To request translation or disability-related accommodations, please contact us at **DTDcompliance@clackamas.us** | **503-742-4400**.

Si quiere solicitar servicios de traducción o adaptaciones para la discapacidad, contáctenos en/al **DTDcompliance@clackamas.us** | **503-742-4400**.

Чтобы запросить перевод или приспособления, связанные с инвалидностью, пожалуйста, свяжитесь с нами по:
DTDcompliance@clackamas.us | **503-742-4400**.

Щоб попросити переклад або спеціальні послуги для осіб з особливими потребами, зверніться до нас, скориставшись такими контактними даними:
DTDcompliance@clackamas.us | **503-742-4400**.

如需翻译服务或残障相关的协助，请与我们联系：
DTDcompliance@clackamas.us | **503-742-4400**。

Để yêu cầu dịch vụ dịch thuật hoặc điều chỉnh liên quan đến tình trạng khuyết tật, vui lòng liên hệ với chúng tôi qua **DTDcompliance@clackamas.us** | **503-742-4400.**

Clackamas County
www.clackamas.us

CLACKAMAS COUNTY

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

NOTICE OF HEARING

October 27, 2026

Terry W Emmert
11811 SE Hwy 212
Clackamas, OR 97015

RE: County of Clackamas v. Terry W Emmert
File: V0048325

Hearing Date: November 17, 2026

Time: This item will not begin before 11:30 AM however it may begin later depending on the length of preceding items.

Location: Hearing will be held by virtual Zoom meeting. Please see attached information regarding the process for the Zoom meeting.

Enclosed you will find the following:

1. Notice of Rights
2. Copy of Complaint and Request for Hearing

You **must** appear at the time set forth in this Notice of Hearing or the relief requested in the **Complaint** may be **granted against you by default.**

You can access the complete hearing packet at https://www.clackamas.us/codeenforcement/hearings

You may contact Jennifer Kauppi, Code Compliance Specialist for Clackamas County at (503) 742-4759, should you have any questions about the violation(s) in the **Complaint.** Do not call the Compliance Hearings Officer.

Enclosures
CC: Carl Cox -Compliance Hearings Officer

STATEMENT OF RIGHTS

1. Prior to the Hearing. You have the right to make the following requests:

(A) You can request the opportunity to review public records and talk to County Staff about the violations or request a subpoena for that purpose if the County does not allow you to do so.

(B) You can request that the Hearings Officer postpone the hearing for good cause by writing the Hearings Officer at least 7 calendar days prior to the scheduled hearing date.

(C) You can request that the Hearings Officer decide the matter based exclusively on written materials from the parties or conduct the hearing by phone.

2. Procedure. The hearing will be governed by general rules of procedure designed to allow you to hear and confront the evidence against you, and for you to present evidence favorable to you. You are not required to present any evidence; the burden is on the County to establish by a preponderance of evidence that a violation exists or existed. Either party may, at their own expense, obtain an attorney, to represent that at the hearing. If you wish to be represented by an attorney, they need only notify the County and the Hearings Officer in writing of their intent to appear on your behalf. The County will present evidence first, and then you may question that evidence. You may then present your own evidence, if you wish, and the County may question your evidence. Testimony by witnesses is evidence. The Hearings Officer may inquire into any facts that are relevant to the hearing and may question parties or witnesses about the case. Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

3. Record of Proceedings. An audio record will be made of the proceedings when a hearing is conducted. The audio record is available through the Clackamas County Code Enforcement Section and is available to you upon request.

4. Hearings Officer. The Hearings Officer is an independent contractor paid by the County to conduct hearings and render decisions. He/she is not a County employee. His/her function is to preside over the hearing, make a record of proceedings, consider admissible evidence and interpret and apply the law. After the hearing is closed, the Hearings Officer will enter written findings of fact, conclusions of law and any Order deemed proper. If a violation is proven, then the Order may include civil penalties, fines, administrative fees, or may require the respondent to take certain actions, or refrain from certain actions. An Order issued by the Hearings Officer may be a final order or a continuing order. The Hearings Officer Order is the final decision of the County, and may be appealed pursuant to Oregon Law. The Hearings Officer for Clackamas County is:

Carl Cox
Attorney at Law
14725 NE 20th Street, #D-5
Bellevue, WA 98007

5. Right to Recess. If, during the course of the hearing, the Respondent or the County requests a recess or postponement, or additional time to present crucial evidence, the Hearings Officer may allow a continuance of the hearing for good cause. The Respondent may also request that the proceedings be continued after the end of the hearing if the Respondent determines that additional evidence should be brought to the attention of the Hearings Officer.

6. Right to Appeal. The Final Order of the Hearings Officer shall set forth the right of the respondent to appeal any adverse Order. Appeal may be taken pursuant to Section 2.07.130 of the Clackamas County Hearing Officer Code, and Oregon Revised Statute 34.010-34.100. If appeal is taken, the appellant is responsible for all costs of appeal including preparation of transcript.

CLACKAMAS COUNTY

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

You must have access to the internet or telephone to use the Zoom platform. The link is provided on the next page. Once you have joined the meeting, you will be prompted to **JOIN AS PANELIST**. Please accept the request to **JOIN AS PANELIST**.

If you would like to present evidence at the hearing, please email Jennifer Kauppi at JKauppi@clackamas.us or mail your evidence, **no later than 4 working days prior to the hearing** to:

Jennifer Kauppi
150 Beavercreek Rd.
Oregon City, OR 97045

Staff will process your evidence for the hearing and provide the numbered documents to the Hearings Officer and send them back to you for your reference.

If you are unable to participate in the hearing through the Zoom platform, please contact Jennifer Kauppi at 503-742-4759 **within 3 calendar days of the receipt of the Notice of Hearing**.

If you are unfamiliar with using the Zoom platform, please perform an internet search "How to use Zoom" prior to the hearing date. There are many interactive guides available.

If you experience difficulties connecting to the Zoom hearing prior to your scheduled start time, please call 971-930-6134, for assistance.

Zoom Information:

Join from PC, Mac, iPad, or Android:

https://clackamascounty.zoom.us/j/85323802164?pwd=nljYLG6FxQlkPfCOJCjuBEyuFrnHiO.1

Passcode: 643734

Phone: +19712471195,,85323802164# US (Portland) 12063379723,,85323802164# US

Join via Audio:

+1 971 247 1195 US (Portland)
+1 206 337 9723 US (Seattle)
+1 213 338 8477 US (Los Angeles)
+1 253 205 0468 US
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 408 638 0968 US (San Jose)
+1 602 753 0140 US (Phoenix)
+1 669 219 2599 US (San Jose)
+1 669 444 9171 US
+1 669 900 6833 US (San Jose)
+1 719 359 4580 US
+1 720 928 9299 US (Denver)
+1 689 278 1000 US
+1 786 635 1003 US (Miami)
+1 267 831 0333 US (Philadelphia)
+1 301 715 8592 US (Washington DC)
+1 305 224 1968 US
+1 309 205 3325 US
+1 312 626 6799 US (Chicago)
+1 360 209 5623 US
+1 386 347 5053 US
+1 470 250 9358 US (Atlanta)
+1 470 381 2552 US (Atlanta)
+1 507 473 4847 US
+1 564 217 2000 US
+1 646 518 9805 US (New York)
+1 646 876 9923 US (New York)
+1 646 931 3860 US
+1 651 372 8299 US (Minnesota)

Webinar ID: 853 2380 2164

International number available: https://clackamascounty.zoom.us/u/kd6B2C5vY

Clackamas County

Department of Transportation and Development

Nondiscrimination Policy:
The Department of Transportation and Development is committed to nondiscrimination.
For more information go to: www.clackamas.us/transportation/nondiscrimination
You may also contact: dtdcompliance@clackamas.us or 971-469-4482

¡LE DAMOS LA BIENVENIDA! Spanish
El Departamento de Transporte y Desarrollo está comprometido con la no discriminación.
Para obtener más información, visite:
www.clackamas.us/transportation/nondiscrimination.
dtdcompliance@clackamas.us or 971-469-4482

ДОБРО ПОЖАЛОВАТЬ! Russian
Департамент транспорта и развития инфраструктуры стремится к соблюдению политики недопущения дискриминации. Для получения дополнительной информации посетите веб-сайт: www.clackamas.us/transportation/nondiscrimination.
dtdcompliance@clackamas.us or 971-469-4482

欢迎！ Chinese (Mandarin)
交通和发展部致力于实现非歧视。如需了解更多信息，请访问
www.clackamas.us/transportation/nondiscrimination.
dtdcompliance@clackamas.us or 971-469-4482

CHÀO MỪNG! Vietnamese
Bộ Vận Tải và Phát Triển cam kết thực thi chính sách không phân biệt đối xử. Để biết thêm thông tin, vui lòng truy cập trang mạng:
www.clackamas.us/transportation/nondiscrimination.
dtdcompliance@clackamas.us or 971-469-4482

환영합니다. Korean
운송개발부는 차별 금지를 위해 모든 노력을 기울이고 있습니다. 자세한 내용은 홈페이지
www.clackamas.us/transportation/nondiscrimination.
dtdcompliance@clackamas.us or 971-469-4482

BEFORE THE COMPLIANCE HEARINGS OFFICER
for
COUNTY OF CLACKAMAS

COUNTY OF CLACKAMAS, Petitioner, v. TERRY W. EMMERT, Respondent.	File No: V0048325 COMPLAINT AND REQUEST FOR HEARING

I, Jennifer Kauppi, Code Enforcement Specialist for Clackamas County, allege the following:

1.

Respondent's mailing address is: 11811 SE Hwy 212, Clackamas, OR 97015.

2.

The Respondent(s) own/owns or occupies the address or location of the violation(s) of law alleged in this Complaint is 17100 SE 82nd Dr, Clackamas, OR 97015 also known as T2S, R2E, Section 16A, Tax Lot 02200, and is located in Clackamas County, Oregon. The property is zoned General Commercial (C-3) and is the location of violation(s) asserted by the County.

3.

On or about the 16th day of December, 2025, and on the 6th day of April, 2026, the Respondent violated the following laws, in the following ways:

a. Respondent violated the Clackamas County Zoning and Development Ordinance, Title 12, Section 1102 for failing to obtain approved design review. This violation is a Priority 3 violation pursuant to the Clackamas County Violation Priorities.

b. Respondent violated the Clackamas County Zoning and Development Ordinance, Title 12, Section 706 for failing to obtain land use approval for development in a Habitat Conservation Area District without land use approval. This violation is a Priority 1 violation pursuant to the Clackamas County Violation Priorities.

c. Respondent violated the Clackamas County Building Code, Chapter 9.02.040 for failing to obtain approved permits for a commercial structure built onsite. This violation is a Priority 1 violation pursuant to the Clackamas County Violation Priorities.

d. Respondent violated the Clackamas County Grading Code, Chapter 9.03 for failing to obtain an approved grading permit for fill material removed and added on the subject property. This violation is a Priority 1 violation pursuant to the Clackamas County Violation Priorities.

4.

The Department initiating this procedure is the Code Enforcement Section of the Department of Transportation and Development.

5.

Notice of the violations was given to Respondent in the following manner: Violation Notice dated December 16, 2025 and Citation and Complaint 2500483 in the amount of $1,850.00 was mailed via first class mail on April 8, 2026. A copy of the notice document is attached to this Complaint as Exhibits F and H, and incorporated by this reference.

6.

Based on these allegations, petitioner requests that a hearing be set in this matter. Petitioner seeks an Order from the Hearings Officer granting the following relief:

1. Pursuant to Clackamas County Code Section 2.07.090, ordering Respondent to immediately abate the violations and bring the property at issue into compliance with all laws, and permanently enjoining Respondent from violating these laws in the future;

2. Pursuant to Clackamas County Code Section 2.07.090, imposing a civil penalty against Respondent for each violation, within the range established by the Board of County Commissioners. Said range for a Zoning and Development Ordinance Priority 3 violation being $500.00 to $1,500.00. Said range for a Zoning and Development Ordinance Priority 1 violation being $1,000.00 to $3,500.00. Said range for a Building Code Priority 1 violation being $1,000.00 to $3,500.00. Said range for a Grading Code Priority 1 violation being $1,000.00 to $3,500.00 per occurrence as provided by Appendix B to the Clackamas County Code;

3. Pursuant to Clackamas County Code Section 2.07.090, ordering Respondent to pay an administrative compliance fee as provided by Appendix A to the Clackamas County Code;

4. Pursuant to Clackamas County Code Section 2.07.090, ordering Respondent to reimburse the County for any expense the County may incur in collection of any penalties, fines or fees that may be imposed:

and

5. Ordering any other relief deemed reasonably necessary to correct the violations.

DATED THIS 21st day of October 2026.

Jennifer Kauppi

Jennifer Kauppi
Code Enforcement Specialist
FOR CLACKAMAS COUNTY

COUNTY OF CLACKAMAS, Petitioner, TERRY W. EMMERT Respondent.	File No.: V0048325 STATEMENT OF PROOF

History of Events and Exhibits:

November 20, 2017 Exhibit A	A complaint was filed with the County regarding grading without approved permits, commercial activity without land use approval and a building violation for cargo containers that had been stacked on top of each other without approved permits. At the time this 2017 file was opened, the property had an address of 17100 SE Evelyn St. This original file was assigned to Code Enforcement Specialist Andrea Hall. During Ms. Hall's enforcement of the 2017 file she found that the address of the property has changed with the new address being 17100 SE 82nd Dr. All previous fines and fees associated with the 2017 case were voided. A new file was opened on the property in December 2025 using the current address.
December 1, 2025 Exhibit B	Andrea Hall and I met with Mr. Emmert's representative Tommy on site to discuss the ongoing violations on the property. We found DP Rock was operating from the subject property. The northern portion of the property was being used for the storage of commercial vehicles and at the southern portion of the property a significant amount of grading has occurred. The southern portion of the property also contains a Habitat Conservation Area. There is a large building on the property that was being used for commercial purposes.
December 1, 2025 Exhibit C	In 2011 a verification of a non-conforming use was submitted for this property to determine whether or not the establishment of a rock and other landscaping materials sales business was established as a lawful nonconforming use or development upon the subject property. The verification of the NCU was denied and an appeal was filed in 2013. The decision of the appeal affirmed the planning directors denial of the 2011 application stating that the Respondent possesses a limited NCU but did not possess an NCU for an active commercial retail landscape supply business. The limited NCU use existed to "to store rock, boulders, fill, sand, and crushed concrete and asphalt on the property and sell those products passively without on-site facilities or personnel, at the frequency and in quantities not exceeding the amount stored and sold prior to 2009.

December 1, 2025 Exhibit D	Between 2017 and 2018 a building was constructed and an addition to that building was done between 2021 and 2022. A review of the County permitting found no approved permits for this building or any electrical that had been added to the building.
December 1, 2025 Exhibit E	At the southern portion of the property, extensive grading has occurred both with bringing material in and taking mater out. This activity would have required an approved grading permit. In addition, zoning review for the development show it is in the Habitat Conservation Area would have also require a Habitat Conservation Area (HCA) land use approval. No permits for the grading or development in the Habitat Conservation Area has been submitted for review.
December 16, 2025 Exhibit F	A Notice of Violation was mailed to the Respondent providing a deadline date of January 19, 2026 to abate the violations. The notice was sent by first class mail and was not returned to the County.
April 6, 2026 Exhibit G	I conducted a site inspection. The business activity continued onsite. I researched the County permitting system and no building, grading or land use applications had been submitted for review.
April 8, 2026 Exhibit H	Citation 2500483 was issued in the amount of $1,850.00 for the Priority 1 Building Code violation, Priority 1 Grading violation, Priority 2 Zoning violation and Priority 1 Zoning violation. The citation was sent by first class mail and was not returned to the County. The citation remains unpaid.
June 9, 2026	The Respondent met with myself and Andrea Hall at the County office to discuss the violations and the pathway for abatement.
August 28, 2026	The Respondent spoke with Andrea Hall on the phone to inquire if the tenants were doing anything to abate the violations.
October 19, 2026 Exhibit I	I conducted a site inspection. I found more fill had been brought onto the property and also placed in the protected area onsite. The commercial vehicles and DP Rock were also still on the property. I researched the County records and no permits or land use applications had been submitted for review.
October 21, 2026	This matter was referred to the Hearings Officer.

If the Compliance Hearings Officer affirms the County's position that a violation of the Zoning and Development Ordinance Title 12, Sections 706 and 1102, Building Code, Title 9.02.040, and Grading Code, Title 9.03 exists, the County is requesting a Final Order as the Respondent has not taken all necessary steps to abate the violations and has continued the activity onsite. This report includes the following recommendations:

- The imposition of civil penalties for the Zoning and Development Ordinance violation between $500.00 up to $1,500.00 for date cited April 6, 2026.

- The imposition of civil penalties for the Zoning and Development Ordinance violation between $1,000.00 up to $3,500.00 for date cited April 6, 2026.

- The imposition of civil penalties for the Building Code violation between $1,000.00 up to $3,500.00 for date cited April 6, 2026.

- The imposition of civil penalties for the Grading Code violation between $1,000.00 up to $3,500.00 for date cited April 6, 2026.

- Payment for Citation No. 2500483 issued on April 8, 2026 for $1,850.00.

- The administrative compliance fee to be imposed from January 2026 through June 2026 at the rate of $100.00 per month totaling $600.00.

- The administrative compliance fee to be imposed from July 2026 through November 2026 at the rate of $102.00 per month totaling $510.00. Total administrative compliances fees total $1,110.00.

- The County requests the Hearings Officer to permanently prohibit the Respondent from violating these laws in the future.

- The County is requesting the Hearings Officer to authorize the County further enforcement action including to proceed to Circuit Court.

Or

Should mitigating factors be presented in the hearing, which the Hearings Officer determines to warrant a Continuing Order, the County would recommend the following:

- The Respondent be ordered to bring the property into compliance with the Zoning and Development Ordinance within 45 days of the date of the Order by submitting a complete application for design review and for development in the Habitat Conservation Area District. If the land use applications are approved, all Conditions of approval must be completed withing 60 days of the date of the approval.

- The Respondent be ordered to bring the property into compliance with the Building Code by either submitting a technically complete Building permit to permit the commercial structure onsite or a demolition permit to remove the structure within 45 days of the date of the order.

- The Respondent be ordered to bring the property into compliance with the Grading Code within 45 days of the date of the order by submitting a technically complete Grading permit application. All further grading activity shall cease until permits are approved and issued.

- Code Enforcement to confirm compliance of the above item and the County will submit a Post Hearing Status Report. The report will be sent to the Compliance Hearings Officer and to the Respondent.



ts (New Selection):

xlot 1

ns	Taxpayer Name	In Care Of	Primary Address	Jurisdiction	Map Number	Taxlot Number
	EMMERT TERRY W		17100 SE 82ND DR, Clackamas, 97015	Clackamas County	22E16A	22E16A 02200

Property Search (/default.aspx) / Search Results (/results.aspx) / Property Summary

Property Account Summary

00486619

Account Number	00486619	Property Address	17100 SE 82ND DR , CLACKAMAS, OR 97015

General Information

Alternate Property #	22E16A 02200
Property Description	Section 16 Township 2S Range 2E Quarter A TAX LOT 02200
Property Category	Land &/or Buildings
Status	Active, Locally Assessed
Tax Code Area	012-051
Remarks	

Tax Rate

Description	Rate
Total Rate	18.8424

Property Characteristics

Neighborhood	20050: Area 05 commercial East Side
Land Class Category	200: Commercial land, vacant
Acreage	4.68
Change property ratio	CIC

Related Properties

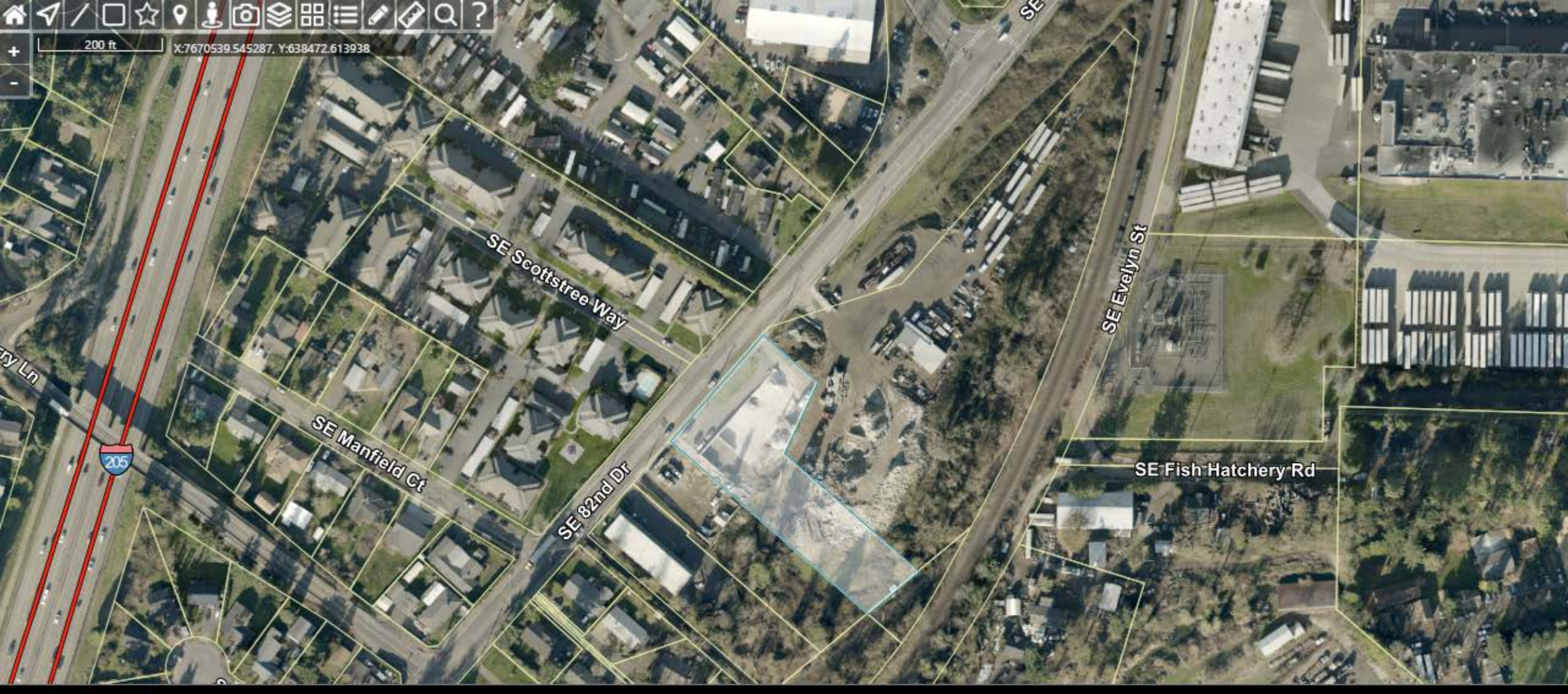
No Related Properties Found

Parties

Role	Percent	Name	Address
Taxpayer	100	EMMERT TERRY W	11811 SE HWY 212, CLACKAMAS, OR 97015
Owner	100	EMMERT TERRY W	11811 SE HWY 212, CLACKAMAS, OR 97015

Property Values

Value Type	Tax Year 1	Tax Year 2	Tax Year 3	Tax Year 4	Tax Year 5
AVR Total	$827,524	$803,422	$780,022	$757,303	$735,246



Results (New Selection):

X Taxlot 1

Actions	Taxpayer Name	In Care Of	Primary Address	Jurisdiction	Map Number	Taxlot Number
	EMMERT INTL PROPERTIES LTD		17270 SE 82ND DR, Clackamas, 97015	Clackamas County	22E16BD	22E16BD00100

Property Account Summary

00489082

Account Number	00489082	Property Address	17270 SE 82ND DR , CLACKAMAS, OR 97015

General Information

Alternate Property #	22E16BD00100
Property Description	Section 16 Township 2S Range 2E Quarter BD TAX LOT 00100
Property Category	Land &/or Buildings
Status	Active, Locally Assessed
Tax Code Area	012-051
Remarks	

Tax Rate

Description	Rate
Total Rate	18.8424

Property Characteristics

Neighborhood	15271: North Clackamas 100, 101
Land Class Category	100: Residential land, vacant
Acreage	1.36
Change property ratio	1XX

Related Properties

No Related Properties Found

Parties

Role	Percent	Name	Address
Taxpayer	100	EMMERT INTL PROPERTIES LTD	11811 SE HWY 212, CLACKAMAS, OR 97015
Owner	100	EMMERT TERRY W	11811 SE HWY 212, CLACKAMAS, OR 97015

Property Values

Value Type	Tax Year 1	Tax Year 2	Tax Year 3	Tax Year 4	Tax Year 5
AVR Total	$169,772	$164,828	$160,028	$155,367	$150,842
Exempt					
TVR Total	$169,772	$164,828	$160,028	$155,367	$150,842
Real Mkt Land	$541,937	$553,257	$532,033	$532,033	$512,223
Real Mkt Bldg					
Real Mkt Total	$541,937	$553,257	$532,033	$532,033	$512,223
M5 Mkt Land	$541,937	$553,257	$532,033	$532,033	$512,223

M5 Mkt Bldg					
M5 SAV					
SAVL (MAV Use Portion)					
MAV (Market Portion)	$169,772	$164,828	$160,028	$155,367	$150,842
Mkt Exception					
AV Exception					

Active Exemptions

No Exemptions Found

Events

Effective Date	Entry Date-Time	Type	Remarks
09/04/2002	09/09/2002 09:01:00	Recording Processed	Property Transfer Filing No.: 59874, Warranty Deed, Recording No.: 2002-082964 09/04/2002 by MARYHAN
09/04/2002	09/09/2002 09:01:00	Taxpayer Changed	Property Transfer Filing No.: 59874 09/04/2002 by MARYHAN
07/01/1999	07/01/1999 12:00:00	Ownership at Conversion	Warranty Deed: 96-65502, 9/1/96, $ 335000

Tax Balance

Installments Payable

Tax Year	Category	TCA/District	Charged	Minimum	Balance Due	Due Date
2026	Property Tax Principal	012-051	$3,198.92	$1,066.30	$3,102.95	11/15/2026
TOTAL Due as of 10/20/2026			$3,198.92	$1,066.30	$3,102.95	10/20/2026

View Detailed Statement (statement.aspx) Click for information about taxes, other charges, and recalculating tax amounts for future interest dates.

Installments Payable/Paid for Tax Year(Enter 4-digit Year, then Click-Here): 2026

Receipts

Date	Receipt No.	Amount Applied to Parcel	Total Amount Due	Receipt Total	Change
04/30/2026 00:00:00	5934517 (ReceiptDetail.aspx?receiptnumber=5934517)	$2,113.09	$2,113.09	$2,113.09	$0.00
11/25/2025 00:00:00	5912222 (ReceiptDetail.aspx?receiptnumber=5912222)	$1,035.83	$3,107.49	$1,035.83	$0.00
11/19/2024 09:08:00	5710954 (ReceiptDetail.aspx?receiptnumber=5710954)	$3,023.39	$63,379.01	$61,494.45	$0.00
07/15/2024 00:00:00	5570234 (ReceiptDetail.aspx?receiptnumber=5570234)	$2,005.66	$2,031.54	$2,005.66	$0.00
11/16/2023 11:31:00	5514111 (ReceiptDetail.aspx?receiptnumber=5514111)	$970.48	$61,901.77	$20,702.53	$0.00

11/17/2022 08:08:00	5326029 (ReceiptDetail.aspx?receiptnumber=5326029)	$2,753.85	$51,588.44	$50,040.80	$0.00
11/16/2021 00:00:00	5144524 (ReceiptDetail.aspx?receiptnumber=5144524)	$2,652.34	$2,652.34	$2,572.77	$0.00
01/27/2021 11:44:00	4984488 (ReceiptDetail.aspx?receiptnumber=4984488)	$1,600.35	$25,045.10	$25,045.10	$0.00

Sales History

Sale Date	Entry Date	Recording Date	Recording Number	Sale Amount	Excise Number	Deed Type	Transfer Type	Grantor(Seller)	Grantee(Buyer)	Ot Pa
08/29/2002	09/09/2002	09/04/2002	2002-082964	$175,000.00	59874		S	WESTBROOK DEAN L & MOLLY M	EMMERT TERRY W	No

Property Details

Living Area Sq Ft	Manf Struct Size	Year Built	Improvement Grade	Stories	Bedrooms	Full Baths	Half Baths

Printable Version

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SE Beaver Lake Dr
Oregon Bud Company - Clackamas...
Caliber Collision
SE Jennifer St
SE Evelyn St
SE Safeway Rd
VCA Northwest Veterinary Specialists
Serenity Shop/ As You Wish
SE Mang
17100 SE 82nd Dr
RECS Clackamas
War Veterans Mem Pwy
SE Evelyn St
SE Scottstree Way
SE 82nd Dr
SE Manfield Ct
SE 82nd Dr
SE Evelyn St
Oregon
Classic Pool Spa & Hearth
Image © 2026 Metro, Portland Oregon
PNAMP
Little Creek Care
Imagery Date: 7/22/2001
45°24'06.52"


7/2005
Liberty Electric
SE 82nd Dr
DP Excavating, Inc
SE Scottstree Way
SE 82nd Dr
SE Evelyn St
SE Fish Hatchery Rd
Classic Pool Spa & Hearth
Image © 2026 Metro, Portland Oregon
Imagery Date: 7/2/2005
45°23'56.69" N


7/2007
Liberty Electric
SE 82nd Dr
DP Excavating, Inc
SE Scotstree Way
SE 82nd Dr
SE Evelyn St
SE Fish Hatchery Rd
Classic Pool Spa & Hearth
Image © 2026 Metro, Portland Oregon
Imagery Date: 7/11/2007
45°23'53.12" N


7/2016
Liberty Electric
SE 82nd Dr
DP Excavating, Inc
Scottstree Way
SE 82nd Dr
Classic Pool Spa & Hearth
SE Fish Hatchery Rd
Imagery Date: 7/23/2016
45°23'53.12"


7/2024
Village Place
SE Scottstree Way
DP Excavating, Inc
SE 82nd Dr
SE Evelyn St
SE Fish Hatchery Rd
Classic Pool Spa & Hearth
SE 82nd Dr
SE Fish Hatchery Rd
Little Creek Care
1985
Imagery Date: 7/3/2024 45°23'51.86" N 122°3
Search


10/2026
Village Place
SE Scottstree Way
DP Excavating, Inc
SE 82nd Dr
SE Evelyn St
Manfield Ct
Classic Pool Spa & Hearth
SE Fish Hatchery Rd
SE 82nd Dr
SE Fish Hatchery Rd
Little Creek Care
Image © 2026 Airbus
1985
Imagery Date: 8/5/2026 45°23'53.14" N 122°34'12.82" W elev


CONCRETE DUMP
12/01/2025 08:59


12/01/2025 08:59


STOP
12/01/2025 09:00


STOP
12/01/2025 09:00


12/01/2025 09:01


12/01/2025 09:01


STOP
STOP
12/01/2025 09:02


12/01/2025 09:02


12/01/2025 09:13


RESTRICTED AREA
EMPLOYEES ONLY
12/01/2025 09:17


12/01/2025 09:17


GLACIER
12/01/2025 09:21


12/01/2025 09:22


12/01/2025 09:22


12/01/2025 09:22


12/01/2025 09:22


12/01/2025 09:23


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12/01/2025 09:23

CLACKAMAS COUNTY

Planning & Zoning

Development Services Building
Mike McCallister, Manager
150 Beavercreek Road | Oregon City, OR 97045
phone: (503) 742-4500 | fax: (503) 742-4550 | e-mail: zoninginfo@co.clackamas.or.us
web: http://www.clackamas.us/transportation/planning

NOTICE OF LAND USE DECISION

This document represents the Land Use and Zoning Staff findings conclusions for a Land Use Application, File No. Z0288-11-NCU, as cited below. It contains two parts:

Section 1 – Summary, Section 2 – Findings & Conclusions.

SECTION 1 – SUMMARY:

DATE: August 17, 2011

APPEAL DEADLINE: August 29, 2011

CASE FILE NO.: Z0288-11-NCU

STAFF CONTACT: Rick McIntire, (503)742-4516, rickm@co.clackamas.or.us

LOCATION: 17100 SE Evelyn St., Clackamas, OR

REFERENCE PARCEL NUMBER: T2S R2E Section 16A, Tax Lot(s) 2200

APPLICANT: Terry W. Emmert, 11811 SE Hwy 212, Clackamas, OR 97015

OWNER: Applicant

TOTAL AREA: Approximately 4.68 acres

ZONING: General Commercial; C-3

CITIZENS PLANNING ORGANIZATION: Clackamas CPO, c/o Barbara Kemper, 503-655-2601, P.O. Box 2136, Clackamas, OR 97015

PROPOSAL: A request to verify whether or not a rock and landscaping materials sales business has been established and continued as a nonconforming use in the C-3 zoning district as defined in Section 202 of the ZDO and subject to Section 1206 of the ZDO.

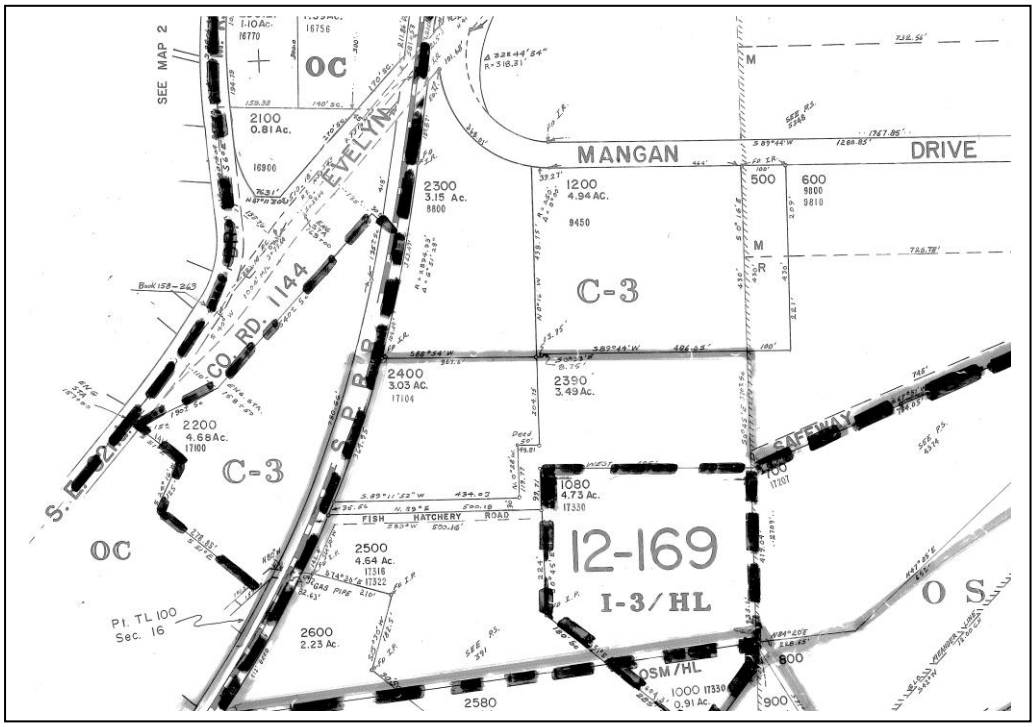
NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS Chapter 215 requires that if you receive this notice, you must promptly forward it to the purchaser.

OPPORTUNITY TO REVIEW THE RECORD: A copy of the Land Use and Zoning Staff Decision and all evidence submitted with this application is available for inspection, at no cost, at the Land Use and Zoning office during normal business hours. Copies of all documents may be purchased at the rate of $1.00 for the first page and 10-cents per page thereafter. The Land Use Decision contains the findings and conclusions upon which the decision is based along with any conditions of approval.

APPEAL RIGHTS: If you disagree with this decision or the conditions of approval, you may appeal this decision to the Clackamas County Land Use Hearings Officer. The cost of the appeal is $250.00. An appeal must be received by the Land Use and Zoning Division by 4:00 p.m. on the last day to appeal which is **August 29, 2011.** This decision will not be effective until the day after the appeal deadline provided an appeal is not filed prior. Unless an appeal is received by the appeal deadline, this decision will be final and no additional written confirmation will be sent.

APPLICABLE APPROVAL CRITERIA: This application is subject to Sections(s) 503 and 1206 of the Clackamas County Zoning and Development Ordinance (ZDO).

Location Map



SECTION 2 – FINDINGS & CONCLUSIONS:

This application is subject to the relevant provisions of Section(s) 503 and 1206 of the Clackamas County Zoning and Development Ordinance (ZDO). The Clackamas County Land Use and Zoning Staff have reviewed these Sections of the ZDO in conjunction with this proposal and make the following findings and conclusions:

1. The applicant is requesting a Verification of a Nonconforming Use status to determine whether or not the establishment of a rock and other landscaping materials sales business was established as a lawful nonconforming use or development upon the subject property.

2. The subject property is located between SE 82nd Dr. and SE Evelyn St. to the west and the Union Pacific railroad right of way to the east at the intersection of 82nd Dr. and Evelyn St. in the Clackamas area. The site is currently developed with a small storage shed, office, approach onto 82nd Dr., graveled parking area and rock and other landscaping materials storage.

3. Sec. 202 of the ZDO defines a "Nonconforming Use" as:

   "A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but, due to a change in the zone or zoning regulations, is now prohibited in the zone."

4. Sec. 202 of the ZDO also defines the term "Nonconforming Development" as:

   "An element of development, such as landscaping, parking, height, signage, or setbacks that was created in conformance with development regulations which, due to a change in the zone or zoning regulations, is no longer in conformance with the current applicable regulations."

   A "Nonconforming Development" is also a "Nonconforming Use".

5. Subsec. 1206.01 of the ZDO states that: *"A nonconforming use may be continued although not in conformity with the regulations for the zone in which the use is located."*

6. To verify if a nonconforming use status has been established for the existing use and development of the subject property, the applicant must demonstrate that the existing nonconforming use(s), structure(s) and/or other physical improvements were lawfully established as a protected nonconforming use as defined in Sec. 202 of the ZDO (see above).

   A. The subject property is currently designated as General Commercial, C-3. The use and development of properties within this zoning district is subject to the provisions of Sec. 503 of the ZDO. This zone allows most types of retail and service commercial uses. This zoning designation was adopted on August 3, 2006 upon Board of County Commissioners approval of a Comprehensive Plan Amendment and

Zone Change application; Planning and Zoning File Nos. Z0702-05-CP and Z0702-05-Z. The use and development of properties in this zoning district is subject to the use, dimensional and development standards of Section 503 of the ZDO. These standards require County Planning and Zoning approval of a Design Review application pursuant to Section 503.09 of the ZDO. The Design Review procedures and requirements are set forth in Section 1102 of the ZDO. Approval of a Design Review application for the development and use of property in the C-3 district requires compliance with Section 1000, Development Standards, of the ZDO.

B. Prior to August 3, 2006, the subject property was zoned Office Commercial, a designation that permits office uses and various other, largely service commercial type uses. The existing use would not be a permitted use under the OC designation. The OC designation was applied to the subject property on September 5, 1990 by legislative action intiated by the Board of County Commissioners.

C. Prior to September 5, 1990, the subject property was designated as Campus Industrial, adopted by the Board of County Commissioners on July 14, 1980. Under the CI designation, the current use and development of the subject property would not have been permitted.

D. Prior to July 14, 1980, the subject property was designated Light Industrial, I-2, on February 21, 1967. This was the first zoning of the subject property and prior to that date, the property was not subject to zoning regulations. The existing use and development of the site would not have been permitted under the original I-2 designation.

E. Additionally, on March 13, 1972, the use and development of properties within commercial and multi-family zoning districts was subject to County approval of a Design Review application prior to the commencement of development or use of property.

F. Additionally, on January 19, 1973, the use and development of properties within industrial zoning districts was subject to County approval of a Design Review application prior to the commencement of development or use of property.

7. In order to demonstrate the establishment of a nonconforming use/nonconforming development, the applicant must affirmatively demonstrate the following: (1) that the use(s) and structure(s) were established prior to the effective date of the initial zoning of the property; **or** (2) that the use(s) and structure(s) were allowed by right under the zoning applicable at the time of establishment; **or** (3) that a required land use permit; e.g. Design Review approval, was obtained from the County to establish the use(s), structure(s) and related site development prior to a change in zoning regulations pursuant to subsection 1206.06B of the ZDO and consistent with ORS 215.130(5).

8. If the applicant can demonstrate that a nonconforming use or development was lawfully established either prior to the adoption of zoning regulations regulating the use or development or under prior zoning regulations that permitted the use and development, the applicant must also demonstrate the existence, continuity, nature and extent of the nonconforming use during the 20-year period preceding the filing of this application for verification pursuant to ORS 215.130(11). See *Lawrence v. Clackamas County*, 40 Or

LUBA 507, 515 (2001) *aff'd* 180 Or App 495, 43 P3d 1192 (2002); *Aguilar v. Washington County*, 201 Or App 640, 645-51, 120 P3d 514 (2005) and *Reeder and Robinson v. Multnomah County*, LUBA No. 2009-015.

ORS 215.130(11) is commonly misunderstood by many to stand for the proposition that an applicant for a Verification of Nonconforming Use status must only show that the use and/or development has existed for the 20-year period prior to the filing of Verification application without interruption. The cases cited above make it very clear that this is not the case. An applicant must also show, pursuant to ORS 215.130(5), that the use/development was lawfully established when established even if more than 20 years prior to the filing of the verification application.

A. In reading the application materials, it appears to staff that the applicant has misunderstood the applicable law in this regard and believes he must only show that the use of the property was established at least 20 years prior to the filing of this application and that the use has continued without interruption since.

B. The applicant has submitted no documentation in support of his contention that the use and development of the site for rock and other landscaping materials sales was lawfully established when established or that the use existed and has continued without interruption for the 20-year period beginning on July 5, 1991. In support of his application, the applicant has submitted very brief responses to the questions contained in the supplemental application without submitting supporting documentation and a copy of a Code Compliance Hearings Officers' Continuing Order on Code Compliance Case No. V0275-10 dated June 8, 2011. The latter contains statements by the applicant and two witnesses called on behalf of the applicant in support of the premise that the use of the property has existing for at least 20 years. This application is a result of the Continuing Order.

C. The Planning and Zoning staff have researched the zoning, permitting, aerial photography and any other available records pertaining to the use of the property over time. The record of current and past zoning designations is discussed above.

D. Based upon the history of the zoning of the property since February 21, 1967, the applicant must demonstrate either that the existing use and development of the site was established prior to that date and has continued without an interruption of more than 12 consecutive months since July 5, 1991 (20 years prior to the date of filing of this application); or that the use and development of the site was established consistent with the requirements of Section 503 of the ZDO since August 3, 2006 when the current C-3 zoning designation was applied. The current use of the subject property would not have been a permitted use if established between February 21, 1967 and August 3, 2006 under the zoning designations applicable during that time period.

E. In addition to reviewing the County permitting history for the site, the staff has reviewed County aerial photography of the site and surroundings taken in the years 1970, 1976, 1989, 2005, 2007, 2008 and 2009. All of these photos were taken after

the adoption of zoning regulations, the I-2 zoning, applicable to the subject property. The applicant has submitted a Google Maps aerial photo taken in 2010. With respect to the permitting history and this series of aerial photographs, the staff finds the following:

1) The photo dated June 25, 1970 clearly shows an unused, undisturbed site bounded by trees with no evident access to the adjoining 82nd Dr. At this point in time the property was zoned Light Industrial. The storage, processing and/or sale of aggregate products and landscaping supplies was not a permitted use in this zoning district;

2) The photo dated September 10, 1976 clearly shows an unused, undisturbed site bounded by trees with no evident access to the adjoining 82nd Dr. At this point in time the property was zoned Light Industrial. The storage, processing and/or sale of aggregate products and landscaping supplies was not a permitted use in this zoning district;

3) The photo dated May/June, 1989 shows extensive, on-going grading activity on the site, but no evidence of any active commercial or industrial use of the site. At this point in time, the property was zoned Campus Industrial. This designation did not permit outdoor storage, sales or processing activities. Staff notes that two Grading Violation files had been opened on November 26, 1984 and December 14, 1988 indicating that site grading/fill was occurring without a permit issued by the County;

4) The 2005 photo shows most of the previous graded/filled area revegetated with a much smaller area of active grading/fill activity at the southerly end of the site with an access from 82nd Dr. However, no active commercial or industrial use of the site is evident. At this point in time, the subject property was zoned Office Commercial and the storage, processing and/or sale of aggregate products and landscaping supplies was not a permitted use in this zoning district. A Grading Permit, no. G0000798 was issued in 1998;

5) The 2007 photo shows that more recent grading grading has occurred over much of the site with what appear to be three small piles (gravel or soil?) in the center of the site. Again, there are no structures or evidence of any active commercial or industrial use of the site. At this point in time, the site had been re-zoned to Genearl Commercial, C-3. The storage, processing and/or sale of aggregate products and landscaping supplies was a permitted use in this zoning district subject to Design Review approval;

6) The 2008 photo shows much of the disturbed area seen in the 2007 photo revegetated with the same piles of gravel/soil near the center of the site seen in the 2007 photo. Again, there are no structures or evidence of any active commercial or industrial use of the site. At this point in time, the site had been re-zoned to Genearl Commercial, C-3. The storage, processing and/or sale of aggregate

products and landscaping supplies was a permitted use in this zoning district subject to Design Review approval;

7) The 2009 photo shows somewhat more surface disturbance near the southerly one-half of the site, two of the piles seen in previous photos remain and there are no structures or evidence of any active commercial or industrial use of the site. The zoning remains C-3.

8) The 2010 Google photo submitted by the applicant shows a significant change from the prior photos. It appears that the current use has been established in the southerly one-half of the site. A pre-application conference, file no. Z0283-10-PAC, for a Design Review application was held with the tenant in 2010, but there is no record of County Design Review approval to establish and operate the use as required pursuant to Sec. 530.09 of the ZDO.

SECTION 3: CONCLUSIONS:

1. Based upon the discussion of the permitting and aerial photography record discussed above, the staff finds that there is no substantive evidence demonstrating that the site has been used for commercial sales activity or any use other than as a fill site until sometime between the photos taken in 2009 and 2010 and there is no record of Design Review approval for the use established between the dates those two photos were taken.

2. Until the re-zoning of the property to C-3 in August of 2006, the existing use would not have been a permitted use under any of the prior zoning designations and there is no record of any kind of land use approval for any commercial or industrial use of the site.

3. The applicant has not submitted any substantive evidence that contradicts the photographic evidence or the lack of permitting history.

4. Therefore; the staff finds that the applicant has failed to demonstrate that a nonconforming use status has been lawfully established for the rock and landscaping materials storage and sales business.

DECISION:

Based upon the findings and conclusions herein, the Planning Director, by his designee, finds that this request for Verification of a Nonconforming Use, as discussed above, is hereby **DENIED.**

BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON

Regarding an application for verification of a nonconforming use in the General Commercial zone.	))))	**FINAL ORDER** **Casefile No. Z0288-11-NCU) (Emmert)**

A. SUMMARY

1. The applicant, Terry Emmert, appeals a Planning Director's decision denying nonconforming use verification for a commercial landscape supply business.

2. The subject property is located at 17100 SE Evelyn Street, Clackamas, Oregon, also known as T2S R2E Section 16A, tax lot 2200.

2. The Planning Director issued a decision on August 17, 2011 denying the application. The applicant filed a timely appeal and an initial hearing date was held October 27, 2011.

3. On October 27, 2011, Hearings Officer Kenneth Helm (the "Hearings Officer") conducted the initial public hearing to receive testimony and evidence on the application. Prior to the hearing, the applicant requested that the hearing be continued. After receiving public testimony, the applicant's request was granted and the hearing was continued through and including the following dates: December 15, 2011, January 19, 2012, April 26, 2012, July 26, 2012, and September 20, 2012. The content of all of those hearings is discussed in more detail below.

4. The following issues are contested in this appeal:

a. Whether substantial evidence in the record demonstrates that a commercial landscape and rock supply business has continuously existed on the subject property sufficient to constitute a protected nonconforming use.

b. Whether the County's so-called "10 year rule" eliminated any otherwise applicable zoning regulations and review requirements for the subject property.

c. Whether alleged violations by the County code enforcement staff of Mr. Emmert's federal due process and equal protection rights in case file V0275-10 infects the review proceeding for this land use application in a way that mandates that the desired commercial retail landscape supply business be allowed.

SCANNED

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearings identified above. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums. The following is a summary by the Hearings Officer of selected relevant testimony.

2. Prior to the October 27, 2011 hearing, the applicant submitted a letter requesting that hearing be continued. Exhibit 18. The request for continuance was made pursuant to the "Notice of Rights" statement of a code enforcement case file V0275-10 which involved the subject property. Although the procedural requirements of the County's code enforcement provisions are different than those that are applicable to land use hearings, the continuance request was accepted by the Hearings Officer. The reason for the request was that the applicant's tenant on the subject property had vacated the location and the applicant was assessing whether to continue with the nonconforming use verification application.

After some discussion with the applicant's attorney, Mr. Kenneth Bauman, it was determined that the hearing would be continued to December 15, 2011 with the applicant communicating with County staff by November 15, 2011 regarding the applicant's intentions for moving forward with the application. At that time, Mr. Bauman submitted Exhibit 22 which he stated was the written record from the V0275-10 code enforcement proceeding.

a. The Hearings Officer then made the statements required by ORS 197.763 as noted above and opened a public hearing for the purpose of taking testimony from the public.

b. County planner Rick McIntire gave a brief overview of Planning Director decision being appealed.

c. One member of the public testified that she drives by the subject property regularly and has observed fill material on the property. She stated that she was worried about soil compaction on the site. She observed that the rock and landscape business that had been on the property was gone, but three semi-trailers were currently parked on the property.

d. Mr. Bauman responded to this testimony by arguing that the documentary evidence in the record shows what it shows and that observations about the subject property by the public are just opinions.

e. The Hearings Officer then continued the hearing to December 15, 2011 at 12:00 p.m.

3. On November 15, 2011, Mr. Bauman provided a letter advising the Hearings Officer that the applicant desired to proceed with the application and the scheduled December 15, 2011 hearing. Exhibit 25. In that same letter, Mr. Bauman argued that the code enforcement file V0275-10 and application Z0288-11-NCU were one case. Based on that assumption, the applicant argued that the case record in V0275-10 constituted the factual basis for the land use application in Z0288-11-NCU. Attached to Exhibit 25 Mr. Bauman attached documents that he labeled "Exhibit 24" which included a "Continuing Order" for case file V0275-10 and some drawings, a Google maps photo, and a property tax statement. Mr. Bauman also requested that the Petitioner's brief from LUBA No. 2011-052 be placed in the record. That brief appears as Exhibit 24 to the hearing record.

4. On November 28, 2011, Mr. Bauman submitted a letter that included "Petitioner's Motion to Compel Discovery and the Attendance of Witnesses." Exhibit 26. The motion requested that the Hearings Officer compel certain discovery in the Z0288-11-NCU proceeding and compel the appearance of County employees for the continued December 15, 2011 hearing.

On December 6, 2011, Assistant County Counsel Rhett Tatum submitted an objection to the applicant's motion. Exhibit 27. The County argued that application Z0288-11-NCU and code enforcement file V0275-10 were separate proceedings under separate authority under the County code. The County also argued that trial type discovery was not provided for by the authorizing statutes governing land use applications.

On December 8, 2011, the Hearings Officer issued an "Order on Motion to Compel Discovery." Exhibit 28. In that order, the Hearings Officer determined that the applicable provisions of the ZDO did not authorize the Hearings Officer to compel discovery or attendance of County employees as the applicant requested. Specifically, I determined:

> Application Z0288-11-C and Code Enforcement file V0275-10 are separate proceedings under the County Code. The only procedural requirements applicable to the land use application currently before the Hearings Officer are contained in ZDO 1300. Those rules do not allow the Hearings Officer to order discovery or the attendance of witnesses at the upcoming appeal hearing on December 15, 2011. The Applicant's motion is denied.

Thereafter, the applicant proceeded to the scheduled December 15, 2011 continued hearing.

5. At the December 15, 2011 hearing the Hearings Officer again made statements required by ORS 197.763 and confirmed that no ex parte contacts had occurred other than discussing procedural issues and scheduling since the October 27, 2011 hearing.

a. County planner Rick McIntire again gave an overview of the staff report and recommended denial of the application. He discussed several exhibits to the record concerning the commercial and industrial zoning that had applied to the subject property in past years. He stated that both the commercial and industrial zones as regulated by the 1972 and 1973 version of the ZDO required design review in order to establish a commercial use. He then discussed historic aerial photos beginning in 1970 through July, 2009. Exhibits 11-17. He concluded that the property had not supported a commercial purpose similar in scope to the rock and landscape supply business that had most recently been operating on the subject property.

b. The Hearings Officer notes that during the December 15, 2011 public hearing, assistant County Counsel Rhett Tatum was present to advise Mr. McIntire as to procedural issues. It quickly became apparent to the Hearings Officer that Mr. Bauman on behalf of the applicant desired to present information that appeared to be related to the County's code enforcement action in file V0275-10. The Hearings Officer determined that because both the applicant and the County were represented by counsel that I would allow the applicant to "make his record" by submitting whatever evidence into the record he so desired. Rather than determining on the spot which evidence would be deemed relevant, I allowed both parties to note objections to certain evidence or arguments during the proceedings.

c. Mr. Bauman testified on behalf of the applicant and began by asking Mr. McIntire some questions about the file in V0275-10 which had become part of the application record through Exhibit 22. He asked Mr. McIntire whether he had read everything in that file. Mr. McIntire responded that he had read most of the written materials. At that point in the hearing the Hearings Officer explained the substantial evidence standard that applies in land use proceedings. Mr. Bauman continued with questions about Mr. McIntire's personal knowledge of the subject property as compared to determinations that could be made based on the aerial photographs and exhibits 11 through 17.

The Hearings Officer asked Mr. Bauman what evidence in Exhibit 22 undermined the Planning Director's decision. Mr. Bauman responded that if Mr. McIntire had not reviewed all the evidence in Exhibit 22, then it was a basis for the Hearings Officer to reject the Planning Director's decision. He noted that he had made a request for various discovery in connection with Exhibit 22. At that point, the Hearings Officer discussed the "Order on Motion to Compel Discovery" with the understanding that the Land Use Board of Appeals would soon be issuing a decision on the same type of arguments in LUBA No. 2011-052. The Hearings Officer explained that unless LUBA ruled otherwise, the Hearings Officer's decision to deny applicant's motion would govern the balance of the proceedings.

d. Mr. Bauman asked Mr. McIntire if he had ever seen a 1998 letter from County code compliance specialist Gary Hewitt along with other letters and documents identified in Exhibit 30. Mr. McIntire indicated that he did not recall seeing those letters. Mr. Bauman then asked Mr. McIntire about a policy purportedly adopted by the County to forgo enforcement of

certain code violations if a use had been established and operating for the past 10 years. Mr. McIntire recalled that such a policy had been discussed in past years but could not remember precisely what determination had been made. Mr. McIntire testified that in any event the policy related to code enforcement priorities rather than an amendment to the ZDO. He explained that under his recollection, a violation might exist, and enforcement action against the property owner would be placed in abeyance, but the underlying zoning code had not been changed. At that point in the hearing, the Hearings Officer questioned the relevance of the information presented by Mr. Bauman on the issue of demonstrating a nonconforming use on the subject property.

e. Mr. Bauman then led Mr. Emmert through questions related to Exhibit 30. Mr. Emmert requested to be put under oath for the purposes of this testimony, and although such a procedure is not commonly considered to be necessary for land-use hearings, the Hearings Officer swore him to truthfulness. Mr. Bauman then asked Mr. Emmert questions about the so-called "10 year rule." He explained that his recollection was that in the 1990s the County Board of Commissioners ("BOCC") had considered and adopted a policy that would allow property owners to continue a use, particularly for properties along Highway 212, if the use had been in place for the prior 10 years. This testimony covered several letters in Exhibit 30, and culminated with an explanation of a July 3, 1998 letter from Mr. Emmert to Gary Hewitt which Mr. Emmert recounts a conversation which he argued established his right to continue historical uses on many of his properties. It was Mr. Emmert's contention that subsequently the BOCC adopted a policy to allow those historical, or nonconforming uses, to continue without interference or threat of code enforcement action.

f. The Hearings Officer asked both County staff and the applicant, pursuant to what authority Mr. Hewitt was acting in the identified interchanges with Mr. Emmert as documented in Exhibit 30? Mr. McIntire responded that his understanding was that the policy, if it formally existed at all, was direction to the code enforcement division, and did not represent a change in the zoning regulations for any of the lands to which the policy might apply. At that point, Mr. Tatum suggested that the County might request that the record be left open to gather more information on the alleged policy and submit related information into the record. Mr. Bauman requested an opportunity to respond to any such information and Hearings Officer noted his comment.

g. Mr. Bauman then asked Mr. Emmert questions about his acquisition of the subject property and the historic use of the subject property. He testified that the property had been used to store crushed concrete, recycled asphalt, boulders and smaller crushed rock since the early 1990s. In response to a question from Mr. Bauman, Mr. Emmert also testified that a sign similar to the sign in the photo shown in Exhibit 31 had been on the subject property since the early 1980s. Mr. Emmert stated that he had been stockpiling, storing and selling those materials at the subject property continuously for the past 20 years. Mr. Emmert also testified that the tenant that had been on the property until the recent code violation action, had moved the rock and landscape supply business to a new location.

Mr. Bauman then asked Mr. Emmert a series of questions related to a business called "Carver Rock." The questions and testimony were related to Mr. Emmert's belief that he had been treated differently than other rock and landscape supply businesses in the County. Mr. Bauman submitted Exhibit 32 and 33 into the record at that time. Mr. Emmert then identified and listed other businesses similar to his own in what he believed to be similar zones near his properties that had been allowed uses to which Mr. Emmert had been denied.

At that point in the hearing the Hearings Officer attempted to summarize the applicant's argument with respect to the so-called "10 year rule" for the purpose of explaining to the applicant, staff, and the public that it was important to understand if the policy was a formal act of the BOCC in the form of an ordinance or amendment of the ZDO. The Hearings Officer explained that if the policy was so formalized as part of the ZDO, and was still in effect, then the policy might be considered a rule or regulation that would apply to the nonconforming use verification application. Mr. Bauman then suggested that if such a policy did exist and was later revoked by the BOCC that a property owner's property rights could be adversely affected and that property owners might be damaged by relying on that policy to their detriment. The Hearings Officer then made clear that it was important to understand the origins and authority for the policy that was being discussed (the "10 year rule") because I was unconvinced that the records in Exhibit 30 were sufficient to understand whether the policy was formally adopted.

This discussion was followed by an interchange between the Hearings Officer and Mr. Bauman discussing the requirements of substantial evidence to support the applicant's nonconforming use claims. Specifically, Mr. Bauman argued that he had made a request for discovery for certain documents that he believed were in the County's possession that would substantiate the applicant's arguments regarding disparate treatment by the County. The Hearings Officer asked Mr. Bauman whether the applicant had made any public records request outside of the motion to compel discovery, and he answered that he had not. Both Mr. Bauman and I acknowledged that the question of whether the applicant was entitled to discovery was awaiting a decision by LUBA in LUBA No. 2011-052. Again, the Hearings Officer explained the requirements of substantial evidence in land-use cases and suggested that the substantial evidence standard could not be met by an allegation that the County was in possession of records that would substantiate the applicant's claims, particularly when no public records request had been made. In response, Mr. Bauman orally made a public records request at the hearing for all the records that he had previously requested at some prior point in the proceedings.

h. Moving then to public testimony, Martha Waldemar testified in opposition that for the past 11 years she has driven past the property and observed soil being dumped on the property. However, the rock business recently on the property was the first she had seen.

i. Several proponents testified in favor of the application. Of the relevant testimony offered, several individuals, including Jim Meyers and Eric Saub,

testified to driving by the property since the early 1990s and observing the use described by Mr. Emmert. Several individuals testified to seeing soil and rock products stored on the subject property.

Les Poole testified that he remembered the 10 year rule as being a policy from the BOCC. Similarly, Ralph Hadley recalled that Commissioners Larry Sowa and Bill Kennemer told him that their policy was to not pursue code enforcement where the use had been established for 10 or more years.

j. During the applicant's rebuttal time, Mr. Bauman requested that the hearing be continued and the record be left open in order to make a public records request and/or work with the County to obtain the desired records in order to place them in the record of this application. During this discussion, Mr. Bauman verbally waived the 150 day rule applicable to this application. The Hearings Officer then asked the applicant how much time the applicant wanted to leave the record open, and when a continued hearing would be appropriate. After discussion with County staff and Mr. Bauman, the parties agreed to set a date for a continued hearing to January 19, 2012 with the understanding that the applicant could request another continuance either at that hearing or before, and the record would stay open during the interim.

6. On January 4, 2012, LUBA issued its order in LUBA No. 2011-052. That decision is Exhibit 34. On January 10, 2012, Mr. Bauman submitted a letter that acknowledged the issuance of the LUBA decision, and requested a further continuance of the January 19, 2012 hearing to a date to be agreed upon by himself, Mr. Tatum and Mr. McIntire. Exhibit 35. The letter also contains an attachment including public records request forms that Mr. Bauman submitted by a letter to Mr. Tatum dated December 22, 2011. This same letter states that the applicant waives the 150 day rule as it applies to this application.

7. At the January 19, 2012 continued hearing, Mr. Bauman on behalf of the applicant requested a continuance of 60 days. The County did not object and stated that the reason for the continuance was to allow the County to respond to the applicant's public records request and that it was a large request involving multiple County departments and would take a significant amount of time to respond. At the end of the hearing the Hearings Officer continued the hearing until March 15, 2012 and left the record open until that time.

8. On February 7, 2012, Mr. Bauman submitted a letter to the County which attached a post hearing status report on the code enforcement actionV0275-10. Exhibits 36 and 37. Then, on March 8, 2012, County Council asked that the March 15, 2012 hearing be further postponed to April 26, 2012 to allow additional time to research documents subject to the public records request made by the applicant. That request was granted and the hearing was set to April 26, 2012 at 9:30 a.m.

9. At the April 26, 2012 hearing, the Hearings Officer recounted the chronology of the application and related hearings beginning with the Planning Director's

August 17, 2011 decision through the April 26, 2012 continued public hearing. At the hearing, Mr. Bauman submitted documents that had been obtained through the public records request along with a cover letter from Mr. Tatum explaining that research. Exhibit 38. During the hearing, Mr. Bauman requested that the hearing be further continued in order to submit additional testimony through something approximating an evidentiary hearing in which the County DTD administrator Mr. Cam Gilmour would be present to explain and answer questions about the so-called 10 year rule. The County had no objection to continuing the hearing. The Hearings Officer then granted the request and continued the hearing to June 7, 2012, at which time a date for yet another continued hearing would be set based on scheduling coordination between the County and the applicant and Mr. Gilmore's availability.

10. On June 7, 2012 the date of the continued hearing was set for July 26, 2012 at which time it was anticipated that Mr. Gilmore could attend the hearing.

11. At the July 26, 2012 hearing, the Hearings Officer once again made all the statements required by ORS 197.763 and declared that no ex parte contacts had occurred since the last hearing. The Hearings Officer also again advised the County and the applicant that due to the unusual format of the hearing, that being primarily a cross-examination of Mr. Cam Gilmour, that the Hearings Officer would not be attempting to referee relevant or irrelevant testimony and would rely upon the parties' counsels to protect their clients' interests. Objections to certain evidence or information would be noted for the record only. Prior to the cross-examination, the Hearings Officer accepted Exhibit 39 into the record which in content is the same as Exhibit 38, but reordered by Mr. Bauman to facilitate his presentation.

a. Mr. McIntire again briefly summarized the Planning Director's decision under appeal. He clarified that since 1972 the County had required design review for commercial retail operations in the County's commercial zones. He reiterated that although the subject property had been used for storage of various materials including asphalt, concrete, rocks and boulders, that no retail commercial use had ever been established and no design review approval had ever been obtained for the subject property. Mr. McIntire concluded by explaining that the focus of the nonconforming use verification was on the question of whether a commercial retail use, like the landscaping business which had recently vacated the subject property, had ever been established or approved either prior to zoning or after zoning with the required design review approval.

b. Mr. Bauman prefaced his presentation by explaining that the information submitted in Exhibit 39, and the purpose of inviting Mr. Gilmour to testify at the hearing was to further explore the nature of the County's code enforcement procedures as they might apply to the subject property. Mr. Bauman was clear that his purpose was to support Mr. Emmert's contention that the structure of the County's code enforcement policies granted unfettered discretion to County staff in a way that violated federal due process and equal protection rights.

Mr. Bauman questioned Mr. Gilmour about his knowledge of whether Mr. Emmert had in past years discussed with him complaints about disparate treatment from various County employees related to properties owned by Mr. Emmert. Mr. Gilmour responded that he was aware of those complaints. Mr. Bauman further questioned Mr. Gilmour as to his knowledge about whether there were any procedures or policies in the County which allowed an individual to subpoena or compel the County to produce documents within its possession for the purpose of submitting those documents into a land use proceedings or code enforcement proceeding. Mr. Gilmour responded that he was not aware of any such policy.

Mr. Bauman also questioned Mr. Gilmour about the existence and nature of any policies or procedures for reviewing the conduct of various County employees in their duties in the code enforcement section. Mr. Bauman then discussed with Mr. Gilmour the concept of unfettered discretion. At this point in the hearing, the Hearings Officer and Mr. Bauman had a brief discussion concerning his ability to submit documents into the application record to which Mr. Bauman responded that he continued to assert that the lack of a mechanism by which an applicant could tell the County to produce documents for placing those documents in the record was essentially a violation of due process. At the same time, the Hearings Officer explained his interpretation of LUBA's recent decision in LUBA No. 2011-052 which the Hearings Officer summarized.

Mr. Bauman then asked Mr. Gilmour whether the County's code enforcement actions were complaint driven. He responded that the County policy at that point was that potential violations are investigated based on complaints from the public. Mr. Gilmour also clarified that although the initiation of code enforcement investigation may begin with a complaint, all of those enforcement mechanisms lead to the option for a hearing in front of a Hearings Officer.

Mr. Bauman then asked about how the code enforcement department handles anonymous complaints of code violations. The focal point of his questioning was whether under the County's procedures it might be possible for a County code enforcement employee to manufacture or fabricate a complaint related to specific property. Mr. Bauman asserted that the County did not have any mechanism for protecting against that result. Mr. Gilmour replied that if such allegations were made against an employee that informal investigation would occur. However, he stated that in his 10 or more year tenure with the County such an allegation had not to his knowledge ever been made. After further questioning, Mr. Gilmour also stated that it was the County's policy to pursue anonymous complaints and hold confidential complaints in confidence while investigating the complaint itself.

Mr. Bauman then argued to Mr. Gilmour that because there was no procedure in the County that allowed a property owner accused of a code violation by an anonymous or confidential complainant to confront that complainant, that it was possible for a County employee to fabricate the complaint without any procedural due process protections for the property owner. Mr. Gilmour felt that he could not respond adequately

to Mr. Bauman's suggestion and that if such problems existed that they could be taken up for review at any time.

The Hearings Officer asked about the applicant's assertion that Continuing Order in V0275-10 compelled the applicant to pursue the nonconforming use application. It was Mr. Bauman's initial response that the County's code enforcement action deprived Mr. Emmert of property which triggers due process protections, and that he was compelled to pursue the verification of nonconforming use. The Hearings Officer asked whether Mr. Emmert could have simply ignored the Continuing Order in V0275-10 and sought relief in Circuit Court for the alleged due process violations. Mr. Bauman responded, without necessarily agreeing with the Hearings Officer, that many other legal avenues were open to Mr. Emmert including proceeding to federal court to pursue a Section 1983 action. Mr. Bauman concluded by reiterating his assertion that the code enforcement action and the current land use application were part of one legal proceeding and could not be separated. As a result, he argued that the due process violations made the underlying code enforcement action impermissible.

After a brief recess, Mr. Bauman continued interviewing Mr. Gilmour on the origins of the "10 year rule" referring to Exhibit 39. Mr. Gilmour stated that around the year 2000 the concept of creating seven levels or priorities for reviewing and pursuing code violations was created. This background is generally covered in Exhibit 39-K which was a memo dated July 2, 1999. Responding to Mr. Bauman's questions, Mr. Gilmour explained the general concept that in order to respond to a heavy case load of open code violation files (maybe as many as 2800) an approach was created which if a use could be verified to have been in operation for the prior 10 years, and did not represent a health, life or safety violation, then the code enforcement department would not seek enforcement of the County code, including the ZDO, for those uses. Mr. Bauman asked if Mr. Gilmour recalled whether the BOCC adopted the "10 year rule" in the form of a "philosophy" at a board meeting in or around June 14, 2001. Exhibit 39-O. Mr. Bauman wanted to know what did the BOCC actually pass in the form of a formal County action. Mr. Gilmour did not recall the "philosophy" being adopted as "law" by ordinance.

Mr. Gilmour noted that his belief was that the philosophy was adopted at some point, for certain by 2003, by resolution, based on Exhibit 39-H. He noted that such strong direction from the BOCC was unusual because under state law the County was not required to have a zoning enforcement program, and that other local governments did not have one. Mr. Bauman asserted that there was never a "vote" of the BOCC to adopt the "philosophy" and no actual delegation of authority to prioritize code violations occurred.

Mr. Bauman then identified Resolution 2005-398 which was a document in which the "Code Compliance Philosophy" was amended. Exhibit 39. The Hearings Officer asked Mr. Gilmour whether he had any reason to believe that the document was not authentic. He responded "no." Mr. Bauman then directed Mr. Gilmour's attention to Exhibit 39-I and asked what was the origin of repealing the so-called "10 year rule" in 2009. Exhibit I includes Resolution 2009-112 and associated attachments.

Mr. Bauman asked Mr. Gilmour whether he or any County employee had requested a legal opinion on the issue of whether repealing the 10 year rule might cause adverse economic consequences to property owners who had relied on the policy. Mr. Gilmour responded he did not believe so. The discussion then moved on to Exhibit 39-I and Mr. Bauman questioned what was actually rescinded in Resolution 2009-112.

Mr. Bauman returned to the question of how long Mr. Gilmour had known Mr. Emmert, and whether there were any discussions with Mr. Emmert in which he asserted that his properties were generally treated differently than others in the County for the purposes of code enforcement. Mr. Gilmour responded that such discussions had occurred, and that in his opinion Mr. Emmert strongly believed that to be the case.

At the end of the hearing the Hearings Officer determined that continuing the hearing was necessary to accommodate further testimony by the applicant and the public who were not able to testify due to time constraints. The date certain for the continued hearing was set for December 20, 2012 at 12:00 p.m.

12. Prior to the September 20, 2012 continued hearing, Mr. Bauman submitted a letter dated September 19, 2012 which in essence contained a final argument for the applicant. Exhibit 41. The letter included attachments which were the previously submitted public records requests and related documents.

13. At the September 20, 2012 public hearing, the Hearings Officer once again made the statements required by ORS 197.763 and explained that no ex parte contacts had occurred since the prior hearing.

a. The hearing picked up where the July 26, 2012 hearing left off which was further testimony by Mr. Emmert recounting his recollections of discussions with Mr. Gilmour about the "10 year rule." His recollection was that Mr. Gilmour and various County Commissioners over the years had discussed and confirmed with him that uses on Mr. Emmert's properties would be allowed to continue as a type of "grandfathered" use. Mr. Emmert testified that he was not informed of the policy change which revoked or rescinded the "10 year rule."

Mr. Emmert then reiterated his prior testimony about the acquisition and use of the subject property. He stated that he was familiar with the subject property before he purchased it. His recollection was that it had been used to store various rock and boulders, and fill dirt and material probably back into the 1970s. Mr. Emmert testified that he stored soil, crushed concrete, crushed asphalt and boulders over the years since he acquired the property. Mr. Emmert took issue with the County's position that the prior landscape business use had ceased.

Mr. Emmert testified that he had conversations with Mr. Gilmour about the subject property and its grandfathered status at many times, particularly after October, 2009. He stated that again was not told that the 10 year rule had been rescinded. Mr.

Emmert claimed that there was never was a "complaint" about the use of the subject property as asserted by the County. He stated that he followed up with the person (later identified as a person from Oak Grove Disposal) who made a call to code enforcement and that person explained that he had simply called the County to ask whether yard debris could be accepted at the subject property.

Mr. Bauman then testified about the complaint driven nature of the County's code enforcement system and how it is ripe for abuse of procedural due process. He once again asserted that if a respondent in a code enforcement action could not confront the person filing the "complaint" then no opportunity exists to determine the veracity of that complainant. Mr. Bauman again argued that he had sought various public records which were not provided, including a data base of violations which may have existed since the early 2000s. He argued that if that data base had been available it might have shown that Mr. Emmert had been treated differently than others in the County.

Mr. Bauman then again requested that the code enforcement action V0275-10 and land use application Z0288-11-NCU be considered one action and that the records for each file be considered part of the other. In response to that request, the Hearings Officer again described the distinction and separation of land use applications under the ZDO and code enforcement actions under the applicable provisions of the County code. The Hearings Officer denied Mr. Bauman's request.

Mr. Bauman then suggested if the enforcement action V0275-10 were to be dismissed for any reason that the nonconforming use verification in Z0288-11-NCU would be moot because the Compliance Hearings Officer's Continuing Order mandated that the nonconforming use verification be sought. The Hearings Officer explained that it was up to the applicant to determine whether to proceed with the nonconforming use application, and that there might be many reasons to do so without regard to the pending code enforcement action.

Mr. Emmert then reminded the Hearings Officer of similar rock and landscape operations, including Carver Rock, and three other properties under similar zoning which had enforcement actions against them abated by the County.

b. The Hearings Officer then opened testimony to the public. Mr. Jim Meyers reiterated his prior testimony that rock, concrete, boulders and similar materials had been stored on the subject property since 1971. Mr. Woods made similar testimony. Herb Child accused County staff of activities that were unethical.

c. Mr. Bauman stated that he would stand on the record in his final rebuttal. He again argued that the complaint driven code enforcement system was ripe for abuse. He again testified, referring to the County's complaint document in V0275-10, that the call from Oak Grove Disposal was not intended to be a complaint – and was a second complaint to a prior anonymous complaint. Thereafter, Mr. Emmert made some concluding comments.

d. Mr. Bauman stated that his presentation was complete. There was no request that the record be left open. The hearing and the record closed on September 20, 2012.

C. DISCUSSION

1. Before reaching the substantive arguments in this appeal, the Hearings Officer deems it important to discuss various aspects of the hearings process by which the application was reviewed and made available for public comment.

a. As an initial matter, it is worth noting that at no point during this very long land-use hearing process did the applicant or any other party request that the Hearings Officer recuse himself for any reason. The opportunity to make such a request is provided under ZDO 1303.07. No such request was made despite the fact that by coincidence I have separate contracts with Clackamas County to serve as both the primary Land Use Hearings Officer and the Compliance Hearings Officer.

b. There is a discussion below of the applicant's due process and equal protection arguments. The hearing summary discussed above shows that Mr. Emmert very strongly believes that his constitutional rights have been systematically violated by Clackamas County staff for many years due to alleged disparate treatment of his uses of real property as compared to other owners and business operators and County. The applicant argued repeatedly during the land-use hearing process that those constitutional violations, including the County code enforcement action V0275-10 and the Compliance Hearings Officer's Continuing Order in that matter, infected the land-use process with procedural errors. As part of the applicant's appeal, he also consistently argued that code enforcement file V0275-10 and land use application Z0288-11-NCU must be viewed as a single case file and reviewed together.

c. The Hearings Officer on several occasions rejected the applicant's argument that somehow V0275-10 and Z0288-11-NCU constituted one case file, and explained the reasons that each file must be reviewed separately within the separate review forums afforded for each. Enforcement of the County code, including enforcing compliance with the ZDO is controlled by Chapter 2.07 of the County code. That chapter provides the procedure for processing code enforcement actions that reach a hearing before the Compliance Hearings Officer. Chapter 2.07.070 governs the structure of those hearings and sets forth the role of the Compliance Hearings Officer in that process. Chapter 2.07.090 describes and limits the Compliance Hearings Officer's authority to requiring remedial action to abate proven violations of the County code including violations of the ZDO.

In contrast, land-use applications and hearings, including appeals of Planning Director decisions such as this one, are governed by the ZDO. The administrative procedures that apply to a verification of nonconforming use are set forth in ZDO 1305.05 which authorizes the Planning Director to make the initial land use decision. If the application is denied, the applicant can appeal to the Hearings Officer under ZDO

1305.02(D). That provision directs the Hearings Officer to conduct appeals under the procedural requirements of ZDO 1300. The current application and appeal hearing are subject to those requirements only, and there is no authority or discretion for the land-use Hearings Officer to also rule on alleged code violations. Therefore, the Hearings Officer finds that no procedural error occurred by the Hearings Officer's refusal to review V0275-10 and Z0288-11-NCU together as one matter.

d. The applicant on several occasions made an argument that represented an alleged procedural error which could be construed as an argument that the applicant's substantial rights were prejudiced during the hearing. That argument was that the applicant desired, and felt legally entitled to, discovery as it is practiced in state and federal courts. This desire for discovery included allegations that the applicant had made various public records requests which the applicant claimed the County had not adequately responded to, and therefore, the applicant wasn't able to submit documents that the applicant believed existed into the decision record before the Hearings Officer. Exhibit 22 and 41. The arguments regarding discovery were essentially identical arguments made at LUBA in *Emmert v. Clackamas* County, __Or LUBA__ (LUBA No. 2011-052, January 4, 2012). In that case, LUBA rejected Mr. Emmert's arguments in part because the decision record was left open for the applicant to provide responsive argument or evidence. Discovery as the applicant seeks to exercise it is simply not an aspect of the land-use hearings process under applicable state statute, or the County's zoning and development ordinance.

For the instant application and hearing, the Hearings Officer agreed with every request by the applicant and the County to both continue the hearing and leave the written record open for almost 11 months. During that time, the record shows that the applicant worked with County staff on public records requests and was provided with County records responsive to those requests. On at least one occasion the Hearings Officer asked the applicant if County planning staff had ever refused to accept documentation into the written record. The applicant's response was "no" with the qualification that the applicant continued to believe that certain documents existed within the County record that would demonstrate that Mr. Emmert had been targeted with code enforcement actions on his many properties in a way that violated his due process and equal protection rights. Leaving aside the question of whether that allegation could be proved at all, on multiple occasions I expressed concern that I did not understand how such information was relevant to demonstrating that Mr. Emmert possessed a protected nonconforming use under the applicable criteria of the ZDO and state law. The record also shows that County Counsel objected on multiple occasions to this line of argument.

While it is hypothetically conceivable that a circumstance could exist where a local government possessed information necessary for an applicant to demonstrate that a land-use application complied with the applicable criteria, the record and Mr. Emmert's allegations in this instance do not represent such a prejudice to substantial rights. The Hearings Officer reaches that conclusion for several reasons. First, of course, is the fundamental requirement that the applicant bears the burden of proof to demonstrate the applicable criteria are met. The Hearings Officer has never agreed with the applicant's

theory that enforcement action V0275-10 and Z0288-11-NCU are one and the same matter, and never agreed with the corollary argument that somehow the burden of proof has shifted from the applicant to the County. Second, the record indicates that County staff, and Assistant County Counsel Rhett Tatum responded to the applicant's public records request with diligence and provided records that were reasonably obtainable within the County's archives. Although the applicant steadfastly claimed that certain information, including a database of code violations, existed somewhere in the County archives, the Hearings Officer is unpersuaded that County staff intentionally withheld documents. Third, and most importantly, the applicant's stated reason for desiring the public records was directed at alleged federal procedural due process and equal protection violations and had no reasonable connection to evidence that would show that a commercial retail landscape and rock supply business had existed on the subject property for the requisite period of time to constitute a protected nonconforming use.

e. For all of the above stated reasons, the Hearings Officer finds that the procedural requirements mandated by state law and the County code that apply to the processing of land use applications were satisfied fully during these proceedings.

2. The first substantive question is whether substantial evidence in the record demonstrates that a commercial landscape and rock supply business has continuously existed on the subject property sufficient to constitute a protected nonconforming use.

a. Verification of a nonconforming use is subject to ORS 215.130 and ZDO 1206.06(A)(2). State law allows counties to adopt provisions which allow applicants to demonstrate the "existence, continuity, nature and extent of the use only for the 10-year period immediately preceding the date of application."[1] If the applicant can do that, it creates a presumption that the nonconforming use has continued from that point in time up to the time the application was filed. This has the effect of shifting the burden of proof from the applicant to the County to rebut, by a preponderance of the evidence, that the use was not continuous. *Lawrence v. Clackamas County*, 164 Or App 462 (1999).

ZDO 1206.06 provides two methods of verifying a nonconforming use. One is ZDO 1206.06(A)(2) which is nearly identical to ORS 215.130(10)(a). The other is ZDO 1206.06(A)(1) which allows for verification if the applicant:

> Proves that the nonconforming use lawfully existed at the time of the adoption of zoning regulations, or a change in zoning regulations, which

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[1] ORS 215.130 - (10) A local government may adopt standards and procedures to implement the provisions of this section. The standards and procedures may include but are not limited to the following:

(a) For purposes of verifying a use under subsection (5) of this section, a county may adopt procedures that allow an applicant for verification to prove the existence, continuity, nature and extent of the use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application;

prohibited or restricted the use; and, the nonconforming use has not been subsequently abandoned or discontinued;

b. As noted in prior Hearings Officers' decisions regarding nonconforming use verifications, it is the role of planning staff and the Planning Director to be critical and skeptical of evidence submitted by an applicant. Nonconforming uses are disfavored in planning law and practice because they represent a limitation on present and future land-use planning for a given area. Complicating this task is the fairly routine lack of adequate documentation because the period of time prior to initial zoning becomes ever more remote as time goes by. Nevertheless, as the Hearings Officer noted at the appeal hearing, these types of applications must be supported by substantial evidence in the whole record. Substantial evidence is information that a reasonable person would rely upon in making a similar decision. *Younger v. City of Portland*, 305 Or 346 (1988).

c. The historic use of the subject property is one of the few areas of this appeal that is not substantially in dispute. The Planning Director found, based in part upon historic aerial photos, that the subject property had been vacant or used for storage of various materials including fill and rock perhaps as far back as 1970. Exhibits 11 -17. The Planning Director concluded that no active commercial or industrial use could be observed on the property between 1970 through 2009.

The Planning Director's analysis is essentially corroborated by Mr. Emmert's testimony during the July 26, 2012 and September 20, 2012 public hearings. Mr. Emmert's testimony, which at the July 26, 2012 hearing was given under oath, described a long practice of storing boulders, rock, fill, and crushed concrete and asphalt on the subject property. Mr. Emmert also testified that as far back as the early 1990s these materials had not only been stored but also sold from the property from time to time. Exhibit 31 is a photo of a sign that Mr. Emmert testified was placed on the property during that period. The sign states that drain rock, to which 2"-12" inch round rock, landscape boulders, and fill sand/topsoil" is available and gives a phone number to call if those products were desired. Exhibit 31.

d. Mr. Emmert's disagreement with the Planning Director's decision is not primarily over what was actually occurring on the property since 1970, but what that historic use would allow in the form of a protected nonconforming use. The applicant submitted the current application for a nonconforming verification decision to establish an active rock products business that between 2010 and early 2012 was operating on the subject property under the name Portland Rock and Landscape Supply. Exhibit 22. The record shows that Portland Rock and Landscape Supply was an active retail use that included many features that apparently did not exist prior to 2009 on the subject property. Those features include a portable office, heavy equipment including trucks, loaders and a backhoe. The business also appears to have included a storage shed and areas divided by Jersey barrier for the placement of various rock, soil, and landscape supplies, and palletized rock products in significant quantities. The business was also enclosed by chain-link fence with a sign that advertized regular hours of operation. Exhibit 22.

e. As part of this application, the applicant has not claimed that a prior land use approval exists allowing a commercial retail business like Portland Rock and Landscape Supply. Indeed, this entire appeal process is concerned with the question of whether Mr. Emmert was in the past, or is in the future, required to obtain such a land-use approval in order to operate a commercial retail business similar to that of his former tenant. The applicant did not appear to dispute the Planning Director's finding that by 1972, regardless of the zoning of the property, some type of design review approval would have been required for a use like Portland Rock and Landscape Supply. The Hearings Officer can find no substantial disagreement between the Planning Director and the applicant that no such land-use approval was historically sought or obtained. Therefore, the essential question presented in this appeal is whether the historic use of storing rock, fill, boulders, and other landscape materials on the subject property and passively selling them by advertising a phone number on-site is sufficient to allow the significantly intensified scope of use as represented by Portland Rock and Landscape Supply.

f. For a nonconforming use to be recognized it must at minimum be legally established. Here, there does not appear to be any significant disagreement that storing the rock, fill and other materials on the subject property had been occurring since Mr. Emmert first purchased the property. Whether the passive sales of those materials constituted a legal use or not is not conclusively established in this record. All parties appear to assume that those sales were occurring so infrequently and at such a low level as to constitute a permissible use of the property. It is not clear to the Hearings Officer whether that use was ever nonconforming in the Industrial and Commercial zoning to which the property has be subject over the years. Nevertheless, based on the record, the Hearings Officer concludes that to the extent that current zoning would forbid such uses, Mr. Emmert possesses a protected use to store rock, boulders, fill, sand, and crushed concrete and asphalt on the subject property and sell those products passively, without on-site facilities or personnel, at the frequency and in quantities not exceeding the amounts stored and sold prior to 2009. However, that historic use does not necessarily bless an expansion of the passive sales of rock and landscape products that has since 2010 occurred on the subject property.

g. Once legally recognized, nonconforming uses under both state law and ZDO 1206.01 are allowed to continue. However, if the intensity of use is allowed to dwindle, the nonconforming use can be lost or significantly limited in scope. *Tigard Sand and Gravel v. Clackamas County*, 149 Or App 417 (1997), *Clackamas County v. Portland City Temple*, 13 Or App 459 (1973), *Warner v. Clackamas County*, 111 Or App 11, 13 (1992), *Hendgen v. Clackamas County*, 115 Or App 117 (1992) , *Cory v. Clackamas County*, __Or LUBA __ (LUBA No. 2002-181, June 18, 2003). Even when intermittent use is alleged, without evidence of consistent use over the course of a given year, a nonconforming use may be found to have been discontinued. *City of Mosier v. Hood River Sand and Gravel*, 206 Or App 292 (2006).

More importantly in this instance, state statute does not allow nonconforming uses to be expanded without review.[2] This requirement is reflected in ZDO 1206.05(B) which only allows alterations of nonconforming uses to occur through a land use review (ZDO 1305.2) if the applicant provides evidence substantiating:

> 1. The alteration in the structure and/or other physical improvements, or change in the use, will, after the imposition of conditions as authorized below, have no greater adverse impact on the neighborhood than the existing use, structure(s), and/or physical improvements; and
>
> 2. The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.06. The verification and alteration/change requests may be combined as a single application.
>
> 3. The Planning Director may impose conditions of approval on any alteration of a nonconforming use, structure(s), or other physical improvements permitted under Subsection 1206.05(B), when deemed necessary to ensure the mitigation of any adverse impacts.

Therefore, state law and the ZDO forbid the expansion or alteration of a verified nonconforming use without the review required by ZDO 1206.05(B).

h. With the above legal foundation in mind, the record of this application shows that Portland Rock and Landscape Supply represented a significantly more intense use on the subject property than had previously been established through Mr. Emmert's historical use. Specifically, there is no record of a sales office, resident heavy equipment, organized and divided areas for rock and landscape supplies, regular retail sales hours, fenced retail sales area, palletized rock products or storage shed on the subject property prior to 2010. Neither ORS 215.130, nor ZDO 1206.01, nor the case law discussed above support the applicant's contention that his historical use of the subject property would allow the alteration and intensification of use represented by Portland Rock and Landscape Supply. For this reason, the Hearings Officer agrees with the Planning Director's findings that since 1972, the type of retail commercial use represented by Portland Rock and Landscape Supply would have at least required a design review approval, and that for a many years between 1980 and 2006 would not have been permitted by the applicable zoning.

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[2] Ors 215.130(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section.

ORS 215.130(9) As used in this section, "alteration" of a nonconforming use includes:
(a) A change in the use of no greater adverse impact to the neighborhood; and
(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

i. In order to undertake the active commercial retail use represented by Portland Rock and Landscape Supply, Mr. Emmert would need to seek either an alteration of nonconforming use under ZDO 1206.05(B) or comply with the requirements of the current General Commercial zoning designation. The historic use the subject property is not sufficient to justify a more intense use.

3. The second question is whether the County's so-called "10 year rule" eliminated any otherwise applicable zoning regulations and review requirements for the subject property.

a. As described above, the applicant requested the opportunity to obtain public records, invite and cross-examine County administrator Cam Gilmour, and to submit various other documents into this record regarding the so-called "10 year rule." The Hearings Officer permitted the applicant to do so, with the warning that the Hearings Officer suspected that such information would be irrelevant, or at minimum non-determinative, in verifying the alleged nonconforming use of the subject property. Because I have concluded that the applicant possesses a protected use to store and passively sell certain rock and landscaping supply products, but not to run a commercial landscape supply business like Portland Rock and Landscape Supply, the question of whether the so-called 10 year rule applies is largely moot. Since there never has been an established active commercial retail landscape supply business on the subject property of the scope now desired by the applicant, the 10 year rule could not act to protect that use from the current requirements of the ZDO. For that reason, the existence or applicability of the 10 year rule has no legal relevance to this application.

b. For the sake of completeness of this decision, the Hearings Officer makes the following findings with regard to the so-called "10 year rule." In general, I find that there is substantial evidence in the record to support the analysis and conclusions of the April 19, 2012 letter from Assistant County Counsel Rhett Tatum in Exhibit 38. For the purposes of this land use review, the most important fact regarding the so-called 10 year rule is that it was a policy enacted by the BOCC to prioritize the enforcement of alleged violations of the County code. It was not a change made to the County's zoning and development ordinance itself. While there is some uncertainty and argument about exactly when the policy was adopted, it appears to have gone into effect sometime between 1999 and 2003. As explained in more detail below, it also appears to have been rescinded by the BOCC on October 29, 2009. Because the 10 year rule did not change any of the nonconforming use provisions of the ZDO, it is legally impossible that it acted to make previously nonconforming uses conforming or authorized under applicable the land-use regulations of the County. Indeed, the Hearings Officer questions, without concluding, whether the County could make such a change consistent with ORS 215.130.

For the purposes of the current application, to the extent there was a policy to suspend active code enforcement for certain uses, the record shows that the policy was rescinded and replaced by a different policy in Resolution 2009-112. Exhibit 38-I. During the public hearings, Mr. Bauman raised many questions about the nature of the

policy that was rescinded and questioned whether Resolution 2009-112 actually rescinded the so-called "10 year rule." The Hearings Officer finds that regardless of what the enforcement policies had been prior to resolution 2009-112, the resolution itself clearly replaces former policies with a new or modified "Code Compliance Philosophy" and "Policies and Compliance Priorities" as shown on Exhibit A to the resolution. As part of the resolution packet, a cover letter from Scott Caufield dated October 29, 2009 stated as follows:

> This specific resolution will resend our 10 year policy. Under that policy if an owner, subject to code enforcement action, can show through credible proof that their violation had existed for more than 10 years from the date of a complaint and was not health, life or safety related for enforcement purposes that violation would fall into a low priority status and no further action would be taken by the County. By rescinding this policy, no matter how long a violation has existed, it will be subject to code requirements for a land-use permit process. Exhibit 38-I-24.

The meeting minutes of the October 29, 2009 BOCC meeting show that Resolution 2009-112 was adopted as presented. The Hearings Officer finds that this information constitutes substantial evidence that the so-called 10 year rule never represented an amendment to the ZDO, and that a reasonable person would conclude that the 10 year rule, and any prior code enforcement policies and prioritization of enforcement was entirely replaced by Exhibit A to the resolution and was duly approved by the BOCC at least in part for the purposes explained in Scott Caufield's October 29, 2009 cover letter to the resolution.

c. For all the reasons described above Hearings Officer finds that the so-called 10 year rule did not and could not have relieved Mr. Emmert of the requirement to seek land-use approval for the type of commercial retail use on the subject property as represented by Portland Rock and Landscape Supply.

4. The third question is whether Mr. Emmert's allegations that his federal due process and equal protection rights have been violated in case file V0275-10 infects the current nonconforming use review proceeding in a way that mandates that the desired commercial retail landscape supply business be approved.

a. According to the applicant, the June 8, 2011 Continuing Order in code enforcement case file V0275-10 forced Mr. Emmert to submit the application for verification nonconforming use being reviewed here. That Continuing Order is located at Exhibit 22-99. The applicant argued that the initiation of case fileV0275-10 and associated citations in the amount of $350 represented a violation of Mr. Emmert's federal constitutional rights for a number of different reasons. Among those reasons, as Mr. Bauman argued, was that the manner in which the County structured and administered its code enforcement activities allowed County staff unfettered discretion to adversely affect Mr. Emmert's property rights.

As I have attempted to describe above, Mr. Bauman's legal theory was that due to the connection between the Compliance Hearings Officer's June 8, 2011 Continuing Order, and the nonconforming use verification application in Z0288-11-NCU, the land-use Hearings Officer must treat those files is one action. Based on this theory, the applicant argued that the land-use Hearings Officer should dismiss the code enforcement case file V0275-10, and recognize Mr. Emmert's nonconforming use right to a commercial retail landscape supply business as described above.

b. The Hearings Officer finds that it is not necessary or indeed within the Hearings Officer scope of authority to respond to the applicant's federal constitutional claims. The ample discussion of procedural issues at the beginning of this section demonstrates that as to the land-use proceeding itself, from the filing of the application through the multiple hearings, no federal constitutional errors were alleged or proven. However, for the purposes of completeness, and to aid possible further review of this matter, the Hearings Officer feels obligated to make the following observations.

1. The June 8, 2011 Continuing Order describes the County's enforcement history related to the subject property. Exhibit 22-99. That Continuing Order describes Mr. Emmert's arguments made at a March 31, 2011 code enforcement hearing. As part of his testimony, and as a defense against the County's enforcement action, Mr. Emmert set forth what would otherwise be considered an affirmative defense arguing that no code violation could have occurred because he had a protected nonconforming use to pursue the landscape business taking place on his property. During that March 31, 2011 hearing, the Compliance Hearings Officer left the record open to allow briefing on the question of whether the Compliance Hearings Officer possessed authority to rule on the existence of the nonconforming use. During the open record period the County submitted a Land Use Board of Appeals case – *Watson v. Clackamas County*, 28 Or LUBA 602 (1995) which strongly indicated that a code enforcement Hearings Officer lacks authority to make land-use decisions within the context of the code enforcement hearing. Mr. Emmert disputed the applicability of the case. As part of the June 8, 2011 Continuing Order, the Compliance Hearings Officer found that it was outside the authority of the Compliance Hearings Officer to rule on the existence of a nonconforming use, and allowed Mr. Emmert to pursue an application to verify his alleged nonconforming use through the land-use review process and bring the results back to the Compliance Hearings Officer.

The Hearings Officer finds that to the extent that the June 8, 2011 Continuing Order is legally relevant to this land-use application at all, the assertion by the applicant that he has been legally compelled to seek the nonconforming use verification is simply legally incorrect. The Hearings Officer raised this issue and discussed it with Mr. Bauman during at least one of the continued public hearings. Far from being required to pursue the current nonconforming use verification application, Mr. Emmert could have sought various other venues for pursuing his alleged constitutional claims. Those include at a minimum allowing the deadlines identified in the Continuing Order to expire and then challenging any resulting final order in Clackamas County Circuit Court or LUBA. This information is set forth in the required legal notices attached to the June 8, 2011

Continuing Order. Exhibit 22-107. As Mr. Bauman noted at one of the hearings, another avenue could have been to take the same constitutional claims the Circuit Court for a declaratory ruling or to federal court to pursue the Section 1983 claim.

For these reasons, and because there is an absolute separation between code enforcement hearings conducted under the authority of Chapter 2.07 of the County code and land-use review hearings conducted under the ZDO 1300, the Hearings Officer finds that there is no merit in the applicant's allegation that alleged violations of his constitutional rights as part of the code enforcement process in V0275-10 could infect the present land-use hearing process and dictate a certain outcome in that process.

2. Mr. Emmert's constitutional claims rest upon, and are dependent upon, the theory that the County has deprived him of certain property rights on the subject property and has done it in a way that violates federal due process and equal protection rights. With regard to this argument, the Hearings Officer simply notes that the analysis regarding Mr. Emmert's alleged nonconforming use shows that he is not been deprived of property right by the County's land-use regulations. It is by now axiomatic that cities and counties can adopt zoning and land use regulations that when properly applied do not deprive individuals of their constitutional property rights. State statute through ORS 197 and 215 set forth the protections afforded to property owners in the state. This decision itself identifies allowable uses of the subject property that can continue to occur without County land-use review - those being the storage of rocks, boulders, fill, and crushed concrete and asphalt and the passive sales of those materials. In addition, Mr. Emmert has the right to pursue any number of uses allowed within the General Commercial zone, a comprehensive plan and zoning designation he sought and was granted for the subject property in 2006. He also has the right to pursue an alteration of the identified nonconforming use through the process described in ZDO 1206.05(B). The requirement to seek approval through one of these review processes in order to pursue the desired use is not tantamount to the deprivation of a property right.

D. CONCLUSION

Based on the above findings and discussion, the Hearings Officer concludes that the Planning Director's decision should be affirmed consistent with the findings and conclusions set forth in this decision.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein, and the public record in this case, the Hearings Officer hereby **AFFIRMS** the Planning Director's denial of application Z0288-11-NCU. The applicant possesses a limited nonconforming use consistent with the above findings, but does not possess a protected nonconforming use to an active commercial retail landscape supply business of the type or intensity represented by his former tenant Portland Rock and Landscape Supply.

February 5, 2013.

Kenneth D. Helm

Kenneth D. Helm
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 1304.01 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(8) 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 1304.02 provides that 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).

CERTIFICATE OF MAILING

I certify that on the date set forth below I mailed a copy of the above HEARINGS OFFICER FINAL ORDER by first class mail to the following participants at the address shown:

Terry W. Emmert
11811 SE Hwy 212
Clackamas, OR 97015

Kenneth C. Bauman
1406 Upland Dr
Portland, OR 97221

Clackamas CPO Barbara Kemper
PO Box 2136
Clackamas, OR 97015

Terry Emmert
10470 SE Hillcrest Dr
Happy Valley, OR 97086

Mack Woods
11677 S Macksburg Rd
Canby, OR 97013

Les Poole
15115 SE Lee Ave
Milwaukie, OR 97267

Eugene Schoenheit
13780 SE Fernridge Ave
Milwaukie, OR 97222

Jerry Ghigheri
PO Box 171
Lake Oswego, OR 97034

Martha Waldemar
PO Box 306
Clackamas, OR 97015

Martha Waldemar
13900 SE Renoir Ct
Clackamas, OR 97015

Yvonne Lazarus
2063 SE Torbank Rd
Milwaukie, OR 97267

Maryanna Moore
18340 Cornell Pl
Gladstone, OR 97027

Sylvia Kraljev
11711 S Macksburg Rd
Canby, OR 97013

Cam Gilmour
150 Beavercreek Rd
Oregon City, OR 97045

Dean Brown
150 Beavercreek Rd
Oregon City, OR 97045

The original of this decision has been filed with the Planning Division, Clackamas County Department of Transportation and Development.

DATED this 5th day of February, 2013

Linda J. May

Linda J. May, Permits Specialist

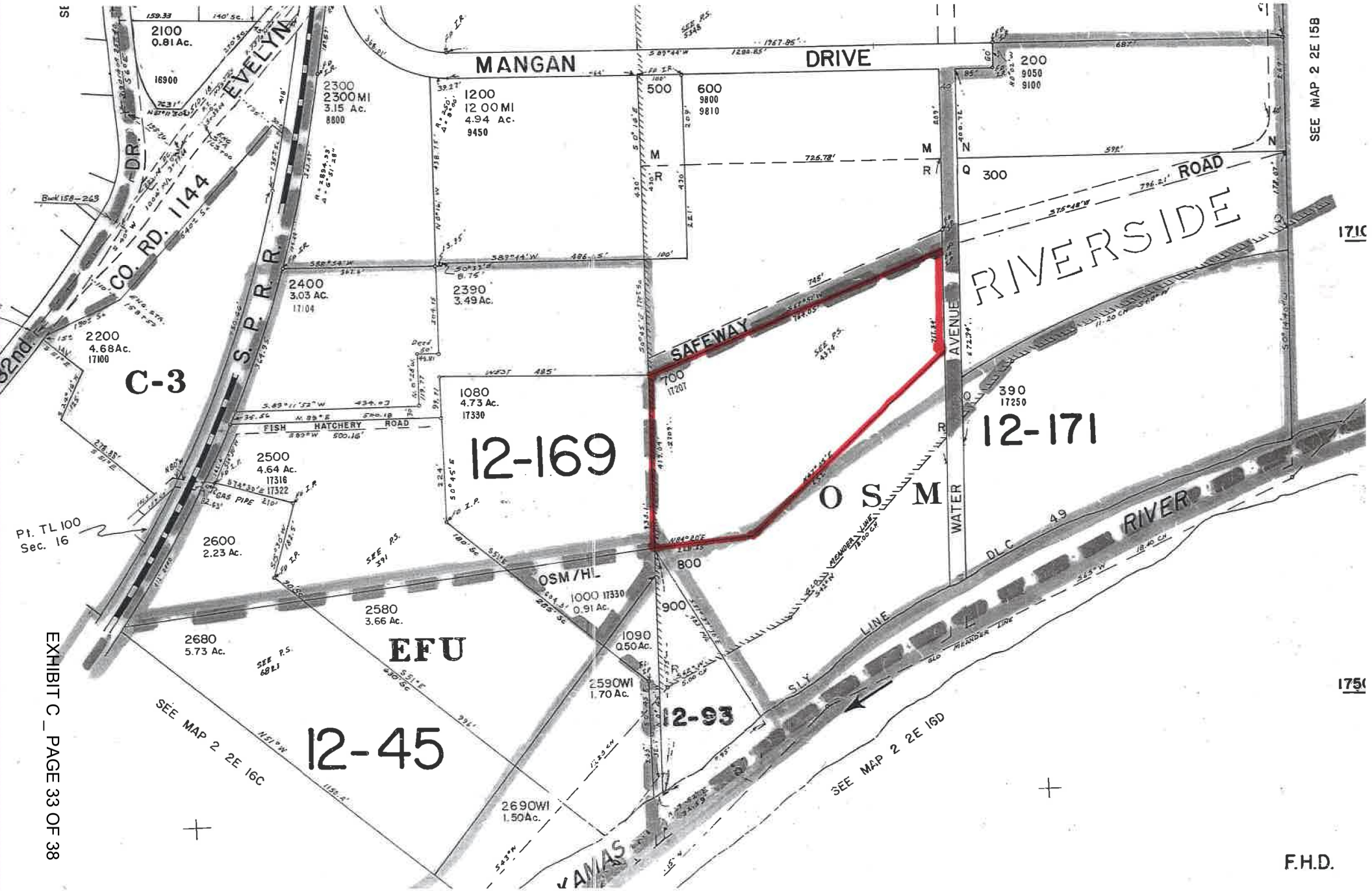


EXHIBIT C _ PAGE 33 OF 38

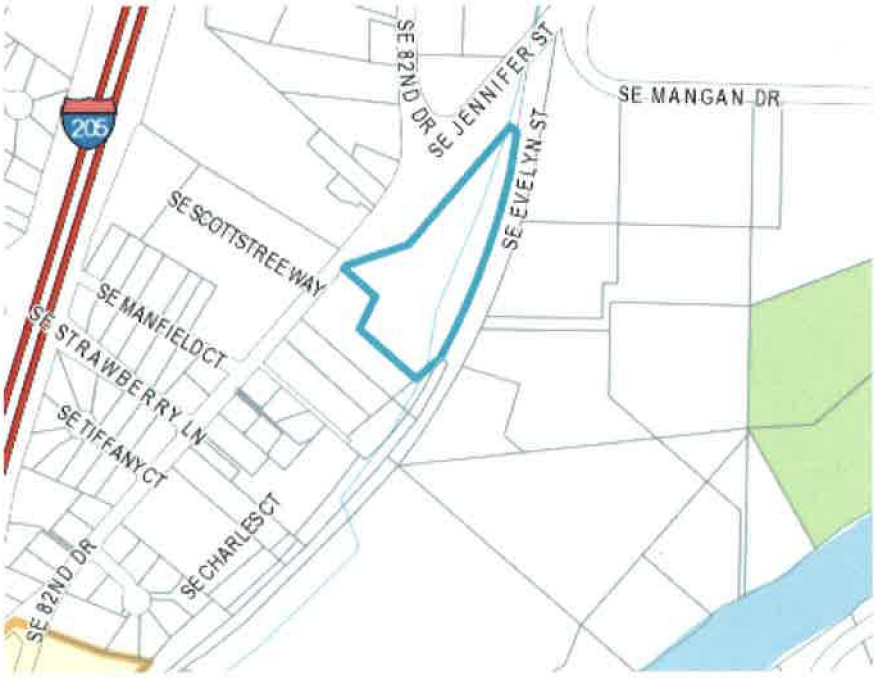
Clackamas County

Geographic Information Systems
168 Warner-Milne Rd
Oregon City, OR 97045

Property Report

EMMERT TERRY W
11811 SE HWY 212
CLACKAMAS, OR 97015

Location Map:



Site Address:	**17100 SE EVELYN ST**
Taxlot Number:	**22E16A 02200**
Land Value:	**608100**
Building Value:	**0**
Total Value:	**608100**
Acreage:	
Year Built:	
Sale Date:	
Sale Amount:	**0**
Sale Type:	

Land Class:
200
Building Class:

Neighborhood:
Area 05 commercial East
Taxcode Districts: **012051**

Site Characteristics:

UGB:	METRO
Flood Zone:	Not Available

Zoning Designation(s):

Zone	Overlays:	Acreage:
C3	N/A	4.67

Fire	**Clackamas RFPD #1**
Park	**North Clackamas Park District #3**
School	**North Clackamas**
Sewer	**CCSD1**
Water	**CLACKAMAS RIVER WATER**
Cable	**Not Identified**
CPO	**Clackamas**
Garb/Recyc	**Clackamas Garbage Co**
City/County	**Clackamas Co.**

This map and all other information have been compiled for preliminary and/or general purposes only. This information is not intended to be complete for purposes of determining land use restrictions, zoning, title, parcel size, or suitability of any property for a specific use. Users are cautioned to field verify all information before making decisions.

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Kauppi, Jennifer

From: Dance, Lizbeth
Sent: Tuesday, December 2, 2025 1:24 PM
To: Hall, Andrea
Subject: RE: Rock crushing

ZDO 510 in the C-3 zone

A- means Accessory Use with an established primary use.

Recycling Drop Sites are allowed as an accessory use and per ZDO 819 are limited to domestic goods, other large goods (like construction debris)are not acceptable. Goods cannot be kept on property for more than 5 days so the intake and repurposing of concrete and other rock style materials does not qualify as a Recycling Drop of site.

510.05 Development Standards:

510.05 DEVELOPMENT STANDARDS

The following development standards apply:

A. Outdoor Operations in the NC District: In the NC District, primary and accessory uses, including storage of materials, products, or waste, shall be wholly contained within an approved structure.

B. Operational Impacts in the C-2 and C-3 Districts: In the C-2 and C-3 Districts, processes and equipment employed and goods processed or sold shall be limited to those that are not objectionable by reason of odor, dust, smoke, cinders, gas, fumes, noise, vibration, refuse matter, or water-carried wastes.

In table 510-1

This use might fall into manufacturing facilities but table 510 excludes the primary processing of raw materials. Not sure it would be approvable because they would need to meet 510.05 and design review standards.

Lizbeth Dance (she/her)
Planner II

Ldance@Clackamas.us. | 503-742-4524
Hours: M-Th 7:00 am to 4:30 pm every other Friday 7:00 am -3:30 pm

The Planning and Zoning public service telephone line (503-742-4500), email account (zoninginfo@clackamas.us), and front lobby are staffed Monday through Thursday from 8:00 a.m. to 4:00 p.m.

From: Hall, Andrea <Andreahal@clackamas.us>
Sent: Tuesday, December 2, 2025 11:09 AM
To: Dance, Lizbeth <LDance@clackamas.us>
Subject: Rock crushing

Hi Liz,

I did a little more research and found that the company operating on the site is calling themselves a recycling center for construction debris.

From DP Rock ///

"DP ROCK /// ACCEPTS DIFFERENT TYPES OF CONSTRUCTION MATERIALS (concrete, asphalt, rock, dirt, brick, marble, tile) DP ROCK /// ALSO OFFERS DIFFERENT TYPES OF PRODUCTS MANUFACTURED OUT OF RECYCLED MATERIALS (crushed concrete, crushed rock, crushed asphalt, top soil, ecology concrete blocks) DELIVERY SERVICES AVAILABLE on orders of 10 yards or more."



Does this change anything? Would this be allowed in a C3 zone?

Thank you!

Andrea Hall
Senior Code Enforcement Specialist
Clackamas County Code Enforcement Division
150 Beavercreek Rd.
Oregon City, OR 97045
503-742-4467
Monday – Friday 8am to 4:30pm
Lobby hours 8:00 a.m. until 4:00 p.m. Monday -Thursday

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Kauppi, Jennifer

From: Lord, Melissa on behalf of ZoningInfo
Sent: Tuesday, December 9, 2025 2:27 PM
To: Hall, Andrea
Subject: RE: C3 Zone

Hi Andrea,
I've looked through our Rolodex and Accela for prior land use applications and don't see any prior land use application on file for this lot. A new Design Review (and pre-application conference) will be required to establish this use.

Thanks!
Mel

Melissa Lord (she/her)
Senior Planner

Clackamas County Planning and Zoning Division
150 Beavercreek Road, Oregon City, OR 97045
ZoningInfo@Clackamas.us | 503-742-4500

The Planning and Zoning public service telephone line at 503-742-4500 and email account at zoninginfo@clackamas.us are staffed Monday through Thursday from 8:00 a.m. to 4:00 p.m., and the public service lobby is open Monday through Thursday from 8:00 a.m. to 4:00 p.m.



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Any opinion or advice provided herein is informational only, and is based on any information specifically provided or reasonably available, as well as any applicable regulations in effect on the date the research was conducted. Any opinion or advice provided herein may be revised, particularly where new or contrary information becomes available, or in response to changes to state law or administrative rule, future legislative amendments of the Zoning and Development Ordinance, decisions of courts or administrative tribunals, or quasi-judicial land use decisions.

This is not a land use decision as defined by Oregon Revised Statutes 197.015(10).

From: Hall, Andrea <Andreahal@clackamas.us>
Sent: Tuesday, December 9, 2025 8:14 AM
To: ZoningInfo <ZoningInfo@clackamas.us>
Subject: FW: C3 Zone

From: Hall, Andrea
Sent: Thursday, December 4, 2025 7:44 AM
To: ZoningInfo <ZoningInfo@clackamas.us>
Subject: RE: C3 Zone

Is there any design review required?

From: ZoningInfo <ZoningInfo@clackamas.us>
Sent: Wednesday, December 3, 2025 4:15 PM
To: Hall, Andrea <Andreahal@clackamas.us>
Subject: RE: C3 Zone

Hi Andrea,

I agree with your reading of the code, and I do not see any requirement in C-3 for the storage of trucks to be enclosed within a building, which is a requirement in other zones but not in C-3. Therefore, the storage of trucks on that property is a primary permitted use.

Thanks,

Taylor Campi, Senior Planner
Planning and Zoning
Clackamas County Department of Transportation and Development
150 Beavercreek Road, Oregon City, OR 97045
www.clackamas.us

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The Planning and Zoning public service telephone line at 503-742-4500 and email account at zoninginfo@clackamas.us are staffed, and the public service lobby is open, Monday through Thursday from 8:00 a.m. to 4:00 p.m.



Any opinion or advice provided herein is informational only, and is based on any information specifically provided or reasonably available, as well as any applicable regulations in effect on the date the research was conducted. Any opinion or advice provided herein may be revised, particularly where new or contrary information becomes available, or in response to changes to state law or administrative rule, future legislative amendments of the Zoning and Development Ordinance, decisions of courts or administrative tribunals, or quasi-judicial land use decisions.

This is not a land use decision as defined by Oregon Revised Statutes 197.015(10).

From: Hall, Andrea <Andreahal@clackamas.us>
Sent: Wednesday, December 3, 2025 3:22 PM
To: ZoningInfo <ZoningInfo@clackamas.us>
Subject: C3 Zone

Hi Planning,

I have a property at 17100 SE 82nd Ave. where to owner is allowing the parking of semi trailers, see attached photo. I see that the storage of commercial vehicles may be allowed as a primary use. Does the ZDO mean that the semis can be parked in conjunction with another allowed use on the property? On this property the parking of the semis have nothing to do with the other commercial activity on site. It's almost like if I were a truck driver and I didn't have a place at my house to park my truck, I can park it here until I leave again.

Thank you!

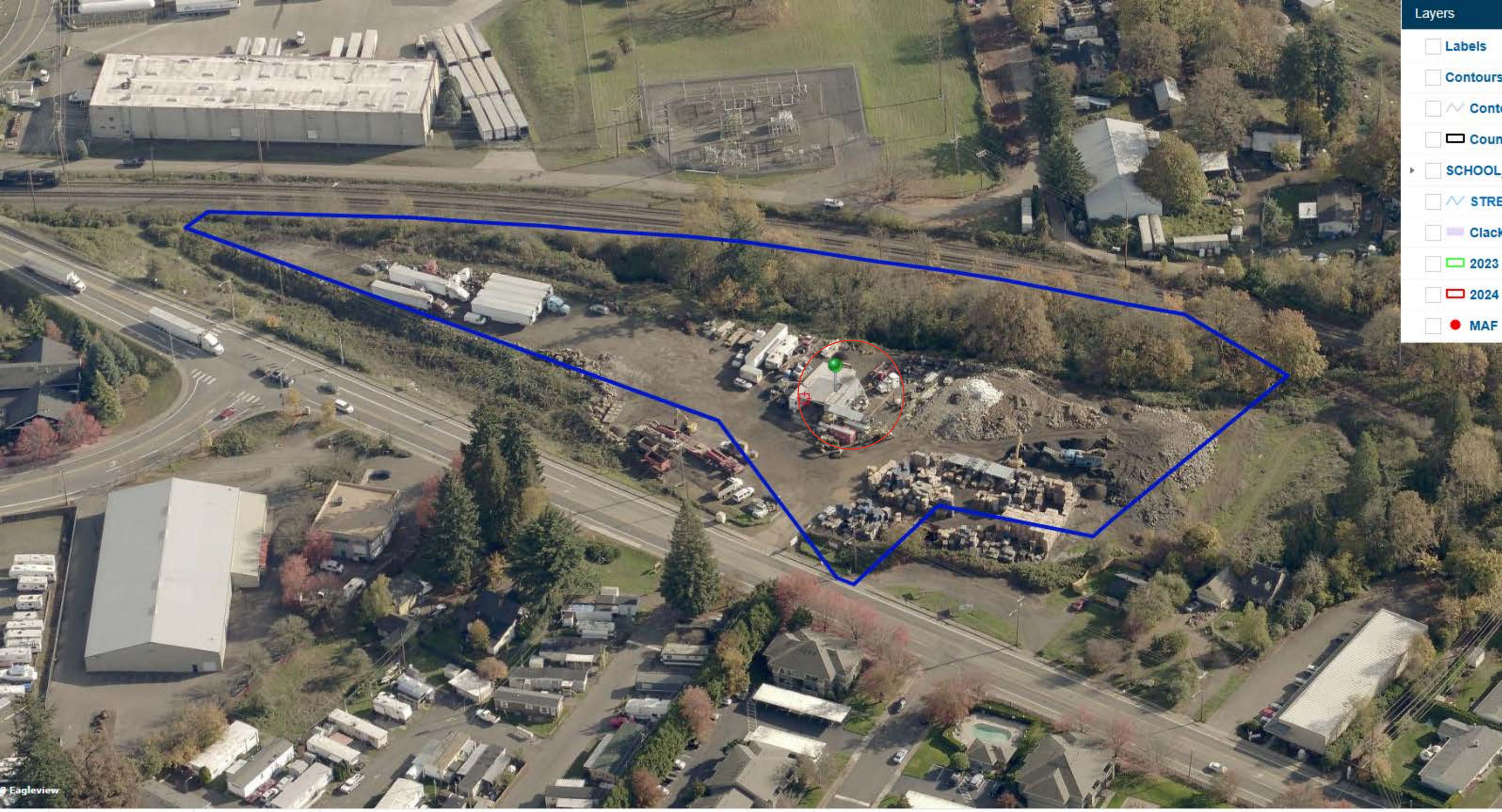
Andrea Hall
Senior Code Enforcement Specialist
Clackamas County Code Enforcement Division
150 Beavercreek Rd.
Oregon City, OR 97045
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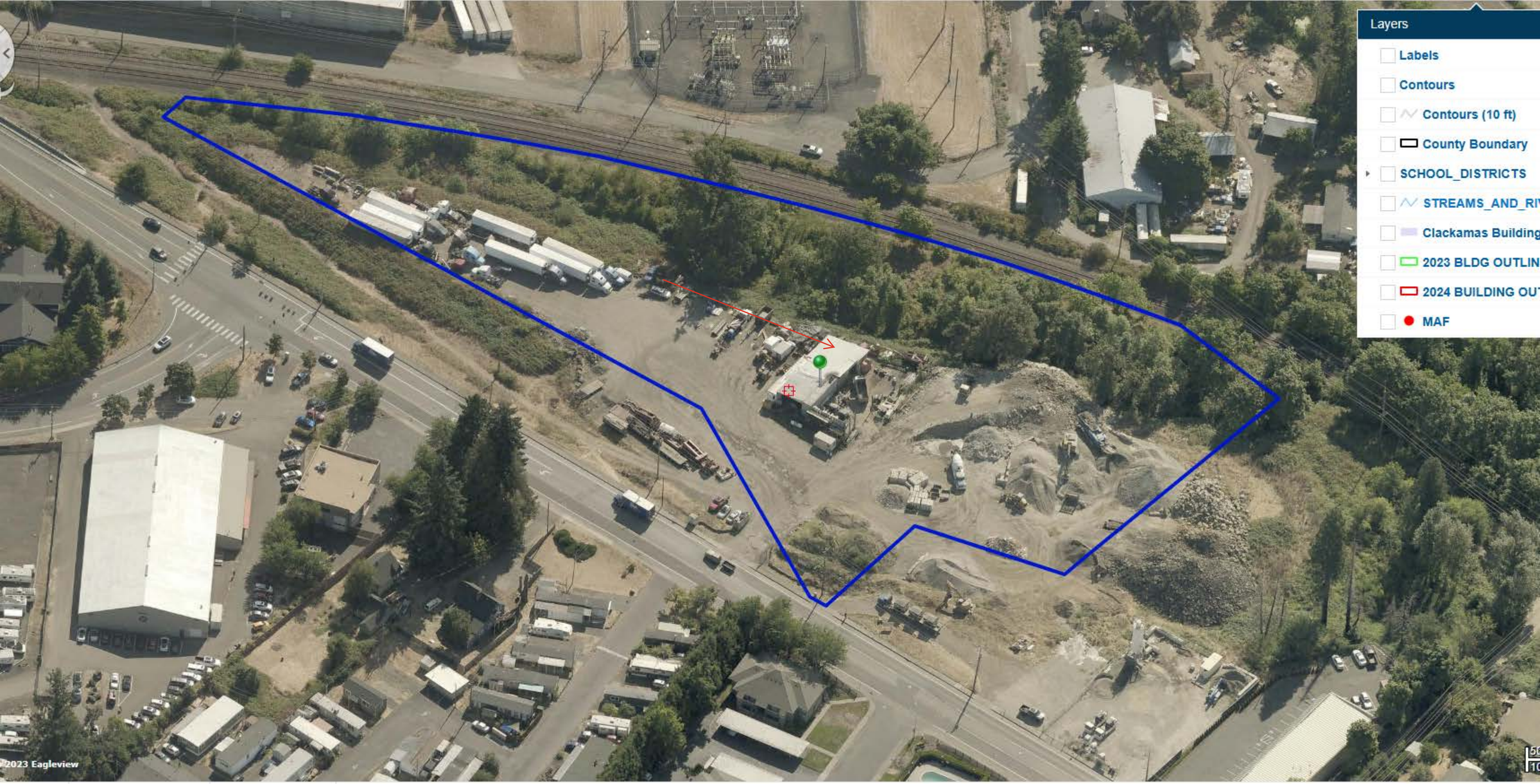
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5/2017
Serenity Shop! As You Wish
17100 SE 82nd Dr
RECS Clackamas
Village Place
SE Scottstree Way
DP Excavating, Inc
SE 82nd Dr
SE Evelyn St
SE Morgan Dr
SE Fish Hatchery Rd
Classic Pool Spa & Hearth
SE 82nd Dr
SE Fish Hatchery Rd
tle Creek Care
Imagery Date: 5/22/2017
45°23'53.43" N



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2024 BUILDING OU
MAF
2023 Eagleview
(Oblique)
Aug 2023 - Sep 2023
image 1 of 18
08/16/2023



ts (New Selection):

axlot 1

ns	Taxpayer Name	In Care Of	Primary Address	Jurisdiction	Map Number	Taxlot Number
	EMMERT TERRY W		17100 SE 82ND DR, Clackamas, 97015	Clackamas County	22E16A	22E16A 02200

CLACKAMAS COUNTY

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

December 16, 2025

Terry W Emmert
11811 SE Hwy 212
Clackamas, OR 97015

Subject: Violation of the Clackamas County Code V0048325

Site Address: 17100 SE 82nd Dr., Clackamas. OR 97015
Legal Description: T2S, R2E, Section 16A,Tax Lot 2200

It has come to the attention of the Clackamas County Code Enforcement Section that there DP Rock is operating from the subject property, over and above what was determined to be a Non-Conforming Use, without land use approval. This constitutes a violation of Section 510 of the Clackamas County Zoning and Development Ordinance and is a Priority 2 violation.

To abate the violation you must complete one of the following no later than **January 19, 2026:**

1. Discontinue the use;
2. Move the use to an approved location; or
3. Obtain land use approval is possible. Please feel free to reach out to Planning and Zoning by phone at 503-742-4500 or by email at zoninginfo@clackamas.us to determine whether other options exist.
   a. If you pause the use and begin the land use process, we will pause the enforcement of this file. If the use continues on the property before you obtain land use approval, we will continue with the enforcement of this file.
   b. If you obtain land use approval, you must implement all conditions of approval before resuming the use. A final inspection may be required to confirm that all conditions of approval have been implemented before closure of the file.

There are also semi-trucks being stored on the property. The storage of the semi-trucks and trailers is an allowed use in the General Commercial zone, however, a review of County records has revealed that there is no Design Review for the activity. This is a violation of Section 1102 of the Clackamas County Zoning and Development Ordinance and a Priority 3 violation. Please submit a Pre-application Conference Request form to the Planning Department no later than **January 19, 2026.**

Additionally, extensive grading and excavating activity has occurred on the property as well as fill material being brought to the site without a grading permit and approved final inspection and some of the area involved is designated as a Habitat Conservation Area District (HCAD). Work in this area without a permit is a violation of Chapter 9.03 of the Clackamas County Code as it pertains to Excavation and Grading and Section 706 of the Clackamas County Zoning and Development Ordinance and are Priority 1 violations.

In order to abate the Zoning and Development Ordinance violation for work in a protected area, please submit a habitat mitigation plan to revegetate the area prepared by a Natural Resource Specialist to the Planning Department no later than **January 19, 2025**.

In order to abate the grading violation, please submit the grading permit application, technically complete plans and appropriate fees to the Clackamas County Building Codes Division no later than **January 19, 2026.** Permits are accepted online, for more information on this process please refer to the County's website at https://www.clackamas.us/building . Requests for additional information must be responded to within 10 days from the date of the request. The permit must have the fees paid in full within ten days of being notified the permit is ready. Please schedule all inspections so that final inspections may be obtained not later than 45 days of the date of the permit being issued. Please be advised that Department of Environmental Quality and the Oregon Division of State Lands may have additional requirements regarding the work done near the waterway.

Lastly, a review of County records has revealed that the structure on the property was built between 2017 and 2018 without the benefit of permits or inspections. This constitutes a violation of Chapter 9.02.040(A)(C)(D) of the Clackamas County Code as it pertains to the Application and Enforcement of the Clackamas County Building Code and is a Priority 1 violation.

In order to abate the building code violation, please submit all required building permit applications, technically complete plans and appropriate fees to the Clackamas County Building Codes Division no later than **January 19, 2026.** Permits are accepted online, for more information on this process please refer to the County's website at https://www.clackamas.us/building .

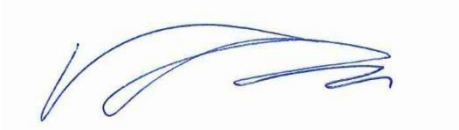
Requests for additional information must be responded to within 10 days from the date of the request. The permit must have the fees paid in full within ten days of being notified the permit is ready. Please schedule all inspections so that final inspections may be obtained not later than 45 days of the date of the permit being issued.

If you have any questions concerning the commercial activity, Design Review, or mitigation requirements, please contact the Planning Division at 503-742-4500, by email zoninginfo@clackamas.us or, you may stop by our offices at 150 Beavercreek Rd., Oregon City, OR 97045, Monday through Thursday between the hours of 8:00 a.m. and 4:00 p.m.

If you have any questions concerning the grading or building permit requirements, please contact the Building Codes Division at 503-742-4240. Or, you may stop by our offices at 150 Beavercreek Rd., Oregon City, OR 97045, Monday through Thursday between the hours of 8:00 a.m. and 4:00 p.m.

Please feel free to contact me if you have any questions. My direct telephone number is 503-742-4467 or email andreahal@clackamas.us .

Thank you for your prompt attention to this matter.



Andrea Hall
Senior Code Enforcement Specialist
Clackamas County Code Enforcement Division

Important Notices

1. **Administrative Compliance Fees.** It is important that you contact the Code Enforcement Section to resolve the violations described in the enclosed letter. **An administration compliance fee of $100 will now be assessed monthly until the violations are abated.**

2. **Failure to resolve those violations may result in one or more of the following:** (1) a citation and fine, and (2) referral of this matter to the County Code Enforcement Compliance Hearings Officer, and (3) a lien being placed against the subject property for the amount due from citations and fees which will accrue interest.

3. **Request for a Hearing:** If you dispute the existence of the violations described in the enclosed letter you may request a hearing before the Hearings Officer by sending a written request for a hearing, including your name and address to: Code Enforcement Section, 150 Beavercreek Rd., Oregon City, OR 97045, or at codeenforcement@clackamas.us.

4. **Potential Fines and Penalties:** The Clackamas County Code provides for Citation fine amounts of up to $514 and additional civil penalties imposed by the Hearings Officer of up to $3,500 for each day the County verifies the noncompliance. Fine amounts and civil penalties may be assessed for each cited violation and may be assessed separately against each named party. In addition, the Hearings Officer may order the violation to be abated by the County at the expense of the property owner(s) and responsible parties.

5. **Non-Compliance may result in a lien upon your property:** Fines and costs are payable upon the effective date of the final order declaring the fine and costs. Fines and costs under this Chapter are a debt owing to the County, pursuant to ORS 30.460, and may be collected in the same manner as any other debt allowed by law. If fines or costs are not paid within 60 days after payment is ordered, the County may file and record the order for payment in the County Clerk Lien Record.

6. **Final Order may be enforced in Circuit Court:** Also, be advised that noncompliance with a Hearings Officer's Order may result in the matter being referred to County Counsel for legal action in Circuit Court which may result in additional penalties or other sanctions.

7. **Recurrences will result in additional Citations:** Finally, recurrences of abated violations may result in the issuance of a citation without prior notice.


04/06/2026 11:35


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ONLY
Clack. Indust. Cntr.
Gladstone
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04/06/2026 11:35

CLACKAMAS COUNTY

Citation No. 2500483

Case No. V0048325

ADMINISTRATIVE CITATION

Date Issued: April 8, 2026

Name and Address of Person(s) Cited:

Name: Terry Emmert
Mailing Address: 11811 SE Hwy 212
City, State, Zip: Clackamas, OR 97015

Date Violation(s) Confirmed: On the 6th day of April, 2026 the person(s) cited committed or allowed to be committed, the violations(s) of law described below, at the following address:

Address of Violation(s): 17100 SE 82nd Dr., Clackamas, OR 97015

Legal Description: T2S, R2E Section16A, Tax Lot(s) 02200

Law(s) Violated:

☒Chapter 9.02 of CCC Application and Enforcement of the Clackamas County Building Code, Section 9.02.040 (A)(C)(D)
☒Chapter 9.03 of CCC Excavation and Grading, Section 9.03
☒Title 12 and 13 of CCC Zoning and Development Ordinance, Section 706 and 1102

Description of the violation(s):

1) Commercial activity without approved design review

Maximum Civil Penalty $1,500.00 Fine $308.00

2) Grading in the Habitat Conservation Area District without approved land use

Maximum Civil Penalty $3,500.00 Fine $514.00

3) Fill material removed and added without an approved grading permit

Maximum Civil Penalty $3,500.00 Fine $514.00

4) Structure built between 2017 and 2018 without approved building permits and inspections.

Maximum Civil Penalty $3,500.00 Fine $514.00

You may avoid paying the civil penalty by abating the violation(s) and paying a total fine of $1,850.00. If you have questions regarding how to abate the violation(s) contact Clackamas County Code Enforcement at the number listed below. Please be advised a $100.00 monthly administrative fee is being assessed.

I hereby certify under penalties provided by ORS 153.990 that I have reasonable grounds to and do believe that the above person(s) committed or allowed to be committed the violation(s) described on this form.

Citation issued by: Jennifer Kauppi Date: April 8, 2026
Telephone No.: 503-742-4759 Department Initiating Enforcement Action: Code Enforcement

PLEASE READ CAREFULLY!

You have been cited for the violations(s) of law stated on the front of this form. If you fail to exercise one of the following options within fifteen calendar days of the citation date, the County may request a Default Order from the Compliance Hearings Officer finding you in violation and assessing fines and monthly administrative fees, or the County may request a hearing before the Compliance Hearings Officer following which you may be ordered to pay the maximum civil penalty and abate the violation.

Options:

1. Abate the violation and pay the fine including the administrative compliance fees that have accrued. Sign the statement of Understanding below and deliver or mail this form, together with a check or money order payable to Clackamas County in the amount of the fine to:

   Clackamas County Code Enforcement Section
   150 Beavercreek Rd.
   Oregon City, OR 97045

2. Request a hearing in writing. You may request a hearing to contest the violation(s) alleged. A written request for a hearing must be mailed to Clackamas County at the address listed above or sent to codeenforcement@clackamas.us.

   A request for hearing must contain all of the following information:
   a. Your name and address;
   b. A copy of the citation or the Citation number and Case number; and,
   c. The description of the relief you are requesting.

   At the hearing, an administrative fee may be assessed by the Hearings Officer in addition to civil penalty(ies) if the Hearings Officer concludes you are responsible for the violation. If a civil penalty is imposed the amount will likely exceed the fine amount on this citation.

STATEMENT OF UNDERSTANDING

I, the undersigned, do hereby acknowledge that I understand the following:

1. By paying the fine I admit the existence of the violation(s) alleged on this citation and my responsibility for it.
2. Paying the fine does not relieve me of my responsibility to correct the violation and to comply with all applicable laws.
3. Until the violation is abated a monthly administrative compliance fee is being assessed.
4. Additional citations may be issued to me if I fail to correct the violation or violate other applicable laws.

Signature: _____Date: _____

Address: _____
City, State, Zip

Contact Number: _____ Email: _____


10/19/2026 10:10


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10/19/2026 10:11


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