

BEFORE THE LAND USE HEARINGS OFFICER  
CLACKAMAS COUNTY, OREGON

Regarding an application for a conditional use permit to operate a biomedical waste transfer station in a portion of an existing building.

Case File No: Z0172-24  
(Trilogy MedWaste West, LLC)

**A. SUMMARY**

1. The applicant is Trilogy MedWaste West, LLC. The subject property is an approximately 1.68-acre parcel owned by Pacific Realty Associates, L.P. The subject property is located at 12690 SE Hwy 212, Clackamas, OR 97015, a location near the intersection of SE Hwy 212 and SE 122<sup>nd</sup> Ave.
2. The subject property is zoned Light Industrial (LI) zone and is currently developed with buildings intended for industrial uses, and associated landscaping and parking areas. The proposed transfer station will operate within an existing building, with no new construction proposed.
3. On September 5, 2024, the Hearings Officer conducted a public hearing to receive testimony and evidence about the applicant’s proposal for a conditional use permit to operate a biomedical waste transfer station in a portion of an existing building. The Hearings Officer approved the application, subject to conditions of approval.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony and evidence at the September 5, 2024 public hearing about this application and during a subsequent open record period, including submittals identified as Exhibits 1-12. 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. 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.
2. At the hearing, County Senior Planner Melissa Lord discussed the August 28, 2024 staff report submitted in this matter and related exhibits, providing a presentation and discussion. Ms. Lord pointed to the location of the proposed biomedical waste transfer facility in an existing building within a light industrial zone, noting that recycling centers and transfer stations are conditional uses in this zone, subject to Section 819, and discussing how the proposal meets the general approval criteria under Section 1203.03 and Section 1000-series requirements. (Section 1000-series include such things as Water, Sewer, Surface Water Management and Erosion Control, Roads and Connectivity, and Parking.)
3. Ms. Lord also discussed the recommended denial of the application in the staff report. Ms. Lord explained that the recommendation of denial was related to a lack of submitted information for ZDO Section 819.01(B) Air Quality and Section 819.01(C) Noise. Ms. Lord issued a notice of incompleteness on May 15, 2024 requesting information on these two missing parts of the

application, stating: “No information was provided regarding how the facility will meet air and noise emission standards from the DEQ. The applicant has the burden of proof to demonstrate compliance with Subsection 819.01(B) and (C).” Ms. Lord issued a second notice of incompleteness on June 28, 2024 advising that “A written narrative response to the review criteria was not provided for Section 819.01. Please direct me to where I can find this in the resubmitted materials if you have provided this already.”

4. Ms. Lord noted that with respect to air quality, the County received an email on September 4, 2024 from DEQ stating that:

“DEQ rules don’t include any air quality standards specific to transfer facilities. The facility would be subject to the general PM and opacity standards from OAR 340 Div 208 (visible emission and nuisance requirements) and OAR 340 Div 226 (general emission standards). Without a complete application (which includes an approved LUCS), DEQ is unable to formally evaluate a source to determine if there are any specific requirements for the industry or specific units on site.”
5. Ms. Lord points out that DEQ will not review an application without a LUCS, while County Planning may not be able to sign a LUCS without land use approval. Noting that per ZDO Section 1307.17(E) the application has the burden of proof, and the application must be supported by a preponderance of evidence that it complies, Ms. Lord recommended that the record be left open for the applicant to provide additional evidence or condition the application on complying with DEQ regulations.
6. Ms. Lord noted that with respect to noise, the County received an email on September 3, 2024 from DEQ stating that DEQ published an Internal Management Directive (IMD) AQ.00.010 in 2003, and revised it in 2006, that discusses the Noise Control Program. The email states:

“The IMD has discussion and clarification on how DEQ should respond to noise inquiries and complaints. The IMD also discusses the steps taken by the agency with legislative approval to terminate the Noise Control Program in July 1991. At that time DEQ provided guidance to local governments on developing local noise ordinances and enforcement strategies. Enforcement falls under the responsibility of local governments and DEQ has no authority or resources to work on noise issues or respond to noise complaints.”
7. Ms. Lord asserts that, while the applicant argues that the entire use is exempt from Noise Emission Standards per OAR 340-035-0035(5)(k) *road vehicle auxiliary equipment*, the entire facility would classify as an industrial noise per OAR 340-035-0015, not only the auxiliary equipment. Ms. Lord again refers to ZDO Section 1307.17(E)’s burden of proof on the applicant to meet a preponderance of evidence standard that the application complies with each requirement. Ms. Lord recommended that the record be left open for the applicant to provide additional evidence or condition the application on complying with DEQ regulations. Ms. Lord submitted a copy of her presentation. (Exhibit 11)
8. Chad Plata of Trilogy MedWaste West, LLC testified in support of the application, providing a presentation and testimony on behalf of the applicant. Several other individuals were present, including several on behalf of the applicant, Trilogy MedWaste West, LLC, who did not provide testimony. Mr. Plata explained that the proposal to operate a biomedical waste transfer station in Clackamas County is consistent with a number of other similar facilities operated by the applicant. With respect to OAR 340 Div 208 (visible emission and nuisance requirements), Mr. Plata pointed to the operations of the proposed facility transferring medical waste from a smaller container to a bulk container by transferring the sealed inner liner of the smaller container. Mr. Plata referenced plans for a future boiler, referenced in his presentation as “Future Autoclave Steam Sterilization Equipment,” and possibly a generator, asserting that these improvements will meet DEQ requirements before being installed. With respect to noise, Mr. Plata asserts that its operations meet current noise requirements, with data from its existing similar indoor

operations showing typical noise from its operations in the 50-55 dB range, with spikes up to 80 dB. Mr. Plata agrees that continuing to meet air quality and noise standards should be conditioned. Mr. Plata submitted a copy of his presentation. Mr. Plata also briefly discussed with the Hearings Officer the requirements of the County's Water Environment Services ("WES) and a September 4, 2024 WES Pre-App Memo submitted as Exhibit 10, and including a condition requiring applicant to meet these requirements for its activities. (Exhibit 12)

9. At the conclusion of the public hearing, 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 affirmed that they wished to waive the period for final written argument. The hearings office closed the hearing, leaving the record open until 4:00 p.m. September 5, 2024 (the day of the hearing) to submit the exhibits and documents discussed at the hearing. Ms. Lord submitted her hearing presentation (Exhibit 11). Chad Plata of Trilogy MedWaste West, LLC submitted the additional information on Air Quality Compliance he presented at the hearing (Exhibit 12).

### **C. FACTS**

1. The subject property is an approximately 1.68-acre parcel owned by Pacific Realty Associates, L.P. The subject property is located at 12690 SE Hwy 212, Clackamas, OR 97015, also known as T2S, R2E, Section 11C, Tax Lot 2203, a location near the intersection of SE Hwy 212 and SE 122<sup>nd</sup> Ave., with frontage on SE Hwy 212. The subject property is zoned Light Industrial (LI) zone and is developed with buildings intended for industrial uses, and associated landscaping and parking areas. There are no mapped wetlands, steep slopes, water quality resources or other environmental hazards on the subject property regulated by the Zoning and Development Ordinance.
2. The applicant is requesting the review and approval of a conditional use permit to operate a biomedical waste transfer station in a portion of an existing building, with no new construction proposed.
3. Notice was sent to applicable agencies and owners of property within 300 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. Public and Agency Responses Requested:
  - a. City of Happy Valley
  - b. Clackamas County Development Engineering Division
  - c. Clackamas Fire District #1
  - d. Clackamas River Water
  - e. Clackamas Water Environment Services
  - f. Oregon Department of Environmental Quality (DEQ)
  - g. Property Owners within 300 feet
4. The County received responses from the Clackamas County Development Engineering Division, Clackamas Fire District #1, Clackamas Water Environment Services, and Oregon Department of Environmental Quality (DEQ). The County did not receive any other written comment pertaining to this proposal prior to its August 28, 2024 Staff Report. Subsequent to the County's August 28, 2024 Staff Report, the County received responses from the Oregon DEQ concerning Noise Standards, and from the Oregon DEQ concerning Air Quality Standards, Water Environment Services (WES). On the day of the hearing, Ms. Lord submitted her Hearing Presentation, and Mr. Plata submitted additional information on Air Quality Compliance.

5. The written comments from WES refer to its authority within Clackamas County, cites discharge regulations, requirements for industrial wastewater discharge permits, rates, charges, and billings rules, and system development charges, for the proposed biowaste transfer station.
6. The application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in Section 1203 of the ZDO. 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 April 29, 2024, and additional materials were received on July 17, 2024. The application was deemed complete on July 17, 2024.

## **D. DISCUSSION**

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is being processed as a Type III Permit, pursuant to Clackamas County Zoning and Development Ordinance (ZDO) Section 1307. The Type III procedure 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) Sections 202, 602, 819, 1000-series, 1203 and 1307; and the 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, adopted and/or modified by the Hearings Officer as denoted by boldface type in italics:

### **1) PROJECT OVERVIEW:**

The applicant proposes to operate a biomedical waste transfer station in a portion of an existing building. The proposed transfer station will operate within the existing building; no new construction is proposed.

A pre-application conference was held with the applicant on March 19, 2024 to discuss the preliminary proposal (reference file ZPAC0007-24).

The subject property is currently developed with four multi-tenant industrial buildings and associated parking and landscaped areas. The site was developed with an approved Design Review land use application (reference file Z0043-96).

There are no mapped wetlands, steep slopes, water quality resources or other environmental hazards on the subject property regulated by the Zoning and Development Ordinance.

**Public Comment:** At the time of this staff report, the Planning and Zoning Division had not received any written public comment pertaining to this proposal.

### **2) ZDO SECTION 602 LIGHT INDUSTRIAL DISTRICT**

A. 602.03 Uses Permitted: Uses permitted in each the Light Industrial zoning district are listed in

*Hearings Officer Final Order*

*Z0172-24*

*Trilogy MedWaste West, LLC CUP*

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Table 602-1, Permitted Uses.

**Finding:** *The proposed use is a waste transfer station. “Recycling center and transfer stations, subject Section 819” is listed as a conditional use in Table 602-1. The proposed use is a conditional use in the underlying zoning district. This criterion is 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 April 29, 2024 and additional materials received were on June 6, July 16 and July 17, 2024. The application was deemed complete on July 17, 2024.*

- 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 Light Industrial (LI) district. ZDO Section 602, Table 602-1, of the ZDO controls land uses in the underlying LI zoning district. “Recycling center and transfer stations, subject Section 819” is listed as a conditional use in Table 602-1.*

*The proposed use is a conditional use in the underlying zoning district. 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:** *The subject property is already developed with buildings intended for industrial uses, and associated landscaping and parking areas. The building includes maneuvering areas for trucks and loading areas on the rear of the building. Hwy 212 adjacent to this site is designated as a Truck Freight Route; SE 135<sup>th</sup> Ave to the east and south of the site is as well. The existing improvements and location of the property make this site suitable for the proposed use. There are no mapped environmental features or hazards on the subject property. When considering the characteristics of the subject property, staff finds that this criterion is met. **The Hearings Officer concurs in the above analysis and finding.***

- 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 and determined that the transportation system is adequate to support the proposed use. This criterion is met. **The Hearings Officer concurs, also noting the relevant analysis for 1203.03(B) above.***

- 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 Light Industrial (LI) zoning district and is surrounded by other properties in LI district. Permitted uses of the LI district are included in ZDO Section 602.*

*This criterion does not require the proposed use to not have any impacts, rather the impacts must not substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses.*

*Lands in the surrounding area are in similar (industrial) use. The site is located on a State highway and a designated Truck Freight Route. The proposed use will be located within an existing tenant space in an existing building; no exterior activities are proposed with the use. The waste transfer facility will operate exclusively within the existing building; as such, there are no anticipated impacts of the facility to surrounding properties. As conditioned, this criterion is met. **The Hearings Officer concurs in the above analysis and finding.***

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

***Finding:** Staff has reviewed this proposal relative to the Comprehensive Plan and finds the goals and policies from Chapter 4, Industrial are met. Primary uses in Light Industrial areas should generate minimal outdoor storage and no outdoor processing or display; none are proposed. The proposed use continues to promote industrial activity in the area and is served by roads that support the use. This criterion is met. **The Hearings Officer concurs in the above analysis and finding.***

- 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, and Section 1000 Development Standards.

***Finding:** Staff reviewed compliance with ZDO Section 1000, as applicable. The findings are included in the staff report below. **The Hearings Officer reviewed the analysis in the staff report and related findings for application ZDO Section 1000-series and concurs.***

#### **4) ZDO SECTION 819 TRANSFER STATIONS**

- A. **819.01(A) Access:** The facility shall have access to major roadways and truck freight routes. The facility shall have an operational plan that ensures those traveling to the facility, particularly trucks, travel primarily on truck freight routes identified on Comprehensive Plan Maps 5-9a through 5-9d.

***Finding:** Map 5-9a shows that Hwy 212 adjacent to this site is a Truck Freight Route; likewise, SE 135<sup>th</sup> Ave (to the east and south of the site) is as well. This criterion is met. **The Hearings Officer concurs.***

- B. **819.01(B) Air Quality:** The discharge of contaminants created by the facility shall not exceed the Oregon Department of Environmental Quality (DEQ) air quality standards.

***Finding:** The applicant stated in their submitted narrative that “Trilogy is exempt from the Noise Emission Standards per OAR 340-035-0035 Noise Control Regulations for Industry and Commerce. The Exemption is based on Section 0035(5)(k) which states the Sounds created by the operation of road vehicle auxiliary equipment complying with the noise rules for such equipment as specified in OAR 340-035-0030 (Noise Control Regulations for In-Use Motor Vehicles)(1)(e) are exempt from the Air and Noise Emissions Standards.”*

*The County sent notice of the land use application to the DEQ for review, but did not receive any response. Air emissions are different than noise emissions, and the applicant seems to have provided a response to the two standards together. Staff does not find that the applicant has*

not provided adequate evidence to support their claim that the facility will meet the DEQ standards for air quality. [**Hearings Officer: I read the last sentence to mean that the applicant did not submit adequate evidence. This is a reference to ZDO Section 1307.17(E)'s requirement that each application must be supported by a preponderance of evidence that it complies with each standard.**] Air emissions refers to the discharge of contaminants. Based on the submitted application materials, staff does not believe that the applicant will be doing any activities that would generate the kind of emissions this subsection is referring to, but staff recommends the applicant address this standard specifically before making a determination of whether this standard can be complied with.

**Hearings Officer: I note that on 9/04/24 (after the County's 8/28/24 Staff Report), DEQ responded to the request for comments, stating that while the proposed facility would be subject to the standards of OAR 340 Division 208 (concerning visible emission and nuisance requirements) and OAR 340 Division 226 (general emission standards). In its response, DEQ states that without a complete application including an approved LUCS (Land Use Compatibility Statement), it is unable to formally evaluate a source to determine if there are any specific requirements related to this proposal. A LUCS is essentially a joint application submitted by the applicant and the County, with Section 2 requiring the County to indicate that the use is compatible with its comprehensive plan and land use regulations, attaching written findings supporting the decision of compatibility. The difficulty pointed to by Ms. Lord concerns a lack of evidence submitted by the applicant on which to base such written findings. Here, with respect to the proposed current operations of the biomedical waste transfer, I find that Mr. Plata's description of placing sealed inner liners from a smaller container to a bulk container is sufficient to support written findings for this activity if the applicant is actually required to apply for a DEQ Basic Air Contaminant Discharge Permit for the proposed activity. However, I find insufficient evidence to support written findings for the discussed possible future boiler, or autoclave steam sterilization equipment, which I understand is an incinerator. This application, however, only seeks land use approval for a biomedical waste transfer station, and not the installation or operation of an incinerator. A condition of approval is warranted to ensure that the requirements of this section are met and clarifying that installation or operation of an incinerator will require additional approval.**

- C. **819.01(C) Noise:** Sound created by the facility and audible off the subject property shall not exceed the maximum permitted by DEQ.

**Finding:** *The applicant stated in their submitted narrative that "Trilogy is exempt from the Noise Emission Standards per OAR 340-035-0035 Noise Control Regulations for Industry and Commerce. The Exemption is based on Section 0035(5)(k) which states the Sounds created by the operation of road vehicle auxiliary equipment complying with the noise rules for such equipment as specified in OAR 340-035-0030 (Noise Control Regulations for In-Use Motor Vehicles)(1)(e) are exempt from the Air and Noise Emissions Standards."*

*The County sent notice of the land use application to the DEQ for review, but did not receive any response. Assuming there are no special DEQ noise standards for the specific use proposed, then then applicant appears to have correctly identified one of the exemptions to the general noise standards established by OAR 340-035. However, staff is not of the opinion that it is synonymous with the entire use being exempt. If the use is an "industrial or commercial noise source" generating "industrial or commercial noise levels" (see OAR 340-*

035-0015), then the entire use has to comply rather than just the road vehicle auxiliary equipment. While it may be possible that the applicant is trying to state that there is no other source of noise that will exceed the standards, it is not clear. Since the waste sorting operations will take place indoors, staff finds no reason to believe this criterion cannot be met. The auxiliary equipment exemption is from OAR 340-035-0035, but 340-035-0030 also appears to apply.

Staff recommends the applicant provides more clarification on how they comply with this standard before making a determination of whether this standard can be complied with. If it can be, a condition of approval is recommended to ensure the applicant complies with the DEQ standards for noise control and obtains any necessary permits (if applicable) from the DEQ prior to operating.

**The Hearings Officer:** *The applicant provided additional evidence at the hearing, including testimony by Mr. Plata concerning the proposed operations and references to noise data from similar operations by the applicant. This evidence indicates the anticipated noise will generally fall within the 50-55 dB range, with spikes to 80 dB. A condition of approval is warranted to ensure that the requirements of this section are met, and to ensure the applicant complies with the DEQ standards for noise control and obtains any necessary permits (if applicable) from the DEQ prior to operating, although it appears no such permit is required.*

- D. **819.01(D) Storage:** (1) Any storage of material shall occur only in a totally enclosed area with proper air quality controls. The storage of uncompacted material shall not exceed one day; (2) Source separated materials, excluding yard debris, shall be stored in containers. These containers shall be located in an enclosed area; (3) Yard debris shall be removed on at least a weekly basis. Storage shall not exceed requirements established by DEQ; (4) Temporary storage areas for all materials recovered from processing shall be totally enclosed.

**Finding:** *The applicant provided a detailed Operating Plan describing the waste materials identification, sorting and storage processes. The applicant does not propose any outdoor storage of materials. As proposed, this criterion is met. The Hearings Officer concurs.*

- E. **819.01(E) Signs:** (1) A clearly visible and legible identification sign shall be posted at the entrance to the facility. The sign shall include the name of the facility, name and phone number of the operator, and hours of operation; (2) A sign describing recycling services and fees shall be posted at the facility.

**Finding:** *The applicant proposes to mount a sign to the front (north) of the building identifying the facility in compliance with this subsection. A condition of approval is warranted to ensure that this criterion is implemented. As conditioned, this criterion is met. The Hearings Officer concurs, adopting the related proposed condition of approval.*

- F. **819.01(F) Hazardous Waste Handling:** (1) No disposal of hazardous and biomedical wastes on site shall be allowed except in accordance with Oregon Revised Statutes Chapter 459 and Oregon Administrative Rules Chapter 340; (2) The operator shall provide a covered area for handling or storage of incidental hazardous, toxic, or other detrimental materials. The area shall provide positive isolation from sanitary and storm sewer systems; (3) The operator shall prepare and implement an incidental hazardous waste containment and cleanup plan approved by DEQ.



**Finding:** *The applicant provided a detailed Operating Plan describing the process to accept hazardous medical waste. Staff recommends a condition of approval that requires the applicant to submit a copy of the cleanup plan approved by DEQ for the County's records prior to operating the transfer facility. As conditioned, these criterion can be met. **The Hearings Officer concurs, adopting the related proposed condition of approval.***

- G. **819.01(G) Safety Measures:** (1) Transfer of waste from one vehicle or container to another vehicle or container shall be done within an enclosed containment area designed to ensure that waste materials do not fall onto the ground or enter the groundwater or a water feature, water system, drainageway, or drainage system; (2) The facility shall establish and implement emergency operating procedures to ensure that minimal risk exists to the public in the case of an emergency. The procedures shall include training programs and practice drills.

**Finding:** *The applicant provided a detailed Operating Plan describing the safety and emergency measures and spill clean-up process. The plan demonstrates compliance with this criterion. As proposed, this criterion is met. **The Hearings Officer concurs.***

- H. **819.01(H) Litter:** A litter control plan shall be adopted to control and provide for the removal of facility-related litter along routes leading to and in the vicinity of the facility. The litter control plan shall include the elements listed in 1 through 5 of this Subsection.

**Finding:** *The applicant provided a detailed Operating Plan describing the litter control procedures was submitted with the land use application. The plan demonstrates compliance with this criterion. As proposed, this criterion is met. **The Hearings Officer concurs.***

## 5) **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*

- A. Sections 1002, 1003, and 1004 are not applicable to the subject property.
- B. Section 1005 relates to the design of the buildings and the site.

**Finding:** *The proposal does not involve the construction of any new buildings or the alteration of the exterior of any existing buildings or building footprints. Subsection 1005.02(E through L) are not applicable to this development. The site is already developed from a previous Design Review land use application (reference file Z0043-96-D) from 1996 and provides onsite walkways that connect the building entrance to the parking area. Subsection 1005.04 provides requirements for outdoor lighting; no new outdoor lighting is proposed. As applicable, the standards of this subsection are met. **The Hearings Officer concurs in the above analysis and finding.***

- C. **1006.03 Water Supply.** The following standards apply inside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:
- a. Land divisions or other development requiring water service shall not be approved, except as provided in Subsection 1006.03(D)(4), unless they can be served by a public water system in compliance with drinking water standards as determined by the Oregon Health Authority.

**Finding:** *The property is within the Clackamas River Water service district. The applicant has submitted a Preliminary Statement of Feasibility signed by the water provider, pursuant to Subsection 1006.03(B), indicating that water service, including fire flows, is available in levels appropriate for the development and adequate water system capacity is available in source, supply, treatment, transmission, storage, and distribution, or such levels and capacity can be made available through improvements completed by the developer or the system owner. This standard is met. **The Hearings Officer concurs.***

- D. **1006.04 Sanitary Sewer Service.** 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. Approval of a development that requires sanitary sewer service shall be granted only if the applicant provides a preliminary statement of feasibility from the sanitary sewage treatment service provider and the collection system service provider.

**Finding:** *The property is within the Clackamas Water Environment Services (WES) service district. The applicant has submitted a Preliminary Statement of Feasibility signed by WES confirming that the sanitary sewer capacity in the wastewater treatment system and the sanitary sewage collection system is available to serve the development or can be made available through improvements completed by the developer or the system owner. This criterion is met. **The Hearings Officer concurs.***

- E. **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:** *The property is within the Clackamas Water Environment Services (WES) service district. The applicant has submitted a Preliminary Statement of Feasibility signed by WES 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. This criterion is met. **The Hearings Officer concurs.***

F. **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 determined that the proposed use complies with the standards of Section 1007.*

*The proposed development has frontage along Stage Hwy 212, which is under the control and jurisdiction of Oregon Department of Transportation (ODOT). Comprehensive Plan Map 5-9a shows that Hwy 212 adjacent to this site is a designated Truck Freight Route; SE 135<sup>th</sup> Ave to the east and south of the site is as well. The four-building industrial complex where this proposed use will be located was developed with an approved Design Review application from 1996, file Z0043-96. The development was designed to support warehouse/distribution, wholesale, and light manufacturing activities which is aligned with the proposed use. All required frontage improvements were exacted at the time of the initial development and no additional improvements are necessary at this time. Pursuant to Subsection 1007.07, 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, except that development in the Light Industrial zoning district is exempt from this requirement. Therefore, the standards of this Section are met. **The Hearings Officer concurs in the above analysis and finding.***

**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. The LI district requires at least 15% of site to be landscaped; except that if an industrial development is lawfully nonconforming, additions of less than 1,000 square feet of building floor space do not require increased compliance with the minimum landscaped area standard.

***Finding:*** *Compliance with the 1996 approved landscaping plan from land use file Z0043-96-D is required surrounding this specific unit (i.e. landscaping on tax lot 2203) unless the site already consists of at least 11,000 square feet (15%) of landscaped area. An updated landscape plan was not provided with the land use application because the applicant states that the site adheres to the 1996 approved landscaping plan. A letter signed by Aaron Jacobs, "Landscape Manager" certifies that the landscaping is in compliance with the approved plans. This criterion is met. **The Hearings Officer concurs.***

G. **1010 Signs; 1010.09 Commercial Signs in Industrial Districts.** Section 1010 regulates the size, type and location of signs.

***Finding:** The written application materials state that the facility will include a building sign identifying the facility. In the submitted documents there is reference to an 18-inch by 24-inch sign and to a 14-inch by 30-inch sign. Both possible sign sizes comply with the sign sizing requirements of this Section. This criterion is met. **The Hearings Officer concurs.***

H. **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. Inside the Portland Metropolitan Urban Growth Boundary (UGB), parking, loading, and maneuvering areas shall be hard-surfaced, unless a permeable surface is required for surface water management pursuant to the regulations of the surface water management authority or in order to comply with Subsection 1006.06.

***Finding:** Application materials state that 15 parking spaces are allocated to this specific tenant/unit within the development complex. There is no shared parking agreement with the other tenants/units within the complex. A minimum of nine parking spaces are required by this Section to support this use. The four-building industrial complex where this proposed use will be located was developed with an approved Design Review application in 1996, file Z0043-96. The development was designed to support warehouse/distribution, wholesale, and light manufacturing activities. The proposed use is considered “warehouse or storage distribution” in the context of minimum parking requirements of Table 1015-1. Therefore, the subject property was previously developed to support the intensity of use proposed with this conditional use permit. This criterion is met. **The Hearings Officer concurs in the above analysis and finding.***

	Minimum parking spaces (per 1,000 square feet)	Number of square feet per use	Minimum required parking spaces per Table 1015-1
Warehouse or storage distribution	0.3	19,285	5.78
Office	2.7	1,200	3.24
<b>TOTAL</b>			<b>9</b>

**E. DECISION**

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0172-24 for a conditional use permit to operate a biomedical waste transfer station in a portion of an existing building on the subject property, subject to the following conditions of approval:

**F. CONDITIONS OF APPROVAL**

If approved, staff recommends that approval of this application for the Conditional Use permit be subject to the following conditions. 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 parentheses. *Hearings Officer: I reviewed and considered the proposed conditions of approval submitted by staff and find the following conditions adequate to ensure that the requirements of this Conditional Use permit are met, with changes or additions denoted by boldface type in italics. I note that failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.*

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on April 29, 2024 and additional materials submitted on June 6, July 16 and July 17, 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.

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

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. [1203.06]
4. Prior to commencing the use:
  - a. The applicant shall comply with the DEQ standards for noise control and obtain any necessary permits (if applicable) from the DEQ. [819.01(C)]
  - b. The applicant shall comply with the DEQ standards for air quality and the discharge of contaminants and obtain any necessary permits (if applicable) from the DEQ. [819.01(B)]. ***The applicant shall not install steam sterilization or any incinerator equipment on the subject property prior to obtaining land use approval for this modification of its proposal.***
  - c. A clearly visible and legible identification sign shall be posted at the entrance to the facility. The sign shall include the name of the facility, name and phone number of the operator, and hours of operation. A sign describing recycling services and fees shall be posted at the facility [819.01(E) Signs]

- d. The facility operator shall prepare and implement an incidental hazardous waste containment and cleanup plan approved by DEQ. The operator shall submit a copy of the cleanup plan approved by DEQ for the County's records. [819.01(F)]
5. ***The applicant shall comply with the Discharge Regulations of the Clackamas Water Environment Services ("WES" or "District"). Prior to discharging or proposing to discharge industrial wastes that require pretreatment (as determined by the District's Industrial Pretreatment program), the applicant shall obtain any required Industrial Wastewater Discharge permit related to the discharge.***
6. The facility operator shall comply with the standards of ZDO Section 819 in perpetuity, until the transfer station is no longer in operation.

Dated: September 16, 2024



Carl D. Cox  
Clackamas County Hearings Officer

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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.