

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

Regarding appeals by Mt. Hood Meadows Oreg., LLC, the) **FINAL ORDER**
Collins Lake Condo Association, and the Collins Lake)
Resort HOA of a planning director decision approving a)
five-story 47-room hotel south of E. Government Camp) **Z0032-23-D**
Loop in unincorporated Clackamas County, Oregon) **(Mt. Hood Lodges Hotel)**

A. SUMMARY

1. On January 19, 2023, Mt. Hood LLC II (the “applicant”), filed an application for approval of a five-story 47-room hotel on a 1.38-acre parcel known as tax assessor account 38E24A 00408 (the “site”). The site is located south of the western end of E. Government Camp Loop, adjacent to the Collins Lake Resort condominium development. The site and all abutting properties are zoned MRR (Mountain Recreational Resort). Properties to the north of E. Government Camp Loop are zoned HR (Hoodland Residential). The site is currently vacant.

a. Camp Creek, at Type F stream, runs roughly adjacent to the southern property boundary, flowing southwesterly. The creek itself is protected by a 50-foot Stream Conservation Area (“SCA”) (aka stream buffer), and the applicant designed the development to avoid the buffer as much as possible, but some impacts are still proposed. Thus, a SCA review is a required, and being reviewed under planning permit #Z0033-23-RSCA.

b. Proposed hotel amenities include small kitchenettes in many of the proposed hotel rooms, a spa/sauna, game room, bike and ski storage area in the basement/lower level, a large lobby, and a restaurant for hotel guests.

2. On April 18, 2023, the planning director (the “director”) issued a written decision approving the Design Review application subject to conditions. (Exhibit 1). On April 25, 2023, Mt. Hood Meadows Oreg., LLC (“Mt. Hood Meadows”) filed a written appeal of the director’s decision. On May 1, 2023, the “Association of Unit Owners of Lodges at Collins Lake Resort, A Condominium” (the “Collins Lake Condo Association”) and the Collins Lake Resort HOA filed a separate written appeals of the director’s decision. For purposes of this Final Order Mt. Hood Meadows, the Collins Lake Condo Association, and the Collins Lake Resort HOA are referred to collectively as “the appellants.”

3. County Hearings Officer Joe Turner (the “hearings officer”) held a public hearing to receive testimony and evidence regarding the appeals. County staff recommended that the hearings officer deny the appeals and approve the application subject to conditions of approval in the director’s decision. Representatives of the applicant testified orally in support of the project. Representatives of the appellants

testified in support of the appeals. Principal contested issues in the case include the following:

- a. Whether the proposed restaurant and office are accessory to the hotel or separate uses;
- b. Whether the proposed development is a “residential” use;
- c. Whether the proposed development makes adequate provision for parking;
- d. Whether it is feasible to comply with the off street loading and maneuvering standards of ZDO 1015.04;
- e. Whether the applicant is required to submit a transportation analysis and demonstrate compliance with the concurrency requirements of ZDO 1007.07(B);
- f. Whether the applicant can be required to construct off-site frontage improvements;
- g. Whether the hearings officer has jurisdiction to interpret and apply the Oregon Fire Code;
- h. Whether the parcel abutting the north boundary of the site, located between the site and E. Government Camp Loop, constitutes “a national forest” as that term is used in footnote 3 of ZDO Table 317-2;
- i. Whether snow shed from the roof of the proposed structure will impact vegetation on or near the site;
- j. Whether development on the site is subject to Section 1.5 of the Mt. Hood Community Plan, which requires a plan for removal and stockpiling of snow on the site;
- k. Whether the proposed development makes adequate provision for collection, treatment, and detention of stormwater runoff from the site;
- l. Whether the scale of the proposed structure violates applicable approval criteria.

4. The hearings officer concludes the applicant sustained the burden of proof that the proposed use does or can comply with the applicable approval criteria of the ZDO subject to conditions of approval needed to ensure such compliance occurs in fact. The appellants did not rebut the substantial evidence in the record in support of the application. Therefore the hearings officer denies the appeals and upholds the planning

director's decision, based on the findings and conclusions adopted or incorporated herein and subject to the conditions of approval at the end of this final order.

B. HEARING AND RECORD

1. The hearings officer received testimony at the public hearing about the appeals on June 8, 2023. All exhibits and records of testimony have been filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the statement required by ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected testimony offered at the public hearing.

2. County planner Ben Blessing summarized the director's decision and his PowerPoint presentation, Exhibit 21.

a. He noted that E. Government Camp Loop, which abuts the north boundary of the site, is subject to the jurisdiction of the Oregon Department of Transportation ("ODOT"). The United States Forest Service (the "USFS") owns a small strip of land between the site and E. Government Camp Loop, identified as "United States of America Lands" on the site plan (Attachment E of Exhibit 2) as well as lands on the north side of E. Government Camp Loop. Appellant Mt. Hood Meadows is a party to an agreement to acquire the small strip of land between the site and E. Government Camp Loop through a land exchange with the USFS. However, Mt. Hood Meadows is currently not an "owner" of that parcel as that term is defined by Section 202 of the Clackamas County Zoning and Development Ordinance (the "ZDO"). The abutting strip is currently owned by the Forest Service and is therefore "a national forest" as that term is used in footnote 3 of ZDO Table 317-2

b. The applicant is not proposing a "mixed use" development. The applicant proposes to construct a 47-unit hotel on the site. Some of the hotel rooms will include small kitchenettes as an amenity. The hotel will not function as a residential use as occupancy is limited to a maximum 30 consecutive days. The proposed restaurant is accessory to the proposed hotel use. It is not open to the general public and will only serve guests of the hotel. The County Code Enforcement section can enforce compliance with the conditions of approval, including limiting restaurant service to guests of the hotel and limiting occupancy to a maximum 30 consecutive days.

c. ZDO Table 317-2 addresses "snow slide" from roofs, requiring a minimum 20-foot setback between buildings with contiguous snow slide areas.

d. The applicant is proposing more parking spaces than the Code requires. ZDO Table 1015-1 requires a minimum one parking space per unit. It does not require additional parking for employees. The County does not regulate on-street parking on E. Government Camp Loop, as that road is within ODOT's exclusive jurisdiction.

e. He requested the hearings officer hold the record open to allow staff to address issues raised at the hearing.

3. Attorney Ed Trompke, general contractor Brian Lessler, architect Jim Toporek, and civil engineer Jimmy Houf appeared on behalf of the applicant, Mt. Hood LLC II.

a. Mr. Trompke responded to the issues raised on appeal.

i. The federal government, the USFS, currently owns the strip of land located between the site and E. Government Camp Loop. Therefore, pursuant to footnote 3 of ZDO Table 317-2, there is no setback requirement between the site and this abutting parcel. Appellant Mt. Hood Meadows is a party to a land exchange agreement regarding that strip of property. However, Mt. Hood Meadows is not an “owner” the adjacent parcel as defined by ZDO 202, as Mt. Hood Meadows does not hold fee title to and it is not a contract purchaser of that parcel. The “Exchange Agreement” between the USFS and Mt. Hood Meadows is not a land sale contract. The agreement may have expired pursuant to Section 11 of the agreement, as more than 12 months have passed since the agreement was executed. The agreement is contingent and speculative, as it requires the United States to approve title and Section 9 notes that the United States “is seeking authorization” of funds to finalize the agreement, which requires an act of congress to complete the exchange.

ii. He noted that stormwater runoff and treatment issues are addressed by Mr. Houf’s written testimony, Exhibit 19. The proposed development provides an adequate turnaround for the largest vehicles that will access the site, shown on pages 5 and 6 of Exhibit 19.

iii. The Code does not regulate the disposal of snow removed from parking lots. The applicant will ensure proper disposal. He agreed to a condition of approval requiring proper snow disposal in compliance with applicable requirements.

iv. The development complies with the requirements of the Fire Code, based on the testimony from the Fire District, Exhibit 18. The Hearings Officer has no authority to review that determination.

v. The proposed development exceeds the minimum parking requirements of the Code. ZDO Table 1015-1 requires a minimum one parking space per unit for the proposed hotel. No additional parking is required for the restaurant, as that is an accessory use that will only serve guests of the hotel. He agreed to a condition of approval prohibiting any advertising of the restaurant as being open to the general public. 2,000 square feet is not a large restaurant.

b. Mr. Lessler noted that the Hoodland Fire District reviewed the development and approved the proposed fire access and water supply. (Exhibit 18). The topography of the site precludes the applicant from providing emergency vehicle access to

the rear of the building. The Fire District approved an exception to the access requirement pursuant to Section 503.1.1.B.1 of the OFC, as the proposed building will be equipped with emergency sprinklers and a “stand pipe.”

c. Mr. Toporek summarized the design of the proposed hotel. The applicant is proposing a five-story hotel building with a basement. The hotel will provide 47 hotel rooms including studio, one, and two-bedroom units. Vehicle parking will be provided in the basement beneath the structure and in a surface parking lot to the west of the structure. The design of the structure complies with the rustic character design guidelines for development in Government Camp. The building will also comply with all applicable state and local fire protection requirements.

d. Mr. Houf summarized compliance with the transportation and stormwater requirements as outlined in his written testimony, Exhibit 19.

i. The site has roughly 135 feet of frontage on E. Government Camp Loop. This street is subject to ODOT jurisdiction and the applicant must obtain approval of an approach permit for the proposed driveway access as well as a miscellaneous permit for required frontage improvements. ODOT requires a minimum 250 feet of access spacing on E. Government Camp Loop. The proposed driveway will be located 870 feet from the nearest access to the west and 750 feet from the nearest access to the east. The proposed driveway will also meet ODOT’s minimum 445-foot sight distance requirement. The applicant will provide a minimum 28-foot driveway throat at the intersection with E. Government Camp Loop. The applicant will provide for vehicle turnarounds via an unmarked parking space in the parking lot.

ii. The applicant will accommodate stormwater runoff in compliance with Clackamas County Water Environment Services (“WES”) and National Marine Fisheries (“NMFS”) requirements. The applicant will collect and detain stormwater runoff from new impervious surfaces on the site. The applicant will treat runoff from pollution generating surfaces using filter cartridges and catch basin filter vaults. The applicant will detain stormwater in pipes or vaults beneath the outdoor parking area and release it to Camp Creek at controlled rates. The applicant will relocate the existing 18-inch culvert to the east. Runoff flowing through the culvert will continue to discharge to Camp Creek as it does under existing conditions.

4. Neal King appeared on behalf of appellant Collins Lake Resort HOA and summarized the HOA’s appeal.

a. He argued that the proposed development does not provide sufficient parking to accommodate the proposed use. The demand for parking in Government Camp frequently exceeds the available supply under existing conditions. The parking supply is further reduced in the winter as parking is prohibited during certain days and hours to allow for snow removal and when cars are parked on the street for months at a time and covered with snow. This development will aggravate the existing parking supply

problems. The applicant is proposing to provide 52 parking spaces for 47 hotel rooms. The applicant makes no provisions for parking needed for the proposed restaurant, persons visiting hotel guests, guests with multiple vehicles, or large vehicles (campers, trailers, and RVs). The Collins Lake Resort provides 377 parking spaces for 151 residential units: a two-car garage for each unit and 75 surface parking spaces. However, parking demand still exceeds the available supply. The applicant makes no provision for employee parking. He estimated that the hotel will generate ten to 15 employees in addition to employees of the Vacasa office. Without adequate parking guests and employees will park wherever they can, which may result in illegal parking that could impact fire and other emergency vehicle access.

b. The applicant proposed a dead-end parking lot with 12-foot turnaround that is inadequate to accommodate a 27-foot vehicle.

c. The proposed development, with trees and other vegetation adjacent to three sides of the building, poses a significant fire hazard. A tossed cigarette could quickly ignite the brush during the dry summer months leading to a fire that could engulf the building. The Golden Poles condominium in Government Camp burned down five or six years ago because the Hoodland Fire District could not arrive soon enough to save the building. It is very difficult to obtain fire insurance in this area and approval of this development will likely increase insurance rates for existing property owners in Government Camp.

d. He questioned how the County will monitor and enforce occupancy of the hotel units. The applicant is proposing an “extended stay” hotel with full kitchens in many units, which could function as long term residences.

e. At the community meeting for the project the applicant stated that they would provide office space for Vacasa in the hotel. This would make the project a “mixed use” development which is not permitted in the MRR zone.

f. He questioned how the County will monitor and enforce use of the proposed restaurant. The applicant claims the restaurant is only for guests of the hotel. However, a 2,000 square foot restaurant is much larger than needed to serve a 47 unit hotel, especially when many units include a full kitchen.

5. Mathew Drake appeared on behalf of appellant Mt. Hood Meadows. He argued that the site does not “abut a national forest.” Therefore footnote 3 of ZDO Table 317-2 is inapplicable and development on the site must be setback a minimum ten feet from the north boundary. Although the USFS currently owns the strip of land located between the site and E. Government Camp Loop, that strip of land is the subject of a pending “Exchange Agreement” that will make Mt. Hood Meadows the “owner” of that strip. Although the agreement is currently the subject of lawsuits, it is a binding agreement approved by the U.S. Congress.

6. Jeff Kaufenberg appeared on behalf of appellant Collins Lake Condo Association. He agreed with the testimony offered by the other appellants. He noted that the Code does not define an “extended stay” hotel. Additional parking should be required for development in a “snow zone.”

7. Pamela Pliska argued that the proposed development does not provide adequate parking. Traffic and parking in Government Camp is a problem under existing conditions and this development will make things worse. She questioned how the County will ensure compliance with the 30-day occupancy requirement. The proposed development is designed as a condominium. Therefore, it should be subject to the same parking requirements as a condominium. She questioned how the County will ensure the restaurant only serves hotel guests and how the operator will distinguish hotel guests from the general public. She questioned where the applicant will dispose of snow cleared from the surface parking lot on the site.

8. At the conclusion of the hearing the hearings officer held the record open for a total of three weeks: for one week, until June 15, 2023, to allow all parties the opportunity to submit additional testimony and evidence, for a second week, until June 22, 2023, to allow all parties the opportunity to respond to the new evidence, and for a third week, until June 29, 2023, to allow the applicant to submit a final argument. The record in this case on June 29, 2023. The following exhibits were submitted during the open record period:

- a. A June 13, 2203 letter from Mr. Blessing regarding the proposed management office (Exhibit 22);
- b. A copy of the applicant’s ESEE analysis for the hotel (Exhibit 23);
- c. A June 13, 2203 letter from the applicant’s representatives address the impact of snow sliding from roofs (Exhibit 24);
- d. A copy of the Government Camp Revitalization Plan (Exhibit 25);
- e. A June 13, 2203 letter from Mr. Toporek addressing measures to limit snow shed from roofs (Exhibit 26);
- f. A June 13, 2203 letter from Mr. Toporek addressing the building occupancy classification (Exhibit 27);
- g. A letter from appellant Collins Lake Resort HOA (Exhibit 28);
- h. A June 13, 2203 letter from Mr. Drake (Exhibit 29);
- i. A June 21, 2203 email from Mr. Drake (Exhibit 30);

j. A June 21, 2203 letter from Mr. Blessing requesting the hearings officer accept Exhibit 29 (Exhibit 31);

k. A June 13, 2203 letter from the applicant's representative (Exhibit 32; and

l. The applicant's final argument dated June 28, 2023 (Exhibit 33).

C. DISCUSSION

1. ZDO 1305.02(D)(2) authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), appeals of administrative decisions must be reviewed as a *de novo* matter. The hearings officer is required to conduct an independent review of the record. He is not bound by the prior decision of the planning director and does not defer to that decision in any way. New evidence may be introduced in an appeal, and new issues may be raised. The applicant must carry the burden of proof that the application complies with all applicable approval criteria in light of all relevant substantial evidence in the whole record, including any new evidence.

2. The hearings officer finds that the applicant is proposing a single use; a hotel. Therefore, the proposed development does not constitute a "mixed use" development as defined by the Code.

a. The restaurant is not a separate use; it is clearly incidental to the primary hotel use as the restaurant will only serve guests of the hotel. The restaurant will not be open to the general public.

i. The appellants argued that a 2,000 square foot restaurant is larger than needed to serve guests of a 47 room hotel, especially where many rooms include kitchenettes. However, they failed to provide any evidence to support that assertion. The applicant proposed to operate the restaurant as an accessory use and the conditions of approval reflect that limitation.

b. The proposed office use is also accessory to the proposed hotel. As discussed in Exhibit 32, use of the office will be limited to management of the hotel. It will not be used by Vacasa or any other entity to manage properties outside the hotel. A condition of approval is warranted to that effect.

3. The proposed use is a hotel, not a residential development. As noted in Exhibit 27, the building is designed for R-1 (transient) occupancy, which Chapter 2 of the Oregon Specialty Code defines as "occupancy of a dwelling or sleeping unit for not more than 30 days." In addition, the applicant proposed to rent rooms for transient occupancy as

defined by ORS 699.005(4).¹ A condition of approval is warranted limiting occupancy to periods no more than 30 consecutive days.

a. The fact that the rooms include “bathing facilities” and some rooms include kitchen facilities does not convert the development to a residential use. State law and the ZDO distinguish hotel and residential uses based on the duration of occupancy, not the types of amenities provided.

4. Suggestions that conditions attached to a land use decision may be violated are speculative, and are not grounds for denial of the application. *Canfield v. Lane County*, 16 Or LUBA 951 (1988). The County will monitor and enforce compliance with the conditions of approval, including limitations on the duration of stays and use of the restaurant and office. The County Code Enforcement section exists for that purpose. Neighbors can initiate the enforcement process by reporting any violations they observe. The fact that neighbors can assist in monitoring the use does not shift the responsibility to them to do so. The County continues to bear the responsibility for enforcing its laws. However neighbors may be in a better position to monitor the use on a continuing basis because of their proximity, and it may be in their interests to do so given the complaint-driven nature of the enforcement process.

5. There is no dispute that demand for parking in Government Camp frequently exceeds the available supply under existing conditions. However, that is an existing condition that the applicant cannot be required to remedy. The applicant will provide more parking than the Code requires. ZDO Table 1015-1 requires one parking space per unit or 47 parking spaces for the proposed 47 unit hotel. The applicant proposes to provide 52 parking spaces. The Code does not require additional parking for employees, additional guest vehicles, or oversize vehicles such as campers, trailers, and recreational vehicles and the Code does not provide special parking requirements for “snow zones.” The County cannot require the applicant to provide more parking than the Code requires.

a. ZDO Table 1015-2, which sets out parking requirements for “dwellings,” and footnote 2 of that Table, which requires covered parking for structures containing three or more dwelling units on land above 3,500 feet in elevation, are inapplicable, because the applicant is proposing a hotel, not a “dwelling” as defined by ZDO 202.²

¹ ORS 699.005(4) provides, in relevant part, “Transient lodging” means a room or suite of rooms that is not occupied as a principal residence:

(a) By persons for periods of less than 30 consecutive days.

...

² ZDO provides the following relevant definitions:

DWELLING: A building that contains one or more dwelling units. A dwelling may be a residential trailer or a manufactured dwelling but not a recreational vehicle.

DWELLING UNIT: A building, or portion thereof, with one or more rooms designed for residential occupancy by one family.

6. The hearings officer finds that it is feasible to comply with the off street loading standards of ZDO 1015.04. Exhibit 19 includes vehicle maneuvering schematics illustrating the feasibility of vehicles maneuvering in and out of the proposed loading berths as well as larger passenger vehicles utilizing the parking spaces.

a. The vehicle maneuvering schematics appear to show outbound vehicles tracking beyond the footprint of the building. The applicant should be required to modify the design to ensure that all vehicle maneuvering can occur within the boundaries of the parking lot and vehicle maneuvering areas. If necessary, the applicant can expand the parking lot to accommodate this maneuver, installing signs or signals to allow outbound vehicles to maneuver into the inbound travel lane for the short distance needed to complete the eastbound to northbound maneuver at the east end of the parking lot, or implement other changes approved by the County as necessary to ensure safe vehicle maneuvering of all vehicles that are allowed to use the parking lot. This is required by condition of approval 11.J.iii. Expansion of the parking lot will not increase the buildings impact on wetlands or the SCA, as these features do not exist in the area of the site where the applicant's schematics illustrate off tracking.

7. The applicant is not required to submit a transportation analysis and the proposed development is exempt from the concurrency requirements of ZDO 1007.07(B), because the proposed development "[i]s otherwise consistent with the Comprehensive Plan land use plan designations and zoning for Government Camp." ZDO 1007.07(B)(6). Therefore, Mt. Hood Meadows' assertion that congestion and vehicle parking will preclude access to the parcel identified as "United States of America Lands" on the site plan is irrelevant.

8. The applicant will construct frontage improvements along the section of the site abutting E. Government Camp Loop. The applicant cannot be required to construct off-site frontage improvements because the applicant does not own the land necessary to construct frontage improvements and there is no evidence that the cost of such off-site improvements is roughly proportional to the impact of the proposed development.

9. The Fire Marshall for the Hoodland Fire District determined that the proposed development complies with the Oregon Fire Code (Exhibit 18). The Fire Marshall approved an exception to the access road requirement of OFC 503.1.1 because the topography and other conditions of the site preclude such access. OFC 503.1.1 authorizes the Fire Marshall to approve exceptions to the access requirement based on the criteria in that section. The building will be fully sprinklered and equipped with a Class 1 standpipe system in accordance with National Fire Protection Association (NFPA) 14 as well as a

HOTEL: A building which is designed or used to offer short-term lodging for compensation, with or without meals, for six or more people. A facility that is operated for the purpose of providing care beyond that of room and board is not a "hotel."

fire alarm systems and smoke alarms throughout the building in accordance with NFPA 72. The hearings officer has no authority to review the Fire Marshall's determination.

a. The appellants argued that the proposed trees, shrubs, and other vegetation near the building will pose an increased fire hazard. However, the Fire Marshall reviewed the proposed development and did not require a fire break or other limitations on vegetation near the building. Nothing in the plain language of the ZDO authorizes the County to require a fire break around the building.

b. There is no evidence in the record to support the appellants' assertion that approval of this application will increase fire insurance rates for existing property owners in Government Camp. Even if there were such evidence, increased insurance rates are not relevant to the applicable approval criteria for this development.

10. The hearings officer finds that, pursuant to footnote 3 of ZDO Table 317-2, no setback is required from the boundary of the small strip of land abutting the north boundary of the site, located between the site and E. Government Camp Loop, the strip identified as "United States of America Lands" on the site plan, because the abutting parcel is "a national forest" as that term is used in footnote 3 of ZDO Table 317-2; the abutting parcel is federal forest land currently owned by the United States of America, acting by and through the Forest Service, Department of Agriculture.

a. Although Mt. Hood Meadows is party to an Exchange Agreement that is intended to transfer ownership of the strip to Mt. Hood Meadows, Mt. Hood Meadows is not currently an "owner" of that parcel. ZDO 202 defines "owner" as "Person or persons holding fee title to a parcel, lot or tract of land, except in those instances when the land is being sold on contract, the contract purchaser shall be deemed the owner." As noted above, the U.S. Government currently holds fee title to the abutting strip. The land is not "being sold on contract" to Mt. Hood Meadows as the Exchange Agreement is not a land sale contract as described by the Oregon Supreme Court in *Bedortha v. Sunridge Land Co., Inc.*, 312 Or 307, 822 P2d 694, 696 (1991); there is no evidence that Mt. Hood Meadows currently has the right to possession of the parcel subject to the Exchange Agreement. Therefore, Mt. Hood Meadows is not a contract purchaser that can be deemed the owner of that parcel.

11. The hearings officer finds that snow shed from the roof of the proposed structure, as modified by Exhibit 26, will not impact vegetation on or near the site. As discussed in Exhibit 26, the applicant proposed to install a snow management system consisting of a heating systems on the roof, gutters and downspouts and snow guards on the roof of the building to reduce/eliminate snow shed from the roof. As proposed:

The snow guards will slow the migration of snow build-up on the metal roof and eliminate large areas of buildup from sliding off of the roofs. As the snow builds up or slides toward the roof eaves, it will be detained once again where it will be melted by an electric

roof heating system. This system will minimize or eliminate the impact of fallen snow on the ground.

(Exhibit 26).

A condition of approval is warranted requiring installation of the proposed snow management system.

12. The applicant should be required to provide a plan for removal and stockpiling of snow on the site as required by Section 1.5 of the Mt. Hood Community Plan. As the applicant notes, ORS 197.015(12) prohibits the County from applying the Mt. Hood Community Plan to a limited land use decision. However, this application does not involve a “limited land use decision” as defined ORS 197.015(12), because the site is not located within a UGB.³ The hearings officer finds that it is feasible to develop such a plan, as snow removal is a necessary process for most developments within Government Camp and there must be locations where snow can be stored or disposed of. A condition of approval is warranted requiring the applicant to submit such a plan to the County.

13. The hearings officer finds that the proposed development makes adequate provision for collection, treatment, and detention of stormwater runoff from the site.

a. The applicant will collect treat, and detain stormwater runoff from all new pollution generating surfaces (roads, parking lots, sidewalks, etc.), including runoff from E. Government Camp Loop that currently flows untreated across the site to Camp Creek. The applicant will collect and detain runoff from non-pollution generating surfaces (roofs). The applicant will release treated runoff to Camp Creek at controlled rates, mimicking existing conditions. See Plan Sheet C4.0 of Attachment F and Attachment L of Exhibit 2.

b. The applicant is not required to detain runoff from the culvert beneath E. Government Camp Loop. This is an existing condition that the applicant is not required to address. The applicant will relocate the on-site section of this culvert but will not otherwise alter the rate or volume of water discharged into Camp Creek.

14. Opponents argued that “The sheer scale of the structure will dominate the entrance and first impression of visitors to the village.” (Exhibit 10). However, they failed to identify any applicable approval criteria that supports this assertion.

D. CONCLUSION

³ ORS 197.015(12) provides, in relevant part:

“Limited land use decision”:

- (a) Means a final decision or determination made by a local government pertaining to a site within an urban growth boundary...”

Based on the above findings and discussion, the hearings officer concludes that the proposed development does or can comply with the applicable approval criteria, provided the applicant complies with conditions of approval warranted to ensure that the proposed development in fact complies with those standards. The appellant failed to rebut that proof with at least equally probative substantial evidence. Therefore the application should be approved subject to the conditions of approval adopted by the director.

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 Z0032-23-D (Mt. Hood Lodges Hotel), subject to the following conditions:

Conditions of Approval

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on January 19, 2023. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. 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 decision described herein.
2. This development is also subject to the findings and conditions of approval set forth in planning file #Z0033-23-RSCA and file# Z0034-23-SSR.
3. Prior to issuance of building permit, the applicant/property owner shall provide a civil plan set and/or building permit plans associated with building permit submittal showing compliance with:
 - A. Vehicle Parking space requirements in ZDO Subsection 1015.02(A) items 1-10.
 - B. Bicycle Parking space requirements in ZDO Subsection 1015.03
 - C. Two (2) loading berths subject to ZDO Subsection 1015.04
 - D. Six (6) van pool spaces
 - E. Provide a detailed drawing of the onsite walkway system/sidewalk, indicating the walkway is at least five feet in width, clearly marked and visible to drivers, raised in parts directly adjacent to vehicular drives (or install wheelstops), and adequately lit.
 - F. Roof eaves shall be 24 inches minimum, with roof vents placed opposite the public entrance
 - G. Metal roofing materials shall be coated to inhibit rust and corrosion.
 - H. Provide a pedestrian walkway/sidewalk planting plan (planters, trellises etc. may be used).

- I. Building Height shall not exceed 87.5 feet. The "height of building" shall be calculated by the methods identified in the State of Oregon Structural Specialty Code.
 - J. The applicant shall implement a snow management system consistent with Exhibit 26 to prevent snow shed from the roof of the building from significantly impacting vegetation on and near the site.
4. Prior to issuance of building permit, the applicant/property owner shall complete provide a civil plan set and checklist showing compliance with:
 - A. Prior to issuance of building permits, the applicant shall submit detailed enclosure plans that clearly outline a solid waste and recycling enclosure that meets the requirements specified in ZDO 1021, including, but not limited to, trash and recycling receptacle footprints (at a minimum, two 2yd containers and two roll carts) and acceptable service truck circulation. The applicant shall work with Clackamas County's Sustainability & Solid Waste staff to finalize plans that comply with design standards. Please contact Tenille Beseda: tbeseda@clackamas.us
 - B. Provide a lighting plan, lighting profiles, and lighting specifications addressing ZDO Section 1005.04 items 1-6.
 - i. Outdoor lighting on or adjacent to E. Government Camp Loop shall be substantially similar in design to the lamp posts on further east, in the Government Camp core area. This includes wood post, wrought iron support structure and hanging street lamp.
 5. Prior to building permit and issuance of certificate of occupancy, the applicant/property owner shall complete the following:
 - A. All elements of proposed site development including installation of landscape materials and irrigation.
 - B. Please provide a planting "maintenance plan" showing compliance with ZDO Section 1009.10(A) through (O).
 - C. Provide a plan for removal and stockpiling of snow on the site as required by Section 1.5 of the Mt. Hood Community Plan.
 6. Additional conditions of approval:
 - A. Any proposed signs shall meet the standards of ZDO 1010.15, as well as incorporating elements noted by the Design Review Committee including: wrought iron/wood rustic design. If signage is proposed, applicant must demonstrate all elements of ZDO Section 1010.15 are being met, prior to final occupancy.
 - B. All mechanical equipment shall be screened from view, as shown on final plan set

- C. The proposed restaurant shall be used for hotel guests only, and not open to the general public for dining. Signage or advertising of the restaurant as being open to the general public is prohibited.
 - D. This development is subject to landscape plans LA-1 through LA-3.
 - E. Any waste collection areas or other storage areas shall be screened and disguised to resemble the exterior materials of the main building.
 - F. Graded areas shall be re-vegetated with suitable plants to ensure erosion control. Netting shall be provided, where necessary, on sloped areas while ground cover is being established.
 - G. At no time shall the proposed hotel be used for residential occupancy, i.e. for stays more than 30 consecutive days.
 - i. **Advisory only:** Title 8 of the Clackamas County Code requires hotels to register for transient room tax.
 - H. This Approval of design review is valid for four years from the date of the final decision (ZDO Section 1102.05). This project shall be “implemented” as defined in ZDO Section 1102.05, prior to the date of expiration of this design review.
 - I. If the design review approval is not implemented within the initial approval period established by Subsection 1102.05(A), a two-year time extension may be approved pursuant to Section 1310, *Time Extension*.
 - J. Any office space on the site shall be limited to management of the hotel.
7. Additional Government Camp Design Standards, to be shown on plan set prior to building permit approval, and confirmed by staff prior to occupancy: (ZDO Section 1005.12):
- A. Applicant shall use *form concrete liners*, or some other type of texture/veneer material that gives each column visual interest and texture. Concrete stain or paint shall be applied, providing a dark rustic wood color that blends with the forested area (e.g. brown, green, earth tones, etc.).
 - B. Columns visible from E. Government Camp Loop, shall have articulation/differentiated materials (such as stone or rock pattern) at the base of columns, though the base shall not be so wide as to affect parking spaces or circulation drive lanes.
 - C. For the blank walls at the garage/basement entrance, provide visually interesting materials such as a wood/wrought iron-style trellis with plant/vine materials or, if driveway width permits, stone planters on each wall can be placed and contain tree/shrub plantings such as vine maple. Stone and rock work shall be “Government Camp” style, similar to that found at Highway 26 and Mt. Hood Ski Bowl entrance.

- D. Different concrete patterns shall be used for the driveway entrance, pedestrian walkways, and the “plaza.”
- E. Pedestrian access to the front entrance shall be delineated with planters, hanging baskets, etc. This screening should be considered semi-visible or a “diaphanous screening.”
- F. Any planters or other structures supporting landscaping shall be constructed with typical Government Camp style rock work and/or wrought iron materials.
- G. One or more elements of wrought iron shall be integrated into the “plaza.”
- H. The columns/posts supporting the front door canopy/“eye brow” shall have an articulated base, such as Government Camp stone work, wrought iron, or an appropriate texture.
- I. A “wood tone rustic” series of horizontal siding shall be used. This shall be used in conjunction with vertical “Board and Batten” siding, though horizontal wood rustic tone siding shall be more prominent (e.g. thicker shadow line). **Advisory:** The DRC advises against using white or lighter tones for “board and batten” siding, as mountain elements may dirty the siding over the years. Board and batten style siding should be moderately bright in color, and should use softer earth tones

8. Government Camp Sanitary District (GCSD) -- ZDO Section 1006

- A. Applicant shall comply with all GCSD standards prior to occupancy.

9. Government Camp Water Company, Inc.(GCWC) -- ZDO Section 1006

- A. Applicant shall comply with all GCWC standards prior to occupancy

10. Oregon Dept. of Transportation (ODOT) Conditions:

- A. Prior to Certificate of Occupancy, applicant shall comply with the following ODOT conditions of approval, except those noted as “Advisory”:

- i. Frontage Improvements:

The applicant shall construct a six-foot wide, at-grade, concrete sidewalk with gutter (no curb). The concrete sidewalk should be set back one-foot from the property line, within the right-of-way. Improvements must be consistent with ODOT and ADA standards

- ii. Access to the State Highway:

A State Highway Approach Road Permit from ODOT for access to the state highway for the proposed use is required. Truck turning templates shall be provided as needed to ensure vehicles can enter and exit the approach safely. Site access to the state highway is regulated by OAR 734.51. **Advisory:** For application information go to <http://www.oregon.gov/ODOT/HWY/ACCESSMGT/Pages/Application-Forms.aspx>.

Advisory: It may take **2 to 3 months** to process a State Highway Approach Road Permit.

iii. Permits and Agreements to Work in State Right of Way:

An ODOT Miscellaneous Permit must be obtained for all work in the highway right of way. When the total value of improvements within the ODOT right of way is estimated to be \$100,000 or more, an agreement with ODOT is required to address the transfer of ownership of the improvement to ODOT. An Intergovernmental Agreement (IGA) is required for agreements involving local governments and a Cooperative Improvement Agreement (CIA) is required for private sector agreements. The agreement shall address the work standards that must be followed, maintenance responsibilities, and compliance with ORS 276.071, which includes State of Oregon prevailing wage requirements. **Advisory:** If a CIA is required, it may take up to **6 months** to process

An ODOT Miscellaneous Permit is required for connection to state highway drainage facilities. Connection will only be considered if the site's drainage naturally enters ODOT right of way. The applicant must provide ODOT District with a preliminary drainage plan showing impacts to the highway right of way.

Advisory: A drainage study prepared by an Oregon Registered Professional Engineer is usually required by ODOT if:

1. Total peak runoff entering the highway right of way is greater than 1.77 cubic feet per second; or
2. The improvements create an increase of the impervious surface area greater than 10,758 square feet

11. Clackamas County Engineering Conditions (ZDO 1007, 1015)

- A. Applicant shall obtain a Development Permit from the County Engineering Section prior to the issuance of a Building Permit. The applicant shall pay the minimum Development Permit fee for commercial development. **Advisory:** At the time of this application the fee structure for commercial developments is \$2,000 minimum or 5% of site improvements. Issuance of a Development Permit is dependent upon the formal approval, by engineering staff, of a set of plans in compliance with *Clackamas County Roadway Standards* Section 140.
 - i. The permit will be for utilities, driveways, sidewalk, drainage, parking and maneuvering area, and other site improvements.
 - ii. The applicant shall have an Engineer, registered in the state of Oregon, design and stamp the construction plans for all required improvements.
- B. Prior to Development Permit issuance the applicant shall submit to Clackamas County Engineering Office:

- i. Written approval from Hoodland Fire District for the planned access, circulation, and water source supply.
 - ii. Written approval from Government Camp Water System District for adequate water supply to service the development.
 - iii. A copy of the approved Surface Water Management Plan, analyzing the difference between pre and post development discharge rates and mitigation of downstream impacts, along with the detention calculations.
 - iv. Written approval from ODOT, in the form of a permit, for access to and all work within E. Government Camp Loop. Permitting of all improvements, surface water management, and the proposed stormwater conveyance system within the ODOT's right-of-way shall be required and coordinated through ODOT.
 - v. A signed Developer-Engineer Agreement for Primary inspection services per Section 180 of the Roadway Standards. The Primary Inspector will be required provide inspection reports to the County during period of active construction.
- C. Frontage improvements along E. Government Camp Loop shall include:
- i. Six-foot wide ADA compliant sidewalk-ADA accessible ramp is required where connection to existing sidewalk does not exist
 - ii. A minimum 28-foot wide concrete driveway approach per ODOT standards. The first 20-feet shall not have a running slope in excess of $\pm 5\%$.
- D. Applicant shall design and construct drainage facilities to serve the building, parking and maneuvering areas, and the remainder of the site in conformance with Water Environment Services requirements, and *Roadway Standards* Chapter four.
- E. The final surface water management plan shall demonstrate that the rerouted and concentrated runoff will not adversely affect the slopes and properties downstream. The proposed stormwater conveyance system shall be designed such that the upstream runoff that currently flows through the culvert is not restricted and the new conveyance system has adequate capacity to convey this flow. Furthermore, no flows shall exceed the permitted pre-development flows.
- F. Applicant shall design and construct a five-foot wide, ADA compliant walkway from the public right-of-way to the public entrance of each building per ZDO 1005.2. Where the on-site ADA walkway intersects the public sidewalk, there shall be a minimum five-foot x five-foot wide landing.
- G. Applicant shall install and maintain a 30-inch "STOP" sign at the driveway exit. The bottom of the "STOP" sign shall be positioned seven feet above the surface of the new sidewalk or pavement.

- H. All traffic control devices on private property, located where private driveways intersect the road 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.
- I. Applicant shall provide and maintain adequate intersection sight distances and stopping sight distances at the driveway approach intersection with E. Government Camp Loop in accordance with Roadway Standards Section 240. Adequate intersection sight distance for drivers turning left into the site shall also be provided and maintained. In addition, no plantings at maturity, retaining walls, embankments, fences or any other objects shall be allowed to obstruct vehicular sight distance. Posted speed is 40 MPH which requires minimum 445 feet of intersection sight distance and 305 feet of stopping sight distance.
- J. Applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the parking and maneuvering areas. Loading spaces shall also be afforded adequate maneuvering room. The applicant shall design and construct on-site parking and maneuvering areas as follows:
- i. All parking and circulation areas shall be paved with structural section minimum requirements of Standard Drawing R100.
 - ii. Applicant shall provide and implement a signing and pavement-marking plan for onsite parking and circulation. This plan shall be reviewed and approved by the Engineering section and the local Fire Marshal prior to the applicant being issued a Development Permit.
 - iii. The applicant shall show the paths traced by the extremities of the anticipated large vehicles, including off-tracking, on the site plan to ensure adequate turning radii are provided for the large vehicles maneuvering on site and at driveways, including, but not limited to:
 - a. A minimum of 24 feet of back up maneuvering room for all 90-degree parking spaces;
 - b. The paths traced by the extremities of trucks and emergency vehicles shall be demonstrated.
 - iv. All vehicular maneuvering shall be onsite with only forward movements towards the road. The applicant shall comply with the requirements of ZDO Section 1021.06 regarding access to the front of the solid waste and recyclable material container pad. The applicant shall comply with all the vehicle access requirements of ZDO Section 1021.06 unless modifications are approved in compliance ZDO Section 1021.08.
 - v. Parking spaces shall meet minimum ZDO section 1015 and Roadway Standards, Standard Drawing P100/200 dimensional requirements. The plans shall list the number of parking spaces required and the number of parking

spaces provided. The applicant shall label all compact, carpool, ADA, and loading berth spaces on the plans.

K. Primary Inspector:

- i. The applicant shall enter into a Developer/Engineer Agreement for primary inspection services per Section 180 of the Roadway Standards. This form will be provided to the applicant and shall be signed and returned to County Plans Reviewer.
- ii. Prior to final occupancy permit, the applicant shall provide a Certificate of Compliance signed by the Engineer of Record stating all materials and improvements have been installed per approved plans and manufacture's specifications.

L. Prior to the issuance of a building permit, the applicant shall submit to Clackamas County Engineering Office:

- i. Written approval from the Hoodland 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.
- ii. Written approval from ODOT in the form of a permit for all work within the E. Government Camp Loop right-of-way.
- iii. Written approval from Government Camp Water System 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.
- iv. A set of site improvement construction plans, including a signing and striping plan, for review, in conformance with *Clackamas County Roadway Standards* Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.

M. Prior to Certificate of Occupancy, the development shall meet the requirement set forth in Section 190 of the Roadway Standards for Substantial Completion including but not limited to:

- i. All underground utilities are installed and accepted including franchise utilities
- ii. Paving or final grade has been completed and approved
- iii. All Development Permit conditions of approval have been met
- iv. Certificate of Compliance has been submitted
- v. Final approval of ODOT permit
- vi. Submit, at time of initial paving, electronic as-built plans for all improvements showing all construction changes, added and deleted items, location of

utilities, etc. A professional engineer, registered in the state of Oregon, shall stamp and sign as-built plans.

DATED this 12th day of July 2023.



Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

ENDANGERED SPECIES ACT NOTICE

This decision addresses only the applicable criteria under the ZDO. It does not address whether the activities allowed by this decision will comply with the provisions of the federal Endangered Species Act (“ESA”). This decision should not be construed 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 responsible 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.

APPEAL RIGHTS

ZDO 1307.14(D)(6) provides that the Land Use Hearings Officer’s decision is the County’s final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when and how an appeal must be filed with LUBA. 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.” ZDO 1307.17(I)(1) provides that this decision will be “final” for purposes of a LUBA appeal as of the date of mailing of this final order (which date appears on the last page herein).