

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

Regarding an Appeal of a Planning Director)	Case File No.
Decision Approving an Application for Design)	Z0323-18-D Appeal
Review for 40 Units of Multi-Family Housing.)	(Wy'East Apartments)

A. SUMMARY

1. The applicants and owners are Robert Thurman and Margaret Thurman.
2. The appellants are the Cedars Homeowners Association and Bobby Dean Phillips.
3. The subject property on the south side of Highway 26, west of East Woodsy Way. The legal description is T3S, R7E, Section 04BA, Tax Lot 600 W.M. The subject property is approximately 2.05 acres and is zoned MRR – Mountain Recreational Resort.
4. On January 31, 2019, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. At the conclusion of the public hearing, the record was closed.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing on this application on January 31, 2019. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearings, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the Planning Director's decision, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planner Anthony Riederer discussed the Planning Director's decision.

3. Margaret Thurman, Robert Thurman, and David Thurman testified in favor of the application.
4. Bobby Dean Phillips, David Winchester, Fay Miller, and Carey Crislip testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer closed the record.

C. FACTS

This case involves the appeal of a Planning Director decision approving design review for a 40 unit multifamily apartment complex with associated site improvements. A design review application is subject to a type II procedure, whereby the decision is made by the Planning Director. The Planning Director approved the design review application.¹ This appeal followed.

The subject property is zoned Mountain Recreational Resort (MRR) and is located on the south side of US Highway 26, slightly to the west of the intersection between US 26 and East Woodsy Way. The development site of approximately 2.05 acres is currently undeveloped and heavily vegetated with a broad mixture of underbrush, scrub/volunteer trees, and mature trees. The site is set within the context of an existing mountain community (Welches) and along the scenic US Highway 26 corridor. The property is essentially a long narrow rectangle running roughly east to west adjacent to Highway 26. The apartments would be mostly located along the southern portion of the property with the circulation system between the apartments and Highway 26. As is common among historic rural highway corridors, the pattern of land use in the immediate area of the proposed development is somewhat inconsistent, ranging in development intensity from tightly controlled National Forest lands to late-20th Century auto-oriented strip mall-type development. Further, given that the immediately adjacent rural community of Welches developed incrementally over time, the architectural context of the area is mixed at best. The properties to the north (across US Highway 26) are zoned Recreational Residential while the properties immediately south of the site are zoned MRR. The properties immediately to the east and west of the site are zoned Hoodland Residential. The

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

application proposes to build 40 multifamily apartments, consisting of 24 studio apartments and 16 one bedroom apartments.

The Cedars Homeowners Association (the Cedars) represents the residents of a single family established neighborhood immediately south of the subject property. The Cedars encompasses slightly over seven acres and contains 58 residents, many of whom are retired. The Cedars challenged the application before the Planning Director and are the appellants in this appeal.

D. DISCUSSION

The proposed apartments are a permitted use in the MRR zone. The application is for design review of a permitted use. There are numerous applicable approval criteria that the Planning Director's decision finds are satisfied. Most of those findings are not challenged by opponents. It would be a waste of the County's money and resources to review and repeat all of the unchallenged findings. I have reviewed the Planning Director's decision, and I agree with his findings. Therefore, I adopt and incorporate the Planning Director's findings and conclusions in this decision, except as discussed further.

1. Design Review Approval Criteria

Clackamas County Zoning and Development Ordinance (ZDO) Chapter 1005 provides the Design Review ordinances. ZDO 1102.03 provides the approval criteria for design review. The only applicable approval criterion is ZDO 1102.03(A), which provides: "The proposed development shall be subject to Section 1000 * * *."

a. ZDO 1002.03 Trees and Wooded Areas

ZDO Chapter 1000 concerns various development standards. ZDO 1002.03(A) provides:

"Existing wooded areas, significant clumps or groves of trees and vegetation, consisting of conifers, oaks and large deciduous trees, shall be incorporated in the development plan wherever feasible. The preservation of these natural features shall be balanced with the needs of the development, but shall not preclude development of the subject property, or require a reduction in the number of lots or dwelling units that would otherwise be permitted. Site planning and design techniques which address incorporation of trees and wooded areas in the development plan include, but are not limited to, the following: [various methods]"

The property has a large number of trees. The proposed landscaping plan would result in the removal of a large number of trees. In particular, most of the trees along the property line with the Cedars to the south would be removed. The Cedars argue that too many trees would be removed. Although the Cedars do not cite ZDO 1002.03(A), their argument falls under this approval criterion. ZDO 1002.03(A) does not prohibit the removal of large number of trees, only that trees and other wooded areas be incorporated in the design when feasible. ZDO 1002.03(A) explains that preservation of trees and wooded areas must be balanced with the needs of the development and cannot require a reduction in the number of dwelling units of the proposed development. The Planning Director found:

“The submitted landscape plan indicates the location of all existing mature trees and indicates which are to be removed to make way for the development. The proposed design retains all mature trees not directly impacted by a building or other hardscape element. This allows for a significant number of mature trees to be retained while providing the development to proceed with the number of units allowable under the zoning code. This standard is met.” Planning Director Decision 24.

The applicant explains that with the limited amount of space and irregular shape of the property all the trees that could be saved while allowing the proposed number of dwellings were saved. The applicant explains that it took various methods of ZDO 1002.03(A)(1-10) into account. An opponent must not only allege that additional trees could be saved, but must also provide an alternative plan that would allow the same number of dwellings and retain more trees. The Cedars submitted an alternative site plan from a registered engineer showing the same number of dwellings and saving more trees. The applicant explains, however, that the alternate site plan is not a feasible alternative because it has the entrance on the western portion of the property, and ODOT requires the entrance to be from the east. The alternative site plan also locates the stormwater detention pond on the western portion of the property when it must be located in the eastern portion of the property. I agree with the Planning Director and the applicant that the proposed site plan preserves trees to the extent feasible. The Cedars has not demonstrated that there is an alternative feasible site plan that would preserve more trees.

ZDO 1002.03 is satisfied.

b. ZDO 1006.03 Water Supply

ZDO 1006.03 concerns water supply for developments. The Cedars argues that there is insufficient water to serve the proposed development. According to the Cedars, water pressure is already very low for their residents, let alone providing water for 40 more apartments. ZDO 1006.03(B) provides:

“Approval of a development that requires public or community water service shall be granted only if the applicant provides a preliminary statement of feasibility from the water system service provider.”

The applicant provided a preliminary statement of feasibility from the water system provider, Salmon Valley Water. Although the Planning Director’s decision did not address ZDO 1006.03, the proposed conditions of approval state that the preliminary statement of feasibility was provided by Salmon Valley Water. The Cedars continue to argue that the water supply is insufficient. Salmon Valley Water submitted a detailed letter dated January 2, 2019 that explains there is adequate pressure within the Cedars and more importantly that there is an adequate water supply to serve the proposed use:

“There are no state or federal laws that mandate or set guidelines for water reserves, however [Salmon Valley Water] has a stated reserve of 30%. Reserve is the amount of water that can be ‘made’ over and above the highest peak demand for whatever is considered a system’s peak period. For [Salmon Valley Water] the peak period is a 90 plus degree Fourth of July week. On average [Salmon Valley Water] has been operating at 38-40% reserve during that period. This development at peak demand will add 2.26% and 1.27% on average to the system. The data used in this estimate is based on a near complete facsimile of the proposed development currently in place and owned by developers, Welches Mt. Properties. That estimate assumes full occupancy.”

Salmon Valley Water not only provided the preliminary statement of feasibility required by ZDO 1006.03(B), but also provided a detailed letter, along with the studies to support its conclusions, explaining that there is adequate water to support the proposed development. While I do not doubt that Cedars residents sometimes have problems with water pressure, Salmon Valley Water’s expert analysis is very persuasive. I agree with the applicant and Salmon Valley Water that there is adequate water to serve the proposed development.²

² The Cedars also argue that the January 2, 2019 letter references new wells that Salmon Valley Water is in the processing of acquiring. According to the Cedars, there is no guarantee that these wells will ever come

ZDO 1006 is satisfied.

c. ZDO 1009.04 Screen and Buffering

ZDO 1009.04 provides the landscaping screening and buffering requirements. ZDO 1009.04(D) provides:

“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.”

The Cedars argues that the contrasting uses between a largely retirement community on relatively large lots and a multifamily apartment complex largely intended for seasonal tourism industry workers requires particularly stout buffering.³ The Planning Director agreed that buffering is required between the uses:

“Though they are both residential in nature, the difference in use intensity between the proposed multi-family residential development and the established single-family residential neighborhood to the south is significant and could reasonably anticipated to generate adverse impacts particular as relate to visual impacts, light trespass, and noise.

Staff finds that these differences in use intensity are substantial enough to require some additional buffering per this subsection. An area of buffering is indicated in the revised site plans, but no details of its design or composition were provided.

This does not comply with the standard. This standard can be met with a condition of approval.” Planning Director Decision 38.

The Planning Director imposed a condition of approval that requires the applicant to submit additional detailed plans for providing a buffer. ZDO 1009.04(E) provides the various methods for providing buffers:

“Buffering shall be accomplished by one of the following:

- “1. A landscaping strip with a minimum width of 15 feet and planted with:

on line. While that may be true, Salmon Valley Water explained that it *currently* had the capacity to serve the proposed use. The additional wells would merely further increase that capacity.

³ The Cedars also argued that screening was required for the parking lot, but ZDO 1009.04(A)(4) only requires such screening in certain zoning districts and does not include the MRR zone.

- “a. A minimum of one row of deciduous and evergreen trees staggered and spaced a maximum of 30 feet apart;
 - “b. A perennial, evergreen planting with sufficient foliage to obscure vision and which will grow to form a continuous hedge a minimum of six feet in height within two years of planting; and
 - “c. Low-growing evergreen shrubs and evergreen ground cover covering the balance of the area;
- “2. A berm with a minimum width of ten feet, a maximum slope of 40 percent on the side away from the area screened from view, and planted with:
- “a. A perennial, evergreen planting with sufficient foliage to obscure vision and which will grow to form a continuous hedge within two years of planting. The minimum combined height of the berm and planting shall be six feet; and
 - “b. Low-growing evergreen shrubs and evergreen ground cover covering the balance of the area;
- “3. A landscaping strip with a minimum width of five feet and including:
- “a. A masonry wall or sight-obscuring fence a minimum of six feet in height. The wall or fence is to be placed along the interior side of the landscaping strip;
 - “b. Evergreen vines, evergreen trees, or evergreen shrubs, any of which shall be spaced not more than five feet apart; and
 - “c. Low-growing evergreen shrubs and evergreen ground cover covering the balance of the area; or
- “4. Another method that provides an adequate buffer considering the nature of the impacts to be mitigated.”

The Planning Director imposed a condition of approval requiring the applicant to “provide additional detailed drawings of the required buffer between the development and adjacent residential properties to ensure it complies with the appropriate criteria as identified in [ZDO] 1009.0[4](E)(1-3).” Planning Director Decision 15. It is unclear from the proposed condition of approval how the Planning Director intended the buffering requirement to be met. ZDO 1009.04(E)(1-3) allows for either landscaping strips with various requirements or a berm with landscaping. Prior owners of the property built a small

berm running between the subject property and the Cedars. According to the applicant. The berm is twenty feet wide, with ten feet on each side of the property line. The applicant proposes to cleanup and rebuild the berm on the subject property to a height of four feet and plant Mugo Pines along the berm to eventually create a hedge. The Cedars argues that such proposed buffering would be woefully inadequate. According to the Cedars, the proposed berm would not provide much a buffer as it would be too low to create any buffer, and the proposed plantings would take a long time to provide any buffer and even then it would not be much of a buffer.

I agree with the Cedars that the proposed buffer is not adequate to mitigate adverse visual impacts, dust, noise, and pollution. ZDO 1009.04(E)(4) provides that “[a]nother method that provides an adequate buffer considering the nature of the impacts to be mitigated” may be used. In addition to the proposed landscaping plan, the condition of approval will include the requirement of a sight-obscuring fence a minimum of six feet in height along the subject property’s southern property line adjacent to the Cedars, pursuant to ZDO 1009.04(E)(4)..

With conditions of approval ZDO 1009.04 is satisfied.⁴

d. ZDO 1015 Parking

The Cedars argues that there will not be enough parking for the proposed apartments. ZDO 1015.02(B) provides the minimum required number of parking spaces in ZDO Table 1015-2. The Planning Director found that the proposal satisfies the parking requirements:

“The ordinance requires a minimum one parking stall per residential unit in the MRR zoning district. The proposal is for 40 residential units, making the minimum required parking 40 stalls. The site design indicates 42 parking stalls, slightly in excess of the minimum. This standard is met.” Planning Director Decision 43.

I agree with the Planning Director that the proposed number of parking spaces complies with the requirements of ZDO Table 1015-2.

ZDO 1015.02 is satisfied.

2. Other Issues

⁴ The Planning Director’s decision stated that the applicant had not submitted plans to screen the refuse and recycling enclosure. The applicant subsequently submitted plans complying with this requirement.

The Cedars raises a number of other issues that do not pertain to any ZDO provisions. The Cedars devote a significant amount of argument to what specific type of apartments the proposed use will be for. According to the Cedars, it is not clear whether the proposed apartments are needed housing, affordable housing, workforce housing, or something else. The proposed apartments, however, are a permitted use in the MRR zone regardless of what kind of apartments they would be. While the specific classification may have some impact on financing or landlord/tenant ramifications, I do not see that it makes any difference for design review under the ZDO. The Cedars' arguments do not provide a basis to deny the application.

The Cedars argue that the proposed use would result in a reduction in their property values. While I tend to agree with the Cedars, even if this is true, any effect on property values is not an applicable approval criterion. The Cedars' argument does not provide a basis to deny the application.

The Cedars cite an earlier Hearings Officer decision denying an application for a recreational vehicle campground a few miles away. According to the Cedars, the present application should be denied for the same reasons. The Dhadwal case (Z0509-15-C), however, involved an application for a conditional use permit. The approval criteria for conditional uses are more stringent than for design review for an outright permitted use. The Dhadwal case does not provide a basis to deny the application.

The Cedars argue that the proposed use would violate state and federal noise regulations. Even if that were true, and I do not see that it is, those are not applicable approval criteria for design review. The Cedars' arguments do not provide a basis to deny the application.

Finally, the Cedars argues that the application does not comply with some of the submittal requirements of ZDO 1102.02 for design review. Failure to comply with submittal requirements is not a basis to deny an application. If submittal requirements are necessary in order to satisfy approval criteria then such a failure may mean that the applicable approval criteria cannot be satisfied and an application cannot be approved. Absent any argument that the alleged failure to comply with the submittal requirements renders the application insufficient to satisfy the applicable approval criteria, the failure to comply with the submittal requirements is irrelevant. The Cedars have not demonstrated

that any applicable approval criteria are not satisfied. The Cedars' arguments do not provide a basis to deny the application.

All of the applicable approval criteria are satisfied.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** the application for design review in Z0323-18-D, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

1) General Conditions:

- 1) Recommendation for conditioned approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on June 29, 2018 and the revised plans submitted to County Staff on November 8, 2018, as well as submitted supplementary information submitted to County Staff on November 27, 2018. No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the recommendation described herein.
- 2) The applicant is advised that they may take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Deana Mulder, (503) 742-4710 or at deanam@co.clackamas.or.us.
- 3) Prior to the SUBMISSION of building permits, the applicant shall submit a statement of use form to Wendi Coryell. She can be contacted at 503-742-4657 or wendicor@clackamas.us. The statement of use is used to calculate the applicable System Development Charges. These SDC's are included in the final calculation of the building permit fees for new development projects.
- 4) The decision is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved design review project. A "major development permit" is:
 - a. A building permit for the structure or
 - b. A permit issued by the County Engineering Division for frontage improvements required by this approval.
- 5) This Design Review approval is granted subject to the above and below stated conditions. 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.

- 6) The approval of the application granted by this decision concerns only the applicable standards for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

2) Planning and Zoning Conditions:

- 1) Development of the subject property is subject to the provisions of ZDO Sections 1102, 317, 1002, 1005, 1006, 1007, 1008, 1009, 1010, 1012, 1015, and 1021 as adopted by the Board of County Commissioners. Pursuant to subsections. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.

Prior to submission for building permits, the applicant shall supply a lighting plan which includes a photometric survey of the proposed condition to demonstrate that the proposed site lighting is adequate for entryways, walkways, parking, recreation, and laundry areas, as per the requirements of 1005.04(G)(2).

- 2) Prior to submission for building permits, the applicant shall supply a signed Preliminary Statement of Feasibility from WES, indicating that suitable stormwater capacity for the proposed development exists, as required by ZDO 1008.
- 3) The applicant shall construct a buffer between the subject property and The Cedars development to the south in accordance with the submitted landscaping plan and shall also construct a six foot or higher sight-obscuring fence between the subject property and The Cedars.
- 4) Prior to issuance of a certificate of occupancy, all site details as illustrated on the submitted drawings and in narrative form shall be inspected by county staff for compliance with code criteria

3) Building Code Division Conditions:

- 1) All construction shall comply with current Oregon Structural Specialty Code and any other relevant codes. All required building permits shall be obtained and received before final occupancy approval.
- 2) All applicable development permits (grading and erosion control, etc.) shall be obtained prior to any construction.

4) Water Environment Services Conditions:

The following general conditions shall apply:

- 1) The proposed development is located within the service area of Water Environment Services and shall be subject to WES Rules and Regulations, and Standards (“RR&S/Rules”) for sanitary sewer services and surface water management, including natural resource protection and erosion control requirements. The applicant shall comply with the following requirements and shall procure the necessary plans approvals and/or permits in accordance with WES RR&S.
- 2) Sanitary and stormwater management plans and calculations shall be stamped and signed by a civil engineer licensed by the State of Oregon. The submittals shall be reviewed and approved by WES. The construction, specifications, and testing shall be completed under the direction of the engineer. (*Rules, Section 12.3*)
- 3) Upon the completion of construction and certification by the engineer, WES shall inspect and approve the construction of the sanitary and storm systems. (*Rules, Section 11 and 12*)
- 4) The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid before building permits will be approved, and are subject to change without notice to the applicant(s) of this planning application.
- 5) All costs associated with the design, construction and testing of the sanitary sewer or storm system, including onsite and offsite improvements and easements, shall be provided by and at the sole expense of the applicant/developer/property owner(s).

For sanitary sewer service, the following shall apply:

- 6) A point of connection to public sanitary sewer shall be made to the existing sewer line located on the southerly property line. The applicant will be required to notify the adjacent property owner at least 1 week in advance of any construction.
- 7) Public sewer mainlines shall be located either in the public right-of-way or within a sanitary sewer easement granted to WES. The existing clean out shall be replaced with a manhole, per WES standards. All service laterals shall terminate with a cleanout at the edge of the Public Sanitary Sewer Easement. (*Section 3.2*)
- 8) Any Public Sanitary Sewer Extension of the WES sanitary sewer system shall be designed, constructed and tested in accordance with WES RR&S. Any extension must be constructed under the continuous inspection of a registered professional Engineer. Building permits shall not be approved until the sanitary system improvements are complete in all respects and accepted by WES. (*Section 3.2*)
- 9) Any extension of the District’s sanitary sewer shall be conveyed to WES for ownership. All conditions of the Public Sanitary Sewer Extension Permit shall be met before final acceptance by WES, in accordance with *Sanitary Standards, Section 4*.
- 10) A 15-foot sanitary sewer easement on the southern edge of the property is permanent and not extinguishable. No development shall incumber use or access to this easement by WES. (*Section 5.3.2*)
- 11) All private sanitary sewer improvements shall be permitted in accordance with County building and plumbing codes.

- 12) Plan review fees for the sanitary sewer system shall apply (equal to 4% of the installed cost of public sewer extension). A \$400.00 minimum plan review fee shall be due with the first plan submittal.
- 13) Sanitary System Development Charges in the amount of \$243,680.00 shall be paid before issuing the building permit (40 units x 0.8 = 32 EDU's x \$7,615.00 = \$243,680.00). (*Rules, Section 4.1*)
- 14) A Collection Sewer Charge shall not apply.
- 15) The sanitary system shall be complete in all respects, in accordance with the approved plans, prior to Certificate of Occupancy approval by WES.

For surface water management, the following shall apply:

- 16) All development shall provide an acceptable point of discharge and adequate conveyance of stormwater runoff, as approved by WES. The applicant shall obtain ODOT approval for any point of discharge or emergency overflow into the Highway 26 right-of-way. (*Section 3*)
- 17) All development that creates or modifies 5,000 square feet or more of impervious surface area shall be subject to WES Stormwater Standards, including water quality, infiltration, and flow control. A Surface Water Management Plan and Storm Report (SWM Plan) shall be submitted for review and shall demonstrate how the development will conform to all WES Stormwater Standards. The plan shall provide an adequate drainage system for all onsite water, all water entering the property from off-site, and all public right-of-way and road frontage improvements. (*Stormwater Standards, Section 5*)
- 18) The storm system shall be complete in all respects, in accordance with the approved plans, prior to Certificate of Occupancy approval by WES.
- 19) WES Stormwater Standards include, but are not limited to, the following: (*Stormwater Standards, Section 5*)
 - 1) **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).
 - 2) **Infiltration Standard** - The first ½ inch of runoff in a 24-hour period must be captured and retained onsite through an approved infiltration system.
 - 3) **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.
 - 4) **Conveyance Standards** - The conveyance system shall be sized for a minimum 25-year design storm.
- 20) Water quality treatment shall be provided for all new impervious surface areas, including rooftops and pavement. As shown on the preliminary plans, the drainage V-ditch from the buildings to the pond does not meet WES water quality standards.
- 21) A geotechnical report shall be submitted by a qualified professional. The report shall address maximum seasonal groundwater levels and provide infiltration testing

results that correspond to the location and depth of all proposed stormwater facilities, in accordance with *Appendix E*.

- 22) Infiltration facilities shall provide a 3-foot minimum vertical separation from the maximum seasonal groundwater elevation. The applicant's engineer shall provide all necessary soils reports and well logs to verify WES standards can be met, as determined by WES. (*Appendix H*)
- 23) The final grading plan shall clearly identify an overflow pathway in the event of any stormwater facility failure or bypass. Any alternatives to an open channel pathway shall be approved at WES discretion.
- 24) The applicant shall submit a Downstream Conveyance Analysis to demonstrate adequate conveyance capacity to a minimum distance of 1500 feet downstream of the project. WES may modify this condition if requirements for 25-year onsite retention and emergency overflow can be met. (*Section 5.4.4*)
- 25) A 'Private Storm Drainage Facilities Maintenance Plan', which identifies the annual maintenance obligations and procedures of all stormwater facilities, shall be submitted to WES prior to final plan approval. (*SW Standards, Section 5.5.10*)
- 26) Plan review fees for the stormwater system shall apply (4% of the installed cost of any surface water management system). A minimum \$400.00 plan review fee shall be due with the first plan submittal.
- 27) Surface Water System Development Charges shall not apply.

For Water Quality Resource Areas and Vegetated Buffers, the following shall apply:

- 28) All new development shall meet WES Rules to preserve and protect all water quality sensitive areas. The applicant shall submit a 'Sensitive Area Certification' to certify the presence or absence of water quality sensitive areas on or within 200' of the property. The applicant shall coordinate with Clackamas County Planning Division for all WES vegetated buffer requirements. (*Section 4.2.2*)

For Erosion Control, the following shall apply:

- 29) All construction sites, regardless of size, shall implement proper erosion prevention and sediment control measures. For areas with 800 square feet or more of disturbance, no grading or construction activity shall commence without an approved erosion control plan and permit from WES. An Erosion Control permit fee shall apply in the amount of \$540.00. (*Section 6*)

Construction Plan Submittal:

- 30) The applicant's construction plan submittal shall include:
 - 1) Two (2) sets of full-size, complete civil construction plans for all sanitary and stormwater improvements, including erosion control plans
 - 2) Two (2) final storm reports, including a geotech report and downstream analysis.
 - 3) \$800 plan review fee
 - 4) \$460 erosion control fee

5) Salmon Valley Water District

The application included the required preliminary Statement of Feasibility from Salmon Valley Water.

No recommended conditions of approval were provided by Salmon Valley Water.

6) Clackamas County Engineering

- 1) The applicant proposes a 40 unit apartment complex for workforce housing. The parcel is located approximately a tenth of a mile west of Woodsey Way. Access to the new development will come from the easterly end of the property along highway 26 at milepost 40.94. Highway 26 is a state highway and access to the property will be governed by Oregon Department of Transportation.
- 2) Clackamas County requires that adequate transportation facilities be provided concurrent with development. A traffic study was completed for this project on January 31, 2018 by Lancaster Engineering. The study concludes that there are no adverse impacts to the state highway or surrounding street network. Clackamas County agrees with these findings and therefore, this proposal meets the County's concurrency requirements as they relate to the capacity of the transportation system.
- 3) Clackamas County has adopted *The Villages at Mt. Hood Pedestrian and Bikeway Implementation Plan*. The applicant's frontage is a part of the multi-use path extension (project W1S). The applicant shall design and construct a 10' wide shared use path 5' from the edge of pavement from highway 26. The path shall be coordinated with Clackamas County DTD and ODOT. The applicant shall design the path to have a minimum of 3" AC over a minimum of 5" of aggregate. Follow guidance in the Oregon Bicycle and Pedestrian Design Guide.
- 4) All site circulation, parking and maneuvering areas shall meet the following requirements.
 - a. After the ODOT paved approach, all onsite circulation areas shall meet county Roadway Standards drawing R100. Outside the urban area the county will accept screened gravel or better.
 - b. Provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the parking and maneuvering areas, including a minimum of 24 feet of back up maneuvering room for all 90-degree parking spaces. Those circulation areas not need for parking shall have a minimum width of 20'.
 - c. Parking spaces shall meet ZDO section 1015 dimensional requirements. The plans shall list the number of parking spaces required and the number of parking spaces provided. The applicant shall label all carpool/vanpool, disabled, and loading berth spaces on the plans. Parking layout geometry shall be in accordance with Zoning and Development Ordinance Table 1015-1 and Figure 1015-1.
 - d. Applicant shall provide and implement a signing and pavement-marking plan for onsite parking and circulation. This plan shall be reviewed and approved by the

Engineering section and the local Fire Marshal prior to the applicant being issued a Development Permit.

- 5) The applicant shall follow ZDO 1021 for all trash enclosure areas.
- 6) Per ZDO 1005.03, onsite walkways shall be a minimum of five feet in unobstructed width. Onsite walkways adjacent to the 90-degree parking spaces shall be a minimum of seven feet in width.
- 7) The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
- 8) Prior to the issuance of a building permit the applicant shall submit to Clackamas County Engineering Office:
 - a. Written approval from Hoodland Fire District for the planned access, circulation and water source supply.
 - b. Written approval from Salmon Valley Water District for adequate water supply to service the development.
 - a. Written approval from WES for surface water detention facilities and erosion control measures.
 - b. A copy of the WES approved Engineer's hydrology study, analyzing the difference between pre and post development discharge rates and mitigation of downstream impacts, along with the detention calculations.
 - c. Written approval from ODOT, in the form of a permit, for access to Highway 26 and for all work in Highway 26 right-of-way. Contact: Loretta Kieffer, Access Coordinator, ODOT District 2C, 503-667-7441 for information on the written permit application process.
- 9) Prior to final certificate of occupancy: all easements shall be established and shown to be adequate for the improvements above.

7) Oregon Department of Transportation: Comments, Conditions and Advisory Info

COMMENTS/FINDINGS

As previously conveyed and discussed, this segment of US Highway 26 is access controlled and ODOT has acquired and owns access rights to the subject property. ODOT previously commented, and it was generally agreed by the applicant, to restripe the highway for a two way center turn lane between the development's access and Woodsey Way.

As such, the applicant has indentured their access rights to the eastern limits of the property to take advantage of the existing left turn lane median at Woodsey Way and reduce, as much as possible, the need for highway widening. Further, as part of the approved indenture the applicant was conditioned to install the left turn median for safe ingress/egress into the site. To date, the applicant has not submitted plans to ODOT for

review so we cannot determine at this time if additional highway widening will be needed for the two-way center turn lane.

Therefore, ODOT recommends a Condition of Approval to require the developer to stripe a two-way left turn lane and provide any necessary widening and any additional highway restriping to meet applicable ODOT standards.

ODOT supports the County's requirement to construct a multi-use path, as identified in *The Village at Mt. Hood Pedestrian and Bikeway Implemental Plan*, Project ID# W1S. As noted below, all improvements, including the proposed multi-use path, shall meet ODOT standards and requirements.

General

- All alterations within the State highway right of way are subject to the ODOT Highway Design Manual (HDM) standards. Alterations along the State highway but outside of ODOT right-of-way may also be subject to ODOT review pending its potential impact to safe operation of the highway. If proposed alterations deviate from ODOT standards a Design Exception Request must be prepared by a licensed engineer for review by ODOT Technical Services. Preparation of a Design Exception request does not guarantee its ultimate approval. Until more detailed plans have been reviewed, ODOT cannot make a determination whether design elements will require a Design Exception. *Note: Design Exception Requests may take up to 3 months to process.*
- All ODOT permits and approvals must reach 100% plans before the District Contact will sign-off on a local jurisdiction building permit, or other necessary requirement prior to construction.

ODOT RECOMMENDED LOCAL CONDITIONS OF APPROVAL

Frontage Improvements and Right of Way

Curb, sidewalk/multi-use path, cross walk ramp(s), bikeways, and road widening/striping shall be constructed as necessary to be consistent with local, ODOT and ADA standards.

If needed for required improvements within the State right-of-way, right of way deeded to ODOT as necessary to accommodate the planned cross section shall be provided. The deed must be to the State of Oregon, Oregon Department of Transportation. The ODOT District contact will assist in coordinating the transfer. ODOT should provide verification to the local jurisdiction that this requirement has been fulfilled. The property owner must be the signatory for the deed and will be responsible for a certified environmental assessment of the site prior to transfer of property to the Department. *Note: It may take up to 3 months to transfer ownership of property to ODOT.*

Access to the State Highway

A State Highway Approach Road Permit from ODOT for access to the state highway or written determination (e-mail, fax or mail acceptable) from ODOT that the existing approach(es) is/are legal for the proposed use is required. Truck turning templates shall be provided as needed to ensure vehicles can enter and exit the approach safely. Site access to the state highway is regulated by OAR 734.51.

For application information go to
<http://www.oregon.gov/ODOT/HWY/ACCESSMGT/Pages/Application-Forms.aspx>.

Note: It may take 2 to 3 months to process a State Highway Approach Road Permit.

Access Control

The applicant is advised that the subject property's highway frontage is access controlled. ODOT has acquired and owns access rights to the subject property. The subject property was granted a Reservation of Access, as recorded in the property deed. Based on the reviewed material, the proposal is relocating the access and an Indenture of Access is required and must be obtained. If ODOT approves an Indenture of Access, it changes the terms for using the access right and any modification must be recorded in a property deed. The owner is responsible for recording the deed and for any associated costs. *Note: It may take 1 to 2 months to process an Indenture of Access. The applicant has applied for an Indenture of Access, which was approved with conditions for a two-way left turn lane at the access location. The applicant needs to submit permits to restripe for a two-way left turn lane, and any necessary widening.*

Permits and Agreements to Work in State Right of Way

An ODOT Miscellaneous Permit must be obtained for all work in the highway right of way. When the total value of improvements within the ODOT right of way is estimated to be \$100,000 or more, an agreement with ODOT is required to address the transfer of ownership of the improvement to ODOT. An Intergovernmental Agreement (IGA) is required for agreements involving local governments and a Cooperative Improvement Agreement (CIA) is required for private sector agreements. The agreement shall address the work standards that must be followed, maintenance responsibilities, and compliance with ORS 276.071, which includes State of Oregon prevailing wage requirements. *Note: If a CIA is required, it may take up to 6 months to process.*

An ODOT Miscellaneous Permit is required for connection to state highway drainage facilities. Connection will only be considered if the site's drainage naturally enters ODOT right of way. The applicant must provide ODOT District with a preliminary drainage plan showing impacts to the highway right of way.

A drainage study prepared by an Oregon Registered Professional Engineer is usually required by ODOT if:

1. Total peak runoff entering the highway right of way is greater than 1.77 cubic feet per second; or
2. The improvements create an increase of the impervious surface area greater than 10,758 square feet.

ADVISORY INFORMATION

Access Control

The applicant is advised that the subject property's highway frontage is access controlled.

Signs:

Private signs are not permitted in the state highway right of way (ORS 377.700-377.840).

Noise

The applicant is advised that a residential development on the proposed site adjacent to the highway may be exposed to traffic noise levels that exceed federal noise guidelines. Builders should take appropriate measures to mitigate this impact. It is generally not the State's responsibility to provide mitigation for receptors that are built after the noise source is in place.

DATED this 21st day of February, 2019.


Fred Wilson
Clackamas County Hearings Officer

ENDANGERED SPECIES ACT NOTICE

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).