

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

Regarding appeals by Mark Siegel and the Collins Lake ) **FINAL ORDER**  
Condo Association of a planning director decision )  
approving Stream Conservation Area and Open Space )  
reviews related to a proposed hotel south of E. Government ) **Z0033-23-RSCA**  
Camp Loop in unincorporated Clackamas County, Oregon ) **(Mt. Hood Lodges RSCA)**

**A. SUMMARY**

1. On January 19, 2023, Mt. Hood LLC II (the “applicant”), filed an application for approval of Stream Conservation Area and Open Space Reviews related to a proposed 47-room hotel on a 1.38-acre parcel known as tax assessor account 38E24A 00408 (the “site”). The site is located south of the western end of E. Government Camp Loop, adjacent to the Collins Lake Resort condominium development. The site and all abutting properties are zoned MRR (Mountain Recreational Resort). Properties to the north of E. Government Camp Loop are zoned HR (Hoodland Residential). The site is currently vacant.

a. Camp Creek, a small Type F stream, runs roughly adjacent to the east and south boundaries of the site, flowing southwesterly. The creek itself is protected by a 50-foot Stream Conservation Area (“SCA”) (aka stream buffer). The site also contains wetlands and wetland recharge areas that are designated high priority open space, and steep slopes between 20 and 35-percent that are designated 2<sup>nd</sup> priority open space. The applicant has proposed the development to avoid the stream buffer and open space as much as possible, but some impacts are still proposed. The site contains 0.64 acres of SCA and 0.16 acres of wetland. The applicant is proposing to disturb 16 percent (0.10 acres) of the outer areas of the SCA and 11 percent (0.02 acres) of the outer areas of the wetlands. As mitigation for disturbance to the SCA and wetlands, the applicant is proposing to restore the SCA through the planting of approximately 500 plants, consisting of 64 native trees and 436 native shrubs, along with the planting of a native grass seed mix. In the end, 0.69 acres of SCA and wetland will be protected and enhanced.

2. This application is limited to review of impacts to the SCA and Open Space on the site. The hotel development is subject to separate review under planning permit Z0032-23-D and development on the steep slopes were reviewed under planning permit Z0034-23-SSR.

3. On April 18, 2023, the planning director (the “director”) issued a written decision approving the RSCA application subject to conditions. (Exhibit 1). On April 27, 2023, Mark Siegel filed a written appeal of the director’s decision. On May 1, 2023, the “Association of Unit Owners of Lodges at Collins Lake Resort, A Condominium” (the “Collins Lake Condo Association”) filed a separate written appeals of the director’s

decision. For purposes of this Final Order Mark Siegel and the Collins Lake Condo Association are referred to collectively as “the appellants.”

a. The Collins Lake Resort HOA also filed an appeal of the RSCA on May 1, 2023. However, the HOA failed to submit the required appeal fee prior to the filing deadline. Therefore, the planning director refused to accept the appeal as it was not filed within the deadline. (Exhibit 31).

3. County Hearings Officer Joe Turner (the “hearings officer”) held a public hearing to receive testimony and evidence regarding the appeals. County staff recommended that the hearings officer deny the appeals and approve the application subject to conditions of approval in the director’s decision. Representatives of the applicant testified orally in support of the project. Representatives of the appellants testified in support of the appeals. Principal contested issues in the case include the following:

a. Whether the County provided adequate notice of the application and appeal;

b. Whether impacts to the SCA are consistent with the adopted Economic, Social, Environmental, and Energy [ESEE] analyses for the Sandy River watershed and whether the ESEE for the wetlands addressed and satisfied the “[s]ocial, economic, energy, and appropriate environmental considerations...” listed in ZDO 1011.03(A)-(D);

c. Whether it is feasible to demarcate the limits of disturbance on the site consistent with the applicant’s plans to prevent intrusion into the SCA and wetlands beyond what is proposed and approved;

d. Whether snow shed from the roof of the proposed structure will impact the SCA, wetlands, or Camp Creek; and

j. Whether snow may be stockpiled in the SCA or wetlands on the site.

4. The hearings officer concludes the applicant sustained the burden of proof that the proposed use does or can comply with the applicable approval criteria of the ZDO subject to conditions of approval needed to ensure such compliance occurs in fact. The appellants did not rebut the substantial evidence in the record in support of the application. Therefore the hearings officer denies the appeals and upholds the planning director’s decision, based on the findings and conclusions adopted or incorporated herein and subject to the conditions of approval at the end of this final order.

## **B. HEARING AND RECORD**

1. The hearings officer received testimony at the public hearing about the appeals on June 8, 2023. All exhibits and records of testimony have been filed with the Planning

Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the statement required by ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected testimony offered at the public hearing.

2. County planner Steve Hanschka summarized the director's decision and his PowerPoint presentation, Exhibit 20.

a. He noted that Camp Creek flows near the east and south boundaries of the site. The County's Water Protection Rule Classification ("WPRC") maps designate Camp Creek as a small Type F stream, subject to a 50-foot SCA buffer. ZDO 704.05.B allows for modification of the SCA buffer "for purposes consistent with the adopted Economic, Social, Environmental, and Energy analyses for the applicable watershed." The site and Camp Creek are part of the Sandy River watershed.

b. The applicant proposed to disturb the outer edge of the 50-foot SCA buffer to accommodate the proposed hotel development. The applicant proposed a total of 4,470 square feet of temporary and permanent disturbance within the SCA. The applicant proposed to mitigate those impacts by planting 64 trees, 436 shrubs, and native grasses within the remaining buffer.

c. The site contains wetlands and wetland recharge areas that are designated high priority open space. The Oregon Division of State Lands ("ODSL") concurs with the applicant's delineation of these areas. The proposed development will impact 11-percent (0.02-acres) of one on-site wetland. Development impacts are limited to the outer portion of the wetland.

d. The site also contains areas of steep slopes, between 20 and 35-percent, which are designated 2<sup>nd</sup> priority open space. The County reviewed and approved impacts to the slopes through a separate application, Z0034-23-SSR.

3. Attorney Ed Trompke, natural resource scientist Ivy Watson, and general contractor Brian Lessler appeared on behalf of the applicant, Mt. Hood LLC II.

a. Mr. Trompke agreed with the director's decision. The applicant will comply with the conditions of approval imposed by the County and ODSL as well as the requirements of the U.S. Army Corps of Engineers (the "Corps").

i. He argued that stormwater flowing across the site carries silt, sand, and pollutants into the stream under existing conditions. The applicant will mitigate this existing condition to some extent by collecting, treating, and detaining runoff from the roadway and discharging it to the creek via an engineered outfall that will reduce potential erosion and improve water quality in the creek.

ii. The applicant is proposing a five-story building in order to minimize impacts to the stream buffer and wetlands, concentrating the development vertically in order to minimize the building footprint. Reducing the number of units would only reduce the height of the building. It would not reduce the footprint and impacts to the stream buffer and wetlands.

iii. The applicant's ESEE is a response to the County's prior ESEE for the Sandy River watershed. The appellants failed to provide any expert evidence to support their assertions of adverse impacts to the wetland and SCA. The only expert testimony in the record demonstrates that the application has addressed all such impacts. The proposed development may improve water quality by collecting and treating stormwater runoff from E. Government Camp Loop that currently flows directly into the creek.

iv. The "dead zones" near existing buildings shown in Mr. Siegel's presentation may be due to weed control or fire breaks rather than snow sloughing off of roofs.

b. Ms. Watson summarized her written testimony, exhibit 22.

i. She testified that she visited the site several times to delineate the wetlands and evaluate the habitat on the site. Camp Creek is located near the east and south boundaries of the site. The majority of the wetlands are located within the 50-foot stream buffer. The applicant located the proposed development as far north on the site as possible in order to minimize impacts to the wetlands, creek, and buffer and preserve the "core area" of the stream corridor. Portions of the building are cantilevered and retaining walls are proposed on the south edge of the development in order to limit intrusions into the stream corridor. The development will have no direct impacts to the stream and only impacts a small area of wetland and stream buffer.

ii. The applicant will mitigate for these impacts by removing and replanting existing unpermitted trails and planting native trees, shrubs, and grasses throughout the stream buffer to enhance the habitat value of the buffer. The applicant will mitigate impacts to the wetlands consistent with ODSL requirements.

ii. There are no threatened or endangered species or habitat for such species on the site. Resident fish, including trout, are present in Camp Creek and Endangered salmonids are present downstream.

iv. The applicant will collect and treat stormwater discharged from the site to the standards set by NOAA Fisheries to protect endangered salmonids, so that only clean water reaches the wetland and stream areas. The applicant will detain treated stormwater in pipes or vaults beneath the surface parking lot of the hotel and release it at controlled rates to maintain the hydrology of the on and off-site stream and wetlands,

including Collins Lake. The applicant will discharge stormwater to engineered outfalls to disperse runoff and minimize the potential for erosion.

v. The applicant's analysis considered the Sandy River watershed, including the presence of ESA listed fish species. Treatment of stormwater runoff from the site will maintain or improve existing water quality.

vi. The applicant will clearly demarcate the limits of construction on the site, installing fencing and other barriers to prevent construction equipment and personnel from entering the protected portions of the stream buffer and wetlands. Staff from ODSL, the Corps, and the County will inspect and monitor the protection measures and construction activity to ensure compliance. The applicant will stage construction activities, building a wall at the south edge of the development and working backwards to construct the remainder of the development, in order to minimize potential impacts.

vii. The site is surrounded by existing development. E. Government Camp Loop abuts the north boundary of the site, cutting it off from habitat areas to the north. Much of the site was disturbed when E. Government Camp Loop was constructed, with fill, trees, and other materials pushed onto the site. Except near the creek, the majority of the trees on the site are young, having grown up after E. Government Camp Loop was constructed.

ix. Unlike the developments shown in Mr. Siegel's photos, there are existing mature conifers within the snow slough zone on the site. The proposed mitigation plantings will be located in the understory beneath these trees, which will protect the new plantings from snow falling from the roof of the building. The trees will also prevent snow falling from the roof from impacting the creek and limit impacts to soils. The existing and proposed vegetation will slow and filter snowmelt and surface runoff, removing sand and sediment before the water reaches the stream.

c. Mr. Lessler testified that the applicant could install a roof heating system to minimize snow sloughing from the roof of the building.

4. Appellant Mark Siegel summarized his PowerPoint presentation (Exhibit 23).

a. He noted that page 15 of Mr. Hanschka's PowerPoint presentation misquotes the Code. ZDO 1011.02(B)(2) provides "Commercial or industrial developments affecting wetlands or significant natural areas may be allowed..." Not "shall be allowed" as stated in Mr. Hanschka's presentation.

b. The ZDO, Oregon Administrative Rules ("OAR"), Mt. Hood Community Plan, and Government Camp Open Space Management District all emphasizes the importance of maintaining the integrity of natural resources and the interconnectedness of wetlands, streams, and the natural habitat. The site contains

“important habitat.” There is an existing trail around Collins Lake, extending through the site. There are historic signs, benches, and other improvements along the trails.

c. The design of the development does not account for snow removal and stockpiling.

d. The ESEE analysis is inadequate.

i. OAR 660-023-040 sets out the ESEE decision process and requires consideration of impacts “that could result.” The analysis must contain enough information about resource impacts and conflicting uses to allow the County to have “[r]easons to explain why decisions were made for specific resource sites.” *Columbia Steel v. City of Portland* 314 OR 424 (1992). The County must balance the impacts that the resources and the conflicting use have on each other.

ii. Wetlands are interconnected. Damage to one wetland can lead to damage to surrounding wetlands. The “impact zone” for this project should include all surrounding wetlands, streams, and Collins Lake. The ESEE analysis in this case only considered impacts to the on-site wetlands and stream. It does not include sufficient detail to support approval. It mentions amphibians, but provides not any detail about where which amphibians, where they are, and how they may be impacted.

iv. Approval of this hotel could have adverse economic consequences by reducing bookings at other existing hotels, lodges, and private rentals (Air BnBs) and those impacts were not considered in the analysis. There is a conclusion that a hotel is needed in the area, but there is no evidence regarding vacancy rates or other support for that conclusion.

v. Environmentally the balance is in favor of not allowing intrusion into the buffer. Economically “it’s a wash.” There is no support for the assertion that the hotel is a “public good.” The analysis is balancing the hotel versus the intrusion into the stream buffer and wetland, which is not the proper balancing. The proper balance is the proposed hotel with intrusion into the buffer versus a smaller hotel with no intrusion.

vi. He disputed the applicant’s conclusion that the development will result in temporary or permanent impacts to only 16-percent of the stream buffer. The applicant will be placing pilings and constructing retaining walls on this sloped site construction activities and equipment are likely to intrude into the stream buffer and wetlands beyond what is shown in the applicant’s plans.

e. Snow slides off of the roof of the five story structure will damage vegetation within the stream setback, including vegetation proposed as mitigation for impacts to the stream buffer and wetland. He submitted photos of existing buildings in Government Camp with no vegetation within 20-30 of the buildings, which he argued was due to snow sliding off of the roof of the buildings. Therefore, the development

cannot comply with ZDO 704.07.A, which requires preservation of a minimum 75-percent of the vegetation within the stream setback, citing *Wilhite v. Clackamas County*, LUBA No. 2003-155. The proposed development, combined with snowfall from the roof, will impact roughly 35-percent of the vegetation within the stream setback.

5. Jeff Kaufenberg appeared on behalf of appellant Collins Lake Condo Association. He argued that snow sloughing off the roof of the buildings at the existing Grand Lodge development impacts vegetation within 35 to 50 feet of the buildings. The five story building proposed in this case will have a greater impact area, which will directly impact vegetation within the stream setback and the wetlands. Snow falling from the roof and hitting the ground will loosen the soil, allowing runoff to carry additional silt and sand into the creek, which discharges to Collins Lake, which will reduce the capacity of the lake. This runoff will also impact downstream portions of the Sandy River watershed. He questioned how the County will assess the effectiveness of the stream buffer and wetland restoration process.

7. Pamela Pliska agreed with Mr. Siegel's testimony regarding the impact of snow sloughing off the roof of the building. Given the height of the proposed building, snow falling from the roof could slough directly into the stream.

8. At the conclusion of the hearing the hearings officer held the record open for a total of three weeks: for one week, until June 15, 2023, to allow all parties the opportunity to submit additional testimony and evidence, a second week, until June 22, 2023, to allow all parties the opportunity to respond to the new evidence, and a third week, until June 29, 2023, to allow the applicant to submit a final argument. The record in this case on June 29, 2023. The following exhibits were submitted during the open record period:

a. A copy of the Government Camp Village Revitalization Plan (Exhibit 24);

b. A June 13, 2203 letter from Ms. Watson address the impact of snow sliding from roofs (Exhibit 25);

c. A June 13, 2203 letter from Mr. Toporek addressing the building occupancy classification (Exhibit 26);

d. . A June 13, 2203 letter from Mr. Toporek addressing measures to limit snow shed from roofs (Exhibit 27);

e. A June 21, 2203 letter from the applicant's representative addressing use of the office in the proposed hotel (Exhibit 28; and

l. The applicant's final argument dated June 28, 2023 (Exhibit 33).

## **C. DISCUSSION**

1. ZDO 1305.02.D.2 authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), appeals of administrative decisions must be reviewed as a *de novo* matter. The hearings officer is required to conduct an independent review of the record. He is not bound by the prior decision of the planning director and does not defer to that decision in any way. New evidence may be introduced in an appeal, and new issues may be raised. The applicant must carry the burden of proof that the application complies with all applicable approval criteria in light of all relevant substantial evidence in the whole record, including any new evidence.

2. Mr. Siegel's appeal (Exhibit 3) cites "insufficient notice" as one of the bases for appeal. However, Mr. Siegel failed to expand on that issue, to explain how the notice was "insufficient." There is no evidence that the County failed to comply with any notice requirements or that any procedural errors impacted any parties substantive rights to participate in the review of this application. This application was processed through the County's Type II review procedure. Therefore, the County mailed notice and a copy of the application to the owners of properties located within 300 feet of the site and other persons and agencies listed in ZDO 1307.09(A)(1) and (2). As required by ZDO 1307.09(B), the director considered the application and public comments received in response to the notice and issued a decision approving the application. County mailed notice of the decision and appeal rights to relevant parties as required by ZDO 1307.09(C). Mr. Siegel and the Collins Lake Condo Association filed timely appeals of the director's decision. The County mailed notice of the appeal hearing to those parties listed in ZDO 1307.14(D)(2). The appellants and other persons appeared and testified at the public hearing regarding the appeals.

3. Camp Creek, a small Type F stream, flows near the east and south boundaries of the site. ZDO 704.04(D) requires that structures on the site be setback a minimum 50 feet from the mean high water line of this stream, known as the SCA. The site also contains wetlands that ZDO 1011.01(C)(1) defines as "High Priority Open Space." All told, the parcel contains 0.64 acres of SCA and 0.16 acres of wetland. Camp Creek and the on-site wetlands are part of the Sandy River Watershed. The applicant proposed to construct a hotel on the northern portion of the site. The southern portion of the structure will impact the outer portions of the SCA and one wetland, disturbing 16 percent (0.10 acres) of the outer areas of the SCA and 11 percent (0.02 acres) of the outer area of the wetland. (See Attachment D of Exhibit 2). As mitigation for disturbance to the SCA and wetland, the applicant is proposing to restore the SCA through the planting of approximately 500 plants, consisting of 64 native trees and 436 native shrubs, along with the planting of a native grass seed mix, enhancing and preserving 0.69 acres of SCA and wetland on the site.

4. ZDO 704.05(B) allows for modifications to the 50-foot stream setback "[f]or purposes consistent with the adopted Economic, Social, Environmental, and Energy [ESEE] analyses for the applicable watershed." ZDO 1011.03 allows disturbance of high



priority open space wetlands for commercial development based on findings that the “[s]ocial, economic, energy, and appropriate environmental considerations...” listed in ZDO 1011.03(A)-(D) “[a]re addressed and satisfied.”<sup>1</sup> The hearings officer finds that the applicant’s ESEE analysis is sufficient to allow the proposed impacts based on the following findings:<sup>2</sup>

ZDO 1011.03(A) Social

a. There is no evidence of any rare, irretrievable, or irreplaceable natural features or scientific opportunities on the site. As discussed in the applicant’s analysis, the natural features on the site were substantially altered by construction of E. Government Camp Loop, with trees, fill, and construction debris pushed into the SCA on the site. Although vegetation on the site has regrown, the proposed development will not disturb “[a] substantially unaltered natural feature or area.” Therefore, the applicant is not required to demonstrate that “[t]he benefit to the public from the proposed use clearly outweighs the public good from retaining the feature or area” for purposes of this criterion. The hearings officer finds that the proposed development complies with ZDO 1011.03(A).

ZDO 1011.03(B) Economic:

b. The hearings officer finds that the proposed disturbances are necessary for reasonable use of the site and strict compliance with SCA and wetlands requirements would substantially damage the applicant. ZDO 1011.03(B)(1). The applicant proposed to develop a hotel on the site, which is an allowed “primary” use in the MRR zone. As noted in Exhibit 22, the proposed hotel will have less impact than less than other allowed uses. Development on the site is constrained by the size and shape of the site, the limited street frontage, and the existence and location of natural features including steep slopes, Camp Creek, and wetlands. The applicant designed the hotel to minimize impacts to the SCA and wetlands, proposing a five story structure to maximize the capacity while minimizing the footprint of the structure. Mr. Siegel argued that the applicant could reduce the building footprint and associated impact to the SCA and wetlands by reducing the number of rooms. However, he failed to provide any support for that assertion and his unsupported statements are not sufficient to overcome the expert testimony of the applicant’s design team in Attachment K of Exhibit 2. It appears that reducing the building footprint to avoid all impacts to these areas would require significant modifications to the development. Avoiding the wetlands at the southeast corner of the building would impact the proposed access drive and avoiding the SCA at the western

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<sup>1</sup> Although ZDO 1011.03 lists the criteria in a different order, the parties use the same acronym, ESEE, for the required analysis and the hearings officer continues to use the same term.

<sup>2</sup> The hearings officer acknowledges that, although both the SCA and wetland impacts require ESEE analysis, the SCA impacts are subject to ZDO 704 and the wetland impacts are subject to the ZDO 1011. The hearings officer relies on the numbering of ZDO 1011.03 to provide a framework for the ESEE findings.

end of the building would reduce the parking lot drive aisle, precluding access to the parking, loading, and maneuvering areas in the western parking lot.

c. The proposed hotel will be a benefit to the community. As noted in the applicant's analysis, Section 8.D.1 of the County's Comprehensive Plan encourages the development of hotels to fulfill the County's economic goals, fulfilling an identified substantial public need. The proposed hotel will create additional jobs in Government Camp and attract tourists that will utilize other existing amenities in the area such as restaurants, stores, and recreational activities (snow sports, biking, fishing, hiking, etc.). The proposed hotel will increase competition with existing hotels in the area. However, as the applicant notes in Exhibit 29, this increased competition may result in lower prices for lodging, increasing access to Mt. Hood recreation for persons who are currently unable to afford to stay overnight due to the limited supply and high cost of overnight accommodations. The hearings officer finds that the benefits of the proposed hotel clearly outweigh the minor impacts to the SCA and wetlands. The hotel will only impact the outer 16 percent (0.10 acres) of the SCA and the outer 11 percent (0.02 acres) of the wetlands. Whereas strict compliance with the stream buffer and wetland protection requirements would preclude construction of a hotel on this site.

ZDO 1011.03(B) Energy:

d. Disturbance of the wetlands and SCA will not impose additional costs on the public or exacerbate existing conditions. ZDO 1011.03(B)(1). To the contrary, the proposed development will remedy some existing conditions – treating and detaining runoff from E. Government Camp Loop that currently discharges directly into Camp Creek, improving water quality in the creek, and by planting additional native trees, shrubs, and grasses within the remaining buffer, restoring and enhancing the SCA and increasing the effectiveness and endurance of the buffer.

e. “The development, as proposed, supports the Comprehensive Plan policies for energy efficient land use considering such things as transportation costs, efficient utilization of urban services, area self-sufficiency, and retention of natural features which create microclimates conducive to energy efficiency.” ZDO 1011.03(B)(2). The development may reduce transportation costs by allowing guests to stay on the mountain, rather than traveling back to town for lodging. The development makes efficient use of urban services by locating in an existing developed area (Government Camp) where some level of urban services are currently available. As discussed above, the proposed mitigation plantings will enhance the remaining natural features (the SCA and wetland) on the site, enhancing the microclimate of the SCA.

ZDO 1011.03(D) Environmental

f. Disturbance of the wetlands and SCA are minimized, as provided under Subsection 1011.02(C). As discussed in the application materials, the applicant's design team considered a number of alternative designs to minimize the impact of the proposed

development on the SCA and wetlands. The proposed design utilizes several of the techniques listed in this section, including: multistory construction, ZDO 1011.02(C)(1); elevated pole structures (cantilevered upper stories) , ZDO 1011.02(C)(2); understructure parking, ZDO 1011.02(C)(3); and minimizing driveway areas; using a single driveway to access parking and driveways and loading areas, ZDO 1011.02(C)(7).

g. The project complies with the wetland criteria of ZDO 1011.03(D)(1)

i. “The wetland [and SCA] can be altered without substantial adverse impact upon the character of the area, and function of the wetland [and SCA].” ZDO 1011.03(D)(1)(a). As noted in the applicant’s analysis, the proposed development is consistent with the character of the area; the site is a small patch of forest within a developed area of Government Camp. Although the development will reduce the total area of wetland and SCA area on the site, impacts are limited to the outer portions of these areas. The remainder of the wetlands are located within the SCA where they will be protected. The proposed mitigation plantings will buffer and protect the wetlands and stream from surrounding development and enhance the habitat value and resilience of the SCA. The applicant will direct treated runoff to the wetlands to maintain the wetland hydrology and improve water quality by treating runoff from the existing roadway.

(A) There is no dispute that the wetlands on the site are connected to other offsite wetlands and waters, including Camp Creek, Collins Lake and downstream portions of the Sandy River Watershed. However, the minor intrusions into the outer portion of the on-site wetland will not impact these downstream waters, based on the expert testimony of the applicant’s biologist. There is no substantial evidence to the contrary.

(B) The hearings officer finds that the applicant’s analysis contains sufficient detail to address the applicable approval criteria given the relatively limited impact of the proposed development. The primary impact of the project is physical intrusion into the outer portion of the wetlands and SCA, not direct impacts to individual organisms. Nothing in the plain language of the Code requires the applicant to identify specific species of amphibians or fish that may utilize the wetlands. There are no ESA listed species on the site and the applicant’s biologists determined that the organisms that do occur on the site will not be significantly impacted. There is no substantial evidence to the contrary.

ii. “The wetland does not support rare or endangered species.” ZDO 1011.03(D)(1)(b). There is no evidence to the contrary.

iii. The proposed development will not “[s]ignificantly alter water movement, including normal levels or rates of runoff into and from wetlands [or the SCA].” ZDO 1011.03(D)(1)(c). As discussed in Attachment K of Exhibit 2, although the applicant will relocate an existing spring-fed ditch roughly 230 feet to the east, the new outfall is adjacent to the local complex of swales and wetlands within the parcel and

water from the ditch will maintain its hydrologic connection with the wetlands in this area. Runoff discharged from the relocated culvert will partially infiltrate and flow into the wetlands, groundwater or into Camp Creek, similar to its existing condition. Additionally, the stormwater collected from the building footprint will be collected, treated, and discharged to the wetlands and creek via dispersion mechanisms.

iv. The hearings officer finds that it is feasible to obtain ODSL and Corps approval of the proposed alteration of the wetland. ZDO 1011.03(D)(1)(d). ODSL is currently reviewing the applicant's wetland delineation and the applicant is preparing a Joint Permit Application (JPA) for submittal to the Corps and ODSL as well as other required permits and approvals from these agencies. The applicant is required to obtain these permits and prior to undertaking construction activities on the site. See Condition 5.

h. The site does not contain "Significant Natural Areas" as defined by ZDO 202.<sup>3</sup> Therefore, the criteria of ZDO 1011.03(D)(2) are inapplicable.

5. It is feasible to clearly demarcate the limits of disturbance on the site consistent with the applicant's plans to prevent intrusion into the SCA and wetlands beyond what is proposed and approved. The applicant can install fencing along the proposed disturbance area boundary to prevent construction equipment and personnel from intruding into the protected areas of the SCA and wetlands, except as needed to implement the proposed mitigation plantings and construct stormwater outfalls. A condition of approval is warranted to that effect.

6. Appellants argued that snow sloughing off of the roof of the proposed building will impact existing and proposed vegetation within the SCA and wetlands, and increase erosion due to falling snow disturbing soils on the site, and discharging snow into Camp Creek. However, as discussed in Exhibit 27, the applicant proposed to install a snow management system consisting of a heating systems on the roof, gutters and downspouts and snow guards on the roof of the building to reduce/eliminate snow shed from the roof. As proposed:

The snow guards will slow the migration of snow build-up on the metal roof and eliminate large areas of buildup from sliding off of the roofs. As the snow builds up or slides toward the roof eaves, it will be detained once again where it will be melted by an electric roof heating system. This system will minimize or eliminate the impact of fallen snow on the ground.

(Exhibit 27).

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<sup>3</sup> ZDO 202 defines as "Significant Natural Areas" as "Natural areas as defined in 'Oregon National Areas - Clackamas County Data Summary' published by The Nature Conservancy. This list of natural areas may be amended by the County as additional areas are identified."

The hearings officer finds that implementation of the proposed snow management system will prevent the cited impacts. A condition of approval is warranted requiring installation of the proposed snow management system.

7. Stormwater and snowmelt flowing over the surface of the site may pick up sand, gravel, and soil as well as pollution from E. Government Camp Loop, and transport it into Camp Creek. The proposed development will mitigate this existing condition to some extent by collecting, treating, and detaining runoff from the roadway and discharging it to the creek via an engineered outfalls that will reduce potential erosion and improve water quality in the creek. In addition, the proposed mitigation plantings will slow and filter surface runoff flowing through the SCA.

8. As discussed in the hotel decision, Final Order Z0032-23-D, the applicant is required to provide a plan for removal and stockpiling of snow on the site as required by Section 1.5 of the Mt. Hood Community Plan. The applicant should be prohibited from stockpiling snow removed from the site or area roads within the wetlands or SCA areas on the site, as the applicant's analysis did not consider the impacts of such storage. A condition of approval is warranted to that effect.

#### **D. CONCLUSION**

Based on the above findings and discussion, the hearings officer concludes that the proposed development does or can comply with the applicable approval criteria, provided the applicant complies with conditions of approval warranted to ensure that the proposed development in fact complies with those standards. The appellants failed to rebut that proof with at least equally probative substantial evidence. Therefore the application should be approved subject to the conditions of approval adopted by the director.

#### **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 Z0033-23-RSCA (Mt. Hood Lodges RSCA), subject to the following conditions:

#### **Conditions of Approval**

1. **General Conditions:**

- A. Approval of this land use permit is based on the submitted written narrative and plan(s) received January 19, 2023. 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 approval described herein.
- B. The proposed development is also subject to the Findings and Conditions of File Nos. Z0032-23-D and Z0366-07-M.

- C. The approval of this Stream Conservation Area (SCA) permit is valid for four (4) 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.
- i. “Implemented” means all major development permits shall be obtained and maintained, or if no major development permits are required to complete the development contemplated by the approved SCA permit, “implemented” means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained.
  - a. A “major development permit” is:
    - (1) A building or manufactured dwelling placement permit for a new primary structure that was part of the SCA permit approval; or
    - (2) A permit issued by the County Engineering Division for parking lot or road improvements that were part of the SCA permit approval.
  - ii. If the approval of this PRCA permit is not implemented within the initial approval period established by Subsection 704.09(C), a two- year time extension may be approved pursuant to Section 1310.

**2. Standards for Buffers/Setbacks from Rivers & Streams**

**A. Exceptions to Buffers/Setbacks:**

- i. The proposed hotel shall be located no closer to Camp Creek than is outlined on the submitted Mitigation & Restoration Plan, Sheet LA-1, dated November 2, 2022.
- ii. The applicant shall install fencing along the proposed disturbance area boundary to prevent construction equipment and personnel from intruding into the protected areas of the SCA and wetlands, except as needed to implement the proposed mitigation plantings and construct stormwater outfalls.

**3. General Development Standards:**

**A. Commercial or Industrial Facilities:** Pursuant to Subsection 704.06(B), the proposed hotel shall:

- i. Screen signs from view from Camp Creek by planting an opaque vegetation buffer, as outlined on the submitted Mitigation & Restoration Plan.
- ii. Be subject to Design Review, pursuant to Section 1102, as is being reviewed under File No. Z0032-23-D

**4. Vegetation Preservation & Restoration Standards for River & Stream Buffers/Setbacks:**

**A. Native Vegetation Preservation:** Pursuant to Subsection 704.07(A), a minimum of 75 percent of the buffer/setback area, which is 50 feet from the

mean high water line of Camp Creek, shall be preserved with native vegetation.

- B. Tree Cutting & Grading: Pursuant to Subsection 704.07(B), tree cutting and grading shall be prohibited within the buffer/setback, except as follows:
  - i. Trees that are endangering life or structures, if any, may be removed.
  - ii. Tree cutting and grading is permitted in conjunction with the development of the proposed hotel that is being permitted through Subsections 704.05(B), to the extent necessary to accommodate the proposed hotel.
  - iii. Disturbed areas that are outside the footprint of structures and other improvements shall be restored with native vegetation, as illustrated by the Mitigation & Restoration Plan.
  - iv. The required vegetation shall be planted prior to approval of final occupancy of the proposed hotel.
- C. The applicant shall implement a snow management system consistent with Exhibit 27 to prevent snow shed from the roof of the building from significantly impacting vegetation on and near the site.
- D. Stockpiling of snow removed from the site or area roads is prohibited within the wetlands or SCA areas on the site.

5. **Other Agency Standards:**

- A. The proposed development is also subject to the rules, regulations and permitting requirements of DSL and the US Army Corps of Engineers. As such, the applicant shall obtain all necessary permits from those agencies, and undertake the proposed development in a manner that is consistent with the approval guidelines of those permits.
6. The preserved open space in the southerly sector of the site shall be:
- A. Dedicated to the public;
  - B. Placed under a legally responsible group, such as a homeowner's association;
  - C. reserved through conservation easements but maintained by individual land owners; or
  - D. Preserved through some other suitable mechanism acceptable to the County.

DATED this 12<sup>th</sup> day of July 2023.



Joe Turner, Esq., AICP  
Clackamas County Land Use Hearings Officer

## **ENDANGERED SPECIES ACT NOTICE**

This decision addresses only the applicable criteria under the ZDO. It does not address whether the activities allowed by this decision will comply with the provisions of the federal Endangered Species Act (“ESA”). This decision should not be construed 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 responsible 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.

## **APPEAL RIGHTS**

ZDO 1307.14.D(6) provides that the Land Use Hearings Officer’s decision is the County’s final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when and how an appeal must be filed with LUBA. 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.” ZDO 1307.17.I(1) provides that this decision will be “final” for purposes of a LUBA appeal as of the date of mailing of this final order (which date appears on the last page herein).