

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

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| Regarding an Appeal of a Planning Director |) | Case File No. |
| Decision Approving an Application for a |) | Z0312-20-HMV |
| Habitat Conservation Area Map Verification. |) | (Willamette Drive Appeal) |

A. SUMMARY

1. The applicant and owner is Willamette Drive LLC.
2. The appellant is Robert Kunis.
3. The subject property is located at 18332 Southeast Willamette Drive, Milwaukie, Oregon 97267. The legal description is T2S, R1E, Section 13DD, Tax Lot 3100, W.M. The subject property is approximately 1.19 acres and is zoned R-10 – Urban Low Density Residential 10,000 District.
4. On October 22, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. At the conclusion of the public hearing, the record was left open one week for the submission of new evidence, testimony, and argument; one additional week for responses to the new evidence, testimony, and argument; 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 October 22, 2020. The public hearing was conducted virtually by the Zoom platform due to the corona virus. 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 Steve Hanschka discussed the Planning Director's decision and recommended that the Planning Director's decision be upheld.
3. Steve Kay testified in favor of the application.
4. Robert Kunis and Jane Morrison testified against the application.
5. At the conclusion of the public hearing, the Hearings Officer left the record open one week for the submission of new evidence, testimony, and argument; one additional week for responses to the new evidence, testimony, and argument; and one additional week for the applicant's final legal argument.

C. FACTS

This case involves the appeal of a Planning Director decision approving a modification to a Habitat Conservation Area (HCA) map that determines whether and what kind of development may take place in certain areas. The subject property is located at 18332 Southeast Willamette Drive, Milwaukie, OR 97267, is 1.19-acres, and is zoned R-10. An HCA Map Verification application is subject to a type II procedure, whereby the decision is made by the Planning Director. The Planning Director approved the Map Verification application.¹ This appeal followed.

The Planning Director's decision gives a good description of the property and issues:

“The roughly 1.19-acre subject property, is located on the east side of the Willamette River, and on the east and west side of SE Willamette Drive, which bisects the westerly quarter of the property. The bulk of the property is located on the east side of Willamette Drive and contains an existing, circa 1941 single family residence located about 30 feet east of the easterly edge of Willamette Drive, along with manicured landscaping and other amenities typical of a homesite. The remaining area of the property located on the west side of Willamette Drive and leading to the river is vacant, except for a stairway leading down to the riverbank.

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

“The property is affected by four (4) sensitive area overlays that include the floodplain, Greenway, Habitat Conservation Area (HCA) and Water Quality Resource Area (WQRA), all associated with the Willamette River. In 2017, the applicant set up a pre-application conference with this office to discuss the feasibility and details of dividing the property into three parcels that could have included widening of and improvements to the SE Willamette Drive right-of-way, while involving the aforementioned sensitive areas in ways that are specific to land divisions. In fact, the submittal materials include a ‘Willamette Drive Habitat Conservation Area Map Verification Assessment,’ prepared by SWCA Environmental Consultants, and dated November 6, 2018, that was prepared for the previously proposed land division. In the case of this application, however, a land division is not proposed, and no work within the Willamette Drive right-of-way would be authorized. Instead, the purpose of this application, according to the ‘SE Willamette Drive HCA Map Verification’ submittal materials prepared by the applicant’s representative, Cascadia Planning & Development Services, and dated July 16, 2020, is to modify the extent of the HCA in the area of the homesite in anticipation of future renovations to the existing home.

“An examination of the submittal materials by Staff, along with communications with Cascadia, indicated that in addition to analysis of the HCA, the materials also provide information about the relationship of the property to the other three sensitive areas and the extent which those areas impact the lot. In turn, this decision represents an analysis, along with accompanying conditions, about the locations of all four sensitive areas and the manner in which additional review of each, if any, would be required for future development of the property.

“Specific to the HCA Map Verification, where the HCA is proposed to be modified, Staff notes that the applicant is only authorized to seek modification of the HCA on the subject property and not within the Willamette Drive right-of-way or adjacent properties. As outlined below in more detail, the mapped HCA that qualifies as Riparian Habitat, moving upland from the Ordinary High Water Line in the west end of the west section of the property across Willamette Drive and into the west end of the east section of the property, can generally be characterized as first Low Structure Vegetation or Open Soils, then Forest Canopy, then Developed Area Not Providing Vegetative Cover that starts at the west end of the existing home, where the HCA can justifiably be removed from that point upland, recognizing among other things that the subject home is the only structure in the surrounding area on top of which HCA is overlaid.” Planning Director Decision 6.

D. DISCUSSION

As the Planning Director’s decision explains, there are many components to this application. There are four separate code sections that must be complied with, including those addressing the Floodplain Management District, the Willamette River Greenway, the Habitat Conservation Area District, and the Water Quality Resource Area District. The overwhelming majority of the Planning Director’s findings are not challenged. It would be a waste of the County’s money and resources to review and repeat all of the unchallenged findings in the Planning Director’s decision. I have reviewed the Planning Director’s decision, and I agree with all of the unchallenged findings. I therefore adopt and incorporate the Planning Director’s decision in this decision.

There is only one issue in dispute in this appeal – the proposed modification of the HCA map. As the Planning Director’s decision explains, the applicant at one point proposed to partition the property into three parcels that would also have involved improvements to Southeast Willamette Drive (Willamette Drive).² The applicant now just seeks to make improvements to the existing house. The area in dispute is the area that extends 100 feet to the east from the flood area boundary. Currently, the flood area boundary, which is based on maps of the 1996 flood, runs approximately through the middle of the house. The area stretching 100 feet to the east of that line is currently classified as Moderate HCA, which would make the potential renovations more difficult to pursue. The applicant seeks to remove the area east of the existing house from the HCA.

Clackamas County Zoning and Development Ordinance (ZDO) 706.09(A)(4) provides the basis for the applicant’s proposed Map Verification:

“An applicant for HCA Map Verification shall use one or more of the following methods to verify the Habitat Conservation Area (HCA) boundary and, if applicable, the boundary between High, Moderate, and Low HCA.

“* * * * *

“(4) If the identified HCA is riparian habitat rather than publicly-owned upland habitat, the applicant may demonstrate that the HCA Map is inaccurate for a reason other than those described in Subsections 706.09(A)(2) and

² The potential improvements to SE Willamette Drive may have been the cause of initial opposition.

(3).”³

The identified HCA east of the existing house is riparian habitat and the applicant is proposing to demonstrate that the HCA map is inaccurate for another reason – that the area to east of the house is not properly classified as HCA. ZDO 706.09(E) provides:

“For applications filed pursuant to Subsection 706.09(A)(4), the HCA boundary shall be established as follows:

- “1. Locate the water resource that was inventoried by Metro and is the basis for the HCA designation, including: Bankfull stage of streams, rivers, and bodies of open water on or within 200 feet of the subject property; flood areas on or within 100 feet of the subject property; and wetlands on or within 150 feet of the subject property based on the 1994 Clackamas County Wetland Inventory maps adopted by reference in Chapter 3 of the Comprehensive Plan and the Metro 2002 Wetland Inventory Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742). Identified wetlands shall be further delineated consistent with methods currently accepted by the Oregon Division of State Lands and the U.S. Army Corps of Engineers.
- “2. Identify the vegetative cover status of all areas on the subject property that are within 200 feet of the bankfull stage of streams, rivers, and bodies of open water; are wetlands or are within 150 feet of wetlands; and are flood areas or are within 100 feet of flood areas.
 - “a. Vegetative cover status shall be as identified on the Metro Vegetative Cover Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742); or
 - “b. Vegetative cover status may be adjusted if the property was developed lawfully between August 1, 2002, and January 5, 2009, or an error was made at the time the vegetative cover status was determined by Metro. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the definitions of the different vegetative cover types provided in

³ ZDO 706.09(A)(2) and (3) involve, respectively, alleged computer mapping errors and development between 2002 and 2009 – neither which are applicable in the present case.

Subsection 706.03.

- “3. Determine whether the degree that the land slopes upward from all streams, rivers, and bodies of open water on or within 200 feet of the subject property is greater than or less than 25 percent. A minimum of three slope measurements along the water resource shall be made on the subject property. The measurements shall be made at no more than 100-foot increments, which means that more than three measurements may be required, depending on the length of the water resource on the subject property. Slope shall be measured in 25-foot increments away from the water resource until a point 200 feet from the starting point of measurement is reached. Where the protected water resource is confined by a ravine or gully, the top of ravine is the break in the greater-than-25-percent slope; and
- “4. Using Table 706-1 and the data identified pursuant to Subsections 706.09(E)(1) through (3), identify all Class I and II riparian areas on the subject property. The riparian class may vary within a single property.”

Under ZDO 706.09(E)(1), the water resource inventoried by Metro as the basis for the HCA designation is the Willamette River. Under ZDO 706.09(E)(2)(a), the applicable area is the area 100 feet within of the flood area (currently the map designating the 1996 flood boundary has it running through the middle of the house).⁴ There does not seem to be much dispute about what is shown on the property by all of the maps. Immediately east of the house are manicured lawns, a putting green, and landscaped plants. Within 100 feet of the current flood boundary, however, an area of tree canopy begins after the landscaped areas. Under ZDO 706.09(E)(3) the Planning Director’s decision determined the slopes on the property. Under ZDO 706.09(E)(4), the Planning Director’s decision analyzed and identified the riparian area on the property:

“This is roughly the aforementioned area that includes the remainder of the existing home, and is Developed Area Not Providing Vegetative Cover as it primarily sits atop the existing home, manicured lawn and a putting green, none of which qualifies as Low Structure Vegetation or Open Soils, Woody Vegetation or Forest Canopy. As previously noted and as far as Staff can tell, Metro did not, for the most part, map HCAs on top of pre-existing structures and areas upland thereof. Additionally, no other structures in the vicinity of the subject property are overlaid

⁴ ZD) 706.09(E)(2)(b) is not applicable because the house was not built between 2002 and 2009.

with HCA.” Planning Director Decision 24.

The Planning Director ultimately concluded:

“In sum, Staff finds that the HCA map is accurate up to the point where it adjoins the west end of the existing home. Forest Canopy extends into the east section of the property up to, or nearly up to, the west side of the existing home, mostly as the result of offsite trees located in the right-of-way. In turn, and as outlined in the Conditions of Approval above, under this HCA Map Verification decision, the HCA Map is modified to terminate at the point where it adjoins the west end of the existing home. In the end, the analysis illustrates that irrespective of slope, the Forest Canopy within the Streams and Flood Areas (specifically the February 1996 Flood Inundation Boundary element) components of the Class I and Class II Riparian Area location methodology bring the HCA up to the west side of the existing home, where it ends as Developed Areas Not Providing Vegetative Cover.” Planning Director Decision 24-25.

When determining whether areas should be classified as Moderate HCA (as in the present case), the question is whether the area is (or includes) Low Structure Vegetation or Open Soils, Woody Vegetation, or Forest Canopy. The Planning Director found that the area to the east of the existing house did not contain any of these designations and was instead a Developed Area Not Providing Vegetative Cover. To the extent there is any dispute about the manicured lawns, putting green, and landscaped shrubs, I agree with the Planning Director that they are Developed Areas Not Providing Vegetative Cover.

Opponents’ main argument is that the maps clearly show that there is a Forest Canopy area within 100 feet of the current flood boundary. Opponents are correct. Opponents argue that because there is a Forest Canopy area within 100 feet of the flood boundary that the entire area within that 100 feet must also be classified as HCA. According to opponents, it was inappropriate for the Planning Director to inquire into the intentions of Metro in mapping the HCA.⁵ The question is therefore, when there is clearly a non-HCA area separating a clearly HCA area less than 100 feet from the flood boundary – what is the resolution. This is an interesting question. I tend to agree with the Planning Director’s suggestion during the public hearing that there could be an interruption in the HCA. In other words, the HCA would extend up to the flood boundary, then there would be no HCA

⁵ While opponents are perhaps correct, that portion of the Planning Director’s decision is merely dicta and not relevant to the resolution of this case.

for the Developed Area Not Providing Vegetative Cover, and then the HCA would resume at the beginning of the Forest Canopy Area and extend to 100 feet from the flood boundary mark.

While that is an interesting question, I need not resolve it because the applicant submitted additional evidence for the public hearing purporting to demonstrate that the current flood boundary is incorrect.⁶ The applicant proposes to move the flood boundary approximately 65 feet to the west, based on localized mapping from its experts, and thereby remove the landscaped area east of the house from the HCA. There does not seem to be any dispute that if the proper flood boundary is that proposed by the applicant that the Forest Canopy area that is within 100 feet of the current flood boundary would now be well outside of the 100 foot regulated area.

To recap, the area under consideration is the area 100 feet east of the flood boundary – which is based on the 1996 flood. Currently the flood boundary is based on County mapping showing the boundary running through the middle of the house. The applicant’s expert submitted evidence based on data collected by the Corps of Engineers during the 1996 flood and provided by the Oregon Department of Geology and Mineral Industries (DOGAMI) showing the flood boundary to be approximately 65 feet to the west. County planner Steve Hanschka (Hanschka) explained during the open record period why it was acceptable to rely on the applicant’s information to revise the location of the 1996 flood boundary:

“As discussed at the hearing, Staff has historically relied on a particular GIS layer — known as ‘1996 Flood Inundation’ in the County’s in-house, online GIS mapping tool called PlanMap, while also available to County ArcMap users as a feature class called ‘Feb1996FloodAreas,’ provided by County Technology Services (TS) / GIS — as best available information. This is the data upon which Staff relied in this land use decision to identify the extent of ‘Flood Areas’ given that those areas include lands inundated by the 1996 flood.

“In the meantime, the applicant submitted Exhibit 13 that includes maps that, according to the applicant, were developed using Google Earth .KMZ files provided by the Geology & Mineral Industries (DOGAMI,

⁶ Opponents argue that it was impermissible for the applicant to submit new evidence regarding the flood boundary at the public hearing. Opponents are incorrect. The public hearing was a de novo hearing, and all parties were entitled to submit new evidence. Furthermore, opponents had the entire open record period to submit their own evidence or dispute the applicant’s evidence.

see <https://www.oregongeology.org/flood/default.htm>) that were created by data collected by the U.S. Army Corps of Engineers during the 1996 flood event. The maps and data, according to Exhibit 13, show the 1996 flood inundation line to be located in the Willamette Drive right-of-way at an elevation of roughly 48.1 feet, which differs from the aforementioned data that Staff has historically used and is depicted on Exhibits 4 and 6. Staff considers data from DOGAMI to be valid information from a viable, reputable and authoritative source, and has no reason to doubt the validity of this data in terms of it being provided by DOGAMI upon request by the applicant. * * *

“Subsequent to the hearing and while researching the above-mentioned DOGAMI data, Staff located GIS data currently available from Metro through its Regional Land Information System (RLIS) and found the data set called ‘February 1996 Flood with Metro Goal 5 Updates.’ The data can be found here: <http://rlisdiscovery.oregonmetro.gov/?action=viewDetail&layerID=2056>, and is described in detail by Metro as part of this exhibit, including it being produced by a Portland-based consultant under contract with the US Army Corps of Engineers. The data shows the 1996 flood inundation line as being located in roughly the middle of the SE Willamette Drive right-of-way, about 65 feet west of the inundation line historically used by Staff. After bringing the matter to the attention of County GIS Staff about the historically used data versus the Metro data cited above, their recommendation was to use the Metro data because it is sourced to the Corps and is also documented. * * *

“In sum, Section 706 does not specify a source for identifying ‘...lands that were inundated in the February 1996 flood’ as an element of overall ‘Flood Areas.’ Thus, assuming that the information provided by the applicant is indeed US Army Corps of Engineers data cataloged by DOGAMI, then Staff finds no issues with the Hearings Officer considering this information as valid data that identifies the extent of the February 1996 flood, provided by an authoritative and reputable source. The same can be said for the Metro data cited above, and illustrated in the other elements of this exhibit.” October 28, 2020 Memorandum 1-2.⁷

As Hanschka explains, there is nothing in the ZDO that requires that the current GIS maps showing the flood boundary running through the house must be used. As Hanschka further explains, the evidence submitted by the applicant is more thorough and accurate than the map currently used. Opponents do not really dispute this evidence other than to argue that the original map should be used. I agree with Hanschka that the evidence submitted by the applicant is more persuasive as showing the actual extent of the 1996

⁷ The applicant subsequently confirmed that the information was provided by the Corps of Engineers.

flood. Therefore, I agree with Hanschka that the 1996 flood boundary should be moved approximately 65 feet to the west. With the new flood boundary located to the west of the existing house, the Forest Canopy areas east of the house are no longer within 100 feet of the flood boundary and should no longer be classified as HCA.

Therefore, all of the approval criteria for the Map Verification 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 in Z0312-20-HMV, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

FMD CONDITIONS OF APPROVAL

1. General Conditions:
 - A) Approval of this land use permit is based on the submitted written narrative and plans received July 20, 2020. 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 approval described herein.
 - B) Pursuant to the currently effective January 18, 2019 Flood Insurance Study (FIS) for Clackamas County, Base Flood Elevation (BFE) at the subject property is 46.1 feet in the North American Vertical Datum of 1988 (NAVD88).
 - C) Formal removal of all areas of the Special Flood Hazard Area (SFHA) that are upland of the 46.1-ft. contour requires approval of Letter of Map Change (LOMC) / Letter of Map Amendment (LOMA) from FEMA, based on a metes and bound description of the area to include the portion of the home within the SFHA.
 - i. The service of a certified surveyor and/or engineer may be required to obtain a LOMA from FEMA.
 - ii. Under the terms of this decision and following the acquisition of the LOMA, development that is proposed upland of the 46.1-ft. contour, as depicted on the Sheet P-4 Site Plan, will not be subject to Section

703 floodplain development rules and regulations for as long as the LOMA remains valid.

D) Approval Period: The approval of this Floodplain Development Permit 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.

i. “Implemented” means at least one major development permit shall be obtained and maintained, or if a major development permit is not required to complete the development contemplated by the approved FDP, “implemented” means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained.

a) A “major development permit” is:

1. A building or manufactured dwelling placement permit for a new primary structure that was part of the FDP approval; or
2. A permit issued by the County Engineering Division for parking lot or road improvements that were part of the FDP approval.

E) Time Extension: If the approval of this Floodplain Development Permit is not implemented within the initial approval period established by Subsection 703.09(F), a two-year time extension may be approved pursuant to Section 1310.

WRG CONDITIONS OF APPROVAL

1. General Conditions:

A) Approval of this land use permit is based on the submitted written narrative and plan received July 20, 2020 No work shall occur under this permit other than that specified within these documents. It shall be the responsibility of

the property owner(s) to comply with this document(s) and the limitation of approval described herein.

- B) The approval of this Willamette River Greenway (WRG) permit is valid for four (4) 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.
 - i. “Implemented” means all major development permits shall be obtained and maintained, or if no major development permits are required to complete the development contemplated by the approved WRG permit, “implemented” means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A “major development permit” is:
 - a) A building or manufactured dwelling placement permit for a new primary structure that was part of the WRG permit approval; or
 - b) A permit issued by the County Engineering Division for parking lot or road improvements that were part of the WRG permit approval.
 - ii. If this approved WRG permit is not implemented within the initial approval period established by Subsection 705.07(B), a two-year time extension may be approved, pursuant to Section 1310.
2. Standards for Landscaped Area, Open Space, Vegetation, Preservation of Buffer / Filter Strip and Structure Setbacks
- A) Pursuant to Subsection 705.04(C, D & E), the depth of the landscaped area, open space, vegetation, preservation of buffer / filter strip and structure setbacks is 150 feet from the Mean Low Water Level of the Willamette River.
 - i. Removal of native vegetation and native trees in this area is prohibited.

- B) Under the terms of this decision, development that is proposed upland of the 150-ft. offset from the Ordinary Low Water Elevation, as depicted on the Sheet P-4 Site Plan, will not be subject to further review under Section 705 Willamette River Greenway rules and regulations, providing that the 150-ft. landscaped area, open space, vegetation, and preservation of buffer / filter strip is maintained in its current natural state, or enhanced.
 - i. The maximum height of the dwelling or a structure accessory to the dwelling shall be 35 feet.

HCAD CONDITIONS OF APPROVAL

- 1. General Conditions:
 - A) Approval of this land use permit is based on the submitted written narrative and plans received July 20, 2020. No work shall occur under this permit beyond that specified in this decision. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2. Construction Management Plan Conditions:
 - A) Pursuant to Subsection 706.08, future requirements for an HCA Construction Management Plan (CMP), including those requirements for an HCA CMP for Exempt Uses under Subsection 706.04, can be satisfied under this decision by implementing the following standards:
 - i. Erosion prevention and sediment control (EPSC) measures shall be required and shall comply with the standards of the Oak Lodge Water Services District (OLWSD).
 - ii. Orange construction fencing (i.e. safety fencing, snow fencing, or a comparable product) shall be installed on or outside the boundary of the HCA, except where the drip line of a protected tree extends outside the HCA, in which case the drip line shall be included inside the fencing. This requirement may be modified or waived if:
 - a) Disturbance of the HCA is authorized pursuant to Subsection 706.04 or 706.10, in which case the fencing shall be installed

in such a manner as to protect the area of the HCA not authorized for disturbance; or

b) The HCA is already lawfully developed, in which case the fencing shall be installed in such a manner as to protect any water resource that is the basis for the HCA designation and any area of the HCA where naturalized vegetative cover exists.

iii. Trees in the HCA shall not be used as anchors for stabilizing construction equipment.

iv. Native soils disturbed during development shall be conserved on the subject property.

v. Development shall not commence until the EPSC measures and fencing required pursuant to Subsections 706.08(A) and (B) are in place.

vi. Compliance with the Construction Management Plan shall be maintained until the development is complete.

vii. As long as properly implemented, this approval for an HCA CMP does not expire.

3. Map Verification Conditions:

A) Approval Period: The approval of this HCA Map Verification shall be valid for four (4) 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.

i. "Implemented" has the meaning set forth in Subsection 706.06(D)(1) and (2), except that under Subsection 706.06(D)(2), if the approval did not contemplate a specific development proposal, "implemented" means at least one County development permit shall be obtained and maintained.

- ii. If this approved HCA Map Verification is not implemented within the initial approval period established by Subsection 706.06(D), a two-year time extension may be approved pursuant to Section 1310.
 - B) This HCA Map Verification applies only to the subject property, and does not apply to SE Willamette Drive right-of-way or adjacent properties.
 - C) Pursuant to Subsection 706.09(A)(4) and 706.09(E) and for the duration of the validity of this application, the HCA Boundary is established as illustrated on the Metro Nature in Neighborhoods Title 13 Map for T2S R1E Section 13 up to the point where it adjoins the west end of the existing home, at which point the HCA terminates and does not continue over the existing home and beyond.
 - D) HCA Map Verification does not amend the Comprehensive Plan. Permanent modification of the HCA Map requires a Comprehensive Plan Amendment.
4. Prohibited Uses:
- A) The planting of invasive non-native or noxious vegetation.
 - B) Outside storage of materials and equipment, unless such storage began before January 5, 2009, or is approved pursuant to review under Subsection 706.06(C).
5. Lot Line Setback Conditions:
- A) In cases where a reduction in the underlying setback standards of the R-10 zone would move development further from the HCA, or prevent encroachment nearer to or into the HCA, the minimum front, rear, and side yard setback shall be zero, except:
 - i. Garages and carports shall comply with the minimum front yard setback of the underlying zoning district; and
 - ii. A greater setback may be required to comply with applicable fire or life safety requirements.

WQRAD CONDITIONS OF APPROVAL

- 1. General Conditions:
 - A) Approval of this land use permit is based on the submitted written narrative and plans received July 20, 2020. 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 approval described herein.

2. Construction Management Plan Conditions:

A) Pursuant to Subsection 709.08, future requirements for an HCA Construction Management Plan (CMP), including those requirements for an HCA CMP for Exempt Uses under Subsection 706.04, can be satisfied under this decision by implementing the following standards:

- i. Erosion prevention and sediment control (EPSC) Permit: Erosion prevention and sediment control (EPSC) measures shall be required and shall comply with the standards of OLWSD.
- ii. Orange construction fencing (i.e. safety fencing, snow fencing, or a comparable product) shall be installed on or outside the boundary of the WQRA, except where the drip line of a protected tree extends outside the WQRA, in which case the drip line shall be included inside the fencing.:
 - a) Disturbance of the WQRA is authorized pursuant to Subsection 709.04 or 709.09, in which case the fencing shall be installed in such a manner as to protect the area of the WQRA not authorized for disturbance; or
 - b) The WQRA is already lawfully developed, in which case the fencing shall be installed in such a manner as to protect any water resource that is the basis for the WQRA designation and any area of the WQRA where naturalized vegetative cover exists.
- iii. Trees in the WQRA shall not be used as anchors for stabilizing construction equipment.
- iv. Native soils disturbed during development shall be conserved on the subject property.

- v. Development shall not commence until the EPSC measures and fencing required pursuant to Subsections 709.08(A) and (B) are in place.
 - vi. Compliance with the Construction Management Plan shall be maintained until the development is complete.
 - vii. As long as properly implemented, this approval for a WQRA CMP does not expire.
3. Boundary Verification Conditions:
- A) Approval Period: The approval of this WQRA Boundary Verification shall be valid for four (4) 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.
 - i. "Implemented" has the meaning set forth in Subsection 709.06(E)(1) and (2), except that under Subsection 709.06(E)(2), if the approval did not contemplate a specific development proposal, "implemented" means at least one County development permit shall be obtained and maintained.
 - ii. If this approved WQRA Boundary Verification is not implemented within the initial approval period established by Subsection 709.06(E), a two-year time extension may be approved pursuant to Section 1310.
 - B) Pursuant to Subsection 709.09, the WQRA Boundary is established as the Willamette River, along with a Vegetated Corridor that extends upland to the westerly edge of the improved right-of-way of SE Willamette Drive.
 - i. Removal of native vegetation and native trees in this area is prohibited.
 - ii. Under the terms of this decision, development that is proposed upland of the WQRA Boundary as defined above will not be subject

to a WQRA Development Permit under Section 709, providing that the WQRA is maintained in its current natural state, or enhanced.

4. Prohibited Uses:
- A) The planting of invasive non-native or noxious vegetation.
 - B) Uncontained areas of hazardous materials as defined by the Oregon Department of Environmental Quality.

DATED this 2nd day of December, 2020.



Fred Wilson
Clackamas County Hearings Officer

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 the decision (which date appears above my signature).