

BEFORE THE LAND USE HEARINGS OFFICER  
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Conditional Use Permit by the Clackamas Water Environment Services (WES).

Case File No: Z0501-22-C

Sieben Lane Sanitary Sewer Pump Station

**A. SUMMARY OF FINDINGS, HEARING, AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony and evidence at the March 2, 2023 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform, with the County providing an explanation for virtual participation. 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 Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, 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. This application was originally submitted October 21, 2022 and deemed complete on January 20, 2023. The subject property is located inside an urban growth boundary. The 120-day timeline for final action on the application pursuant to ORX 215.427(1) is May 22, 2023.
2. At the hearing, County Planner Melissa Lord shared a PowerPoint presentation and discussed the staff review of this application for a conditional use permit by Clackamas Water Environment Services (WES). Ms. Lord provided relevant background information concerning the application, the County's review, and the County's recommendation of approval. Ms. Lord noted that the applicant is requesting a conditional use permit to make improvements to the Sieben Lane Sanitary Sewer Pump Station on property located at 14149 SE 142<sup>nd</sup> Ave., Clackamas, OR 97015, also known as T2S, R2E, Section 02DD, Tax Lot 500. This location is on the west side of SE 142<sup>nd</sup> Ave., between SE Territory Dr. and SE Sieben Creek Dr., with the pump station utilizing a driveway access to SE 142<sup>nd</sup> Ave. The subject property is an approximately 7.6 acre parcel zoned Future Urban 10-Acre (FU-10) owned by Christine and Leroy Hammer. WES has an easement for the pump station on the subject property.
3. Ms. Lord provided background history concerning the existing facility, noting that the Sieben Lane Pump Station was developed in 1992 and has been operating ever since. Ms. Lord explained that the applicant's proposal is for upgrades and improvements to the existing Sieben Lane Pump Station. These improvements include replacing old and failing equipment to increase the reliability of the facility and address specific maintenance issues. The project scope of work includes mechanical and electrical upgrades, placement of a new generator, and repaving the existing asphalt driveway. The project will not increase the pumping capacity, building area, or classification. Ms. Lord pointed out that the WES pump station is a "public utility facility" which necessitates a conditional use permit in the FU-10 zone.

4. Ms. Lord shared two slides showing the applicant's site plan for the facility, showing the existing pump station and related facilities, the driveway access, and the changes the applicant proposes, including removal of several trees that are located in affected areas, and some trees the applicant proposes to remove in order to improve visibility at the intersection of the site driveway/access onto SE 142<sup>nd</sup> Ave. The slides show the location and proximity of these facilities to existing property lines, the existing wetland, and the Water Quality Resource Area (WQRA) Boundary, including identifying the line 50 feet from the wetland boundary. The slides indicate the pump station parts being removed or replaced, and the new location for the proposed associated 1" public water service. The slides also show the location of the proposed standby power generator, and note it will be in a critically silenced enclosure.
5. Ms. Lord shared several slides and presented staff findings with respect to approval criteria in Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 316, 706, 709, 1004, 1005, 1006, 1007, 1010, 1015, 1021, 1203, and 1307. Ms. Lord also noted that the proposed public utility facility is an "institutional use." With respect to ZDO 706 Habitat Conservation Area (HCA), Ms. Lord described the distinction between Medium and High Value HCA, and exempt uses, including the proposed maintenance/ alteration/ repair/ replacement of buildings, roads, and utilities, further noting that the new disturbance area in the applicant's proposal involves as area of 120 square feet or less (for the new backup generator). Ms. Lord noted that these activities are exempt from Section 706, except for building or grading permit requirements (if any), pointing to the recommended condition of approval.
6. With respect to Section 709 WQRA standards, Ms. Lord presented a slide and discussion concerning the protected water resource and adjacent corridor of Rose Creek. Again, Ms. Lord pointed to exempt uses, including placement of a structure that does not need building or grading permits, and maintenance of existing structures, driveways and utility facilities. Ms. Lord noted that these activities are also exempt from Section 709, except for building or grading permit requirements (if any), with staff recommending an associated condition of approval.
7. With respect to Section 1002 Protection of Natural Features, Ms. Lord presented a slide and discussion noting this section concerns slopes of 20% or more, excessive tree removal, wooded areas, and significant tree clumps, river and stream corridors outside of the Urban Growth Boundary (UGB), deer and elk winter range below 3,000 foot elevation, or significant natural areas and landforms/ Scenic and Distinctive Resources. Ms. Lord pointed to staff findings that this section is not applicable to the proposed development. With respect to Section 1003: Hazard to Safety, Ms. Lord discussed how this section applies to mass movement and soil, and flood issues, not applicable to the proposed development. With respect to Section 1004: Historic Preservation, Ms. Lord discussed how this section applies to property with historic and cultural resource designations, also not applicable to the proposed development
8. Ms. Lord presented a slide and discussion of ZDO Section 1005 Site and Building Design, referring to staff findings that 1005.02 Site Design criteria are met, that the facility and control building are not open to the public (an unmanned facility) with no proposed changes to site circulation, building orientation, or use. Ms. Lord pointed to staff findings that Section

1005.03 Building Design is not applicable, as the control building façade is not visible from 142<sup>nd</sup> Ave., the facility has no public building entrances, and there are no proposed changes to the existing control building.

9. With respect to ZDO Section 1006 Utilities, Street Lights, Water & Wastewater, Surface Water, and Erosion Control, Ms. Lord discussed the proposal and staff findings, noting that since the proposal involves replacement of the 1-inch water service a statement of feasibility is required from Sunrise Water Authority, with staff recommending an associated condition of approval. Ms. Lord noted that Section 1006.05 Onsite Wastewater treatment is not applicable, as the pump station is unmanned, and that WES provided a statement of feasibility meeting the requirements for Section 1006.06 Surface Water Management and Erosion Control.
10. Ms. Lord provided a slide and discussion concerning ZDO Section 1007 Roads and Connectivity, noting the proposal will result in: no increase in vehicle trips; no change to vehicular access from SE 142<sup>nd</sup> Ave; no offices or onsite staff, with the facility not open to the public, and therefore requirements for bicycle and pedestrian facilities are not applicable to the proposed development; and, the site is not on a designated transit route. Ms. Lord presented a similar slide and discussion with respect to ZDO Section 1015 Parking, noting there is no proposed expansion of the existing control building; therefore, the development does not require additional parking. Ms. Lord noted that the site is visited only for occasional maintenance and is an unmanned facility without parking requirements. Similarly, with respect to ZDO Section 1021 Solid Waste and Recycling, Ms. Lord pointed out that this section is also not applicable, as there is no existing or proposed demand for waste and recycling, with no offices or onsite staff, and the facility not open to the public.
11. Ms. Lord provided a slide and discussion concerning the ZDO Section 1203 Conditional Uses criteria, noting that: “public utility facilities” are a conditional use in the FU-10 zone; the facility is not visible from the public right of way; the proposal includes no changes to the proposed use or scale of operation; the proposal is for continued onsite operation the same as the past 30 years, and; the pump station is essential to support the sewer district with adequate sanitary sewer service.
12. The County provided notice to applicable agencies and owners of property within 2,640 feet. At the time of the staff report prepared for this hearing no comments were received relating to the applicable approval criteria. The Clackamas Fire District #1 responded to the notice stating that they had no comment. County staff listed the following as public and Agency responses requested: Clackamas Water Environment Services (WES); Clackamas County Building Codes Division; City of Happy Valley; Clackamas Fire District #1; Sunnyside/West Mt Scott Community Planning Organization (CPO), and; property owners within one-half mile.
13. Eric Eiseman, applicant WES’s representative/consultant, Jessica Rinner, Civil Engineer for WES, and Adam Crafts of Consor Engineering, appeared on behalf of applicant WES, in support of approving the application. Ms. Rinner and Mr. Crafts each pointed out that approval of the applicant’s proposal will improve reliability of the pump station, and improve water quality.

14. Dayna Hubenthal and Jaki Harvell appeared at the hearing as interested citizens and asked a couple of questions about tree removal and whether the proposal will result in increasing the capacity of the pump station, but their connection dropped. They were able to submit an email to the County that I received prior to closing the record that shared their address and did not express any opposition to the proposal. Applicant's representatives responded to the questions concerning tree removal (as indicated and necessary) and capacity (no increase).
15. The Hearings Officer asked whether any party or member of the audience wanted an opportunity to provide additional evidence, arguments, or testimony, and no one requested this opportunity. The applicant, through its representative Eric Eisemann, affirmed that the applicant wished to waive the period for final written argument. The hearings officer indicated he intended to approve the application, leaving the record open until 4:00 pm on March 2, 2023 (the day of the hearing) to receive any additional submittals, including time for Ms. Lord to submit a copy of her presentation to the record.

## **B. FINDINGS AND DISCUSSION**

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1203. This application is being processed as a Type III Permit pursuant to Section 1307. A Type III Permit is quasi-judicial in nature and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 316, 706, 709, 1005, 1006, 1007, 1015, 1021, 1203, and 1307, and the County's Comprehensive Plan. Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and make the following findings and conclusions, *reviewed, adopted and/or modified by the Hearings Officer as denoted by boldface type in italics*.

### **1) PROJECT OVERVIEW**

Background: This is a land use application for a Conditional Use permit. The applicant, Clackamas Water Environment Services, proposes to make improvements to the Sieben Lane sanitary sewer pump station. The project will make upgrades to the reliability, operational safety, and efficiency. Improvements include: replacing old and failing equipment to increase the reliability of the facility and address specific maintenance issues. There will be no increase to the size of the existing 190 square foot control building. The facility was originally constructed in 1992 and the applicant states that it appears to have most of its original equipment. The property is impacted by mapped wetlands and water quality resources.

A pre-application conference was held with the applicant on July 6, 2021 to discuss the preliminary proposal (reference file ZPAC0080-21).

2) **ZDO SECTION 316 FUTURE URBAN 10-ACRE ZONING DISTRICT**

**316.03 Uses Permitted:** public utility facilities are a conditional use, which means the use is subject to section 1203, conditional uses. A public utility facility in the FU-10 zone shall not include shops, garages, or general administrative offices.

***Finding:** The applicant has applied for a conditional use permit for a public utility facility. The application does not include the development of a shop, garage, or general administrative office. Compliance with ZDO section 1203 is reviewed later in this staff report. As proposed, this criterion is met. **The Hearings Officer concurs.***

**316.04 Dimensional Standards:** Dimensional standards applicable in the rural and future urban residential zoning districts are listed in table 316-2.

***Finding:** The minimum front setback is 30 feet. The front lot line is the eastern lot line, bordering SE 142<sup>nd</sup> Ave. The development proposes a concrete pad to be 20 feet from the front lot line; this is permitted pursuant to ZDO Section 903.06 Setback Exceptions. The generator and the critically silenced enclosure which will be installed on the concrete pad are less than 30 inches in height; therefore, the setback exceptions of Section 903.06 apply. As proposed, staff finds that the standards of this section are met. **The Hearings Officer concurs.***

3) **ZDO SECTION 1203.02 CONDITIONAL USES**

A. 1203.02: SUBMITTAL REQUIREMENTS

*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. All the submittal requirements under Subsection 1203.02 are included in the application. The application was submitted on October 21, 2022 and additional materials received were on January 13 and 20, 2023. Following submission of additional requested information, the application was deemed complete on January 20, 2023.*

***The Hearings Officer concurs that these submittal requirements are met.***

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 zoned Future Urban 10-Acre (FU-10). Section 316 of the ZDO controls land uses in the underlying FU-10 zoning district; Table 316-1 lists the conditional uses which are allowed.*

*Table 316-1 specifies that “public utility facilities” is a conditional use, therefore a conditional use permit is necessary. This criterion is met. **The Hearings Officer concurs.***

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:** In addition to the findings made in the applicant’s narrative. Staff adds the following:*

*The subject property is approximately 7.6 acres in size and is currently developed with the Sieben Lane Pump Station, a public utility facility. The location is suitable for the public*

utility because it provides sanitary sewer services to those who live within their service district. For the past 30 years the facility has existed on the subject property, and it has served the people who reside within the Kellogg basin.

The pump station occupies a very small portion of the 7-acre property. The property and existing improvements are of sufficient size to accommodate the use, as demonstrated by the facility's existence for 30 years. Access to the site is from SE 142<sup>nd</sup> Ave; the facility has a gated driveway. The facility is not currently visible from the road, and the location of the new proposed generator will not be visible from the road either.

Rose Creek abuts the site and the applicant team had the wetland boundary delineated in 2020 as part of an approved bank enhancement project. ZDO Section 706 and 709 relate to the environmental overlays on the property and are discussed later in this staff report.

The location, size, shape, topographic, natural and developed characteristics of the property are suitable to accommodate the proposed Sieben Lane Pump Station upgrades for Water Environment Services (i.e. public utility facility). When considering the characteristics of the subject property, staff finds that this criterion is met. **The Hearings Officer concurs with this analysis and in these staff findings.**

- 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. This criterion is met. **The Hearings Officer has reviewed these findings and concurs.**

- 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 FU-10 zoning district and is surrounded by other properties in the FU-10 zone, as well as Village Standard Lot Residential (VR-5/7), Village Small Lot Residential (VR-4/5) zoning districts. Primary uses of the VR zoning districts are included in ZDO Section 315, and primary uses in the FU-10 district are in ZDO Section 316. Generally, the primary uses allowed in these zoning districts is predominantly low-density residential. The subject property borders Pfeiffer Park to the west.

The physical and visual characteristics of the surrounding area will not be changing with the proposed upgrades to the existing pump station. The pump station is well established in the neighborhood and has been a part of the characteristics of the area for the past 30 years. The proposed development will not alter the character of the surrounding area, and will not substantially limit, impair or preclude the use of surrounding properties for the primary uses allowed. The new proposed generator will not be visible from the street. This criterion is met. **The Hearings Officer concurs with this analysis and in these staff findings.**

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

**Finding:** The applicant addresses the Comprehensive Plan Chapter 7, Public Facilities and Services goals and policies, but does not address Chapter 4, Land Use goals and policies for the future urban land, though the submitted narrative touches on a few points.

*The proposed development is subject to dimensional and development standards to ensure compatibility, function and aesthetic of the area. The proposal does not involve land division or a change to the existing lot size, and so the other policies in Chapter 4 that relate to future urban lands are not applicable to this development.*

*Chapter 7 related to planning for utilities, including sanitary sewage treatment, and ensuring that adequate levels of those public facilities and services be available before urban levels of development. The applicant, Water Environment Services (WES) is one of the County's sanitary sewer providers. The proposal implements the adopted Sanitary Sewerage Services capital facilities plan and the WES 2020-2025 Capital Improvement Plan.*

*Staff finds that the proposed use is consistent with the applicable goals and policies of the Comprehensive Plan. This criterion is met. **The Hearings Officer concurs with this analysis and in these staff findings.***

**G. 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, Section 800, Special Use Requirements, and Section 1000, Development Standards.

***Finding:** Compliance with Section 800 is not applicable. Staff reviewed compliance with Section 1000, as applicable, and the findings are included in the staff report below. Staff reviewed the applicable standards for the Habitat Conservations Area overlay (Section 706) and the Water Quality Resources (Section 709) overlay and the findings are included in this staff report below. **The Hearings Officer concurs with this analysis and in these staff findings.***

#### **4) ZDO SECTION 706 HABITAT CONSERVATION AREA DISTRICT (HCAD)**

Section 706 sets forth the process, standards and requirements for reviewing development in the HCAD. The Planning Division has reviewed these sections of the ZDO in conjunction with this proposal and makes the following findings.

**Section 706.02 Area of Application:** Section 706 applies in the Habitat Conservation Area District (HCAD). The HCAD applies to all parcels containing a Habitat Conservation Area (HCA). The HCAD also applies to any area that is less than 100 feet outside the boundary of an HCA even if the area is not located on the same parcel as the HCA. HCAs are identified on maps adopted by reference in Chapter 3 of the Comprehensive Plan (hereinafter referred to as the HCA Map) and are categorized as High, Moderate, or Low HCA. Notwithstanding the HCA Map, however, Section 706 does not apply to areas that are outside both the Metropolitan Service District Boundary (MSDB) and the Portland Metropolitan Urban Growth Boundary (UGB).

***Finding:** The subject property contains HCA and is located within the UGB; therefore, the HCAD applies. The applicant is not disputing the location of an HCA. **The Hearings Officer concurs.***

**Section 706.04 Exempt Uses:** Certain uses and activities are exempt from the requirements of Section 706, except that if the use or activity requires a building or grading permit, a Construction Management Plan shall be required pursuant to Subsection 706.06(A).

***Finding:** The proposed development is exempt from the requirements of Section 706 based upon the following exemptions listed in Subsection 706.04: **The Hearings Officer finds that, as conditioned, this requirement can be met.***

(E) Maintenance, alteration, expansion, repair, and replacement of existing structures, provided that the building footprint is not increased.

**Finding:** The development proposal includes making electrical upgrades to an existing control building. This exemption standard is met. **The Hearings Officer concurs.**

(G) Development that will have a disturbance area that does not exceed 120 square feet. If more than one development is undertaken pursuant to this exemption—regardless of whether the work is done as one project or a series of projects—the total disturbance area shall not exceed this 120 square-foot limit.

**Finding:** The proposed generator and concrete pad footprint is 60 square feet and will be placed on a concrete pad where there is currently asphalt. This exemption standard is met. **The Hearings Officer concurs.**

(M) Maintenance, alteration, repair, and replacement of existing roads, railroads, and utilities, provided that there is no additional intrusion into the HCA.

**Finding:** The proposal includes repaving existing asphalt driveway and circulation area with no additional intrusion into the HCA. The entire proposal relates to the maintenance, alteration, repair, or replacement of an existing public utility facility with no intrusion into the HCA beyond the allowances in subsection (G) discussed above. This exemption standard is met. **The Hearings Officer concurs.**

The development is also exempt from requiring a Construction Management Plan (CMP) permit if a building or grading permit is not required. Staff recommends that a condition of approval is imposed to ensure that a CMP permit is obtained if necessary. As conditioned, this criteria is met. **The Hearings Officer agrees that, as conditioned, this criteria is met.**

## 5) ZDO SECTION 709 WATER QUALITY RESOURCE AREA STANDARDS

Section 709 sets forth the process, standards and requirements for reviewing development in the WQRAD. The Planning Division has reviewed these sections of the ZDO in conjunction with this proposal and makes the following findings.

**709.02 Area of Application:** Section 709 applies in the Water Quality Resource Area District (WQRAD). The WQRAD applies to all parcels containing a water quality resource area (WQRA), provided that such parcels are inside the Metropolitan Service District Boundary or the Portland Metropolitan Urban Growth Boundary and outside the boundaries of both Clackamas County Service District No. 1 and Surface Water Management Agency of Clackamas County. WQRAs are protected water resources and adjacent vegetated corridors as established by Section 709. Protected water resources are classified as primary or secondary.

**Finding:** The subject property contains WQRA and is located within the UGB; therefore, the WQRAD applies. Rose Creek abuts the subject property. **The Hearings Officer concurs.**

**Section 709.04 Exempt Uses:** Certain uses and activities are exempt from the requirements of Section 709, except that if the use or activity requires a building or grading permit, a Construction Management Plan shall be required pursuant to Subsection 709.06(A).

**Finding:** The proposed development is exempt from the requirements of Section 709 based upon the following exemptions listed in Subsection 709.04: **The Hearings Officer concurs.**

(F) Placement of structures that do not require a grading or building permit.

**Finding:** The applicant states that a building permit or grading permit will not be required for



the siting of the generator. This exemption standard is met. **The Hearings Officer concurs.**

(G): Maintenance of existing structures, roadways, driveways, utility facilities, accessory uses, and other development.

*Finding:* The development proposal includes making electrical upgrades to an existing control building, making mechanical upgrades to existing equipment supporting a public utility facility. The proposal includes repaving existing asphalt driveway and circulation area that serves as the single access to a public utility facility. This exemption standard is met. **The Hearings Officer concurs.**

The development is also exempt from requiring a Construction Management Plan (CMP) permit if a building or grading permit is not required. Staff recommends that a condition of approval is imposed to ensure that a CMP permit is obtained if necessary. As conditioned, this criteria is met. **The Hearings Officer agrees that, as conditioned, this criteria is met.**

## **6) ZDO SECTION 1000 DEVELOPMENT STANDARDS**

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

### **Section 1002 – Protection of Natural Features**

Section 1002 addresses the protection of various natural features including hillsides, the excessive removal of trees prior to development, the protection of trees and wooded areas through development, river and stream corridors, the winter ranges of deer and elk populations, certain open spaces near Mount Hood, significant natural areas, and significant landforms and vegetation.

*Finding:* The application does not involve development on slopes greater than 20%. Tree removal is proposed with this conditional use permit, which is not defined as “excessive” tree removal. There is an established driveway and development site; the proposal will not interfere with existing wooded areas or significant clumps of trees. The property is not in an identified deer and elk winter range, and is not on lands designated as resource protection open space in the Comprehensive Plan. The applicable criteria of Section 1002 are met. **The Hearings Officer concurs in this analysis and in these findings.**

### **Section 1003 and 1004 – Hazards to Safety and Historic Protection**

Section 1003 addresses various hazards to safety including flood, soils, fire, and mass movement areas. Section 1004 addresses standards related to historic preservation.

*Finding:* The standards in these Sections are not applicable to this development. **The Hearings Officer agrees.**

### **Section 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.

**Subsection 1005.02 – General Site Design Standards** establishes standards for the sites of commercial, industrial, and multifamily developments and addresses standards for the placement and orientation of buildings, on-site pedestrian circulation, the placement and orientation of building entrances, and other use- and zone-specific standards.

**Finding:** *The proposed development involves the placement of a new 5-foot by 12-foot concrete generator pad and enclosure, various electrical and mechanical upgrades to the existing treatment facility, and repaving the existing asphalt. There are no changes to the proposed location, setback, or appearance of the existing structures on site, and no new buildings are proposed. The existing control building is not open to the public; this is a gated utility facility that is not open to members of the public at any time; therefore, walkways connecting the control building to the nearest sidewalk are not necessary for this development. Due to the nature of the development proposal, the standards of this subsection are largely not applicable. This criteria is met. **The Hearings Officer agrees with this analysis and in these findings.***

**Subsection 1005.03 – Building Design** provides standards for building facades, entrances roof design, exterior building materials, the screening of mechanical equipment, and other use- and zone-specific standards.

**Finding:** *The standards of this Subsection generally apply to building facades visible from a public or private street or accessway, public building entrances, building materials and roof design. Due to the nature of the proposed development, this criteria is not applicable. **The Hearings Officer concurs.***

**Subsection 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:** *There is no lighting proposed with the development. This section is not applicable. **The Hearings Officer concurs.***

### **Section 1006 – Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control.**

Section 1006 addresses the provision of appropriate infrastructure for utilities, water supply, and sewage disposal, as well as the management of surface water and site erosion.

**1006.03(d) Water Supply.** The following standards apply inside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:

**Finding:** *The property is within the Sunrise Water Authority water district. A new 1-inch water service will be installed near the pump station driveway entrance and a private water line will be extended along the driveway to the pump station. The applicant states that there was previously water service to this project site, but the “water service was broken when the road improvements along NE 142<sup>nd</sup> Avenue were completed years ago” and the water service was shut off at the meter. The applicant did not provide a statement of feasibility from Sunrise Water Authority with the application submittal. If the application is approved, staff recommends a condition of approval requiring the applicant to submit the above mentioned signed statement of feasibility*

prior to implementing the land use approval. As conditioned, this criterion can be met. **The Hearings Officer agrees that, as conditioned, this criterion can be met.**

**1006.04 Sanitary Sewer Service and 1006.05 Onsite Wastewater Treatment.** All development that has a need for sanitary sewers shall install the facilities pursuant to the requirements of the district or company serving the development. All development proposing onsite wastewater treatment shall receive approval for the system from the County prior to submittal of a land use application for development. Said systems shall be installed pursuant to Oregon Revised Statutes 454.605 through 454.745 and Chapters 171, 523, and 828; Oregon Administrative Rules Chapter 340, Divisions 71 and 73; and the policies of the County.

**Finding:** *The subject property is not located in a public sanitary sewer district. At this time, the applicant does not propose a use that will require onsite wastewater treatment. Any future development will be reviewed for compliance with the onsite wastewater treatment requirements of this section. This section is not applicable. The Hearings Officer concurs.*

**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:** *Water Environment Services (WES) is the surface water management authority for the subject property; they are also the applicant. A preliminary statement of feasibility was provided in the application materials confirming that there is adequate surface water management, treatment, and conveyance to serve the development or can be made available through improvements completed by the developer. This criteria is met. The Hearings Officer concurs.*

### **Section 1007 - Roads and Connectivity**

Subsection 1007.02 – Public and Private Roadways

Subsection 1007.03 – Private Roads and Access Drive

Subsection 1007.04 – Pedestrian and Bicycle Facilities

A-C: General Standards, Design and Requirements

D-G: Location and Construction of Sidewalks and Pedestrian Paths

H: Sidewalk and Pedestrian Path Width

I-N: Accessways, Bikeways, Trails, Bike/Pedestrian Circulation

**Finding:** SE 142<sup>nd</sup> Ave is classified as a Minor Arterial street (Comprehensive Plan map 5-4a). Clackamas County has adopted roadway standards that pertain to the structural section, construction characteristics, minimum required right-of-way widths and access standards for minor arterial streets. This Subsection includes roadway development standards, including the layout of new public and county roads, and private roads and access drive development standards. The subject property is accessed by a single driveway from SE 142<sup>nd</sup> Ave; the driveway does not serve any other lot or development. There are no bicycle and pedestrian facilities proposed or necessary to accommodate the proposed upgrades to an existing pump station. The pump station is not open to the public and does not have office space or work space for employees; it is an unmanned facility. The proposed scope of work will not increase the number of vehicle trips generated by the existing public utility facility. The standards of this section have been met, as applicable. **The Hearings Officer agrees with this analysis and concurs.**

**1007.05 Transit Amenities.** All residential, commercial, institutional, and industrial developments on existing and planned transit routes shall be reviewed by Tri-Met or other appropriate transit provider to ensure appropriate design and integration of transit amenities into the development.

**Finding:** The development does not propose any transit amenities. The project is not located on an existing transit route. Therefore, this subsection is not applicable. **The Hearings Officer concurs.**

**1007.06 Street Trees.** Within the Portland Metropolitan Urban Growth Boundary (UGB), except in the AG/F, EFU, FF-10, FU-10, RA-1, RA-2, RC, RI, RRFF-5, and TBR Districts, street trees are required on all road frontage.

**Finding:** The subject property is located within the Portland Metropolitan UGB and is within the FU-10 zoning district. Therefore, this subsection is not applicable. **The Hearings Officer concurs.**

**1007.07 Transportation Facilities Concurrency.** Shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.

Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner.

**Finding:** Compliance with 1007.07 is required pursuant to Section 1203.03(C). The applicant is proposing to modify and/or replace portions of an existing development on the same property that will not increase motor vehicle traffic. Therefore, the development is exempt from the concurrency requirements. The proposed facility upgrades and alterations will not change the volume of vehicular traffic generated by the facility; the property has been used as a pump station for 30 years and the scope of work will not increase the traffic demand to or from the facility. This criterion is met. **The Hearings Officer agrees with this analysis and concurs in this finding.**

**Section 1009 Landscaping.** Section 1009 seeks to ensure that sites are designed with appropriately selected, designed, installed, and maintained landscape materials and that landscaped areas are used for appropriate purposes.

**Finding:** *An estimated 90% of the subject property is undeveloped and will remain undeveloped; no new impervious surface is being added to the subject property with the proposed development. The majority of the site will continue to have natural ground cover as it exists currently on the site. Section 1009 includes landscaping standards for improvements such as parking lots, loading areas, recreational areas and various other features that do not exist and are not required for this development. This section is met. **The Hearings Officer agrees with this analysis and concurs in this finding.***

**1010 Signs; 1010.08 Signs for Institutional Uses.** Pursuant to Section 202, Definitions, a utility facility is an institutional use.

**Finding:** *The application materials submitted by the applicant did not identify any new/proposed signage with the conditional use. Any future signage will require compliance with this section. Pertaining to the proposed development, this subsection is not applicable. **The Hearings Officer concurs.***

**1015 Parking and Loading.** Section 1015 is designed to ensure that developments in Clackamas County provide sufficient and properly designed parking for motor vehicles and bicycles as well as appropriate off-street loading areas.

**Finding:** *In case of expansion of a building or use that, prior to the expansion, does not meet the minimum parking space requirements in Table 1015-1 or 1015-2, the minimum number of additional parking spaces required shall be based only on the floor area or capacity added and not the area or capacity existing prior to the expansion.*

*The Sieben Lane Pump Facility is developed with an existing 190 square foot control building with no parking; the control building will not be expanded. Therefore, the development proposal will not require any additional parking. The asphalt driveway and maneuvering area will adequately provide off street parking for occasional maintenance needs of the unmanned facility. This criteria is met. **The Hearings Officer agrees with this analysis and concurs in this finding.***

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

**Finding:** *The requirements and standards of Section 1021 are applicable to this proposal; yet no information was provided in the application materials addressing solid waste. Since the development site does not include any administrative office, workshop, or other area for employees to work, it is unlikely that there is any garbage or recycling generated by this development site. Moreover, the Sieben Lane Pump Facility is an unmanned facility. The primary “development” proposed on the subject property is the placement of a new generator on a concrete pad; this will not generate an increase in waste production. Based on the scope of work of the proposed developed staff can construe that there is no need for solid waste and recycling material collection on site, and therefore compliance with Section 1021 is not applicable. **The Hearings Officer agrees with this analysis and concurs in this finding.***

### **C. CONDITIONS OF APPROVAL**

**The conditions listed 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 parenthesis. The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. It shall be the responsibility of the**

**property owner(s) to comply with the limitation of any approval resulting from the decision described herein.**

The Clackamas County Land Use and Zoning staff recommends approval of this application for Conditional Use Permit subject to the following conditions, reviewed, adopted and/or modified by the Hearings Officer:

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on October 21, 2022 and additional materials received January 13 and 20, 2023. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). If the County’s final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. “Implemented” means all major development permits shall be obtained and maintained for the approved 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.

If the approval of a conditional use is not implemented within the initial approval period established by Subsection 1203.05(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension. [Subsection 1203.05(B)]

If the approval of a conditional use is not implemented within the initial approval period established by Subsection 1203.05(B), a five-year time extension may be approved pursuant to Section 1310. [Subsection 1203.05(C)]
3. If a conditional use is implemented pursuant to Subsection 1203.05 and later discontinued for a period of more than five consecutive years, the conditional use shall become void. [Subsection 1203.06]
4. If a building permit or a grading permit is required, a Construction Management Plan land use permit must be obtained prior to issuing the building or grading permit. [Section 706.04) and 709.04]
5. The applicant shall provide a preliminary statement of feasibility from the water system service provider, Sunrise Water Authority, to the Planning Division prior to implementing the approval of this land use permit [Section 1006.03]

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## **D. DECISION**

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0501-22-C, subject to conditions of approval.

Dated: March 8, 2023



Carl D. Cox

Clackamas County Hearings Officer

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### **ADVISORY NOTES**

Advisory notes are not a part of the decision on this land use permit. The items listed below are not conditions of land use approval and are not subject to appeal. They are advisory and informational only but may represent requirements of other agencies/departments. As such, they may be required by these other agencies/departments in order to complete your proposed development.

1. The applicant is advised that they should contact the Sunrise Water Authority for information regarding permit requirements and fees associated with the proposed 1-inch water line.

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### **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 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 is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.