

BEFORE THE BOARD OF COMMISSIONERS  
OF UMATILLA COUNTY, OREGON

<b>Approving with Conditions an</b>	)	<b>FINDINGS OF FACT AND</b>
<b>Application for a Firearms Training</b>	)	<b>CONCLUSIONS OF LAW</b>
<b>Facility on Property Identified as Tax</b>	)	
<b>Lot 1200 of Umatilla County</b>	)	<b>Umatilla County Land Use Permit</b>
<b>Assessor's Map 5N 36</b>	)	<b># LUD-163-13</b>

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**I. INTRODUCTION**

This decision relates to two appeals of the February 3, 2014 decision by the Umatilla County Planning Commission (the "Planning Commission") approving a land use application (the "Application") of the East End Rod and Gun Club ("EERGC"). Approval of the Application: (1) determined that the EERGC's firearms training facility may continue to operate as a "firearms training facility" pursuant to ORS 197.770 and the parallel provisions of UCDC §§ 152.059(E) and 152.617(II)(5); and (2) approved six (6) existing structures and five (5) proposed structures on the existing lease area, as permitted by OAR 660-033-0130(2).

The EERGC's firearms training facility is situated on an approximately 85-acre ground lease area, generally located approximately 1 and 1/2 miles east of Milton-Freewater, at 54752 Milton Cemetery Road (County Rd. No. 564) ("Subject Property"). The Subject Property is described as a portion of Tax Lot 1200 of Umatilla County Assessor's Map 5N 36.

The EERGC filed an appeal of the Planning Commission's decision to the Umatilla County Board of Commissioners (the "Board") requesting removal or modification of five (5) of the twelve (12) conditions of approval imposed by the Planning Commission.

Opponent H.T. Rea Farming Corp. (the "Reas") also filed an appeal requesting that the Board reverse the Planning Commission's decision and find that the EERGC's firearms training facility is not a legal use. For the reasons set forth below, the Board grants the EERGC's appeal in part, denies the Reas' appeal, and approves the Application with certain conditions of approval.



training facility” pursuant to ORS 197.770, and approval of six (6) existing structures and five (5) proposed structures on the existing 85-acre lease area, as permitted by OAR 660-033-0130(2). The six (6) existing structures include a 12 ft. x 150 ft. muzzleloader lean-to, a 16 ft. x 32 ft. lean-to, a 12 ft. x 16 ft. cook shack, an 8 ft. x 20 ft. shipping container, and two (2) 8 ft. x 40 ft. shipping containers. The five (5) proposed structures include two (2) 20 ft. x 40 ft. open-front buildings, one 12 ft. x 160 ft. roof over an existing shooting bench, one 24 ft. x 60 ft. modular classroom, and one 16 ft. x 32 ft. lean-to. These proposed structures will be located on the Subject Property.

## **B. Modified Application**

As originally submitted, the Application also included a proposed 35-acre expansion, outside of the existing ground-lease area. This geographical expansion component of the Application was withdrawn. Approval of the Application would thus allow the EERGC firearms training facility to continue, pursuant to ORS 197.770 and the parallel regulations of UCDC §§ 152.059(E) and 152.617(II)(5), and approve the six (6) existing and five (5) proposed structures on the Subject Property, pursuant to OAR 660-033-0130(2). County Planning staff issued a notice of preliminary approval of the EERGC’s application on October 15, 2013.

## **C. Planning Commission Hearing**

The Reas submitted a request for a public hearing on the Application on November 5, 2013. The Planning Commission held a hearing on the Application on December 19, 2013. Planning Commission Chairman Randall opened the hearing and read the required announcements. Commissioners Lee and Danforth recused themselves. A quorum was still present. Testimony was given in support and opposition to the Application. The hearing was continued to the Planning Commission’s January 23, 2014 meeting. The Planning Commission voted 5:1 to approve the EERGC’s Application at the January 23, 2014 hearing, subject to twelve (12) conditions of approval. On February 5, 2014, the Planning Commission issued final findings on its approval of the Application.

## **D. Appeals**

The EERGC appealed the Planning Commission’s decision on February 24, 2014, requesting certain changes to the conditions of approval imposed by the Planning Commission. The Reas also appealed the Planning Commission’s decision on February 17, 2014, arguing that the decision should be reversed. Pursuant to Umatilla County Development Code (“UCDC”) § 152.766, a *de novo* hearing was scheduled for June 3, 2014 before the Board to consider the respective appeals of the EERGC and the Reas. The County provided notice consistent with the requirements of state and local law for the Board appeal hearing.

### **E. Board of County Commissioners Review**

The Board held its only evidentiary hearing on the appeals on June 3, 2014. All members of the Board were present. No party raised any procedural objections about the notice of the hearing or the Board's conduct of the hearing. Board Chair Bill Elfering opened the hearing and read the announcements required by ORS 197.763. Chair Elfering asked the Commissioners if they had any *ex parte* contacts, conflicts of interest, or bias to declare. No commissioner declared any *ex parte* contacts, conflicts of interest, or bias.

Tamra Mabbott, County Planner, presented the staff report. Michael Robinson of Perkins Coie LLP represented Applicant/Appellant EERGC and testified on its behalf. Verl Pressnall, EERGC member, also provided an explanation of the EERGC's proposal. Other individuals testified in favor and in opposition to the Application. Patrick Gregg of Corey, Byler & Rew LLP represented Opponents/Appellants Reas and testified on their behalf. Nathan Rea and Dennis Rea provided testimony in opposition to the Application and in support of the Reas' appeal. Other individuals testified in favor and opposition to the Reas' appeal. Michael Robinson and Verl Pressnall provided rebuttal testimony on behalf of the EERGC. Patrick Gregg provided rebuttal testimony on behalf of the Reas.

The Board voted 3:0 to close the hearing and public record but continued deliberations on the appeals to June 23, 2014.

The Board deliberated on the appeals on June 23, 2014. All members of the Board were present. No member of the Board declared any *ex parte* contacts, conflicts of interest, or bias. No party raised any objections to the Board's procedure or jurisdiction. Tamra Mabbott, County Planner, provided a memorandum explaining the conditions of approval imposed by the Planning Commission and the EERGC's requested changes to those conditions. The Board engaged in discussion and considered the EERGC's requested modifications and the Reas' appeal. The Board voted 3:0 to: (1) grant the EERGC's appeal in part—modifying the Planning Commission's conditions 5, 7, 11, and 12—and deny the EERGC's request to delete Condition 4; (2) modify Condition 9; (3) deny the Reas' appeal; and (4) approve the Application, subject to the identified conditions of approval.

### **III. AUTHORITY**

The Board may amend, rescind, affirm or remand the action of the Planning Commission, pursuant to UCDC 152.766(B)(3).

#### **IV. DECISION AND FINDINGS**

The Planning Commission's decision applied several criteria that the Board finds inapplicable to the Application. These are discussed below.

##### **A. Inapplicable Criteria**

###### **1. ORS 215.296(1), "Standards for approval of certain uses in exclusive farm use zones."**

FINDING: The Planning Commission's decision applied the criteria of ORS 215.296 to the Application and found that the Application met such criteria. These criteria require that rural conditional uses will not (a) force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or (b) significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. The Reas submitted argument that the Planning Commission's decision failed to include adequate findings that the Application satisfied the two criteria of ORS 215.296.

The Board finds that the Planning Commission erred in applying the criteria of ORS 215.296, because ORS 215.296 applies only to uses allowed under ORS 215.213(2) ("Uses permitted in exclusive farm use zones in counties that adopted marginal lands [...]") and ORS 215.283(2) ("Uses permitted in exclusive farm use zones in nonmarginal lands counties"). A "firearms training facility," as defined by ORS 197.770, is not a listed use in either ORS 215.213(2) or ORS 215.283(2). Therefore, the conditional use standards of ORS 215.296 do not apply to a "firearms training facility," and such findings are not required for approval of the Application. The Board hereby vacates the Planning Commission's findings related to the criteria of ORS 215.296 and finds that ORS 215.296 does not apply to the Application.

###### **2. UCDC 152.615, "Additional Conditional Use Permit Restrictions."**

FINDING: The Planning Commission's February 3, 2014 decision approving the Application applied UCDC 152.615, which provides the basis upon which additional conditions of approval may be imposed on a conditional use authorized in the UCDC. The Board finds that UCDC 152.615 does not apply to the Application because a "firearms training facility" is not a listed conditional use in the EFU zone.

##### **B. Applicable Approval Criteria**

FINDING: The Subject Property is located in an Exclusive Farm Use (EFU) zone. The Board finds that the Application is subject to UCDC 152.059(E), which authorizes the County to permit in the EFU zone, through a land use decision, the "[c]ontinuation of a fire arms training facility in existence on September 9, 1995 and meeting the intent and

purposes in ORS 197.770(2) and as provided in § 152.617(II)(5).” The Board further finds that UCDC 152.617(II)(5) provides that “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.” In so providing, UCDC § 152.617(II)(5) mirrors ORS 197.770, discussed below. The Board finds that because the firearms training facility is in compliance with ORS 197.770, for the reasons stated below, it is also in compliance with UCDC § 152.617(II)(5) and authorized by UCDC § 152.059(E).

ORS 197.770 (“Firearms training facilities”) and the related standards of OAR 660-033-0130(2) apply to the Application because these provisions of Oregon law apply directly to “firearms training facilities.” The EERGC has the burden of proof in this matter as required by UCDC 152.772(D). The Board further finds that it has the authority pursuant to UCDC 152.776 to impose conditions of approval on a “firearms training facility” necessary to protect the public health, safety, and welfare.

The Board hereby finds that, based upon substantial evidence in the whole record, the Application meets all applicable criteria, as follows:

1. **The EERGC’s is a “firearms training facility” under ORS 197.770 and UCDC 152.059(E).**

**ORS 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.”**

FINDING: This statute provides that a “firearms training facility” in existence on September 9, 1995 shall be allowed to continue operating until it is no longer used for firearms training. The Oregon Court of Appeals interpreted this statute to allow any such facility in existence on September 9, 1995 to continue to operate, regardless of whether the particular facility was lawfully established or permitted in the first place. *Citizens for Responsibility v. Lane County*, 207 Or. App. 500, 507, 142 P3d 486 (2006).

**a. A “firearms training facility,” as defined by ORS 197.770(1) must have been operating, and able to conduct trainings and issue certifications, as of September 9, 1995.**

**FINDING:** A firearms training facility in the County wishing to continue, pursuant to ORS 197.770, has the burden of proof to demonstrate that the firearms training facility was in existence on September 9, 1995; that it was functioning and able to conduct trainings and issue certifications required by one of the entities listed in ORS 197.770(2)(a-c) as of that date; and that it continues to be able to conduct trainings and issue such certifications. Although the Reas contended that, in order to qualify as a “firearms training facility” under ORS 197.770, the EERGC must produce training certificates required by one of the qualifying organizations under ORS 197.770(2)(a-c) from on or before September 9, 1995, the Board denies this contention for the reasons explained below.

ORS 197.770(2) defines a “firearms training facility” as one that conducts trainings and grants certifications, but it does not require that certificates are actually granted. In *Citizens for Responsibility*, the Oregon Court of Appeals held that facility is a “firearms training facility,” as defined by ORS 197.770, if it is functioning and *able* to conduct trainings and issue certifications. 207 Or. App. at 507-511. Although the Oregon Court of Appeals applied this test to determine whether a facility continued to operate after September 9, 1995, the Board finds that it is the appropriate test to determine whether a facility qualifies as a “firearms training facility” in the first place. The Reas did not dispute—as was the case in *Citizens for Responsibility*—that a firearms training facility is considered “operating” after September 9, 1995 so long as it is able to conduct trainings and issue certifications, and that no actual certificates must be produced to demonstrate that a facility is operating. On the other hand, the Reas argue that a facility must prove that trainings actually occurred and certifications were actually issued on or before September 9, 1995, in order for a facility to be considered a “firearms training facility” pursuant to ORS 197.770(2). Adopting the Reas’ recommended interpretation of ORS 197.770 would mean that a facility was a “firearms training facility” on or before September 9, 1995 only if it could produce certificates issued on or before that date, while no such proof would be required after that date to demonstrate that it *continued* to operate as a “firearms training facility.”

The Board finds that a facility is “firearms training facility,” as defined by ORS 197.770, if it is functioning and able to conduct trainings and issue certifications. *Citizens for Responsibility*, 207 Or. App. at 507-511. ORS 197.770(2) does not require actual certificates to be provided in order to demonstrate that a facility meets the definition of a “firearms training facility” under that section. *Id.* The Board finds that the definition of “firearms training facility” under ORS 197.770(2) does not set forth separate definitions for a “firearms training facility” existing on or before September 9, 1995, and

one existing afterward. Rather, the only temporal element in the statute is found in ORS 197.770(1), which sets a date upon which all existing "firearms training facilities" were legalized. Thus, a firearms training facility in the County must demonstrate that it was in existence on September 9, 1995; that it was functioning and able to conduct trainings and issue certifications required by one of the entities listed in ORS 197.770(2)(a-c) as of that date; and that it continues to be able to conduct trainings and issue such certifications.

**b. The EERGC produced substantial evidence demonstrating that its facility is a "firearms training facility" as defined by ORS 197.770(2) and may continue, as provided by ORS 197.770(1).**

FINDING: In support of its Application, the EERGC submitted at least fifteen (15) notarized affidavits from EERGC members stating that the EERGC had been operating on the Subject Property since at least 1994, and that EERGC members intend to provide training courses and issue certifications required for law enforcement personnel by the Oregon Department of Fish and Wildlife ("ODFW") and by nationally recognized programs that promote shooting matches, target shooting, and safety. The following individuals submitted such affidavits into the record:

1. Janet Anderson
2. Steve Anderson
3. Randy Black
4. Jim Buettner
5. Parvin "Lance" Hallmark
6. Lorne Harvey
7. Jeffery Hendrickson
8. Viki Hendrickson
9. Jesse Roddick
10. Ken Sloan
11. Brian Schnick
12. Gary VanBlokland
13. Richard Weaver
14. R.V. Williams Jr.
15. Larry Zalaznik



The Board further finds that, even if ORS 197.770 requires that actual trainings and certifications occurred at the EERGC firearms training facility on or before September 9, 1995, the applicant has satisfied this requirement. As support for this conclusion, the Board relies upon the testimony of EERGC member Andy Millar in an affidavit dated August 8, 2013. In that affidavit, Mr. Millar stated that the EERGC obtained permission to use the Subject Property in 1992, that it conducted firearms trainings there on April 24, 1993, which resulted in certifications required by the ODFW being issued for participants, and that the EERGC continues to offer training programs resulting in certifications. Mr. Millar and four (4) other individuals also submitted letters attesting to organized clay pigeon shooting having occurred on the Subject Property since Spring 1994.

As additional support for its conclusion, the Board relies upon the following: a letter from Janice Copple at the ODFW stating that Mr. Millar was a certified trainer as of January 12, 1994; testimony that Mr. Millar provided certification to an 11-year old young man at the EERGC in 1994; a letter from Terry Reynolds that he was enrolled in a firearms safety course in 1994 taught by Mr. Millar at the Subject Property; and copies of hunter safety cards dating back to 1994, submitted by Mr. Pressnall.

In light of the substantial evidence discussed above, the Board finds that firearms trainings resulting in certifications were conducted on the Subject Property on or before September 9, 1995. The Board also finds that each of the specific instances of firearms training activities mentioned above occurred on the EERGC's firearms training facility.

The Board further finds that the EERGC has continued to host firearms trainings after September 9, 1995, which result in the issuance of certifications. As support for this conclusion, the EERGC relies upon the following:

- 1. Letter from Lt. Douglas Jones, U.S. Department of Veterans Affairs Police, indicating that his department has been using the EERGC firearms training facility to conduct trainings over the last three (3) years;**
- 2. Letter from Mike Davis, Oregon State Police (retired), indicating that he used the EERGC firearms training facility to conduct trainings;**
- 3. Letter from Steve Timmons, hunter safety instructor, indicating that he has used the EERGC firearms training facility to teach state-mandated hunter-safety classes;**
- 4. Letter from Grant Asher, concealed firearms instructor, indicating that he has used the EERGC firearms training facility to conduct concealed firearms classes; and**

**5. Letter from Don Zimmerman, Boy Scout troop leader, indicating that Boy Scout Troop 305 has used the EERGC firearms training facility for firearms training.**

The Board finds that the various affidavits and letters are credible, consistent, and significant in number. Therefore, the Board finds that a reasonable person would rely upon these affidavits and letters to support the conclusion that the EERGC firearms training facility was operating before September 9, 1995; that it either intended to or actually did provide trainings and certifications to qualified organizations prior to September 9, 1995; and that it has continued to operate in a similar fashion since that time.

**c. The testimony from opponents is less extensive in nature and does not undermine the substantial evidence in support of the EERGC's Application.**

FINDING: Although the Reas and other opponents submitted evidence and argument in opposition to the Application, the Board finds that this testimony does not undermine the substantial evidence in support of the Application for the following reasons.

First, although the Reas contended that Andy Millar's affidavit does not demonstrate that the EERGC was providing the training which took place on April 24, 1993 and did not issue the related certifications, the Board finds that evidence showing that Andy Millar conducted a firearms training on the Subject Property on April 23, 1993 is sufficient to demonstrate that such training and the resulting certifications were provided by the EERGC, because the EERGC supplied the necessary facilities for the training.

Second, although the Reas contended that the testimony in the record does not support a conclusion that the EERGC was issuing certifications before September 9, 1995, the Board denies this contention for the reasons set forth, and based upon the evidence summarized in, Sections A.1. and 2. above.

Third, although Nathan Rea submitted an affidavit stating that he took a hunter safety class conducted by Andy Millar and Paul Pettry and that this class was not conducted on the Subject Property, the Board finds that Nathan Rea's testimony does not demonstrate that the EERGC was not otherwise operational on the Subject Property and conducted trainings there. The Board finds that Mr. Millar and Mr. Pettry could have conducted trainings in multiple locations. As stated above, the Board finds that all of the instances of firearms training submitted by the EERGC and its proponents have occurred at the EERGC's firearms training facility.

Fourth, although the Reas contended that the fact that EERGC withdrew a previous application requesting approval of the firearms training facility under ORS 197.770 supports the conclusion that the EERGC did not believe that it could prove its case, the Board denies this contention. That the EERGC submitted and later withdrew the 2002 application is irrelevant to this proceeding. Because the 2002 application was withdrawn, the Board is unable to determine whether the applicant believed at the time that it could not satisfy ORS 197.770; in any case, such a subjective belief does not affect whether the EERGC has carried its burden to prove that this Application satisfies applicable criteria.

Fifth, although the Reas contended that aerial photographs from 1994 and 2002 demonstrate that the EERGC firearms training facility was not in existence as of September 9, 1995, the Board denies this contention for four (4) reasons. First, the Board finds that ORS 197.770(2) does not require that the firearms training facility include a structure or any indoor area. Second, the Board finds that, as a matter of fact, shooting may be a wholly outdoor activity. Therefore, the absence of photographic evidence of structures is not necessarily inconsistent with operation of a firearms training facility. Third, the photographs represent a mere "snapshot in time" and do not constitute evidence that firearms training activities were not taking place on the Subject Property on or before September 9, 1995. Moreover, the photograph taken in 1994 in no way demonstrates that the EERGC firearms training facility was not active as of September 9, 1995. Fourth, the Board finds that the photographs submitted by the Reas were grainy, difficult to read, and at such a large scale that they did not constitute evidence that a reasonable person would rely upon to find that there were no structures existing on the Subject Property in 1994 or in 2000.

It is the Board's role as the final decision-maker to weigh the evidence in the record and choose among conflicting evidence. The Board has reviewed the testimony and evidence in the record and finds that the testimony from opponents is less extensive and credible in nature and, for the reasons explained above, does not undermine the substantial evidence in support of the EERGC's Application. Specifically, the Board finds that such evidence does not outweigh the substantial evidence demonstrating that the EERGC was active as of September 9, 1995, was able to conduct trainings and issue certifications, and has been doing so since that date.

For the reasons above, the Board finds that the EERGC's firearms training facility on the Subject Property was in existence on September 9, 1995; that it was functioning and able to conduct trainings and issue certifications required by the parties listed in ORS 197.770(2)(a-c) as of that date; that it had indeed conducted trainings and issued certifications before that date; that it remains able to conduct trainings and issue certifications; and that it continues to conduct trainings and issue certifications. It therefore qualifies as a legal use under ORS 197.770 and may continue until such time as the facility is no longer used as a firearms training facility.

2. **The six (6) existing and five (5) proposed structures located on the same tract as the facility are consistent with applicable administrative rules and are allowed.**

FINDING: The second aspect of the Application is a request to approve six (6) existing and five (5) proposed structures, which will not accommodate more than 100 people, and all of which are part of the firearms training facility, on the Subject Property. The applicant testified that the proposed structures are an enhancement of the facility within the same leased area (same tract). The Board finds that the Application is subject to the following administrative rules.

**OAR 660-033-0120. "Uses Authorized on Agricultural Lands."**

**"The specific development and uses listed in the following table are allowed or may be allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:**

**(2) R — Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns."**

**OAR 660-033-0120. Table.**

**Firearms training facility as provided in ORS 197.770.**

**High Value Farmland: R2**

**All Other: R2.**

FINDING: Based on OAR 660-033-0120 and its accompanying Table, the Board finds that a "firearms training facility," as provided by ORS 197.770, is subject to the criteria in OAR 660-033-0130(2), including the requirement that the use be reviewed and be subject to notice and a hearing. The Board finds that it has provided notice and a hearing in this matter and therefore has complied with the procedural requirements of this rule.

**OAR 660-033-0130. "Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses."**

**"(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34."**

FINDING: The Subject Property is located approximately 1 and 1/2 miles from the City of Milton-Freewater, and therefore within three (3) miles of an urban growth boundary. The applicant provided information describing the EERGC's facilities. The two (2) existing lean-tos are not enclosed structures. The three (3) existing shipping containers are for storage and are not structures which have a capacity for human occupation. The existing cook-shack has a limited design capacity. The proposed modular class room has a design capacity of 35 people. The proposed roofed shooting bench and open-front buildings are not enclosed structures. Based on this description of the existing and proposed structures located on the Subject Property, the Board finds that the cumulative design capacity of existing and proposed enclosed structures would not accommodate more than 100 people. Therefore, the Board finds that OAR 660-033-0130(2)(a) is met.

**"(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010."**

FINDING: As stated above, the EERGC's firearms training facility does not currently have enclosed structures with a total capacity greater than 100 people. The additional structures also will not increase the total capacity of fully-enclosed structures to more than 100 people. Therefore, these structures do not qualify as "structures described in subsection (a)" (i.e. those with a total design capacity greater than 100 people). The Board finds that this section does not apply.

**"(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule."**

FINDING: This section allows maintenance, enhancement, or expansion of a “firearms training facility” within the same tract upon which it was operating as of September 9, 1995. The Board finds that all eleven (11) identified structures are located on the same tract as the firearms training facility. Therefore, the Board finds that the Application satisfies the requirements of this rule.

As discussed above, the Reas submitted aerial photographs showing the Subject Property in 1994 and 2000 and contended that the existing facilities cannot be seen on those photographs. According to the Reas, any physical development on the Subject Property since September 9, 1995 thus constituted an illegal expansion of the EERGC, in violation of the County’s EFU zone (UCDC 152.055–152.063), which does not expressly permit expansions of “firearms training facilities.” In support of this argument, the Reas cite the Oregon Court of Appeals, which in *Conrady v. Lincoln County* construed ORS 197.770 to not preempt local land use laws. 260 Or App 115, 129 (2013).

The Board denies the Reas’ contention for three (3) reasons. First, as explained above, the Board finds that the photos submitted by the Reas were grainy, difficult to read, and at such a large scale that they did not constitute evidence that a reasonable person would rely upon to find that there were no structures existing on the Subject Property in 1994 or in 2000. Moreover, even if the photos were at a scale such that the extent of physical development of the Subject Property could be clearly ascertained, the photos represent a “snapshot in time” and could not clearly demonstrate when such structures were added.

Second, *Conrady* concerned a proposed conditional use for a new firearms training facility, not legalization of an existing one. *Conrady* also involved the interpretation of ORS 166.170, ORS 166.171, and ORS 166.176, not ORS 197.770. *Id.* at 119. Because *Conrady* did not involve the application of ORS 197.770 to an existing firearms training facility, the *Conrady* court’s interpretation of ORS 197.770 does not control how the County interprets and applies ORS 197.770.

Third, the Board finds that development of the eleven (11) identified structures at the EERGC firearms training facility, all on the Subject Property, does not constitute an unlawful expansion under the UCDC because it is not prohibited by the UCDC. Under these circumstances, the Board finds that, although it could have adopted or could adopt additional restrictions on expansions in the UCDC, the Board has not done so. Therefore, state law, including the provisions of OAR 660-033-0120 and -130, applies directly to the Application.

For the reasons stated above, the Board finds that the Application satisfies the provisions of these rules.

### **C. Additional Issues Raised During the Local Proceedings**

- 1. Opponents' contention that the firearms training facility would adversely affect property values is speculative and not directed at an approval criterion.**

FINDING: Although several area residents expressed concern that allowing the firearms training facility to continue and expand within its existing tract would adversely affect their property values, the Board denies this contention for two reasons. First, the testimony from area residents was speculative and not supported by any analysis or expert testimony. Second, although the Board appreciates the residents' concerns, this issue is not directed at an applicable approval criterion. Accordingly, the Board cannot make a decision to deny or condition the Application based upon potential impacts to property values. See *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) (error to deny application based upon factor that was not applicable approval criterion).

- 2. The EERGC's impact on agricultural practices is not an applicable approval criterion.**

FINDING: Although several residents expressed concern that allowing the firearms training facility to continue and expand within its existing tract would force a significant change in or significantly increase the cost of accepted agricultural practices on surrounding lands, the Board denies this contention because this issue is not directed at an applicable approval criterion. In fact, the standard referenced by the opponents is embedded in ORS 215.296 and the parallel UCDC provision, which are not applicable to the Application for the reasons set forth in Section IV.A of these Findings. The Board incorporates these reasons herein by reference.

- 3. Opponents submitted no substantial evidence that the EERGC's Application will result in an increase in noise; there is no particular noise standard that the EERGC must satisfy.**

FINDING: Although multiple opponents contended that allowing the firearms training facility to continue and expand within the existing tract would increase noise in the area, the Board denies this contention for four (4) reasons. First, the opponents have not related this contention to an approval criterion. Stated another way, there is no applicable standard that requires that the firearms training facility comply with a certain noise standard or even that it be compatible with surrounding uses. Therefore, the Board finds that, even if the opponents are factually correct, the opponents' contention does not provide a basis to deny or further condition the Application. *Buel-McIntire*, 63 Or LUBA at 452.

Second, the Board finds that the opponents have not presented any evidence to support their contention.

Third, the Board finds that applicant has presented evidence that rebuts the opponents' contention. Specifically, the applicant testified that existing noise levels at the firearms training facility do not exceed applicable standards, when measured at the property line. Opponents have not explained how continuation of the firearms training facility and development of additional structures will increase off-site noise impacts.

Fourth, the Board finds that implementation of noise abatement measures will reduce any adverse noise impacts generated by the firearms training facility. In order to ensure compliance with this requirement, the Board imposes the following condition of approval:

**“10. Implement noise abatement measures as necessary and in order to comply with National Rifle Association noise recommendations.”**

The Board finds that the Application, as conditioned, addresses the residents' concerns about noise impacts.

4. **Opponents submitted no substantial evidence that the EERGC's Application will result in an increase in traffic; Opponents did not direct their comments regarding traffic impacts to an applicable criterion.**

FINDING: Although opponents expressed concern that approval of the Application would increase traffic in the area, the Board denies this contention. Similar to opponents' other contentions, this contention is not supported by any evidence and is not directed at any applicable approval criterion. Therefore, the Board finds that there is no basis to sustain opponents' contentions.

5. **The Board denies opponent's contention that there will be no way to ensure that EERGC complies with conditions of approval.**

FINDING: Although an opponent expressed concern that, if the firearms training facility is approved, no one will monitor the activities occurring at the firearms training facility to ensure that they do not adversely affect other properties, the County denies this contention for three reasons. First, the Board finds that citizens in the area can report any concerns to the County's Department of Code Enforcement, which can then investigate the complaints. Second, the Board finds that an annual review of the firearms training facility by the County will provide an opportunity to periodically assess the firearms training facility's compliance with the adopted conditions of approval. In order to ensure that this annual assessment occurs, the Board adopts the following condition of approval:



**“4. Application shall be subject to an annual review by County Code Enforcement to ensure compliance with the conditions of approval and this land use permit. Annual review shall be subject to a fee set forth in the County Fee Schedule.”**

Third, the Board further finds that an annual meeting between the applicant and area residents will provide an additional opportunity for communication among the parties and the opportunity to cooperatively identify and address any compliance issues. In order to ensure that this annual meeting occurs, the Board adopts the following condition of approval:

**“8. The Gun Club (EERGC) Executive Board shall hold an annual meeting with adjacent landowners (as shown on the vicinity map) to review concerns. Notes from the meeting shall be submitted to the County Planning Department. Gun Club shall mail notice of the meeting to all adjacent landowners (as identified by the County Planning Office) 21 days prior to the meeting. The purpose of the meeting is to establish communication protocol and to collaborate on concerns about the range operation.”**

The Board finds that the Application, as conditioned, addresses the opponents’ concern about monitoring the firearms training facility and compliance with conditions.

**6. Approval of the Application will not result in a taking of private property.**

FINDING: Although an opponent contended that approving the Application will result in a taking of the opponent’s property, the Board denies this contention. The Board finds that, in general, an uncompensated taking of private property can only occur if a government action deprives an owner of all economically viable use of a property. *Lucas v. South Carolina Coastal Council*, 505 US 1003, 112 S Ct 2886, 120 L Ed 2d 798 (1992). In this case, the Board finds that the opponent has not presented any evidence that continuation and limited expansion, within the same tract, of the firearms training facility will deprive the opponent of all economically viable use of its property. Therefore, the Board finds that approval of the Application will not cause a taking of the opponent’s property.

**7. The County nonconforming use standards of UCDC 152.591 do not apply to the Application.**

FINDING: Although the Reas contended that alteration and expansion of the firearms training facility must be analyzed under UCDC 152.591, which applies to nonconforming uses, the Board denies this contention because it misconstrues applicable

law. In fact, the Court of Appeals has held that, by adopting ORS 197.770, the state legislature removed firearms training facilities from the traditional definition of “nonconforming uses.” *Citizens for Responsibility*, 207 Or App at 510-511. The Court of Appeals further held that ORS 197.770 did not import the statutory nonconforming use provisions found in ORS 215.130 and that nothing in the statute required local governments to treat an otherwise allowed “firearms training facility” as a nonconforming use. *Id.* Based upon the Court of Appeals’ decision in *Citizens for Responsibility*, the Board finds that a “firearms training facility” is not a nonconforming use under state law. Further, no aspect of the UCDC makes it a nonconforming use under County law. Therefore, the Application is not subject to review for compliance with the County’s nonconforming use provisions.

**8. Whether the Subject Property satisfies the requirements for farm deferral status is irrelevant to these proceedings.**

**FINDING:** Although an opponent contended that the County Assessor had improperly granted the Subject Property a farm deferral of ad valorem property taxes, the Board finds that this contention is not directed at any approval criterion and thus is outside the scope of these proceedings. The Board denies the contention accordingly.

**9. A “firearms training facility” is allowed on EFU-zoned land under state and local law.**

**FINDING:** Although opponents contended that the Application should be denied because a firearms training facility is not allowed on the Subject Property, which is EFU land, the Board denies the opponents’ contention. In fact, as explained Section IV.B of these findings, “firearms training facilities” that meet certain standards are allowed to continue on EFU land under ORS 197.770 and the parallel provisions UCDC §§ 152.059(E) and 152.617(II)(5). Further, for the reasons explained in Sections IV.A. and B., the Application qualifies as a “firearms training facility” under these provisions. Therefore, the opponents’ contention misconstrues the law, and the Board denies it.

**D. UCDC 152.776 “Imposition of Conditions.”**

**“(C) The Planning Commission or Board may impose conditions of approval on any decision that comes before them, on appeal or otherwise, following the same standards and procedures as set forth in § 152.753.”**

**FINDING:** The Planning Commission’s decision in this matter imposed twelve (12) conditions of approval. These were based on the inapplicable provisions of UCDC 152.615, which provides for additional conditional use permit restrictions. As discussed in Section IV.A, above, UCDC § 152.615 does not apply to the Application because a

firearms training facility is not listed as a conditional use in the EFU zone. Nevertheless, UCDC § 152.776 provides the Board with authority to impose the same conditions, modifications thereof, or new conditions. Although this is not an “amendment,” UCDC § 152.776 (C) applies the criteria for conditions of approval set forth in UCDC § 152.753.

The EERGC’s appeal requested modifications to Conditions 5, 7, and 12, and that the Board strike Conditions of Approval 4 and 11 (as those conditions are listed in the Planning Commission’s decision). As explained below, the Board finds that the conditions imposed by the Planning Commission should be affirmed in part, modified in part, stricken in part, and that an additional condition of approval must be added.

**E. UCDC 152.753 “Conditions to Amendments.”**

**“(2) Such conditions shall directly benefit the property described in the amendment and shall be imposed only if the county finds them necessary to prevent circumstances which may be adverse to public health, safety and welfare.**

**(3) Such conditions shall be reasonably conceived to fulfill public needs emanating from the proposed land use as set forth in the petition in the following respects:**

**(a) Protection of the public from potentially deleterious effects of the proposed use; or**

**(b) Fulfillment of the need for public service demands created by the proposed use.”**

FINDING: Although this is not an “amendment,” UCDC § 152.776 (C) applies the criteria for conditions of approval set forth in UCDC § 152.753. The Planning Commission approved the Application, subject to twelve (12) conditions of approval. On appeal, the applicant requested that the Board delete Conditions 4 and 11 and modify Conditions 5, 7, and 12. The Board adopts the following findings on these conditions:

**a) Condition 4.** The Planning Commission decision required that the Application would be subject to an annual review by County Code Enforcement in order to ensure compliance with conditions of approval. Applicant expressed concern that this annual review could become a never-ending series of applications for approval of the firearms training facility. In an effort to establish closure for all parties, applicant sought to delete this condition. Applicant contended that the County’s Code Enforcement Department would be able to adequately address any code compliance issues by responding to citizen complaints. The Board denies the applicant’s contentions and finds that the annual review provided in Condition 4 will provide an important opportunity for periodic input

from the public and review by the County. The Board further finds that this periodic review should not result in an appealable land use decision and should not serve as an avenue to re-open the Application or its lawfulness under Oregon law and the UCDC.

b) **Condition 5.** Planning Commission's Condition 5 would have limited hours of operation to daylight hours in addition to limiting the hours during which firearms may be discharged. The Board finds that reasonable restrictions on the hours when discharge of firearms may occur will protect the public health, safety and welfare. However, based on the EERGC's February 14, 2014 appeal letter and testimony, the Board recognizes that there may be instances where EERGC members and officers must be on the property before or after daylight hours to perform maintenance, prepare for events, or otherwise operate the EERGC. The Board finds that a general prohibition on hours of operation outside of discharge of firearms hours is not necessary to prevent circumstances that may be adverse to public health, safety and welfare. For the same reason, the Board finds that such a general limitation on hours of operation does not protect the public from any potentially deleterious effects of the proposed use. The Board also finds that the night hours available for law enforcement training should be clarified. Accordingly, the Board revises Condition 5 to read as follows:

**"5. Discharge of firearms shall be allowed between 8:00 a.m. and one-half hour before sunset during weekdays and between 9:00 a.m. and one-half hour before sunset on Saturday and Sunday. The Gun Club may host six (6) nighttime events per calendar year, but the six (6) nighttime events may not be held on consecutive weekends. Nighttime events for law enforcement training certification are not subject to the hours limiting discharge of firearms or nighttime event restrictions but must end by 11pm May 1 to September 30 and by 10pm October 1 to April 30."**

c) **Condition 7.** The Planning Commission decision required that the applicant implement the black flag safety procedure when a farmer is working downfield from shooting. The applicant requested that this condition be modified to allow for additional flexibility in the type of notice procedure that would be utilized. The Board finds that the applicant's proposed modification is reasonable, provided that the alternative notice procedures provide equal or greater safety. Accordingly, the Board modifies Condition 7 to read as follows:

**"7. Gun Club shall implement the black flag safety procedure (cease fire), or other similar notice procedure to provide equal or greater safety, for cease fire when a farmer is working in a field down-range from shooting."**

**d) Condition 9.** The Planning Commission decision allowed new structures in accordance with applicable administrative rules in OAR Chapter 660 Division 033. The Board finds that the Planning Commission's condition included a parenthetical description of OAR 660-033-0130 that the Board finds may be misleading. Accordingly, the Board modifies Condition 9 to remove the parenthetical reference but to continue to require compliance with the applicable administrative rules. As modified, Condition 9 will read as follows:

**“9. New structures in support of the firearms training facility may be permitted with a Zoning Permit. Such structures shall comply with limitations set forth in OAR 660-033-0120 and OAR 660-033-130.”**

**e) Condition 11.** As listed in the Planning Commission's decision, Condition 11 would have limited membership of the EERGC to 1,000 persons. There is no substantial evidence in the whole record to support the conclusion that the number of EERGC members has any relationship to the impact of the club's activities on surrounding properties or the public. Therefore, the Board finds that this condition is not necessary to protect the public health, safety and welfare and therefore, the Board lacks the authority to impose the condition under UCDC 152.753.

However, the Board finds, based upon testimony in the record, that off-site parking by persons attending events at the firearms training facility may disrupt traffic flow and interfere with off-site uses. The Board finds that these impacts are adverse to the public health, safety, and welfare. Therefore, the Board strikes the Planning Commission's Condition 11 and replaces it with a more narrowly crafted condition designed to address the specific issue of off-site parking:

**“11. All event parking shall be on-site. No event parking shall be allowed off-site.”**

**f) Condition 12.** As listed in the Planning Commission's decision, Condition 12 provided that no alcohol would be allowed in the range at any time. This was to ensure that alcohol was not being consumed at the same time firearms were being discharged. However, there are several periods during which non-shooting activities are permissible at the EERGC. For this reason, the Board finds that a complete prohibition on alcohol is not necessary to prevent circumstances which may be adverse to public health, safety and welfare. Rather, alcohol consumption need only be prohibited during periods in which shooting is permitted to take place. For the same reason, the Board finds that such a restriction does not protect the public from potentially deleterious effects of the proposed use. Accordingly, the Board modifies Condition 12 to read as follows:

**“12. Consumption of alcoholic beverages is allowed when shooting is not occurring, outside of the hours of discharge of firearms in**

**condition of approval 5 of this decision. No permanent on-site commercial food service is allowed. No on-site restaurant is allowed. Catering for special events is allowed.”**

The Board finds, for the reasons set forth in the Planning Commission decision, which reasons are incorporated herein by reference, that the Planning Commission’s remaining conditions appropriately prevent circumstances that may be adverse to the public health, safety, and welfare and/or protect the public from potentially deleterious effects of the proposed use. Therefore, the Board finds that it should impose these remaining Planning Commission conditions (1, 2, 3, 4, 6, 8, and 10) as its own.

## **V. Decision**

For the reasons contained herein, the Board hereby **modifies** the Planning Commission’s decision, **upholds** the EERGC’s appeal in part and **denies** the EERGC’s appeal in part, and **denies** the Rea’s appeal as follows:

**A.** The EERGC’s firearms training facility, located on a tract of land identified as Tax Lot 1200 of Umatilla County Assessor’s Map 5N 36, is an approved “firearms training facility” use pursuant to ORS 197.770 and the parallel provisions of UCDC §§ 152.059(E) and 152.617(II)(5), and shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility. The six (6) existing structures on the existing lease area and five (5) proposed structures are hereby approved, as permitted by OAR 660-033-0130(2). The EERGC’s firearms training facility may be maintained, enhanced, or expanded on the same tract, subject to other requirements of law.

**B.** Land use application #LUD-163-13 is hereby approved subject to the following conditions:

**Precedent Conditions:** The following conditions of approval must be completed prior to issuance of a Zoning Permit and Final Approval.

1. Obtain an Access Permit from County Public Works (if not already existing).
2. Obtain a Zoning Permit to for all existing buildings and proposed buildings, including cargo containers, per UCDC 152.063, associated with the Shooting Range.

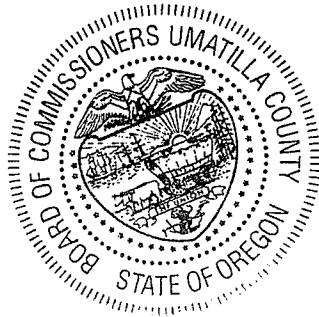
**Subsequent Conditions:** The following subsequent conditions apply to the use and shall be maintained throughout the life of the operation of the firearms training facility.

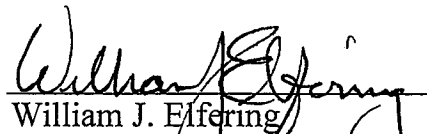
3. If outdoor lighting is installed, it shall be installed so as to minimize glare to the residence on the property.
4. Application shall be subject to an annual review by County Code Enforcement to ensure compliance with the conditions of approval and this land use permit. Annual review shall be subject to a fee as set forth in the County Fee Schedule.
5. Discharge of firearms shall be allowed between 8:00 a.m. and one-half hour before sunset during weekdays and between 9:00 a.m. and one-half hour before sunset on Saturday and Sunday. The Gun Club may host six (6) nighttime events per calendar year, but the six (6) nighttime events may not be held on consecutive weekends. Nighttime events for law enforcement training certification are not subject to the hours limiting discharge of firearms or nighttime event restrictions but must end by 11pm May 1 to September 30 and by 10pm October 1 to April 30.
6. The shooting range shall be operated in compliance with NRA Range Safety Standards. The Gun Club will submit documentation to verify the range complies with NRA standards within six (6) months of permit approval.
7. Gun Club shall implement the black flag safety procedure (cease fire) and other similar notice procedure to provide equal or greater safety, for cease fire when a farmer is working in a field down-range from shooting.
8. The Gun Club (EERGC) Executive Board shall hold an annual meeting with adjacent landowners (as shown on the vicinity map) to review concerns. Notes from the meeting shall be submitted to the County Planning Department. Gun Club shall mail notice of the meeting to all adjacent landowners (as identified by the County Planning Office) 21 days prior to the meeting. The purpose of the meeting is to establish communication protocol and to collaborate on concerns about the range operation.
9. New structures in support of the firearms training facility may be permitted with a Zoning Permit. Such structures shall comply with limitations set forth in OAR 600-033-0120 and OAR 660-033-130.
10. Implement noise abatement measures as necessary and in order to comply with National Rifle Association noise recommendations.

11. All event parking shall be on-site. No event parking shall be allowed off-site.

12. Consumption of alcoholic beverages is allowed when shooting is not occurring outside of the hours of discharge of firearms in condition of approval 5 of this decision. No permanent on-site commercial food service is allowed. No on-site restaurant is allowed. Catering for special events is allowed.

APPROVED this 31<sup>st</sup> day of July, 2014.



  
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William J. Eiferling  
Umatilla County Board Chair