

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an Appeal of a Planning Director)	Case File No.
Decision Approving an Application for Design)	Z0322-19-D Appeal
Review for a Bank.)	(Chase Bank)

A. SUMMARY

1. The applicant is Josh Behr of Ankrom Moisan Architecture. The owner is Roger Wampler.
2. The appellant is Josh Behr (on behalf of JP Morgan Chase Bank).
3. The subject property is located at 8869 Southeast 82nd Avenue, Happy Valley, Oregon 97086. The legal description is T1S, R2E, Section 29AA, Tax Lot 6100, W.M. The subject property is approximately .14 acres and is zoned CC – Corridor Commercial.
4. On January 30, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. At the conclusion of the public hearing, the record was left open one week for submission of new evidence, one additional week for responses to the new evidence, and one additional week for the applicant’s final legal argument.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing on this application on January 30, 2020. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearings, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the Planning Director’s decision, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

2. At the hearing, county planner Anthony Riederer, Johnny Gish, and Rick Nyes discussed the Planning Director's decision.
3. Elaine Albrich and Brad Kilby testified in favor of the application.
4. No one testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer left the record open one week for submission of new evidence, one additional week for responses to the new evidence, and one additional week for the applicant's final legal argument.

C. FACTS

This case involves the appeal of a Planning Director decision approving design review for a bank. A design review application is subject to a type II procedure, whereby the decision is made by the Planning Director. The Planning Director approved the design review application.¹ This appeal followed.

The subject property is located at 8869 Southeast 82nd Avenue (82nd Avenue), Happy Valley, Oregon 97086, on the west side of 82nd Avenue between Southeast Cornwall Avenue and Southeast Lindy Street. The applicant proposes to redevelop an approximately 24,585 square foot lot within the existing Fred Meyer shopping center. The applicant proposes to remove the existing restaurant and construct a 3470 square foot bank building with a drive-thru ATM.

D. DISCUSSION

The proposed bank is a permitted use in the CC zone. The application is for design review of a permitted use. There is no opposition to the proposed bank. The applicant appealed the Planning Director's decision regarding some of the imposed conditions of approval. It would be a waste of the County's money and resources to review and repeat all of the unchallenged findings. I have reviewed the Planning Director's decision, and I agree with his findings. Therefore, I adopt and incorporate the Planning Director's findings and conclusions in this decision, except as discussed further.

¹ Under ZDO 1307.03(B), the Planning Director includes "any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]."

The only issue in this appeal is the Planning Director's decision to impose conditions of approval regarding improvements to 82nd Avenue. In particular, the Planning Director imposed conditions of approval D.3 and E, which provide:

"3. Design and construct SE 82nd Ave to standards required by Clackamas Regional Center Design Plan and Comprehensive Plan Map X-CRC-2:

"Donate required right-of-way to ensure a 51-foot half street right-of-way width along SE 82nd Ave

"37 feet paved width from centerline, including half of a center turn lane.

"Two 12-foot travel lanes

"8-foot wide bike lane

"6-inch curb

"5.5-foot landscape strip with street trees

"8-foot unobstructed sidewalk"

"E. Oregon Department of Transportation Recommended Conditions:

"Curb, planter strip/furnishing zone, sidewalk, cross walk ramps, bike lanes (8ft) and road widening shall be constructed as necessary to be consistent with local, ODOT and ADA standards (see attached Figure X-CRC-2).

"If right of way donated to ODOT as necessary to accommodate the planned cross section shall be provided. The deed must be to the State of Oregon, Oregon Department of Transportation. The ODOT District contact will assist in coordinating the transfer. ODOT should provide verification to the local jurisdiction that this requirement has been fulfilled. The property owner must be the signatory for the deed and will be responsible for a certified environmental assessment of the site prior to transfer of property to the Department."

The conditions of approval require the applicant to dedicate 21 feet of right-of-way and also construct 250 linear feet of half-street improvements to standards required by Clackamas Regional Center Design Plan and Comprehensive Plan Map X-CRC-2. The basis the County imposed the conditions of approval under is Clackamas County and Zoning Development Ordinance (ZDO) 1007.02(A), which provides:

“All roadways shall be developed according to the classifications, guidelines, tables, figures, and maps in Chapters 5 and 10 of the Comprehensive Plan and the provisions of the Clackamas County Roadway Standards.”

The portion of 82nd Avenue fronting the subject property is identified in Chapter 10 of the comprehensive plan as proposed to be improved to the requirements illustrated in Figure X-CRC-2, which is what requires, among other things, the dedication of 21 feet of right-of-way and improvement of the 250 linear feet of roadway. The applicant appealed the Planning Director’s decision, arguing that the conditions of approval requiring improvements to the standards of Figure X-CRC-2 are unconstitutional takings because the exactions are not roughly proportional to the impacts of the proposed development under *Dolan v. City of Tigard*, 512 US 374 (1994).

Until recently, the conditions of approval at issue would likely have passed constitutional muster. Generally, an exaction (that requires relinquishment of a property right) may not be required unless the local government could otherwise deny the application. In the present case, the County could deny the application for failing to comply with ZDO 1007.02(A) unless the conditions of approval at issue are imposed. The County would have to show that there is an essential nexus between the reason the application could be denied and the exaction required. In other words, the reason for denial is the problem, and the exaction is the solution. There is no dispute that the proposed exaction would be a solution to the problem of satisfying ZDO 1007.02(A). The County would also have to show the proposed exaction is roughly proportional the impact of the proposed development. In other words, the exaction must only solve the problem created by the proposed development and not be an excuse to solve other problems that were not created by the proposed development. Until recently the County could very plausibly argue that the proposed exaction is only solving the problem of the frontage of the subject property being out of compliance with Figure X-CRC-2 and would likely have prevailed. The proposed solution solves the problem that would be a basis of denial and is roughly proportional to the problem created by the proposed development (that the subject property does not comply with Figure X-CRC-2).

In *Hill v. City of Portland*, 293 Or App 283 (2018), however, the court of appeals held that an exaction was not permissible merely by “simply demonstrating that [the local

government's] approval criteria allow it to deny a permit on the ground that an existing right-of-way does not meet design standards.” *Id.* at 290. Under *Hill*, the County must now apply the *Nolan/Dolan* essential nexus/rough proportionality test to the impacts of the proposed development in general rather than to merely whether it satisfies the local design standards.

The County agrees with the applicant that the dedications required by Figure X-CRC-2 are not roughly proportional to the impacts of the proposed development, which amount to 82 additional vehicle trips over the amount generated by the restaurant use that would end. The County employed a methodology imported from the City of Tigard and proposed the following amendments to the conditions of approval:

“D.3 Prior to Development Permit: Design and construct an ADA compliant 8-foot wide sidewalk .5 foot off the ultimate public right-of-way at an elevation consistent with the existing roadway cross slope. The newly constructed ADA compliant sidewalk shall taper to the ultimate location from the existing sidewalk on the north and south limits. The plans shall also include the removal of the existing sidewalk and place landscaping in between this existing curb and the newly constructed sidewalk.

“E. Prior to Certificate of Occupancy: The applicant shall dedicate an additional 21 feet of right-of-way to ODOT. The deed must be to the State of Oregon, Oregon Department of Transportation. The ODOT District contact will assist in coordinating the transfer. ODOT should provide verification to the local jurisdiction that this requirement has been fulfilled. The property owner must be the signatory for the deed and will be responsible for a certified environmental assessment of the site prior to transfer of the property to the Department.”

This amendment was based on an equation from the City of Tigard methodology which provides as follows:

$$\frac{\text{SDC}}{\text{Expected Recovery Rate (17\%)}} = \text{Total Impact of Project} - \text{SDC Fee} = \text{Unmitigated Impact}$$

The methodology is somewhat complicated and is explained in detail in Exhibit 9. In a nut shell, if the cost of the exaction is less than the Unmitigated Impact from the equation above then the exaction is roughly proportional to the impacts of the development.

I am not sure that this is the proper way to determine rough proportionality as there is an apples to oranges problem, but both the County and the applicant agree to this method, so I will assume for the purposes of this decision that this is the proper way to determine rough proportionality.

Under this methodology the Unmitigated Impact is \$281,652.05, and that number is not disputed by the parties. The County determined the cost of the exaction to be \$168,566. The County based its estimate on the applicant's estimated cost for constructing 1696 square feet of sidewalk of \$16,960 and an estimated value of the 4459 square feet that would be required by a 21 foot dedication of \$151,606. The \$151,606 figure is based on comparisons such as property acquired by the County from another bank on 82nd Avenue. The applicant argues that the County's estimates are significantly undervalued. According to the applicant, the actual value of the 4459 square feet that would have to be dedicated is \$280,800 and the actual cost of the required improvements would be 158,580, which is well above the \$261,652.05 Unmitigated Impact number. The \$280,000 figure is based on 18% of the purchase price of \$1,560,000.

The 4459 square feet is approximately 18% of the subject property. The applicant has provided a current appraisal of the property that determines that the best and highest use of the property would be as vacant land and that it has a current market value of \$960,000.² The appraisal states that the purchase price of \$1,560,000 is overvalued. As the applicant explains, the County's appraisal is based on outdated comparisons. While I do not agree with the applicant that the value of the property is \$1,560,000, I do agree with the professional appraisal that values the property at \$960,000. The professional appraisal is current and is based on the property in question, which I find to be more persuasive than the County's outdated comparisons based on other properties. 18% of \$960,000 is

² The open record period allowing for responses to new evidence submitted during the initial open record closed at 4:00 p.m. on February 13, 2020. The applicant apparently submitted its responses to the new evidence sometime between 4:00 p.m. and 5:00 p.m. While technically this was after the open record period had closed, I do not see that there would be any prejudice to anyone's substantial rights to allow the evidence in the record. This occurred at the end of the responsive evidence period – in other words no more evidence would have been able to be submitted by anyone responding to the applicant's evidence. The only thing left to be submitted was the applicant's final legal argument. There was no prejudice to the County's substantial right as it would not have been able to respond to the applicant's evidence even if it had come in before 4:00 p.m. There was no prejudice to the Hearings Officer, as I did not look at any of the evidence until well after February 13, 2020. I do not see that the hour at most delay had any effect at all. Therefore, the applicant's evidence is properly part of the record.

\$172,800. The applicant has also provided more persuasive estimates regarding the cost of making the improvements that would be required under the conditions of approval in the Planning Director's decision in an amount \$158,580. Those two figures result in a cost of the exaction of \$331,380, which exceeds the Unmitigated Impact. Therefore the proposed exaction is not roughly proportional to the impacts of the proposed development.

The applicant offered to provide alternative exactions that only require the dedication of nine feet of right-of-way along 82nd Avenue and reconstruction of the public sidewalk to a width of eight feet, modified at existing mature street trees.³ Therefore, the exactions agreed to by the applicant are imposed as conditions of approval.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** the application for design review in Z0332-19-D, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

A. General Conditions:

1. Approval of this land use permit is based on the submitted revised written narrative and plan(s) filed with the County on July 18, 2019, with revisions submitted on August 15, 2019 and November 19, 2019. No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these document(s) and the limitation of any approval resulting from the recommendation described herein.
2. The applicant is advised that they may take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Wendi Coryell, 503-742-4657 or at wendicor@clackamas.us.
3. Prior to the SUBMISSION of building permits, the applicant shall submit a statement of use form to Wendi Coryell. She can be contacted at 503-742-4657 or

³ The precise details of the exactions are provided in Attachment 4b to the applicant's January 28, 2020 letter.

wendicor@clackamas.us . The statement of use is used to calculate the applicable System Development Charges. These SDC's are included in the final calculation of the building permit fees for new development projects.

4. The decision is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision (ZDO 1102.05). During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved design review project. A "major development permit" is:
 - a. A building permit for the structure or
 - b. A permit issued by the County Engineering Division for frontage improvements required by this approval.
5. This Design Review approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.
6. The approval of the application granted by this decision concerns only the applicable standards for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

B. Planning and Zoning Conditions:

1. Prior to issuance of building permit, the applicant shall submit revised site drawings demonstrating a physical connection between the proposed structure and the linear wall element along 82nd Avenue, so as to better create the sense of architectural presence along the frontage. This is an additional design element to support the

- proposed modification to the building setbacks requirement along 82nd Avenue, as available through ZDO 1005.07.
2. Prior to issuance of building permit, the applicant shall submit a site drawing demonstrating a landscape irrigation system which meets the standards of ZDO 1009.10(M).
 3. Prior to issuance of certificate of occupancy, applicant shall submit a signed maintenance contract guaranteeing the landscape materials for one year from the date of installations or provide a performance surety pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance, covering the landscape maintenance costs for the one-year period, per ZDO 1009.10(F).
 4. Prior to issuance of certificate of occupancy the landscaping installation, lighting, and irrigation system shall be inspected to ensure compliance with submitted drawings and the standards of ZDO 1009.
 5. Prior to the issuance of building permits, the applicant shall submit a final proposed signage plan demonstrating compliance with the dimensional standards of ZDO 1010.

C. Building Code Division Conditions:

1. All construction shall comply with current Oregon Structural Specialty Code and any other relevant codes. All required building permits shall be obtained and received before final occupancy approval.
2. All applicable development permits (grading and erosion control, etc.) shall be obtained prior to any construction.

D. Clackamas County Engineering Conditions

1. **Prior to site improvements:** a Development Permit is required from the Engineering Department for review and approval of frontage improvements, erosion control Best Management Practices implemented, sight distances and the driveway improvements. The permit shall be obtained prior to commencement of site work and Certificate of Occupancy. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division and pay a plan review and inspection fee. The fee will be calculated as a percentage of the

construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit Application.

2. **Prior to Site Improvements:** Submit approvable construction Plans showing all required improvements. All proposed and required improvements shall be designed, constructed, inspected and approved, or financially guaranteed, pursuant to *Clackamas County Roadway Standards*:
3. Design and construct SE 82nd Ave to standards detailed in the applicant's January 28, 2020 Attachment 4b consisting of a dedication of nine feet of right-of-way along 82nd Avenue and reconstruction of the public sidewalk to a width of eight feet, modified at existing mature street trees.
4. Design and construct the onsite parking area to standards required by ZDO 1015:
 - a. A 5 foot unobstructed ADA compliant sidewalk from the public right-of-way to the public building entrance, per Standard Detail S960.
 - b. Provide a striping and circulation plan showing parking stall of 8.5 feet wide and 16 feet in length with a drive aisle minimum width of 24 feet, per Standard P100.
 - c. Provide a signing plan for the parking and maneuvering area meeting the Manual for Uniform Traffic Control Devices (MUTCD).
 - d. Parking and maneuvering area shall be paved and constructed to the structural section of Standard Detail R100 with a minimum 8" of ¾"-0" aggregate base and 3" of asphalt concrete pavement.
 - e. All curbs that carry, direct or channel stormwater shall be type "C", per Standard Detail S100.
 - f. Provide a minimum of 1 clearly marked, securely mounted, and lighted bicycle parking within 50 feet of the public building entrance.
 - g. Maintain positive drain flow throughout disturbed area using erosion control Best Management Practices.
5. Submit approved set of plans and permit for stormwater management from Water Environmental Services

6. Submit approved set of pans and permit for domestic water and fire suppression from Clackamas River Water.
7. **Prior to Final Inspection:** the applicant shall obtain written approval from Clackamas Fire Marshal indicating adequate emergency services access is provided.

E. Oregon Department of Transportation Recommended Conditions:

1. If right of way donated to ODOT as necessary to accommodate the planned cross section shall be provided. The deed must be to the State of Oregon, Oregon Department of Transportation. The ODOT District contact will assist in coordinating the transfer. ODOT should provide verification to the local jurisdiction that this requirement has been fulfilled. The property owner must be the signatory for the deed and will be responsible for a certified environmental assessment of the site prior to transfer of property to the Department.

F. Water Environment Services Conditions:

The following General Conditions shall apply:

1. The proposed development is located within the service area of Water Environment Services (WES) and shall be subject to WES Rules and Regulations, and Standards (“WES RR&S”), in accordance with the following adopted ordinances:
 - a. Water Environment Services Rules and Regulations, July 2018, Ordinance No. 03-2018
 - b. Sanitary Sewer Standards, Clackamas County Service District No. 1, July 1, 2013.
 - c. Stormwater Standards, Clackamas County Service District No. 1, July 1, 2013.
2. The applicant shall procure the necessary plan approvals, and permits in accordance with WES RR&S for sanitary sewer services and surface water management, including erosion control requirements.
3. Prior to plan approval, all submittals shall be reviewed for compliance with WES RR&S and Conditions of Approval. All sanitary and stormwater management plans and reports, which are submitted for review and approval, shall be stamped and

- signed by a civil engineer licensed by the State of Oregon. The project construction, specifications, and testing must be completed under the direction of the project engineer.
4. The applicant shall include the following materials with their plan review submittal to WES:
 - a. Two (2) sets of complete civil construction plans for all sanitary and stormwater improvements.
 - b. Two (2) copies of the final storm report
 - c. Two (2) copies of the geotechnical report, including infiltration testing.
 - d. Non-residential Questionnaire (available on WES website)
 - e. \$800 minimum sanitary and stormwater management plan review fees
 - f. Erosion control permit application (available on WES website) and \$460 permit fee
 5. The sanitary and storm systems shall be complete in all respects, in accordance with the approved plans, prior to Certificate of Occupancy approval by WES, or a performance bond shall be provided by the applicant to guarantee the construction of the infrastructure. WES shall inspect and approve the construction of the sanitary and storm systems in accordance with the approved plans.
 6. Any requests to modify current WES Design Standards shall be made in accordance with Sanitary Standards, Section 1.7 or Stormwater Standards, Section 1.6. The applicant shall provide all necessary information to evaluate the request, as determined by WES.
 7. A sanitary sewer mainline and associated easement granted to CCSD#1/WES are located in the southwest corner of T/L 12E29AA06500. The easement is permanent and not extinguishable. No development shall encumber the use or access to this easement by WES. Placement of any permanent structures within the easement may require an Encroachment Permit, as determined by WES.
 8. The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid prior to issuance of building permits, and are subject to change without notice to the applicant. All

costs associated with the design, construction and testing of the sanitary sewer and storm system shall be provided by and at the sole expense of the applicant.

For Sanitary Sewer, the following conditions shall apply:

9. Prior to occupancy, a gravity sanitary sewer service connection shall be provided to the development.
 - a. Any existing service laterals shall be used where feasible, as determined by WES.
 - b. Service laterals shall terminate with a clean out at the edge of the public sanitary sewer easement.
10. Any redevelopment that results in a change to the Class of Service (Table VII) or presents the potential for increased usage of the sanitary sewer system shall require a recalculation of sanitary system development charges (SDC's). Sanitary plan review fees shall apply.
 - a. A credit of 7 EDU's (Equivalent Dwelling Units) will apply for previously paid SDC's (File# 9241).

For Surface Water, the following conditions shall apply:

11. **Surface Water Management Plan:** All development that creates or modifies 5,000 square feet or more of impervious surface area shall be subject to WES RR&S. A Surface Water Management Plan and Storm Report (SWM Plan), Geotechnical Report and downstream conveyance report shall demonstrate how the development will conform to WES RR&S. The plans and reports shall be prepared by a licensed engineer and submitted to WES for review and approval.
 - a. Reconstruction of existing pavement, including regrading of base rock that alters the existing flow patterns or destination of runoff, shall be considered modified impervious surface area.
12. The SWM Plan shall provide a design to mitigate the stormwater runoff from all proposed onsite permeable and impervious surface areas, all water entering the property from off-site, and any road frontage improvements. Any offsite stormwater entering the site shall be placed in a bypass pipe or mitigated onsite.

13. The SWM Plan shall conform to the following general stormwater standards, as well as all other applicable stormwater requirements in accordance with WES RR&S:
 - a. **Water Quality Standard** - Water quality facilities shall be designed to capture and treat the first 1-inch of stormwater runoff from a 24-hour storm event using either vegetation (Appendix H) or a Basic Treatment proprietary device (Appendix F).
 - b. **Infiltration Standard** - The first ½ inch of runoff in a 24-hour period must be captured and retained onsite through an approved infiltration system.
 - c. **Detention/Flow Control Standard** – On-site detention facilities shall be designed to reduce the 2-year post-developed runoff rate to ½ of the 2-year pre-developed discharge rate.
14. The conveyance system shall be sized for a minimum 25-year design storm.
15. The SWM Plan shall demonstrate the development has an acceptable downstream point of discharge to safely convey stormwater runoff from the entire boundary of the development.
16. Grading plans shall clearly identify an overflow pathway system by which the storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons in the event of any stormwater facility failure or bypass (Section 1.2)
17. Any discharge or overflow into the SE 82nd Ave right-of-way shall require approval from ODOT. If applicable, the applicant shall provide proof of ODOT approval prior to WES plan approval.
18. A geotechnical report prepared by a qualified professional shall be included with the SWM Plan. The report shall verify the feasibility of all proposed infiltration systems and provide infiltration test results that correspond to the location and depth of the infiltration facilities, in accordance with Appendix E.
 - a. The submitted geotechnical report indicates the potential for temporary perched groundwater conditions, therefore any proposed infiltration facilities shall be tested during construction to confirm design infiltration rates.

19. If discharge to an existing system or facility is proposed, the applicant must verify that the existing system is functioning as designed and can be modified to accommodate additional discharge per WES Standards.
20. A Downstream Conveyance Analysis shall be included in the SWM Plan. The analysis must extend a minimum of 1500' or to the point where the development contributes less than 15% of the upstream drainage area, whichever is greater. WES may waive this requirement if 25-year onsite retention and emergency overflow requirements can be sufficiently met.
21. The property owners shall be responsible to perpetually inspect and maintain all stormwater management systems, in accordance with WES Rules, Section 12.10. A WES 'Private Storm Drainage Facilities Maintenance Plan' (available on website) shall be submitted to WES prior to final plan approval.

For Erosion Control, the following shall apply:

22. All construction sites, regardless of size, shall implement proper erosion control measures for any development activities that accelerate erosion, including excavating, construction and grading.
23. Any development activity that results in over 800 sq ft of soil disturbance shall obtain a WES Erosion Prevention and Sediment Control Permit before the start of any grading or construction activities. The applicant shall submit a Permit application and erosion control site plans, and pay applicable permit fees.

The following WES Fees and Charges shall apply:

24. Sanitary Sewer Plan Review fees in the amount of \$400.00 shall be due with the first plan submittal.
25. Surface Water Plan Review fees shall apply. The total fee is equal to 4% of the construction cost for all stormwater management related facilities. A \$400.00 minimum is due with the first plan submittal.
26. An Erosion Control permit fee shall apply. \$460.00 is due with first plan submittal.
27. Surface Water System Development Charges (Storm SDC's) shall be applied for any additional impervious surface area in accordance with WES RR&S. An

estimate of the Equivalent Service Units (ESUs) will be determined after the stormwater management plan is reviewed (1 ESU = 2,500 sq ft impervious area).

- a. Effective August 1, 2019, the surface water SDC rate is **\$211 per 2,500 sqft of impervious surface area**. A credit of 5 ESU's will apply based on previously paid SDC's.

DATED this 12th day of March, 2020.



Fred Wilson
Clackamas County Hearings Officer

ENDANGERED SPECIES ACT NOTICE

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).