

BEFORE THE LAND USE HEARINGS OFFICER  
CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director  
Decision Approving an Application to Modify  
Conditional Use Permit Z0165-21.

Case File No: Z0444-23-MOD APPEAL  
(Hoodcourse Acres)

A. SUMMARY

1. The Hearings Officer received testimony and evidence at the May 2, 2024 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.
2. The subject property is an approximately 15.64-acre parcel owned by Hoodcourse Acres, LLC, which is owned by Robert and Barbara Stinson. The subject property is located at 25297 E. Welches Rd., in Welches, OR 97067, and is zoned MRR, Mountain Recreational Resort. The legal description is T3S, R7E, Section 05AD, Tax Lot(s) 00100.
3. The applicant is Robert Stinson. The applicant is requesting to modify a previously approved Conditional Use permit approved in August of 2021 (land use file Z0165-21<sup>1</sup>) which authorized adding 26 new manufactured home spaces to the existing Hoodcourse Acres manufactured home park. The applicant is requesting to modify the original approval and is asking to replace those permitted 26 additional manufactured dwelling spaces with recreational vehicle (RV) or travel trailer spaces instead. The applicant states that the recreational vehicle (RV) spaces will be for long-term stays rather than short term/campground style RVs. The most recent land use approval (file Z0165-21) established that there were 69 manufactured home spaces and 15 RV spaces. Approval of that land use application authorized adding 26 more manufactured home (MH) spaces, for a total of 95 MH spaces and 15 RV spaces (110 total combined spaces). This land use proposal will result in there being a total of 69 MH spaces and 41 RV spaces (110 total combined spaces).
4. On March 28, 2024, Melissa Lord, Senior Planner for Clackamas County, approved the application to modify Conditional Use permit Z0165-21 consistent with the application, subject to conditions. On April 8, 2024, Ryan Tercek, Chair of the Hoodland Community Planning Organization (CPO) submitted an appeal on behalf of the Hoodland CPO. The site is within the Hoodland CPO district.
5. On May 2, 2024, the Hearings Officer conducted a public hearing to receive testimony and evidence about the applicant's proposal. At the request of the County, the Hearings Officer left

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<sup>1</sup> I acted as Hearings Officer in that matter and approved this Conditional Use permit subject to conditions.

the record open for three weeks following the close of the public hearing, as follows: one week for the submission of new evidence, testimony, and argument; one week for responses to the new evidence, testimony, and argument; and, one additional week for the applicant's final legal argument.

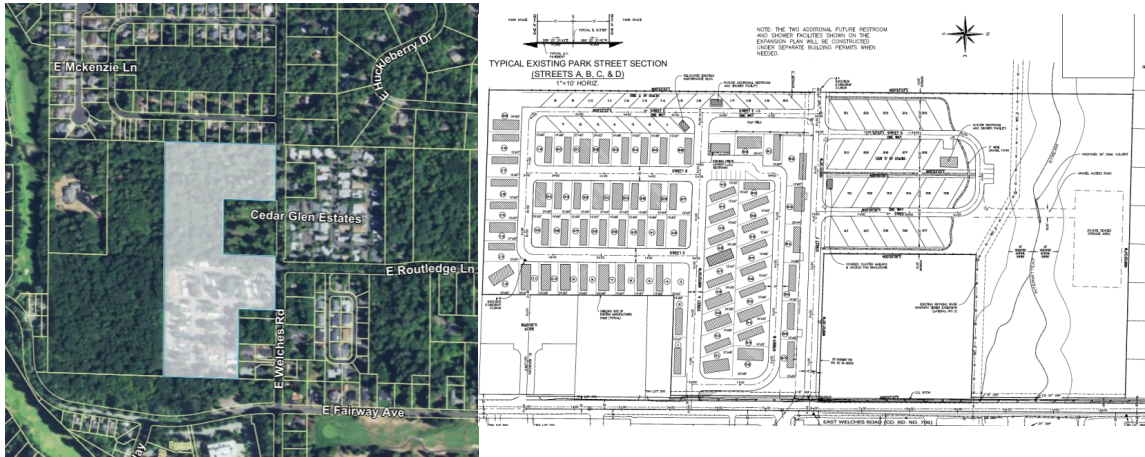
6. Patricia Erdenberger, Hoodland CPO Board Member, stated the Hoodland CPO's concerns were addressed at the hearing and waived the open record period. Daniel Minch, owner of property adjacent to and accessed through the subject property, indicated his concerns regarding changes to the approved fencing/landscape area of Conditional Use permit Z0165-21 would be addressed by submission of an updated landscape plan showing these items as originally required. Bruce Erickson, Professional Engineer and consultant for the applicant, stated he would submit the discussed landscape site plan. Mr. Erickson also wanted confirmation that the County would accept a fee-in-lieu of certain improvements required in Conditional Use permit Z0165-21, stating the applicant intended to waive any additional open record periods. Ms. Lord stated she would obtain clarity concerning the acceptance by the County of a fee-in-lieu of these improvements and submit the County's response to the record.
7. The Hearings Officer approved the application, subject to several conditions.

**B. HEARING AND RECORD HIGHLIGHTS**

1. At the hearing, Senior County Planning Melissa Lord discussed the staff review of this application. Ms. Lord shared a PowerPoint presentation prepared for this hearing. In her presentation, Ms. Lord provided relevant background information concerning the application, the County's review of the application per the County's Zoning and Development Ordinance (ZDO) and Comprehensive Plan, the approval of the application, and the reasons for the appeal.
2. Ms. Lord noted that the Hoodcourse Acres manufactured home park was originally developed in the mid-1960s. Ms. Lord noted that the 2021 conditional use permit authorized an expansion of the park to add 26 new mobile home spaces (bringing the total mobile home spaces to 95), and to add 15 new recreational vehicle (RV) spaces, bringing the total spaces in the park to 110. Ms. Lord explained that the proposal here is to modify the 2021 conditional use approval and replace those permitted 26 additional manufactured home spaces with RV or travel trailer spaces. Ms. Lord pointed out that approval of this land use application will result in there being a total of 69 manufactured home spaces and 41 RV spaces at the park, with the total number of spaces at the park remaining 110 as approved. Ms. Lord explained that the reasons for the appeal related to a proposed culvert, proposed gravel road, and an indicated future storage area. She recommended approval of the application with conditions consistent with the initial decision.
3. Ms. Lord shared copies of the location map and of the original site plan from Z0165-21 being modified, highlighting the area on the north end of the site originally designed for 8 of the new approved manufactured home sites accessed by a new internal access road and culvert for a creek crossing.

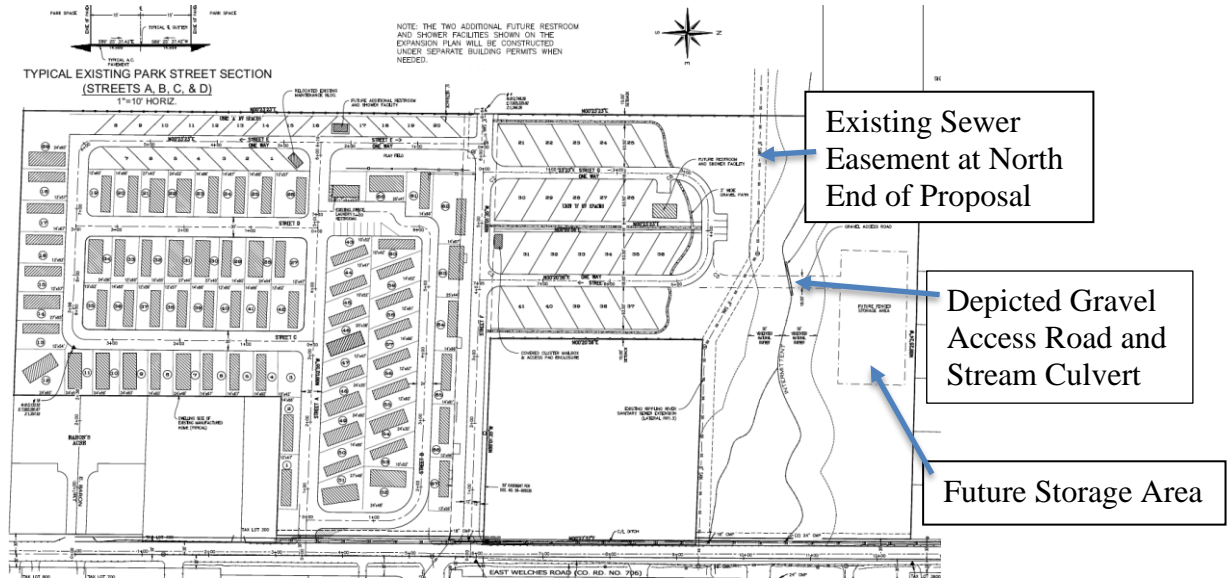
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## Location Map and Original Site Plan being Modified (Z0165-21)



- Ms. Lord also shared an updated site plan showing the proposed modification reconfiguring the expansion area to accommodate the smaller proposed RV sites and eliminating the eight manufactured home sites originally proposed on the north side of the property. However, the new proposed site plan continues to show the proposed 36" culvert and proposed gravel access road, and also shows a portion of this northern area now designed as "Future Fenced Storage Area." Ms. Lord stated that the applicant has agreed to remove these three features from the proposal and it is her understanding that these changes will address the primary concerns of the Hoodland CPO.

### PROPOSED MODIFIED SITE PLAN



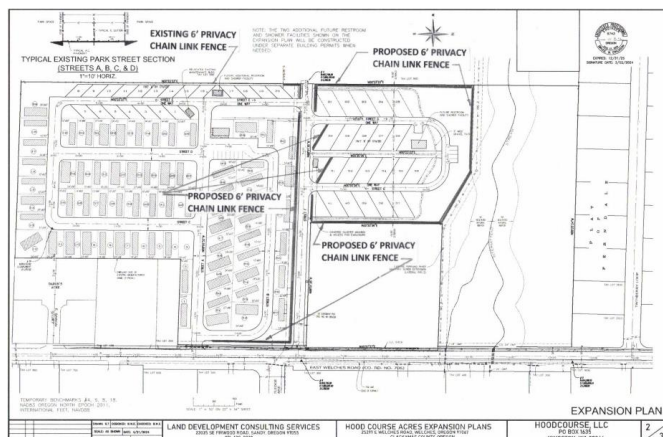
- Patricia Erdenburger is a member of the board of directors for the Hoodland CPO, and appeared on behalf of the CPO. Ms. Erdenburger discussed the concerns of the Hoodland CPO with this proposal, noting the CPO's support for additional low-cost and affordable housing options, discussing the need for new low-income housing options in the community. Ms. Erdenburger referenced the CPO's recommendations that the proposal: 1) provide for long-term housing with long-term leases (as opposed to camping spots for RVs); 2) limit the density of the housing; 3) apply a low-income standard; 4) require that RVs and trailers have independent locomotion; and 5) provide for placement of a landscape barrier after removal of the north driveway. Ms.

Erdenberger stated that the applicant had addressed the primary concerns of the CPO, reporting that the applicant agreed to remove the dotted lines on the site plan indicating the northern access road crossing the stream and associated culvert as well as the indicated future storage area, and that the CPO was in support of the application as modified.

6. Bruce Erickson, P.E., explained that the originally approved proposal proved too costly and the owner determined that there was more demand for RV spaces than manufactured home spaces, resulting in submission of the current application to modify the original proposal and change the approved new manufactured home spaces to RV spaces. Mr. Erickson stated that the indicated dotted line crossing of the creek on the north side of the property was for access to complete certain mitigation work in that area. Mr. Erickson further reported, however, that the owner had obtained a temporary permit for access to this area directly from E. Welches Road making the temporary north access road and associated culvert unnecessary. Mr. Erickson also raised an issue concerning the frontage improvements required in the original approved proposal (Z0165-21-CUP) stating he believed the County would now accept a fee-in-lieu of these improvements, citing a County Capital Improvement Project affecting the location. Ms. Lord responded that she would confirm that County Engineering would agree to accept a fee-in-lieu, requesting that the record stay open for the County to submit a response.
7. Daniel Minch owns adjacent property to the west of the proposal site, and accesses his property via an easement through the applicant's property roughly along designated "Street F" (formerly referred to as "Street E"). Mr. Minch participated in the July 15, 2021 public hearing for application Z0165-21-CUP and referenced the agreed-upon screening fencing that was to occur along both sides of this access road. Mr. Erickson responded to this comment, noting that the site plan shows fencing (chain link with privacy slats) extending along the west boundary of the site to the sewer easement at the north end. Mr. Minch explained that his concern is that the screening fence is not shown on the site plan along the sides of newly designated "Street F." Mr. Erickson agreed that the area would be fenced except for road crossing areas, pointing out that the internal access road designated "Street G" cannot be fenced, and any adjacent fencing must provide for adequate sight distances. He also pointed out that any fencing must allow for the required mailbox area, and that the specific appearance of the property is determined by the property's owner. Nevertheless, Mr. Erickson agreed to discuss the matter with Mr. Minch and submit an updated landscaping plan showing the planned improvements to the easement frontage along Street F.
8. The Hearings Officer noted that the County had requested that the record stay open to submit additional materials responsive to Mr. Erickson's request that conditions of approval requiring frontage improvements allow for payment of a fee-in-lieu of these improvements, and that Mr. Erickson had stated he intended to submit a landscaping site plan responsive to Mr. Minch's concerns. The Hearings Officer asked whether any other party or member of the audience wanted an opportunity to provide additional evidence, arguments, or testimony, and no one requested this opportunity. Ms. Erdenberger stated that the Appellant did not intend to submit any additional materials and was in support of the applicant proceeding as soon as possible. Mr. Erickson affirmed that the applicant wished to waive the period for rebuttal and final written argument. The hearings officer closed the hearing, stating that the record would stay open as follows: for a minimum of seven days until 4:00 pm on Thursday, May 9, 2024 to submit additional written evidence, argument, or testimony, a minimum of an additional week until

4:00 pm on Thursday, May 16, 2024 for any participant or member of the public to respond to new evidence submitted during the prior open record period, and an additional week until 4:00 pm on Thursday, March 23, 2024 for the applicant to provide a final written “last word” response or rebuttal, not to include new evidence. The hearings officer advised that the applicant could waive this “last word” period by submitting a written statement to Ms. Lord. This seven-day period for applicant’s final written arguments is not subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179 and thereby extended the 150-day time period for a final decision on this matter by 7 days to June 1, 2024.

9. Kenneth Kent, County Development Engineering, submitted Open Record Comments concerning the applicant’s requested clarification on whether a fee-in-lieu (FILO) payment for the required frontage improvements on E Welches Road would be an option. Mr. Kent states that in researching the FILO question, County staff found that the ZDO Section 1007.04(E) provisions on which the require to construct a sidewalk/pedestrian path was based is no applicable to a manufactured dwelling park. Therefore, staff recommends that Condition of Approval 8(c)(i)(a)(vi) requiring a “6-foot-wide pedestrian pathway” is removed. Further, Mr. Kent noted that the referenced Welches Road Pedestrian Improvements capital improvement project will construct pedestrian and bicycle improvements along E Welches Road, primarily including a 10-foot-wide multi-use path on one side of the road.
10. In his Open Record Comments, Mr. Kent noted that widening of E Welches Road is not planned with this project. Further, Mr. Kent noted that since FILO is not an option through the Zoning and Development Ordinance provision (referencing Section 1007.08), and the capital improvement project will not be widening the road, other forms of payment by the applicant would not relate to the required half street improvements or satisfy the approval criteria. County staff noted that the Welches Road Pedestrian Improvements project can be coordinated with the applicant’s frontage improvements, including financial surety per Roadway Standards Section 190 and ZDO Section 1007 to avoid any conflicts that would result in re-doing work by either party. County staff recommended a Condition of Approval requiring that the application complete the roadway improvements required by Condition of Approval #8, or that a financial surety be filed with the County Engineering Division prior to obtaining a final inspection of a PRK permit.
11. Mr. Erickson submitted comments stating that he met with Mr. Minch a reached an agreement on the proposed location of the 6’ privacy chain link fence, attaching the following site plan showing the location of the agreed to fence location: (Exhibit 26)



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## C. FINDINGS AND DISCUSSION

This case involves the appeal of a Planning Director decision approving an application to modify a previously approved land use decision. The application was initially processed by the County under ZDO Section 1307 as a land use permit for a variance, a Type II procedure whereby the Planning Director is the initial decision review authority, and the Hearings Officer is the appeal review authority.<sup>2</sup> The Planning Director<sup>3</sup> approved the application and this appeal followed.

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. The appeal discussed below is reviewed subject to the appeal procedures contained in ZDO 1307.13. These procedures provide for de novo review of the application whereby all issues of law and fact are heard anew, and no issue of law or fact decided by the lower-level review authority is binding on the parties in the hearing. The record of the initial proceedings shall, however, be made a part of the record of the appeal. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 317, 813, 825, 1000-series, 1307 and 1309, and the Comprehensive Plan. Clackamas County Land Use and Zoning Staff reviewed these Sections of the ZDO in conjunction with this proposal and makes the following findings and conclusions, *reviewed, adopted and/or modified by the Hearings Officer as denoted by boldface type in italics*:

### 1. PROJECT OVERVIEW:

The applicant is requesting to modify a previously approved land use decision. A Conditional Use permit was approved in August of 2021 (land use file Z0165-21) which authorized adding 26 new manufactured home spaces to the existing Hoodcourse Acres manufactured home park. The applicant states that the recreational vehicle (RV) spaces will be for long-term stays rather than short term/campground style RVs.

The applicant is requesting to modify the original approval and is asking to replace those permitted 26 additional manufactured dwelling spaces with more recreational vehicle (RV) or travel trailer spaces instead.

The most recent land use approval (file Z0165-21) established that there were 69 manufactured home spaces and 15 RV spaces, and then that land use application authorized adding 26 more manufactured home (MH) spaces, for a total of 95 MH spaces and 15 RV spaces. This land use proposal will result in there being a total of 69 MH spaces and 41 RV spaces.

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

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<sup>2</sup> See Table 1307-1: Land Use Permits by Procedure Type.

<sup>3</sup> ZDO 1307.3(B) provides that the Planning Director includes “Any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO].” Former County Planner Andrew Yaden acted in this capacity.

Section. Comments from surrounding residents were received; their comments are either addressed in the staff decision or below.

Concerns over the cost of water bill rates cannot be addressed by Clackamas County; water is provided by the Salmon Valley Water Company and rates are determined by the water provider.

There are no spot lights, pole-mounted lights, or other outdoor lighting or proposed with this development that would shine light onto adjoining residential properties. Pursuant to ZDO Section 1001, Table 1001-1, Section 1005 is not applicable to manufactured dwelling parks; Subsection 1005.04 pertains to outdoor lighting requirements, but this section is not addressed in the decision because the section is not applicable and no such lighting is proposed.

Buffering of dissimilar uses is required as a condition of approval to mitigate adverse impacts between the manufactured dwelling park and the single-family residential dwellings to the north of the site. Buffering includes the establishment of landscaping materials to visually buffer the dissimilar use. ***It is the establishment of such visual buffering along Street F that is the subject of Mr. Minch's concerns raised at the hearing. Mr. Minch's property lies directly west of and adjacent to the Hoodcourse Acres site and is accessed via an easement roughly within Street F. I find the proposed 6' privacy chain link fence (Exhibit 26) consistent with the original approval, adequately buffering these dissimilar uses.***

Vegetation removal previously occurred that was not authorized by Clackamas Water Environment Services (WES), and violated their environmental buffers. A County Code Violation was opened as a results of that and a letter of noncompliance was sent to the property owner. WES has reviewed this land use application and requires that mitigation occur to rectify the outstanding violation due to vegetation removal. WES' water quality standards are not provided for in the ZDO, and are therefore not detailed in this decision, below.

## 2. **ZDO SECTION 1309 MODIFICATION**

A modification to an approved Type II or III land use permit, or conditions thereto, requires review as a Type II application pursuant to Section 1307, *Procedures*, and shall be subject to the following standards and criteria:

**1309.01(A)** A modification shall be consistent with the prior approval.

***Finding:*** *In 2021, the applicants received a conditional use permit to add 26 new manufactured dwelling spaces to an existing manufactured dwelling park (reference land use file Z0165-21-C). The park included 69 manufactured home (MH) spaces and 15 recreational vehicle (RV) spaces and then that permit authorized adding 26 more MH spaces, for a total of 95 MH spaces and 15*

*RV spaces. The current modification requested is to change the park so that there will be 69 manufactured dwelling spaces [and] 41 RV spaces.*

*The proposal is consistent with the prior approval because the prior approval included a park with both MHs and RVs and there is no change to the type of use. This criteria is met. **The Hearings Officer concurs.***

**1309.01(C)** A modification shall not result in any of the following:

1. A change in the type of use (e.g. commercial, industrial, institutional);
2. An increase of greater than 25 percent of the original approved building floor area;
3. An increase of greater than 25 percent of the original approved lot coverage;
4. An increase in the density of development (residential or recreational uses), or intensity of use, as demonstrated by a change in occupancy rating requiring substantial modifications to structures;
5. An increase in traffic congestion or use of public facilities;
6. A reduction in approved open space;
7. A reduction of off-street parking spaces or loading berths, except as provided under Section 1015; or
8. A reduction in required pavement widths or a change in major access locations, except as required by the County.

***Finding:** The proposed modification will not result in any of the prohibitions listed above. Hoodcourse Acres Park already consists of both manufactured dwelling spaces and recreational vehicle spaces; therefore, the use will not change. The previously approved manufactured dwellings would have occupied more floor area than the proposed RVs or travel trailers; the amount of building floor area and total lot coverage is decreasing with this modification request.*

*The most recent land use approval (file Z0165-21) established that there were 69 manufactured home spaces and 15 RV spaces, and then that land use application authorized adding 26 more manufactured home (MH) spaces, for a total of 95 MH spaces and 15 RV spaces. This land use proposal will result in there being a total of 69 MH spaces and 41 RV spaces; therefore, there will not be an increase in density.*

*Traffic congestion was reviewed by the County's Engineering Division. A Transportation Analysis Letter was submitted with the land use application for review and determined that the proposed modification will not increase traffic congestion. The proposed changes will not impact any approved open space or off-street parking areas.*

*This criterion is met. **The Hearings Officer concurs.***

### **3. ZDO Section 317 Mountain Recreational Resort (MRR)**

**317.03 Uses Permitted.** Uses permitted in the MRR zoning district are listed in Table 317-1, Section 317. Manufactured Dwelling Parks and Recreational Vehicle Camping Facilities are Conditional Uses in the MRR zone.

***Finding:** Hoodcourse Acres Park, which includes both manufactured homes and RV spaces, received conditional use permit approval in 2021 through the review of land use permit Z0165-*



21. The proposed modification of Hoodcourse Acres does not include a change of use in the park. The County ZDO does not provide for “recreational vehicle parks” but only for “recreational vehicle camping facilities”. As a result, this application is characterized as a manufactured dwelling park where ORS 197.493 requires the County to allow recreational vehicles if they are occupied as a residential dwelling and lawfully connected to the listed utility systems.

This criterion is met. **The Hearings Officer concurs.**

**317.04 Dimensional Standards.** Dimensional standards applicable in the MRR zoning district are listed in Table 317-2, Section 317.

**Finding:** The minimum rear and side setback for structures is 10 feet. Recreational vehicles (RVs) are not considered “structures”; however, park model trailer are considered structures. In an email received from the applicant on March 20, 2024, the applicant confirmed that park model trailers will not occupy the proposed RV spaces and so the minimum 10-foot setback along the western property line need not be met. The proposed RVs meet the development standards of the MRR zone.

The applicant was advised that the Building Code may require a minimum of a 5-foot setback from the property line, and as a result designed the site plan a 5-foot setback from the western property line. This criterion is met. **The Hearings Officer concurs.**

#### 4. ZDO Section 1203 Conditional Uses

**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 MRR. Section 317 of the ZDO controls land uses in the underlying MRR zoning district; Table 317-1 lists the conditional uses which are allowed.

Table 317-1 specifies that Manufactured Dwelling Parks are a conditional use, therefore a conditional use permit is necessary. The development previously received conditional use permit approval (land use permit reference file number Z0165-21); the subject application is to modify the existing land use approval. This criterion is met. **The Hearings Officer concurs.**

**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 was already found to comply with this standard by both Staff and the Hearings Officer during the review and approval of land use file Z0165-21. There have been no substantive changes to the characteristics of the subject property since the approval of those permits. This criteria continues to be met. **The Hearings Officer concurs.**

**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 in the previous land use application, file Z0165-21. A Transportation Analysis Letter was submitted with the land use application for review and determined that the proposed modification will not increase traffic congestion. The Clackamas County Engineering Division reviewed the letter and determined that

*the same conditions of approval applied to land use file Z0165-21 are still necessary. **The Hearings Officer concurs.***

*As conditioned, this criterion is met. **The Hearings Officer concurs.***

**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 subject property was already found to comply with this standard by both Staff and the Hearings Officer during the review and approval of land use file Z0165-21. There have been no substantive changes to the character of the surrounding area since the approval of those permits and the proposed modification will not have an impact on the surrounding area in a way that substantially limits, impairs or precludes the use of surrounding properties. However, the manufactured dwelling park is dissimilar to the single-family residential dwelling subdivision to the north and so buffering techniques is required to reduce adverse impacts; this is detailed further in this report. This criteria is met. **The Hearings Officer concurs, noting that the proposed 6' privacy chain link fence (Exhibit 26) is consistent with the original approval and provides adequate buffering for these dissimilar uses.***

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

***Finding:** The subject property was already found to comply with the goals and policies provided in Chapter 4, Mountain Recreation by both Staff and the Hearings Officer during the review and approval of land use file Z0165-21. The proposed modification will not alter or change the level of compliance with the Comprehensive Plan. This criterion is met. **The Hearings Officer concurs.***

**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:** Staff reviewed compliance with Section 825 and 1000, as applicable, and the findings are included in the staff decision below. This criterion is met. **The Hearings Officer concurs.***

## **5. ZDO Section 825 Manufactured Dwelling Parks**

The County ZDO does not provide for “recreational vehicle parks” but only for “recreational vehicle camping facilities”. As a result, this application is characterized as a manufactured

dwelling park where ORS 197.493 requires the County to allow RVs if they are occupied as a residential dwelling and lawfully connected to the listed utility systems.

**825.01(B):** The minimum front setback is 25 feet from front lot lines on the perimeter of the manufactured dwelling park.

***Finding:** There are no proposed changes to the setbacks along the front property line (E Welches Rd). This standard will continue to be met. **The Hearings Officer concurs.***

## **6. ZDO Section 1000 Development Standards**

**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.

***Finding:** Salmon Valley Water Company is the water service provider to the property. A preliminary statement of feasibility was provided in the application materials confirming 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.*

*Clackamas Water Environment Services (WES) is the sanitary sewer service provider for the subject property. A preliminary statement of feasibility was provided in the application materials confirming that sanitary sewer capacity is 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.*

*WES is the surface water management authority for the subject property. 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 or system owner.*

*WES has imposed conditions of approval that relate to their jurisdiction. Their comments have been included in the Advisory Notes section, yet compliance with the service provider's regulations is a condition of approval. As conditioned, this section is met. **The Hearings Officer concurs.***

**Section 1009, Landscaping** provides landscaping requirements for development.

**1009.02 Minimum area standards:** Pursuant to Table 1009-1, the minimum landscaped area in the MRR district is 25%.

***Finding:** Manufactured dwelling parks are subject to Section 1009. Each proposed RV space includes lawn area. Pursuant to subsection 1009.02(B), no additional landscaping is required to*

satisfy Table 1009-1 since there is no additional building floor area being added to the development site. This criterion is met. **The Hearings Officer concurs.**

**1009.04 Buffering:** Buffering shall be used to mitigate adverse visual impacts, dust, noise, or pollution, and to provide for compatibility between dissimilar adjoining uses. Special consideration shall be given to buffering between residential uses and commercial or industrial uses, and in visually sensitive areas.

**Finding:** *Buffering is necessary to mitigate dissimilar uses between the subject property and the dwellings located to the north, on Twinberry Loop, due to the dissimilarity between the manufactured dwelling park and the residential subdivision. A condition of approval is warranted to ensure compliance Subsection 1009.04(E)(1 through 3). Subsection 1009.04(E)(4) is a discretionary standard that cannot be imposed through a condition of approval. As conditioned, this criterion is met. **The Hearings Officer concurs, noting that the applicant has proposed a 6' privacy chain link fence (Exhibit 26) consistent with the original approval, providing adequate buffering for these dissimilar uses.***

**Section 1015, Parking** 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:** *Minimum parking standards provided for in Table 1015-2 require that two (2) parking spaces are required for each manufactured dwelling in a manufactured dwelling park. The applicant proposes to add recreational vehicles in the manufactured dwelling park, which does not necessitate additional parking. This criterion is met. **The Hearings Officer concurs.***

#### **D. CONDITIONS OF APPROVAL**

***The Clackamas County Land Use and Zoning staff recommended approval of this application for a modification subject to the following conditions, consistent with the original August 18, 2021 decision in Z0165-21-C approving this conditional use permit application, reviewed, adopted and/or modified by the Hearings Officer as denoted by boldface type in italics:***

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.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on November 14, 2023 and additional documents submitted November 16, and December 20, 2023 and March 26, 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. Approval of a modification shall be subject to the same approval period and time extension provisions as the application type modified by the approval [1309.02]:
  - a. Approval of a conditional use is valid for four years from the date of the final decision. 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.

- b. 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:
  - i. A building permit for a new primary structure that was part of the conditional use approval; or,
  - ii. A permit issued by the County for parking lot or road improvements required by the conditional use approval.
3. **Prior to issuance of a development permit**, the applicant shall provide an updated site plan and/or a landscaping plan demonstrating compliance with the buffering standards of Subsection 1009.04(E)(1 through 3) to the Planning and Zoning Division.
4. The planting of invasive non-native or noxious vegetation shall be prohibited, and existing invasive non-native or noxious vegetation shall be removed. [1009.01]
5. When planted, deciduous trees shall be fully branched, have a minimum caliper of two inches, and have a minimum height of eight feet. When planted, deciduous trees shall be fully branched, have a minimum caliper of two inches, and have a minimum height of eight feet. Shrubs shall be supplied in minimum one-gallon containers or eight-inch burlap balls with a minimum spread of 12 inches. [1009.10]
6. **Prior to issuance of a development permit**, landscaping materials shall be guaranteed for a period of one year from the date of installation. The developer shall either submit a signed maintenance contract for the one-year period or provide a performance surety pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance, covering the landscape maintenance costs for the one-year period. [1009.10]
7. Subject to Planning and Zoning condition of approval #3 from original land use approval (file Z0165-21): “Prior to use applicant to satisfy requirements of Section 1021 relative to recycling and trash enclosure, etc. Contact [Tenille Beseda Fillwock], Sustainability at [503-742-4451; [TBeseda@clackamas.us](mailto:TBeseda@clackamas.us)]”
8. Development Engineering Division Conditions from Z0165-21, which include:
  - a. Overview:
    - i. The following items are project requirements from the Department of Transportation and Development’s Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project, but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These conditions are based upon the requirements detailed in the County’s Comprehensive Plan (Comp Plan), the County’s Zoning and Development Ordinance (ZDO) and the County’s Roadway Standards. Additional requirements beyond those stated in the conditions of approval may be required once plans have been submitted and reviewed. The applicant may discuss the requirements of the project with staff at any time.

- ii. The requirements specifically required by the Comprehensive Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the County Roadway Standards, are based upon nationally accepted standards and engineering judgment and may be modified pursuant to Section 170 of the Roadway Standards.

The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted.

b. General Provisions:

i. Prior to Certificate of Occupancy:

- a) The applicant shall obtain a Development Permit from the Engineering Department for review and approval of frontage improvements, private access and sight distances. The permit shall be obtained prior to commencement of site work and certificate of occupancy. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, provide a performance surety equal to 125% of the estimated cost of the construction within the existing County right-of-way and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if the amount exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit Application.
- b) The applicant shall dedicate sufficient right-of-way to provide for a minimum 30-feet from centerline along E Welches Rd. Right-of-way dedication documents shall be submitted and accepted prior to final inspections of the Development Permit and Certificate of Occupancy.
- c) The applicant shall meet the requirements for Substantial Completion including final inspection approval of all frontage and access improvements along E Welches Rd.
- d) The applicant will be required to submit or provide a minimum 25-foot wide access and utility easement through the subject tax lot 37E05AD00100 benefitting 37E05AD01000, 37E05AD00900 and future divisions thereof.
- e) The applicant shall submit a Certificate of Compliance, signed by the Engineer of Record, stating all frontage improvements have been completed as per plans and materials installed as per manufacturers specifications.

ii. Prior to Development Permit Issuance:

- a) The applicant shall enter into a Developer/Engineer Agreement for primary inspection services of the frontage and private access improvements along E Welches Rd.
- b) The applicant shall provide a performance surety of 125% of the cost estimate for the frontage improvements within the existing County right-of-way.

c. Public & Private Roadways:

i. Prior to Development Permit Issuance:

- a) The applicant shall submit approvable plans per Section 140 of the Roadway Standards showing:

- i. Up to half-street improvements consisting of road widening of 19-feet of pavement with 2-foot gravel shoulders from centerline with off-site asphaltic tapers in accordance with Roadway Standards section 250.6.4. Structural section to meet minimum requirements set forth in standard detail C140.
  - ii. Re-establish any effected drainage swales.
  - iii. Removal of the existing driveway Street B and re-establish the drainage swale.
  - iv. The applicant shall show all utility work within County right-of-way on the approved plans or obtain Utility Permits for utility connections and work within the County right-of-way. On and off-site pavement restoration to meet Chapter 7 of the Roadway Standards.
  - v. Paved access to E Welches Rd. at Street “E” meeting Standard Detail D500.
  - vi. ~~6-foot wide pedestrian pathway with returns at each property line meeting minimum structural section of 3” AC over 5” of 3/4 0” crushed completed rock.~~  
***The Hearings Officer concurs with the recommendation by County staff that this Condition of Approval is not applicable to a manufactured dwelling park.***
  - vii. ***The Hearings Officer adds the following additional Condition of Approval consistent with the recommendation by County Staff: “The applicant shall complete the roadway improvements required by Condition of Approval #8, or shall file a financial surety with the County Engineering Division prior to obtaining a final inspection of a PRK permit.***
- ii. Prior to Final Inspection:
- a) The applicant shall provide and maintain minimum intersection sight distances at all shared private road intersection with E. Welches Rd. Intersection sight distance shall restrict plantings at maturity, retaining wall, embankments, trees, fences or any other objects that obstruct vehicular sight distance. Minimum required intersection sight distance is 390-feet both north and south bound along E. Welches Rd.
9. The applicant shall comply with all permitting and regulations of Clackamas Water Environment Services (WES), the sanitary sewer provider and the surface water management authority as outlined in Conditions #10 through 40, below. [1006]
10. The proposed development is located within the service area of Water Environment Services (WES) and shall be subject to WES Rules and Regulations, and Standards (“WES RR&S”), in accordance with the following adopted ordinances:
- a. Water Environment Services Rules and Regulations, July 2018, Ordinance No. 03-2018
  - b. Sanitary Sewer Standards, Clackamas County Service District No. 1, July 1, 2013.
  - c. Stormwater Standards, Clackamas County Service District No. 1, July 1, 2013.
11. Upon land use approval, the applicant shall procure the necessary plan approvals and permits in accordance with WES RR&S for sanitary sewer services and surface water management, including erosion control requirements. WES shall determine if the applicant’s sanitary and stormwater submittals conform to WES RR&S and satisfy the Conditions of Approval during WES’ final plan review and permit approval process.

12. All plans and reports submitted to WES for review and approval shall be stamped and signed by a civil engineer licensed by the State of Oregon. The project construction, specifications, and testing must be completed under the direction of the project engineer.
13. The sanitary and storm systems shall be complete in all respects prior to Certificate of Occupancy. WES shall inspect and approve the construction of the sanitary and storm systems in accordance with the approved plans. No connections shall be made to the sanitary or storm systems prior to system acceptance by WES.
14. Any requests to modify current WES Design Standards shall be made in accordance with Sanitary Standards, Section 1.7 or Stormwater Standards, Section 1.6.
15. A Surface Water, Storm Drainage and Sanitary Sewer Easement granted to Clackamas County Service District No. 1 is permanent and not extinguishable. No development shall encumber use or access to this easement by WES.
16. The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid prior to issuance of building permits, and are subject to change without notice to the applicant. All costs associated with the design, construction and testing of the sanitary sewer and storm system shall be provided by and at the sole expense of the applicant.
  - a. Prior to plan approval by WES, System Development Charges for the total number of additional RV spaces shall be paid in full. WES will determine a final assignment of SDC's and charges after review of the civil plans.

**For Sanitary Sewer, the following conditions shall apply:**

17. In accordance with Sanitary Standards, Section 3.2, the developer shall provide an approvable plan for connection to the Public Sanitary Sewers System. All dwelling units with sewer drains within the boundaries of the proposed development shall be connected to the Public Sanitary Sewers System.
18. Prior to occupancy, a gravity sanitary sewer service connection shall be provided to the development.
  - a. Sanitary sewer service connections to the public mainline shall be made at a location that is acceptable to WES.
  - b. The diameter of the Service Connection for lots other than residential single family shall be served by a minimum 4-inch diameter pipe, or large if deemed necessary by Oregon Plumbing Specialty Code or permitted at the sole discretion of the District.
  - c. A new 6-inch connection to an existing 8-inch mainline shall require a manhole connection be provided by the developer. Connections to existing District manholes shall be made using a core drilling method. Connect PVC pipe to concrete manholes by means of an approved coupling with an elastomeric gasket or flexible sleeve conforming to ASTM C923, (Kor-N-Seal or equal).
  - d. C-900 PVC shall be used at any stream crossings.
  - e. A minimum 12-inch of vertical separation shall be required where the private system crosses the public mainline.
  - f. Any new connections made to an existing mainline shall be subject to a Collection Sewer Charge.



**For Surface Water, the following conditions shall apply:**

19. In accordance with Section 5 of the WES Stormwater Standards, WES shall review, approve and permit stormwater management plans for any development that creates or modifies 5,000 square feet or more of impervious surface area.
  - a. The applicant shall submit plans that show the extent of disturbance for the entire development, including identification of all onsite and offsite impervious area improvements either proposed by the applicant or required by other agencies as a condition of development (including roof area, hardscapes, and roads). The total square footage of new and modified impervious surface area shall be noted on the plans.
  - b. The applicant shall submit a Surface Water Management Plan and Storm Report (SWM Plan) to WES for review and approval. The SWM Plan shall demonstrate how the development will conform to WES RR&S and shall be prepared by a civil engineer licensed by the State of Oregon.
20. The applicant's SWM Plan shall provide a design to mitigate the stormwater runoff from all onsite impervious surface areas, all permeable disturbed areas, all water entering the property from off-site, and all road improvements required by the local road authority.
21. The SWM Plan shall conform to the following general stormwater performance standards, as well as all other applicable stormwater requirements in accordance with WES RR&S:
  - a. **Water Quality Standard** - Water quality facilities shall be designed to capture and treat the first 1-inch of stormwater runoff from a 24-hour storm event using either vegetation (Appendix H) or a Basic Treatment proprietary device (Appendix F).
  - b. **Infiltration Standard** - The first ½ inch of runoff in a 24-hour period must be captured and retained onsite through an approved infiltration system.
  - c. **Detention/Flow Control Standard** – On-site detention facilities shall be designed to reduce the 2-year post-developed runoff rate to ½ of the 2-year pre-developed discharge rate.
22. The conveyance system shall be sized for a minimum 25-year design storm.
23. A design modification request from the applicant to use the BMP Tool as an equivalent alternative to the required infiltration/retention standard was approved by WES on April 13, 2021. The BMP Tool is based on HSPF continuous rainfall model simulation, and sizes facilities so that post development peak flow durations will match the predevelopment peak flow durations (ranging from 42% of the 2-year to the 10-year flows, as determined by the continuous model simulation). The following shall apply with the BMP Tool design submittal:
  - a. All stormwater management facilities shall be designed with the continuous flow model of the Tool. Conveyance structures shall be designed per WES stormwater standard criteria.
  - b. Underground detention facilities shall be designed with the custom pond sizing feature of the BMP Tool. The designer shall use HydroCAD or another design tool to size the detention system along with Brown and Caldwell's Tool input procedures for asymmetrical detention storage design.
  - c. Proprietary stormwater treatment devices must be approved by the Washington Department of Ecology with General Use Level Designation and classified as a Basic Treatment technology.

- d. The engineer shall verify each Drainage Management Area aligns with the final grading plans.
24. Any offsite stormwater entering the site shall be placed in a bypass pipe or mitigated onsite.
25. The SWM Plan shall identify an acceptable point of discharge to safely convey stormwater runoff from the entire boundary of the development.
26. Grading plans shall clearly identify an overflow pathway system by which the storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons in the event of any stormwater facility failure or bypass (Section 1.2)
27. A Downstream Conveyance Analysis shall be included in the SWM Plan. The analysis must extend a minimum of 1500' or to the point where the development contributes less than 15% of the upstream drainage area, whichever is greater.
  - a. The analysis shall be based on the entire drainage basin, including all future upstream development, and calculate the 25-year storm event for conveyance capacity requirements.
  - b. Provide a standard capacity analysis chart and plan showing the downstream pipe layout to the extent of your analysis. Indicate pipe sizes and slopes on the map. Provide all applicable as-built drawings.
  - c. Provide representative cross sections of the conveyance drainage, including the smallest area that represents the limiting factor.
28. In the event a development or any part thereof is traversed by any water course or natural drainage channel, adequate easements for surface water drainage purposes shall be provided to WES. This does not imply a maintenance obligation by WES.
29. The property owners shall be responsible to perpetually inspect and maintain all stormwater management systems, in accordance with WES Rules, Section 12.10. A WES 'Private Storm Drainage Facilities Maintenance Plan' (available on website) shall be submitted to WES prior to final plan approval.

**For Erosion Control, the following shall apply:**

30. Per Stormwater Standards, Section 6.1, the owner or their agent, contractor, or employee shall properly install, operate and maintain both temporary and permanent Erosion Protection and Sediment Control practices to protect the environment during the useful life of the project. No visible or measurable erosion shall leave the property during development, construction, grading, filling, excavating, clearing, or other activity that accelerates erosion, as required by water quality standards set forth in OAR 340-41-445 thru 470.
31. With the first plan submittal to WES, the applicant shall include erosion control site plans that identify adequate EPSC techniques and methods as prescribed in the current WES Erosion Prevention Planning and Design Manual. Site plans shall delineate the total area of disturbance.
32. Any development activity that results in over 800 sq ft of soil disturbance shall obtain a WES Erosion Prevention and Sediment Control (EPSC) Permit before the start of any grading or construction activities. The applicant shall submit a Permit application and erosion control site plans, and pay applicable permit fees (\$460 + \$80/acre over 1 acre).
33. For those sites that are 1 acre to less than 5 acres of disturbance, an Oregon DEQ 1200-CN Construction Stormwater (Erosion Control) Permit will be issued by WES along with the WES

EPSC permit. To obtain a 1200-CN permit, the applicant must submit the required WES EPSC Permit application and 1200-CN template style erosion control plans to WES for review and approval.

**For Water Quality Vegetated Buffers, the following shall apply:**

34. All new development shall meet WES Rules to preserve and maintain an undisturbed vegetated buffer to protect all water quality resource areas, in accordance with Stormwater Standards, Section 4. County Planning Division serves as WES' agent to administer these requirements (in consultation with WES), therefore the applicant shall coordinate with Planning for all buffer-related requirements.
35. A Natural Resource Assessment Report shall be submitted to Planning/WES. All springs, wetlands, streams, required buffers, and proposed encroachments/mitigation shall be clearly shown and noted on the plans and identified/delineated by a certified professional.
36. Any unauthorized encroachments into the buffer area identified in Clackamas County Code Violation file number V0049921 shall be restored into a functional buffer that provides water quality benefit, as determined by the District. With final plan submittal to WES, the applicant shall provide a landscape restoration plan.

**The following WES Fees and Charges shall apply:**

37. Sanitary Sewer Plan Review fees shall apply. A \$400.00 minimum shall be due with the first plan submittal.
38. Surface Water Plan Review fees shall apply. The total fee is equal to 4% of the construction cost for all stormwater management related facilities. A \$400.00 minimum shall be due with the first plan submittal.
39. A Collection Sewer Charge (CSC) for the proportionate cost of constructing the public mainline sewer shall apply for the new connection to the public sanitary sewer system. A CSC in the amount of \$6,000.00 shall be paid to WES prior to plan approval.
40. System Development Charges (SDC's) shall apply for sanitary sewer and surface water, in accordance with the prevailing rates in effect when the original land use application was submitted.
  - a. WES will determine a final assignment of SDC's and charges after review of the civil plans. SDCs shall be paid in full prior to WES plan approval.
  - b. Sanitary Sewer SDC: The applicable SDC rate is \$8,005.00 per EDU (Equivalent Dwelling Unit). Assignment of EDU's is in accordance with Table VII, Class 5 (0.8 EDU per space).
  - c. Note: The development's monthly sewer bill will be adjusted accordingly based on the number of new R V spaces approved.

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**E. DECISION**

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0444-23-MOD, subject to conditions of approval.

Dated: May 22, 2024



Carl D. Cox

Clackamas County Hearings Officer

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**APPEAL RIGHTS**

ZDO 1307.11(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.