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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

THOMAS ABREGO, ELLEN ABREGO, )  
RAY HUNT, MARGUARY HUNT, )  
ORLIN H. ROTH, WILLIAM ROTH, )  
and FRANCIS ROTH, )  
Petitioners, )  
v. )  
YAMHILL COUNTY, )  
Respondent, )  
and )  
NEWBERG SCHOOL DISTRICT 29JT )  
Applicant-Respondent. )

LUBA NO. 81-053  
FINAL OPINION  
AND ORDER

Appeal from Yamhill County.

John C. Pinkstaff, McMinnville, filed the petition for review and argued the cause for Petitioners.

Daryl S. Garrettson, McMinnville, filed a brief and argued the cause for Respondent.

George H. Layman, Newberg, filed a brief and argued the cause for Applicant-Respondent.

Cox, Referee; Reynolds, Chief Referee; Bagg, Referee; participated in the decision.

Remanded. 8/12/81

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

1 COX, Referee.

2 NATURE OF PROCEEDING

3 Petitioners seek reversal of the Yamhill County Board of  
4 Commissioners decision to grant an amendment to the Yamhill  
5 County Comprehensive Plan map. The plan map amendment allows  
6 the addition of 18.8 acres to the existing City of Newberg's  
7 urban growth boundary for use as an elementary school site.

8 ALLEGATIONS OF ERROR

9 Petitioners set forth five assignments of error as follows:

10 "First Assignment of Error:

11 "The Board violated Goal 2 because it failed to  
12 demonstrate with compelling reasons and facts that the  
13 entire 18.8 acre parcel is needed for the proposed  
14 development.

14 "Second Assignment of Error:

15 "The Board violated Goal 2 because it failed to  
16 demonstrate with compelling reasons and facts that  
17 there were a lack of alternative sites within the UGB  
18 that could be used for the proposed school. The Board  
19 also violated Yamhill County Zoning Ordinance No. 83,  
20 1976, Section 45.250 by excluding evidence of other  
21 alternative sites without considering the factors  
22 required to be considered under the zoning ordinance.

19 "Third Assignment of Error:

20 "The Board violated Goal 2 because it failed to  
21 demonstrate with compelling reasons and facts that the  
22 proposed elementary school is compatible with an  
23 explosives warehouse located less than one mile away.

23 "Fourth Assignment of Error:

24 "The Board violated Goal 2 by failing to  
25 coordinate with an affected governmental unit, the  
26 City of Newberg.

1        "Fifth Assignment of Error:

2                "The Board violated Yamhill County Zoning  
3                Ordinance No. 83, 1976, Section 48.100 by failing to  
4                give proper notice to Petitioners prior to a meeting  
              at which the Board made a decision regarding the  
              exclusion of evidence of other alternative sites."

5        FACTS

6                This is the second time this matter has been before the  
7        Board. The first appeal, Abrego v. Yamhill County, 2 Or LUBA  
8        101 (1980), resulted in a remand to the county. A full  
9        statement of the facts leading up to the original Abrego  
10       decision is contained in that decision and incorporated in this  
11       decision by reference.

12               On remand, the Yamhill County Board of Commissioners held  
13       additional public hearings on February 25, 1981 and on March  
14       11, 1981. On March 18, 1981, the Yamhill County Board of  
15       Commissioners voted to reaffirm its decision to enlarge the  
16       City of Newberg's urban growth boundary based on additional  
17       findings.

18               At the February 25, 1981 remand hearing, petitioners  
19       attempted to introduce evidence of alternative sites within the  
20       Newberg Urban Growth Boundary that had become known to be  
21       available since the county's original decision. The Board of  
22       County Commissioners refused to consider the alternative sites  
23       based on an earlier decision made at an informal Board of  
24       Commissioners session. That decision was to consider only  
25       those matters that were specifically mentioned in this Board's  
26       December 11, 1980 decision. As regards alternative sites for

1 the elementary school, the county decided it would consider  
2 only the Coppergold site. The Coppergold site was known to the  
3 school board at the time it made its decision to build on the  
4 contested site (Crater property).

5 DECISION

6 Petitioners set forth three assignments of error which  
7 directly relate to the goal exception terminology found in Goal  
8 2 and which require this Board to review Yamhill County's  
9 decision against the compelling reasons and facts standard.  
10 The compelling reasons and facts terminology found in Statewide  
11 Goal No. 2<sup>1</sup> is made applicable to this fact situation by the  
12 dictates of Statewide Goal No. 14 which provides in pertinent  
13 part:

14 "In the case of a change of a boundary, a governing  
15 body proposing such change in the boundary separating  
16 urbanizable land from rural land, shall follow the  
procedures and requirements as set forth in Land Use  
Planning Goal (Goal 2) for goal exceptions."

17 Specifically, petitioners' first assignment of error relates to  
18 the Goal 2 question "why these other uses should be provided  
19 for." Petitioners' second assignment of error relates to the  
20 Goal 2 question of "what alternative locations within the area  
21 could be used for the proposed uses." Petitioners' third  
22 assignment of error relates to that portion of the exceptions  
23 test which requires "a finding that the proposed uses will be  
24 compatible with adjacent uses."

25 Taking the first three assignments of error together we  
26 find that the Respondent Yamhill County has failed to meet the

1 compelling reasons and facts tests under Statewide Goal 2 and,  
2 therefore, we once again remand this matter to Yamhill County  
3 for further consideration not inconsistent with the following  
4 holding in this case.

5 Why these other uses should be provided for.

6 In earlier decisions by this Board, we have held that when  
7 reviewing findings related to the Goal 2 question of "why these  
8 other uses should be provided for" we would look for  
9 justification of "need" for the size parcel being considered.  
10 See for example Abrego v. Yamhill County, supra; Friends of  
11 Linn County, Inc. v. Lebanon, 1 Or LUBA 50 (1980). In  
12 reconsidering, we now determine that in order to reduce  
13 confusion and to aid in review of cases which involve the  
14 exception language of Goal 2, parcel size is more appropriately  
15 considered as part of the analysis of "what alternative  
16 locations within the area could be used for the proposed uses."

17 Therefore, our discussion of the 18.8 acre parcel size  
18 chosen by Yamhill County and the Newberg School District  
19 appears infra. We do hold, as we did in our earlier decision,  
20 that Newberg School District 29JT has shown by compelling  
21 reasons and fact that a new elementary school "should be  
22 provided for."

23 What alternative locations within the area could be used  
24 for the proposed uses.

25 We begin this discussion with a given and a presumption.  
26 The given is State Department of Education requirements provide

1 that new school sites should contain five acres plus one acre  
2 for each 100 students. Since the Newberg School District  
3 contemplates a 600 student school, a site containing 11 acres  
4 of land is required. Petitioners do not contest that 11 acres  
5 are required. The presumption we make from reading the record  
6 is that the State Department of Education site size formula  
7 includes property to be used for playfields, driveways, etc.

8 Before an urban growth boundary can be expanded the  
9 proponent of the expansion has the burden of showing by  
10 compelling reasons and facts that the use to be accommodated by  
11 the expansion can not be located within the urban growth  
12 boundary. The site selected by the School District contains  
13 18.8 acres and is outside the Newberg Urban Growth Boundary.  
14 In approving an expansion of the Newberg UGB, Yamhill County  
15 found, in summary, that although an elementary school can exist  
16 on 11 acres, the additional 7.8 acres are needed for a)  
17 roadways, b) appropriate access to insure a properly shaped  
18 site for building and playfield placement and c) to avoid  
19 lengthy litigation resulting from a possible conflict between  
20 Yamhill County and the City of Newberg's decision relating to  
21 the property in question.<sup>2</sup> Newberg originally found that an  
22 18.8 acre site was necessary and decided to expand its UGB to  
23 reflect that size site.

24 In reaffirming its choice of the 18.8 acre Crater site the  
25 county looked at only one alternative site inside the UGB:  
26 (Coppergold). The petitioners requested the Yamhill County

1 Board of Commissioners consider at least two additional sites  
2 which became known to the petitioners subsequent to Yamhill  
3 County's original decision to allow the expansion of the  
4 Newberg urban growth boundary. Petitioners' request was denied  
5 on the grounds that the Yamhill County Board of Commissioners  
6 had decided to limit its consideration of alternative sites to  
7 the Coppergold property. Yamhill County decided that other  
8 sites were beyond the scope of the notice of hearing and remand  
9 from LUBA and, therefore, would not consider them.  
10 Specifically, Yamhill County only considered the alternative  
11 Coppergold site and found as follows:

12 "2. The Board finds that the Coppergold or Pony  
13 Farm site is not a viable alternative to the proposed  
14 site under consideration in this proceeding. The  
15 School District presented extensive evidence in regard  
16 to service radius and walking routes which indicated  
17 the superiority of the proposed site over the  
18 Coopergold site. The Board finds that evidence in the  
19 Record establishes that the conditions imposed by the  
20 developer of Coppergold are excessive and cause the  
21 site to be unacceptable. Specifically, architectural  
22 review and price. In addition, the Board finds that  
23 the Coppergold site is not presently available because  
24 no school site is presently part of th Planned Unit  
25 Development of Coppergold and the developer's  
26 statement that, even if the School District meets all  
of his demands, he is only willing to negotiate on the  
possibility of selling a school site (no specific  
parcel has been identified). The Board finds that the  
other sites suggested by Mr. Pinkstaff at the hearing  
of February 25, 1981 are beyond the scope of the  
Notice of Hearing and Remand from LUBA and, therefore,  
did not consider them."

24 Sites within UGB

25 Yamhill County interpreted this Board's decision in the  
26 first Abrego case to require that on remand the only

1 alternative site to be considered within the UGB was the  
2 Coppergold property. Since the county is required by Goal 2 to  
3 support its ultimate decision by compelling reasons and facts,  
4 it erred in limiting the scope of its remand hearing. Our  
5 opinion remanded the Yamhill County Board of Commissioners'  
6 decision for several reasons only one of which was that an  
7 alternative to the Crater property had not been properly  
8 considered. At the time this Board considered the first Abrego  
9 appeal, we determined that of the alternative sites which the  
10 record revealed were then given consideration only the  
11 Coppergold site was not satisfactorily addressed. The  
12 terminology in our opinion did not restrict Yamhill County from  
13 considering alternatives or changed circumstances that became  
14 known to it subsequent to its first decision. See generally  
15 Peterson v. Lake Oswego, 32 Or App 181, 188, 574 P2d 326  
16 (1978); Jobar Corp. v. Rodgers Forge Community Assoc., 326 Md  
17 106, 202 A2d 612 (1964); Anderson, American Law of Zoning, 2d  
18 Ed, sec 20.30 et seq. (1977).

19 Petitioners introduced considerable evidence on at least  
20 one alternative site, within the urban growth boundary, which  
21 contained sufficient land to meet the school's size  
22 requirements.<sup>3</sup> When such evidence became known for the first  
23 time during a hearing at which the county was receiving new  
24 evidence, the refusal to consider the evidence for the reasons  
25 stated would not compel a reasonable person to conclude the  
26 county has sufficiently considered alternative locations as



1 required by Goal 2. See 1000 Friends v. Clackamas County,  
2 or LUBA \_\_\_\_\_ (LUBA No. 80-060, 1981).

3 Coppergold Alternative.

4 Petitioners also contend that the Coppergold site was not  
5 shown by substantial evidence to be unacceptable or  
6 unavailable. There is nothing in the record that would  
7 eliminate the Coppergold site as a school location  
8 possibility. The county's finding that the site is "not  
9 presently available" is unsupported. In addition, the  
10 statement that the

11 " \* \* \* conditions imposed by the developer of  
12 Coppergold are excessive and cause the site to be  
13 unacceptable. Specifically, architectural review and  
14 price"

15 is an unsupported conclusion.

16 There is no evidence that the School District made an offer  
17 to purchase the property contingent on it getting the necessary  
18 approvals. The county concluded the Coppergold developers'  
19 conditions were excessive.<sup>4</sup> It did not find, however, what  
20 additional work those conditions would impose on the school  
21 district; e.g. how difficult it would be to obtain the  
22 necessary approvals, etc.

23 The county's statement about the excessive nature of the  
24 developers' condition that it be granted architectural review  
25 is a mere conclusion. There is no statement of why such a  
26 condition is excessive, i.e. what, if any, hardship it would  
place on the school district.

1 As regards price, the record includes uncontradicted  
2 evidence that property inside the Newberg UGB is presently  
3 selling for between \$20,000 and \$30,000 per acre. The  
4 conclusion that the \$28,000 per acre price quoted by the  
5 developer is excessive is not a finding but a conclusion and,  
6 furthermore, in light of the price of land within the UGB, it  
7 is not supported by the record. As we said in the first Abrego  
8 case, the high cost of land within the UGB is not by itself a  
9 sufficient factor to justify the expansion of the UGB. In  
10 addition, there is no indication in the findings or the record  
11 that Yamhill County or the school district looked at anything  
12 more than bare land costs. They do not seem to have compared  
13 sites on the basis of total investment necessary to make the  
14 various sites developable. Such things as estimated costs for  
15 drainage systems, access roadways, cut and fill, etc. are  
16 usually necessary for a complete comparison of alternatives.

17 Crater Site.

18 The selected site contains more than the required eleven  
19 acres. Petitioners argue that Yamhill County violated Goal 2  
20 in failing to demonstrate with compelling reasons and facts  
21 that the entire 18.8 acre parcel is required for the proposed  
22 elementary school development. In our decision in Abrego v.  
23 Yamhill County, supra, we found the county had failed to show  
24 that the entire 18.8 acre parcel was required for the  
25 development. Specifically we stated:  
26

1 "The record indicates that at a minimum only 11 acres  
2 are needed for the school (plus one acre for  
3 roadways). The remaining acreage is proposed to be  
4 used as park land, but no finding of need for a park  
5 is contained in the contested order. The record  
6 indicates in fact that the land may not be used as a  
7 park due to financial constraints on the local park  
8 district. The land once inside the UGB may possibly  
9 be developed for purposes not presently proposed by  
10 the District. The County needs to address these  
11 issues within the dictates of Statewide Goal 2." 2 Or  
12 LUBA at 107.

13 On remand the Yamhill County Board of Commissioners again  
14 found that the entire 18.8 acre parcel is needed for the  
15 proposed school site. (See Footnote 2) The portion of the  
16 finding indicating the additional acreage is required to allow  
17 proper placement of the building is not compelling when viewed  
18 against the reasonable person standard. It does not explain  
19 why 18.8 acres are necessary to accomplish what the Department  
20 of Education indicates can be achieved on 11 acres.

21 The finding that a portion of the excess acreage is needed  
22 for access roadways is relevant only if the county first  
23 properly determines there is no adequate school site available  
24 within the UGB, a prerequisite we determine it has not met.  
25 Even then there is no requirement that the access roadways be  
26 within the UGB. The record is void of any site plan which  
27 contemplates expanding the UGB to include only the required  
28 eleven acres. The school district seems to have operated  
29 entirely on the assumption that since it can acquire 18.8 acres  
30 at a good price, then it is necessary to expand the UGB to  
31 include all 18.8 acres. As we have said previously, there are

1 inadequate findings and evidence to support that position.

2 The portion of the finding indicating the additional  
3 acreage is necessary for play fields fails to explain why the  
4 land required by the State Department of Education school site  
5 size formula (i.e. 11 acres) does not allow for sufficient  
6 playfields. Surely there is play field land included in such a  
7 formula as a 600 pupil facility would not cover all 11 acres  
8 with buildings.

9 That portion of the county's findings document which  
10 relates to its desire to avoid conflict with the City of  
11 Newberg's earlier decision to include 18.8 acres in the UGB  
12 seems to be based on Goal 2's requirement that the county's  
13 plans "be consistent with the comprehensive plans of cities \* \*  
14 \* \*" Goal 2 does not require that Yamhill County include  
15 within the UGB acreage not justified by the facts solely to  
16 make its decision consistent with Newberg's. Therefore, the  
17 county was in error in relying upon the "consistency" language  
18 in Goal 2 as support for its decision to include within the UGB  
19 acreage not otherwise justified by the facts.

20 A finding that the proposed uses will be compatible with  
21 adjacent uses.

22 As regards the Crater site, our decision in the first  
23 Abrego case was that the county failed to address evidence in  
24 the record indicating an explosives warehouse is located in the  
25 vicinity of the Crater site. On remand, the county made the  
26 following findings regarding that explosives warehouse.

1           3. The Board finds that the proposed school site  
2 is compatible with the explosives warehouse. The  
3 school site is located approximately 4,800 feet from  
4 the center of lease area to the center of the school  
5 site. The total licensed capacity of the facility is  
6 200,000 lbs. (100,000 per magazine). Using these  
7 figures on the ATF tables and assuming that the  
8 explosives are unbarricaded, there is a safety margin  
9 of 740 feet. However, if the workable storage of  
10 55,000 lbs. is utilized, the safety margin increases  
11 to 1,130 feet. The Board finds that the worst  
12 possible case situation results in an acceptable  
13 safety margin indicating the school site's  
14 compatibility; however, the Board also finds that the  
15 building would not be normally holding more than  
16 55,000 lbs. of explosives each. Further, the Board  
17 finds a strong likelihood that the warehouse lease  
18 will not be renewed when it expires in 1985, and that  
19 the school will not be open for studies until 1985.  
20 In regard to transportation of explosives near the  
21 school site, the Board finds that Pacific Powder  
22 Company has shown vigilance in complying with  
23 regulations, a good safety record in Oregon for the  
24 last 10 years, is heavily regulated by the Federal and  
25 State governments, does not pass near the school site  
26 on the majority of its routes and in all likelihood  
will not be transporting explosives near the school  
after 1985 when the lease expires."

16           A review of the record indicates that the county has  
17 supported its findings regarding the warehouse by substantial  
18 evidence. The findings indicate that the Board of County  
19 Commissioners basically decided that while there may be a risk  
20 of danger to the school, that risk is marginal based on various  
21 tables and the licensed capacity of the explosives warehouse.  
22 However, the county failed to make sufficient findings to  
23 compel a reasonable person to conclude that the transportation  
24 of explosives past the site is compatible with the location of  
25 a school at that site.

26           The explosives warehouse is a storage facility which acts

1 as the hub of a distribution wheel. Explosives in varying  
2 amounts are shipped to and from the warehouse. The record  
3 indicates that those explosives, when in transit, pass near the  
4 school site. The conclusion that the explosives laden trucks  
5 do not pass near the school on "the majority" of its routes and  
6 the conclusion that "in all likelihood" Pacific Powder Co. will  
7 not be transporting explosives near the school after 1985 when  
8 the lease expires are inadequate.

9 There are no findings to indicate the county considered  
10 exactly when the trucks carrying explosives pass by the school  
11 site, the possibility of restricting to non-school hours the  
12 times the explosives trucks pass by the site, the impact area  
13 if an explosion did occur when the explosives are in transit,  
14 the amount of explosives carried on the trucks which pass by  
15 the site, etc. It may be that these types of concerns are  
16 taken care of by state and federal regulations, but the  
17 county's findings do not indicate that to be fact. In  
18 addition, there is no finding to indicate that the explosives  
19 warehouse will, in fact, not be in operation at the time the  
20 school at the site would open for operation. There are only  
21 indications that the possibility exists the Pacific Powder Co.  
22 land lease, which is held by a private party, will not be  
23 renewed.

24 We conclude, therefore, that Yamhill County has failed to  
25 make sufficient findings, supported by substantial evidence, to  
26 compel the conclusion that expansion of the Newberg urban

1 growth boundary is necessary.

2       Based on the foregoing, it is unnecessary to address  
3 petitioner's remaining assignments of error. Kerns v.  
4 Pendleton, 1 Or LUBA 1 (1980).

5       Remanded for further consideration not inconsistent with  
6 this opinion.

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1 FOOTNOTES

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4 "PART II - EXCEPTIONS: When during the  
5 application of the statewide goals to plans, it  
6 appears that it is not possible to apply the  
7 appropriate goal to specific properties or situations,  
8 then each proposed exception to a goal shall be set  
9 forth during the plan preparation phases and also  
10 specifically noted in the notices of public hearing.  
11 The notices of hearing shall summarize the issues in  
12 an understandable and meaningful manner.

13 "If the exception to the goal is adopted, then  
14 the compelling reasons and facts for that conclusion  
15 shall be completely set forth in the plan and shall  
16 include:

17 "(a) Why these other uses should be provided for;

18 "(b) What alternative locations within the area  
19 could be used for the proposed uses;

20 "(c) What are the long term environmental,  
21 economic, social and energy consequences to the  
22 locality, the region or the state from not applying  
23 the goal or permitting the alternative use;

24 "(d) A finding that the proposed uses will be  
25 compatible with other adjacent uses."

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29 "1. The Board finds that the entire 18.8 acre  
30 parcel is needed for the proposed school site. A  
31 minimum of 11 acres is needed for the school site with  
32 an additional requirement of at least one acre for  
33 roads. The remaining acreage is needed as a result of  
34 the parcel's shape and in order to provide the maximum  
35 flexibility in the placement and development of the  
36 school site. In order to provide appropriate access  
37 to the school site, the School District intends to  
38 construct a roadway along the entire southern boundary  
39 of the parcel so that the School can efficiently  
40 service both the City in an easterly direction, and  
41 the County in a westerly direction. The Board finds  
42 that this is a reasonable and prudent means of  
43 accessing the parcel. The Board further finds that  
44 this access problem severely limits the reduction of



1 the proposed parcel so that the only realistic means  
2 of reducing the parcel would be to reduce its northern  
3 boundary. This would result in a long, narrow  
4 parcel. The Board finds that a long, narrow parcel  
5 severely restricts the placement of the school  
6 building and play fields, resulting in difficulty in  
7 maintaining adequate supervision over the children.  
8 The Board further finds that Newberg School District  
9 has attempted to develop energy efficient schools, as  
10 evidenced by the Springbrook Intermediate School, and  
11 any limitation upon the school site as a result of the  
12 parcel shape would impair the utilization of energy  
13 conservation in that a narrow site would impair facing  
14 and siting said school in the most energy efficient  
15 manner. The Board also finds that more than 12 acres  
16 is needed and that, while an argument may be made that  
17 one or two acres may still be shaved off of the  
18 northern perimeter, such shaving would provide little  
19 or no public benefit in that it would create a  
20 conflict between the decisions of Yamhill County and  
21 the City of Newberg resulting in further and lengthy  
22 litigation when the evidence is that a school is  
23 needed to alleviate present overcrowding in the  
24 Newberg School District and when there is no evidence  
25 in the Record beyond mere speculation that any alleged  
26 excess land would be used for anything except a school  
and school related facilities."

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Petitioners said in a letter dated February 22, 1981  
addressed to the Yamhill County Board of Commissioners:

"In our survey of realtors we were able to locate  
several possible alternate locations. One stands out  
and we'd like to offer it for comparison with the  
Crater site. [subject property]

"The property we have found is a fifteen acre  
parcel located on Columbia Drive between College  
Avenue and Main St. (Columbia Dr. runs east-west  
connecting College Ave. with Chahalem Dr.  
approximately eight tenths of a mile south of  
Foothills Dr.) It is within the Urban Growth  
Boundary, is serviced with sewer and water, and is  
located on an existing road. The land is flat and  
presents no obvious developmental challenges. The  
asking price is \$25,000 an acre. The Crater property  
[subject site] by contrast is, as defined by the  
Newberg Comprehensive Plan (page 8), as an area

1 subject to natural disasters and hazards. The costs  
2 of measures taken to address the drainage deficiencies  
3 of the Crater site should be considered part of the  
4 total cost of this site. Additionally, the School  
5 District proposed to extend Foothills Dr. from the  
6 east of the Crater site to Chahalem Dr. The costs of  
7 this road building project should be added to the  
8 total cost of this site. We feel that by considering  
9 developmental cost factors the 'high priced' parcels  
10 within the Urban Growth Boundary become more  
11 competitive with the Crater property in terms of  
12 costs.

13 "The real advantage of a site within the Urban  
14 Growth Boundary is location. The Columbia Drive site  
15 is approximatey one mile further away from the  
16 dynamite storage facility than the Crater site. A  
17 school at the Columbia site would be centrally located  
18 for its service area and could better serve as a  
19 center for neighborhood and community activities.  
20 Most importantly, the Columbia Drive site would more  
21 efficiently serve community needs. It would encourage  
22 pedestrian and bicycle traffic and decrease  
23 transportation costs such as bussing."

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25 There is evidence in the record that a nine acre parcel was  
26 presented to the Board of County Commissioners but it was not  
27 considered under the limited scope on remand. Given the fact  
28 that the school board needs at least 11 acres for an acceptable  
29 site, the facts on their face indicate that the nine acre site  
30 would not be an acceptable alternative and, therefore, it was  
31 not necessary that the county make findings regarding that  
32 site. Rockaway v. Tillamook County, 1 Or LUBA 254 (1980); Lee  
33 v. City of Portland, \_\_\_ Or LUBA \_\_\_ (LUBA No. 80-142, 1981).

34 4

35 A letter from Ronald J. Bowden, Senior Vice President, CL7  
36 Development, Inc., to Dr. Gerald Post, District Superintendent  
37 of Newberg School District stated:

38 "This letter is written as answer to your  
39 questions relative to the school district purchasing  
40 property within Coppergold Park.

41 "At the time the application process for the  
42 proposed development was started, it was our  
43 understanding that the school district did not wish to  
44 acquire land for a school site and I believe a letter  
45 to that effect was sent to the City agency. As such,  
46 approvals now obtained are based on the preliminary

1 plat as submitted. To alter any of the proposed uses,  
2 would mean starting the entire process over again, and  
3 to do so could ultimately mean the loss of existing  
4 approvals. We have no desire of entertaining that  
5 possibility. Should the school district be able to  
6 get approvals at their own expense without changing  
7 the existing preliminary approvals, we might, and I  
8 stress might, entertain negotiations. If that were to  
9 occur, we would require as a minimum, architectural  
10 review and approval, plat changes and any changes in  
11 existing work to be reimbursed, and a minimum price of  
12 \$28,000 per acre."  
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## STATE OF OREGON

## INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION      DATE: 7/22/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: ABREGO V. YAMHILL COUNTY AND NEWBERG SCHOOL DST. 29JT  
LUBA NO. 81-053

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

This appeal is the second time petitioners have appealed Yamhill County's decision to expand Newberg's urban growth boundary. The purpose of the proposed expansion is to provide a site, within the UGB, for a 600 student elementary school. In our original decision, a copy of which is attached for your convenience, we remanded the matter. This time the petitioners appeal Yamhill County's decision on remand.

We once again remand the decision. We find that Yamhill County has again failed to properly consider alternative sites which appear to exist within the UGB. In addition, we find that the school district requires only 11 acres for the school but the site chosen (which is outside the existing UGB) contains 18.8 acres. The county fails to explain with compelling reasons and facts why the excess 7.8 acres are necessary.

Finally, we find that while the county has properly considered the impact of a nearby explosives warehouse on the compatibility of the chosen site, it failed to sufficiently consider the risks inherent in the transportation of explosives to and from the warehouse. The transporting of explosives requires trucks to pass in close proximity to the proposed school site.

The Board is of the opinion that oral argument would not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



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BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON

|                 |   |                    |
|-----------------|---|--------------------|
| Abrego,         | ) |                    |
|                 | ) |                    |
| Petitioner(s),  | ) |                    |
|                 | ) |                    |
| v.              | ) | LUBA 81-053        |
|                 | ) | LCDC Determination |
| Yamhill County, | ) |                    |
|                 | ) |                    |
| Respondent.     | ) |                    |

The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA 81-053 concerning the allegations of Statewide Goal violations.

DATED THIS 12<sup>th</sup> DAY OF August, 1981.

FOR THE COMMISSION:

  
W. J. Kvarsten, Director  
Department of Land  
Conservation and Development

WJK:ER:cp  
6345A/p3/2B