

**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)	Z0387-18-D Appeal
Review for an Industrial Warehouse.)	(Clackamas Warehouse)

A. SUMMARY

1. The applicant is Jennifer Kimura of VLMK, and the owner is the Clackamas County Development Agency.
2. The appellant is John Niemeyer.
3. The subject property is located at 11650 Southeast Capps Road, Clackamas, Oregon 97015. The legal description is T2S, R2E, Section 15A, Tax Lot 1700 W.M. The subject property is approximately 15.18 acres and is zoned GI – General Industrial.
4. On December 27, 2018, 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 December 27, 2018. 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 discussed the Planning Director's decision.
3. Jennifer Kimura and Gus Baum testified in favor of the application.
4. John Niemeyer, Jay Tuffli, and Jane Turville 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 an industrial warehouse. 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 Planning Director's decision gives a detailed summary of the case:

“The subject parcels are located slightly to the west of the terminus of Capps Road at approximately 115th Ave, in the Clackamas Industrial Area. Though the two parcels combined total 15.18 acres, the development area proposed in this application is approximately 12 acres, per staff's measurements taken via Clackamas County's GIS mapping system. The southwest diagonal edge of the development site roughly follows the Clackamas River. At its closest the site is approximately 210 feet from the bank of the river as indicated by county mapping.

“The proposed project area of is currently not developed in a meaningful way and, save for some areas which were paved previously, is entirely vacant. The site is, generally speaking, not heavily vegetated though there is an extant broad mixture of underbrush, scrub/volunteer trees, and some mature trees, particularly in the northern portion of the site and around the periphery. Historic aerial photography indicates that the site may have previously been used to store stone, topsoil, or other landscaping materials.

“The development site is set within the Clackamas Industrial Area and, save for a small area on the southwest side of the site where it becomes close to an area zoned for Exclusive Farm Use near the Clackamas River,

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].”

it is surrounded by large areas of land carrying the same General Industrial zoning. This is a zone of the Clackamas Industrial Area that has seen significant development in recent years including additional distribution and warehousing facilities and Clackamas County's Veterans Village project. Although there is an extent to which the size of buildings vary, the vast majority of them could be described as have extremely utilitarian or industrial architectural characteristics.

“* * * * *

“Clackamas County's GIS mapping system indicates the presence of areas subject to the county's Habitat Conservation Area (ZDO Section 706) overlay zoning. This overlay zoning requires a separate review and approval from Clackamas County Planning. As of the drafting of this staff recommendation, the application had been submitted and deemed complete, but the review process had not been completed. [Subsequent to the Planning Director's decision HCA approval was obtained.]”
Planning Director Decision 3.

The proposed warehouse is a tilt-up concrete building of approximately 126,360 square feet to be used as a warehouse and distribution facility with accessory office space. There is a portion of the property near the river located in an HCA overlay. Neither the proposed warehouse nor a proposed retaining wall would be in the HCA. The subsequently approved (and not appealed) HCA decision establishes that the proposed building and retaining wall would be outside the HCA. Much of the opposition comes from a rural residential area across the Clackamas River from the property.

D. DISCUSSION

The proposed industrial warehouse is a permitted use in the GI zone. The application is for design review of a permitted use. There are numerous applicable approval criteria that the Planning Director's decision finds are satisfied. Most of those findings are not challenged by opponents. 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.

I. Design Review Approval Criteria

Clackamas County Zoning and Development Ordinance (ZDO) Chapter 1005 provides the Design Review ordinances. ZDO 1005.04(I) provides the “Requirements for compatibility with the intent of the design type or with the surrounding area.”

“1. Use shapes, colors, materials, textures, lines, and other architectural design features that enhance the design type area and complement the surrounding area and development.

“2. Use colors, materials and scale, as appropriate, to visually connect building exteriors to adjoining civic/public spaces such as gateways, parks, plazas and transit stations.

“3. Use building orientation and physical design, including setbacks and modulations, to ensure a development is compatible with other activities onsite, nearby properties, intended uses and the intent of the design type.

“4. Orient loading and delivery areas and other major service activity areas of the proposed project away from existing dwellings. Loading areas shall be located to the side or rear of buildings unless topography, natural features, rail service, or other requirements of this Ordinance dictate front-yard loading bays.

“5. In industrial zoning districts, site areas used for vehicular operations, outdoor storage, and outdoor processing to minimize the impacts on adjacent dissimilar uses.

“6. Inside the Portland Metropolitan Urban Growth Boundary, use colors, materials and architectural designs to visually reduce the impact of large buildings.

“7. In unincorporated communities, design structures to reflect and enhance the local character and to be in scale with surrounding development.

“8. In rural and natural resource areas, use materials, colors and shapes that imitate or complement those in the surrounding areas, such as those used in typical farm structures.

“9. In open space or scenic areas, use natural color tones, lines and materials which blend with the natural features of the site or site background.”

Opponents argue that the Planning Director’s decision contained “[i]nadequate review” of ZDO 1005.04(I)(1, 2, 6, 7, 8 & 9). Opponents later clarified that in particular the decision did not adequately consider ZDO 1005.04(I)(6, 8 & 9). According to opponents, the color should have been changed to natural color tones. The Planning Director’s decision states:

“The project site is set within the context entirely of other industrial-type buildings of similar architectural character. This is an area without adjoining public or civic spaces. The building is oriented and designed

to ensure compatibility with surrounding industrial uses. There are no adjacent dwellings away from which to orient loading areas. The design team has used horizontal banding to break the façade into smaller pieces, reducing the visual impact of the building. These the applicable criteria are met.” Planning Director Decision 31.

Although the Planning Director’s findings are brief they do address the approval standards and explain why they are satisfied. Furthermore, the Design Review committee also agreed that the proposed design met the applicable standards. Opponents’ argument is that the proposed building’s façade facing the river should be painted in natural color tones. The applicant has agreed to a proposed condition of approval requiring the façade facing the river be changed to earth tones. With the proposed condition of approval. ZDO 1005.04(I) is satisfied.

II. Landscaping Approval Criteria

ZDO Chapter 1009 provides the Landscaping standards. ZDO 1009.03(A)(2) requires swales when there are six or more rows of parking spaces. Opponents argue that the landscaping plan does not contain swales and therefore violates ZDO 1009.03(A)(2). As the applicant explains, however, there are only five proposed parking rows so no swales are required. ZDO 1009.03(A)(2) is satisfied.

ZDO 1009.03(B) provides perimeter landscaping requirements. Opponents argue that the landscaping plan does not comply with ZDO 1009.03(B) between the HCA, the proposed retaining wall, and the parking area. Landscaping Plans L1.0 and L2.0, however, show the landscaped buffer between the parking area and the retaining wall contains a combination of existing landscaping that would not be disturbed and additional new landscaping that would enhance the buffer. ZDO 1009.03(B) is satisfied.

ZDO 1009.04(A) provides for screening for certain visual impacts:

“Screening shall be used to eliminate or reduce the visual impacts of the following:

- “1. Service areas and facilities, such as loading areas and receptacles for solid waste or recyclable materials;
- “2. Storage areas;
- “3. Ground-mounted rainwater collection facilities with a storage capacity of more than 100 gallons;

“4. Parking lots within or adjacent to an Urban Low Density Residential, VR-5/7, VR-4/5, RA-1, RA-2, RR, RRF-5, FF-10, FU-10, or HR District; and

“5. Any other area or use, as required by this Ordinance.”

Opponents argue that the proposed warehouse does not comply with ZDO 1009.04(A)(4) because there is not adequate screening of the parking lot. The property, however, is zoned GI, and GI is not one of the zoning districts listed in ZDO 1009.04(A)(4). Therefore, ZDO 1009.04(A)(4) is not applicable. Opponents’ argument does not provide a basis to deny the application.

ZDO 1009.04(D) provides:

“Buffering shall be used to mitigate adverse visual impacts, dust, noise, or pollution, and to provide for compatibility between dissimilar *adjoining* uses. Special consideration shall be given to buffering between residential uses and commercial or industrial uses, and in visually sensitive areas.” (Emphasis added.)

Opponents argue that the proposed warehouse is not adequately buffered from the rural residential areas across the river from the property. According to opponents, the rural residential use is a dissimilar use from the proposed warehouse and is in visually sensitive area. While I tend to agree with opponents that the proposed industrial use is dissimilar to rural residential use and the area is arguably a visually sensitive area, the rural residential uses are not *adjacent* to the subject property. The rural residential uses are separated from the subject property by the Clackamas River. “Adjoining” is defined as “touching at some point or along a line; contiguous.” Webster’s New World Dictionary (Second College Edition 17. As the subject property is not adjoining any rural residential uses, ZDO 1009.04(D) does not apply. The applicant, however, has agreed to a voluntary proposed condition of approval to plant additional trees to provide some more screening. Opponents’ arguments do not provide a basis to deny the decision.

III. Other Issues

Opponents raise a number of other issues that do not pertain to design review or landscaping requirements.

1. Retaining Wall

Opponents argue that the proposed retaining wall would be dangerous as it would be built on dangerously unstable fill. While I understand opponents' concerns about the proposed retaining wall, I do not understand what approval criterion this would allegedly violate. To the extent opponents argue the wall would be a violation because it would be in the HCA, the HCA decision specifically determines that the proposed wall would not be in the HCA, and that decision was not appealed and is now final. Furthermore, the HCA decision certainly appears to be correct. To the extent opponents argue that ZDO 1002.01(A) regarding development on steep slopes applies, the proposed development is not on slopes of over 20 percent as the Planning Director's decision explains. Even if ZDO 1002.01(A) did apply, as staff explains there is nothing in the ZDO that pertains to the composition of fill. Furthermore, the applicant's geotechnical expert explains that certain measures will be required due to the poor quality of fill in certain areas. Opponents' arguments do not provide a basis to deny the application.

2. River and Stream Conservation Area

Opponents argue that the application does not address ZDO Chapter 704 regarding river and stream conservation areas (RSCA). Generally, under ZDO 704.03(A) the RSCA provisions apply to land that is within a quarter mile of the mean high water line of certain rivers, including the Clackamas River. ZDO 704.03(F), however, provides that Section 704 does not apply to "land that is inside the * * * Portland Metropolitan Urban Growth Boundary * * *." The subject property is within the Portland Metropolitan Urban Growth Boundary. Therefore, ZDO 704 is not applicable. Opponents' arguments do not provide a basis to deny the application.

3. Notice Issues

Opponents argue that they did not receive proper notice of the application or have sufficient time to review the record. There is no dispute that the County provided the notification required by state law and County ordinance. While I can certainly understand why people who live across the river from the proposed warehouse would be interested in the application and wish to participate, they do not live within the mandated notice area. Despite not receiving notice, however, opponents were able to adequately participate in the process.

While there was some difficulty in getting all record materials to opponents, I do not see that it is County's staff's responsibility to provide everything in the record to opponents. Opponents are certainly free to visit the planning department and obtain documents on their own. In any event, even if the County were at fault for not providing documents early in the proceedings, the open record period gave opponents sufficient time to review and comment on the various documents. I do not see that opponents' substantial rights were at all prejudiced.

4. General Protection of the River

A recurring theme in opponents' objections to the proposed warehouse is that the Clackamas River is a special resource that must be protected. While I certainly agree with opponents that the river is a special resource, any protections for the river must be found in the ZDO. I have addressed all the arguments that I can find that concern applicable provisions under the ZDO. Even though opponents' may have a very valid point about protecting the river, I am bound to review the application under the applicable approval criteria – as was the Planning Director. I do not see that there are any applicable approval criteria that are not satisfied. Opponents have asked the Board of County Commissioners to change the process and standards for reviewing such applications. While it is certainly within the Board's power to make changes to the ZDO, this decision must be based on the current ZDO. Under the current ZDO, I do not see any basis to deny the application.

Therefore, all of the applicable approval criteria are satisfied.

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 Z0387-18-D, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

I.) General Conditions:

- 1) Recommendation for conditioned approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on August 8, 2018. 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 this 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 Deana Mulder, (503) 742-4710 or at deanam@co.clackamas.or.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 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. 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.

II.) Planning and Zoning Conditions:

- 1) Development of the subject property is subject to the provisions of ZDO Sections 1102, 602, 706, 1002, 1005, 1006, 1007, 1009, 1010, 1015, 1021, 1102, and 1307 as adopted by the Board of County Commissioners.

Pursuant to subsections. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.

- 2) Prior to Occupancy, the developer shall supply written guaranty on the landscape materials for a period of one year from the date of installation. A copy of the guarantee shall be furnished to the County by the developer.
- 3) Prior to Occupancy, the developer also shall submit a signed maintenance contract, or provide a financial guarantee pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance, covering the landscape maintenance costs during the guarantee period.
- 4) Over the life of the site, all outdoor operations conducted on the site shall fully accord of the criteria of 602.05(C).
- 5) Prior to Occupancy, the developer shall supply Clackamas County planning with set of landscape drawings at a scale such that staff can determine compliance with the approved landscape design.
- 6) The Applicant shall change the color of the river-facing façade to an earth tone color approvable by staff.
- 7) The Applicant shall supplement the existing plantings on Landscape Plan L1.0 with approximately 9.500 square feet of additional HCA enhancement per L2.0, disbursed in the area highlighted on Exhibit 8.

III.) 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.

IV.) Water Environment Services Conditions:

The following general conditions shall apply:

- 1) The proposed development is located within the service area of Water Environment Services and shall be subject to WES Rules and Regulations, and Standards (“RR&S/Rules”) for sanitary sewer services and surface water management, including natural resource protection and erosion control requirements. The applicant shall procure the necessary plans approvals and/or permits in accordance with WES RR&S.
- 2) Sanitary and stormwater management plans and calculations shall be stamped and signed by a civil engineer licensed by the State of Oregon. The submittals shall be reviewed and approved by WES. The construction,

specifications, and testing shall be completed under the direction of the engineer. Upon the completion of construction and certification by the engineer, WES shall inspect and approve the construction of the sanitary and storm systems. (Rules, Section 11 and 12)

- 3) The sanitary and storm system shall be complete in all respects, in accordance with the approved plans, prior to Certificate of Occupancy approval by WES.
- 4) All private sanitary and storm improvements shall require a private plumbing permit through the County's Building Division.
- 5) The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid before building permits will be issued, and are subject to change without notice to the applicant(s) of this planning application. All costs associated with the design, construction and testing of the sanitary sewer or storm system, including onsite and offsite improvements and easements, shall be provided by and at the sole expense of the applicant/developer/property owner(s).

For sanitary sewer service, the following shall apply:

- 6) A separate and independent sanitary sewer service connection shall be provided to the development. The service lateral shall terminate with a clean out at the front edge of the Public Sanitary Sewer Easement. (Sanitary Standards, Section 5)
- 7) The connection to the existing sanitary sewer mainline CL22 shall be made at an elevation that the finished floor of the proposed building is 2-feet in elevation above the rim elevation of manhole CL22-1. This is a safety factor that will prevent any backup from the public mainline to overflow into the proposed building. Per uniform plumbing code, if the finished floor elevation is below the rim elevation of the upstream MH CL22-2, a back-flow prevention valve is required to be installed in the private connection to the public sanitary sewer mainline.
- 8) If the finished floor elevation of the building is below the rim elevation of the downstream manhole CL22-1, then, the developer shall install pumping facilities in accordance with local plumbing codes to eliminate the possibility of a pump station failure overflowing into the proposed building. The private system shall connect to the District's mainline via a gravity sanitary sewer service connection lateral, and the private pumping facility shall have a check valve to inhibit back flows. The property owner will be required to enter into an agreement with WES regarding the terms and conditions of connection and pumping. The permitting of the pumping facility and private pressure main shall be issued by Clackamas County Plumbing Dept.
- 9) The project engineer shall confirm the datum of the IE of proposed connection into the mainline, rim elevation of MH CL22-1 & MH CL22-2, and finished floor elevation of the proposed building to determine the applicable connection to the public sanitary sewer mainline.

- 10) A sanitary sewer easement running north-south along the eastern property line, which encompasses force and gravity mains, pump station and access road, is permanent and not extinguishable. No development shall encumber use or access to this easement by WES.
- 11) Procedures shall be in place that prevent the discharge of any pollutant, substances, or wastewater that will interfere with the operation or performance of the public sewer system.
- 12) A Non-Residential Questionnaire (NRQ) shall be included with the first plan submittal. The NRQ shall provide an estimate of the development's discharge load and volume to the public sanitary sewer system.
- 13) A \$150 tap-in fee shall apply for any 6-inch tap-in to a District mainline. (Rules, Section 4.4.2)
- 14) Plan review fees for the sanitary sewer system shall. A \$400.00 minimum plan review fee shall be due with the first plan submittal.
- 15) A Collection Sewer Charge shall apply in the amount of \$6,000.00 and shall be paid on connection.
- 16) Sanitary System Development Charges shall apply per WES rules and rates at the time of building permit application. Fees shall be paid prior to issuing the building permit. Sanitary SDC estimate based on 12.19 developable acres = 48.76 EDU's * \$7615.00 = \$371,307.40

For surface water management, the following shall apply:

- 17) All development shall provide an acceptable point of discharge and adequate conveyance of stormwater runoff, as approved by WES. (Section 3)
- 18) All development that creates or modifies 5,000 square feet or more of impervious surface area shall be subject to WES Stormwater Standards. The applicant's engineer shall submit a Surface Water Management Plan and Storm Report (SWM Plan) for review that shall explain how the development will conform to all WES Stormwater Standards, including: (Stormwater Standards, Section 5)
 - 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.
 - d. Conveyance Standards - The conveyance system shall be sized for a minimum 25-year design storm.
- 19) The SWM Plan shall provide an adequate drainage system for all onsite water, all water entering the property from off-site, and all public right-of-way and road frontage improvements.

- 20) Detention/flow control shall not be required if the system's point of discharge is made to a stormwater conveyance system that directly discharges to the Clackamas River. Detention/flow control requirements shall apply for all other points of discharge.
- 21) The grading plans shall clearly identify an overflow pathway system in the event of any stormwater facility failure or bypass. (Section 1.2)
- 22) A geotechnical report shall be submitted by a qualified professional. The report shall address maximum seasonal groundwater levels, verify the feasibility of all proposed infiltration systems, and provide infiltration test results with the appropriate safety factor that correspond to the location and depth of the infiltration facilities, in accordance with Appendix E.
- 23) Subsurface facilities shall provide a 3-foot minimum vertical separation from the maximum seasonal groundwater elevation. (Appendix H)
- 24) If discharge to an existing system is proposed, the applicant must verify that the existing system is functioning as designed and can safely accommodate the additional discharge.
- 25) The applicant shall submit a Downstream Conveyance Analysis to demonstrate adequate conveyance capacity to a minimum distance of 1500 feet downstream of the project. (Section 5.4.4)
- 26) If infiltration is not feasible the design engineer shall submit a modification request in accordance with Stormwater Standards Section 1.6 with an equivalent alternative design which can accomplish the same design intent as provided in these standards. A geotech report shall be included with the request.
- 27) A 'Private Storm Drainage Facilities Maintenance Plan', which identifies the annual maintenance procedures of the onsite stormwater facilities, shall be submitted to WES prior to final plan approval.
- 28) WES recommends the common property owners sharing any private stormwater facilities create a maintenance plan that identifies the annual maintenance obligations of the shared stormwater facilities.
- 29) Plan review fees for the stormwater system shall apply (equal to 4% of the installed cost of any surface water management system). A minimum \$400.00 plan review fee shall be due with the first plan submittal.
- 30) Surface Water System Development Charges shall apply per WES rules and rates at the time of building permit application. The current rate is \$205 per 2,500 sf of impervious surface area.

For Title 3 Water Quality Resource Areas, the following shall apply:

- 31) All new development shall meet WES Rules to preserve and maintain an undisturbed vegetated buffer to protect all water quality sensitive areas, in accordance with Stormwater Standards, Section 4.
- 32) All encroachments into the water quality buffer require an approved Buffer Variance from WES, in accordance with Section 4.4. WES shall require a review of final construction plans prior to any buffer variance approvals to verify that the variance will not conflict with the approved storm and sanitary layout.

- 33) Approval of the land use application does not include any conclusions by WES regarding acceptability of regulated water quality sensitive areas by DSL or COE. This decision should not be construed or represented to authorize any activity that will conflict with or violate DSL/COE requirements. The applicant shall coordinate with DSL/COE and, if necessary, other responsible agencies to ensure that development activities are designed, constructed, operated and maintained in a manner that complies with DSL/COE approval.

For Erosion Control, the following shall apply:

- 34) An approved erosion control plan and permit from WES shall be required before the start of any grading or construction activities. An erosion control permit fee shall apply (\$460 + \$80/acre over 1 acre).
- 35) Areas with greater than 5-acres of disturbance will require a 1200-C permit from DEQ and local erosion control approval thru WES (consisting of WES plan review and fees). (Section 6)

Construction Plan Submittal:

- 36) The applicant's construction plan submittal shall include:
- a. Two (2) sets of full-size, complete civil construction plans for all sanitary and stormwater improvements, including erosion control and vegetated buffers (Sanitary Standards, Section 4.3)
 - b. Two (2) final storm reports, including a geotech report and downstream analysis.
 - c. One (1) Non-Residential Questionnaire
 - d. \$800 plan review fee
 - e. \$1,420 erosion control fee

V.) Clackamas River Water District Conditions

1. Water Distribution Design & Infrastructure Requirements:
- a. Per Section 18 of the CRW's Rules and Regulations all water improvements designed and constructed by the developer to serve the proposed development must meet all standards and specifications of CRW; must be reviewed and approved by the Clackamas River Water (Engineering Department) prior to issuance of a Clackamas County Development Permit:
 - i. The size of a water main available to the site is limited to the size, pressure and volume within an existing or future water main serving the property. Where the demand exceeds the water main capacity the Applicant is responsible for the total costs of a water main enlargement or extension required to meet the capacity.
 1. Developer shall install at their expense all improvements necessary to provide water service to their development.
 2. At no time will CRW approve plans that include hardscape landscaping (except grass or shallow root plantings) or

- structures (such as walls, drainage systems, or permanent structures of any type) placed within easements.
3. Any block wall or other fence shall be designed and constructed around the outside of the easement(s), to allow the District direct access to vault(s) and inlet piping from the adjacent right-of-way.
- ii. All domestic and fire services, and private mains must be installed entirely on the lot for which it serves. Services and private mains will not be allowed to cross property lines or to be placed in a private utility easement.
 - b. Water service solely for private fire protection purposes to a customer owned fire sprinkler system are classified as a fire service connection (restricted water use).
 - c. The size of a fire service connection available at any site is limited to the size, pressure and volume within the existing water main serving the property. Where the demand exceeds the water main capacity the Applicant is responsible for the total costs of a water main enlargement or extension required to meet the capacity.
 - d. Private fire sprinkler systems shall be installed where required and shall be provided by, owned, maintained, and tested by the customer. All fire services shall be metered and protected from backflow.
 - e. The average system pressure range for this development is approximately 65-80 psi.
2. Service Connection and System Development Charges:
 - a. Per Section 8 of the CRW's Rules and Regulations the following will be required when the Clackamas County Development Permit is issued for the parcel or per ZDO1006.05.F:
 - i. "Water service will be provided only from pipes or mains located within public streets, alleys or rights-of-way, or within easements furnished CRW, and to property or premises with frontage to such mains..."
 - ii. "Each dwelling or building will be provided with its own water service connection and meter ..." This means that each building will have its own domestic connection from the existing waterline within the SE Capps Rd.
 - iii. Domestic service will require review and approval of Clackamas River Water to ensure adequate sizing based on site demand in accordance with applicable rules and regulations.
 - iv. The service for this development will require a backflow assembly directly downstream of the domestic water meter in accordance with Oregon Administrative Rules (OAR) 333-061-0070 thru 071 and all applicable plumbing codes. The owner will furnish and install the backflow device. Ownership and maintenance will be the property owner's responsibility.

- b. The System Development Charges (SDC) is based on meter size.
 - i. The System Development Charges (SDC) is based on the domestic average and peak demands for your facilities.
 - ii. The current System Development Charges (SDC) will be collected when a building has been issued a Building Permit from Clackamas County and a CRW Water Service Application has been requested by the owner/builder.
 - iii. The System Development Charges (SDC) is based on the domestic average and peak demands for your facilities. SDC credit will be given for the existing domestic meter if a larger meter is needed. Current 1-inch SDC is \$8,682.
 - 3. District Approvals:
 - a. Professionally engineered waterline plans reviewed and approved by Clackamas River Water.
 - b. The Developer will be required to pay a time and materials deposit to the District for a Plan Check and Inspection fee prior to review any construction plans. Any unused portion will be reimbursed or if any monies are due the developer will be billed.
 - c. Upon construction plan review there may be additional requirements as set forth by the Water District.
 - 4. Clackamas County Development Permit:
 - a. It will be the developer's responsibility to acquire any necessary easements for water facilities that shall be provided and designated on the final plat, as deemed necessary by the Water District. These easements must have functional access to public right of way and be properly recorded.
 - b. Fire and domestic water services as approved with this land use application, are intended specifically for the lot and are not intended to serve additional parcels or structures which may be created in the future. In the event that the parcels and/or lots are further divided to create additional parcels or lots, the owner is required to provide separate fire and domestic water services per CRW's "Rules and Regulations".
 - c. Future fire related improvements will require review and approval of Clackamas County Fire District #1 to ensure proper fire coverage and fire service connection installation in accordance with applicable regulations along with the appropriate backflow prevention assembly and flow detector.
- 6) Clackamas County Engineering Conditions
- The following items are project requirements from the Department of Transportation and Development's Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project, but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These conditions are based upon the requirements detailed in the County's Comprehensive Plan

(Comp Plan), the County's Zoning and Development Ordinance (ZDO) and the County's Site Development and Roadway Construction Standards (Roadway Standards). Additional requirements, beyond those stated in the conditions of approval, may be required. The applicant may discuss the requirements of the project with staff at any time.

The requirements specifically required by the Comp Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the Roadway Standards, are based upon nationally accepted standards and engineering judgment and may be modified pursuant to Section 170 of the Roadway Standards. The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted.

- 1) All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with Clackamas County Roadway Standards.
- 2) The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
- 3) At the time of building permit, if the Cul-de-sac improvements on SE Capps Road have not been completed by the Development Agency, an interim gravel surface that will support a fire truck shall be constructed from the existing paved surface of SE Capps Road to the project site.
- 4) All on-site curbs shall typically be type "C", or curb and gutter if curb line slope is less than one percent, if they carry, direct or channel surface water. Alternative curbs will be considered when it is determined by the Clackamas County Department of Transportation and Development that type "C" curbs or curb and gutter are not appropriate. Extruded curbs for carrying, directing or channeling surface water, or used as a vehicle wheel stop, shall not be allowed.
- 5) The applicant shall design and construct five-foot wide minimum, unobstructed, hard-surfaced walkways from the new sidewalk to the main entrance to the building in accordance with ZDO requirements for walkways crossing wide vehicle maneuvering areas, as indicated on the submitted site plan.
- 6) Walkways adjacent to 90-degree parking spaces shall be designed and constructed at a minimum width of seven feet.
- 7) The applicant shall provide a copy of the Water Environment Services approved drainage study, surface water management plan, and Engineer's detention calculations to DTD Engineering.
- 8) The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the parking and maneuvering areas, including 24 feet of back up maneuvering room for all 90-degree parking spaces. Loading spaces shall also be afforded adequate maneuvering room. The applicant shall show the paths traced by the extremities of anticipated large vehicles (delivery trucks, fire apparatus, garbage and recycling trucks, WB-67s), including off-tracking, on the site

plan to insure adequate turning radii are provided for the anticipated large vehicles maneuvering on the site and at driveways.

- 9) Parking spaces shall meet ZDO section 1015 dimensional requirements. The plans shall list the number of parking spaces required and the number of parking spaces provided. The applicant shall label all carpool/vanpool, disabled, and loading berth spaces on the plans.
- 10) The applicant shall provide illuminated bicycle-parking spaces in accordance with ZDO section 1015, Table 1015-3. At least 75% of the bicycle-parking spaces shall be within 50 feet of a public entrance to the building, in conformance with

ZDO subsection 1015.05 A2.

- 11) Prior to certificate of occupancy, the applicant shall provide an Engineer's cost estimate to Clackamas County Engineering for any unfinished improvements required by conditions of approval. The estimate shall be submitted for review and approval of quantities of asphalt concrete, aggregates, curbs, sidewalks and any other required improvements and associated construction costs.
- 12) All traffic control devices on private property, located where private driveways intersect County facilities shall be installed and maintained by the applicant, and shall meet standards set forth in the Manual on Uniform Traffic Control Devices and relevant Oregon supplements.
- 13) Prior to the issuance of a building permit, the applicant shall submit to Clackamas County Engineering Office:
 - a. Written approval from the local Fire District for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
 - b. Written approval from Clackamas River Water District for adequate water supply source to serve the development. The approval shall be in the form of utility plans stamped and signed by the Water District representative.
 - c. Written approval from Water Environment Services for surface water management facilities, surface water detention facilities, and erosion control measures.
 - d. A set of site improvement construction plans, including a striping and signing plan, for review, in conformance with Clackamas County Roadway Standards Section 140, to Deana Mulder in Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.
 - i. The permit will be for driveway, curb, sidewalk, drainage, parking and maneuvering area, and other site improvements.
 - ii. The minimum fee deposit is required upon submission of plans for the Development Permit. The fee will be calculated based on 5% of the onsite transportation improvements, according to the current fee schedule.

- iii. The applicant shall have an Engineer, registered in the state of Oregon, design and stamp construction plans for all required improvements, or provide alternative plans acceptable to the Engineering Division.
 - e. A Fire Access and water supply plan for subdivisions, commercial buildings over 1000 square feet in size or when required by Clackamas Fire District #1.
The plan shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The applicant shall provide fire flow tests per NFPA 291 and shall be no older than 12 months. Work to be completed by experienced and responsible persons and coordinated with the local water authority. (Applicable for developments with potable water supply provided by a water authority.)
 - f. When the Department of Transportation and Development is the surface water authority for the proposed project and detention facilities are a requirement of development, the applicant shall provide a copy of an approved grading permit to DTD Engineering, Deana Mulder, prior to the issuance of a Development Permit.
- 14) Following completion of site construction activities of subdivisions, buildings over 1000 square feet or when required by Clackamas Fire District #1, the applicant shall provide as-built Fire Access and Water Supply pdf plans to the local Fire District and the County. The pdf plans shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The plans shall include any supporting details of the access, circulation, water vaults, fire lines, valves, fdc, backflow devices, etc. For this proposal, the pdf as-built plan sheets shall be transmitted to matt.amos@clackamasfire.com (Deputy Fire Marshal Matt Amos) and deanam@co.clackamas.or.us (Development Review Coordinator Deana Mulder).

DATED this 25th day of February, 2019.


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).