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THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Amending)
 Comprehensive Plan and) ORDINANCE NO. 2003-01
 Approving Exception to)
 Statewide Planning Goal 3)
 for Stahl Hutterian Brethren)

WHEREAS the Board of Commissioners has adopted a Comprehensive Plan for Umatilla County and has ordained Ordinance No. 83-04, adopting the County Land Development Ordinance;

WHEREAS an application was received from Stahl Hutterian Brethren requesting Umatilla County to amend the Comprehensive Plan to allow for an exception to Statewide Planning Goal 3, to amend the Umatilla County zoning map for the application of the Limited Use Overlay Zone to the exception area, and for a conditional use in the EFU zone, all to accomplish the establishment of a new Hutterite community;

WHEREAS the Umatilla County Planning Commission held a public hearing on November 21, 2002 to review the application and the proposed amendments to the plan and to the ordinance and recommended that the Board of Commissioners adopt the amendments and approve the conditional use application;

WHEREAS the Board of Commissions held a public hearing on January 9, 2002, to consider the proposed amendments, and at that hearing closed the portion of the hearing for testimony, and voted for the approval of the application, the amendments, and the conditional use permit.

NOW, THEREFORE the Board of Commissioners of Umatilla County ordains that the Umatilla County Comprehensive Plan, adopted May 9, 1983, be further amended to include the following, and the County Land Development Ordinance, No. 83-04, passed May 9, 1984, be amended as set out below:

1) AMEND UMATILLA COUNTY COMPREHENSIVE PLAN

To be added to as a new section entitled Hutterian Brethren Exception, inserted after Unincorporated Communities and before Definitions on Page XVIII-477:

HUTTERIAN BRETHREN EXCEPTION

Stahl Hutterian Brethren of Ritzville, Washington, purchased the "Mikami Farm" near Stanfield, Oregon, with the intention of farming the land by establishing a new Hutterite community, with dwellings, a church, a school, a community building, and other necessary support facilities, including a water system and wastewater disposal system. The community would eventually accommodate approximately 100 persons. All adults would be employed in farming or activities that support the work of the farm.

The proposed configuration of uses, especially the non-farm uses on high value farmland (church, school, and community building), is inconsistent with Goal 3, which requires protection of high value farmland and statutes and rules which are based on the model of an agricultural enterprise undertaken by a single family or family with hired workers, rather than as a communal farm. Dwellings can be allowed on high value farmland under certain circumstances, but a waiting period is required to confirm sufficient income is generated or a hierarchical structure (main dwelling, accessory dwellings) is required. The waiting period would make it difficult for the community to operate the farm without an on-site presence and a hierarchical arrangement which conflicts with Hutterite beliefs.

The community will include approximately 100 people, living in attached and detached dwellings. All adults in the community will be engaged in farming or related support activities. The community buildings and improvements will be located on a 1,500 by 1,500 foot square (approximately 50 acres), and include the church and school, dwellings, both detached and attached, without a hierarchy of "primary" or "accessory," a community building that serves as a meeting and dining room, food preparation area, and laundry building. Other buildings necessary for the farm use such as barns, storage buildings, etc. would be permitted in the EFU Zone. Additional facilities required for the community include two domestic wells for water service, an on-site sewer system, and on-site roads sufficient to provide access within the community and to Despain Gulch Road.

The Hutterian Brethren have chosen a portion of Circle 9 as the community location. They have not identified specific building or facility sites pending the County's decision. Circle 9 is approximately a mile north of Despain Gulch Road. That location is one of the higher points on the property, offering suitable drainage for the wastewater system as well as reasonable separation from surrounding properties and uses. The water rights for the

portion of the irrigated circle utilized for the community likely could be transferred to another part of the farm, resulting in no net loss, or minimal loss, of cultivated land. The community location is a 51.28 acre parcel located in Section 17 of Township 4 North, Range 30, East of the Willamette Meridian in Umatilla County, Oregon, more particularly described as follows: BEGINNING at a point 2,180 feet North of the Southeast corner Section 17 of Township 4 North, Range 30, East of the Willamette Meridian; thence West a distance of 1,625.00 feet; thence South 62°25'37" West a distance of 446.34 feet; thence South a distance of 400.00 feet; thence West a distance of 150.00 feet; thence South a distance of 730.00 feet; thence West a distance of 80.00 feet; thence South a distance of 560.00 feet; thence East a distance of 490.00 feet; thence North a distance of 400.00 feet; thence East a distance of 650.00 feet; thence North 85°34'00" East a distance of 540.00 feet; thence North a distance of 630.00 feet; thence West a distance of 770.00 feet; thence North a distance of 350.00 feet; thence along a 274.89 foot, 90° curve to the right with a radius of 175.00 feet and a chord of North 45°00'00" East and distance of 247.49 feet; thence East a distance of 1,175.00 feet to the East line of said Section 17; thence North 1°44'15" West a distance of 300.00 feet to the point of beginning of this description; All being East of Willamette Meridian, Umatilla County, Oregon.

Few Hutterians have need for vehicles, as their lives are centered on the farm and community activities. There are approximately a dozen passenger vehicles (six pickups, three large sport/utility vehicles, four vans) at the Ritzville community, in addition to farm trucks and equipment. A similar number of passenger vehicles would be expected at the Stanfield community.

The Hutterian Brethren require a rural location to maintain their particular agrarian and communal lifestyle and religious practice. A farm community cannot be established in a city, and the separation from outside influences is also an important factor for maintaining their religious beliefs. The dwellings, church, and school are essential to the functioning of the Hutterian community and their agricultural operation.

Stahl Hutterian purchased the "Mikami Farm" in September, 2001, and began taking steps to improve the facilities at once. They replaced equipment for 31 irrigation circles, and replaced 41 pivots and switching with improved equipment that more efficiently uses energy and water. Stahl Hutterian invested over \$1 million in new farm equipment in 2002 and expects to invest a similar amount in the farm and equipment over the next year.

The "Mikami Farm" was chosen because it was a large tract that became available, a fairly infrequent occurrence, and the farm was a viable commercial operation that could become the basis for a communal enterprise.

BACKGROUND AND HISTORY

The Hutterite Brethren takes its name from Jakob Hutter, an Austrian who founded the group during the Protestant Reformation and was burned as a heretic in 1536. Hutter's followers modeled their communities on the early church by holding their goods in common. Hutterites were persecuted in Moravia and Tyrol, eventually moving to Hungary and the Ukraine. In the 1870's, many emigrated to the United States and Canada. Colonies of 60 to 150 members operate communal farms across the Western United States and Canada.

Hutterites live as close to the teachings of Jesus' disciples in the New Testament as possible. Religious services and observances are an important part of daily life. Religious education starts at home, continuing in kindergarten and school. Children are taught both German and English.

Hutterites live and dress simply. They are pacifists and avoid politics. Communities are closed to non-community members, though non-members may choose to join.

Hutterites raise and process the food for their community. They use modern commercial type kitchen facilities to prepare meals and preserve the produce from an extensive farm garden. The community has facilities to butcher meat for its own use.

There are approximately 23,000 Hutterites in about 300 communities today in the United States and Canada. Although activities that support the communities vary, most engage in farming. Hutterites do not shun technology and their farming operations are a model of modern methods, efficiency, and good management.

The Hutterian Brethren maintain communities that are separated, as a way of maintaining their religious beliefs and simple, communal life style. This is why it is important for the community to have its own church and school, and dwellings for all community members.

SITE DESCRIPTION

The "Mikami Farm" is a tract that qualifies as "high value

farmland," as defined by OAR 660-033-0020 (8) (a), as it contains predominantly Class II or better irrigated soils. ¹ The entire tract includes 8,853.54 acres under one ownership, of which 7,568 acres are irrigated (85%). The soils include a relatively small area of Adkins Fine Sandy Loam, classified as a prime soil when irrigated. Most of the site is Sagehill Fine Sandy Loam and Shano Very Fine Sandy Loam (both Class IIe when irrigated) with Quincy Fine Sand and Quincy Loamy Fine Sand (both IVe when irrigated).

Crops grown on the farm in 2002 include potatoes (1,102 acres), grass seed (900 acres), onions (785 acres), winter wheat (950 acres), spring wheat (1,406 acres), timothy hay (385 acres), alfalfa (485 acres), and sweet corn (455). Revenue generated by the "Mikami Farm" in 2000 and 2001 was approximately \$8 million.

Most of the tract is gently rolling hills. However, the tract is crossed from east to west by two drainages, which connect near the west boundary and eventually flow into Cold Springs Reservoir. The drainageways have steeply sloped banks and these areas are currently unused for farm activities. Few trees grow on the farm. Some cattails and wetland-type plants grow in the marshy area where the two drainageways join.

There is an existing dwelling on the tract, and four large structures used for potato storage. There is also a fueling station.

EXCEPTION TO GOAL 3

Statewide Planning Goal 3 reads as follows:

"To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700."

¹ The definition of "high value farmland" in OAR 660-033-0020(8) (a) refers to "a tract composed predominantly of soils" that are classified as prime, unique, or Class I or II when irrigated. Therefore, the entire farm is considered "high value," though only 7,568 acres of the 8,854 acres is irrigated. According to the definition, the area of the community will remain "high value" even if the irrigation water right is transferred, because the farm is "predominantly" (more than 50%) within the irrigated/Class II or better classification.

Goal 3, ORS 215.283 which lists permitted uses in EFU Zones,² and OAR 660-033, together provide the framework for protection of farmland, especially high value farmland. This scheme does not allow a church or school on high value farmland. Further, the statute allows dwellings under certain conditions, including an income test or in a hierarchical arrangement inconsistent with Hutterite beliefs. The policy and statutory framework is not structured to allow a communal situation.

The Hutterian Brethren request an exception to Goal 3, to allow establishment of a communal farm because the specific uses and configuration of uses necessary for the community are not allowed on high value farmland under the statute and the goal.

Goal 2 provides that a local government may adopt an exception to a goal when "reasons" justify why the state policy should not apply. The language of Goal 2 is repeated in ORS 197.732 and repeated and interpreted in OAR 660-04. For practical purposes and to avoid redundancy, provisions of OAR 660-04 will be the focus of this narrative.

The purpose of the exceptions process is to provide flexibility in the application of the statewide planning goals. The proposal for a Hutterian community presents a unique set of issues: The Hutterian Brethren do not wish to change the use of the land but rather to maintain and improve the commercial agricultural enterprise. The Hutterians need the various elements of their community—dwellings, church, school, community building—to engage in the fanning of the property and to maintain their separate, communal style of life, which is based in their religious beliefs.

OAR 660-004-0010(1)(a) provides that "an exception to Goal 3 'Agricultural Lands' is not required for any of the farm or nonfarm

²ORS 215.283 lists the uses permitted in EFU zones in nonmarginal lands counties, including the following:

- 215.283(1)(a) Public or private schools
- 215.283(1)(b) Churches and cemeteries in conjunction with churches
- 215.283(1)(e) Dwelling on the same property for a family member "whose assistance in the management of the farm us is or will be required by the farm operator."
- 215.283(1)(f) The primary and accessory dwellings and other buildings customarily provided in conjunction with farm use.

ORS 215.283 (1)(f) was amended in the last legislative session to add the phrase "primary and accessory" to describe permitted dwellings. This change creates a hierarchy of dwellings, and the people who live in them, contrary to Hutterite belief.

uses permitted in the exclusive farm use (EFU) zone under ORS Chapter 215...." Notwithstanding that dwellings, church, and school are permitted in ORS 215.283, the particular arrangement of the uses in support of a communal farm was not. Therefore, the exception process is necessary to allow the Hutterite community, which will support Goal 3 by maintaining the "Mikami Farm" as a commercially viable agricultural enterprise. The exception process was determined to be the most expeditious means for assuring that all land use concerns and policies were considered, and to unequivocally allow all proposed uses for the community.

660-004-0020 Goal 2, Part 11(c), Exception Requirements

Four factors must be considered when taking an exception (660-004-0020(1)), as discussed in the following sections:

Factor 1: "Reasons justify why the state policy embodied in the applicable goals should not apply."

Only Goal 3 applies: The policy is "To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs...." As noted, the exception process is necessary because the proposed uses are not allowed outright by the goal and statute, which have as a model the single family, extended family, or family plus hired workers. A communal farm does not fit the management paradigm envisioned by the goal and statute (see especially ORS 215.283(1)(f), recently amended to provide for primary and accessory dwellings).

The Hutterian Brethren propose to establish a community on approximately 50 acres, part of the 7,568 irrigated acres of the 8,854 acre tract. The community will include dwellings, a church, a school, a community building, and other structures necessary for agricultural activities. The purpose of the community is to actively engage in farming of the land. The irrigation water right may be able to be transferred to another part of the property, so that no loss, or minimal loss, of irrigated farmland is anticipated.

The types of reasons that may be used to justify certain uses not otherwise allowed on resource lands are identified in OAR 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part 11(c):

(1) For uses not specifically provided for in subsequent sections of this rule or OAR 660, Division 014, the

reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Statewide Goals 3 to 19; and either

(b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource... or

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

The exception is necessary because the proposed uses are not permitted outright under Goal 3 and the statute. The model envisioned by the Goal and statute involves a single family, extended family, or family with hired help rather than a communal farm. Nonetheless, the proposed community supports Goal 3, by preserving and maintaining high value farmland in commercial agricultural use.

The Hutterian community depends upon its agricultural endeavors for support and for employment. All adult members of the community (residents) will be either actively engaged in farming or in related activities that support the community, such as food preparation, maintenance of equipment, etc. Management of a 14 square mile farm requires presence on site, which is made possible by the residential nature of the community. The community can only be located on rural land, because it is a communal farm.

The Hutterian Brethren have particular religious beliefs, which separate them from other groups who might simply wish to "live on the land." Hutterites have chosen a rural and separate life for centuries. They have engaged in farming in the United States and Canada for many years, and have a proven model for their communities and agricultural enterprises. For Hutterites, the activity of farming, the independence of a rural lifestyle and location, and the separation from outside influences are important factors for maintaining their uniqueness and their religious beliefs. Stahl Hutterian Brethren, specifically, have operated a farm in the Ritzville area since 1980, when 5,000 acres was purchased. Stahl Hutterian now farms 16,000 acres.

The factors of this section are satisfied, as the proposed Hutterite community supports Goal 3, requires the rural location, and requires particular facilities to maintain religious beliefs within the community. The policy of Goal 3 is actively and unequivocally supported by the proposal.

Factor 2: "Areas which do not require a new exception cannot reasonably accommodate the use...."

A Hutterite community is a resource dependent use, requiring a location on agricultural land in order to establish a communal farm and to thereby maintain its religious values and its integrity as a separate community. A communal farm can hardly be located within a city, but requires a rural location.

Stahl Hutterian Brethren were looking for a suitable site in eastern Oregon and Washington for expansion as their Ritzville community prospered. Few large farms have been offered for sale, and few had the attributes the community desired, including soils suitable for agriculture and sufficient size to provide a buffer around the community to separate itself from adjacent communities and uses. The religious beliefs of the Hutterites require communal living within a self-contained community, with their own church and school. These facilities, in fact, form the heart of the Hutterite community.

Goal 3, with related statute and administrative rules, prohibit a church and school on high value farmland and would make it difficult to establish the type of dwellings necessary for the community's religious beliefs. Therefore, any location chosen for the community on high value farmland would require an exception. Communal living and a communal agricultural enterprise are uses that were not anticipated by the goal and statute: No need was foreseen for a self-contained community, with shared religious beliefs, that might wish to maintain a separation from outside influences and to also manage an agricultural enterprise.

Most of the site has soils with a designation of Class II or better, with irrigation, and the entire tract is therefore considered high value. If the irrigation water right for the area of the community can be transferred to another part of the property, no useable high value farmland will be lost.

Therefore, the response to Factor 2 is that any EFU site with high value farm land would require an exception. However, the Hutterite community is unusual because their religious beliefs require communal living and separation from outside influences,

with their own church and school. The commitment and success of Stahl Hutterian Brethren to commercial agricultural is beyond question, given their record since 1980 at their farm near Ritzville, Washington, and their major investment in the "Mikami Farm" near Stanfield and potato processing facilities in Boardman. Further, the Hutterian model for communal farming has been successfully utilized in both the United States and Canada for many years. Finally, if the irrigation water right is transferred, there will be minimal, or no, net loss of farmed land.

Factor 3: The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.

Stahl Hutterian proposes no change in the use of the land for farming. Their intention is to improve the productivity at the property, and they have already begun to install new, more efficient irrigation systems and other equipment on the farm.

A Hutterian community has little need for automobile transportation, as it is self-contained to a large degree and members have no need or desire to leave. The Ritzville community, with approximately 100 residents and 22 dwellings, maintains only six pickup trucks for workers, three large sport/utility vehicles, and four vans, in addition to the vehicles required for farm operations such as tractors, harvesting equipment, etc. A similar number of passenger vehicles is anticipated at the Stanfield community. Therefore, the impact on Despain Gulch Road will likely be small and similar to that of other farms in the vicinity. Traffic on Despain Gulch Road is light at present, and should not be adversely affected by the proposed use.

The only change proposed on the farm is building a new community, with dwellings, a church, school, and community building. The community will occupy approximately 50 acres. It will require two municipal wells, for which new water rights will be required. It will require a wastewater disposal system, which will be engineered to comply with Department of Environmental Quality requirements and which will likely be similar to the facility approved by the State of Washington at the Ritzville community.

No change is proposed for the use of the site, i.e. irrigated agriculture, and no adverse impacts on farm activities on the site or on adjacent sites are identified. Stahl Hutterian is willing to

accept conditions of approval that require appropriate permits for wells and wastewater disposal; they intend to seek such permits in any case.

Factor 4: The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

The use of the site for irrigated agriculture will not change. In fact, the farm use at the site, along with its relative isolation, is what the Hutterians find desirable about the property. If the use of the site does not change, the proposed use is very likely to remain compatible with adjacent uses.

The site of the community is proposed for a portion of Circle 9, which is approximately one mile north of Despain Gulch Road. The site is located on a high point, to facilitate management of wastewater. A specific location for the wastewater treatment facilities has not yet been chosen, pending an engineering analysis and appropriate approval process. The separation of the community from Despain Gulch Road and other property boundaries means that it will be relatively unnoticed and have no impact on adjacent uses. Viewed from a distance, the community will appear to be a cluster of agricultural buildings similar to the storage sheds located at the farm entrance, immediately adjacent to Despain Gulch Road, and typical of buildings on other nearby farms.

No adverse impacts were identified in the consideration of Factor 3, therefore no measures to mitigate impacts are identified with the consideration of Factor 4.

2) AMEND UMATILLA COUNTY DEVELOPMENT CODE

Pursuant to §152.530, the Limited Use Overlay Zone may be applied to plan amendment changes affect by a reasons goal exceptions under ORS 197.732. The Umatilla County zoning map is amended to apply the Limited Use Overlay Zone to the approximately 50 acres for which a Goal 3 exception has been granted, more particularly described as follows: BEGINNING at a point 2,180 feet North of the Southeast corner Section 17 of Township 4 North, Range 30, East of the Willamette Meridian; thence West a distance of 1,625.00 feet; thence South 62°25'37" West a distance of 446.34 feet; thence South a distance of 400.00 feet; thence West a distance of 150.00 feet; thence South a distance of 730.00 feet; thence West a distance of 80.00 feet; thence South a distance of 560.00 feet; thence East a distance of 490.00 feet; thence North a

distance of 400.00 feet; thence East a distance of 650.00 feet; thence North 85°34'00" East a distance of 540.00 feet; thence North a distance of 630.00 feet; thence West a distance of 770.00 feet; thence North a distance of 350.00 feet; thence along a 274.89 foot, 90° curve to the right with a radius of 175.00 feet and a chord of North 45°00'00" East and distance of 247.49 feet; thence East a distance of 1,175.00 feet to the East line of said Section 17; thence North 1°44'15" West a distance of 300.00 feet to the point of beginning of this description; All being East of Willamette Meridian, Umatilla County, Oregon. This will limit the uses permitted on the farm to a limited area and to those uses specifically authorized by the goal exception and plan amendment.

Specifically, the LU Overlay Zone applied under this application authorizes the following uses:


A. An area of approximately 51.28 acres are designated for community uses, including attached and detached dwellings for residents of the community, a church, a school, a community building, and related structures necessary to support community facilities.

B. A wastewater disposal system, including pipes and a lagoon. The exact location of this facility will be determined by an engineer, and shall be located with consideration for the needs of the community, sensitive drainage areas, and similar issues, and may be located at some distance from the community area, though not where it would interfere with agricultural activities.

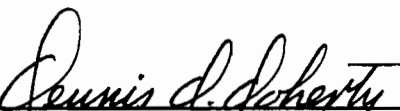
C. A water system, including at least two separate wells, to provide adequate potable water for the community.

DATED this 9th day of January, 2003.

UMATILLA COUNTY BOARD OF COMMISSIONERS



William S. Hansell, Chair



Dennis D. Doherty, Commissioner

ABSENT

Emile M. Holeman, Commissioner



ATTEST:
OFFICE OF COUNTY RECORDS

Jean Hemphill
Records Officer

