

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 4/2/19

Approx. Start Time: 10:30AM

Approx. Length: 30 min

Presentation Title: Class Special Procurement Exemption for Landowner Development Partnerships

Department: Finance - Procurement

Presenters: George Marlton, Procurement & Contract Services Division Director; Amanda Keller, County Counsel; Ron Wierenga, WES Tech Division Manager; Rick Nys, Civil Engineering Supervisor

Other Invitees: Andrew Naylor, Nate Boderman, Mike Bezner, Greg Geist

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD? Staff is seeking direction on whether to pursue a new class special procurement exemption for landowner development partnership projects.

EXECUTIVE SUMMARY: ORS 279C.335 and Clackamas County Local Contract Review Board rule C-049-0620 allow the County to declare a class special procurement exemption so that it may conduct an alternative procurement process for entering into a series of contracts over time or for multiple projects. A class special procurement exemption may be authorized for construction projects if: 1) it is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and 2) is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with standard procurement requirements.

When a landowner (or their developer) is engaged in a development or construction project, they typically need to make specific improvements to satisfy land use requirements. While those specific improvements are being completed, the County could benefit by having the landowner construct additional infrastructure enhancements on or near the property that are not otherwise required. In those instances where the landowner agrees to make the enhancements, the County needs to be able to contract with the landowner and its contractor to complete the enhancement.

Example situations:

1. Water Environment Services ("WES") has required a developer to construct off-site public sanitary sewer or storm systems, and WES requests the installation of the service connection laterals to each of the adjacent properties for future connections.
2. A landowner is required to install a sanitary sewer to the edge of the property, but WES requests the line be extended beyond the property line for future service needs.
3. The Department of Transportation and Development ("DTD") has required a developer to install sidewalks and curbing along with paving for half of the road, and DTD would like to have the other side of the street upgraded with sidewalks, curbing and new paving at the same time.
4. A developer is constructing a new development and is required to create dedicated green space, and Parks would like plumbing and electrical run to the property at that time for development of future facilities.

Approval of a class special procurement exemption will result in significant savings for the County because it can avoid having to design and construct infrastructure improvements completely separately, taking advantage of the efficiencies from landowner's construction team and equipment that will be already mobilized on site. The exemption will not encourage favoritism as it would only be used for construction needs that arise in limited circumstances when projects are already initiated by a landowner and it will be the landowner, not the County, who selects the contractor to perform the work. A majority of all County construction projects will still remain competitively bid. In addition, approval of a class special procurement exemption substantially promotes the public interest by allowing the County to make long-term system upgrades that might otherwise not have been prioritized or completed and/or allow the completion of infrastructure improvements near new development that will enhance the overall public benefit.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? \$N/A

What is the funding source? N/A

STRATEGIC PLAN ALIGNMENT:

Aligns with the Department and County goal of building public trust through good government.

LEGAL/POLICY REQUIREMENTS: Under ORS 279C.335, a class special procurement exemption may be authorized if: 1) it is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and 2) is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with standard procurement requirements. The Board will be required to hold a hearing and adopt findings that show the requirements above are satisfied.

PUBLIC/GOVERNMENTAL PARTICIPATION: A public hearing will be held at a future date to provide the public an opportunity to be heard on this issue.

OPTIONS:

1. Move forward with the class special procurement exemption process, including scheduling a hearing and presenting a class definition and findings to the Board for adoption at a future business meeting.
2. Move forward with the class special procurement exemption process as laid out in Option 1, with any modifications or additional considerations required by the Board.
3. Do not move forward with the exemption process.

RECOMMENDATION: Staff respectfully requests the Board move forward with Option 1 above and allow the class exemption process to move forward, including scheduling a hearing and presenting findings to the Board for adoption at a future business meeting.

ATTACHMENTS:

Draft Class Definition

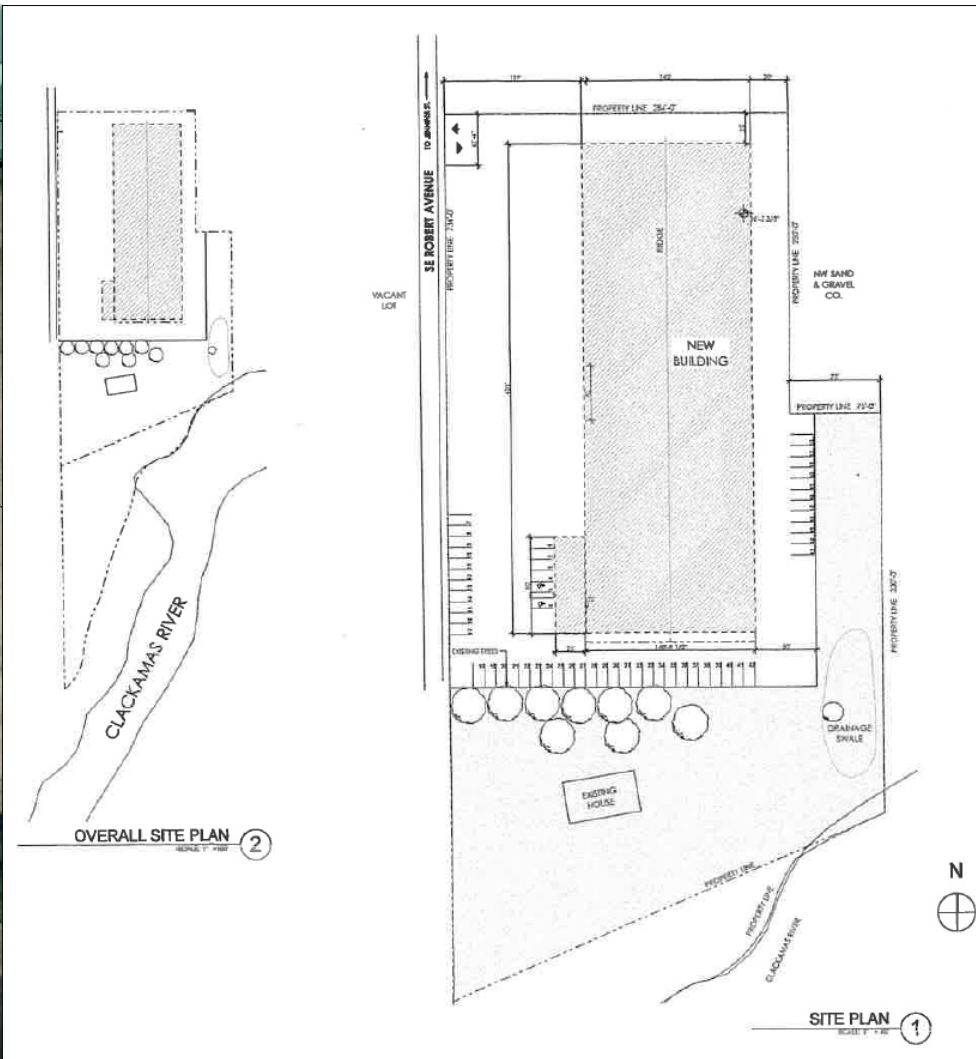
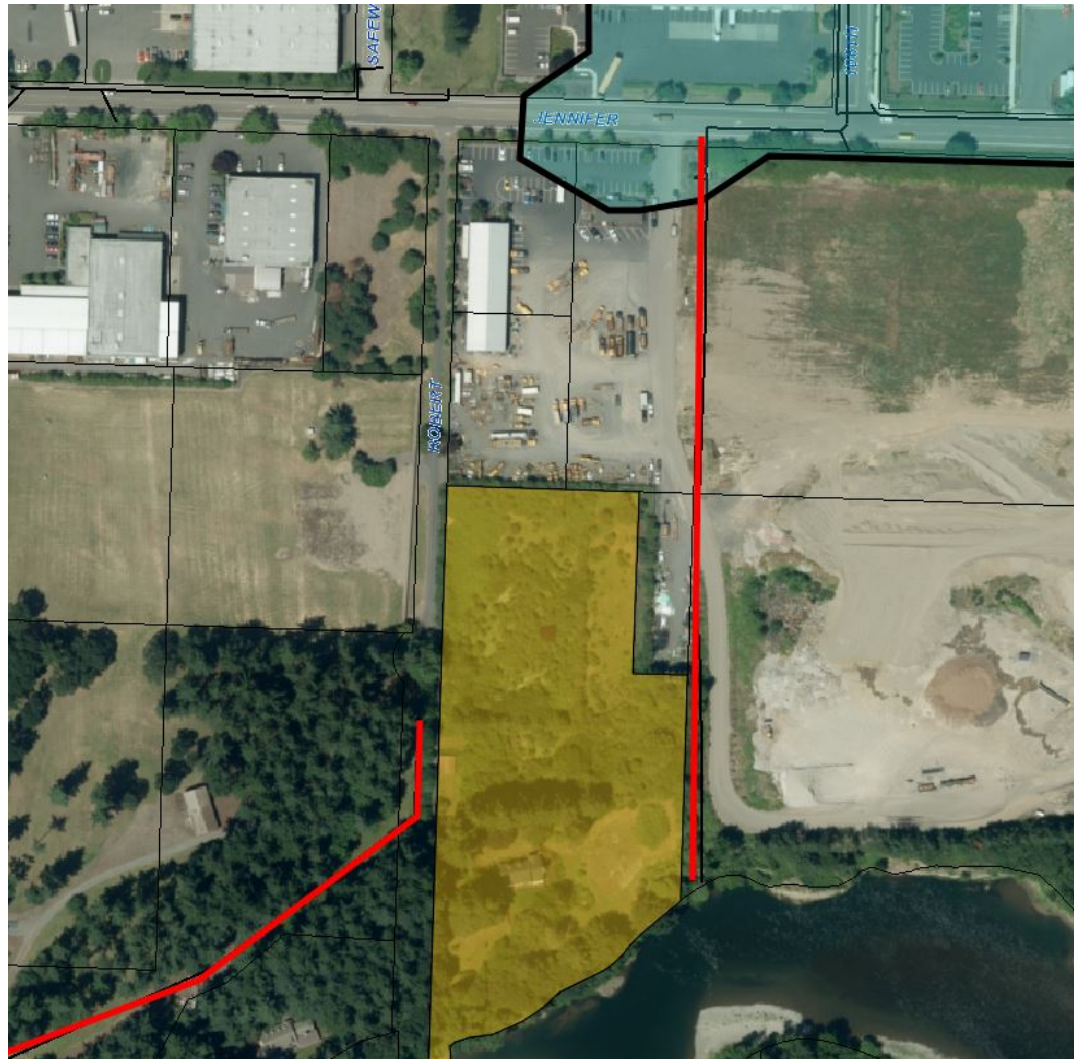
SUBMITTED BY:

Division Director/Head Approval 

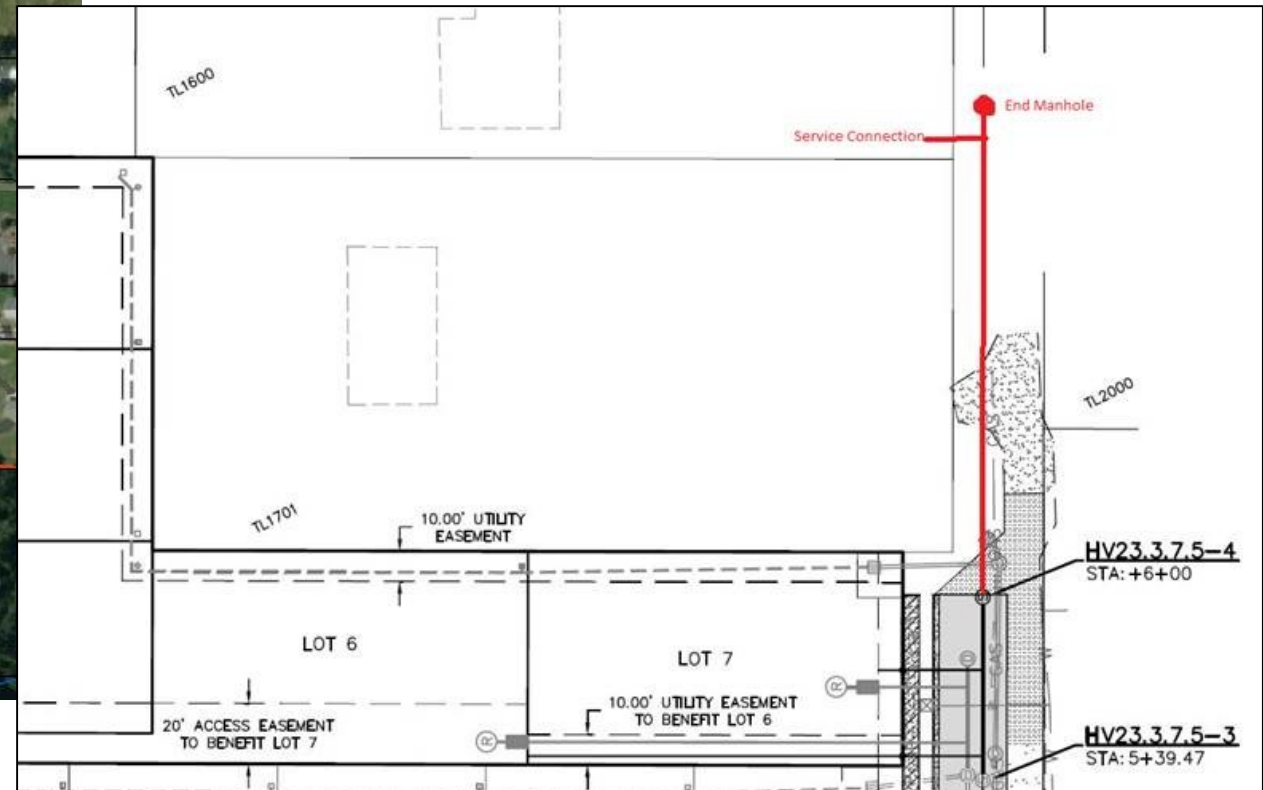
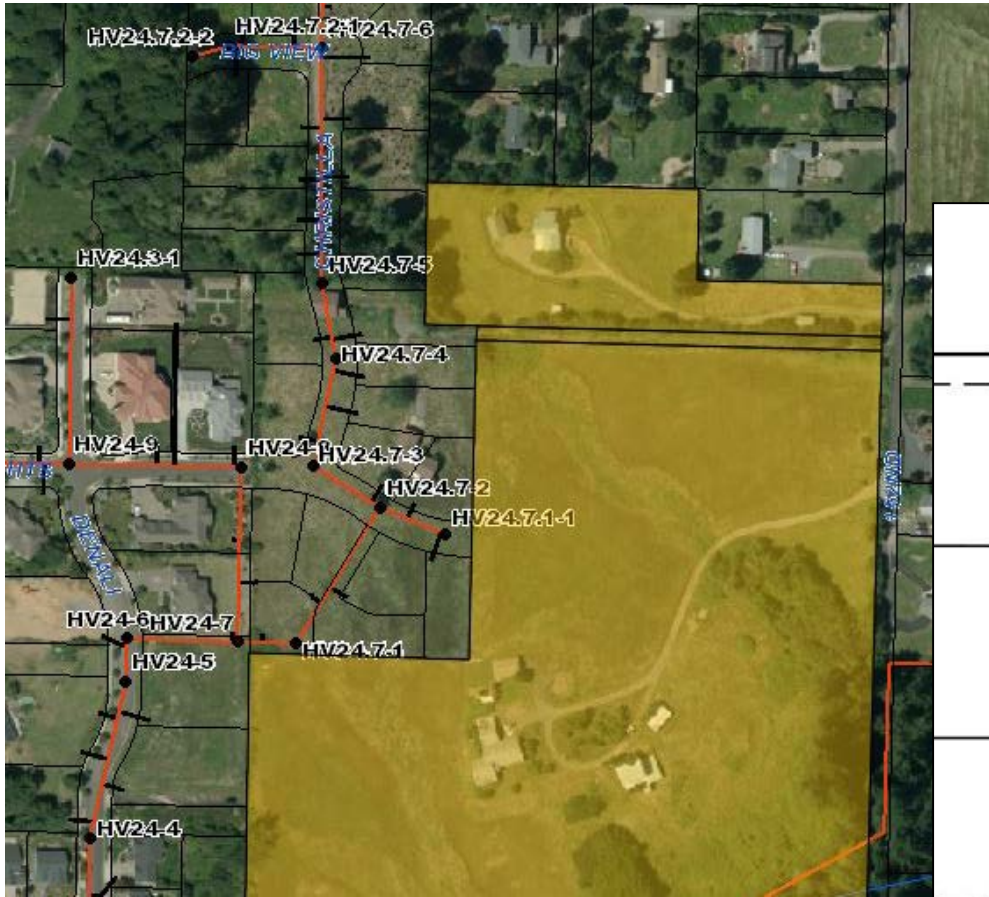
Department Director/Head Approval _____

County Administrator Approval _____

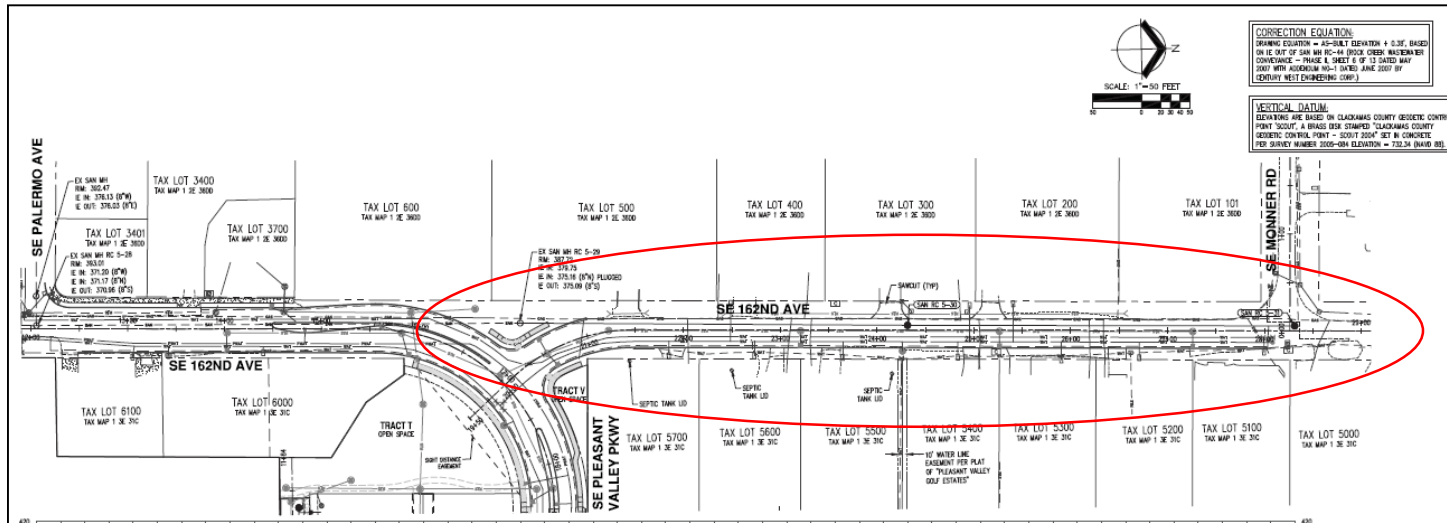
WES Example – On-site sewer construction



WES Example – Off-site sewer extension



WES Example – Off-site sewer lateral construction



Landowner Development Partnership Exemption

Identification of Class and Requirements:

The Landowner Development Partnership exemption shall apply when a Person* is engaged, or is planning to engage, in a development or construction project within Clackamas County and adjacent to an area where a Contracting Agency* desires to perform certain construction work, including Public Improvement*, minor alterations or repairs ("Construction"). In order for a Construction project to qualify for this exemption, the Contracting Agency Department Director must show, in writing, that the following requirements are met:

1. The Construction work would occur adjacent to, or within close proximity of, the Person's existing or planned project;
2. Contracting Agency has identified the Construction work through one of the following methods:
 - a. Indicated in an adopted capital improvement plan or other inventory list of infrastructure needs; or
 - b. Upon a recommendation by the Director of the Department;
3. The Person engaged, or planning to engage, in the development project is willing and able to perform the Construction work;
4. Contracting Agency has sufficient funds to complete the Construction work;
5. The use of this class exemption will result in cost savings and efficiencies as a result of the Person's equipment or other resources, including engineering or other personal services, being present or utilized for project work adjacent to, or within close proximity of, where Contracting Agency desires the Construction work to take place; and
6. The use of this exemption is in the public's best interest.

The Department Director will provide a written memorandum summarizing the above information to County Procurement, who will review for consistency with applicable requirements and obtain any other necessary approvals. For Construction projects over \$100,000, the Department Director or County Procurement must obtain the prior written approval of the County Administrator. Notwithstanding any other LCRB Rule*, County Counsel must approve any agreement entered into pursuant to this exemption regardless of dollar value.

Upon completion of Construction projects over \$100,000 utilizing this class exemption, the Department Director will submit to the Board an evaluation in compliance with ORS 279C.355 detailing the following:

- (a) The actual project cost as compared with original project estimates;
- (b) The amount of any guaranteed maximum price;
- (c) The number of project change orders issued by the contracting agency;
- (d) A narrative description of successes and failures during the design, engineering and construction of the project; and
- (e) An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.

* As defined in the Clackamas County Local Contract Review Board Rules.