

2/11/98

Thanks Jerry
Steve J has reviewed and
has what he needs for now.
We're waiting for Kloos to give
us dates they can meet again.
Kent.

To: DCF files
From: Jerry Marshall
Re : Kloos letter of 1-8-98.

In response, a mtg. was held w/B.Kloos,
Leslie Scott, Russell Pope, JK, & Kent Howe on 1-29-98.

It was decided that we would request legal counsel
to join the above parties in a meeting to be scheduled
soon (see copied note above).

-JK

2-13-98.

→ Mtg subsequently set up for 3-6-98, but Bill Kloos
cancelled (no-show). Re-set for 4-9-98.

Resolution from mtg. of 4-9-98: DCF's apply for a new
verification per CC 16.251(1) only. understood Fair is an
amorphous activity. -JK (w/Kent, Steve Marshall, Kloos,
Pope, Leslie Scott) on 4-9-98.

LAW OFFICES OF
JOHNSON · KLOOS · SHERTON
A PROFESSIONAL CORPORATION
LAND, AIR & WATER LAW

ALLEN L. JOHNSON

BILL KLOOS

CORINNE C. SHERTON

RECEIVED BY
LAND MANAGEMENT

JAN 9 1998
AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

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January 8, 1998

*see JK's file note
dated 2-12-98.*

Jerry Kendall, Planner
Lane County Land Management Division
125 E. 8th Ave.
Eugene, OR 97401

Re: Oregon Country Fair

Dear Jerry:

Thank you for your letter of December 5, 1997.

I have the documentation from PA 2813-90 in my file and have reviewed those materials. That application resulted from the OCF's discussions about how it should proceed to relocate some booths on the site due to the fact that the Long Tom River was wandering into the area of the improvements, thus making some changes necessary. County staff suggested applying for an alteration, and the OCF followed the suggested procedure.

The thrust of your December 5 letter seems to be that by applying for an alteration at the suggestion of staff, the OCF also received a second or supplemental verification of the scope of its nonconforming use. The new verification was more specific than the 1985 verification, and the more specific verification is now binding on the OCF.

It seems to me that the shortcoming in this view is that it is premised upon the assumption that in 1990 the OCF was the subject of a land use decision that it did not apply for. That is, it applied for an alteration in 1990, and what it received was an alteration and a verification. This assumption is incorrect, I believe.

Initially, the "verification" of a nonconforming use and the "alteration" of a nonconforming use are two entirely different processes. "Alteration" is a creature of statute, including both the standards and the procedures for same. See ORS 215.130. The "verification" process, until 1997 at least, has been addressed only in the Lane Code. See LC 16.251(1). Prior to 1997, the statute was silent about "verification" of nonconforming uses.

Furthermore, the Lane Code addresses both the verification process and the alteration process. See LC 16.251(1), (11). These are discrete processes with discrete standards. In summary, it would be erroneous to say that a landowner, who holds a nonconforming use verification, and who applies to the County for an alteration, has also applied for a verification or a modification of the existing verification.

I hope this clarifies the position of the OCF in a way that is useful for our continuing dialog. I must say that I remain a bit unclear as to the county's objective in pressing the issue of the scope of the

Mr. Jerry Kendall
January 8, 1998
Page 2

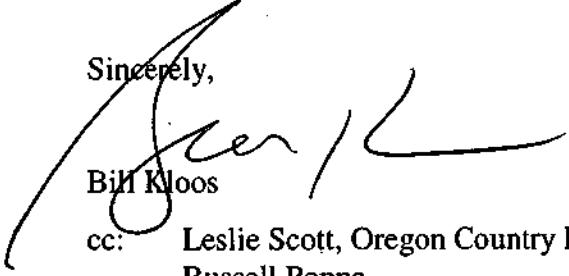
nonconforming use determination. Perhaps staff could share with the OCF some insight as to what it is trying to accomplish on this issue.

In addition, to the extent that it may be relevant to how the County proceeds, I would point out that the applicable state statute has recently changed. See Oregon Laws 1997, chapter 394. The most significant change made the 1997 Act is to delete from ORS 215.130(5) the requirement that any requested alteration of a nonconforming use be necessary "to reasonably continue the use." This greatly liberalizes the standard for making changes to nonconforming uses. The remaining standard in the statute is "no greater adverse impact to the neighborhood." ORS 215.130(9)(a). For a use like the OCF, whose activities are clustered in the middle of a couple of hundred acres, this ensures much more flexibility in how the use is conducted and altered.

As a practical matter, the exact footprint of the uses on the site may have to be juggled a bit over time for a number of reasons, including due to the wanderings of the Long Tom River. The original 1985 nonconforming use determination allows ample room to do this without getting discrete approvals from the County for alterations. Again, this discussion focuses on land uses, not buildings.

I look forward to your thoughts on this, and my client and I would be happy to meet with you to discuss this further.

Sincerely,


Bill Kloos

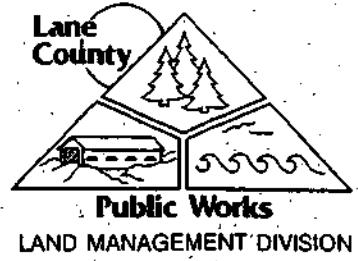
cc: Leslie Scott, Oregon Country Fair, General Manager
Russell Poppe

87faira

- agreed at meeting of 4-9-98, OCF to
simply apply for NCO verification.

-dk.

→ Attended by Kent Howe
Steve Vondas
Bill Kloos
Leslie Scott
Russel Poppe
Jerry Kendall



December 5, 1997

Bill Kloos
Johnson, Kloos & Sherton
767 Willamette
Eugene, Or. 97401

Re: Oregon Country Fair/your letter of November 11, 1997

Dear Bill:

While the initial nonconforming use application is admittedly vague, a subsequent verification, PA 2813-90 is more specific. It contains documentation as to the number of booths, footprint of the "figure 8", uses occurring within the "8" and the area entertained under PA 2813-90, as well as aerial photos of those areas and beyond. That file was not mentioned in your letter and is available for your review.

Your response is awaited, otherwise the letter of September 5, 1997 still stands.

Sincerely,

A handwritten signature in cursive ink that appears to read "J. Kendall".

Jerry Kendall/Associate Planner (541-682-4057)

c: Kent Howe/Planning Director

Oregon Country Fair
c/o Leslie Scott
P.O. Box 2972
Eugene, Or. 97402

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November 1, 1997

Jerry Kendall, Planner
Lane County Land Management Division
125 E. 8th Ave.
Eugene, OR 97401

Re: Oregon Country Fair; your letter of September 5, 1997

Dear Jerry:

Leslie Scott of the Oregon Country Fair has given me your September 5, 1997 letter to the OCF and asked me to coordinate the appropriate response. With this letter I want to acknowledge receipt of your letter and let you know the Fair's preliminary thoughts on the issue.

I have had a number of discussions with the OCF in recent years over its nonconforming use status and what applications for reviews and approvals might be necessary or appropriate for the OCF to reasonably continue the use in light of the changing conditions on the site. I have also had the opportunity to review the original nonconforming use determination made by the county in 1985 (PA 1955-85) in response to the Fair's application for such a determination. Based on my discussions with the Fair staff and my review of the documents, I can offer a couple of general observations about the status of the nonconforming use.

First, the OCF has a 1985 nonconforming use verification that it can rely on and operate within. The scope of that verification is quite broad, and its terms are quite general. It recognizes an annual outdoor assembly including activity areas with booths, toilets, staging areas, parking, etc. It does not limit the gathering to specific dates, to a specific length of time, or to a specific number of attendees. The authorization is for the Fair's total property area, not just a part of it. It does not specify a particular number of booths or other structures. It does not establish a particular footprint for activities, booths or other structures. The verification could have been much more specific. Instead, the County chose to be much more general, recognizing, perhaps, the historically loose and changing nature of the use. This characterization of the verification reflects my review of the relevant documents. If there are relevant documents to the contrary, which I have missed in my review of the voluminous county files, I would like to review those as well.

Second, as a result of the very general scope of the 1985 nonconforming use verification, the Fair has considerable flexibility to make adjustments in the footprint of its use as conditions warrant without seeking county approval for an "alteration" of a nonconforming use. This would include making changes in the location of booths and related facilities in the interior of the site.

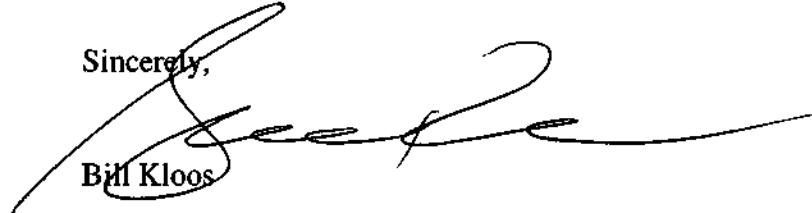
Finally, the position I have outlined above relates to nonconforming use aspects of compliance with the

Mr. Jerry Kendall
November 11, 1997
Page 2

zoning code. It does not relate to compliance with the building code or the sanitary code as either may apply to the site. The Fair understands that clearly.

I hope you will give the points above your consideration. The Fair looks forward to resolving the issues raised in your September 5 letter and believes the points above are certainly relevant.

Sincerely,



Bill Kloos

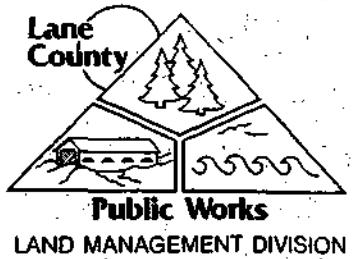
cc: Leslie Scott, Oregon County Fair, General Manager

Russell Poppe

86faira

September 5, 1997

TAS copy



Oregon Country Fair
c/o Leslie Scott
P.O. Box 2972
Eugene, Or. 97402

Re: "Chela Mela" & "Hoarse Chorale" areas

Dear Leslie:

As we discussed on 8-8-97, it appears that booths and stage(s) have been relocated to an area not previously occupied or approved for such uses.

PA 2813-90 was for "restoration/relocation" of up to 50 booths and the placement of restroom facilities, extension of the drinking fountain system, and the creation of green space (per letter dated 4-25-90 by Arna Shaw) into an area south of the main "figure 8", as shown on the enclosed plot plan submitted along with PA 2813-90. Condition #4 of that approval stated that "This approval is valid only for the areas depicted in the submitted site plan" (see PA 2813-90 enclosed).

The "Chela-Mela" and "Hoarse Chorale stage" areas are beyond the bounds approved under PA 2813-90, in regards to both area and uses.

To cure this apparent violation, application for an "Alteration of a Nonconforming Use (NCU) is required, per LC 16.251(11) (ordinance enclosed). Note that the criteria found under LC 16.251(12) & (1) will need to be addressed. This application is processed at the Hearings Official level per LC 14.300, with an attendant fee of \$1155. Since there is always the possibility that this action will be contested and appealed, it would be wise to make application as soon as possible, so that the issue can be resolved prior to the '98 fair.

We both have come to realize that the OCF, as a NCU, falls under the less than straightforward area of land use law governing such uses. As such it would be helpful to all parties if the application included

an inventory of all booths, stages and other structures which are south of "Indian Creek Road" as labeled on the enclosed plot plan, and that they be differentiated between those approved under PA 2813-90 and those that were not. This "Alteration" application can be an opportunity for the OCF to legitimize not only the unauthorized uses that occurred at the '97 fair, but also to add any future structures or uses.

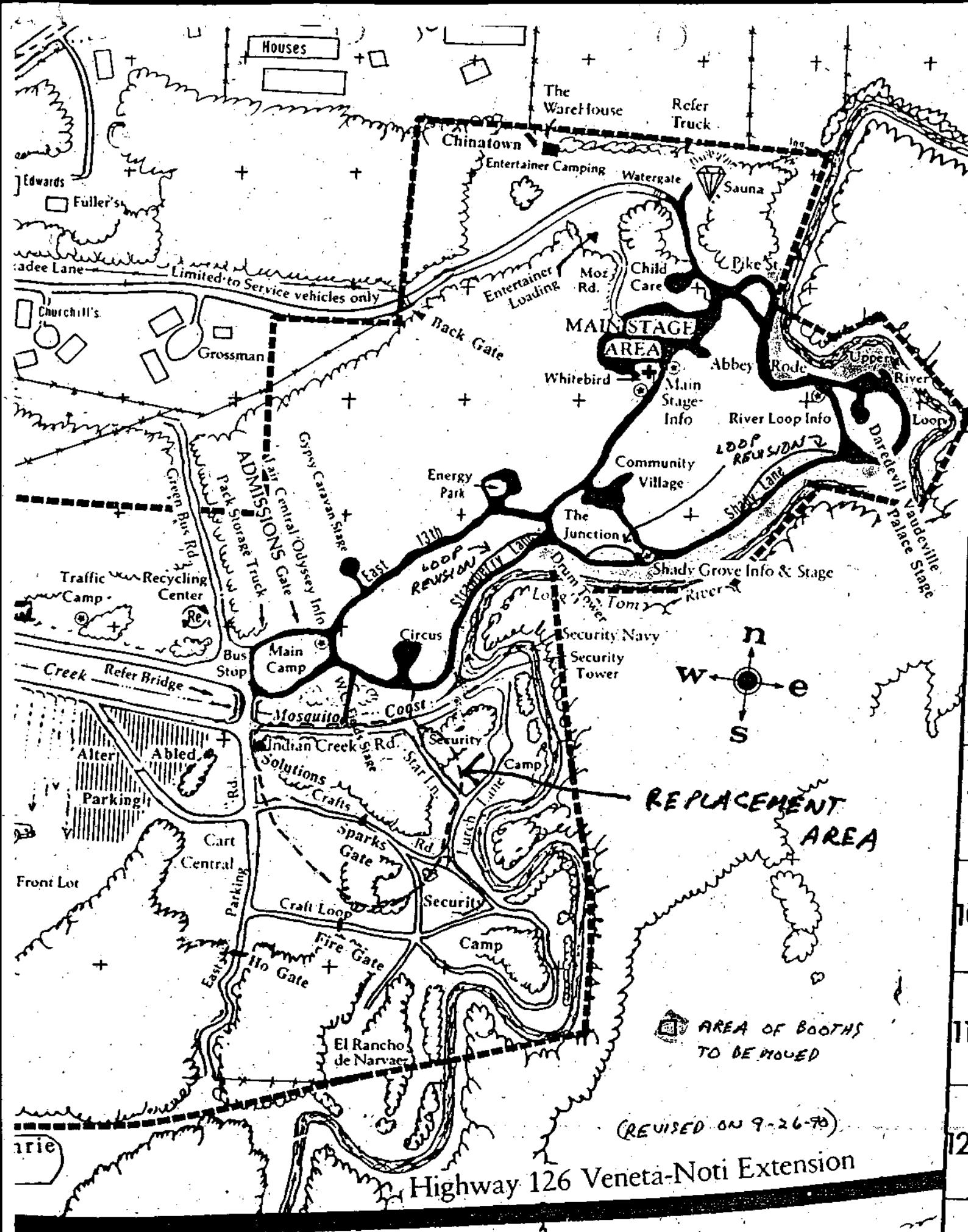
Sincerely,

J. Kendall

Jerry Kendall/Associate Planner (541-682-4057)

c: Kent Howe/Planning Director
Roger McGuckin/Building Official
Jane Burgess/Code Enforcement
George Classen/Environmental Health

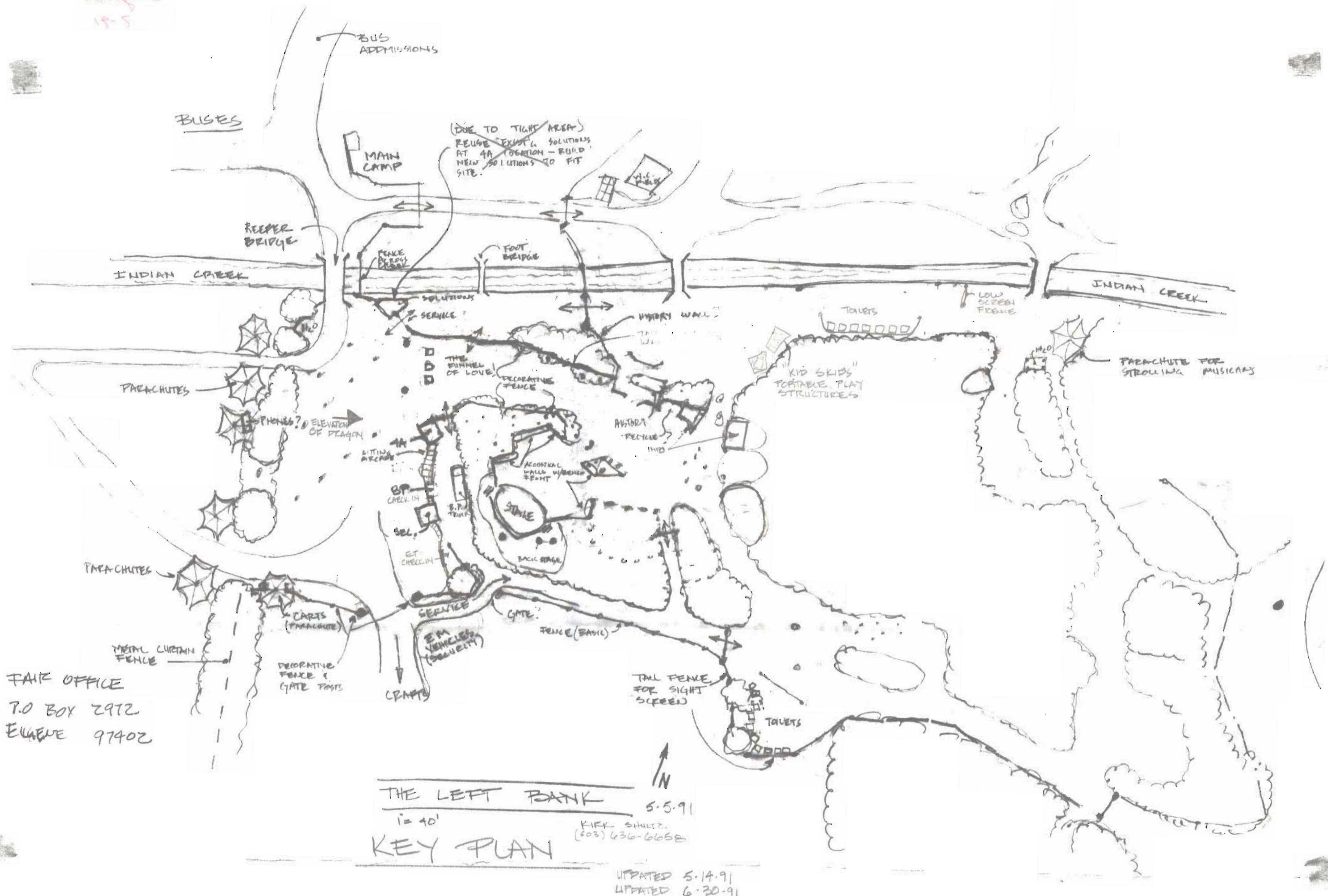
enclosures: PA 2813-90
LC 16.251
Land Use Application form



(REVISED ON 9-26-90)

Highway 126 Veneta-Noti Extension

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Jungles
18-5



JL file copy
re'd 7-5-91

Left Bank
original

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