

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

Regarding an application by the City of Estacada for) **FINAL ORDER**
conditional use approval for a 0.5 or 1.0 million gallon water)
reservoir located on a 23-acre parcel located at 31501 SE) **Case No. Z0161-24-C**
Currin Road in unincorporated Clackamas County, Oregon) **(Estacada Reservoir #5)**

A. SUMMARY

1. The applicant, City of Estacada, requests conditional use approval to construct a municipal water storage reservoir on a 23-acre parcel located at 31501 SE Currin Road; also known as tax lot 100 Section 22C, Township 3 South, Range 4 East, of the Willamette Meridian, Clackamas County (the “site”).

a. The site and all surrounding properties are zoned AG/F (Agriculture/Forest). The majority of the site is currently in farm use, growing Christmas trees, with a dwelling and barns/outbuildings in the southeast corner near SE Currin Road. The site does not contain mapped wetlands or streams regulated by the Zoning and Development Ordinance (ZDO). The property is relatively flat, and does not include any slopes greater than 20%.

b. The applicant proposed to construct the reservoir on a 0.33-acre easement in the northeast corner of the site, adjacent to SE Lucky Lane. The proposed reservoir consists of a green, bolted steel tank, with an aluminum dome top. The applicant is seeking review of two possible reservoir sizes: A 500,000-gallon reservoir that would be approximately 60-feet in diameter and 28 feet tall; or, a 1,000,000-gallon reservoir that would be approximately 81-feet in diameter and 30 feet tall. The proposed water reservoir will have a new access off of SE Lucky Lane.

2. Clackamas County Hearings Officer Joe Turner (the “hearings officer”) held an online public hearing about the application. County staff recommended that the hearings officer approve the application, subject to conditions. See the Staff Report and Recommendation to the Hearings Officer dated July 17, 2024, (the “Staff Report”). The applicant accepted the findings and conditions of approval as recommended by County staff, with certain exceptions. One person testified orally with questions about the application. One person testified in writing in opposition. Contested issues include:

a. Whether the reservoir is subject to the fuel-free break standards of ZDO 406.08(A);

b. Whether the risk of shallow landslides and soil liquefaction during a seismic event make the site unsuitable for the proposed use;

c. Whether the risk that the reservoir will fail during a large earthquake substantially limits, impairs or precludes the use of surrounding properties; and

d. Whether the reservoir’s alleged impact on property values is relevant to the applicable approval criteria.

3. Based on the findings provided or incorporated herein, the hearings officer finds that the applicant sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Clackamas County Zoning and Development Ordinance (the “ZDO”), provided the applicant complies with conditions of approval recommended by County staff or warranted by the facts and law to ensure the proposed use does comply in fact with those standards. Therefore the hearings officer approves the application subject to the conditions at the end of this final order based on the findings and conclusions incorporated herein.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about this application on July 25, 2024. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, 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 following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Melissa Lord summarized the Staff Report and her PowerPoint presentation (Exhibit 13). She noted that the applicant is requesting approval of either a 0.5 or 1.0 million gallon water storage reservoir on the site.

a. Reservoirs and water impoundments are allowed as conditional uses in the AG/F zone. (ZDO 1203.03.A).

b. The characteristics of the site are suitable for the proposed use. (ZDO 1203.03.B). The reservoir must be located on or near the site in order to provide gravity flow water service to the City of Estacada. The area of the site where the applicant proposes to locate the reservoir is relatively flat and there are no floodplains, streams, wetlands, or other natural features regulated by the ZDO. However, the Statewide Landslide Information Database of Oregon (“SLIDO”) maps indicate a risk of shallow landslides in this area. Therefore, proposed condition of approval 5 requires the applicant to submit a geologic study of the site prior to issuance of development permits. The County building department will also require the applicant to submit a geotechnical analysis with the building permit application.

c. The proposed use complies with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use. (ZDO 1203.03.C). The proposed reservoir will be unmanned. Traffic will be limited to occasional maintenance trips. The site will not be accessible by the public. The applicant will be required to improve SE Lucky Lane as necessary to provide a minimum 12-foot wide gravel surfaced roadway between the reservoir access and SE Currin Road.

d. The use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the AG/F zoning district. (ZDO 1203.03.D). The reservoir is unmanned and will not generate noise, light/glare, or other offsite impacts. The County engineer determined that it is feasible to comply with applicable stormwater regulations. Ms. Lord requested the hearings officer modify proposed condition 13 to provide “A storm water management plan in compliance with Roadway Standards Chapter 4 shall ...”

e. The reservoir will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices. (ZDO 406.05(A)(1)(a)). The majority of the site is currently used for Christmas tree production. The proposed facility will not impact the existing farming operations on the site outside of the 0.33-acre easement area as the reservoir is unmanned, generates minimal traffic, and does not have any offsite impacts.

f. The reservoir will not significantly increase the fire hazard, fire suppression costs, or risks to fire suppression personnel. (ZDO 406.05(A)(1)(b)). The reservoir will consist of a largely non-flammable metal tank. However, the proposed reservoir is a “structure” as defined by the ZDO. Therefore, the applicant will be required to comply with the fuel-free break standards of ZDO 406.08(A). The applicant can provide the required 30-foot fuel-free break within the bounds of the easement for the 500,000 gallon reservoir. For the one-million gallon reservoir, the applicant can provide the required 30-foot fuel-free break within the bounds of the easement on the north and east sides of the reservoir, however the 30-foot fuel-free area will extend outside the easement on the south and east sides of the reservoir. Proposed condition of approval 6 requires the applicant to submit an agreement documenting whether the applicant or the property owner will be responsible for maintaining any fuel-free break area located outside of the applicant’s existing easement.

g. The wildland/urban interface standards of ORS 477.027 and OAR 629-044-1005 are not “in effect” as the statewide wildfire risk maps that designate the wildland/urban interface have not been adopted. The draft maps are currently out for review. Areas outside of high risk and designated wildland/urban interface areas would be subject to the defensible space requirements of the state Fire Marshall while fire hardening requirements are addressed through the building code. The fire break requirements of the ZDO are based on OAR 660-006-0035 and require that the owners of dwellings and structures must maintain a primary fuel free fire brake around the structure.

3. City attorney Peter Watts, city engineer Curt McLeod, and assistant city manager Elaina Turpin appeared on behalf of the applicant City of Estacada.

a. Mr. Watts made legal arguments on behalf of the applicant.

i. He argued that the proposed reservoir is not subject to the fuel-free break requirements of the ZDO. Senate Bill 360, codified as ORS 477.027, was passed in 1997. The purpose of the statute was to 1) ensure that firefighters have sufficient room around dwellings to fight fires and 2) limit the amount of potential fuel that structures add to a fire. OAR 629-044-1005 established rules to implement SB 360 and ORS 477.027.

(A) The proposed reservoir is not a “structure” subject to the fuel-free break requirements. The definition of “structure” in OAR 629-044-1005 is different than the County’s definition in ZDO 202. OAR 629-044-1005(2)(g) defines “structure” as “[a]ny building that is at least 400 square feet.” Smaller buildings are excluded, as they do not add significant additional fuel to a fire. The metal water reservoir proposed in this case is not a “structure” as defined by OAR 629-044-1005(2)(g). It is an “essential facility” that supports community functions, which OAR 629-044-1005(2)(f) defines as “other human development”. The proposed reservoir is an “essential facility”, because it is necessary to ensure that the City has sufficient water supply and pressure to fight fires. During the 2020 fire many residents were using city water to dampen their roofs to protect their homes, which reduced the water pressure available to emergency crews fighting the fire. The proposed reservoir will provide additional water storage capacity, which will add redundancy to the City’s water system and improve the water supply and pressure in the event of a future wildfire event.

(B) The proposed reservoir will not add fuel to the fire and does not require protection; it is a non-flammable metal structure. Therefore, a fuel break is not needed to protect the reservoir from fire. Firefighters would use the reservoir as a source of firefighting water supply needed to protect other structures.

(C) ORS 477.027 and OAR 629-044-1005 predate the current wildfire mapping process. Several, mostly urban, counties adopted and received acknowledgement of maps pursuant to that legislation. However, these provisions did not include a mechanism to require or fund wildfire mapping. Therefore, authority was transferred to the State Forestry Department to map wildfire risk in unmapped counties. Clackamas County has adopted wildfire risk maps. Therefore, it is not subject to the current mapping process.

ii. Compliance with the fuel-free break requirements of the ZDO could prohibit the applicant from constructing the one-million gallon reservoir or require the City to pay the property owner for an additional easement for the fuel-free fire break. This is contrary to the purpose of the wildfire risk statute. The City Council is unwilling to use its eminent domain powers to acquire land for the reservoir.

(A) There are few alternative locations for the proposed reservoir. The applicant’s engineers identified three potential sites that met the elevation and location requirements for the planned reservoir. Other potential locations would have required additional right-of-way from other property owners. One of the sites was the cemetery on Currin Road. However, a reservoir in that location would eliminate the

majority of the cemetery's parking, making it difficult for mourners to attend funerals or visit graves. The owner of the second parcel was only interested in selling the entire parcel. The site is the only parcel that met the City's siting requirements and had a willing owner. Due to this lack of options, the City paid more than the appraised value of the easement in order to provide this needed service.

(B) The property owner could potentially charge whatever they want to allow the City to expand its easement to accommodate the fire break or the City would only be able to build the smaller reservoir.

iii. Clackamas County recognizes that the City's lack of water is a significant issue, citing bullet four on page 113 of the County's Community Wildfire Protection Plan dated March 14 and June 27, 2024. Limiting this use to a 500,000 gallon tank will increase the risk if wildfire.

b. Mr. McLeod testified that the City obtains water from the Clackamas River. There is an existing water main in SE Woodland Road west of the site. The applicant will extend that water line within the right-of-way for SE Lucky Lane to connect the proposed reservoir to the City's water system.

c. Ms. Turpin noted that the County has adopted its own wildfire risk mapping which identified a wildland/urban interface. She questioned whether that adoption would implement OAR 629-044-1005 and make those rules applicable.

4. Alice Zabudsky questioned how the City will extend water to the proposed reservoir.

5. Dennis Abernethy testified in writing in opposition to the proposed reservoir. (Exhibit 9). He argued that the water tank will "loom over" surrounding homes and reduce the value of surrounding properties. Area residents will be unable to obtain affordable flood insurance due to the proximity of the tank. Soils on the site are susceptible to liquefaction, which will cause the reservoir to fail during a large earthquake. Failure of the reservoir will cause flooding and damage structures on surrounding properties as well as properties located downhill from the site.

6. The hearings officer close the record at the end of the public hearing and took the matter under advisement.

C. DISCUSSION

The hearings officer adopts the following findings as his own.

1. ZDO Section 1203.02 CONDITIONAL USES

A. 1203.02: Submittal Requirements

Finding: *This application includes a completed land use application form, site plan, application fee, and completed supplemental application addressing the criteria in ZDO Section 1203. The application also includes a description of the proposed use and vicinity map. The application includes all the submittal materials required under Subsection 1203.02. The application was submitted April 18, 2024, and additional materials received on May 15 and 23, 2024. The application was deemed complete on May 23, 2024, following the submission of additional information requested by the County.*

- B. **1203.03(A):** The use is listed as a conditional use in the zoning district in which the subject property is located.

Finding: *The subject property is located in the AG/Forest (AG/F) district. ZDO Section 407.04 lists the uses allowed in the AG/F district. As established in Table 407-1, a reservoir or water impoundment is a Conditional Use and is subject to Subsection Section 406.05(A)(1),(2) & (6). The applicant has submitted a Conditional Use land use application accordingly. This criterion is met.*

- C. **1203.03(B):** The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.

Finding: *The subject property is approximately 23 acres in size and is currently in use as a Christmas tree farm. The property is generally flat, and does not contain any mapped environmental features, such as rivers, streams or groves of trees, that would be regulated by the ZDO (the trees on the property are Christmas trees and therefore considered farm crops). The subject property is not located within the 100-year floodplain and is not subject to the review of ZDO Section 703, Floodplain Management District.*

The applicant's written narrative states that the City of Estacada requires this proposed high-service water storage reservoir to provide gravity service to all properties within the City's Urban Growth Boundary. For that to be possible, the reservoir must be at least 80 feet higher in elevation than the service area. The site is located at an elevation that meets the City's need.

ZDO Section 1003 sets standards related to development or grading in areas of land movement, slump or earth flow, or mud or debris flow. The principal source of information for determining mass movement hazards is the State Department of Geology and Mineral Industries (DOGAMI) Bulletin 99 and accompanying maps, though the site is not available on the Bulletin 99 maps. Regardless of the applicability of Section 1003, a neighboring resident raised concerns related to shallow landslide hazards. Specifically, the testimony expressed concern of liquefaction. (Exhibit 6). Staff reviewed the Statewide Landslide Information Database for Oregon (SLIDO) web map (Exhibit 11) and confirmed the presence of landslide susceptibility on the site. The map shows evidence of moderate or

high susceptibility of shallow landslides (less than 15 feet below ground surface). The applicant is required to submit an engineering geologic study prior to the issuance of a development permit in order to ensure that the ground where the water reservoir will be located is suitable for the proposed use. The report shall include the information listed in ZDO Section 1003.02(B)(3). The reservoir shall be constructed to implement the recommendations provided in the report.

As conditioned, this criterion is met.

- D. **1203.03(C):** The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

***Finding:** Staff reviewed the proposal for compliance with 1007.07. The findings are included in the staff report below. Under Subsection 1007.07(B)(3), unmanned (“unstaffed”) utility facilities are exempt from the concurrency requirements. This criterion is met.*

- E. **1203.03(D):** The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.

***Finding:** The site is in the AG/Forest (AG/F) district and is immediately surrounded by other properties in AG/F district. Permitted uses of the AG/F district are included in ZDO Section 407. Primary uses largely include farming and forestry operations, but a complete list is available in ZDO Section 407.04 and Table 407-1.*

The hearings officer incorporates the findings that the applicant provided in their written narrative in response to this specific question and provides the following comments in addition. Due to the nature of the proposed development there will be no noise, light/glare, or significant increase in traffic in a way that would substantially limit, impair or preclude the surrounding properties use of their property.

Neighbors argued that the proposed reservoir will “loom over” surrounding homes and reduce the value of surrounding properties. However, the proposed reservoir will not exceed the 35-foot maximum height allowed in the County’s residential zones. The 500,000 gallon reservoir is 28 feet tall, not including the domed cap, and the one million gallon reservoir is 30 feet tall, not including the domed cap. In addition, alleged property value impacts of the facility are not relevant to the applicable approval criteria. The Land Use Board of Appeals (“LUBA”) held that “[p]otential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D). . .” Tylka v. Clackamas County, 34 Or LUBA 14 (1998). The hearings officer agrees with and adopts that conclusion.

There is no dispute that a sudden failure and collapse of the proposed reservoir during an earthquake or landslide would have significant impacts on surrounding and downstream properties and structures. As noted above, the site and surrounding properties are subject to moderate or high susceptibility of shallow landslides. However, the applicant is required to design the reservoir to address the potential for landslides, soil liquefaction, and other seismic risks to limit the potential for failure during an earthquake. The hearings officer finds that, as conditioned, the reservoir does not pose a significant risk of failure.

This criterion is met.

- G. 1203.03(E):** The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.

***Finding:** The site is designated Forest on the Comprehensive Plan map. The AG/Forest (AG/F) zoning district implements the goals and policies of the Forest plan designation. Chapter 4, Land Use: Forest Polices – 4.00 of the Comprehensive Plan is applicable. The goals include utilizing forest lands for forest uses and to conserve environmental resources.*

The site is 23 acres in size and is developed with a lawfully established dwelling and barns/outbuildings. The property is currently employed in farm use, which is a primary use in the AG/F district. The proposed water reservoir structure will be situated in the northwestern corner of the site as close to the north and west property boundary as allowed by the Zoning and Development Ordinance, including as close to the road as allowed. This will maximize the amount of land available for continued farming of the site. As discussed below, the applicant will be required to implement appropriate measures to ensure fire protection and to minimize risk of fire hazard. This criterion is met.

- H. 1203.03(F):** The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, and Section 1000 Development Standards.

***Finding:** Staff reviewed compliance with ZDO Section 1000, as applicable. The findings are included in the staff report below.*

2. ZDO Section 1000 Development standards

Not all subsections in ZDO Section 1000 are applicable. Below is an evaluation of the criteria that are applicable to the proposed conditional use.

A. Section 1002 Protection of Natural Features, 1003 Hazards to Safety, and 1004 Historic Protection.

***Finding:** These sections are not applicable to the site. ZDO Section 1002 sets standards related to development on slopes greater than or equal to 20%. The*

development area on the site is nearly flat, and therefore this section is not applicable.

ZDO Section 1003 sets standards related to development or grading in areas of areas of land movement, slump or earth flow, or mud or debris flow. The principal source of information for determining mass movement hazards is the State Department of Geology and Mineral Industries (DOGAMI) Bulletin 99 and accompanying maps, though the site is not available on the Bulletin 99 maps and therefore Section 1003 does not apply.

ZDO Section 1004 sets standards related to the establishment of historic designations on properties and the development or redevelopment on already designated historic properties. The site is not a designated historic site and therefore Section 1004 does not apply.

- B. 1005 Sustainable Site and Building Design.** Section 1005 addresses the development of sites and design of buildings so as to efficiently utilize land, create lively, safe, and walkable centers, support the use of non-auto modes of transportation, reduce impact of development of natural features, utilize opportunities arising from a site's configuration, design illumination so dark skies are maintained when possible and accommodate the needs of users of developments. It applies to institutional, commercial, and industrial development; multifamily dwellings; and developments of more than one, two- or three-family dwellings.

***Finding:** Subsections 1005.01, 1005.02 and 1005.03 primarily relate to developments in commercial and industrial areas, and to urban housing developments and the goal to create walkable, pedestrian-oriented developments with strong design elements; however, Section 1005 applies to all institutional developments. The proposed water reservoir will be located in the northwest corner of the property, as close to the north and west property lines as allowed by the Zoning and Development Ordinance and will be constructed of steel, which is an allowed building material. The site will not be occupied by any staff, and will be visited infrequently for the occasional maintenance needs of the facility. The applicant proposes to surface the area surrounding the reservoir with crushed rock surfacing which is adequate to serve the pedestrian needs of the development. As applicable to the proposed development, the standards of this section are met.*

- C. 1005.04 Outdoor Lighting** provides standards to ensure that onsite lighting is compatible with the site and surrounding uses while preventing light trespass and pollution.

***Finding:** No outdoor lighting is proposed with this development. The standards of this subsection are not applicable.*

- D. 1006.06 Surface Water Management and Erosion Control.** The following surface water management and erosion control standards apply:

- a. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.
- b. The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the Clackamas County Roadway Standards apply.
- c. Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.
 - i. The service provider may require a preliminary storm water management plan, storm drainage report, natural resource assessment and buffer analysis prior to signing the preliminary statement of feasibility.
 - ii. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.

Finding: *Clackamas County is the surface water management authority for the area including the site. The applicant has submitted a Preliminary Statement of Feasibility signed by County Development Engineering indicating that adequate surface water management, treatment, and conveyance is available to service the development or can be made available through improvements completed by the development or the system owner. The proposed site development is subject to compliance with Clackamas County Roadway Standards, Chapter 4. The applicant states that the proposed development will not create more than 10,000 square feet of impervious surface; however, a condition of approval is recommended to ensure that a stormwater management plan be submitted if 10,000 square feet or more of new impervious area is developed. As conditioned, this criterion is met.*

- E. **1007 Roads and Connectivity.** The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.

Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and

three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards.

Transportation Facilities Concurrency applies to the following development applications, with exceptions: design review, subdivisions, partitions, and conditional uses.

Finding: *The Clackamas County Development Engineering division reviewed the application materials and provided the following comments:*

SE Lucky Lane is non-maintained rural local roadway, extending approximately west 875 feet from SE Currin Road to the project site. ZDO Section 1007.02(E) and 1007.04 require that developments improve the public roadway frontage to current county standards. Per Clackamas County Roadway Standards, the minimum right-of-way width for a rural local road is 48 feet. The existing right-of-way width of SE Lucky Lane appears to be 20 feet, based on the County Assessor's map. Although, the existing right-of-way does not meet the current standard, based on the limited number of vehicle trips associated with the reservoir, dedication of right-way is not warranted. The existing right-of-way is adequate to serve the proposed development.

SE Lucky Lane is a gravel roadway with an improved width that varies from approximately 12 to 15 feet. The applicant will be required to verify that there is a minimum width of 12 feet of gravel on SE Lucky Lane, extending from SE Currin Road to the project site.

Development of the reservoir facility will likely have construction impacts on a non-maintained gravel roadway. Roadway Standards section 225.6 requires that impacts to local roadway are addressed so that the roadway does not deteriorate during construction. The applicant will be required to repair damage to the road and leave the roadway in as good or better condition following construction of the project site.

The applicant is required to provide adequate on-site circulation for the parking and maneuvering of all vehicles anticipated to use the site in accordance with ZDO Section 1015 and applicable Roadway Standards requirements. The minimum access road includes a 12-foot

wide gravel surface, within a minimum 20-foot wide, unobstructed clear zone.

Based on ZDO subsection 1007.07(B)(3), the use qualifies for an exemption regarding transportation facilities concurrency.

As proposed, these standards can be met with conditions.

- F. 1010 Signs; 1010.08 Signs in for Institutional Uses.** Pursuant to Section 1010.07, any signage associated with and institutional use in the Natural resource districts (e.g. EFU, TBR and AG/F) is subject to the applicable standards of Section 1010 and Subsection 1010.08.

Finding: *The standards of Section 1010 apply to all institutional developments; however, the applicant has not proposed any signage with this development. At this time the standards of this section are not applicable, but any future signage on site shall comply with this section. A condition of approval is warranted to offer guidance on allowed signage should the applicant choose to provide signage at a later date.*

- G. 1015 Parking and Loading.** Outside the Urban Growth Boundary (UGB), areas used for parking, loading, and maneuvering of vehicles shall be surfaced with screened gravel or better, and shall provide for suitable drainage [1015.01(B)]. Off-street parking areas are governed by Subsection 1015.02(A) and minimum automobile parking space requirements are provided in Table 1015-1.

Finding: *Section 1015 provides the standards for off-street motor vehicle parking requirements. In the event that a use or structure is not specifically listed in Table 1015-1, it is subject to the requirements for the most similar use. The land use categories in Table 1015-1 do not provide a similar use to the proposed water storage reservoir; however, the parking demand is most similar to “on-site vehicular parking for employees, customers and visitors, determined through Conditional Use process” like the surface mining standards.*

The development proposal will operate as an unstaffed facility. There is a need to accommodate at least one vehicle for occasional maintenance and inspection needs of the unstaffed facility. At least one 8.5 feet wide by 16 feet long parking space shall be provided. Designated vehicle parking spaces shall comply with ZDO Section 1015 dimensional requirements and require a surface of screened gravel or better.

The applicant is required to provide adequate on-site circulation for the parking and maneuvering of all vehicles anticipated to use the site in accordance with ZDO Section 1015 and applicable Roadway Standards requirements. The minimum access road includes a 12-foot wide gravel surface, within a minimum 20-foot wide, unobstructed clear zone.

As conditioned, this criterion can be met.

H. **1021 Solid Waste and Recyclable Material Collection.** Outlines the standards for refuse and recycling for commercial developments.

***Finding:** The requirements and standards of Section 1021 are applicable to this “institutional use”; yet since the development site will be an unstaffed facility and the proposal does not include any administrative offices, workshop, or other area for employees to work, it is unlikely that there is any garbage or recycling generated by this development site. The site will only be visited a few times each month for the occasional maintenance needs of the reservoir. Based on the scope of work of the proposal the hearings officer finds that there is no need for solid waste and recycling material collection on site, and therefore compliance with Section 1021 is not applicable.*

3. **ZDO SECTION 407 AG/F DISTRICT**

- A. 407.04 Uses Permitted. Table 407-1 lists “Reservoir or water impoundment” as a Conditional Use, subject to Section 406.05(A)(1),(2) & (6).

***Finding:** As established in Table 407-1, a reservoir or water impoundment is a Conditional Use and is subject to Subsection Section 406.05(A)(1),(2) & (6). The applicant has submitted a Conditional Use land use application accordingly. This criterion is met.*

- B. 406.05(A)(1): The use may be approved only where such uses: (A) Will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; and (B) Will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

***Finding:** The site is currently in use as a Christmas tree farm, and will continue to operate as a Christmas tree farm following the installation of the proposed water reservoir tank. Other than for occasional maintenance needs, there will be no traffic generated to/from the site. The water reservoir tank will not generate noise, light, or smell that could have an impact on farming or forestry practices. Therefore, the proposed reservoir will not force a significant change or increase in cost of farming or forest practices.*

The proposed water reservoir will be located in the northwestern corner of the property, as close to the northern and western property boundaries as allowed by the Zoning and Development Ordinance which will ensure that access to the structure is located as close to the existing road as possible. As discussed below, the structure will be required to meet the minimum primary fuel-free break zone standards which are intended to protect structures from fire. In addition, the water reservoir tank will be made of steel, which is not a flammable material. The submitted application materials state that the water storage reservoir will contain

“water for the purpose of fighting fires” and that the reservoir will be “constructed for the purpose of fire protection.”

Therefore, the proposed reservoir will not force a significant increase in fire hazard, fire suppression costs or risk to fire personnel.

This standard is met.

- C. 406.05(A)(2): A written statement recorded with the deed or written contract with the County or its equivalent is obtained from the land owner that recognizes the rights of the adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and Rules.

Finding: *Such a statement has not yet been recorded with the County at this time. A condition of approval is warranted to ensure that this criterion is met.*

- D. **406.05(A)(6):** A land division for the use may be approved pursuant to Subsection 406.09(D).

Finding: *This standard is informational in nature; at this time, a land division is not proposed. This criterion is not applicable.*

- E. **407.06 Dimensional Standards.** Subsection 406.07, which establishes dimensional standards in the TBR District, shall apply in the AG/F District.

Finding: *Section 406.07 outlines the dimensional standards in the AG/F zoning district as follows:*

	Standard	Proposed	Compliant
Minimum Front Setback (east/Currin Rd)	30 feet	800 feet	Yes
Minimum Front Setback (north/Lucky Ln)	30 feet	30 feet	Yes
Minimum Rear Setback	30 feet	30 feet	Yes
Minimum Side Setback	10 feet	1,100+ feet	Yes

Pursuant to ZDO Section 202, when a property is a corner lot the rear lot line is any one of the boundary lines opposite the front lot lines. Any other opposite boundary line is a side lot line. Whether the applicant chooses to consider the western property boundary as the “rear” or the “side” lot line, the proposed 30-foot setback complies; likewise, whether the applicant chooses to consider the southern property boundary as the “rear” or the “side” lot line, the proposed 30-foot setback complies. This criterion is met.

- F. **407.07 Development Standards.** Subsection 406.08, which establishes development standards in the TBR District, shall apply in the AG/F District.

Subsection 406.08(A) includes fire siting standards for new structures. Fuel-free break standards shall be provided surrounding any new structure approved after April 28, 1992, pursuant to a land use application as described herein.

Finding: *The hearings officer finds that the fuel-free break standards apply to this use. As Staff noted, the fire-siting standards of ZDO 406.08(A) are based on OAR 660-006-0035, which establishes “Fire-Siting Standards for Dwellings and Structures.” This rule distinguishes between dwellings and structures. Subsection (3) applies to structures whereas the remaining requirements of OAR 660-006-0035 only apply to dwellings. ORS 477.027 and OAR 629-044-1005, cited by the applicant, establish mapping requirements and do not include any specific requirements for the protection of dwellings or structures. Assertions that the proposed reservoir constitutes “other human development” as defined by OAR 629-044-1005(2)(f) are irrelevant, as this term is only used in the definitions of “Wildland-Urban Interface” and “Occluded geographical area”. (See OAR 629-044-1005(2)(e) and (m) and 629-044-1011(1) and (3)). Therefore, the hearings officer finds that the specific fire-siting standards of OAR 660-006-0035 prevail over the general fire-risk mapping provisions of ORS 477.027 and OAR 629-044-1005 and the reservoir is subject to the fuel-free break standards of the ZDO.*

Bullet four on page 113 of the Clackamas Community Wildfire Protection Plan (CCWPP) cited by Mr. Watts is also inapplicable. This bullet is expressly limited to “Communities that have been identified as being particularly vulnerable to wildfires are listed in Table 9-9.” This reservoir is intended to store water “[t]o support fire flows within the City’s UGB...” (Exhibit 1, application narrative at 2). The City of Estacada is not included in Table 9-9 of the CCWPP.

OAR 660-006-0035(3) and ZDO 406.08(A) require a primary fuel-free break area surrounding all structures. ZDO Section 202, defines “structure” as “Anything constructed or erected, which requires location on the ground or attached to something having a location on the ground.” The reservoir is a structure. Therefore, the fire siting standards are applicable to the proposed water reservoir. The fact that the proposed steel reservoir is not flammable and will provide water for fighting fires is irrelevant. Based on the plain language of the Code, this requirement applies to all structures, regardless of their composition or use. The applicant demonstrated on their site plan that a primary fuel-free break standard can be maintained, as described further in this Final Order. With conditions, this standard can be met.

- G. **406.08(A)(1)** A primary fuel-free break area shall be maintained surrounding any new structure, including any new dwelling. The primary safety zone is a fire fuel break extending a minimum distance around structures. The minimum distance is established by Table 406-2, Minimum Primary Safety Zone and Figure 406-1, Example of Primary Safety Zone. The goal within the primary safety zone is to remove fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone may include green lawns and shrubs less than 24

inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, limbs and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the structure. As slope increases, the primary safety zone shall increase away from the structure and down the slope at a 45-degree angle from the structure, in accordance with Table 406-2 and Figure 406-1.

Finding: *As established by Table 406-2, the minimum primary safety zone is 30 feet around the proposed structure when considering the slope of the land. The primary safety zone has specific limitations on vegetation growth that can be addressed as a condition of approval. The proposed 60-foot diameter (500,000 gallon) tank can clearly allow for the City of Estacada to maintain the primary safety zone within their easement area on the site. However, the proposed 81-foot diameter (one-million gallon) tank does not provide adequate space within the easement area to accommodate the primary safety zone. In order to satisfy the ZDO standard, the primary safety zone does not specifically need to be within a private easement; however, ensuring (and enforcing) continued compliance with the primary fuel-free break safety zone may pose a challenge to the County if portions of the primary safety zone are located outside of the easement area.*

The hearings officer understands that compliance with the fuel-free break standards may impact the applicant's ability to construct the larger reservoir, as the applicant must negotiate with the property owner to provide the fuel-free break area outside of the applicant's existing easement. However, those impacts are not relevant to the applicable approval criteria.

ZDO Subsection 406.08(A)(3) states that "the fuel-free break standards shall be completed and approved prior to issuance of any septic, building, or manufactured dwelling permits. Maintenance of the fuel-free breaks shall be the continuing responsibility of the property owner." A condition of approval is warranted to ensure compliance with this criterion. The easement holder, City of Estacada, should be authorized to negotiate the continued maintenance of the primary safety zone on behalf of the owner. As conditioned, this standard is met.

- H. **406.08(C)** Compatibility Siting Standards. The following compatibility siting standards shall apply to any new structure, including any new dwelling, approved pursuant to a land use application based on standards in effect on or after April 28, 1994. Structures shall be sited on the subject property so that:
- a. They have the least impact on nearby or adjoining forest or agricultural lands;
 - b. The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

- c. The amount of forest lands used to site access roads, service corridors, and structures is minimized; and
- d. The risks associated with wildfire are minimized.

Siting criteria satisfying Subsection 406.08(C)(1) may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads, and siting on that portion of the subject property least suited for growing trees.

***Finding:** Pursuant to ZDO Section 202, a “structure” is anything constructed or erected, which requires location on the ground or attached to something having a location on the ground. As such, the compatibility siting standards are applicable to the proposed water reservoir since the reservoir is a structure.*

The amount of agricultural land used to accommodate this use is minimized based on the location of the proposed reservoir. The proposed water reservoir will be located in the northwestern corner of the property, as close to the northern and western property boundaries as allowed by the Zoning and Development Ordinance which will reduce the amount of farm and forest land impacted by the structure and by the access driveway to the structure.

The structure will be required to meet the minimum primary fuel-free break zone standards which are intended to protect structures from fire. In addition, the water reservoir tank will be made of steel, which is not a flammable material. Therefore, the risks associated with wildfire are minimized by the proposed siting of the structure. As proposed, this standard is met.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0161-24-C (Estacada Reservoir #5) should be approved, because the application does or can comply with applicable standards of the Clackamas County ZDO, provided it is subject to conditions that ensure timely compliance in fact with the ZDO and relevant Comprehensive Plan Policies.

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 Z0161-24-C (Estacada Reservoir #5) subject to the following conditions:

Conditions of Approval:

The following conditions are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses.

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on April 18, 2024, and additional materials received on May 15 and 23, 2024. 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. The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). During this four year period, the approval shall be implemented, or the approval will become void. “Implemented” means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, “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 permit for a new primary structure that was part of the conditional use approval, or
 - b. A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval
3. **Prior to obtaining a development permit**, a copy of a written statement recorded with the deed or written contract with the County or its equivalent is obtained from the land owner that recognizes the rights of the adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and Rules. [406.05(A)(2)]
4. **Prior to obtaining a development permit**, the primary fuel-free break standards shall be completed. The minimum primary safety zone is 30 feet around the proposed structure, as established by Table 406-2. Evidence of completion shall be provided to the Clackamas County Planning and Zoning division. [406.08(A)(3)]
5. **Prior to obtaining a development permit**, an engineering geologic study shall be completed and submitted to the County. The report shall include the information listed in ZDO Section 1003.02(B)(3) and the reservoir shall be constructed to implement the recommendations provided in the report. [1203.03(B)]
6. Maintenance of the primary fuel-free breaks shall be the continued responsibility of the property owner, unless a maintenance agreement is provided specifying that it is the responsibility of the easement holder, the City of Estacada. If applicable,

a copy of this maintenance agreement shall be provided to the Clackamas County Planning and Zoning division. [406.08(A)(3)]

The primary fuel-free break area shall be maintained surrounding the proposed water reservoir. The primary safety zone is a fire fuel break extending a minimum 30 feet around the reservoir. Vegetation within the primary safety zone may include green lawns and shrubs less than 24 inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, limbs and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the structure. [406.08(A)(1)]

7. 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.
8. The applicant shall verify and/or provide a minimum 12-foot wide gravel surface on SE Lucky Lane, extending from SE Currin Road to the project site. Verification shall be submitted to the Clackamas County Development Engineering division.
9. **Prior to issuance of a Development Permit**, the applicant shall provide photographic/video evidence of the condition of the existing road surface of SE Lucky Lane. The road shall be left in as good or better condition following construction of the water reservoir facility, per Roadway Standards Section 225.6.
10. The applicant shall design and construct a minimum 12-foot wide by 20-foot long, driveway approach onto SE Lucky Lane, per Clackamas County Roadway Standards Drawing D400.
11. The applicant shall design and construct a minimum 12-foot wide, gravel access road from the approach to the parking and circulation area for the reservoir site. The access road shall be consistent with Roadway Standards Drawing R100.
12. A turnaround shall be provided on-site for service vehicles. If required by the fire marshal, an emergency vehicle turnaround shall be constructed, per Standard Drawing C350.
13. Adequate storm drainage facilities shall be provided. A storm water management plan in compliance with Roadway Standards Chapter 4 shall be provided when 10,000 square feet or more of impervious area is developed. Adequate conveyance of stormwater runoff shall be provided for the site and access road.
14. The applicant shall provide adequate on site circulation areas for the parking and maneuvering of all vehicles anticipated to access the site. Parking spaces shall meet ZDO Section 1015 dimensional requirements, and Roadway Standards, Drawing P100/P200.

15. **Prior to the issuance of a building permit or the initiation of any construction activities associated with the proposal**, the applicant shall submit to Clackamas County Development Engineering:

- a. Written approval from the local Fire District for the planned access, circulation, fire lanes. The approval shall be in the form of site stamped and signed by the Fire Marshal.
- b. A set of street and site improvement construction plans, 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.
 - i. The permit will be for driveway, drainage, parking and maneuvering areas, 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 8.83% of the public improvements and 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.

16. Pursuant to Section 1010.07, any signage associated with an institutional use in the Natural resource districts (e.g. EFU, TBR and AG/F) is subject to the applicable standards of Section 1010 and Subsection 1010.08. Any future signage associated with the water reservoir shall comply with the standards of Section 1010 and Subsection 1010.08.

17. All frontage and onsite improvements shall comply with the *Clackamas County Roadway Standards*.

DATED this 1ST day of August 2024.



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

APPEAL RIGHTS

ZDO 1307.14(D)(6) 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).