

It's often best to start at the beginning. SB 1149's definition of site is really in two parts, with the second part starting at the infamous comma and addressing the interconnectedness of facilities owned by a single retail electricity consumer. We do not believe this part of the definition is germane to this discussion.

A Journey Of 1,000 Feet Is Long Enough

The part that is relevant dictates that a site "means a single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet,..." In agreeing to that language during legislative negotiations, as suggested in the Introduction, FCEC intended to strike a balance by allowing some expansion in defining a site, but not too much. We believe that staff's initial interpretation achieves an intended goal by defining a site as "(b) a single contiguous area of land containing building or other structures that are separated by *not more than 1,000 feet, such that: (A) No building or structure included in the site is more than 1,000 feet from any other building or structure in the site;*... (emphasis ours).

One thousand feet is a considerable distance which is able to cover a reasonable number of large commercial and industrial facilities. Although the initial interpretation certainly may not cover every conceivable facility, it treats the vast majority of facilities fairly by allowing facilities covering the area equivalent to three football fields long and three football fields wide to be included in the definition of a single site. Anything more than that falls into the "too-much expansion" that FCEC was trying to avoid. We did not want to give that much away in legislative negotiations and in reading the law, we do not believe we did. Looking at the statutory definition, buildings are on a single site if they are "separated by not more than 1,000 feet." Reversing that sentence says, "if buildings are separated by more than 1,000 feet, then they are on different sites." We do not recollect giving away the chaining interpretation and again, don't think we did.

In its opening comments, staff states that its newer proposed rule modified the definition of site in two ways: it allowed facilities to stretch out 1,000 feet in a "chain" fashion rather than requiring all buildings be within 1,000 feet of each other. Rather than solving problems, we believe this interpretation creates unending new problems.

It makes 1,000 feet an even more significant distance than it already is. By allowing "*each* (emphasis ours) building or structure in the site" to be no more than 1,000 feet from "*at least one other* (emphasis ours) building or structure in the site," the definition of site is stretched to the point of almost being meaningless.

Why Did the Chicken Cross The Road? To Get To The Other Site

The inclusion of rights of way within the definition of contiguous land completely undermines both common sense and the intent to balance the desire to create a definition of site but to simultaneously limit that definition to avoid unreasonable results.

Allowing "site" to run over rights of way, including streets and railroad rights of way, makes nonsense of the term. An owner of a building in downtown Portland, even a building with rental units, can couple this building with another completely separate building he owns across the street and, *voila*, he has one site. As we will discuss below, if the 1000 foot chaining definition is adopted, these two changes to the statutory definition of site will create "sites" of unimaginable proportions.

Not only is this not what any of the parties intended, it defies common sense. While we did not conduct an exhaustive search of the word "contiguous" in state statute, we did look for examples of its use. The best example we found in the right of way context showed that the word contiguous was not assumed to include rights of way. ORS 222.111 authorizes a city to annex contiguous land: "the boundaries of any

city may be extended by the annexation of territory that is not within a city and that is contiguous to the city *or* separated from it only by a public right of way or a stream, bay, lake or other body of water." (emphasis ours). So while a city may annex contiguous property even if it is on the other side of a road or railroad, that road is not automatically considered contiguous to the city. It is clear that contiguous land in state statute does not necessarily include rights of way. Therefore, defining land to be contiguous even if there is a public or railroad right of way through it is an addition to this statutory definition of site. As we said earlier this does violence to both logic and intent. Furthermore, to include rights of way within contiguous land for the purposes of defining site may require an amendment to the statute itself.

Opening the Door to a Parade of Horribles

What are the possibilities if the "chaining" definition and the allowing inclusion of rights of way within the definition of contiguous land are used together to determine a site? Let's examine a potential scenario.

A retail store operates out of a shop on a busy downtown street corner. Business has been good and additional store locations have been opened up in the area, all within about 8 blocks of each other. Under the proposed rules, this store could connect all its locations, because at least one is 1,000 feet from another, and be considered one site, despite the public streets between each location, because public rights of way don't mean that land is not contiguous.

Let's look at another more concrete potential example. A building owner owns several buildings in downtown Portland. She could purchase more. Given the right conditions in terms of locations of buildings, under these rules, this shrewd owner could conceivably find herself with a package of buildings scattered throughout downtown that could be considered a site, despite those buildings being blocks apart and likely separated by more than one public street or right of way.

And finally, let's look at a real example. Powell's Books have its main store in Portland on the corner of 10th and Burnside. Across the street on Burnside is Powell's Internet sales office. On Burnside and Park, just a block or two away, Powell's has a Technical Books outlet. Because at least one store is less than 1,000 feet away from one other store and public rights of way have no bearing on the contiguous nature of a site, Powell's just created a site with three of its four downtown stores. That completely violates the original intent of the site definition.

And these examples are not the only ones that would push the definition beyond the bounds of common sense.

Conclusion

The goal of the site definition is to be reasonable while not creating scenarios that defy good policy and common sense. We believe the statutory language in SB 1149 does this and the language of staff's original proposed rules from August 15, 2000 implements the law adequately. Anything more expansive undercuts negotiated agreements and the original intent.

We understand that the definition of site may not be satisfactory to all parties in all cases where they want single sites. We are open to considering other options but feel strongly about the original language agreed to in the legislature last year and will not give up something now that we were not willing to then. Other changes in the definition may have to be considered in the next legislative session if other parties want something much broader than the current language.