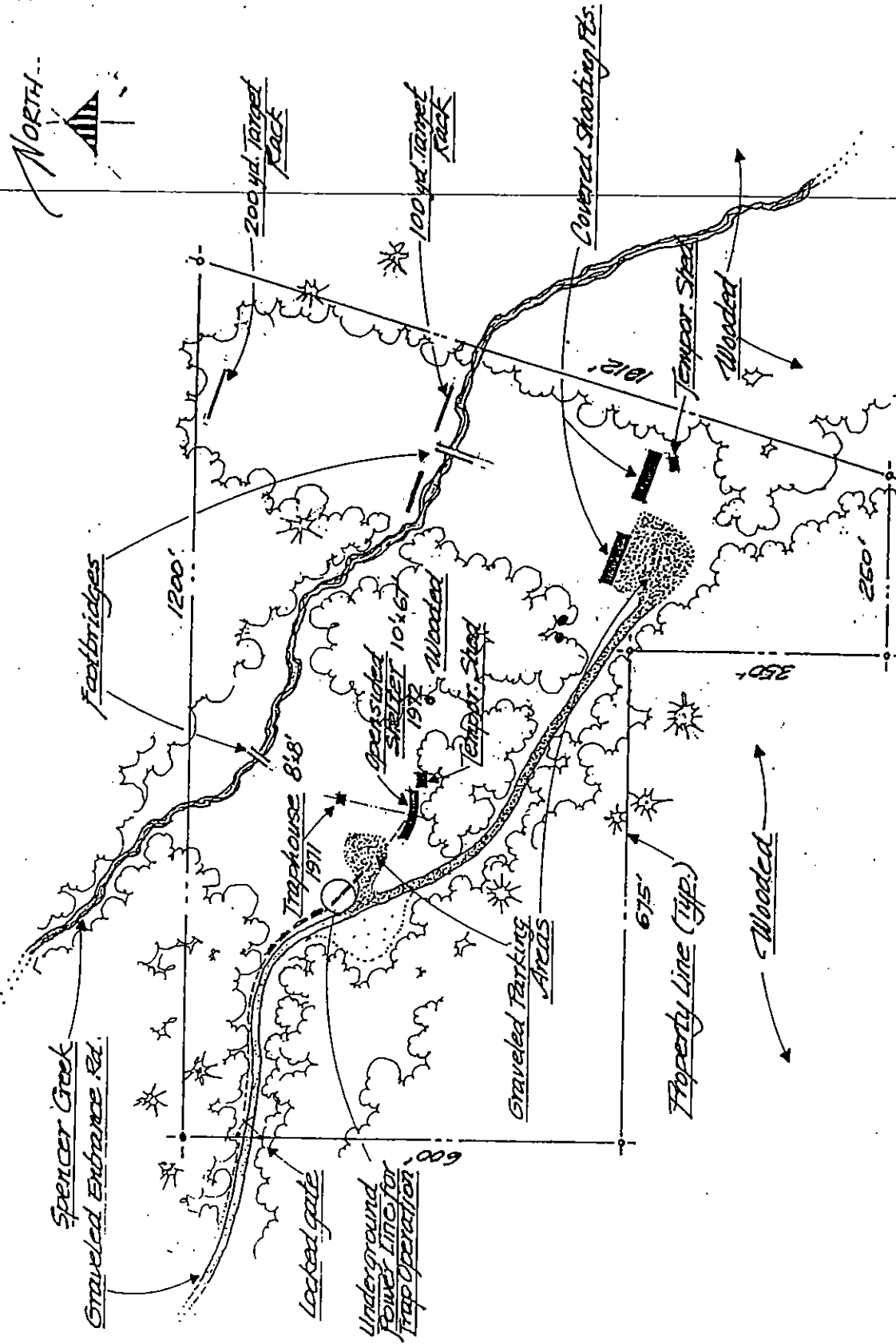


Chairman, Lane County Board of
Commissioners

Page 4 of 4

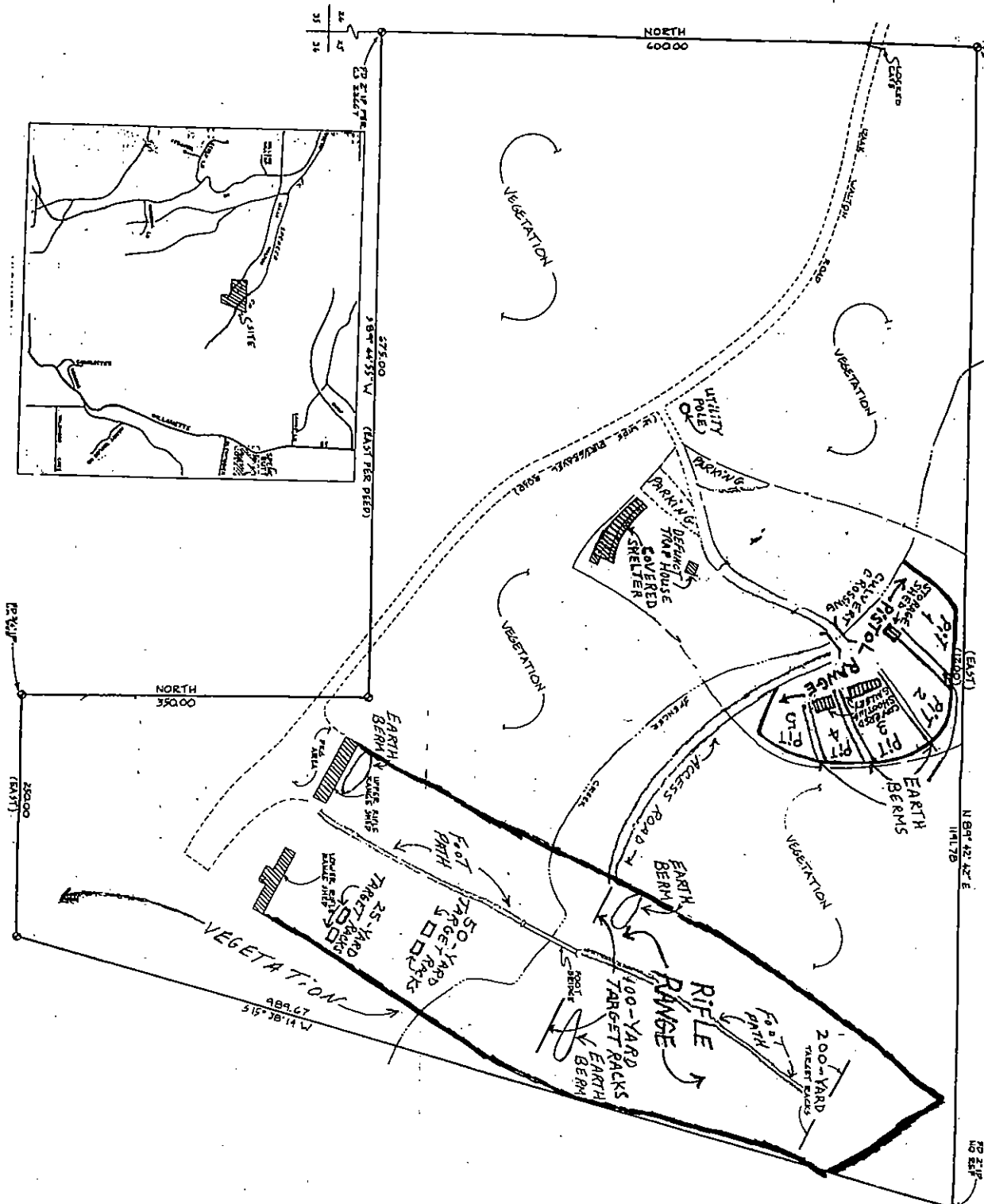
In the Matter of the Application of the Izaak Walton League for a Conditional Use Permit to Operate a Facility for Recreational Shooting. CUP 75-079





LOT 17A - PRESENT STAGE OF DEVELOPMENT
PROPERTY OF EUGENE CHAPTER, IZAAK WALTON
LEAGUE OF AMERICA, INC. SCALE: 1" = 20' 0"

Drawn by: R.C. Clark, April, 1975



REF: C-1 NO. 22267
 VARIATION DEPT TO BLM
 DATED JULY 18, 1952
 (1) RECORD FOR DEED
 (2) - BUILDING

RECEIVED
 IZAAK WALTON LEAGUE
 JAN 10 1953

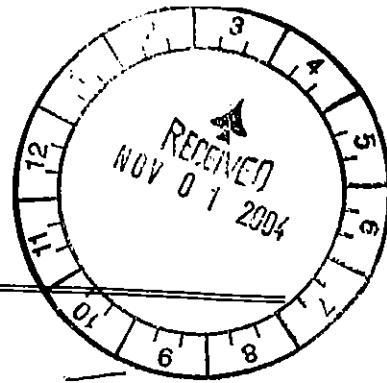
FILE # PA
 EXHIBIT # 1E-17

SURVEY
 FOR
**EUGENE CHAPTER
 OF
 IZAAK WALTON LEAGUE
 OF AMERICA, INC.**

FACILITIES
 OR
 LOCATED IN
 W. 1/2, SECTION 25, T. 18 S., R. 4 W., W.M.S.
 LANE COUNTY
 OREGON

PA 03-6300
 ATTCH. # 2
 10-15-04
 LP.

APPLICATION FOR AN APPEAL OF A
DECISION BY THE PLANNING DIRECTOR



(Thoroughly Complete by Typing or Printing)

1. Name of Appellant Adam Novick, Derek Jaros; Phil Ziebert Phone _____
Maureen Hudson and Citizens for Responsibility

Appellant's Representative Daniel Stotter, Bromley Newton LLP Phone 541/343-4700

Mailing Address 627 Country Club Road, Eugene, OR 07401
(Street) (State) (Zip)

2. Attach a copy of the decision being appealed. The Dept. File No. for the decision being appealed is: PA 03-6300

3. Attach the \$1954 appeal fee, payable to Lane County.

4. The deadline date by which this appeal must be submitted to and received by the Lane County Land Management Division is: November 1, 2004. (This deadline date is stated in Director's decision.)

5. Check one of the boxes below to identify your party status with the right to appeal the Director's decision:

- a. I am the owner or contract purchaser of the subject property;
- b. I am the applicant for the subject application;
- c. Prior to the decision by the Director, I submitted written testimony into the record of the subject application;
- d. I am not one of the persons mentioned above in 5a.-c. but wish to appeal the Director's decision for the reasons explained in my letter which is attached to this appeal application form.

6. Attach to this appeal application form a letter that includes an explanation that addresses each of the following three standards:

- a. an explanation of the reasons why you believe the Director's decision was in error or why you believe the Director should reconsider the decision;
- b. an identification of one or more of the following general reasons for the appeal or request for reconsideration:
 - (i) The Director exceeded his or her jurisdiction;
 - (ii) The Director failed to follow the procedure applicable to the matter;
 - (iii) The Director rendered a decision that is unconstitutional;
 - (iv) The Director misinterpreted the Lane Code or Manual, State Law or other applicable criteria; or
 - (v) The Director should reconsider the decision in order to allow the submittal of additional evidence not available in the record and addressing compliance with the applicable standards or criteria; and
- c. detailed information in support of your explanations.

Your appeal shall be rejected by the Director if it does not contain the above mentioned information.

Signature of Appellant or Appellant's Representative Daniel Stotter

Date 11-1-04

FILE # PA _____
EXHIBIT # 79A-1A

BCC ATT. # 3-9pp

BROMLEY NEWTON LLP

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

WILLIAM W. BROMLEY, P.C.

BRUCE W. NEWTON, P.C.

JUDSON M. CARUSONE

ALSO LICENSED TO PRACTICE IN IDAHO

DANIEL J. STOTTER, P.C.

OF COUNSEL:

JOHN L. HENDERSON, P.C.

ATTORNEYS AT LAW
627 COUNTRY CLUB ROAD, SUITE 200
EUGENE, OR 97401

PHONE: (541) 343-4700

FAX: (541) 343-4713

November 1, 2004

Lane County Hearings Official
c/o Lane County Land Management Division
125 East 8th Avenue
Eugene, OR 97401

Re: Appeal of Adam Novick, Derek Jaros, Philip Ziebert, Maureen Hudson, and
Citizens For Responsibility - PA 03-6300

Dear Lane County Hearings Official:

This office has been retained by Adam Novick, Derek Jaros, Philip Ziebert, Maureen Hudson, and by the organization Citizens For Responsibility to appeal the October 15, 2004 decision of the Lane County Planning Director approving the application for a firearms training facility by the Izaak Walton League in Lane County Land Management Department File PA 03-6300. A copy of the decision appealed is attached. Appellants hereby set forth the following specific Assignments of Error in this matter:

First Assignment of Error

The Planning Director misapplied ORS 197.770 in approving the challenged land use application, and the applicant has failed to meet its burden of demonstrating its shooting range qualifies as a "Firearms Training Facility" pursuant to the express statutory criteria of ORS 197.770. In particular, the evidence in the record fails to support the IWL's claim that it was properly qualified as a "Fire Arms Training Facility" on or before September 9, 1995 per the criteria of ORS 197.770. In addition, the evidence in the record also fails to demonstrate that the IWL maintained continuous use of their shooting range as a "Fire Arms Training Facility" from September 9, 1995 to the present, as expressly required by ORS 197.770.

The undisputed evidence demonstrates that neither the IWL's 1975 Conditional Use Permit (CUP 75-079), nor the IWL's recorded deed, authorize or allow the IWL to use its shooting range for the non-recreational firearms training activities presented by the IWL in support of this application.

FILE #	PA _____
EXHIBIT #	79B-4 pp.

In addition, the applicant has failed to present any specific evidence of any uses that qualify as a "Fire Arms Training Facility" occurring on or before September 9, 1995 as required by ORS 197.770(2), and the only evidence of firearms training certification issued prior to September 9, 1995 as for a "NRA Personal Protection Course" that clearly does not qualify as a "fire arms training facility" use per the criteria of ORS 197.770(2). See e.g. Testimony of Adam Novick. The applicant has also failed to rebut the substantial evidence demonstrating that it has not maintained continuous use of its alleged "Fire Arms Training Facility" uses from 1995 to the present, as expressly required by ORS 197.770(1). *Id.*

Second Assignment of Error

The Planning Director failed to make any specific findings as to the applicable approval criteria of Lane Code § 16.211(3), and the applicant has failed to meet its burden of demonstrating that this proposed land use approval will not "significantly conflict with the existing uses on adjacent and nearby lands" as required by this approval criteria. See Lane Code § 16.211(3).

The county received substantial un rebutted evidence of significant adverse impacts and conflicts from the IWL's expansion of their shooting range to numerous adjacent and nearby lands, including but not limited to significant impacts from stray bullet trespass onto nearby property, the contamination of local creeks and riparian areas with lead and other toxic materials associated with the IWL shooting range, and the impact of significant gunfire noise disturbances impacting numerous local residents on adjacent and nearby residential uses and activities. See e.g. Testimony of Adam Novick, Testimony of Phil Ziebert..

Furthermore, the un rebutted evidence in this matter also demonstrates that the unauthorized expansion of the IWL shooting range from 1995 to the present significantly increased the scope and intensity of activities at the IWL range, causing significantly greater noise, lead pollution, and traffic adverse impacts. See e.g. Testimony of Adam Novick; Testimony of Phil Ziebert.

Third Assignment of Error

The Planning Director erred by failing to make any express findings as to the approval criteria of Lane Code 16.211(3), which requires that the applicant demonstrate that the proposed use will not cause significant changes to and significant increased costs of accepted agricultural and forest practices on agricultural and forest lands located in the vicinity of the IWL shooting range, and the applicant failed to meet its burden as to this applicable approval criteria.

The county received substantial and un rebutted evidence of significant adverse impacts and conflicts causing significant changes in and significant increased costs of accepted agricultural and forest practices on agricultural and forest lands located in the vicinity of the IWL shooting range, including significant and un rebutted evidence of damage to timber lands from "out of control" shooting on the IWL range, which has significantly damaged adjacent forest lands, causing significant economic damage to timber resources which are virtually unmarketable at local mills due to bullet trespass. See e.g. Testimony of Adam Novick. In addition, the county received un rebutted evidence of agricultural damage to livestock resources in the vicinity if the IWL range from lead and other toxic materials which have contaminated the stream and riparian areas of perennial creeks flowing though the IWL's shooting range facility, and soils of adjacent property owners. *Id.*

Fourth Assignment of Error

The Planning Director erred by failing to make any express findings as to the approval criteria of Lane Code 16.211(3) requiring that the applicant demonstrate that the proposed use will not cause a significant increase of fire hazards, fire suppression costs, or cause significant increased risks to local fire suppression personnel, and the applicant has failed to meet its burden as to this applicable approval criteria. The county received un rebutted evidence from several fire safety personnel from local fire service agencies demonstrating that the expansion of this shooting range poses significant fire safety issues and risks to adjacent property and fire personnel, and therefore, the applicant has failed to demonstrate compliance with the fire safety approval criteria of Lane Code 16.211(3). Consequently, this application should be denied pursuant to this applicable criteria.

Fifth Assignment of Error

The Hearings Official should allow the filing of limited supplemental evidence in this matter per Lane Code 14.400(2), or otherwise allow reconsideration of the challenged land use decision by the Planning Director per Lane Code 14.515(vi), in order to allow the county to consider material evidence of the September 7, 2004 Limited Judgement by the Lane County Circuit Court of the State of Oregon in the matter of *Citizens For Responsibility et. al. v. Eugene Chapter, Izaak Walton League of America*, Case No. 16-03-12853, wherein a unanimous Lane County Circuit Court jury found the subject IWL shooting range was operating in a manner constituting "negligence per se" for violating Oregon's water pollution control laws, and also expressly found the IWL shooting range to be both a public and private nuisance due to its unauthorized pollution of the South Fork of Spencer Creek., and in addition, finding the IWL to be a trespass tortfeasor as to downstream property owned by Mr. Ron Merrow. A true and

Lane County Hearings Official
November 1, 2004
Page 4

correct copy of the Limited Judgment entered by the Honorable Judge Douglas S. Mitchell in *Citizens For Responsibility et. al. v. Eugene Chapter, Izaak Walton League of America*, Case No. 16-03-12853, is attached.

Conclusion

Consequently, for all of the reasons set forth above, the Planning Director has erred by misapplying the applicable approval criteria for this land use matter, and the applicant has not met its burden of establishing that its land use application meets all of the applicable Lane County Code approval criteria for this land use action. Therefore, the Hearings Official should reverse the Lane County Planning Director, and deny the challenged land use application pursuant to the applicable approval criteria.

Respectfully,

BROMLEY NEWTON LLP



Daniel J. Stotter
DJS:emp

Enclosure(s)

SEP - 9 2004

FILED
AT 2:20 O'CLOCK PM

SEP 17 2004

Circuit Court
For Lane County, Oregon
BY SP

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

CITIZENS FOR RESPONSIBILITY, an unincorporated association;) Case No. 16-03-12853
PHILIP ZIEBERT; NINA TETZLER; MAUREEN HUDSON; and RON and BEVERLY MERROW,) LIMITED JUDGMENT
)
Plaintiffs,)
v.)
)
EUGENE CHAPTER, IZAAK WALTON LEAGUE OF AMERICA, INC., an Oregon nonprofit corporation,)
)
Defendants.)

17 This matter having come before this Court for trial on the 29th day of June, 2004, the
18 Honorable Douglas S. Mitchell presiding, before a twelve-person jury, with the Plaintiffs
19 represented by attorneys Howard Grooters and Daniel Stotter, and with the Defendant
20 represented by attorneys Gregory Skillman and Danna Fogarty, and the jury having reached a
21 verdict in this matter on the 9th day of July, 2004, which was received and accepted by the Court
22 on that date, and the Court having found no just reason for a delay in entry of a limited judgment
23 as to the above described jury verdict, pending final resolution of the post-trial issues in this
24 matter;
25 //
26 //

Bromley Newton LLP
Attorneys at Law
627 Country Club Road, Suite 200
Eugene, OR 97401
Phone: (541) 343-4700 FAX: (541) 343-4713

FILE #	PA _____
EXHIBIT #	790-4 pp.

1 IT IS HEREBY ADJUDGED that:

2 1. Upon the motion of Plaintiffs to voluntarily dismiss all claims in this action asserted by
3 Plaintiff Citizens For Responsibility and Plaintiff Beverly Merrow, all claims by Plaintiffs Citizens
4 For Responsibility and Beverly Merrow in this action are hereby dismissed voluntarily *with prejudice*

5 2. On Plaintiffs' First Claim, for Private Nuisance, Judgment is entered in favor of Plaintiff
6 Ron Merrow, with an award of damages in the sum of \$1,500, and Judgment is entered in favor
7 of Defendant Izaak Walton League and against Plaintiffs Philip Ziebert, Nina Tetzler and
8 Maureen Hudson.

9 3. On Plaintiffs' Second Claim, for Public Nuisance, Judgment is entered in favor of
10 Plaintiff Ron Merrow, with an award of damages in the sum of \$1,500, and Judgment in favor
11 of Defendant Izaak Walton League and against Plaintiffs Philip Ziebert, Nina Tetzler and
12 Maureen Hudson.

13 4. On Plaintiffs' Third Claim, for Trespass, Judgment is entered in favor of Plaintiff Ron
14 Merrow, with an award of damages in the sum of \$10,000, and Judgment is entered in favor of
15 Defendant Izaak Walton League and against Plaintiffs Philip Ziebert, Nina Tetzler and Maureen
16 Hudson.

17 5. On Plaintiffs' Fourth Claim, for Negligence, Judgment is entered in favor of Defendant
18 Izaak Walton League and against Plaintiffs Ron Merrow, Philip Ziebert, Nina Tetzler and
19 Maureen Hudson.

20 6. On Plaintiffs' Fifth Claim, for Negligence Per Se, Judgment is entered in favor of
21 Plaintiff Ron Merrow, with an award of damages in the sum of \$10,000, and Judgment is entered
22 in favor of Defendant Izaak Walton League and against Plaintiffs Philip Ziebert, Nina Tetzler and
23 Maureen Hudson.

24 7. On Plaintiffs' Sixth Claim, for Abnormally Dangerous Activity, Judgment is entered
25 in favor of Defendant Izaak Walton League, and against Plaintiffs Ron Merrow, Philip Ziebert,
26 Nina Tetzler and Maureen Hudson.

Bromley Newton LLP
Attorneys at Law
627 Country Club Road, Suite 200
Eugene, OR 97401
Phone: (541) 343-4700 FAX: (541) 343-4713

1 It is further adjudged that the separate monetary damages awarded by the jury are
2 cumulative, and the total amount of damages awarded to Plaintiff Ron Merrow is \$23,000.

3 The determination of the prevailing party on each of the claims asserted in this action,
4 along with the amount of costs and disbursements, if any, to be awarded to prevailing parties, and
5 the amount of any attorney fees to be awarded to Defendant pursuant to ORS 20.105(1), shall
6 be determined per ORCP 68 and set forth by Supplemental Judgment.

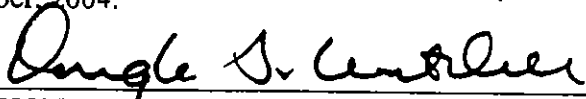
7 This Limited Judgment is hereby entered in accordance with the jury's verdict as
8 described above and as set forth in the Money Award below.

9 **MONEY AWARD**

10 Judgement Creditor: Ron Merrow
11 Address: 30739 Izaak Walton Road
12 Eugene, Oregon 97405
13 Creditor's Attorney: Daniel J. Stotter
14 Phone Number: 541-343-4700
15 Address: 627 Country Club Road, Suite 200
Eugene, Oregon 97401
16 Judgment Debtor: Eugene Chapter, Izaak Walton League of America, Inc.
17 Address: 30930 Izaak Walton Road
18 Eugene, Oregon 97405
19 Date of Birth: N/A
20 Debtor's Attorney: Gregory E. Skillman, Esq.
21 Debtor's Tax ID #: 51-0137272
22 Driver's License No.: N/A
23 State of Issuance: N/A
24 Name of persons or public body known to the judgment creditor, other than the judgment
creditor's attorney, who is entitled to any portion of a payment made on the judgment: None.
25 Amount of the Judgment: \$23,000.00
26

1 Interest owed to date: N/A
2 Post-judgment Interest
3 Accrual Information: Post-judgment interest shall accrue on all outstanding judgment
4 sums (including any amount that may be awarded as costs and
5 Periodic Accrual
6 Information: N/A
7 Amount of Costs &
8 Disbursements: To be determined by Supplemental Judgment per ORCP 68
9 Amount of Attorney Fees: To be determined by Supplemental Judgment per ORCP 68

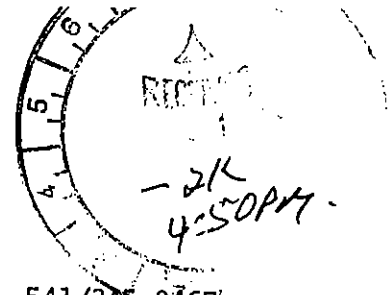
9 Dated this 7th day of September, 2004.

10 
11 HON DOUGLAS S. MITCHELL
12 CIRCUIT COURT JUDGE

13 Submitted By:
14 Daniel J. Stotter, OSB #91109
15 BROMLEY NEWTON LLP
16 Attorney for Plaintiffs
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26
Bromley Newton LLP
Attorneys at Law
627 Country Club Road, Suite 200
Eugene, OR 97401
Phone: (541) 343-4700 FAX: (541) 343-4713

APPLICATION FOR AN APPEAL OF A
DECISION BY THE HEARINGS OFFICIAL
(Thoroughly Complete by Typing or Printing)



1. Name of Appellant Adam Novich et al. Phone 541/345-0467
Mailing Address c/o Bromley Newton LLP, 627 Country Club Rd., Ste 200, Eugene, OR 97401
(Street) (State) (Zip)

Appellant's Representative Daniel J. Stotter, Bromley Newton LLP
Mailing Address 627 Country Club Rd., Suite 200, Eugene, OR 97401
(Street) (State) (Zip)

2. Attach a copy of the decision being appeal. DEPARTMENT FILE NO: PA 03-6300
3. Attach one check for \$3,240.00 covering the appeal fees, payable to LANE COUNTY. (See reverse side for important fee information).

4. The deadline date by which this appeal must be submitted to and received by the Lane County Land Management Division is: April 1, 2005 (This deadline date stated in Hearings Official decision).
(or 4/1/05)

5. Check one of the boxes below to identify your party status with the right to appeal the Hearings Official decision:
 a. I am the owner or contract purchaser of the subject property;
 b. I am the applicant for the subject application;
 c. I made an 'appearance' in the proceeding by submitting oral or written testimony into the record. (An appearance does not include a name or address on the petition).

6. Attach to this form a written explanation that addresses each of the following, three standards:
1. An explanation of the reasons why you believe the decision of the Hearings Official was in error or why you believe the Hearings Official should reconsider the decision;
2. An identification of one or more of the following general reasons for the appeal or request for reconsideration:
a. the Hearings Official exceeded his or her jurisdiction;
b. the Hearings Official failed to follow the procedure applicable to the matter;
c. the Hearings Official rendered a decision that is unconstitutional;
d. the Hearings Official misinterpreted the Lane Code or Manual, State Law or other applicable criteria; or
e. the Hearings Official should reconsider the decision in order to allow the submittal of additional evidence not available in the record and addressing compliance with the applicable standards or criteria; and

3. Detailed information in support of your explanations.

Your appeal shall be rejected by the Director if it does not include all required fees and above mentioned information.

Dan Stotter
Signature of Appellant or Appellant's Representative

4-1-05
Date

BCC ATT.#4 - 10/88

BROMLEY NEWTON LLP

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

WILLIAM W. BROMLEY, P.C.

BRUCE W. NEWTON, P.C.

JUDSON M. CARUSONE
ALSO LICENSED TO PRACTICE IN IDAHO

DANIEL J. STOTTER, P.C.

OF COUNSEL:

JOHN L. HENDERSON, P.C.

ATTORNEYS AT LAW

627 COUNTRY CLUB ROAD, SUITE 200
EUGENE, OR 97401

PHONE: (541) 343-4700

FAX: (541) 343-4713

April 1, 2004

Lane County Board of County Commissioners
c/o Lane County Land Management Division
125 East 8th Avenue
Eugene, OR 97401

Re: Appeal of Adam Novick, Philip Ziebert, Maureen Hudson,
and Citizens For Responsibility - PA 03-6300

Dear Lane County Board of County Commissioners:

This office has been retained by Adam Novick, Philip Ziebert, Maureen Hudson, and the organization Citizens For Responsibility to appeal the March 21, 2005 decision of the Lane County Hearings Official approving the application for a firearms training facility by the Izaak Walton League. A copy of the decision appealed is attached as Exhibit "A". It is particularly appropriate for the Board of County Commissioners to review this appeal at this time, as the 1975 land use permit for the IWL shooting range had expressly provided for the Lane County Board of Commissioners to provide a compatibility review of this land use within three years of the date of approval of the IWL's 1975 CUP, *see* Condition 6 of CUP 75-079 (attached as Exhibit "B"), and as it is undisputed that this compatibility review by the Board has still not occurred for the IWL shooting range, notwithstanding findings indicating this shooting range's non-compatibility and adverse impacts to the surrounding residential and forest uses in this area. Appellants hereby set forth the following specific Assignments of Error in this matter:

First Assignment of Error

The Hearings Official has clearly misapplied or misinterpreted the Firearms Training Facility statute, ORS 197.770, in approving the challenged land use application. The Hearings Official incorrectly found that ORS 197.770 (the Firearms Training Facility statute) preempts Lane County from applying its current land use requirements and CUP criteria (Lane Code 16.211(3)) to address the applicant's unauthorized expansion of uses at the IWL shooting range beyond the development and uses allowed in the applicant's existing 1975 Conditional Use Permit (CUP 75-079) (attached as Exhibit "B"). While ORS 197.770 clearly prohibits a county from closing down a pre-existing "Fire Arms Training Facility" existing as of September 9, 1995, this statute does not provide that a use otherwise authorized by a pre-existing land use permit can be expanded beyond its allowable or permitted uses in order to claim protection under ORS 197.770 for these unlawful and unauthorized expansions, prohibited by an existing land use permit.

It cannot be disputed that the IWL has now expanded its uses and firearms range development beyond those uses and developments which were expressly authorized by the IWL's 1975 CUP, and it was error for the Hearings Official to rule that the IWL's unlawful expansion, beyond the uses and development previously allowed and authorized by the County's existing land use permit for this facility (CUP 75-079) are now preempted uses exempt from any county review or oversight per ORS 197.770. In particular, the IWL's 1975 CUP only allows those uses and development at the IWL range which are expressly documented on the map identified as Exhibit "A" to the 1975 CUP, *see* Condition 3 of CUP 75-079 (attached), and this CUP permit expressly limits shooting activities in areas "clearly designed for such purpose and suitable for the caliber and type of weapon used." *See* Condition 1 of CUP 75-079 (attached). It is beyond dispute that the 1975 CUP did not authorize the current pistol shooting in the IWL's new pistol range shooting area, and certainly did not authorize the current 180 degree arc of fire pistol shooting activities adjacent to the South Fork of Spencer creek, which has now caused considerable pollution of waters of the state with hazardous materials, and required a state court judgment finding public and private nuisance, trespass and violation of Oregon's water pollution laws.

The evidence in the record fails to support the IWL's claim that it was ever properly qualified as a "Fire Arms Training Facility" on or before September 9, 1995 per the criteria of ORS 197.770. In addition, the evidence in the record also fails to demonstrate that the IWL maintained continuous use of their shooting range as a "Fire Arms Training Facility" from September 9, 1995 to the present, as expressly required by ORS 197.770.

The undisputed evidence in the record demonstrates that neither the IWL's 1975 Conditional Use Permit (CUP 75-079), nor the IWL's recorded deed, authorize or otherwise allow the IWL to use its shooting range for any of the professional firearms training activities presented by the IWL in support of this application, that are clearly non-recreational in nature. *See* Condition 1 of CUP 75-079 ("Permitted uses include **recreational** shooting of rifles, shotguns and handguns"). The Hearings Official erred by accepting the IWL's argument that in applying ORS 197.770, the county should consider professional firearms training by the Eugene Police Department, the United States Marine Corps and the Oregon State Defense Force as constituting "recreational shooting" uses, or by allowing these unauthorized uses to be used to support "Fire Arms Training Facility" status, notwithstanding the fact that these non-recreational training actions are clearly prohibited by the 1975 CUP, in addition to violating the applicant's deed restriction limiting shooting to non recreational uses only.

The Hearings Official also erred by misinterpreting or misapplying ORS 197.770 in finding that the applicant did not lose any alleged "Fire Arms Training Facility" protection under this statute by abandoning all of its "Fire Arms Training Facility" uses for a period of several years subsequent to 1995, thereby precluding, as a matter of law, any subsequent ORS 197.770 protective status for its present 2003 Conditional Use Permit land use application. ORS 197.770 expressly states: "Any firearms training facility in existence on September 9, 1995, shall be allowed to continue operating **until such time as the facility is no longer used as a Firearms training facility.**" *See* ORS 197.770(1).

The Hearings Official erred by apparently assuming that any continued firearms uses by the IWL at this shooting range demonstrates continued use as a “firearms training facility”, notwithstanding the undisputed evidence establishing a lack of continuity of any actual “firearms training facility” uses for a period of several years, and by apparently ignoring how this term is expressly defined by statute in determining the applicant’s alleged continuity of use. *See* ORS 197.770(2) (defining “firearms training facility” uses). In addition, the Hearings Official’s finding that the IWL’s abandonment of “firearms training facility” uses for a period of “several years” somehow meets the “reasonable person” standard which was applied on this issue is clearly a misapplication of ORS 197.770, as the proverbial “reasonable person” would certainly not consider that the IWL’s express abandonment of these firearms training facility uses for a period of several years to be a demonstration of continuity of these uses.

Second Assignment of Error

The Hearings Official also erred by misinterpreting or misapplying the law in finding that the subject land use application was exempt from the applicable approval criteria of Lane Code § 16.211(3)(c-c) for all uses in existence since 1995, and by finding that the this proposed land use should not be denied for failing to meet applicable approval criteria requiring that this use will not “significantly conflict with the existing uses on adjacent and nearby lands.” *See* Lane Code § 16.211(3)(c-c).

The county received substantial evidence of significant adverse impacts and conflicts from the IWL’s expansion of their shooting range to numerous adjacent and nearby uses, including but not limited to significant impacts from stray bullet trespass onto nearby property, the contamination of local creeks and riparian areas with lead and other toxic materials associated with the IWL shooting range, and the impact of significant gunfire noise disturbances impacting numerous local residents on adjacent and nearby residential uses and activities.

Furthermore, the un rebutted evidence in this matter also demonstrates that the unauthorized expansion of the IWL shooting range from 1995 to the present has significantly increased the scope and intensity of activities at the IWL range, thereby causing significantly greater noise, lead pollution, and traffic adverse impacts.

Third Assignment of Error

The Hearings Official also erred by misinterpreting or misapplying the law by finding that the subject land use application is exempt from the applicable approval criteria of Lane Code § 16.211(3) for all uses in existence since 1995, and by finding that the applicant met its burden of demonstrating that this proposed land use approval meets this approval criteria, which requires that the applicant demonstrate that the proposed use will not cause significant changes to and significant increased costs of accepted agricultural and forest practices on agricultural and forest lands located in the vicinity of the IWL shooting range.

The county received substantial and un rebutted evidence of significant adverse impacts and conflicts causing significant changes in and significant increased costs of accepted agricultural and forest practices on agricultural and forest lands located in the vicinity of the IWL shooting range, including significant and un rebutted evidence of damage to timber lands from "out of control" shooting on the IWL range, which has significantly damaged adjacent forest lands, and caused significant economic damage to timber resources due to bullet trespass.

In addition, the county received un rebutted evidence of agricultural damage to livestock resources in the vicinity of the IWL range from lead and other toxic materials which have contaminated the stream and riparian areas of perennial creeks flowing through the IWL's shooting range facility, and soils of adjacent property owners.

Based upon the evidence and findings of fact demonstrating serious adverse impacts to adjacent forest and farm uses caused by the IWL shooting range facility's expansion of uses and development, the Hearings Official erred by not denying this CUP application pursuant to LC 16.211(3).

Fourth Assignment of Error

The Hearings Official made a procedural error by failing to issue a final ruling addressing the Appellant's previous "Fifth Assignment of Error" regarding the request to review limited supplemental evidence in this matter per Lane Code 14.400(2), or otherwise allowing for reconsideration of the challenged land use decision by the Planning Director per Lane Code 14.515(vi), in order to allow Lane County to consider material evidence of the September 7, 2004 Limited Judgement by the Lane County Circuit Court of the State of Oregon in the matter of *Citizens For Responsibility et. al. v. Eugene Chapter, Izaak Walton League of America*, Case No. 16-03-12853, wherein a unanimous Lane County Circuit Court jury found the subject IWL shooting range was operating in a manner constituting "negligence per se" for violating Oregon's water pollution control laws, and finding the IWL shooting range to be both a public and private nuisance due to its unauthorized pollution of the South Fork of Spencer Creek., and that the IWL range caused trespass to a downstream property owner and neighbor, Ron Merrow. A true and correct copy of this state court limited judgment is attached hereto as Exhibit "C". The Hearings Official erred by failing to make a final determination as to this appeal issue.

Conclusion

The Board of County Commissioners should hold a hearing in this matter to review the issues presented in this land use appeal, because the existing 1975 land use permit for the IWL shooting range expressly provided for Lane County Board of Commissioner compatibility review within three years of the date of approval of this CUP, *see* Condition 6 of CUP 75-079 (attached as Exhibit "B"), and as it is undisputed that this compatibility review by the Board of Commissioners has never occurred, notwithstanding facts and findings indicating that the IWL's

shooting range's has serious compatibility conflicts with adjacent forestry practices and residential uses in this area, because the Hearings Official has erred by misapplying the applicable approval criteria for this land use matter, and as the applicant has clearly not met its burden of establishing that its land use application meets all of the applicable Lane County Code approval criteria for this land use action. Therefore, the Board of County Commissioners should review the challenged decision, and should deny the challenged CUP land use application pursuant to the applicable approval criteria.

Respectfully,

BROMLEY NEWTON LLP



Daniel J. Stotter

DJS:emp

cc: Clients

SEP - 9 2004
FILED
AT 2:20 O'CLOCK PM

Circuit Court
For Lane County, Oregon
BY SP

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

8	CITIZENS FOR RESPONSIBILITY,) Case No. 16-03-12853
	an unincorporated association;)
9	PHILIP ZIEBERT; NINA TETZLER;) LIMITED JUDGMENT
	MAUREEN HUDSON; and RON and)
10	BEVERLY MERROW,)
)
11	Plaintiffs,)
)
12	v.)
)
13	EUGENE CHAPTER, IZAAK WALTON)
	LEAGUE OF AMERICA, INC., an Oregon)
14	nonprofit corporation,)
)
15	Defendants.)
	_____)
16)

17 This matter having come before this Court for trial on the 29th day of June, 2004, the
18 Honorable Douglas S. Mitchell presiding, before a twelve-person jury, with the Plaintiffs
19 represented by attorneys Howard Grooters and Daniel Stotter, and with the Defendant
20 represented by attorneys Gregory Skillman and Danna Fogarty, and the jury having reached a
21 verdict in this matter on the 9th day of July, 2004, which was received and accepted by the Court
22 on that date, and the Court having found no just reason for a delay in entry of a limited judgment
23 as to the above described jury verdict, pending final resolution of the post-trial issues in this
24 matter;
25 //
26 //

Bromley Newton LLP
Attorneys at Law
627 Country Club Road, Suite 200
Eugene, OR 97401
Phone: (541) 343-4700 FAX: (541) 343-4713

Exhibit C
Page _____ of _____

1 IT IS HEREBY ADJUDGED that:

2 1. Upon the motion of Plaintiffs to voluntarily dismiss all claims in this action asserted by
3 Plaintiff Citizens For Responsibility and Plaintiff Beverly Merrow, all claims by Plaintiffs Citizens
4 For Responsibility and Beverly Merrow in this action are hereby dismissed voluntarily. *with prejudice*

5 2. On Plaintiffs' First Claim, for Private Nuisance, Judgment is entered in favor of Plaintiff
6 Ron Merrow, with an award of damages in the sum of \$1,500, and Judgment is entered in favor
7 of Defendant Izaak Walton League and against Plaintiffs Philip Ziebert, Nina Tetzler and
8 Maureen Hudson.

9 3. On Plaintiffs' Second Claim, for Public Nuisance, Judgment is entered in favor of
10 Plaintiff Ron Merrow, with an award of damages in the sum of \$1,500, and Judgment in favor
11 of Defendant Izaak Walton League and against Plaintiffs Philip Ziebert, Nina Tetzler and
12 Maureen Hudson.

13 4. On Plaintiffs' Third Claim, for Trespass, Judgment is entered in favor of Plaintiff Ron
14 Merrow, with an award of damages in the sum of \$10,000, and Judgment is entered in favor of
15 Defendant Izaak Walton League and against Plaintiffs Philip Ziebert, Nina Tetzler and Maureen
16 Hudson.

17 5. On Plaintiffs' Fourth Claim, for Negligence, Judgment is entered in favor of Defendant
18 Izaak Walton League and against Plaintiffs Ron Merrow, Philip Ziebert, Nina Tetzler and
19 Maureen Hudson.

20 6. On Plaintiffs' Fifth Claim, for Negligence Per Se, Judgment is entered in favor of
21 Plaintiff Ron Merrow, with an award of damages in the sum of \$10,000, and Judgment is entered
22 in favor of Defendant Izaak Walton League and against Plaintiffs Philip Ziebert, Nina Tetzler and
23 Maureen Hudson.

24 7. On Plaintiffs' Sixth Claim, for Abnormally Dangerous Activity, Judgment is entered
25 in favor of Defendant Izaak Walton League, and against Plaintiffs Ron Merrow, Philip Ziebert,
26 Nina Tetzler and Maureen Hudson.

1 It is further adjudged that the separate monetary damages awarded by the jury are
2 cumulative, and the total amount of damages awarded to Plaintiff Ron Merrow is \$23,000.

3 The determination of the prevailing party on each of the claims asserted in this action,
4 along with the amount of costs and disbursements, if any, to be awarded to prevailing parties, and
5 the amount of any attorney fees to be awarded to Defendant pursuant to ORS 20.105(1), shall
6 be determined per ORCP 68 and set forth by Supplemental Judgment.

7 This Limited Judgment is hereby entered in accordance with the jury's verdict as
8 described above and as set forth in the Money Award below.

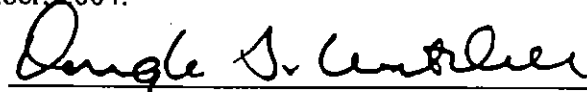
9 **MONEY AWARD**

10 Judgement Creditor: Ron Merrow
11 Address: 30739 Izaak Walton Road
12 Eugene, Oregon 97405
13 Creditor's Attorney: Daniel J. Stotter
14 Phone Number: 541-343-4700
15 Address: 627 Country Club Road, Suite 200
Eugene, Oregon 97401
16 Judgment Debtor: Eugene Chapter, Izaak Walton League of America, Inc.
17 Address: 30930 Izaak Walton Road
18 Eugene, Oregon 97405
19 Date of Birth: N/A
20 Debtor's Attorney: Gregory E. Skillman, Esq.
21 Debtor's Tax ID #: 51-0137272
22 Driver's License No.: N/A
23 State of Issuance: N/A
24 Name of persons or public body known to the judgment creditor, other than the judgment
creditor's attorney, who is entitled to any portion of a payment made on the judgment: None.
25 Amount of the Judgment: \$23,000.00
26

Bromley Newton LLP
Attorneys at Law
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1 Interest owed to date: N/A
2 Post-judgment Interest
3 Accrual Information: Post-judgment interest shall accrue on all outstanding judgment
4 sums (including any amount that may be awarded as costs and
5 Periodic Accrual
6 Information: N/A
7 Amount of Costs &
8 Disbursements: To be determined by Supplemental Judgment per ORCP 68
9 Amount of Attorney Fees: To be determined by Supplemental Judgment per ORCP 68

9 Dated this 7th day of September, 2004.



HON DOUGLAS S. MITCHELL
CIRCUIT COURT JUDGE

13 Submitted By:
14 Daniel J. Stotter, OSB #91109
15 BROMLEY NEWTON LLP
16 Attorney for Plaintiffs
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