

BEFORE THE LAND USE HEARINGS OFFICER  
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Conditional Use Permit for Commercial and Processing Activities in Conjunction With Forest Uses, Including Log Storage, Logging Equipment Storage and Logging Vehicle Storage On Site

**FINAL ORDER**

Case File No: Z0380-25  
(O'Malley)

**A. SUMMARY**

1. The applicant and owner of the subject property is Mike O'Malley. The applicant seeks a conditional use permit for commercial and processing activities that are in conjunction with forest uses to allow the applicant to store, sort, and air-dry timber removed from other properties and brought to the subject site. The applicant also proposes to store logging equipment and logging vehicles (logging trucks) on site. The applicant does not propose having customers come to the site. The applicant proposes up to six employees on a given day driving their personal use vehicles to the site. The employees will retrieve logging vehicles from the site and drive them to the forest, returning to the site with harvested logs. The employees will stack the harvested logs and return home in their personal use vehicle. The stored logs are taken off site for processing into firewood and occasionally for dimensioning for a stream restoration project.
2. The subject site is an approximately 9.82-acre parcel located at No Situs, approximately 600 feet west of the intersection of S. Hwy 212 and E Hwy 26 on the south side of Hwy 212, also known as T02S, R04E, Section 05, Tax Lot 01500, W.M. (the "Property.") The Property is zoned Rural Residential Farm Forest 5-Acres (RRFF-5). The Property has direct frontage and access to Hwy 212 via two established driveways. Both driveways providing access to this state highway are permitted and authorized by the Oregon Department of Transportation (ODOT). This application was deemed complete on November 19, 2025. The subject property is not located within an urban growth boundary. The 120-day timeline for final action on the application pursuant to ORS 215.427(1) is April 20, 2026.
3. On January 15, 2026, the Hearings Officer conducted a public hearing to receive testimony and evidence about this application for a conditional use permit. At the conclusion of the public hearing, the Hearings Officer asked whether any party or member of the audience wanted an opportunity to provide additional evidence, arguments, or testimony, and no one requested this opportunity. The Hearings Officer noted that the record would close at 4:00 pm the day of the hearing. The applicant indicated they wished to keep the record open to review and respond by final written argument to any additional comments submitted to the record the day of the hearing and discussed this with the Hearings Officer. The Hearings Officer then closed the hearing, keeping the record open until 4:00 pm the day of the hearing to receive the evidence discussed at the hearing and any additional public comments, and an

additional period to receive the applicant's final written argument (if any). Additional written comments were received by the County prior to 4:00 pm the day of the hearing and were included in the record. The applicant submitted a final written argument on January 16, 2026 that was also included in the record. The Hearings Officer approved the application, subject to Conditions of Approval.

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony and evidence at the January 15, 2026 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. Notice of the application was sent to applicable agencies and owners of property within 2,640 feet. Comments received relating to the applicable approval criteria are addressed in the Findings Section. Public and Agency Responses Requested:
  - a. Clackamas County Development Engineering Program
  - b. ODOT
  - c. CPOs
  - d. Property Owners within one-half mile
3. The County received written public comments from Craig and Suezette Penniman, some of the owners of the adjacent property immediately to the west of the proposal site. Mr. and Ms. Penniman writes that there are two conditions necessary for their support: 1) Rectification of drainage issues they attribute to unauthorized addition of landfill to the subject property, and 2) Re-zoning of the properties East of Highway 212 from the junction with Highway 26 to include their own property and others, stating: "This change would be in harmony with the extensive Commercial/Industrial nature of the business properties on the West side of Highway 212."
4. The Oregon Department of Transportation (ODOT) submitted a response stating that it reviewed the applicant's Traffic Impact Analysis and agrees with the conclusions of the report noting there will be no impact to the State highway facilities and therefore no additional state review is required. The response further notes that an ODOT Miscellaneous Permit must be obtained for all work in the State highway right of way. The County's Transportation and Engineering Office also submitted written comments with several proposed conditions of approval related to the application.
5. The County received a copy of the Notice of Civil Penalty Assessment and Order in Case No. WQ-NP-NWR-2025-534, assessing a civil penalty to the applicant for the activities on the subject property related to findings that there is an unnamed stream

that flows westward across the upper middle portion of the property and continues west until its eventual confluence with North Fork Deep Creek and the applicant filled approximately 330 linear feet of the stream and approximately 1.12 acres of the fringing wetlands bordering the stream, without required permits for these and other activities.

6. The applicant's representatives, Wendi Kellington and Kelly Huedepohl of the Kellington Law Group, PC, submitted a Pre-Hearing Memorandum with several attachments, in addition to the submitted application and additional submitted application materials. They largely do not dispute the County's staff report and proposed findings but assert that the applicant's activities are allowed outright on the subject RRFF-5 zone property as forest practices and explain that the application was filed as a precaution in response to the County's determination that a conditional use permit is required. Among other things, Ms. Kellington and Ms. Huedepohl also describe the applicant's use of Conex shipping containers, arguing that these containers are not "buildings" because they are mobile and deployable to active forest sites to securely store and stage other equipment. They point to the Clackamas County Land Use Hearings Officer's decision in File No. Z0075-24 (February 24, 2025), cited in the County's staff report, and contend that it incorrectly reaches the conclusion that Conex containers are "structures" and/or "buildings" subject to County site and building design review. Ms. Kellington and Ms. Huedepohl submit several supporting arguments concerning the Conex containers and assert in the alternative that if the Conex containers are "structures" or "buildings" within the meaning of the County ZDO, then they are agricultural buildings exempt from the structural building code under ORS 455.315.
7. At the hearing, County Principal Planner Joy Fields provided background information concerning this application and its review by County staff, providing a presentation and discussion of this application for a conditional use permit and review of applicable review criteria. Ms. Fields explained that the conditional land use permit application is for commercial and processing activities that are in conjunction with forest uses to allow the applicant to store, sort, and air-dry timber removed from other properties and brought to the subject site. Ms. Fields also explained that the applicant proposes to store logging equipment and log trucks on site. Ms. Fields noted that the Oregon Department of Transportation (ODOT) provided comments concerning the application, generally concerned with Traffic Impacts, and a neighbor submitted public comments concerning surface water management, and asking about a zone change for area properties. Ms. Fields noted the staff recommendation of approval with conditions.
8. Ms. Fields provided discussion of several approval criteria, including noting the definition in ZDO Section 202 of "Commercial Use" as "The use of land and/or structures for the conduct of retail, service, office, artisan, restaurant, lodging, child care, adult daycare, entertainment, private recreational, professional, and similar uses." She then pointed to several areas with specific approval criteria for Conditional Uses and provided discussion concerning whether the proposed use is listed as a conditional use in the RRFF-5 zoning district in which the subject property is located. Ms. Fields pointed to ZDO Table 316-1 provisions including "Commercial or Processing Activities that are in Conjunction with Farm or Forest Uses" as a Conditional Use in the

RRFF-5 zone as satisfying this criterion. Ms. Fields also drew attention to a designated Habitat Conservation Area and Water Quality Resource Area in the southern portion of the property that requires additional protection.

9. Ms. Fields discussed the safety of the transportation system noting that ODOT reviewed the application and had no concerns about the transportation system or the traffic impact study, finding the transportation system is adequate for the low number of trips generated from the proposed use. Ms. Fields also reported staff findings supporting concluding that the proposed Commercial and Processing use including the storage of logging equipment and logs on the property will not substantially limit, impair, or preclude the primary uses in the underlying zone. Ms. Fields pointed to the applicant's argument that using the subject site as proposed would support the development of forest lands for processing activities and thus support the protection of forest lands as prioritized through Comprehensive Plan Forest Goals at 3-18 and 4-51. She noted that the subject property contains a designated Habitat Conservation Area and a Water Quality Resource Area that are overlay zoning districts, reporting related development standards were reviewed and can be met with conditions.
10. Ms. Fields provided additional discussion concerning the approval criteria for ZDO 1005 and the purpose of this section that informs design review criteria, pointing to specific design standards that apply to the proposal. She pointed to relevant definitions in ZDO 202, including: "BUILDING: "Any structure used or intended for supporting or sheltering any use or occupancy" and "STRUCTURE: Anything constructed or erected, which requires location on the ground or attached to something having a location on the ground." Ms. Fields pointed to ZDO Section 1005.03 Building Design and noted that the applicant did not request a modification of these standards pursuant to Section 1005.06, pointing out the applicant's current use of several Conex-type containers for storage on the site and providing an aerial photo showing the containers placed on the ground in an area adjacent to the side setback for the property.



Figure 2: 2025 Side Setback Aerial

11. Ms. Fields provided discussion concerning additional relevant requirements for approval of this application, noting these requirements can also be met as conditioned for design review, providing some discussion concerning the specific requirements.
12. The applicant's attorneys, Wendi Kellington and Kelly Huedepohl, provided a presentation and discussion in support of the application, providing additional background information and clarification. Ms. Huedepohl asserted that the historic drainage for the property runs from east to west, noting comments submitted by the owner of the neighboring property to the west. Ms. Huedepohl discussed the proposal's scope and location, describing it as a logging operation yard with forest operations including federal, state, and County emergency forest hazard tree response, habitat and stream restoration, and other forestry. She pointed out that the applicant's proposal does not include any parking, storage, or activity in the Habitat Conservation Area located on the property. She also referenced the applicant's DEQ 1200z requirements for a Land Use Compatibility Statement (LUCS) to follow approval of this application, with the applicant's storm management plan consistent with the submitted 1200z plan.
13. Ms. Huedepohl points to Table 316-1 in the County's ZDO and asserts that the applicant's activities are primary allowed Forestry uses on RRFF-5 zone property. Ms. Huedepohl also points to the provisions of ORS 527.722, providing this quote with emphasis: "Notwithstanding any provisions of ORS chapters 195, 196, 197, 197A, 215 \*\*\* no unit of local government shall adopt any rules, regulations or ordinances or take any other actions that prohibit, limit, regulate, subject to approval or in any other way **affect** forest practices\*\*\*." She reports that the applicant submitted this conditional use application as a precaution in case it is required in the view of the County.
14. Ms. Huedepohl provided a review of the proposed findings by County staff and provided additional information concerning the applicant's background and forestry operations showing the applicant advertises contract logging services, land clearing, culvert installation and maintenance, ditch cleaning, road grading and rocking, roadside brushing, slide removal, and danger tree removal services. She provided additional discussion describing the applicant's forestry operations support services for private and public landowners, including timber harvest, hazard tree removal, and fuel reduction projects. Ms. Huedepohl also pointed to the applicant's emergency response capabilities, providing rapid deployment of crews and equipment during natural disasters such as wildfires and ice storms. She noted the applicant's operational model and safety, pointing to provision of field logistics with non-public staging yards asserting the model results in reliability, safety, and environmental stewardship. Ms. Huedepohl also asserts that the applicant's operations are of regional importance as its distributed staging locations reduce response times and mitigate risks, enhancing regional resilience in forestry and disaster response.
15. Ms. Huedepohl provided additional discussion concerning the critical importance of logging yards, explaining that the applicant's model for distributed logging yards prevents "single points of failure" during road closures and natural disasters, ensuring continuous forestry operations. She noted the efficiency of locating the staging yards

near forest corridors to reduce travel time and support faster emergency responses, further noting the alignment with public safety goals by ensuring timely resource availability during emergencies. Ms. Huedepohl also asserts the staging yards model protects natural resources by limiting the amount of equipment, vehicles, and logs on sensitive forest lands by providing a nearby base of forestry operations.

16. Ms. Huedepohl provided a slide and discussion concerning the character of the surrounding area, pointing to area light industrial and commercial uses and noting pig farming taking place on the property to the east, with the property to the west used for horses, and sharing this aerial photo labeling the proposal site “O’Malley Brothers”:



17. Ms. Huedepohl reviewed the requirements for a Conditional Use Permit as also presented by Ms. Fields, adding additional discussion addressing County ZDO 1203.03.D. requirements that the proposed use will “not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.” Ms. Huedepohl pointed to the aerial photo showing the proposal site designated as O’Malley Brothers and its location near the intersection of Hwy 212 and Hwy 26, showing the significant industrial use of adjacent and nearby area properties used by businesses that include Boring Bark, Boring Bean, Western Bus Sales, B&R Auto Wrecking. She also points to nearby industrial and commercial businesses conducting RV sales and storage, shed sales, well drilling, paint stripping, paving and sealcoating, auto mechanic, and heavy equipment sales, providing photos of these businesses that show the commercial uses on several surrounding properties. Ms. Huedepohl also shared this photo showing the buffering of the property to reduce impacts on neighbors:



18. Ms. Huedepohl points to the north side of the site, with Highway 212 frontage landscaping and buffering, and the south boundary of the property with 200+ feet of deep vegetation, the west side of the property with an approximately 26-foot-wide buffer, and the east side with an existing berm and newly planted evergreen trees providing screening. Ms. Huedepohl cites the statement of the owner of the neighboring property to the west requesting that the County "Re-zone the properties East of Highway 212 from the junction with Highway 26 to include our property and likely further towards the City of Boring to Commercial/Industrial. This change would be in harmony with the extensive Commercial/Industrial nature of the business properties on the west side of Highway 212." She points to the character of the surrounding area as it exists, with significant transportation infrastructure that includes the two intersecting state highways, several intensive industrial and commercial uses, and a pig farm, asserting that primary uses allowed in the area zoning districts will be unaffected by the applicant's proposed use.
19. With respect to noise and opponent's contentions regarding impacts from noise, Ms. Huedepohl asserts that the proposed use does not generate significant noise. She describes the only noise as that created from unloading logs and reloading them, packing and unpacking logging equipment, and parking logging-related vehicles. Ms. Huedepohl points out that the applicant does not propose any log processing on site. Ms. Huedepohl addressed comments by opponents of this application, contending that opponent's claims of visual blight are not plausible given the existing surrounding area uses and the significant buffering on the subject property, further asserting that visuals of the subject property alone, or the noise from the proposed activities, do not "substantially limit" or result in "substantial impairment" or preclude any primary use in the zoning district.
20. Ms. Huedepohl addresses historic drainage in the area, noting it flows from the east to the west over property that is lower in elevation, owned by an opponent of this applicant. Ms. Huedepohl points to the right to historic drainage as settled law, agreeing that the applicant cannot divert any water that used to go elsewhere onto the neighbor's property. She asserts that the applicant has not diverted any water to the neighboring property to the west but rather cleaned out a ditch to the east so that water from an impoundment on property to the east could flow through that ditch to an ODOT highway ditch, noting this ditch directs water away from the opponent's property to the

west. Ms. Huedepohl and Ms. Kellington also point out that the applicant must obtain the LUCS from the County for its stormwater management plan and DEQ permit.

21. Ms. Huedepohl provided discussion concerning how the proposed use is consistent with the applicable goals and policies of the County's Comprehensive Plan. She pointed to Forest Goals in two different sections, describing ways in which the proposal is consistent with those goals and policies, including among other things how the applicant's activities minimize wildfire hazards and risks, enhance and protect other environmentally sensitive areas, provide continued employment in the forest products industry, and protect the state's forest economy by making possible economically efficient forest practices. Ms. Huedepohl points to the applicant's utilization of the site as a centralized storage yard for forestry machinery, vehicles, and logs, supporting efficient forest operations while reducing unnecessary land disturbance.
22. Ms. Huedepohl also provided discussion concerning Oregon Forest Industries Council recognition of private forest operators as important to the State's wildfire control efforts, providing an excerpt discussing contributions of private forest landowners and operators contributing firefighting resources including employees, equipment, and management every year helping state and local firefights protect communities. Ms. Huedepohl asserts that the proposed use complies with applicable requirements of the zoning district, existing overlay districts, and Section 1000 series development standards. She notes that the site is gated and fenced, ensuring security and controlled access for forestry equipment and personnel. Ms. Huedepohl describes the proposed operations as concentrated away from the existing Habitat Conservation Area (HCA) on the property, with all equipment and material storage confined to the northern site section that is outside the HCA boundary.
23. Ms. Huedepohl reports that the applicant and County staff agree on the location of the HCA at the southern portion of the property, and further notes that the applicant has installed a physical barrier (orange plastic silt fencing) that removes any ambiguity, to ensure no activities take place within the HCA. She points to the report by Evan Bruggeman, Principal Field Geologist with Evran Northwest utilized in identifying the applicable boundary and determining the location of the HCA Demarcation Fence. Ms. Huedepohl and Ms. Kellington point to an aerial photograph that appeared to show encroachment within the HCA area, explaining that there has been no encroachment within the actual boundary of the HCA. Ms. Huedepohl further points to the report by Joe Bettis, Botanist & Wetland Scientist, stating he visited the site and reviewed the HCA mapping for the property as well as the State Wetland Inventory for the property. Mr. Bettis notes there is an intermittent stream on the south end of the property within the HCA that corresponds to a wetland shown on the State Wetland Inventory that dries up in the summer. Mr. Bettis concludes that if the area were delineated it almost certainly would be contained within the HCA.
24. Ms. Huedepohl asserts that only limited Design Review associated with this application is needed, focusing on site walkways, parking, and grading, noting that stormwater management plans are included in the application materials. Both Ms. Huedepohl and Ms. Kellington strongly contend that architectural review is not required, particularly for

building design, asserting that the Conex containers utilized by the applicant for storage on the site are not buildings. They describe the use of the Conex containers as “equipment” noting that Conex containers are mobile and designed to be placed on ships, barges, semitrailer tractors, and also on the ground, sometimes mobile and sometimes fixed. They describe the applicant’s use here as “equipment” – as a mobile unit stored on property to securely store forestry equipment during jobs, and on the subject property. In the alternative, Ms. Huedepohl and Ms. Kellington contend that if the Conex containers are structures, then they are exempt as “agricultural buildings” per ORS 455.316. Further, they assert that the Conex containers are essential to forestry practices and regulating them would “affect” accepted forest practices on forest lands contrary to ORS 527.522. Ms. Huedepohl reviewed the conditions of approval proposed by County staff, stating that the applicant accepts most of the proposed conditions with a few clarifications, requesting certain revisions to proposed conditions nos. 4, 7, 9, 10, 14, and 15.

25. Mr. Scott Teeny is one of the owners of the adjacent property immediately to the west of the proposal site. Mr. Teeny is concerned about the impacts of the applicant’s activities on his ability to develop his own property, noting that his property is also zoned RRFF-5 for residential use. Mr. Teeny contends that future development of his property for residential use will be impacted by the noise from diesel logging trucks in the early hours of the morning.
26. The County received several additional submissions to the record on the day of the hearing, including a written response from the applicant’s attorney, Ms. Kellington, to the letter submitted by Craig and Suezette Penniman, two of the owners of the adjacent property to the west of the proposal site. In her response, Ms. Kellington notes that the applicant is not opposed to the Pennimans seeking a rezone of their property. However, Ms. Kellington asserts that the applicant has not caused unlawful drainage problems for the Pennimans property as a matter of law, providing discussion of the law of drainage in Oregon and its application here, essentially noting that water flows from the upgradient property to the east, across the subject property, and onto the downgradient property to the west. Ms. Kellington reports that there was a man-made drainage ditch on the east of the subject property that the applicant cleaned out that catches water from the east and conveys it to the highway ditch. Ms. Kellington also reports that at some past point someone prevent water from the east property being conveyed across the subject property via a drainage ditch, noting that Oregon DEQ is aware and will almost certainly require the restoration of this historic drainage ditch.
27. Ms. Suezette Penniman submitted additional written comments with attached photos the day of the hearing. In her comments, Ms. Penniman contends that the applicant brought truckloads of fill dirt onto the subject property building up that property and resulting in the drainage becoming a problem for properties to the west, including theirs and the neighboring property to their west owned by Dianna Cubic, describing the standing water issue as unprecedented. Ms. Penniman also asserts that the visual screening provided by the applicant is inadequate, sharing photos showing the stored trucks, equipment, and logs, remain visible despite the screening.



28. Ms. Dianna Cubic owns and resides on property located at 30422 SE Highway 212, in Boring, Oregon, located to the west of the Penniman's property. Ms. Cubic submitted written comments the day of the hearing stating she has lived at this address for over 30 years and lived there before the applicant purchased the subject property. Ms. Cubic asserts that the applicant brought truckloads of fill onto the subject property and built up the ground where the trucks are now parked, also installing culverts and diverting the water. She reports that her property now experiences flooding that did not occur in the past, including water in her barn and across her back driveway. Ms. Cubic also reports being woken up most mornings to backup alarms from the applicant's trucks as early as 4:30 am or 5:00 am in the morning. Ms. Cubic notes that the south side of the roadway where these properties are located is zoned RRFF-5 for residential farm use, contending the applicant's proposed use should not be allowed.
29. The applicant's representative Ms. Huedepohl submitted additional written comments the day of the hearing, including submitting proposed alternative language for several conditions of approval proposed by County staff as discussed at the hearing. In addition, Ms. Huedepohl addressed comments regarding alleged noise impacts from the proposed use. Ms. Huedepohl asserts that the noise from the applicant's operations is not unreasonable, largely consisting of employees of a forestry operation arriving at the site in their passenger vehicles, firing up a logging truck, loading equipment, and heading into the forest to work. She notes the location of the site is adjacent to state Highway 212 and only a few hundred feet from interstate Highway 26, contending that the noise from these off-site sources exceeds or matches any noise from the applicant's activities. Ms. Huedepohl also notes that the Penniman/Teeney property is a 9-acre property not currently in residential use with room to situate any future dwelling to avoid any noise found objectionable. In addition, Ms. Huedepohl points to exceptions in the County's noise ordinance CCC 6.05.060 (B) for emergency work related to some of the applicant's work, and (F) "Sounds caused by industrial, commercial, timber-harvesting, or utility organizations or workers during their normal operations" which she asserts describes the applicant's use of the site.
30. Ms. Kellington submitted a final written argument in this matter on behalf of the applicant. In this submittal, Ms. Kellington responded to the two additional written comments submitted the day of the hearing before the record closed to new evidence. She points to her earlier letter concerning Oregon drainage law, with lower elevation properties obliged to accept drainage from upstream properties, noting that both opponent's properties are at a lower elevation than the applicant's property. Ms. Kellington asserts that the applicant has not diverted any water to the opponent's

properties but rather cleaned out an existing drainage ditch flowing to the ODOT right-of-way ditch and suggests there may be reasons for the flooding unrelated to the applicant. Ms. Kellington also addressed the comments concerning noise made by opponents of the application, pointing out that Ms. Cubic's property is located acres away from the subject property and noting the many other commercial and industrial uses in the area. Further, Ms. Kellington points out that commercial and industrial vehicles are required by state and federal law to have backup beepers, citing several regulations. In addition, Ms. Kellington points to exceptions in the County's noise ordinance that apply to the proposed use.

### C. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is being processed as a Type III Permit, pursuant to Clackamas County Zoning and Development Ordinance (ZDO) Section 1307. The Type III procedure is quasi-judicial in nature and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Sections 202, 316, 1203, 1307, 1002, 1003, 1004, 1005, 1006, 1007, 1009, 1010, 1011, 1015, and 1201; and the Comprehensive Plan. Clackamas County Planning and Zoning Staff reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and submitted a staff report with recommended findings identifying the standards and criteria that are relevant to this decision, stating the facts relied upon, and explaining the justification for the recommendation. These findings were reviewed and adopted and/or modified by the Hearings Officer with excerpts from staff and the applicant denoted by italics:

#### 1) PROJECT OVERVIEW:

The applicant is requesting approval of a conditional use permit to allow commercial activities in conjunction with forest use. A pre-application conference was held with the applicant on May 6, 2025 to discuss the preliminary proposal (reference file ZPAC0038-25). After the pre-application conference, staff provided the following clarity to the applicant on the rationale for which of the activities occurring on the property would need to be included in a conditional use review:

**Staff Finding:** *Under ZDO Table 316-1, “forest practices,” including a list of “operations conducted on or pertaining to forestland,” are allowed outright in the RRFF-5 zone. That language derives from the Oregon Forest Practices Act (FPA). Most of the FPA is codified at ORS 527.610 to 527.770. The Oregon Department of Forestry (ODF) has adopted implementing administrative rules at OAR chapter 629, divisions 600 to 680. In general,*

the FPA sets standards for commercial activities involving the establishment, management, or harvesting of trees on Oregon's non-federal forestlands. In addition, the FPA prohibits local governments from regulating forest practices on forestlands outside UGBs. ORS 527.722.

Like ZDO Table 316-1, the FPA defines "forest practice" to mean "operation[s] conducted on or pertaining to forestland," with the same list. ORS 527.620(6). The FPA defines "operation" to mean "any commercial activity relating to the establishment, management or harvest of forest tree species" with certain exceptions (e.g., Christmas trees, fruit trees, ornamental and street trees). ORS 527.620(13). The FPA defines "forestland" to mean "land that is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied." ORS 527.620(8). Although the FPA does not define "pertain," the dictionary defines it as "to belong to something," "to be appropriate to something : be right or proper or suitable : be pertinent," and "to have some connection with or relation to something : have reference : RELATE." Webster's Third New Int'l Dictionary 1688 (unabridged ed 2002).

Because the subject property is not "forestland," since it is not land for growing or harvesting trees, there is a question of what "pertaining" means in this context. More specifically, can an operation qualify as a forest practice even if the property does not qualify as forestland? It is the county's position that the answer is yes. It does not look like LUBA or the courts have directly addressed this issue. However, when interpreting statutes, courts are obliged to "assume that the legislature did not intend any portion of its enactments to be meaningless surplusage." State v. Clemente-Perez, 357 Or 745, 359 P3d 232 (2015) (citing ORS 174.010 and cases). If an operation qualifies as a forest practice only if the property qualifies as forestland, then the "pertaining to" part of the definition is meaningless. "Pertaining to" must mean something different from "conducted on." The dictionary definition of "pertain" is quite broad. However, it is important to remember what it is the operation must pertain to: forestland. It is not enough that it might relate to logs or "forest uses."

There is also a question of whether log, vehicle, and equipment storage qualify as "forest practices." Again, there are no cases directly on point. Based on a couple of considerations, though, it is the county's position that the answer is no, log, vehicle and equipment storage are not considered "forest practices". The first consideration is the list of operations in the provision itself. In both the FPA and ZDO Table 316-1, that list includes reforestation of forestland, road construction and maintenance, harvesting of forest tree species, application of chemicals, disposal of slash, and removal of woody biomass. One could argue that harvesting forest tree species necessarily includes log, vehicle, and equipment storage. However, ODF's rules governing harvesting under the FPA, which are very detailed, do not mention those things at all. OAR ch 629, div 630. They do mention landings, but a landing is where logs are collected on the property where they are felled before they are hauled elsewhere for processing. That is not the situation here.

The second consideration is LCDC's administrative rules implementing Goal 4.

*Consistent with the FPA, those rules allow “forest practices” outright in forest zones. OAR 660-006-0025(2)(a). Differently, “permanent logging equipment repair and storage” requires a conditional use permit. OAR 660-006-0025(4)(b). If logging equipment storage qualifies as a “forest practice” by virtue of the fact that it pertains to forestland, then the conditional use permit requirement is meaningless. We must assume that that is not the case. Staff observe that this consideration is also relevant with respect to the firewood operation on the property. If sawing and storing firewood qualifies as a “forest practice” by virtue of the fact that it pertains to forestland, then LCDC would not have identified temporary and permanent processing facilities separately in OAR 660-006-0025(3)(d) and (4)(a).*

The assessment above is contested by the applicant as described below:

*“The applicants seek approval of a Conditional Use Permit for log storage, logging equipment and logging vehicle storage on the subject property. No customers are intended to or do come to the site. Employee activities on the site are limited to a small number of employees (up to 6 on any given day) driving their personal car to the site, getting a logging vehicle, driving the log truck to the forest and then returning to the site with harvested logs, stacking the harvested logs and returning home in their personal vehicle. On an as needed basis, logs are taken off site for processing into firewood or occasionally if necessary for dimensioning for a stream restoration project. Applicants’ position is that these are “forest practices” uses identified as primary uses in ZDO Table 316-1. These uses directly relate to the “harvest of forest tree species,” ORS 527.620(6), (13), to the disposal of slash and removal of woody biomass, ORS 527.620(6). Table 316-1’s definition mirror’s the state law definition. “Forest Practices” defined by state statute and administrative rules are not subject to local regulation under competing definitions.”*

Further discussion by the applicant on the Precautionary CUP application is found on page 10-11 of Exhibit 2.

**Hearings Officer:** The properties surrounding the subject site on the west and north are zoned Rural Residential Farm Forest 5-Acre (RRFF-5). In general, RRFF-5 zoned properties such as the subject property may be developed with certain primary uses associated with residential, farm, or forest use, certain uses that are accessory to an established primary use, and certain other uses subject to the requirements for a conditional use permit. The applicant has submitted an application for a conditional use permit for commercial or processing activities that are in conjunction with farm or forest uses, consistent with ZDO Table 316-1 requirements for a conditional use permit for these activities, and consistent with OAR 660-006-0025(4)9B0 requirements for a conditional use permit for permanent logging equipment repair and storage, which fairly describes the applicant’s use of the subject property. As described by the applicant:

*“The subject property has no address and is located along the South side Highway 212, T2S, R4E, Section 05, Tax Lot 01500 in Boring, Oregon—a region characterized by a diverse mix of commercial and light industrial uses. The site lies within a heavily trafficked and commercially active zone, surrounded by businesses that support the*

*agricultural, automotive, and construction sectors. Immediate neighboring properties include a landscape supply store, auto sales lot, wrecking yard, heavy machinery dealership, and farm supply stores, underscoring the area's industrial-commercial character and utilitarian land use patterns."*

The subject property has a Water Quality Resource Area (WQRA) and Habitat Conservation Area located in the southern portion of the site. Although not included in the WQRA map created by Metro, the Statewide Wetlands Inventory indicates that there is a freshwater emergent wetland on site and thus pursuant to ZDO 709.02(F), there is a WQRA on the site. There are no other known environmental overlays on the property.

The aerial images and the traffic impact analysis indicate that the use proposed through this application is already occurring on the site. However, this is the first land use review of the use and therefore, the commercial and processing activities that are in conjunction with forest uses are referred to as proposed instead of existing. The change of use being reviewed and considered in this application is from vacant rural residential land to land used for commercial and processing activities that are in conjunction with forest uses. The properties to the south and east are zoned Exclusive Farm Use and have farm and forest uses as primary uses.

## 2) **ZDO SECTION 316 RURAL RESIDENTIAL FARM FOREST 5-ACRE (RRFF-5)**

**Finding:** Section 316 regulates the RRFF-5 District, which includes the subject property. Table 316-1 identifies Commercial or Processing Activities that are in Conjunction with Farm or Forest Uses as a conditional use in the underlying zoning district subject to footnote 3. Footnote 3 states "As used in Table 316-1, farm uses do not include marijuana production, marijuana processing, marijuana wholesaling, or marijuana retailing". The proposal includes no marijuana related uses. As discussed in the background section and discussion of Section 1203.03(A), the permanent storage of logs, log trucks, and logging equipment on the subject site is considered a conditional use. **This criterion is met.**

Consistent with the above analysis, logging equipment storage on Timber District (TBR) zone property and AG/Forest District (AG/F) zone property also require a conditional use permit, with the ZDO for each District citing the approval criteria in ZDO 406.05. (See Table 406-1 and Table 407-1) Among other criteria, Section 406.05 (A)(2) requires:

"A written statement recorded with the deed or written contract with the County or its equivalent is obtained from the land owner that recognizes the rights of the adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and Rules."

OAR 660-006-0025 – Uses Authorized in Forest Zones implements restrictions on local government adoption of rules regulating forest operations set forth in ORS 527.722 and is cited by both County staff and the applicant. OAR 660-006-0025(4) describes uses that may be allowed on forest lands, including (b) "Permanent logging equipment storage and repair" subject to the review standards in section (5) of the rule. Section (5) of the rule states that:

"A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands.

- (a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.
- (b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.
- (c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule."

The above implementing language uses the phrase "may be allowed" consistent with requirements by the County for a conditional use permit and includes requirements for additional findings and conditions that must be met. The Hearings Officer finds that the above criteria can be met, subject to conditions. Specifically, first the proposal must meet the criteria for a conditional use permit, which I find is equivalent to meeting the provisions of OAR 660-006-0025(5)(a) and (b), and secondly the proposal must be conditioned to meet the requirements of OAR 660-006-0025(5)(c). I find that a statement meeting the requirements of ZDO Section 406.05 (A)(2) is equivalent. The Hearings Officer briefly discussed this additional required condition with Ms. Kellington during the hearing and she agreed to it, referring to it as a "No Gripe" clause.

#### **Section 316.04, Table 316-2 Dimensional Standards:**

	Standard	Proposed	Compliant
Minimum Lot Size	2-acre minimum. 5-acre average	No change	
Minimum Front Setback	30 feet	No change proposed	Conex storage containers in setback. Fence approximately 80' back. See Figure 1
Minimum Rear Setback	30 feet	No change proposed	Yes.
Minimum Side Setback	10 feet	No change proposed	For ZDO 316.04, Yes
Maximum Building Height	None		N/A

The applicant is seeking approval for commercial activities taking place on the subject property. The applicant states:

*"The subject property is in an RRFF5 zone and is composed of approximately 9.82 acres. The property complies with all the above applicable dimensional standards for*

the RRFF-5 zone. See Exhibit A Site Plan. Further, no buildings are proposed. A “building” is “any structure used or intended for supporting or sheltering any use or occupancy.” ZDO 202. A “structure” is “anything constructed or erected, which requires location on the ground or attached to something having a location on the ground.” ZDO 202. Applicants’ Conex storage containers are not “constructed or erected,” and do not “require[ ] location on the ground.” The Conex’s are placed on the ground and can exist on the back of a truck or on a ship as well as the ground – they do not require a location on the ground. Therefore, this section does not apply; however, in any case Applicants’ Conex storage containers are placed in a manner that is consistent with the dimensional setbacks.”

As the Hearings Officer found in Z0075-24 – “A storage container is a structure per ZDO 202, which defines a structure as ‘anything constructed or erected’. The storage container appears to meet this strict definition of a structure because it is constructed or erected and then placed on the site. Therefore, the standards described in this section are applicable to the placement of the storage container”.

ZDO 202 defines the front lot line as: LOT LINE, FRONT: Any boundary line separating a lot from a County, public, state, or private road, or from an access drive.

Therefore, the front lot line is the right-of-way boundary line that separates the lot from the state road. Based on the aerial image, the front lot line does not correspond with the pavement width. Although the 2-D tax lot boundaries are not perfectly aligned with the 3-D aerial image of the ground, Figure 1 indicates that in January of 2025, the Conex storage container closest to Hwy 212 was only approximately 10 feet from the right of way. Although used throughout the site for various storage purposes, the Conex storage containers located between Hwy 212 and the front fence are located inside the front setback and do not meet the setbacks required for structures. To meet setback requirements pursuant to ZDO 316, and the buffering and screening discussed later pursuant to ZDO 1009, the placement of Conex storage structures outside of the fenced area is not consistent with the zoning requirements for this conditional use. Therefore, a condition of approval is warranted to ensure the front setback is maintained.



Figure 1: Front Setback – Comparison of 2023 and 2025

Conex containers outside fenced area



Figure 2: 2025 Side Setback Aerial



Figure 3: 2025 aerial with tax lot lines

As noted, tax lot lines and property lines do not always line up on an aerial image. However, the aerial images of the eastern property boundary indicate that there may be encroachment into the side setback as currently developed. This conditional use application does not approve any use on the adjacent property to the east that has map and tax lot number 24E05 01400. Therefore, to ensure the buffering and setback requirements are met a site plan prepared and stamped by an Oregon registered professional land surveyor is needed. **As conditioned these criteria are met.**

### 3) ZDO SECTION 1203 CONDITIONAL USES

**1203.01 PURPOSE AND APPLICABILITY** Section 1203 is adopted to provide standards, criteria, and procedures under which a conditional use may be approved.

#### **1203.02: Submittal Requirements**

**Finding:** This application includes a site plan, application fee, and a completed land use application form addressing the criteria in ZDO Section 1203. The application, Z0380-25, was submitted on September 8, 2025, with additional application materials submitted on November 19, 2025. The application was deemed complete on November 19, 2025, after receiving a signed form indicating the applicant provided all of the missing information.

The applicant provided preliminary statements of feasibility for water and surface water management. No preliminary statement of feasibility was received from the septic and onsite wastewater program. However, the applicant noted in findings for ZDO 1006 that “The applicants are not proposing a development that has a need for sanitary and sewer. The property is a storage yard for a logging operation.” **This criterion is met.**

**1203.03(A):** *The use is listed as a conditional use in the zoning district in which the subject property is located.*

**Finding:** The applicant submitted a conditional use application because staff determined that the permanent storage of logs, log trucks, and logging equipment is not included in

the activities allowed under the “Forest Practices, including the following operations conducted on or pertaining to forestland”. As discussed in the Background Section above, the permanent storage of logging equipment is a conditional use pursuant to OAR 660-006-0025(4)(b). Additionally, OAR 660-006-0005 includes the following definition:

(12) “*Primary processing of forest products*” means the initial treatments of logs or other forest plant or fungi materials to prepare them for shipment for further processing or to market, including, but not limited to, debarking, peeling, drying, cleaning, sorting, chipping, grinding, sawing, shaping, notching, biofuels conversion, or other similar methods of initial treatments.

A permanent facility for the primary processing of forest products is a conditional use pursuant to OAR 660-006-0025(4)(a). Thus, the proposed storing, sorting, and drying of logs are consistent with the Commercial or Processing Activities that are in Conjunction with Farm or Forest Uses category of Table 316-1 and other conditional uses identified in OAR 660-006-25(4). **This criterion is met.**

**1203.03(B):** *The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

**Finding:** The subject property is over 9 acres in size with a Water Quality Resource Area and Habitat Conservation Area located in the southern portion of the property that is currently vegetated and proposed to remain vegetated. The site is relatively flat with ample room for large trucks to maneuver within the gated property and logs to be stored within the property boundaries. The applicant states:

*“The subject property is approximately 9.82 acres, zoned RRFF5 and is situated on Hwy 212 in Boring, OR in Clackamas County. The area in which the proposed use is located is rural in nature, but has a mixture of industrial and commercial uses, industrial and commercial buildings as well as rural residences. The site is bordered on the north by Hwy 212, and a nursery and auto wrecking yard. South is rural residential, West a heavy machinery shop and East appears to be undeveloped rural property. The size, shape, location, topography, existence of improvements, and natural features are all appropriate for applicants’ proposed uses. This criterion is met.” and*

*“In addition to harvested commercial tree species logs, applicants also store necessary forestry equipment and vehicles on the subject property. The proximity of those vehicles and equipment to forestlands is vital to harvesting operations, which cannot occur without that equipment. Applicants’ operation stages the equipment needed for operations on nearby forest lands locally and with the vehicles necessary to deploy that equipment quickly and efficiently, including in response to urgent developing situations that arise in forest operations, such as in the event of soil destabilization or on-site equipment malfunction. When something goes wrong in the forest, it is vitally important to have equipment and vehicles close at hand to protect lives and natural resources. Travel time matters. Often hours, and even*

minutes, matter. Preserving non-forestland locations where forest logs can be stored, and where forestry equipment and vehicles are staged and ready for deployment, is precisely the type of protected forest practice that “pertains to” forestlands and that is not subject to local regulations because the travel distance and ready availability of equipment and vehicles indisputably “affect[s] forest practices on forestlands[.]” ORS 527.722.”

Staff submitted findings asserting that, with adequate buffering, the noise and intensity of the use can be mitigated for adjacent residential and farmland and thus the subject property is suitable due to its size. As noted by the applicant the subject property is suitable for the use partially due to the location in proximity to state highways. The owners of the neighboring properties to the west submitted comments opposed to this application, citing concerns with the noise from the logging trucks, particularly the safety or back-up beepers of the logging trucks as the applicant's employees take them off site in the morning. These comments also pointed out that the stacked logs and various vehicles and equipment stored on the site, pointing out that these things are visible over the fencing and buffering. This site is immediately adjacent to State Highway 212 and close to the major intersection of State Highway 212 with Highway 26. This is an area largely developed with commercial businesses and the sight of many industrial uses, and an area with significant commercial truck use.

Although there are water quality resource areas and habitat conservation areas at the southern end of the property, the site is relatively flat so any fluids from the logging equipment or trucks will be less likely to travel into the sensitive areas with adequate stormwater capture and treatment and the vegetative buffer, and topography make the subject site suitable for the proposed use. Therefore, the shape, size, topography, location, and existing improvements show the site is suitable. **This criterion can be met as conditioned.**

**1203.03(C): The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.**

#### **1007.07 TRANSPORTATION FACILITIES CONCURRENCY**

*A. Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.*

*B. Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:*

*1. Development that is located:*

- a. In the Light Industrial, General Industrial, or Business Park District; and*
- b. North of the Clackamas River; and*
- c. West of Highway 224 (south of Highway 212) or 152nd Drive (north of Highway 212); and*

- d. *South of Sunnyside Road (east of 82nd Avenue) or Harmony Road (west of 82nd Avenue) or Railroad Avenue (west of Harmony Road); and*
- e. *East of Interstate 205 (south of Milwaukie Expressway) or the city limits of Milwaukie (north of the Milwaukie Expressway).*

2. *Modification or replacement of an existing development (or a development that has a current land use approval even if such development has not yet been constructed) on the same property, provided that an increase in motor vehicle traffic does not result;*
3. *Unmanned utility facilities, such as wireless telecommunication facilities, where no employees are present except to perform periodic servicing and maintenance;*
4. *Mass transit facilities, such as light rail transit stations and park-and-ride lots;*
5. *Home occupations to host events, which are approved pursuant to Section 806; and*
6. *Development in Government Camp that is otherwise consistent with the Comprehensive Plan land use plan designations and zoning for Government Camp.*

**Finding:** The proposed use is not a home occupation to host events, nor unmanned utility facility, nor a modification of an existing development that has land use approval. The property is not located in Government Camp and is not in the other geographic areas identified as exempt from this requirement. Therefore, this criterion applies to the application.

In Exhibit 2 the applicant states the following in reference to ZDO 1007.07:

*“The capacity of transportation facilities serving the subject property is adequate and will remain adequate to support the proposed use. A transportation impact study to address traffic capacity is not required because the proposal will generate less than 20 vehicles trips in any peak hour as is demonstrated on the Exhibit G Traffic Analysis....*

*The subject property is located on SE Hwy 212 and outside the UGB. A transportation impact study to address traffic capacity is not required where the proposed development will generate less than 20 vehicles trips in any peak hour. Clackamas County Roadway Standards section 295.1. Applicants’ proposed uses will generate fewer than 20 vehicle trips in any peak hour. Exhibit G TIA. Table 5-2b from the County’s standards is attached below..”*

The Traffic Impact Analysis found that typically the proposed use will have 40 total trips a day with 12 of those being truck trips (6 trips for trucks leaving the site, and 6 trips for trucks returning to the site). The analysis found that the transportation system is adequate for the proposed use because the site “generates its peak traffic volumes in

the very early hours of the morning and in the early afternoon prior to the peak of commute traffic...". Staff have reviewed the Traffic Impact Analysis and the comments from the Transportation and Engineering Program and ODOT and agree with the applicant's findings that the transportation system is adequate for the proposed use. **This criterion is met.**

**1203.03 D:** *The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.*

**Finding:** The applicant does not identify the boundaries of the surrounding area in the narrative but does provide a vicinity map. The applicant also does not identify the primary uses allowed within that area in the findings for this criterion. The primary uses in ZDO 401 for the Exclusive Farm Use land located to the east and south include farm and forest uses. The primary uses identified in ZDO 316 for the rural residential zoned properties located west and north of the subject site include residential use as well as farm and forest uses. Specifically, Table 316-1 identifies the following uses as primary uses in the RRFF-5 Zone: Bus Shelters; Conservation Areas or Structures for the Conservation of Water, Soil, Forest, or Wildlife Habitat Resources; Dwellings; Farm Uses; Fish or Wildlife Management Programs; Forest Practices; Places of Worship; Recreational Uses; Roads, and certain Utility Facilities or Utility Lines.

In Exhibit 2 the applicant states:

*"The subject property is zoned RRFF5 and is in a rural area of the unincorporated community of Boring Oregon and is surrounded by a mixture of industrial and commercial uses and will not alter the character of the surrounding area. See Exhibit B Vicinity Map for more details of surrounding area. This criterion is met.."*

In other areas of the application the applicant states:

*"The proposed use is consistent with the RRFF-5 zoning on the property, and contributes to the local resource economy while maintaining compatibility with adjacent land uses. Given the property's established role in forestry logistics and its placement within a zone already supporting similar operations, the proposed storage of logs and logging equipment/vehicles, are expected to integrate seamlessly with the surrounding land uses."*

Using the narrative provided throughout the application in addition to the photos and plans provided, staff agree that the commercial and processing activities that are in conjunction with forest uses will not limit, impair, or preclude the use of surrounding properties from rural residential or farm and forest uses that are the primary uses in the RRFF-5 zone or the farm and forest uses in the EFU zone for the properties to the east, and south.

Although the rural character of the surrounding area will be impacted by the proposed use, staff find that the storage of logging equipment and logs on the property will not substantially limit, impair, or preclude the primary uses in the underlying zone as required by ZDO 1203.03(D) pursuant to the findings in LUBA No. 2018-145 in York v Clackamas that included *“However, altering the rural character of the surrounding area would not run afoul of ZDO 1203.03(D) unless that alteration also “substantially limits, impairs or precludes” the primary uses in the area.”* Staff submitted findings asserting that, with adequate buffering, the noise and intensity of the use can be mitigated for adjacent residential and farmland. As noted by the applicant the subject property is suitable for the use partially due to the location in proximity to state highways.

The owners of the neighboring properties to the west submitted comments opposed to this application due to noise impacts, drainage issues, and visual impacts. They particularly cited concerns with the noise from the safety or back-up beepers of the logging trucks as the applicant's employees take them off site in the morning. As noted in the discussion of the TIA, however, there are typically up to six trips in the morning from logging trucks taken off the site by employees, and six more trips later in the day from employees returned these logging trucks to the property. Owners of the neighboring properties to the west report experiencing flooding of their properties, asserting that the applicant has brought fill onto the site and essentially caused additional runoff. I note that the applicant does not actually use any water on the site. I also note that the applicant denies filling in the drainage ditch that bisects the site that carried water from the eastern boundary to the western boundary but is cooperating in obtaining necessary permits to restore this drainage and manage the water. Further, neighbors essentially described the view of the stacked logs and various vehicles and equipment stored on the site as undesirable. However, I note that this site is immediately adjacent to State Highway 212 and close to the major intersection of State Highway 212 with Highway 26 and the associated noise. This is an area largely developed with commercial businesses and is already impacted with the sights and noises of many commercial and industrial uses, including significant commercial truck use of the two highways and related intersections. I agree that the sound of backup beepers is annoying, and the view of an undeveloped lot with trees is preferable to a storage yard. However, I conclude these impacts do not rise to such a level as to substantially limit, impair, or preclude the primary uses of properties in the area. **This criterion is met.**

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

**Finding:** The applicant identified that the use meets the Clackamas County Comprehensive Plan and identifies several specific examples in the application narrative. Staff cited two of those examples here:

- *Conservation and Protection of Forest Lands By utilizing the property as a centralized storage yard for forestry machinery, vehicles, raw logs, and wood materials, O'Malley Bros supports efficient forest operations that reduce unnecessary land disturbance. The firewood processing proposed under the CUP*

*will take place on already improved land, thereby avoiding the need for additional forest land development or processing activities on forestland, and contributing to the overall conservation of working forest landscapes consistently with Comprehensive Plan Forests Goals at 3-18 and 4-51.*

- *Applicants' propose storing logging vehicles and equipment and logs on the subject property. This use is wholly consistent with applicable goals and policies of the Comprehensive Plan, as demonstrated below.*

*Comprehensive Plan:*

*The current and proposed uses of the subject property are closely aligned with the County's Forests Goals. Applicant seeks to conduct forest practices uses off of forestlands and on the subject property, including the "yarding" or "landing" of harvested logs, the storage of forestry equipment and vehicles, and the processing of firewood. Rather than conduct those activities on sensitive forestland, applicant minimizes the impact of its forest operations by relocating them to the subject property.*

*This is consistent with the County's Natural Resources and Energy Forests Goals (Comprehensive Plan 3-18), in particular by preserving forest resources and contributing to the sustainability of the forest products industry in the County.*

The Hearings Officer agrees that the proposal supports the Forest Policies in Chapter 3 and 4 by ensuring the reduction of wildfire impacts and forest impacts and utilizing the subject property by implementing commercial and processing activities in conjunction with forest uses. The site is also suitable for the proposed use and conflicting uses are mitigated through feasible conditions of approval. **This criterion can be met as conditioned.**

**1203.03 F:** *The proposed use complies with any applicable requirements of the zoning district and any overlay zoning district(s) in which the subject property is located, Section 800, Special Use Requirements, and Section 1000, Development Standards.*

**Finding:** The specific overlay zones, applicable special use requirements and Development Standards are addressed separately below.

#### **Section 700 Overlay Zoning Requirements –**

#### **4) ZDO SECTION 706 HABITAT CONSERVATION AREA DISTRICT (HCAD)**

**706.01 PURPOSE** Section 706 is adopted to implement the policies of the Comprehensive Plan for Habitat Conservation Areas.

##### **706.02 AREA OF APPLICATION**

- A. *Section 706 applies in the Habitat Conservation Area District (HCAD). The HCAD applies to all parcels containing a Habitat Conservation Area (HCA). The HCAD also applies to any area that is less than 100 feet outside the boundary of an HCA even if the area is not located on the same parcel as the HCA. HCAs are identified on maps adopted by reference in Chapter 3 of the Comprehensive Plan (hereinafter referred to as the HCA Map) and are categorized as High, Moderate, or Low HCA. Notwithstanding the HCA Map, however, Section 706 does not apply to areas that are outside both the*

*Metropolitan Service District Boundary and the Portland Metropolitan Urban Growth Boundary.*

- B. An applicant may dispute the location of an HCA by submitting an application for HCA Map Verification pursuant to Subsection 706.06(B) or by applying for a Comprehensive Plan amendment to modify the HCA Map. HCA Map Verification does not amend the Comprehensive Plan.
- C. Development within an HCA in accordance with the provisions of Section 706 shall not result in removal of such developed areas from the HCA and shall not change the applicable HCA category.

#### *706.03 DEFINITIONS*

- B. *Building Footprint: The area that is covered by buildings or other roofed structures. A roofed structure includes any structure more than six feet above grade at any point, and that provides an impervious cover over what is below. Building footprint also includes uncovered horizontal structures such as decks, stairways, and entry bridges that are more than six feet above grade. Eaves are not included in the building footprint. Underground facilities and structures are defined based on the foundation line.*
- E. *Development: Any manmade change defined as structures, roads, utilities, mining, dredging, paving, filling, or grading in amounts greater than 10 cubic yards. In addition, “development” is any other activity that results in the removal of more than 10 percent or 20,000 square feet of the Habitat Conservation Area vegetation on a lot of record, whichever is less. The calculation of the amount of vegetative cover removed shall be done separately for each lot of record and shall include all vegetative cover removed after January 5, 2009, regardless of whether the removal is done as one project or a series of projects. When individual trees are removed, the area contained within the tree’s drip line shall be the basis for calculating the square footage of vegetation removed.*
- F. *Disturb: Manmade changes to the existing physical status of the land, which are made in connection with development*

*706.04 EXEMPT USES The following uses and activities are exempt from the requirements of Section 706, except that if the use or activity requires a building or grading permit, a Construction Management Plan shall be required pursuant to Subsection 706.06(A). Notwithstanding the requirement for HCA Map Verification under Subsection 706.06(B), the HCA Map shall be deemed reliable for the purpose of administering Subsection 706.04 unless an approved HCA Map Verification exists for the subject property, in which case the approved HCA Map Verification shall be used to administer Subsection 706.04.*

- A. *Uses and activities that do not constitute development, except if the use or activity is prohibited by Subsection 706.05;*
- G. *Development that will have a disturbance area that does not exceed 120 square feet. If more than one development is undertaken pursuant to this exemption—regardless of whether the work is done as one project or a series of projects—the total disturbance area shall not exceed this 120 square-foot limit;*

**706.05 PROHIBITED USES** *The following uses and activities are prohibited within a Habitat Conservation Area:*

- A. *The planting of invasive non-native or noxious vegetation; and*
- B. *Outside storage of materials and equipment, unless such storage began before January 5, 2009, or is approved pursuant to review under Subsection 706.06(C).*

**706.06 DEVELOPMENT REVIEW REQUIREMENTS** *The following review requirements are applicable to development in the Habitat Conservation Area District (HCAD) unless such development is exempt pursuant to Subsection 706.04.*

- A. *A Construction Management Plan, consistent with Subsection 706.08, shall be required prior to development in the HCAD, regardless of whether development will occur within an HCA. However, if an area is in the HCAD solely because it is less than 100 feet outside the boundary of an HCA located on a different parcel, a Construction Management Plan shall not be required unless HCA Map Verification determines that an HCA exists on the same parcel as the area for which development is proposed. A Construction Management Plan shall be reviewed: 1. As part of an HCA Development Permit; or 2. In conjunction with review of a building or grading permit, if no HCA Development Permit is required.*
- B. *Unless the applicant concurs with the accuracy of the HCA Map, HCA Map Verification, pursuant to Subsection 706.09, shall be required or allowed as follows: ...*
- C. *An HCA Development Permit, consistent with Subsection 706.10, shall be required for:*
  1. *Development in an HCA or for a parcel that: a. Contains an HCA; and b. Is the subject of a land use application for a partition or subdivision.*
  2. *If a parcel is subject to Subsections 706.06(C)(1)(a) and (b), an application for an HCA Development Permit shall be filed concurrently with the application for a partition or subdivision.*
  3. *An application for an HCA Development Permit shall be reviewed as a Type II application pursuant to Section 1307 unless the application is filed concurrently with another land use application that requires review as a Type III application, in which case the applications will be consolidated and reviewed as a Type III application pursuant to Section 1307.*

**Finding:** As described in the staff report and the applicant's submissions, these HCA regulations apply to the subject property. The applicant indicated that Exhibit C of the original application included a Landscaping Plan that shows HCA areas on the subject property. Staff agree with the extent and location of the HCA identified on the landscaping plan. The applicant indicated that they are not disputing the location of the HCA and that no map verification was needed. The applicant also stated "No development in an HCA is proposed, and there is no application for a partition or subdivision." The applicant also did not claim an exemption to the HCA Development Permit requirements pursuant to ZDO 706.04 (G).

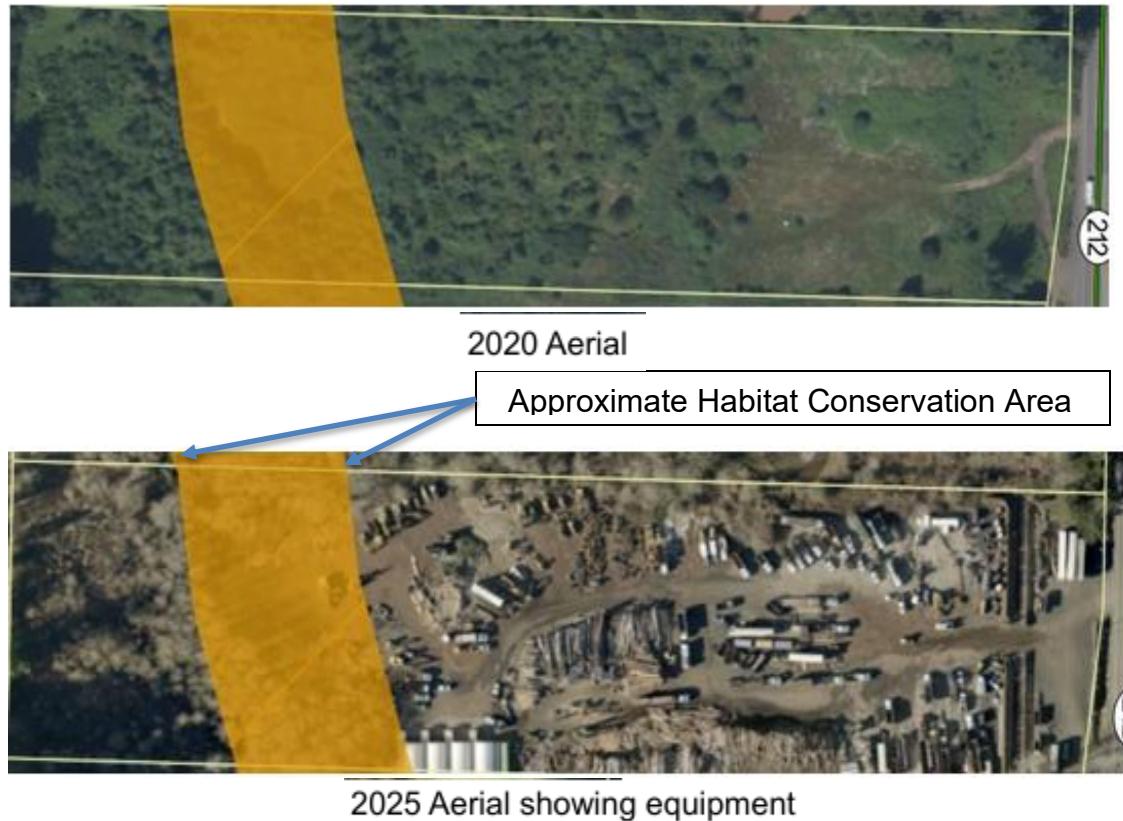
Based on the landscaping plan in Exhibit 2 (excerpt below) that shows ground disturbance and outside storage of logging equipment inside the HCA a Development Permit is needed pursuant to 706.05. The comments from the Transportation and Engineering Program for ZPAC0038-25 also indicate that a Development Permit is needed because the vehicle maneuvering areas need to be improved with gravel or asphalt, which is development pursuant to the definition of Development in ZDO 706. Additionally, the comments from the Clackamas County Sustainability Program related to the Trash and recycling receptacles indicate that a pad needs to be provided in addition to the other requirements of 1021 (Exhibit 2a). Therefore, development related to the proposed use will occur in order to come into compliance with the zoning code and roadway standards. Therefore, additional review is needed through an HCA Development Permit and Construction Management Plan. The applicant has installed orange plastic silt fencing to mark the location of the HCA. The applicant proposes to maintain this fencing to prevent future disturbance of the HCA.



Figure 4: Landscaping Plan excerpt

As noted in the Background Section and seen in the aerial images with the HCA shown below, the ground disturbance and development that has occurred on the subject site between 2021 and 2025 was not reviewed or approved through land use and occurred after 2009. Therefore, a HCA Development Permit is needed to review the ground disturbance and development that occurred after the current property owner purchased the property in addition to any development that will occur as part of implementing this land use decision. The applicant's representatives report that the initial information concerning ground disturbance and development occurring within the HCA was incorrect. They point to the declaration of Evan Bruggeman, Principal Field Geologist with Evren Northwest ("ENV"), that the precise location of the HCA was determined in 2025 and it was established that there is no equipment, vehicle parking, or other use occurring in the HCA. Further, Mr. Bruggeman notes that in 2025 the applicant installed a physical demarcation line (an orange silt fence) along the northern edge of the HCA to prevent inadvertent encroachment into the resource area. The applicant's representatives propose an alternative condition stating that no storage, staging, or other site development is authorized within the HCA, and no such activity shall occur within the HCA unless the County approves a Habitat Conservation Area Permit, together with the County's proposed requirements

for a construction management plan. The proposed alternative condition was discussed and determined adequate.



**As conditioned these criteria can be met.**

#### **4) WATER QUALITY RESOURCE AREA DISTRICT (WQRAD)**

**709.01 PURPOSE** Section 709 is adopted to implement the policies of the Comprehensive Plan for Water Quality Resource Areas.

**709.02 AREA OF APPLICATION**

- A. Section 709 applies in the Water Quality Resource Area District (WQRAD). The WQRAD applies to all parcels containing a Water Quality Resource Area (WQRA), provided that such parcels are inside the Metropolitan Service District Boundary or the Portland Metropolitan Urban Growth Boundary and outside the boundaries of both Clackamas County Service District No. 1 and Surface Water Management Agency of Clackamas County. WQRAs are protected water resources and adjacent vegetated corridors as established by Section 709. Protected water resources are classified as primary or secondary.
- B. A wetland shall be a primary protected water resource if the wetland meets any one of the following criteria and is not a constructed wetland: 1. The wetland is fed by surface flows, sheet flows, or precipitation, has evidence of flooding during the growing season, has 60 percent or greater vegetative cover, and is over one-

half acre in size; 2. The wetland qualifies as having “intact water quality function” under the 1996 Oregon Freshwater Wetland Assessment Methodology; 3. The wetland is in the Flood Management District, has evidence of flooding during the growing season, is five acres or more in size, and has a restricted outlet or no outlet; 4. The wetland qualifies as having “intact hydrologic control function” under the 1996 Oregon Freshwater Wetland Assessment Methodology; or 5. The wetland or a portion of it is within a horizontal distance of less than one-fourth mile from a water body that meets the Oregon Department of Environmental Quality’s definition of a “water quality limited water body.”

- C. Rivers, perennial streams, intermittent streams draining more than 100 acres, natural lakes, and springs that feed streams and wetlands and have year-round flow are primary protected water resources.
- D. Intermittent streams draining 100 acres or less are secondary protected water resources.
- E. The width of the vegetated corridor included within a WQRA is specified in Table 709-1. However, if an improved, public road right-of-way runs parallel to and—based on Table 709-1—would be included within a WQRA, the WQRA shall not extend beyond the improved, public road right-of-way.

Table 709-1: Width of WQRA Vegetated Corridor

Protected Water Resource Type	Slope Adjacent to Protected Water Resource <sup>1</sup>	Starting Point for Measurements from Water Resource	Width of Vegetated Corridor <sup>2</sup>
Primary Protected Water Resource	< 25 percent	•Edge of bankfull stage •Delineated edge of protected wetland	50 feet
Primary Protected Water Resource	≥ 25 percent for 150 feet or more	•Edge of bankfull stage •Delineated edge of protected wetland	200 feet <sup>3</sup>
Primary Protected Water Resource	≥ 25 percent for less than 150 feet	•Edge of bankfull stage •Delineated edge of protected wetland	Distance from starting point of measurement to break in 25 percent slope plus 50 feet <sup>3,4</sup>
Secondary Protected Water Resource	< 25 percent	•Edge of bankfull stage	15 feet
Secondary Protected Water Resource	≥ 25 percent	•Edge of bankfull stage	50 feet <sup>3</sup>

- F. The text of Section 709 shall determine the boundaries of a WQRA. 1. Certain protected water resources are identified on maps adopted by reference in Chapter 3 of the Comprehensive Plan (hereinafter referred to as the WQRA Map). The WQRA Map shall be a reference for identifying areas likely to be regulated by Section 709, but the WQRA Map is not intended to provide field-verified locations of the protected resources or delineate the edge of the

vegetated corridors. In addition, there may be WQRAs not shown on the WQRA Map. If credible evidence (e.g. aerial photographs, topographic maps, expert studies) indicates that the subject property may contain a WQRA that is not identified on the WQRA map, the provisions of Section 709 shall apply.

**Finding:** The subject property is inside the Metropolitan Service District Boundary and outside of the boundaries of the Clackamas County Service District No. 1 (CCSD No. 1). As noted by the applicant, the subject property is subject to the surface water requirements of the Clackamas County Transportation and Engineering Program that provides surface water management pursuant to the roadway standards when properties are outside of the boundary of the Surface Water Management Agency of Clackamas County, and outside CCSD No 1. Aerial photographs show a vegetation change that could indicate wetlands, and the Statewide Wetlands inventory provided by the experts at the Department of State Lands indicates that the water resource at the southern portion of the property is an intermittent stream and Freshwater Emergent Wetland with predominantly hydric soils covering the whole property. Therefore, ZDO Section 709 applies to this property and the proposed use.

**According to OAR 340-041-0002 (70)** "Water Quality Limited" means one of the following:

- (a) A receiving stream that does not meet narrative or numeric water quality criteria during the entire year or defined season even after the implementation of standard technology;
- (b) A receiving stream that achieves and is expected to continue to achieve narrative or numeric water quality criteria but uses higher than standard technology to protect beneficial uses;
- (c) A receiving stream for which there is insufficient information to determine whether water quality criteria are being met with higher-than-standard treatment technology or a receiving stream that would not be expected to meet water quality criteria during the entire year or defined season without higher than standard technology.

The Oregon Department of Water Quality website states "Every two years, DEQ is required to assess water quality and report to the U.S. Environmental Protection Agency on the condition of Oregon's waters. DEQ prepares an Integrated Report that meets the requirements of the federal Clean Water Act for Sections 305(b) and 303(d)." This assessment determines if a body of water does not meet a numeric water quality standard. This assessment data is sent to the EPA and DEQ sends the general public to the EPA's website How's My Waterway?. Based on the data on the EPA website the North Fork of Deep Creek and its tributaries are impaired and does not meet the water quality standards for aquatic life, swimming and boating (Exhibit 3). The subject property is located on a tributary of the North Fork of Deep Creek. However, the tributary that goes through the southern portion of the property is also considered to be impaired based on the data on the EPA website. Therefore, because it is a "water quality limited water body" it is considered a primary water quality resource and the width of the vegetated buffer is 50 feet from the delineated edge of the protected wetland resource. The presence of a primary protected wetland

resource is also confirmed through Oregon Department of Environmental Quality Case No. WQ-NP-NWR-2025-534 (Exhibit 5).

The applicant did not apply for a WQRA permit. Although Z0380-25 included findings for ZDO 709, the application for Z0380-25 did not include a wetland delineation or address the criteria in ZDO 709 with enough detail to determine where the boundaries of the primary water quality resource are located. The applicant states "No development is proposed to be conducted in a WQRAD. Additionally, the subject property is inside the Surface Water Management Authority of Clackamas County. This criterion does not apply."

Without a wetland delineation staff were unable to determine if the development that occurred since 2021 has occurred inside the boundaries of primary WQRA, or the vegetated buffer around the WQRA. Staff proposed that if Z0380-25 is approved then a Water Quality Resource Area Development Permit be required to ensure the wetland is delineated and the remaining criteria of ZDO 709 are evaluated for impacts to the resource. In that way, any impacts would be identified and mitigated according to an approved plan using native vegetation pursuant to ZDO 709.09, and 709.10. The applicant proposed an alternative condition requiring the applicant to obtain an evaluation by a professional wetland scientist within six months of final design review approval regarding whether there is a wetland in the southern portion of the subject property, report the findings to the County, and take certain additional corresponding actions, with no development or disturbance authorized in any wetlands other than the evaluation. The proposed alternative condition was not discussed at the hearing. The Hearings Officer determined that a modified condition requiring the proposed evaluation and in addition requiring that identified impacts be mitigated according to an approved plan. **These criteria can be met as conditioned.**

**Section 800 Special Use Requirements** - There are no sections in the 800s that apply to commercial or processing activities in conjunction with forest uses.

## 5) SECTION 1000 DEVELOPMENT STANDARDS

As stated in ZDO 1001 "Section 1000 applies to all development, as identified in Table 1001-1, Applicability of Section 1000."

Commercial uses are subject to the following:

**Table 1001-1 Applicability of Section 1000.**

Type of Development	1002 Protection of Natural Features	1003 Hazards to Safety	1004 Historic Protection	1005 Site and Building Design	1006 Utilities, etc	1007 Roads & Connectivity	1009 Landscaping	1010 Signs	1011 Open Space and Parks	1012 Lot Size and Density	1013 Planned Unit Developments	1015 Parking and Loading	1017 Solar Access	1021 Solid Waste & Recyclable Material Collection
Partitions														
Subdivisions	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	
Replots														
Institutional														
Commercial <sup>2</sup>	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓		✓
Industrial														

## **ZDO Section 1002, Protection of Natural Features**

**Finding:** The subject site contains no slopes greater than 20 percent. The water features regulated by the ZDO 709 are addressed above. The property does contain a water feature on the statewide wetland inventory. The Department of State Lands (DSL) reviewed the proposal for impacts to jurisdictional wetlands and found that there is Essential Salmonid Habitat (ESH) on the property. Any removal or addition of 50 cubic yards of material in the ESH requires a Removal-Fill permit from DSL (Exhibit 4).

The property contains a significant clump of trees on the southern portion of the site and no development is proposed in that location of the property, leaving the wooded area mostly undisturbed.

The applicant is correct in the following assertion related to ZDO 1002.04: "The subject property is not located within a Principal River Conservation Area or within 50 feet of the mean high water line of any Type F stream; section 704 River and Stream Conservation Area, therefore, does not apply. The subject property is also not located within the Willamette River Greenway; section 705 does not apply. The small stream on the property is seasonal and not perennial, see Exhibit I Dry Creek Bed Pictures; this section, therefore, does not apply." The intermittent creek is not on the adopted inventory for the River Stream Conservation Areas that are subject to ZDO 704. **These criteria can be met as conditioned.**

## **ZDO Section 1003, Hazards To Safety**

**Finding:** The subject site contains no mapped: mass movement hazards, special flood hazard areas, or soil hazard areas. The property is outside the Urban Growth Boundary and it has unknown wildfire risk since the Oregon Wildfire Risk maps produced by ODF and Oregon State University has been repealed by the passage of 2025 Senate Bill 83. There are no steep slopes on the property. **These criteria are not applicable.**

## **ZDO Section 1004, Historic Protection**

**Finding:** The subject property is not a Historic Landmark and is not located in a Historic District or Historic Corridor. Therefore, there are no known historic resources on the subject site. **These criteria are not applicable.**

## **ZDO Section 1005, Site and Building Design**

### **1005.02 GENERAL SITE DESIGN STANDARDS**

*The following site design standards apply:*

- A. *Where feasible, cluster buildings within single and adjacent developments for efficient sharing of walkways, on-site vehicular circulation, connections to adjoining sites, parking, loading, transit-related facilities, plazas, recreation areas, and similar amenities.*

- B. Where feasible, design the site so that the longest building elevations can be oriented within 20 degrees of true south in order to maximize the south-facing dimensions.*
- C. Minimum setbacks may be reduced by up to 50 percent as needed to allow improved solar access when solar panels or other active or passive solar use is incorporated into the building plan.*

**Finding:** ZDO 202 includes the following definition: **BUILDING:** Any structure used or intended for supporting or sheltering any use or occupancy.

County staff assert that by strict definition the Conex Storage containers used to shelter equipment and wood on the subject site are buildings. The Conex Storage containers have no windows to allow passive solar and the site plan does not indicate the location of all of the storage containers to allow a determination on whether they are clustered or oriented. There are no adjoining sites with transit-related facilities, plazas, recreation areas or similar amenities that could connect to the subject property. Review of the walkways within the site was not available based on the site plan provided.

The applicant states:

*"The Conex type shipping containers on site are used for storage of equipment and erosion control product used in the forest practices. The Conex containers are allowed at least as accessory uses in connection with applicants' forest practices uses because the storage containers are "clearly incidental to" applicants' main use on the property under ZDO 202's definition of "accessory building or use." Applicant further notes that if a Conex were a building or structure (it is not), it would qualify for agricultural exemption under ORS 455.315 because they are used in a forest operation and for forestry use; specifically, they are used for storage of forestry equipment, and equipment necessary to maintain forest machinery and equipment."*

Staff reported they were unable to determine if the site development will cluster buildings in a way that is appropriate for the commercial and processing activities within the developed portion of the site because the site plan did not include the location of the buildings or structures. There are no members of the public visiting the site and thus the efficient sharing of walkways with adjacent development is not applicable to the proposed use. The site is a rural residentially zoned property with no commercial, industrial, or other institutional uses on adjacent properties in the area, thus connections to adjoining sites, parking, loading, transit-related facilities, plazas, recreation areas, and similar amenities are not needed because these amenities are not available in the area. No solar panels or other active or passive solar use is incorporated into the building plan because the Conex Storage used to cover equipment and the sheltered wood area are not in need of passive solar use.

With respect to the Conex containers, I considered the arguments advanced by the County consistent with the analysis of the Hearings Officer in Z0075-24 that: "A storage container is a structure per ZDO 202, which defines a structure as 'anything constructed or erected' and also considered the arguments advanced by Ms. Huedepohl and Ms. Kellington on behalf of the applicant.

The Conex storage containers appear to meet the County definition of a structure because they are constructed or erected and then placed on the site. Therefore, the standards described in this section appear applicable to the placement of the storage containers on the subject property. However, I also understand the arguments advanced by Ms. Huedepohl and Ms. Kellington and the supporting facts they provide describing the use of these same Conex containers as "equipment" that is moved from location to location in connection with the applicant's forestry activities. After considering the matter, I conclude that these Conex containers are defined by their use and can be considered either "equipment" or "structures." They are shipping containers when used to move goods or equipment about from location to location or to store materials on a temporary basis such as at a remote work site. The Conex containers become a structure that may require a building permit when placed on the ground and used for storage, particularly in cases where a Conex container is repurposed and used in place of a storage building as is the case for the four Conex containers here. I agree with the arguments advanced by Ms. Huedepohl and Ms. Kellington that the Conex containers may be exempt from the structural building code (just as any other storage building) when used for agricultural or forestry purposes, clarifying the related condition to reflect this. To clarify: submitting an application for an agricultural building exemption does not exempt these Conex containers from setback requirements or requirements for permits for electrical, plumbing (including rain drains), or mechanical systems. **These criteria can be met as conditioned.**

*D. A continuous, interconnected on-site walkway system meeting the following standards shall be provided.*

- 1. Walkways shall directly connect each building public entrance accessible to the public to the nearest sidewalk or pedestrian pathway, and to all adjacent streets, including streets that dead-end at the development or to which the development is not oriented.*
- 2. Walkways shall connect each building to outdoor activity areas including parking lots, transit stops, children's play areas, and plazas.*
- 3. Walkways shall be illuminated. Separate lighting shall not be required if existing lighting adequately illuminates the walkway.*
- 4. Walkways shall be constructed with a well-drained, hard-surfaced material or porous pavement and shall be at least five feet in unobstructed width.*
- 5. Standards for walkways through vehicular areas:
  - a. Walkways crossing driveways, parking areas, and loading areas shall be constructed to be clearly identifiable to motorists through the use of different paving material, raised elevation, warning signs, or other similar methods.*
  - b. Where walkways are adjacent to driveways, they shall be separated by a raised curb, bollards, landscaping, or other physical barrier.**

- c. *Inside the Portland Metropolitan Urban Growth Boundary (UGB), if the distance between the building public entrance and street is 75 feet or greater and located adjacent to a driveway or in a parking lot, the walkway shall be raised, with curbs, a minimum four-foot-wide landscape strip and shade trees planted a maximum of 30 feet on center.*
- d. *The exclusive use of a painted crossing zone to make walkways identifiable to motorists may be used only for portions of walkways which are shorter than 30 feet and located across driveways, parking lots, or loading areas.*
- e. *Walkways bordering parking spaces shall be at least seven feet wide or a minimum of five feet wide when concrete bumpers, bollards, curbing, landscaping, or other similar improvements are provided which prevent parked vehicles or opening doors from obstructing the walkway.*
- 6. *The interconnected onsite walkway system shall connect to walkways in adjacent developments, or stub to the adjacent property line if the adjacent land is vacant or is developed without walkways.*
  - a. *Walkway stubs shall be located in consideration of topography and eventual redevelopment of the adjacent property.*
  - b. *Notwithstanding the remainder of Subsection 1005.02(D)(6), walkway linkages to adjacent development shall not be required within industrial developments, to industrial developments, or to vacant industrially zoned land.*

**Finding:** The applicant states:

“There are no buildings, public entrances, or outdoor activity areas on the property requiring walkway connections and, therefore, walkways are not required under this section. The criteria do not apply.”

The application materials confirm that no public entrance is applicable, and the employees visiting the site will be parking and using the equipment or driving the log trucks away. Walkways to the road are not appropriate or needed, and there are no outdoor activity areas, transit stops, children’s play areas, or plazas. The onsite walkway system will need further review. **These criteria can be met as conditioned.**

- E. *Inside the UGB, except for industrial developments, a minimum of 50 percent of the street frontage of the development site shall have buildings located at the minimum front setback line.*
- F. *Inside the UGB, parking lots larger than three acres in size shall be built with major on-site vehicular circulation ways that include raised walkways with curbs, a minimum four-foot-wide landscape strip, and shade trees planted a maximum of 30 feet on center.*
- G. *New retail, office, mixed use, and institutional buildings located on major transit streets shall have at least one public entrance facing a major transit street, or street intersecting a major transit street.*

- H. *New retail, office, mixed use, multifamily, and institutional buildings located at a major transit stop shall be set back a maximum of 20 feet from at least one of the following: the major transit stop, the major transit street or an intersecting street, or a pedestrian plaza at the major transit stop or a street intersection.*
- I. *In the PMU District, there shall be no vehicular parking or circulation within the front setback area.*
- J. *In the OC District, the design and siting of structures shall control public access points into office buildings, utilizing a central lobby design, entrance courtyard, internal pedestrian walkway or mall, or similar designs that protect business/professional uses from the disturbances of direct public access.*
- K. *Where a minimum floor area ratio (FAR) is required by the standards of the applicable zoning district, it shall be calculated as follows:*
- L. *The following standards apply in the HDR, RCHDR, and SHD Districts:...*

**Finding:** The subject site is located outside the UGB, in an area without major transit, and no street frontage. The site is in the RRFF-5 District that has no minimum FAR. The use is not retail, office, mixed use, or institutional, and the public does not visit or enter the site. **These criteria are not applicable.**

### **ZDO SECTION 1005.03 BUILDING DESIGN**

- A. *The following standards apply to building facades visible from a public or private street or accessway and to all building facades where the primary entrance is located.*
  1. *Building facades shall be developed with architectural relief, variety and visual interest and shall avoid the effect of a single, long or massive wall with no relation to human size. Examples of elements that subdivide the wall: change in plane, texture, masonry pattern or color, or windows.*
  2. *Building facades shall have particular architectural emphasis at entrances and along sidewalks and walkways*
  3. *Provide visual interest through use of articulation, placement and design of windows and entrances, building trim, detailing, ornamentation, planters, or modulating building masses.*
  4. *Utilize human scale, and proportion and rhythm in the design and placement of architectural features.*
  5. *Use architectural features which are consistent with the proposed use of the building, level and exposure to public view, exposure to natural elements, and ease of maintenance.*
  6. *When uses between ground-level spaces and upper stories differ, provide differentiation through use of bays or balconies for upper stories, and awnings, canopies, trim, and other similar treatments for lower levels.*
- B. *Requirements for building entries:*

1. *Public entries shall be clearly defined, highly visible, and sheltered with an overhang or other architectural feature, with a depth of at least four feet.*
2. *Commercial, mixed-use and institutional buildings sited to comply with 1005.02(E) shall have public entries that face streets and are open to the public during all business hours.*
- C. *The street-facing facade of commercial, mixed-use and institutional buildings sited to comply with 1005.02(E) shall meet the following requirements:*
  1. *Facades of buildings shall have transparent windows, display windows, entry areas, or arcades occupying a minimum of 60 percent of the first floor linear frontage.*
  2. *Transparent windows shall occupy a minimum of 40 percent of the first floor linear frontage. Such windows shall be designed and placed for viewing access by pedestrians.*
  3. *For large-format retail buildings greater than 50,000 square feet, features to enhance the pedestrian environment, other than transparent window, may be approved through design review. Such items may include, but are not limited to display cases, art, architectural features, wall articulation, landscaping, or seating, provided they are attractive to pedestrians, are built to human scale, and provide safety through informal surveillance.*

**Finding:** The subject property is accessed through two driveways onto a state highway. The remainder of the site is behind a gate. The site is not open to the public. Adjacent properties are zoned RRFF-5 or EFU. Therefore, there will be no building facades visible from a public or private street or accessway and no building facades where the primary entrance is used by the public. This application is not subject to ZDO 1005.02(E) because the subject property is located outside of the UGB. **These criteria are met.**

*D. Requirements for roof design:*

1. *For buildings with pitched roofs:*
  - a. *Eaves shall overhang at least 24 inches.*
  - b. *Roof vents shall be placed on the roof plane opposite the primary street*
2. *For buildings, other than industrial buildings, with flat roofs or without visible roof surfaces, a cornice or other architectural treatment shall be used to provide visual interest at the top of the building.*

*E. Requirements for exterior building materials:*

1. *Use architectural style, concepts, colors, materials, and other features that are compatible with the neighborhood's intended visual identity.*
2. *Building materials shall be durable and consistent with the proposed use of the building, level and exposure to public view, exposure to natural elements, and ease of maintenance.*
3. *Walls shall be surfaced with brick, tile, masonry, stucco, stone or synthetic equivalent, pre-cast masonry, gypsum reinforced fiber concrete, wood lap siding, architecturally treated concrete, glass, wood, metal, or a combination of these materials.*

4. *The surfaces of metal exterior building materials that are subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and the surfaces of metal exterior building materials with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion.*

**F. Additional building design requirements for multifamily dwellings and middle housing, except middle housing developed pursuant to Section 845, Triplexes, Quadplexes, Townhouses, and Cottage Clusters:**

**Finding:** The proposed use is not a middle housing type. Although the applicant indicates there are no buildings on the property, as discussed above the Conex storage containers are structures designed to shelter a use and are thus considered buildings. The use of Conex storage structures as buildings is consistent with the proposed use, level of exposure to public view, exposure to natural elements and ease of maintenance. There is no particular architectural style, concepts, colors, materials, or other features that are compatible with the rural nature of the area and the proposed use of the site for storage of logging equipment and logs.

The applicant states: “*Section 1005.03(A) through (F) apply to “building facades visible from a public or private street or accessway and to all building facades where the primary entrance is located,” to “building entries” with “public entries” or “with “public entries sited to comply with 1005.02(E).” There are no buildings on the property; therefore, this section does not apply. Regardless, the subject property is screened from view from public and private streets and accessways by fencing and landscaping, applicant does not propose any building with a façade visible from a public or private street or accessway, the subject property is not open to the public, there are no public entries or building entries, and applicant does not propose any building at the primary entrance to the property. Subsections (A) through (G) do not apply.*”

As discussed earlier, there is no public view. Therefore, the building materials chosen are durable and consistent with the proposed use of the building as indicated by the applicant. The building materials are consistent with the level and exposure to public view because there is no public view. Staff finds that the materials are consistent with the exposure to natural elements, and ease of maintenance, and the Hearings Officer agrees.

However, because the buildings are not industrial buildings there are requirements for roof design that were not addressed in the application and no modification pursuant to ZDO 1005.06 was requested. The design of the buildings on the site can be reviewed separately through a future design review application. **These criteria can be met as conditioned.**

**G. Requirements to increase safety and surveillance:**

1. *Locate buildings and windows to maximize potential for surveillance of entryways, walkways, and parking, recreation, and laundry areas.*

2. Provide adequate lighting for entryways, walkways, and parking, recreation, and laundry areas.
3. Locate parking and automobile circulation areas to permit easy police patrol.
4. Design landscaping to allow for surveillance opportunities.
5. Locate mail boxes where they are easily visible and accessible.
6. Limit fences, walls and, except for trees, landscaping between a parking lot and a street to a maximum of 30 inches in height.
7. Locate play areas for clear parental monitoring.

**Finding:** The applicant states: “Section 1005.03(G) applies to “buildings,” “windows,” “entryways,” “walkways,” “parking, recreation, and laundry areas,” “landscaping,” “mailboxes,” “landscaping \* \* \* between a parking lot and a street,” and “play areas.” This site is proposed for use for log storage as well as logging equipment/vehicle storages. No employees are based at this location, no residents live at the site, and the site is not open to the public. The site is secured by a fence and gate. The secured portion of the site is designed to facilitate circulation, maneuvering, and visibility requirements for logging equipment/vehicles, which satisfies the security and surveillance requirements. The highway access and area outside the secure fence meets the requirements for onsite security and surveillance, including permitting easy police patrol. To the extent they may apply, the requirements of this subsection are met.”

Staff and the Hearings Officer concur with the applicant’s finding. **These criteria are met.**

*H. Solar access requirements: 1. Except for uses with greater cooling needs than heating needs, such as many retail uses, concentrate window areas on the south side of buildings (within 20 degrees of due south) where there is good southern exposure. 2. Provide overhangs, balconies, or other shading devices to prevent excessive summer heat gains. 3. Use architectural features, shape of buildings, fences, natural landforms, berms, and vegetation to catch and direct summer breezes for natural cooling, and minimize effects of winter winds.*

*I. Requirements for compatibility with the intent of the design type or with the surrounding area.*

*J. Requirements for screening mechanical equipment:*

*K. Requirements for specialized structures in industrial zoning districts*

**Finding:** The proposed use of Conex Storage Containers for storing equipment and logs involves no habitable space for people, or need for windows. The surrounding area is in farm, forestry and rural residential use with no specific design dominating the surrounding area. The proposed use does not include mechanical equipment on the roof of any of the buildings. All of the structures in the site are either Conex Storage containers or coverings for covered wood storage. The applicant did not

identify how the solar access requirements of the buildings were met. **These criteria can be met as conditioned.**

#### **ZDO SECTION 1005.04 OUTDOOR LIGHTING**

**A. Outdoor lighting devices:**

1. Shall be architecturally integrated with the character of the associated structures, site design, and landscape.
2. Shall not direct light skyward.
3. Shall direct downward and shield light; or direct light specifically toward walls, landscape elements, or other similar features, so that light is directed within the boundaries of the subject property;
4. Shall be suitable for the use they serve (e.g. bollard lights along walkways, pole mounted lights for parking lots);
5. Shall be compatible with the scale and intensity of uses they are serving. The height of pole-mounted fixtures shall not exceed 25 feet or the height of the tallest structure onsite, whichever is less; and
6. At entrances, shall be glare-free. Entrance lighting may not exceed a height of 12 feet and must be directed downward.

**B. The following are exempt from Subsection 1005.04(A):**

1. Temporary lights used for holiday decorations;
2. Street lights regulated in Section 1006, Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control; and
3. Lighting associated with outdoor recreation uses such as ball fields or tennis courts.

**Finding:** The applicant states: "There are no lights on the property that direct light skyward or outside the boundaries of the subject property, and there are no pole-mounted fixtures that exceed 25 feet or the height of the tallest structure onsite, and there is no entrance lighting." However, the application did not provide any support for that statement. Lighting was not shown on the site plan and there was no lighting study included in the application materials. To ensure lighting specifications, a lighting plan or other documentation of the proposed lighting will need to be provided and the lights used will be shielded and directed downwards. **These criteria can be met as conditioned.**

#### **ZDO SECTION 1005.05 ADDITIONAL REQUIREMENTS**

*Development shall comply with a minimum of one of the following techniques per 20,000 square feet of site area. Regardless of site size, a minimum of one and a maximum of five techniques are required. Partial site area numbers shall be rounded.*

**A. Install a solar energy system in the development.**

**B. Use passive solar heating or cooling techniques to reduce energy consumption.**

**Examples of techniques:**

1. Modulate building masses to maximize solar access.

2. For developments with more than one structure, locate taller structures to minimize negative impacts on solar access for the development site and adjacent sites.
3. Locate buildings to maximize windbreaks.
4. Locate structures and landscaping to avoid winter shading on the south side and optimize summer shading on the west and southwest sides of buildings.
5. Utilize deciduous trees to provide summer shade and allow winter sun.
6. Utilize deciduous vines on fences, trellises, and arbors to provide summer shade.
7. Locate and form berms to protect buildings and exterior use spaces against winter winds or utilize dense evergreens or conifers to screen winter wind and protect against hostile winter elements.
8. Provide skylights or clerestory windows to provide natural lighting, and/or solar heating of interior spaces.

C. Use highly reflective (high albedo) materials on roof surfaces.

D. Place major outdoor use areas such as plazas, playgrounds, gardens, etc. on the south side of buildings.

E. Construct a minimum of 75 percent of walkway area of porous pavement.

F. Construct a minimum of 75 percent of all parking spaces with porous pavement.

G. Provide additional landscaping area at least 10 percent above the requirement for the site pursuant to Table 1009-1, Minimum Landscaped Area. For example, if the minimum area requirement is 20 percent, then 22 percent shall be provided. Credit shall be given for green roofs or other areas of vegetation that exceed the minimum area requirements.

H. Include additional swales in development landscaping, pursuant to Section 1009, Landscaping. Credit shall be given for additional swale(s) that exceed the requirements of Subsection 1009.04(A)(2) by at least 10 percent of area. For example, if 1009.04(A)(2) requires 200 square feet of swale area, then an additional 20 square feet of swale area would be required.

I. Collect rainwater from roofs and/or other impervious surfaces and use it for irrigation.

J. Apply other techniques for onsite storm water treatment identified by the surface water management regulatory authority.

K. Lay out sites and locate buildings and on-site vehicular circulation to create functional open areas such as plazas, courtyards, outdoor recreation areas, miniparks, and accessways that are open to the general public.

**Finding:** The application materials show that the applicant has a stormwater pollution control plan but it uses ditches to collect stormwater and direct it off-site instead of using techniques for onsite stormwater treatment. As noted in Exhibit 7, a stormwater management plan shall be provided, verifying that the storm drainage facilities are or will be designed and constructed in conformance with *Clackamas County Roadway Standards* Chapter 4. The subject site is zoned RRFF-5 and *Table 1009-1, Minimum Landscaped Area* identifies that for conditional uses, in the RRFF-

5 zone, 25% of the site shall be landscaped. The applicant is proposing 30-34% of the site for landscaping. As noted above no public are invited or expected to visit the site. The applicant identified that they would be using "passive solar heating or cooling techniques to reduce energy consumption." but did not identify a specific technique that would be used other than avoiding the use of HVAC systems entirely. These criteria can be met as conditioned.

## **ZDO SECTION 1006, UTILITIES, STREET LIGHTS, WATER SUPPLY, SEWAGE DISPOSAL, SURFACE WATER MANAGEMENT, AND EROSION CONTROL**

### **1006.01 GENERAL STANDARDS**

- A. *The location, design, installation, and maintenance of all utility lines and facilities shall be carried out with minimum feasible disturbance of soil and site consistent with the rules and regulations of the surface water management regulatory authority.*
- B. *All development that has a need for electricity, natural gas, and communications services shall install them pursuant to the requirements of the utility district or company serving the development. Except where otherwise prohibited by the utility district or company, utility service lines shall be installed underground.*
- C. *Coordinated installation of necessary water, sanitary sewer, and surface water management and conveyance facilities is required.*
- D. *Easements shall be provided along lot lines as deemed necessary by the County, special districts, and utility companies. Easements for special purpose uses shall be of a width deemed appropriate by the responsible agency.*

**Finding:** As conditioned these criteria are met.

### **1006.03 WATER SUPPLY**

- A. *Development which has a need for, or will be provided with, public or community water service shall install water service facilities and grant necessary easements pursuant to the requirements of the district or company serving the development.*
- B. *Approval of a development that requires public or community water service shall be granted only if the applicant provides a preliminary statement of feasibility from the water system service provider.*
  1. *The statement shall verify that water service, including fire flows, is available in levels appropriate for the development and that adequate water system capacity is available in source, supply, treatment, transmission, storage and distribution. Alternatively, the statement shall verify that such levels and capacity can be made available through improvements completed by the developer or the system owner.*

2. If the statement indicates that water service is adequate with the exception of fire flows, the applicant shall provide a statement from the fire district serving the subject property that states that an alternate method of fire protection, such as an on-site water source or a sprinkler system, is acceptable.
3. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve water system capacity for the development.

C. Prior to final approval of a partition or subdivision, the applicant shall provide evidence that any wells in the tract subject to temporary or permanent abandonment under Oregon Revised Statutes (ORS) 537.665 have been properly abandoned.

D. The following standards apply inside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:

1. Land divisions or other development requiring water service shall not be approved, except as provided in Subsection 1006.03(D)(4), unless they can be served by a public water system in compliance with drinking water standards as determined by the Oregon Health Authority.
2. Development requiring water service within the boundaries of a water service system, created pursuant to ORS chapters 264, 450, or 451, shall receive service from this system.
3. New public water systems shall not be created unless formed pursuant to ORS chapters 264, 450, or 451.
4. A lot of record not located within the approved boundaries of a public water system may be served by an alternative water source.

**Finding:** The development includes storing and sorting logs as well as storing logging equipment on the site. Although the applicant is not proposing the use of water at the site a preliminary statement of feasibility from the Boring Water District was provided that indicates that it is feasible to meet the water requirements for the site. No land division is proposed and no new water system is being created. Although the site is inside the Sandy-Boring groundwater limited area, no water usage is proposed, and hydrogeologic review is not needed. **These criteria are met.**

#### **1006.04 SANITARY SEWER SERVICE**

**Finding:** The subject property is outside of all sanitary sewer districts and is not able to be served by a sanitary sewer service. **These criteria are not applicable.**

#### **1006.05 ONSITE WASTEWATER TREATMENT**

A. All development that requires onsite wastewater treatment shall receive approval for the system from the County prior to submittal of a land use application for development. Onsite wastewater treatment systems shall be installed pursuant to: Oregon Revised Statutes 454.605 through 454.745;

*Oregon Administrative Rules chapter 340, divisions 71 and 73; and the policies of the County.*

*All development that requires onsite wastewater treatment shall receive approval for the system from the County prior to submittal of a land use application for development. Onsite wastewater treatment systems shall be installed pursuant to:*

*Oregon Revised Statutes 454.605 through 454.745; Oregon Administrative Rules chapter 340, divisions 71 and 73; and the policies of the County.*

- B. Inside the Portland Metropolitan Urban Growth Boundary (UGB), Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village, all land divisions or other development that requires onsite wastewater treatment shall be prohibited except for: ....*
- C. Notwithstanding Subsection 1006.05(B), development of triplexes, quadplexes, townhouses, or cottage clusters in the VR-4/5, VR-5/7, R-5, R-7, R-8.5, R-10, R15, R-20, or R-30 Districts and development of affordable housing subject to Section 846, Affordable Housing, is prohibited if the development requires onsite wastewater treatment.*

**Finding:** The site is located outside of the UGB. The development is not for triplexes, quadplexes, townhouses, or cottage clusters in an urban residential zone. The Clackamas County Septic and Onsite Wastewater Program does not provide preliminary statements of feasibility. The Program does provide authorization notices for situations where the use or intensity of the use is changing to ensure the existing system is adequate for the new use and does provide site evaluations when a new system is proposed. In the application, the applicant indicated that no wastewater is proposed. **These criteria are met.**

## **1006.06 SURFACE WATER MANAGEMENT AND EROSION CONTROL**

*The following surface water management and erosion control standards apply:*

- A. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.*
- B. The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the Clackamas County Roadway Standards apply.*
- C. Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water*

*management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.*

1. *The surface water management regulatory authority may require a preliminary surface water management plan and report, natural resource assessment, and buffer analysis prior to signing the preliminary statement of feasibility.*
2. *The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.*

*D. Development shall be planned, designed, constructed, and maintained to:*

1. *Protect and preserve existing natural drainage channels to the maximum practicable extent;*
2. *Protect development from flood hazards;*
3. *Provide a system by which water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons within the drainage basin;*
4. *Ensure that waters drained from the development are substantially free of pollutants, including sedimentary materials, through such construction and drainage techniques as sedimentation ponds, reseeding, and phasing of grading; and*
5. *Ensure that waters are drained from the development in such a manner that will not cause erosion to any greater extent than would occur in the absence of development.*

*E. Where culverts cannot provide sufficient capacity without significant environmental degradation, the County may require the watercourse to be bridged or spanned.*

*F. If a development, or any part thereof, is traversed by any watercourse, channel, stream, creek, gulch, or other natural drainage channel, adequate easements for surface water management purposes shall be provided to the surface water management regulatory authority.*

*G. Channel obstructions are not allowed, except as approved for the creation of detention, retention, or hydropower facilities approved under this Ordinance. Fences with swing gates may be utilized.*

*H. The natural drainage pattern shall not be substantially altered at the periphery of the subject property. Greatly accelerated release of stored*

*water is prohibited. Flow shall not be diverted to lands that have not previously encountered overland flow from the same upland source unless adjacent downstream owners agree.*

- I. A surface water management and erosion control plan is required for significant residential, commercial, industrial, and institutional development. The plan shall include: 1. The methods to be used to minimize the amount of runoff siltation and pollution created from the development both during and after construction; and 2. Other elements required by the surface water management authority.*

**Finding:** The subject property is located outside surface water management districts and thus the Clackamas County Transportation and Engineering Program is the surface water management agency. The applicant provided a stormwater pollution control plan in the application, but did not provide a stormwater management plan to show how stormwater would be captured and treated onsite. As indicated by the preliminary statements of feasibility signed the 5/04/2025 by the Clackamas County Transportation and Engineering Program the onsite surface water treatment requirements for the proposed use could be met. The storm drainage capture and treatment facilities for the proposed development will be reviewed with the Development Permit. As noted in Exhibit 7, a stormwater management plan shall be provided, verifying that the storm drainage facilities are or will be designed and constructed in conformance with *Clackamas County Roadway Standards* Chapter 4. **As conditioned these criteria are met.**

## **1007 ROADS AND CONNECTIVITY**

### **1007.01 GENERAL PROVISIONS**

- A. The location, alignment, design, grade, width, and capacity of all roads shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.*
- B. Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, duplexes, triplexes, quadplexes, townhouses, cottage clusters, detached single-family dwellings, and commercial, industrial, and institutional uses, consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.*

**Finding:** No new roads are proposed. The existing access will need to meet the requirements of the Clackamas County Roadway Standards and ODOT requirements and be adequate for fire and emergency access. **These criteria are met as conditioned.**

C. New developments shall have access points connecting with existing roads.

1. *Intersection spacing and access control shall be based on Subsection 3.08.110(E) of the Metro Code (Regional Transportation Functional Plan); Chapters 5 and 10 of the Comprehensive Plan; and the Clackamas County Roadway Standards.*
2. *For development on any portion of a contiguous site identified on Comprehensive Plan Map 5-6, Potentially Buildable Residential Sites > 5 Acres in UGB, the applicant shall provide a conceptual map of new streets for the entire site. The map shall identify street connections to adjacent areas to promote a logical, direct, and connected system of streets; demonstrate opportunities to extend and connect new streets to existing streets, and provide direct public right-of-way routes. Closed-end street designs shall be limited to circumstances in which barriers prevent full street extensions. Closed-end streets shall not exceed 200 feet in length and shall serve no more than 25 dwelling units. Subsequent development on the site shall conform to the conceptual street map, unless a new map is approved pursuant to Subsection 1007.01(C)(2).*
3. *Access control shall be implemented pursuant to Chapter 5 of the Comprehensive Plan and the Clackamas County Roadway Standards considering best spacing for pedestrian access, traffic safety, and similar factors.*
4. *Approaches to public and county roads shall be designed to accommodate safe and efficient flow of traffic and turn control where necessary to minimize hazards for other vehicles, pedestrians, and bicyclists.*
5. *Joint access and circulation drives utilizing reciprocal easements shall be utilized as deemed necessary by the Department of Transportation and Development. In the NC District, joint street access for adjacent commercial developments shall be required.*
6. *In the SCMU District, driveways shall be spaced no closer to one another than 35 feet, measured from the outer edge of the curb cut, unless compliance with this standard would preclude adequate access to the subject property as a result of existing off-site development or compliance with the Clackamas County Roadway Standards.*
7. *In the VA District, no direct motor vehicle access is permitted on Sunnyside Road.*
8. *Inside the Portland Metropolitan Urban Growth Boundary:*

- a. *The development shall have no more than the minimum number of driveways required by the Department of Transportation and Development on all arterial and collector streets.*
- b. *For properties having more than one street frontage, driveways shall be located on the street with the lowest functional classification, if feasible.*
- c. *Driveways shall be no wider than the minimum width allowed by the Clackamas County Roadway Standards.*
- d. *Driveways shall be located so as to maximize the number of allowed onstreet parking spaces, the number of street trees, and optimum street tree spacing.*

**Finding:** The subject property is not in the NC, VA, or SCMU District and is not located in a station community. Joint access is not proposed and the property is outside the UGB. The driveways serving the site currently exists and the application materials do not propose to alter the location of the driveways. Comments provided by the Transportation and Engineering Program staff will be saved as an exhibit. The access from Hwy 212 onto the existing access easement was reviewed by ODOT for the pre-application conference ZPAC0038-25 and they noted in their comments that further review would be completed. ODOT reviewed the traffic study and their comments can be viewed in Exhibit 6. **As conditioned these criteria are met.**

- D. *Street alignments, intersections, and centerline deflection angles shall be designed according to the standards set forth in Chapters 5 and 10 of the Comprehensive Plan and the Clackamas County Roadway Standards.*
- E. *All roads shall be designed and constructed to adequately and safely accommodate vehicles, pedestrians, and bicycles according to Chapters 5 and 10 of the Comprehensive Plan and the Clackamas County Roadway Standards. Development-related roadway adequacy and safety impacts to roadways shall be evaluated pursuant to the Clackamas County Roadway Standards and also to Oregon Department of Transportation standards for state highways.*
- F. *Roadways shall be designed to accommodate transit services where transit service is existing or planned and to provide for the separation of motor vehicles, bicycle, and pedestrian traffic, and other modes as appropriate.*

**Finding:** The development does not propose the construction of any new roads. The public road adjacent to the site does not serve a transit service route. The subject property is outside the UGB and the driveway currently exists and will be reviewed for adequacy, safety, and compliance with the Comprehensive Plan and Roadway Standards through a Development Permit from Clackamas County Department of Transportation and Development with coordination with ODOT as needed. **As conditioned these criteria are met.**

## **1007.02 PUBLIC AND PRIVATE ROADWAYS**

- A. *All roadways shall be developed according to the classifications, guidelines, tables, figures, and maps in Chapters 5 and 10 of the Comprehensive Plan and the provisions of the Clackamas County Roadway Standards.*
- B. *The layout of new public and county roads...*
- C. *New county and public roads terminating in cul-de-sacs or other dead-end turnarounds are prohibited....*

**Finding:** The property is not included in Comprehensive Plan Map 5-1 as a scenic road; and is not on Map IV-8. The subject property is not located in a center, corridor or station community; and is outside of the area included on Map 5-5. No new public or county roads are proposed. The subject property is not located in: Government Camp; the Sunnyside Corridor; the Sunnyside Village; the Regional Center, or Mount Hood Resource Protection Area. Hwy 212 adjacent to the subject site is identified as a Planned Bikeway on Comprehensive Plan Map 5-2-b and is identified as a Principal Arterial in Map 5-4b. Therefore there are no specific design standards for the road that is adjacent to the site beyond the provisions in the Roadway Standards and Comprehensive Plan Figure 5-2a. However, Hwy 212 is a state highway owned, operated, and maintained by ODOT. **These criteria are not applicable.**

- D. *Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:*
  - 1. *No planting, signing, or fencing shall be permitted which restricts motorists' vision; and*
  - 2. *Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.*
- D. *New developments, subdivisions, and partitions may be required to dedicate land for right-of-way purposes and/or make road frontage improvements to existing rights-of-way, consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.*
- F. *Road frontage improvements within the UGB and in Government Camp, Rhododendron, and Wemme/Welches shall include:...*

**Finding:** Hwy 212 adjacent to the subject site is identified as a Planned Bikeway on Comprehensive Plan Map 5-2-b, is identified as a Principal Arterial in Map 5-4b, and

is subject to the right of way provisions for Arterials that include a paved shoulder/bikeway as shown in Figure 5-2a. The Roadway Standards guide access and vehicle circulation on site however, Hwy 212 is a state highway owned, operated, and maintained by ODOT therefore, right-of-way is controlled by ODOT. The site is outside of the UGB and Government Camp. **These criteria can be met as conditioned.**

### **1007.03 PRIVATE ROADS AND ACCESS DRIVES**

A. *Private roads and access drives shall be developed according to classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, Typical Roadway Cross Sections, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards, except:*

- 1. When easements or “flag-pole” strips are used to provide vehicular access ....;*
- 2. Where the number of lots served exceeds three, ....;*
- 3. Access easements or “flag-pole” strips may be used for utility purposes in addition to vehicular access;*
- 4. The standards listed above may be deviated from when deemed appropriate by the Department of Transportation and Development to accommodate one-half streets or private common access drives and roads within developed urban areas providing access to not more than seven lots; and*
- 5. The intersection of private roads or access drives with a public or county road and intersections of two private roads or access drives shall comply with the sight distance and clear zone standards pursuant to Subsection 1007.02(D).*

**Finding:** The proposed use involves no private roads or access drives. **These criteria are not applicable.**

### **1007.04 PEDESTRIAN AND BICYCLE FACILITIES**

A. *General Standards: Pedestrian and bicycle facilities shall be developed according to the classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, Typical Roadway Cross Sections, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.*

B. *Pedestrian and Bicycle Facility Design: Pedestrian and bicycle facilities shall be designed to:*

- 4. Be consistent with Chapters 5 and 10 of the Comprehensive Plan; Comprehensive Plan Maps 5-2a, Planned Bikeway Network, Urban, 5-2b, Planned Bikeway Network, Rural, and 5-3, Essential Pedestrian Network; North Clackamas Parks and Recreation District’s (NCPRD)*

*Park and Recreation Master Plan; and Metro's Regional Trails and Greenways Map.*

- C. Requirements for Pedestrian and Bicycle Facility Construction: Within the Portland Metropolitan Urban Growth Boundary (UGB).
- D. Requirement for Sidewalk Construction: Within the UGB,....
- E. Sidewalks or Pedestrian Pathways in Unincorporated Communities: In an unincorporated community,....
- F. Sidewalk Location: Sidewalks required by Subsection 1007.04(C) or (D)....
- G. Pedestrian Pathways: Within the UGB....

**Finding:** The project is located outside the Urban Growth Boundary, is zoned RRFF-5 and is not located inside an unincorporated community, there is no requirement for pedestrian and bicycle facilities, or sidewalks, to be designed or constructed pursuant to items C and D above. **These criteria are not applicable.**

## **1007.07 TRANSPORTATION FACILITIES CONCURRENCY**

- A. *Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.*
- B. *Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:*

**Finding:** The proposed use is not a design review, subdivision, or partition. The traffic study submitted by the applicant and reviewed by ODOT found that the proposed use will have no impact to the State highway facilities and the transportation system was found to be adequate. 1007.01 is addressed above in relation to 1203.03(C). **These criteria are met.**

## **ZDO SECTION 1009 LANDSCAPING**

### **1009.01 GENERAL PROVISIONS**

- A. *Landscaping materials shall be selected and sited to produce a hardy and low-maintenance landscaped area with an emphasis on fast-growing plants. Selection shall include consideration of soil type and depth, spacing, exposure to sun and wind, slope and contours of the subject property, building walls and overhangs, and compatibility with existing vegetation to be preserved. Notwithstanding the requirement for hardiness, annuals are permitted as provided in Subsection 1009.01(B).*
- B. *A variety of plants, intermixed throughout landscaped areas, shall be provided, as follows:*
  - 1. *Evergreen and deciduous;*
  - 2. *Trees, shrubs, and groundcover;*
  - 3. *Plants of varying textures;*

4. *Plants of varying widths and heights at maturity; and*
5. *Plants with seasonal color interest (e.g., foliage, flowering perennials, annuals).*

C. *The planting of invasive non-native or noxious vegetation shall be prohibited, and existing invasive non-native or noxious vegetation shall be removed.*

D. *Landscaped areas shall not be used for other purposes, such as storage or display of automobiles, equipment, merchandise, or materials.*

E. *Landscaping of the unimproved area between a lot line and the improved portion of an adjacent road right-of-way shall be required when there are no immediate plans to develop or otherwise disturb the unimproved area, and one or more of the following apply:*

1. *The subject property is located inside the Portland Metropolitan Urban Growth Boundary;*
2. *Landscaping is necessary to present an appearance consistent with the proposed development as viewed from the road;*
3. *Landscaping is necessary to reduce dust, noise, erosion, or fire hazard; or*
4. *The road is designated as a scenic road on Comprehensive Plan Map 5-1, Scenic Roads*

F. *Landscaping shall be used to highlight public entrances to buildings. If—due to the depth of a front setback, a required walkway, or both—there is insufficient area to permit a typical, in-ground landscaping bed between a public entrance and a front lot line, this requirement may be met with trellises, hanging baskets, or planters, any of which shall include plants.*

G. *Where feasible, landscaping shall be required adjacent to walkways and other areas intended for pedestrian use.*

H. *Existing significant plants, terrain, and other natural features shall be incorporated into the landscaping design and development if such features are required to be retained by other provisions of this Ordinance or if otherwise feasible.*

**Finding:** The subject site is outside the Portland Metropolitan Urban Growth Boundary and the applicant is proposing to use existing vegetation including the wooded area on the southern and western portions of the property to meet the landscape requirements including the screening and buffering requirements. The application materials showed new planting of evergreen trees along the eastern property boundary. The adjacent access easement is not a Scenic Road. The site plan did not identify the location of the buildings or walkways. There is no public access to the site and thus no public entrance to the building. Existing plants and

natural features are being retained on the exterior portion of the property. Further review of these standards will occur during future design review. **These criteria are met as conditioned.**

## **1009.02 MINIMUM AREA STANDARDS**

- A. *Table 1009-1, Minimum Landscaped Area, establishes the minimum percentage of the area of the subject property that shall be landscaped.*

**Finding:** The proposed use is a conditional use in the RRFF-5 District so Table 1009-1 identifies the minimum requirements for landscaped area as 25% of the site. **These criteria are met.**

## **1009.03 SURFACE PARKING AND LOADING AREA LANDSCAPING**

*Surface parking and loading areas shall be landscaped as follows:*

- A. *Surface parking areas that include more than 15 parking spaces shall comply with the following landscaping requirements:*
- B. *Perimeter landscaping requirements for surface parking and loading areas adjacent to abutting lots or rights-of-way are as follows:*

**Finding:** The proposed use will require parking areas. The surface parking area is not included in the site plan. Therefore, further review of landscaping will be needed to determine if it is needed around the surface parking areas. **These criteria can be met as conditioned.**

## **1009.04 SCREENING AND BUFFERING**

- A. *Screening shall be used to eliminate or reduce the visual impacts of the following:*
  1. *Service areas and facilities, such as loading areas and receptacles for solid waste or recyclable materials;*
  2. *Storage areas;*
  3. *Ground-mounted rainwater collection facilities with a storage capacity of more than 100 gallons;*
  4. *Parking lots within or adjacent to an Urban Low Density Residential, VR-5/7, VR-4/5, RA-1, RA-2, RR, RRFF-5, FF-10, FU-10, or HR District; and*
  5. *Any other area or use, as required by this Ordinance.*
- B. *Screening shall be accomplished by the use of sight-obscuring evergreen plantings, vegetated earth berms, masonry walls, sight-obscuring fences, proper siting of disruptive elements, building placement, or other design techniques.*

- C. Screening shall be required to substantially block any view of material or equipment from any point located on a street or accessway adjacent to the subject property. Screening from walkways is required only for receptacles for solid waste or recyclable materials. A sight-obscuring fence at least six feet in height and up to a maximum of 10 feet in height shall be required around the material or equipment.
- D. Buffering shall be used to mitigate adverse visual impacts, dust, noise, or pollution, and to provide for compatibility between dissimilar adjoining uses. Special consideration shall be given to buffering between residential uses and commercial or industrial uses, and in visually sensitive areas.
- E. Buffering shall be accomplished by one of the following: 1. A landscaping strip with a minimum width of 15 feet and planted with: a. A minimum of one row of deciduous and evergreen trees staggered and spaced a maximum of 30 feet apart; b. A perennial, evergreen planting with sufficient foliage to obscure vision and which will grow to form a continuous hedge a minimum of six feet in height within two years of planting; and c. Low-growing evergreen shrubs and evergreen ground cover covering the balance of the area;

**Finding:** The proposed development includes commercial and processing activities in conjunction with a forest use. The property to west is zoned Rural Residential Farm and Forest five acre (RRFF-5). Each legal lot of record in that zone is allowed to have a single-family residence as a primary use. The property to the east and south are zoned EFU and have historically had farm use, with residential use also occurring to the south. Therefore, screening through the use of the existing vegetation to the south and west, as proposed in the application materials, will screen the conditional use from adjacent rural residential properties. The applicant also identified the installation of new evergreen trees along the eastern property boundary. In the additional submittal materials the applicant states:

*“The frontage of the subject property is screened by a 6-ft sight-obscuring chain-link fence set approximately 105 ft off Hwy 212.”* And

*“On the east, a berm and a new row of evergreen trees provide screening and buffering along portions of the northern two-thirds of the property. A continuous line of mature trees completely screens and buffers the southern third.”* And

*“The western boundary of the subject property is continuously screened and buffered by mature trees and undergrowth that exceed 15-feet of depth for most or all its length.”*

The berm and new plantings along with the existing mature trees and screening at the front of the property ensure the intense use is screened from adjacent properties and that the noise and visual impact to adjacent properties are buffered through the

landscaping. A condition of approval is warranted requiring replacement of any of the evergreen trees providing screening and buffering on the east of the site. **These criteria can be met as conditioned.**

#### **1009.07 FENCES AND WALLS**

- A. *Fences and walls shall be of a material, color, and design complementary to the development.*

**Finding:** The applicant states:

*"A sight-obscuring fence at least six feet in height and up to a maximum of 10 feet in height shall be required around the material or equipment." The subject property has the required six-foot sight-obscuring fence between the material and equipment and Hwy 212, as required. This section is met"*

Staff reports that an existing fence installed is complementary to the development for the screening it provides and for the safety it provides to the use of the property. The property is not located in the BP, LI, or GI District. **These criteria are met.**

#### **1009.08 RECREATIONAL AREAS AND FACILITIES**

**Finding:** The applicant is not proposing the development of duplexes, triplexes, quadplexes, or multifamily dwellings in the MR-1, MR-2, or HDR Districts. **These criteria are not applicable.**

#### **1009.09 EROSION CONTROL**

- A. *Graded areas shall be re-vegetated with suitable plants to ensure erosion control. B. Netting shall be provided, where necessary, on sloped areas while ground cover is being established.*

**Finding:** As noted above, the Clackamas County Transportation and Engineering Program is the Surface Water Management authority for the subject property. **These criteria are met as conditioned.**

#### **1009.10 PLANTING AND MAINTENANCE**

- A. *Impervious weed barriers (e.g., plastic sheeting) are prohibited.*
- B. *Plants shall not cause a hazard. Plants over walkways, sidewalks, pedestrian pathways, and seating areas shall be pruned to maintain a minimum of eight feet below the lowest hanging branches. Plants over streets, bikeways, accessways, and other vehicular use areas shall be pruned to maintain a minimum of 15 feet below the lowest hanging branches.*

- C. *Plants shall be of a type that, at maturity, typically does not interfere with above or below-ground utilities or paved surfaces.*
- D. *Plants shall be installed to current nursery industry standards.*
- E. *Plants shall be properly guyed and staked to current nursery industry standards as necessary. Stakes and guys shall not interfere with vehicular or pedestrian traffic, shall be loosened as needed to prevent girdling of trunks, and shall be removed as soon as sufficient trunk strength develops, typically one year after planting.*
- F. *Landscaping materials shall be guaranteed for a period of one year from the date of installation. The developer shall either submit a signed maintenance contract for the one-year period or provide a performance surety pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance, covering the landscape maintenance costs for the one-year period.*
- G. *Plants shall be suited to the conditions under which they will be growing. As an example, plants to be grown in exposed, windy areas that will not be irrigated shall be sufficiently hardy to thrive under these conditions. Plants shall have vigorous root systems, and be sound, healthy, and free from defects and diseases.*
- H. *When planted, deciduous trees shall be fully branched, have a minimum caliper of two inches, and have a minimum height of eight feet.*
- I. *When planted, evergreen trees shall be fully branched, have a minimum height of eight feet, and have only one leader.*
- J. *Shrubs shall be supplied in minimum one-gallon containers or eight-inch burlap balls with a minimum spread of 12 inches.*
- K. *Ground cover shall be planted a maximum of 30 inches on center with a maximum of 30 inches between rows. Rows of plants shall be staggered. Ground cover shall be supplied in minimum four-inch containers, except that the minimum shall be reduced to two and one-quarter inches or equivalent if the ground cover is planted a minimum of 18 inches on center.*
- L. *Plants shall be spaced so that ground coverage three years after planting is expected to be 90 percent, except where pedestrian amenities, rainwater collection systems, or outdoor recreational areas count as landscaping pursuant to Subsection 1009.02. Areas under tree drip lines count as ground coverage.*

**Finding:** Because existing vegetation is proposed to meet the majority of the landscaping needs, irrigation, and maintenance of new landscaping material is not

needed. The evergreen trees planted along the eastern property for screening and buffering can be replaced if needed to continue the buffering. **These criteria are met as conditioned.**

## **1010 SIGNS**

**Finding:** The applicant included no sign designs or specifications. In the narrative they state "*Applicant is not proposing any signs. The subject property is not proposing any development and is not open to the public. This provision does not apply.*" Staff agree and the Hearings Officer concurs. **These criteria are met.**

## **1011 OPEN SPACE AND PARKS**

**Finding:** As noted by the applicant, the property has no Open Space Designation on any of the specified maps. **These criteria are not applicable.**

## **1015 PARKING AND LOADING**

### **1015.01 GENERAL STANDARDS**

- A. *Inside the Portland Metropolitan Urban Growth Boundary (UGB), ....*
- B. *Outside the UGB, areas used for parking, loading, and maneuvering of vehicles shall be surfaced with screened gravel or better, and shall provide for suitable drainage.*
- C. *Parking and loading requirements for uses and structures not specifically listed in Tables 1015-1, Automobile Parking Space Requirements; 1015-2, Minimum Automobile Parking Space Requirements for Dwellings; 1015-3, Minimum Required Bicycle Parking Spaces; and 1015-4, Minimum Required Off-Street Loading Berths shall be subject to the requirements for the most similar use.*
- D. *Motor vehicle parking, bicycle parking, and loading areas shall be separated from one another.*
- E. *Required parking spaces and loading berths shall not be: a. Rented, leased, or assigned to any other person or organization, except as provided for under Subsection 1015.02(D)(3)(a) for shared parking or Subsection 1015.04(C) for shared loading berths. b. Used for storing or accumulating goods or storing a commercial or recreational vehicle, camper, or boat, rendering the space(s) useless for parking or loading operations. c. Occupied by the conducting of any business activity, except for permitted temporary uses (e.g., farmers' markets).*

**Finding:** The subject property is outside the Portland Metropolitan Urban Growth Boundary (UGB) and the parking, loading, and maneuvering areas will be hard surfaced as verified through a Development Permit with the Clackamas County

Transportation and Engineering Program. The site plan submitted in the application did not show where the parking areas would be and the narrative identified that up to 6 employees may park their personal vehicles at the site. **These criteria are met as conditioned.**

## **1015.02 MOTOR VEHICLE PARKING AREA STANDARDS**

*A. Off-street parking areas shall be designed to meet the following requirements:....*

**Finding:** The submitted site plan failed to show parking space dimensions, surface material beyond “gravel” or how the number requirements were met. Further review through design review is needed and will be verified through a Development Permit with the Clackamas County Transportation and Engineering Program. **These criteria are met as conditioned.**

*B. Parking Minimums: The minimum number of parking spaces listed in Tables 1015-1, Automobile Parking Space Requirements, and 1015-2, Minimum Automobile Parking Space Requirements for Dwellings, applies unless modified in Subsection 1015.02(D)*

**Finding:** The land use types in Table 1015-2 do not identify the commercial and processing facilities in conjunction with forest uses as a use. Pursuant to ZDO 1015.01(C) staff reviewed Table 1015-2 to find the most similar use. The Industrial, Manufacturing and Processing Facilities use is similar since the site will be used to store logging equipment, and fleet vehicles, and store logs. The use requires 1.5 parking spaces for every 1,000 square feet of leasable area for a floor area of Zero to 24,999 square feet. However, the applicant did not provide information on the building area of the Conex storage structures. Therefore, staff find that the parking requirements cannot be effectively evaluated at this time. The applicant identified that there would be up to six staff driving their personal vehicles to the site and no customers visiting the site. To serve the employees, the site needs a minimum of six parking spaces.

The applicant identified that the proposed use is most similar to Industrial, Manufacturing and Processing Facilities and states: “The minimum number of parking spaces is calculated based on gross leasable area. ZDO Table 1015-1. There are no buildings on the property; therefore, there is no gross leasable area or parking required. The property is not in the SCMU District. This section does not apply.”

As discussed above staff disagree and find that there is a need for delineated parking spaces. Parking spaces need to be provided for staff in delineated areas to facilitate the safe maneuvering of vehicles and pedestrians through the site. The location and dimensions of the parking areas can be reviewed through a design review application. **These criteria are met as conditioned.**

## 1015.03 BICYCLE PARKING STANDARDS

- A. *Bicycle parking areas shall meet the following on-site locational requirements:*
- B. *Bicycle parking shall be designed to meet the following requirements:*

**Finding:** Utility facilities are not identified in Table 1015-3 as having a minimum number of Bicycle Parking Spaces. **These criteria are not applicable.**

## 1015.04 OFF-STREET LOADING STANDARDS

**Finding:** Table 1015-4, Minimum Required Off-Street Loading Berths, does not identify a minimum number required for commercial and processing facilities in conjunction with forest uses. As noted in the finding above, the applicant identified that the use is close to the Industrial, Manufacturing, and Processing Facility for parking requirements. Thus using that same category, the loading berths needed would be calculated on the square feet of floor area and would need to measure 60 feet x 12 feet x 14 feet high. The applicant states "No building or loading berth is required or proposed. This section does not apply."

Staff disagree since the use is identified as more like Industrial, Manufacturing, and Processing for the needed parking, the same category would need to be used here and the loading berths would need to be evaluated through the design review process. **These criteria are met as conditioned, or do not apply.**

## 1021 SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION

**Finding:** As discussed above, staff visit the site, but do not have offices on site. The commercial and processing facilities in conjunction with forest uses has existing solid waste service. The solid waste and recycling receptacles will need to meet the criteria in 1021. The design of the receptacles, access, location of the pads and enclosure details were not provided on the site plan or in the application materials. The specifics of the receptacles can be reviewed for compliance with the specifics of 1021 through a design review application to ensure the location works with the site design and vehicular circulation.

The applicant states:

*"Attached Exhibit O is an email from County employee Tenille Beseda Fillwok requesting that the applicant confirm that its trash service is "1.5 yd garbage container serviced 1x/week," and that confirmation of that service will satisfy Issue C in the notice of incompleteness. Confirmation to Ms. Beseda Fillwok has been provided, and is also provided here."*

**These criteria can be met as conditioned.**

## 1203.05 APPROVAL PERIOD AND TIME EXTENSION

A. Approval of a conditional use is valid for four years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.

1. Implemented means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, implemented means all other necessary County development permits (e.g., grading permit, building permit for an accessory structure) shall be obtained and maintained. A major development permit is:
  - a. A building permit for a new primary structure that was part of the conditional use approval; or
  - b. A permit issued by the County for parking lot or road improvements required by the conditional use approval.

B. If the approval of a conditional use is not implemented within the initial approval period established by Subsection 1203.05(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension.

**This is informational only.**

**1203.06 DISCONTINUATION** - If a conditional use is implemented pursuant to Subsection 1203.05 and later discontinued for a period of more than five consecutive years, the conditional use shall become void.

**This is informational only.**

## **E. DECISION**

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0380-25 for a conditional use permit for commercial and processing activities that are in conjunction with forest uses to allow the applicant to store, sort, and air-dry timber removed from other properties and brought to the subject site, as well as store logging equipment and logging trucks on site, subject to the following conditions of approval:

## **F. CONDITIONS OF APPROVAL**

Staff recommends approval of this application for the Conditional Use permit subject to the following conditions. The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses. **Hearings Officer: I reviewed and considered the proposed conditions of approval submitted by staff, and the applicant's proposed alternative conditions, and find the following conditions adequate to ensure that the requirements of this Conditional Use permit are met. I**

***note that failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.***

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on September 8, 2025 and additional documents filed on November 19, 2025. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). During this four-year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
  - a) A building permit for a new primary structure that was part of the conditional use approval; or
  - b) A permit issued by the County Engineering Division for work in the right of way or road improvements required by the conditional use approval.

If the approval of a conditional use is not implemented within the initial approval period established by Subsection 1203.05(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension. [ZDO 1203.05]

3. If a conditional use is implemented pursuant to Subsection 1203.05 and later discontinued for a period of more than five consecutive years, the conditional use shall become void. [ZDO 1203.06]
4. Coordinated installation of necessary water, septic, and surface water management facilities is required, consistent with the regulations of the management authority. This condition does not require installation of water, septic, or surface water facilities; rather, if any such facilities are installed or modified in connection with the approved use such work shall comply with the regulations of the applicable management authority. [ZDO 1006.01]
5. Any driveway entrance improvements at the intersection with Hwy 212 will require coordination with ODOT and may require a right of way permit or an ODOT Miscellaneous Permit. Contact the ODOT District 2C Maintenance Office (D2CAP@odot.oregon.gov) prior to any work in the Hwy 212 right of way. [ZDO 1007.01(E)]
6. Placement of Conex storage containers between Hwy 212 right of way and the front fence on the subject site is prohibited. [ZDO 316.04 and 1009.04(C)]
7. Walkways and site design, including the parking areas for passenger vehicles, circulation, and trash receptacles (including construction of the pad), will be reviewed through a Design Review application prior to the initiation of the use and any construction activities associated with the project. If fourteen (14) or fewer passenger vehicle parking areas are

proposed, they are not subject to surface parking or loading area landscaping. The applicant shall identify the Conex containers used as storage buildings accessory to the applicant's permanent storage of logs, log trucks, and logging equipment and either obtain Design Review or agricultural exemption approval. [ZDO 1005.02; 1009.03; 1021; and 1102.01(A)]

8. Setbacks from the eastern property line for all existing structures (covered wood storage and Connex storage structures) shall be verified by a site plan prepared and stamped by an Oregon registered professional land surveyor. The evergreen trees planted along the eastern property boundary for screening and buffering shall be replaced as needed when lost to disease or death. [ZDO 316.04; 1009.04(B)(C)(E); 1009.10]
9. No storage, staging, or other site development (including removal of vegetation) is authorized within the Habitat Conservation Area (HCA), and no such activity shall occur within the HCA unless the County approves a Habitat Conservation Area Development Permit. A construction management plan will also be needed prior to the approval of the Transportation and Engineering Development Permit. The applicant's construction management plan shall include a permanent barrier or fence demarcation for the HCA boundary to replace the temporary orange plastic silt fencing currently used. [ZDO 706.06]
10. No development or disturbance is authorized in any wetlands other than as necessary for a professional wetland scientist to undertake their evaluation. Within six (6) months of final design review approval, the applicant shall either:
  - a) Provide to the County a written evaluation report from a professional wetland scientist determining whether there is a wetland in the southern portion of the subject property within the HCA as shown on the State Wetland Inventory. If the wetland exists, then the report must address the criteria in ZDO 709 with enough detail to determine where the boundaries of the primary WQRA and the vegetated buffer around the WQRA are located, ensuring the wetland is correctly delineated and certifying to the County that no wetland boundary extends outside the currently delineated HCA and there have been no impacts to the resource from the applicant's activities; or
  - b) Submit a complete application for a WQRA Development Permit to delineate the primary protected resource and to mitigate any impacts to the resource from the applicant's activities. [ZDO 709.02 and ZDO 709.10]
11. A lighting plan or site plan with lighting and light fixture specifications shall be submitted to the file the initiation of the use and any construction activities associated with the project. [ZDO 1005.04].

#### **Development Engineering Recommended Conditions of Approval:**

12. All frontage improvements in, or adjacent to Clackamas County right-of-way, and/or on-site transportation improvements shall be in compliance with *Clackamas County Roadway Standards*.
13. The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of the use and any construction activities associated with the project. The applicant shall have an Engineer, registered in *Hearings Officer Final Order*  
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the state of Oregon, design and stamp the construction plans for all required parking, maneuvering, equipment/vehicle storage and storm drainage improvements.

14. The following on-site circulation and site improvements will be determined in design review and will be established under a County development permit:

- a) Adequate on-site circulation shall be provided for the maneuvering of all vehicles anticipated to use the site area.
- b) The on-site access roads shall be constructed per Roadway Standards, Drawing R100, with a minimum surface of screened gravel.
- c) All parking, maneuvering and equipment storage areas shall be constructed per Roadway Standards Drawing R100, with a minimum surface of screen gravel or better.
- d) Passenger vehicle parking spaces shall meet minimum dimensional requirements of ZDO Section 1015 and Roadway Standards, Standard Drawing P100/P200. The plans shall list the number of parking spaces required and the number of parking spaces provided. Gravel parking spaces shall include a wheel stop to delineate each space. Paved parking spaces shall be striped.
- e) A stormwater management plan shall be provided, verifying that the storm drainage facilities are or will be designed and constructed in conformance with *Clackamas County Roadway Standards* Chapter 4, providing water quality treatment and conveyance to a suitable outfall. Verification of a 1200-C or 1200-Z permit as required from Oregon DEQ shall be provided. If the County standards conflict with DEQ requirements, the DEQ requirements shall prevail.

15. Prior to the issuance of a Development Permit, the applicant shall submit to Clackamas County Engineering Office:

- a) Written approval from the Clackamas Fire District #1 Fire Marshal for the planned access, circulation, fire lanes and water supply source. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
- b) A set of street and site improvement construction plans, in conformance with *Clackamas County Roadway Standards* Section 140, and obtain written approval, in the form of a Development Permit.
- c) A 1200-C or 1200-Z permit, as applicable, issued by the Oregon DEQ.
- d) A written statement recorded with the deed or written contract with the County or its equivalent that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and Rules.

Dated: February 3, 2026



Carl D. Cox  
Clackamas County Hearings Officer

## **APPEAL RIGHTS**

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