



CLATSOP COUNTY
BOARD OF COMMISSIONERS AGENDA
WORK SESSION & REGULAR MEETING
IN PERSON & VIRTUAL MEETING
(HYBRID)

Judge Guy Boyington Building
857 Commercial St., Astoria

Wednesday, July 27, 2022

BOARD OF COMMISSIONERS:

Mark Kujala, Dist. 1 – Chair
Lianne Thompson, Dist. 5 – Vice Chair
John Toyooka, Dist. 2
Pamela Wev, Dist. 3
Courtney Bangs, Dist. 4

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JOIN THE BOARD OF COMMISSIONERS VIRTUALLY

Clatsop County Board of Commissioners host virtual meetings on Zoom

The Board remains committed to broad community engagement and transparency of government. To provide an opportunity for public testimony, the Board will host virtual meetings on Zoom.

Join the meeting from your computer, tablet or smartphone ([Zoom link](#))

You can also dial in using your phone.

1-253-215-8782

Meeting ID: 503 325 1000

Passcode: 384761

Public Testimony

You must register in advance if you want to provide testimony on public hearings or speak at the designated time. There are three ways to do this: On our website at [public comment](#), emailing commissioners@co.clatsop.or.us or by calling 503-325-1000. Once registered, we will notify you when it is your opportunity to speak for a two-minute comment. You also may submit written comments which will be provided to the Board and submitted into the record.

WORK SESSION: 5:00 PM

Work Sessions are an opportunity for Board members to discuss issues informally with staff and invited guests. The Board encourages members of the public to attend Work Sessions and listen to the discussion, but there is generally no opportunity for public comment. Members of the public wishing to address the Board are welcome to do so during the Board's regularly scheduled meetings held twice monthly.

Discuss Formal Agenda

TOPICS:

1. Exception to Goal 11 and text amendments to the Clatsop County Comprehensive Plan and Clatsop Plains Community Plan to extend the Shoreline Sanitary District's boundary {10 min} {Page 3}
2. Overview County Role in Affordable Housing {20 min} {Page 5}

REGULAR MEETING: 6:00 PM

The Board of Commissioners, as the Governing Body of Clatsop County, all County Service Districts for which this body so acts, and as the Clatsop County Local Contract Review Board, is now meeting in Regular Session.

ROLL CALL

AGENDA APPROVAL

BUSINESS FROM THE PUBLIC – *Individuals wishing to provide oral communication at the designated time must register in advance by calling 503-325-1000 or email commissioners@co.clatsop.or.us by 3 p.m. on the day of the meeting.*

CONSENT CALENDAR

- [3.](#) ARPA Funding – Clatsop Community College – SBDC {Page 11}
- [4.](#) ARPA Funding Request for Consolidated 911 Review and Analysis {Page 17}
- [5.](#) Award of six-month contract to Bio-Oregon for purchase of fish food with option to renew for additional six months {Page 31}
- [6.](#) Ecola State Park Pine Street Vacation Petition {Page 63}
- [7.](#) Contract Amendment No. 3, Terracon Consultants, Inc {Page 72}
- [8.](#) Approve Agreement with COLPAC to provide Fiscal and Administrative Services on Behalf of the Child Care Advisory Group {Page 86}
- [9.](#) Award Contract with Brightly Software Inc. {Page 91}
- [10.](#) Dish Machine Rental Agreement {Page 101}

COMMISSIONER'S LIAISON REPORTS

COUNTY MANAGER'S REPORT

PUBLIC HEARINGS

- [11.](#) Ordinance Declaring a Temporary Ban on Psilocybin Businesses – First Reading {Page 110}
- [12.](#) Smith Conditional Use Permit – LUBA Remand {Page 119}

BUSINESS AGENDA

- [13.](#) Behavioral Health Resource Network Grant {Page 338}

GOOD OF THE ORDER

ADJOURNMENT

As necessary Executive Session will be held in accordance with but not limited to: ORS 192.660 (2)(d) Labor Negotiations; ORS 192.660 (2)(e) Property Transactions; ORS 192.660 (2)(f) Records exempt from public inspection; ORS 192.660 (2)(h) Legal Counsel

Agenda packets also available online at www.co.clatsop.or.us

This meeting is accessible to persons with disabilities or wish to attend but do not have computer access or cell phone access. Please call 325-1000 if you require special accommodations at least 48 hours prior to the meeting in order to participate.

Board of Commissioners Clatsop County

WORK SESSION AGENDA ITEM SUMMARY

July 27, 2022

Topic: Exception to Goal 11 and text amendments to the Clatsop County Comprehensive Plan and Clatsop Plains Community Plan to extend the Shoreline Sanitary District's boundary

Presented By: Julia Decker, Planning Manager

**Informational
Summary:**

OVERVIEW

The Community Development Department has received a request to amend the boundary of the Shoreline Sanitary District to include an immediately adjacent property. The procedure to expand the sewer district's boundary requires an exception to Goal 11, Public Facilities and Services, of the county's Comprehensive Plan; and text amendments to Goal 11 and the Clatsop Plains Community Plan. Staff also proposes to add a map of the sanitary district's boundary to the Clatsop Plains Community Plan.

Very specific procedures for taking goal exceptions are provided in Statewide Goal 2, [OAR 660-004](#).

Briefly, Goal 2 requires each local government in Oregon to have and follow a comprehensive land use plan and implementing regulations. For Clatsop County, the Land and Water Development and Use Code is the implementing ordinance for the county's Comprehensive Plan, for example. City and county plans must be consistent with one another. Special district and state agency plans and programs must be coordinated with comprehensive plans. All of them need to be consistent with statewide goals and policies.

The comprehensive plans and zoning ordinances are the guiding documents for local government land use decisions. They help create predictable outcomes for the people who live and operate businesses in the community for development of homes, stores, and industries. Comprehensive plans also guide public development – streets, municipal water, sewer, and parks – and conservation of natural resources.

Sometimes, however, situations arise that don't fit neatly into the acknowledged plan, and plans eventually need to change as

community needs, goals and resources evolve. When they are revised, changes to comprehensive plans also must comply with the statewide planning goals.

A local government can take an exception to a goal when it finds that unique circumstances warrant a local override of the statewide goal to create a better outcome. Part II of Goal 2 provides a process a local government can follow when taking an "exception" to one of the land use goals.

In the case of the application the Board will review in August, the applicant is requesting an exception to Goal 11: Public Facilities and Services. Public facilities and services take a variety of forms and are most intensive in urban areas – inside city limits and urban growth boundaries – and less intensive in rural areas. They include water and sewer services, police and fire protection, health services, recreation facilities, energy services, and communications.

According to Oregon land use regulations, public facilities should be in greater supply in areas planned for higher densities, and available at appropriate levels of service throughout a city, such as Astoria, Cannon Beach, Gearhart, Seaside, and Warrenton. Outside an urban growth boundary, public facilities should not, as a matter of practice, be provided.

For example, public sewer service is only allowed outside of an urban growth boundary to alleviate an existing health hazard. In order to extend or expand sewer service outside and urban area, the county needs to take an exception to Goal 11, and that exception needs to be consistent with statewide land use goals and must go through a post acknowledgement plan amendment process.

On July 12, the Clatsop County Planning Commission reviewed the application that will be coming to the Board and is recommending Board approval. The Planning Commission's recommendation will be included in the Board's packet for August 24th and September 14th for first and second readings, respectively.

Board of Commissioners Clatsop County

WORK SESSION AGENDA ITEM SUMMARY

July 27, 2022

Topic: Overview County Role in Affordable Housing
Presented By: Don Bohn, County Manager

Informational Summary: The attached memo provides an overview of the role and priorities for County initiatives directed towards affordable housing and supporting the safety-net. The memo is provided as a starting-point for further discussion and direction by the Board of Commissioners.

Attachment List

- A. Overview – Clatsop County Affordable Housing Initiatives

Overview
Clatsop County Affordable Housing Initiatives
July 13, 2022

Introduction

The [Clatsop County Housing Strategies Report](#), a cooperative initiative by cities and the County, assessed current conditions and trends related to the local housing market and made recommendations to expand housing through 1) land supply; 2) policy and development code; 3) development incentives; 4) funding tools and uses; and 5) regional collaboration and capacity building. While the recommendations primarily focus on cities (where most housing will be generated), the County does play a role in the rural areas and as a partner/supporter of city initiatives and priorities.

This discussion paper describes the role between cities and the County and includes staff recommended priorities to move Clatsop County affordable housing initiatives forward.

Background Regarding County and City Roles/Authority

The County Charter provides for the exercise of authority over matters of County concern to the fullest extent permissible under the constitution and laws of the United States of America and the State of Oregon. ORS 203.010 defines this role as follows:

203.010 General powers of county as body politic and corporate. Each county is a body politic and corporate for the following purposes:

- 1) To sue and be sued;
- 2) To purchase and hold for the use of the county lands lying within its own limits and personal estate;
- 3) To make all necessary contracts; and
- 4) To do all other necessary acts in relation to the property and concerns of the county.

While the Charter and Statutes provide broad powers to the County; County ordinances do not apply within cities without the consent of the city's governing body or electorate (ORS 203.040). Cities are uniquely governed by their own slate of duly elected and appointed officials, and are also granted broad statutory authority including the ability to adopt codes, ordinance, policies and priorities related to housing for their respective communities.

This statutory framework creates structural limits to the legislative functions of a county within a municipal jurisdiction's boundaries. While any given public concern (such as homelessness and/or affordable housing) may impact all cities and unincorporated areas,

the broad geographic scope of the problem does not alter the roles and governance authority between the cities and County. For these community-wide challenges, collaboration and coordination between public agencies and other partner stakeholders is paramount to thread together a cogent and effective response. To this end, counties often play a role as “convener”. Unlike the County’s statutory role to provide county-wide Public Health services, the County’s role in housing is to partner and support city efforts and priorities and to address code and policy issues for rural areas. The County’s role does not contemplate building affordable housing as a direct service, but rather support the efforts of our public, nonprofit and private partners.

Given the autonomy of municipal governments (cities and special districts), the County has identified three distinct roles it assumes at various times, depending on the situation/issue. These roles include: 1) direct service provider; 2) partner; and 3) supporter.

Description of Roles

Direct Service Provider – certain county-wide programs (typically “core” services) are determined to be most appropriately provided by the County or by contractors who provide services on the County’s behalf (as determined by the Board of Commissioners).

Examples of direct services provided by the County are Elections, Assessment and Taxation, Juvenile and other county-wide services using County staff. Direct service provided by contractors includes the County Mental Health Program.

Partner – certain key functions, while not found to be a core function of county government, may by virtue of their proximity to the mission of the County, be performed in partnership with other organizations. The County’s role may be performed via financial support, technical assistance, coordination, and/or the creation of a new organization.

An example of such partnerships is the County’s participation in Columbia Pacific Economic Development District (COLPAC) and Clatsop Economic Development Resources (CEDR) – two private nonprofits created to support various governmental and business interests related to economic development.

Supporter – Absent the assumption of either a direct service provider or partnership role, a major function the County can perform is that of supporting activities consistent with the development of healthy, sustainable and complete communities. This role is typically in the form of letters of support or other forms of advocacy.

Examples include working with others to highlight support of elementary, secondary or higher education needs and volunteering in support of cultural, charitable or family activities.

These county roles apply distinctly in rural/unincorporated areas, incorporated cities or county-wide as detailed below:

Table 1: Examples of Roles and Services Provided by the County by Geographic Area

	Rural/Unincorporated	Incorporated	County-wide
Direct Services (provided by County staff or contractor)	<ul style="list-style-type: none"> ○ Law Enforcement ○ Land Use Planning ○ Building Services ○ Code Enforcement ○ Solid Waste 		<ul style="list-style-type: none"> ○ Public Health ○ Land Banking – Surplus Property ○ Mental Health ○ Alcohol Treatment ○ County Roads ○ County Parks ○ Elections ○ Assessment & Taxation ○ Juvenile ○ Probation/Parole ○ Jail ○ Prosecution ○ Emergency Management ○ Medical Examiner ○ County-wide Law Enforcement ○ Veteran Services
Partnerships (financial, technical assistance and coordination)	<ul style="list-style-type: none"> ○ Broadband 	<ul style="list-style-type: none"> ○ Affordable Housing 	<ul style="list-style-type: none"> ○ Safety Net Services ○ Child Care Task Force ○ Economic Development
Supporter	<ul style="list-style-type: none"> ○ Broadband 	<ul style="list-style-type: none"> ○ Affordable Housing 	<ul style="list-style-type: none"> ○ Education (K-12)

Affordable Housing Action Priorities for FY 22-23

Community Development

- Comprehensive Plan - Update Goal 10

Although many of the requirements of Goal 10 do not apply to Clatsop County, it is imperative to coordinate housing activities with the cities. Over 80% of the land in unincorporated Clatsop County is designated as resource land (farm/forest),

resulting in a limited quantity of land available to increase housing options outside of cities. Potential study/policy areas for Board consideration, include:

- Rural Accessory Dwelling Units;
- Infrastructure Capacity in Rural Areas related to water quality and waste water management (septic systems); and
- Parking standards for residential development

County Manager's Office

- *Land Banking for Affordable Housing and other Social Service Needs (Surplus Real Property)*

Regularly survey and make potentially suitable properties available to other government entities and qualified nonprofits for affordable housing, child care or other social services (per ORS 271.330). The first [Request for Expression of Interest](#) was released in April 2022 for approximately fifteen parcels (located in various cities).

- *Predevelopment Grant Program*

The [ARPA Spending Concept Plan](#), includes funds for predevelopment grants to non-profit housing developers. Predevelopment grants provide one-time resources to cover a variety of predevelopment expenses while determining the feasibility of a particular project such as the costs of preliminary financial applications, legal fees, architectural and engineering fees, environmental and other exploratory work. Staff are assessing the feasibility of an in-house grant program or contracting with another non-profit or public housing agency.

- *Housing Dashboard*

Clatsop County, in collaboration with cities, has developed a prototype for a housing dashboard that includes a map of all current affordable housing and another map of housing development in the various stages of permitting and construction. The prototype will be ready for public unveiling in August, 2022. The dashboard will allow the community to track progress towards the estimated 3000 additional housing units required over the next 20 years (per the 2021 Regional Housing Needs Analysis released by Oregon Housing and Community Services).

- *Micro-Housing or Other Transitional Housing Funding Opportunities*

The [ARPA Spending Concept Plan](#), includes funds available to qualified nonprofits for the siting and operation of transitional housing (including micro-housing) within cities. This is a partnership between the cities, nonprofit provider(s) and the County as a potential financial sponsor and supporter.

The County regularly assesses funding sources, including Project Turnkey and other state, federal and foundation granting programs.

- *Financial Support for Safety-Net Social Service Providers*

The [ARPA Spending Concept Plan](#), includes operational and capacity-building support to key non-profit partners through December 31, 2024. Qualified non-profits who have received funding to date, include:

- Clatsop Community Action
- Helping Hands
- Astoria Warming Shelter
- The Harbor
- Lifeboat Services

- *Affordable Housing Task Force*

Clatsop County, cities and other stakeholders have agreed to interactively and cooperatively strategize and implement coordinated land use planning initiatives and financial incentives through a facilitated task force process. Each agency has three representatives, typically including an elected official, appointed manager and planning director. The first meeting is scheduled for July 20, 2022.

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: ARPA Funding – Clatsop Community College – SBDC
Category: Consent Calendar
Presented By: Don Bohn, County Manager

Issue Before the Commission: Approve ARPA funding for Clatsop Community College SBDC to sustain pandemic staffing levels

Informational Summary: At the July 6th work session Clatsop SBDC staff presented to the Board the work that SBDC staff has been conducting over the past two and a half years through the COVID Pandemic.

In the ARPA Concept Funding Plan \$800,000 (out of the total \$7.8M) has been set aside for potential economic development investments (no allocations have been made to date). The ARPA guidelines include funding to respond to negative economic impacts of the pandemic by supporting small businesses and industries. The SBDC has been on the frontline of supporting local small businesses and current economic conditions continue to underscore the importance of technical assistance and training.

The SBDC request is to sustain pandemic staffing levels and cover the ongoing payroll costs for the six (6) part-time team members at a cost of approximately \$10,000 per month. This funding will replace expired funding from Oregon SBDC (Cares Act Funds) and Col-Pac EDD funds, and allow the SBDC to continue providing accessible, diverse and relevant educational content and technical assistance to small business owners. Access to these services also provides an entry point for non-SBDC clients to transition to advising support and participate in more comprehensive programs like boot camps and Small Business Management.

Staff recommends support funding for 2022 – 2023 FY in the amount of \$120,000 (\$10,000/month), with additional contributions to be determined at a later date based on outcomes and performance.

Fiscal Impact: Funds have been allocated in the COVID Fund for FY 2022 – 2023 to account for economic development investments.

Requested Action:

Approve the Funding Agreement between Clatsop County and Clatsop Community College Small Business Development Center and authorize the County Manager to sign along with any amendments.

Attachment List

- A. SBDC – ARPA Funding Agreement
- B. Exhibit A – Clatsop Small Business Development Center American Rescue Act Funding Request

ARPA FUNDING AGREEMENT

This Agreement is made this 28th day of July, 2022, This AGREEMENT is by and between Clatsop County (“County”) and Clatsop Community College - Small Business Development Center (SBDC) (“Contractor”).

Recitals

In May 2021, County was allocated approximately \$7.8 million in Federal American Rescue Plan Act of 2021 (ARPA) funds to respond to the impacts of the coronavirus pandemic. County has designated \$300,000 of these ARPA funds in FY2022-2023 to provide financial support for potential economic development investments.

County desires for this economic development investment to allow Contractor to continue to provide accessible, diverse and relevant educational content to equip the business owners of Clatsop County with the practical knowledge and tools needed to successfully start and grow their businesses. In addition to providing an easy entry point for non-SBDC clients, who are then encouraged to transition to advising support and participate in more comprehensive programs like boot camps and Small Business Management.

These funds are restricted to sustaining pandemic staffing levels and covering the ongoing payroll costs for the six (6) part-time team members and for indirect costs not to exceed 5%.

NOW THEREFORE, the parties agree as follows:

1. Term: This Agreement shall be for date of execution through June 30, 2023.
2. Services and Payment: County shall provide funding to Contractor in the amount of \$120,000. Contractor represents that it shall use the funds provided solely for the purposes set forth herein, and solely for ongoing payroll costs for the six (6) part-time team members (within County). See Exhibit A (Clatsop SBDC Funding Request) for a more detailed explanation of use of funds. Any funds not used for such purposes shall be returned to County. Any funds not expended by December 31, 2026 shall be returned to County.
3. Indemnity: Contractor shall indemnify and hold County harmless for any claim arising out of the provision of the Services. Contractor shall maintain liability insurance in an amount sufficient to satisfy the current Oregon Tort Claim Act limits, and shall name County as an additional insured on any policies.
4. Compliance and Reporting: Funds provided to Contractor by this Agreement are a subaward of State and Local Fiscal Recovery Funds (SLFRF). Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient. Contractor shall adhere to all SLFRF subrecipient compliance and reporting requirements as determined by the U.S. Department of the Treasury. These requirements include, but are not limited to: (a) Subrecipients are subject to audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements. (b) Subrecipients must ensure subawards are not used for ineligible purposes, and there is no fraud, waste, or abuse associated with awarded funds. (c) County may issue additional reporting requirements for SLFRF subawards greater than \$50,000, as required by the U.S. Department of the Treasury.

Contractor shall provide County with an annual report of Services, including an explanation of how funding was spent. Contractor shall follow the annual reporting schedule outlined below until all funds are expended or until December 31, 2026 (deadline for expending funds); whichever comes first.

Annual Report	Period Covered	Due Date
1	July 1, 2021 – March 31, 2022	April 15, 2022
2	April 1, 2022 – March 31, 2023	April 15, 2023
3	April 1, 2023 – March 31, 2024	April 15, 2024
4	April 1, 2024 – March 31, 2025	April 15, 2025
5	April 1, 2025 – March 31, 2026	April 15, 2026
6	April 1, 2026 – December 31, 2026	January 15, 2027

5. General: (a) Funding for this Agreement is allocated by the Clatsop County Board of Commissioners. This Agreement may be terminated by County at any time and without any cause upon ten (10) days written notice to the Contractor. (b) County may, in its sole discretion and upon ten (10) days written notice, unilaterally terminate or adjust any provisions of this Agreement to ensure quality performance of the Services. (c) Upon completion of the Agreement term, the Agreement shall terminate and Contractor shall have no right to renewal or expectation thereof. Any decision by County to renew an otherwise terminated contract for additional or extended period shall be in the sole and unfettered discretion of County.

COUNTY:

Don Bohn, County Manager

Name, Title

Date

Signature

CONTRACTOR:

Name, Title

Date

Signature

Name of Contractor

Contractor Address

Contractor Phone

**Clatsop Small Business Development Center
American Rescue Act Funding Request
June 6, 2022**

**Clatsop Community College Small Business Development Center
TOTAL FUNDING REQUESTED \$180,000 (July 2022-December 2023)**

The Clatsop Community College SBDC requests funding that will continue the transformational service delivery that has grown exponentially over the past few years. Existing Cares Act Funds through the Oregon SBDC network and Col-Pac EDD funds will be spent out by the end of June 2022.

Since 2020, the CCC SBDC has served 679 Clients with over 3,000 hours of No Cost and Confidential advising, achieved 25 new business starts, held 111 training workshops with 3,882 participants, created/retained 383 jobs, and served 180 minority and 241 Women-owned businesses.

Funding will continue providing accessible, diverse and relevant educational content to equip the business owners of Clatsop County with the practical knowledge and tools needed to successfully start and grow their businesses. Provide an easy entry point for non-SBDC clients, who are then encouraged to transition to advising support and participate in more comprehensive programs like our boot camps and Small Business Management.

- Monthly No-Cost Topical Workshops (60-90 minute/ ZOOM w/ recording)
- Start-Up Business Bootcamp
- Quarterly Deep Dive Bootcamps (Finance, HR, QuickBooks, Marketing)
- Small Business Management Program (9 month cohort model. Signature program)

- Digital communication support has also catapulted outreach and results. Weekly newsletter sent out to 2700 local business owners, elected leaders and community stakeholders, with an average open rate over 28%.

- Latino Business Support advising continues to grow to support this fast growing underserved demographic in Clatsop County and the region. Two Spanish-speaking advisors will support these efforts.

- Requested funding for advising will include increased outreach and efforts in the hard-hit restaurant and hospitality sector, which is a key component of our local economy.

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: ARPA Funding Request for Consolidated 911 Review and Analysis
Category: Consent Calendar
Presented By: Matt Phillips, Sheriff

Issue Before the Commission: Request of Authorization to approve Professional Services Agreement between Communications Northwest and Clatsop County for a total of \$59,950.00

Informational Summary: Public safety leaders representing law enforcement, fire, Medix and dispatch centers have been meeting twice a month to develop a plan and evaluate the feasibility of a consolidated 911 intergovernmental agency (ORS 190).

A next step is engaging the services of a contractor to conduct a county-wide radio communications system review. This will include the current radio system as well as addressing the future needs of the public safety communications infrastructure.

The Sheriff's Office has been working with Communications Northwest to develop a scope of work to conduct this review and analysis that will include:

- Detailed review of the current Public Safety radio systems within Clatsop County
- Long-term maintenance, management and budget issues
- Future radio communication system replacement costs
- Frequency management needs for now and into the future and associated costs
- Next generation radio system options and recommendations
- Identification of potential partnerships with other agencies
- Potential use of FirstNet
- Findings for updates to the County Emergency Operations Plan
- Total cost of ownership
- Budgetary options

Upon completion of the review and analysis project a written report will be provided to the County along with an oral review to the stakeholders to include a final explanation of capabilities and operation. This report will include recommendations for implementation both short and long-

term along with identified priorities for stakeholder consideration. Greater detail can be found in the attached scope of work. The evaluation and recommendations from this report will be immediately valuable to our current 911 centers.

The anticipated timeline for this review and analysis to be conducted is approximately 4 months after the date of execution and the cost is estimated at \$59,950.

As identified in the 2022 – 2023 Strategic Plan as a priority infrastructure goal, staff is asking that the Board consider the use of ARPA funds, in accordance with the attached ARPA funding concept to fund this County-wide communications work. This item was presented to the Board during the July 6th work session.

Fiscal Impact: \$59,950.00

Requested Action:

Approve Professional Services Agreement in the amount of \$59,950.00 between Communications Northwest and Clatsop County.

Attachment List

- A. Communications NW Scope of Work
- B. Professional Services Agreement for a total of \$59,950.00
- C. NASPO price sheet



CLATSOP COUNTY, OREGON
800 Exchange Street, Suite 410
Astoria, Oregon 97103
An Equal Opportunity Employer

Contract No. _____

PERSONAL/PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT is by and between Clatsop County (“County”) and **SAR Enterprises, Inc. dba Communications Northwest** (“Contractor”). Whereas County has need of the services which Contractor has agreed to provide; NOW THEREFORE, in consideration of the sum not to exceed \$59,950 to be paid to Contractor by County, Contractor agrees to perform between date of execution and **120 days after execution**, inclusive, the following specific personal and/or professional services:

See Scope of Work – Exhibit A

Payment Terms: *See Scope of Work – Exhibit A*

- 1. COMPLETE AGREEMENT.** This Agreement contains the entire understanding of the parties and supersedes all prior agreements, oral or written, and all other communication between the parties relating to the subject matter of this Agreement.
- 2. WRITTEN NOTICE.** Any notice of termination or other communication having a material effect on this Agreement shall be served by U.S. Mail on the signatories listed.
- 3. GOVERNING LAW/VENUE.** This Agreement shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Agreement shall be in the Circuit Court of Clatsop County. The prevailing party shall be entitled to reasonable attorney fees and costs, including an appeal. All rights and remedies of County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of County according to law.
- 4. COMPLIANCE.** Contractor shall comply with all applicable Federal, State, and local laws, rules and regulations. All provisions of ORS 279B.220-235 (Public Contracts and Purchasing) are incorporated herein to the extent applicable to personal/professional service agreements. Specifically, Contractor shall:
 - a. Promptly pay, as due, all persons supplying labor and material for the prosecution of the work provided of in such contract. If Contractor fails to pay any such claim, County may pay the claim and charge the payment against the funds due Contractor, pursuant to ORS 279B.220;
 - b. Pay any required contributions due the Industrial Accident Fund incurred in the performance of the contract;
 - c. Not permit any lien or claim to be filed or prosecuted against County, on account of any labor or material furnished by Contractor;
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167;.
 - e. Not employ any person more than 10 hours a day, or 40 hours a week, unless permitted under ORS 279B.235, and any employee working over 40 hours per week shall be paid overtime as

provided in ORS 279B.235.

- f. Pay promptly, as due, any payment for medical surgical or hospital care furnished to employees of Contractor, pursuant to ORS 279B.230.
- g. If Contractor is a subject employer, Contractor will comply with ORS 656.017.

5. JUDICIAL RULINGS. If any provision of this-as applied to either party or to any circumstances shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement or the validity of enforceability of the Agreement.

6. INDEPENDENT CONTRACTOR. Contractor, in carrying out the services to be provided under this Agreement, is acting as an "independent contractor" and is not an employee of County, and as such accepts full responsibility for taxes or other obligations associated with payment for services under this Agreement. As an "independent contractor", Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties, on other matters, for the duration of this Agreement.

7. INDEMNIFICATION. Contractor shall save harmless, indemnify, and defend County for any and all claims, damages, losses and expenses including but not limited to reasonable attorney's fees arising out of or resulting from Contractor's performance of or failure to perform the obligations of this Agreement to the extent same are caused by the negligence or misconduct of Contractor or its employees or agents.

8. INSURANCE. Contractor shall purchase and maintain at Contractor's expense, Comprehensive General Liability including Drone Liability, Automobile Liability, and Professional Liability insurance. This insurance is to provide separate coverage for each of the required types of insurance at a minimum of \$700,000 for property damage and minimum of \$800,000 per person for bodily injury and no less than \$1,600,000 for each occurrence. In addition, all such insurance, with the exception of Professional Liability, shall name County, its Commissioners, employees and agents, as an **Additional Insured**. A copy of the policy or certificate of insurance acceptable to County shall be submitted to County. Some, or all, of the required insurance may be waived or modified if approved by County's counsel as follows:

_____ (approved by County Counsel) _____ (Contractor's Initials) _____

9. WORKER'S COMPENSATION. Contractor shall comply with ORS 656.017 for all employees who work in the State of Oregon. If Contractor hires employees, he or she shall provide County with certification of Worker's Compensation Insurance, with employer's liability in the minimum of \$100,000.

10. NONDISCRIMINATION. No person shall be subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age or national origin. Any violation of this provision shall be considered a material violation of this Agreement and shall be grounds for cancellation, termination or suspension in whole or in part by County.

11. TERMINATION OF AGREEMENT. This Agreement may be terminated under the following conditions:

- a. By written mutual agreement of both parties. Termination under this provision may be immediate.
- b. Upon fifteen (15) calendar days written notice by either Party to the other of intent to terminate.
- c. Immediately on breach of the contract.

12. SUBCONTRACTING/NONASSIGNMENT. No portion of this Agreement may be contracted to assigned to any other individual, firm, or entity without the express and prior approval of County.

13. SURVIVAL. The terms, conditions, representations and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

14. FUNDING. In the event the Board of Commissioners of County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, Contractor agrees to abide by any such decision including termination of service.

15. STANDARD OF SERVICES AND WARRANTY. Contractor agrees to perform its services with that

standard of care, skill and diligence normally provided by a professional individual in the performance of similar services. It is understood that Contractor must perform the services based in part on information furnished by County and that Contractor shall be entitled to rely on such information. However, Contractor is given notice that County will be relying on the accuracy, competence and completeness of Contractor's services in utilizing the results of such services. Contractor warrants that the recommendations, guidance and performance of any person assigned under this Agreement shall be in accordance with professional standards and the requirements of this Agreement.

16. COUNTY PRIORITIES. Contractor shall comply promptly with any requests by County relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to said work.

17. OWNERSHIP AND USE OF DOCUMENTS. All documents, or other material submitted to County by Contractor shall become the sole and exclusive property of County. All material prepared by Contractor under this Agreement may be subject to Oregon's Public Records Laws.

18. TAX COMPLIANCE CERTIFICATION. Contractor hereby certifies, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge, Contractor is not in violation of any of the tax laws of this state or political subdivision of this state, including but not limited to ORS 305.380(4), 305.620 and ORS chapters 316, 317 and 318. Contractor represents that Contract will continue to comply with the tax laws of this state and any applicable political subdivision of this state during the term of the public contract. If Contractor's fails to comply with the tax laws of this state or a political subdivision of this during the term of this agreement, the Contractor shall be in default and County may terminate this agreement and pursue its remedies under the agreement and under applicable law.

This Agreement will not be effective until approved by the authorized signatory for County.

FOR COUNTY:

Signature Date

Title

FOR CONTRACTOR:



Signature Date 6/22/2022

President/CEO

Title

624 McLoughlin Blvd

Address

Oregon City OR 97045

City State Zip

COMMUNICATIONS NORTHWEST

624 McLoughlin Blvd
Oregon City, OR 97045

SOW 201 for Agreement to provide a County Wide Radio Communications System Review for Clatsop County

03/14/2022

Services Performed By:

Communications Northwest
624 McLoughlin Blvd
Oregon City, OR 97045

Services Performed For:

Clatsop County Sheriff
1190 SE 19th Street
Warrenton, OR 97146

This Statement of Work (SOW) is issued pursuant to the Agreement between Clatsop County Sheriff (“Client”) and Communications Northwest (“Contractor”), effective upon execution of the contract (the “Agreement”). This SOW is subject to the terms and conditions contained in the Agreement between the parties and is made a part thereof. Any term not otherwise defined herein shall have the meaning specified in the Agreement. In the event of any conflict or inconsistency between the terms of this SOW and the terms of this Agreement, the terms of this SOW shall govern and prevail.

PERIOD OF PERFORMANCE

The Services shall commence upon the execution of the contract by both parties and shall continue no longer than through the 120th day.

ENGAGEMENT RESOURCES

Scott Reilly

President/CEO of Communications Northwest

Steve Watson

Vice President of Communications Northwest

Chad Lund

Communications Northwest Project Manager

Victor Leatzow

Communications Northwest Project Manager

Matt Phillips

Clatsop County Sheriff

SCOPE OF WORK

Contractor shall provide the Services and Deliverable(s) as follows:

SYSTEM REVIEW

It has been requested by Clatsop County to conduct a county wide radio communications system review. This includes the current radio system and addressing the future needs of Clatsop County. This document provides a detailed scope to conduct a system wide review, address future system technologies, and associated costs and documentation.

IMPROVE THE EXISTING RADIO SYSTEM PERFORMANCE OVER TIME AND HOW TO GO ABOUT DOING IT

To improve the radio system performance, a few critical steps are required. Auditing the current system will provide Communications Northwest with intimate details and help us familiarize ourselves with Clatsop County Public Safety radio system. This is a key component to obtaining the best outcome for the entirety of this report.

CURRENT SYSTEM AUDIT

First step in any system review is to obtain information to understand the current Clatsop County Public Safety radio system. Communications Northwest will provide a thorough and detailed review of the current Clatsop County Public Safety radio system. The Clatsop County Public Safety radio system is composed of all the sites and infrastructure operated or used by Astoria 911, Seaside 911 and Medix ambulance service to provide dispatch service to all the county law enforcement, fire and ambulance services. Audit will provide a spreadsheet to identify ownership of radio/microwave and associated equipment (to include dispatch consoles), associated leases, structures (buildings and towers) and who manages them and replacement schedule for existing equipment.

- These items include, but are not limited to:
- Site Visits
 - Shelter Inventory
 - Power/Requirements
 - Repeater Hardware
 - Combining System(s)
 - Grounding
- Towers
 - Antenna Mounting Locations
 - Microwave Dishes
 - FCC Documentation
 - Analyze for Visible Concerns
- Shelter
 - HVAC Systems
 - Generators
 - Exterior Structures
- Dispatch
 - Consoles
 - CAD
- Microwave system evaluation.
- User Consultation

- Understand areas of concern
 - Urban Areas
 - Rural Areas
 - Public safety and dispatcher Interviews

The items above will help generate a general understanding of the overall health of the Clatsop County Public Safety radio system. Recommendations with cost estimates will be provided to address any critical repairs identified to allow current system to function at peak performance.

LONG-TERM MAINTENANCE, MANAGEMENT AND BUDGET ISSUES

Long-term maintenance is critical to Public Safety Radio Systems. It is industry standard at a minimum to perform preventative maintenance on a yearly basis regardless of vendor. This includes antenna systems, shelters, and microwave dishes.

Communications Northwest will make recommendations on when and how to address deferred maintenance, do preventative maintenance and associated costs. Communications Northwest will also provide the manufacturer recommended preventative maintenance schedules.

A thorough study of how the radio system is managed today will be conducted and provided in detailed documentation. Communications Northwest will provide management model recommendations to Clatsop County if prevalent.

Auditing the current Clatsop County Public Safety radio system will help determine the Public Safety radio system's budgetary needs to perform and maintain the radio system.

FUTURE RADIO COMMUNICATION SYSTEM REPLACEMENT COSTS

Based on site audits, Communications Northwest will propose options and the associated costs to repair, revamp and/or replace the radio system. This is presented as a rough order magnitude (ROM). Communications Northwest will take the provided site information from the site audits and propose all options to Clatsop County and the technologies available to include improvements to current system. This will include coverage maps at the public safety standard of 3.4 DAQ, 95% reliability with portable street level coverage and mobile radio coverage county wide. This will also include microwave paths with 99.99% link reliability, console options, and portable/mobile radio options.

FUTURE FCC 6.25 KHZ NARROW BANDING AND SPECTRUM ISSUES

Communications Northwest will provide a thorough explanation and audit of all county public safety agency's licensed and unlicensed frequencies (if applicable). Frequency management is critical to a radio systems success and design. Whether it's new or old technology. Communications Northwest will determine if any frequency management needs to take place and associated costs. Reports will include all licensed frequencies for portables, mobiles, repeaters, and microwave.

NEXT GENERATION RADIO SYSTEM OPTIONS AND RECOMMENDATIONS

A conclusive study will be completed to determine what technologies will best fit the Clatsop County Public Safety radio system's future needs.

- Coverage Maps
- Microwave Linking
- Dispatch Consoles
- Portable and Mobile Radios

Communications Northwest will provide Clatsop County with best available options for the future. Communications Northwest will provide information for an Analog Radio System, P25 Digital Radio System, and P25 Trunked Radio System options. Information will identify the benefits and challenges of each type of system.

POTENTIAL PARTNERSHIPS WITH OTHER AGENCIES

Communications Northwest will work with neighboring agencies to evaluate any potential benefits that could be achieved with strategic partnerships. This will include:

Sites

- Identify tower sites that might provide increased coverage (if applicable)?
- Microwave Availability
 - Link Redundancy and available Lines of Site
- Fees
 - Associated User Fees
 - Site Lease Costs
- County Agreements and expectations

POTENTIAL USE OF FIRSTNET

Communications Northwest will provide Clatsop County with detailed explanation of FirstNet and its viability within the County. These findings will include current primary provider capabilities.

UPDATE COUNTY COMMUNICATIONS PLAN

Report findings will provide critical information for the County to update the Clatsop County Emergency Communications Plan.

TOTAL COST OF OWNERSHIP

Communications Northwest will provide total cost of ownership estimations based on each technology. This includes the current system and any new potential system technology. Also included will be any shared radio system total cost of ownership. Life expectancy of current technologies will also be addressed within this report.

BUDGETARY OPTIONS

Communications Northwest will provide system funding options, resources, and state contracts to explore funding model options for the Clatsop County Public Safety radio system. Radio Systems can be costly, and we believe that beneficial funding options should be explored as well.

DELIVERABLE MATERIALS

CURRENT SYSTEM DOCUMENTATION AND FINDINGS

After collecting aforementioned information, Communications Northwest would determine the best course of action to address the system needs based on initial findings. Collective documentation and inventories are included to support the steps needed to address the current system issues (if applicable).

This includes but is not limited to:

- Summary of Findings
- Photos and supporting documentation
- Inventory
- Shelter (photographs of all equipment in shelter)
- Tower (photographs of all radio antennae and microwave)
- Action Plan/Recommendations
- Cost Analysis
- Timeline and Deliverables

If it is determined that there are action items to improve the overall system health, those items would be ranked in priority order and cost. Communications Northwest works directly with vendor engineers to determine what hardware and radio system settings should be used to make overall radio system improvements if needed. The cost to improve the Clatsop County Public Safety radio system may differentiate from long term preventative maintenance costs. This information will be included in Communications Northwest's report.

Documentation Items

- Evaluate existing infrastructure and detail its suitability as part of short term and long-term future options. Infrastructure evaluated should include:
 - Communications Sites
 - FCC Licensing
 - Microwave System
 - Radio (LMR) System
 - Dispatch Radio Console Equipment
 - End User Radio Equipment
- Understand radio needs and expectations for users of the existing Clatsop County Public Safety Radio System.
 - Work with user members of the Clatsop County Public Safety Radio System to understand their day-to-day operational needs both current and future:
 - User Interviews
 - System Maintainers
 - Dispatchers
- Provide a report that identifies existing conditions and outlines the current operational capabilities or deficiencies.
- Develop a document that outlines a short- and long-term communications plan to address all aspects of the current system evaluation. This plan should address what methods or practices Clatsop County should continue to use in the operations and maintenance of the Radio System as a whole. The plan should also outline short- and long-term goals/objectives that Clatsop can institute to improve system performance and operation.
 - Frequency Plan/Site Management
 - Radio Asset Management
 - Preventative Maintenance
- Develop a short/long term plan utilizing existing Clatsop County Public Safety Radio System owned equipment as practical based upon reliability and compatibility.
- Develop a frequency allocation plan for law enforcement, fire and ambulance and the related equipment/infrastructure needs to accomplish the plan.

- Use of existing Microwave backbone
- Develop a detailed report of findings, and a short/long-term plan including recommendations based on a combination of safety, continuity of operations, affordability, efficiency, interoperability and topography.
- Identify and define potential partnership opportunities with neighboring jurisdictions and existing or future radio systems.
 - Provide detailed evaluation and recommendations of short/long term options available to the Clatsop County Public Safety Radio System. Evaluations and recommendations should include suitability of the solution based on identified Clatsop County Public Safety Radio system user needs, technical feasibility and use of existing infrastructure and sites. Evaluations should include risk factors and major cost drivers. This will include total cost of ownership based on defined life expectancy of partnership equipment.
- At the conclusion of the audit, Communications Northwest will provide a written and verbal report and recommendation options to a group of identified stakeholders.
- These recommendations and evaluations should consider the following:
 - System Design as determined by the frequency plan
 - Microwave Design
 - Dispatch Consoles
 - Partner Integration
 - Coverage Maps
 - Current System
 - New Technology

Upon completion of the review and analysis project, Communications Northwest will provide a written report to Clatsop County and provide an oral review of the scope to the Clatsop County stakeholders to include a final demonstration of capabilities and operation. The final project analysis should include recommendations for implementation both short and long-term utilizing a phased in approach if possible. The recommendation should identify priorities that should be considered by stakeholders for moving forward.

Communications Northwest will provide information to update the Clatsop County Communications Plan.

Final review and potential implementation will be the responsibility of the Clatsop County stakeholders.

Ownership of the finished product, as well as real and intellectual property shall be retained by Clatsop County.

CONTRACTOR RESPONSIBILITIES

Contractor shall provide documentation listed in the deliverable section of SOW 201.

Contractor also understands that proprietary vendor information may be included in this study and will be flagged as such throughout the related documentation. Contractor must adhere to Vendor proprietary disclaimers and will be defined thoroughly as it pertains to vendor specific items.

CLIENT RESPONSIBILITIES

Clatsop County requests that consistent and constant communication between Administrative Staff, Technical Staff, User Members as necessary and designated Stakeholders occur on a regular basis to include an open

outline with progress reports and updates throughout the analysis process.

The scope of this project with the recommendation from Communications Northwest for review and discussion with Clatsop County.

Client also understands that proprietary vendor information may be included in this study and will be flagged as such throughout the related documentation. Client must adhere to Vendor proprietary disclaimers and will be defined thoroughly as it pertains to vendor specific items.

County hereby agrees that during the course of the Agreement and for a period of twelve (12) months immediately following the expiration or termination of the Agreement for any reason, or up to a twelve month separation of employment by Communications Northwest's employee, County will not hire any employees of Communication Northwest and will not, either directly or indirectly, solicit, induce, recruit or encourage any of Communications Northwest 's employees to leave its employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of Communications Northwest, either on behalf of County personally or for any other person or entity such as temporary employment agencies, government workforce or employment offices, or other personnel placement firms.

In addition, County will not accept services from an employee or do business with an employee in any form or manner, alone or as a sole proprietor, employee, consultant, owner, partner, officer, director, shareholder, member, advisor or agent for a period of twelve months.

FEE SCHEDULE

This engagement will be conducted on a lump sum basis. Communications Northwest will perform said services identified in this statement of work for the sum of \$59,950. Fifty (50%) percent to be paid to Communications Northwest from Clatsop County at the time of initiation of the project. The remaining 50 percent to be invoiced monthly as progress billing.

If additional expenses are needed, Contractor and Client will discuss the issue and if agreed, a Project Change Request will be issued.

Net 30 terms apply to all invoices.

COMPLETION CRITERIA

Contractor shall have fulfilled its obligations when any one of the following first occurs:

- Contractor accomplishes the Contractor activities described within this SOW, including delivery to Client of the materials listed in the Section entitled "Deliverable Materials," and Client accepts such activities and materials without unreasonable objections. No response from Client within 5-business days of deliverables being delivered by Contractor is deemed acceptance.
- Contractor and/or Client has the right to cancel services or deliverables not yet provided within 20 business days after advanced written notice to the other party.

ASSUMPTIONS

Contractor assumes worst case scenario and assumes this report should take no more than 120 days from the execution of the contract.

CONFIDENTIALITY

Communications Northwest (Contractor) agrees to abide by the County's confidentiality policies and procedures. Clatsop County is a public entity and routinely handles sensitive public information. Every effort will be made to ensure the protection of any such information that the Contractor is provided. All information will be returned to Clatsop County should a termination of contract occur.

PROJECT CHANGE CONTROL PROCEDURE

The following process will be followed if a change to this SOW is required:

- A Project Change Request (PCR) will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change, and the effect the change will have on the project.
- The designated Project Manager of the requesting party (Contractor or Client) will review the proposed change and determine whether to submit the request to the other party.
- Both Project Managers will review the proposed change and approve it for further investigation or reject it. Contractor and Client will mutually agree upon any charges for such investigation, if any. If the investigation is authorized, the Client Authorized Signer will sign the PCR, which will constitute approval for the investigation charges. Contractor will invoice Client for any such charges. The investigation will determine the effect that the implementation of the PCR will have on SOW price, schedule and other terms and conditions of the Agreement.
- Upon completion of the investigation, both parties will review the impact of the proposed change and, if mutually agreed, a Change Authorization will be executed.
- A written Change Authorization and/or PCR must be signed by both parties to authorize implementation of the investigated changes.



Communications Northwest
 624 McLoughlin Blvd.
 Oregon City OR 97045
 United States

www.commnw.com

Quote

Quote #QU6704

Date: 3/9/2022

Bill To	Ship To
CLATSOP COUNTY SHERIFF'S OFFICE PO BOX 658 ASTORIA OR 97103 United States	CLATSOP COUNTY SHERIFF'S OFFICE 1190 SE 19TH ST Warrenton OR 97146 United States

Sales Rep	Terms	PO Number
Scott A Reilly	Net 30	

Item	Description	Quantity	Price	Total
SVF-COV	Services - Coverage Design	7	\$2,000.00	\$14,000.00
SVF-SYS	Services - System Design	10	\$1,850.00	\$18,500.00
SVF-SUR	Services - Site Survey	12	\$1,850.00	\$22,200.00
SVF-DOC	Services - System Documentation	3	\$1,750.00	\$5,250.00
Discount - NASPO	NASPO - 00318 **PRICES ARE BASED ON CURRENT CONTRACT**		0%	\$0.00
Notes	Pricing includes, expenses, travel, lodging and per diem; based on the SOW.			

Sales Tax(%) \$0.00

Total \$59,950.00

<https://www.commnw.com/wp-content/uploads/2021/11/Terms-and-Conditions.pdf>

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: Award of six-month contract to Bio-Oregon for purchase of fish food with option to renew for additional six months

Category: Consent Calendar

Presented By: Steve Meshke, Natural Resources Manager

Issue Before the Commission: Each year Clatsop County Fisheries purchases more than \$100,000 in fish food, requiring a contract approved by the Board of Commissioners.

Informational Summary: Clatsop County Fisheries has worked closely with Bio-Oregon since its inception in 1976. Due to the lack of large freezer/storage space, frequent smaller orders shipped from less than 75 miles away are necessary to meet production needs of the program. A contract for purchasing fish food is exempt from competitive bid requirements as per Public Contracting 12.2.5(E).

Fiscal Impact: The amount of this contract is included in the approved FY22/23 budget and is funded by grants from the Bonneville Power Administration, Oregon Dept. of Fish and Wildlife, and fishermen assessment contributions. If the additional six-month renewal makes the total contract for the fiscal year exceed the approved budget amount of \$118,770.00, then a Resolution and Order will be prepared to revise the budget. Each six-month period will operate from a separate mutually agreed upon feed price list.

Recommended Action:

Approve contract C8057 with Bio-Oregon for July 1 – Dec. 31, 2022 and authorize the County Manager to sign original contract and six-month extension for the period January 1 – June 30, 2023.

Attachment List

A. C8057 Bio-Oregon Inc.

CLATSOP COUNTY, OREGON
800 Exchange Street, Suite 410
Astoria, Oregon 97103
An Equal Opportunity Employer

Contract No: **C8057**

Clatsop County Contract for Materials

This Contract is by and between **Clatsop County (County)** and **Bio-Oregon, Inc. (Contractor)**. Whereas **County** has need of the materials which **Contractor** has agreed to provide; **Now Therefore**, in consideration of the sum not to exceed **\$118,770.00** to be paid to **Contractor** by **County**, **Contractor** agrees to provide the materials below for the period July 1, 2022 through December 31, 2022 according to the price list in **Exhibit A**. There will be an option to extend the Contract time period for six months from January 1, 2023 through June 30, 2023 inclusive, with a new price list mutually agreed to. Total annual Contract amount will not exceed **\$118,770.00**.

A. The Materials:

Fish food as needed by **County** in accord with prices set forth in **Exhibit A**.

B. Payment Terms:

County will pay within 30 days of receipt of an invoice satisfactory to **County**. Invoices are to be itemized by feed size, feed type, medication and pounds of feed **Exhibit B**.

C. Other Considerations:

Contractor agrees to comply with all provisions applicable to subcontractors under the County's contract with the United States of America by and through Bonneville Power Administration, contract #88866 dated October 1, 2021, and attached hereto as **Exhibit C**.

D. Miscellaneous:

1. **Written Notice.** Any notice of termination or other communication having a material effect on this Agreement shall be served by U.S. Mail on the signatories listed.

2. **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Agreement shall be in the Circuit Court of Clatsop County. The prevailing party shall be entitled to reasonable attorney fees and costs, including an appeal. All rights and remedies of **County** shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of **County** according to law.

3. **Compliance.** **Contractor** shall comply with all applicable Federal, State, and local laws,

rules and regulations. All provisions of ORS 279B.220 through 240 (Public Contracts and Purchasing) are incorporated herein to the extent applicable.

4. **Judicial Rulings.** If any provision of this Agreement as applied to either party or to any circumstances shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement or the validity of enforceability of the Agreement.

5. **Independent Contractor.** **Contractor**, in carrying out the services to be provided under this Agreement, is acting as an "independent contractor" and is not an employee of **County**, and as such accepts full responsibility for taxes or other obligations associated with payment for services under this Agreement. As an "independent contractor", **Contractor** will not receive any benefits normally accruing to **County** employees unless required by applicable law. Furthermore, **Contractor** is free to contract with other parties, on other matters, for the duration of this Agreement.

6. **Indemnification.** **Contractor** shall save harmless, indemnify, and defend **County** for any and all claims, damages, losses and expenses including but not limited to reasonable attorney's fees arising out of or resulting from **Contractor's** performance of or failure to perform the obligations of this Agreement, to the extent same are caused by the negligence or misconduct of **Contractor** or its employees or agents.

7. **Worker's Compensation.** **Contractor** shall comply with ORS 656.017 for all employees who work in the State of Oregon. If the **Contractor** hires employees, he or she shall provide **County** with certification of Worker's Compensation Insurance, with employer's liability in the minimum of \$100,000.

8. **Nondiscrimination.** No person shall be subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age or national origin. Any violation of this provision shall be considered a material violation of this Agreement and shall be grounds for cancellation, termination or suspension in whole or in part by **County**.

9. **Termination of Agreement.** This Agreement may be terminated under the following conditions:

- a. By written mutual agreement of both parties. Termination under this provision may be immediate.
- b. Upon fifteen (15) calendar days written notice by either Party to the other of intent to terminate.
- c. Immediately on breach of the contract.

10. **Subcontracting/Non-assignment.** No portion of this Agreement may be contracted or assigned to any other individual, firm, or entity without the express and prior approval of **County**.

11. **Survival.** The terms, conditions, representations and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

12. **Warranty.** **Contractor** warrants that its product meets or exceeds the required **County**

standards and specifications.

13. **Tax Compliance Certification.** Contractor hereby certifies, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge, Contractor is not in violation of any of the tax laws described in ORS 305.380(4).

14. **Insurance.** Contractor shall purchase and maintain at Contractor's expense, Comprehensive General Liability and Automobile Liability insurance. This insurance is to provide separate coverage for each of the required types of insurance at a minimum of \$100,000 for property damage and a minimum of \$500,000 per person for bodily injury and no less than \$1,100,000 for each occurrence. In addition, all such insurance shall name County, its Commissioners, employees and agents, as an Additional Insured. A copy of the policy or certificate of insurance acceptable to County shall be submitted to County.

All terms on the previous pages of this document are hereby made a part of this Agreement.

This Agreement will not be effective until approved by the County Manager.

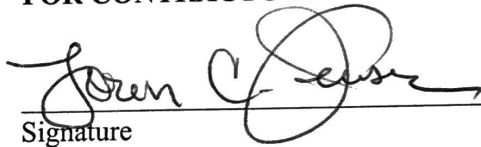
FOR COUNTY:

Signature

Date

Name/Title

FOR CONTRACTOR:

 _____
Signature

June 29, 2002

Date

Loren C. Jensen / Acct Manager

Name/Title

Address: 1140 Industrial Way

Longview, WA 98632



Erica Keyser
Clatsop County Fisheries
2001 Marine Drive Rm 253
Clatsop County Fisheries/Parks
Astoria, OR 97107

Dear Erica,

Attached are Bio-Oregon's updated feed prices for the period of July 1 to Dec 31, 2022

I hope you and the staff at Clatsop County Fisheries are doing well.

The costs of raw materials used in fish feed have increased significantly since our last price update on January 1. Also, the cost of energy used to process and ship our products has increased significantly as well.

We have reviewed our costs and will need to implement the attached updated feed prices for the period of July 1 to Dec 31, 2022. These prices have increased in the range of 8 to 12 % over the previous prices. We are doing everything possible to keep feed price increases to a minimum, and these price increases will allow us to continue to produce and ship high quality Bio-Oregon feeds.

Medicated feed prices have increased by 10 %.

I can quickly turn around any documents that may need to be signed.

All of us at Bio-Oregon thank you for your business and appreciate the opportunity to supply feed to Clatsop County Fisheries with the highest quality fish feeds.

Please call me for questions and further information.

Sincerely,

Loren

Loren Jensen
US Freshwater Sales
Bio-Oregon
Customer Service: 800 962 2001
Cell: 360 556 0811

Exhibit A



Clatsop County Fisheries

Bio-Oregon Price List

Effective:
Expires:

July 1, 2022
Dec 31, 2022

Longview WA Office
Order Phone (800) 962-2001
Order Fax (360) 425-6785

	Protein / Fat	Feed Size (mm)	ODFW Base Price Delivered ≥ 6600 lbs. Price/lb. *	ODFW Discount Price Delivered ≥ 13,200 lbs. Price/lb. *
(freight is added to orders < 6600 lbs)				
<u>STARTER FEEDS</u>				
BioVita Starter (crumbles)	53/18	Mash, # 0	2.47	2.41
	52/20	# 1, # 2	2.47	2.41
BioClark's Starter (crumbles)	53/18	# 0	2.22	2.16
	52/20	# 1, # 2	2.22	2.16
<u>FRY FEEDS</u>				
BioVita Fry	50/22	1.2	2.26	2.20
	50/22	1.5	2.20	2.14
	50/22	2.0	2.02	1.96
	50/22	2.5	2.01	1.95
	50/22	3.0	1.99	1.93
BioClark's Fry	47/18	1.2	1.70	1.64
	47/18	1.5	1.38	1.32
	47/18	2.0	1.27	1.21
	47/18	2.5	1.23	1.17
	47/18	3.0	1.16	1.10
BioClark's Fry EV (Extra Vitamins) Use for enhanced nutrition, especially when feeding a reduced ration. 11,000 lb. minimum order when product is not in stock.	47/18	2.0	1.32	1.26
	47/18	2.5	1.28	1.22
	47/18	3.0	1.21	1.15
<u>SPECIALITY FEEDS</u>				
BioPro (Health Promoting Diet)	52/20	# 0, 1, 2	2.55	2.49
	50/22	1.2	2.49	2.43
	50/22	1.5	2.33	2.27
	50/22	2.0	2.13	2.07
	50/22	2.5	2.12	2.06



	Protein / Fat	Feed Size (mm)	ODFW Delivered ≥ 6600 lbs. Price/lb. *	ODFW Delivered ≥ 13,200 lbs. Price/lb. *
BioSupreme (Transfer Diet)	50/20	1.2 **	2.10	2.04
(for use prior to release or before transfer to seawater)	50/20	1.5 **	1.96	1.90
	50/20	2.0	1.78	1.72
** BioSupreme sizes 1.2 & 1.5 are seasonal, order by March 15th.	50/20	2.5	1.76	1.70
	50/20	3.0	1.67	1.61
BioBrood (Brood Feed)	48/20	4.0, 6.0, 9.0	1.76	1.70
<u>TROUT FEEDS</u>				
BioTrout	47/24	2.0	1.16	1.10
	47/24	3.0	1.12	1.06
	45/24	4.0	1.07	1.01
*** 40ppm astaxanthin included in 4.0mm	45/24	4.0	1.11	1.05
40ppm astaxanthin included in 6.0mm	43/24	6.0	1.02	0.96
40ppm astaxanthin included in 9.0mm	40/24	9.0	1.02	0.96

*** BioTrout 4.0mm with 40ppm Asta - 11,000 lb. minimum order when the product is not in stock.

*** FREIGHT RATES (Washington & Oregon)**

Delivered prices vary depending on the order amount as shown above.
 For orders less than 6600 lbs, actual freight charges will be added to the Base prices shown above.
 Multiple feed types and sizes can be combined to obtain the higher volume discounts.
 Discount of .06 /lb. for pick ups at Bio-Oregon's Longview WA warehouse.
 UPS, Fed-Ex, Rush, or other special shipping services will be billed at actual cost.

PACKAGING

All feeds are packaged in 44 lb. (20 kgs) recyclable plastic bags unless otherwise specified.
 Crumble Sizes (#0, #1, #2) - 30 bags per pallet = 1320 lbs. (600 kgs).
 Pellet Sizes (1.2 mm and larger) - 50 bags per pallet = 2200 lbs. (1000 kgs).

ORDER LEAD TIME

Requested Order Lead time is 21 days (15 business days).

TERMS

Bio-Oregon's General Terms and Conditions of Sale are applicable and can be found at: www.bio-oregon.com

EXHIBIT B

DELIVERY: **Contractor** shall deliver product to **County** when requested and may be required to split loads for delivery to separate locations. Orders will be placed in advance either by phone or Fax, usually 21 working days prior to delivery. Deliveries are to be made on dates specified by **County** and between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Medicated feed orders may require delivery on shorter notice. County may frequently pick up feed by pickup truck.

AUTHORITY TO USE MEDICATED FEED: **County** is authorized to use medications in fish feeds under the US Food and Drug Administration's INAD 4333 and is subject to reporting procedures through the Oregon Department of Agriculture. **Contractor** is required to provide, to **County**, a copy of the INAD 4333 compliance form which states level of applicable medications, production date or production identification number, total pounds of feed shipped, destination of feed, and size of feed.

VOLUME REPORTS: A record of all feed made for and delivered to **County** shall be kept by **Contractor** and made available to **County** upon request.

Bio-Oregon - Medicated Feed Pricing

Aquaflor Medicated Feed ***10mg kg of fish***				CCF Effective: July 1, 2022 Expires: December 31, 2022	
Feed Rate % bwt per day	Drug Inclusion Rate	Feed Size	Feed Price * \$/lb.		
5.0%	0.04%	#0, #1, #2, 1.2mm	\$3.23		Orders for AquaFlor require a VFD or registration in an INAD.
3.0%	0.066%	#0, #1, #2, 1.2mm	\$3.32		
2.0%	0.10%	#0, #1, #2, 1.2mm	\$3.45		
1.0%	0.20%	#0, #1, #2, 1.2mm	\$3.84		
0.5%	0.40%	#0, #1, #2, 1.2mm	\$4.59		
5.0%	0.04%	1.5 mm & larger	\$2.82	See note regarding medicated feeds at the bottom of this page.	
3.0%	0.066%	1.5 mm & larger	\$2.92		
2.0%	0.10%	1.5 mm & larger	\$3.04		
1.0%	0.20%	1.5 mm & larger	\$3.42		
0.5%	0.40%	1.5 mm & larger	\$4.17		

Aquaflor Medicated Feed ***15mg kg of fish***				CCF Effective: July 1, 2022 Expires: December 31, 2022	
Feed Rate % bwt per day	Drug Inclusion Rate	Feed Size	Feed Price * \$/lb.		
5.0%	0.06%	#0, #1, #2, 1.2mm	\$3.30		Orders for AquaFlor require a VFD or registration in an INAD.
3.0%	0.099%	#0, #1, #2, 1.2mm	\$3.44		
2.0%	0.15%	#0, #1, #2, 1.2mm	\$3.65		
1.0%	0.30%	#0, #1, #2, 1.2mm	\$4.20		
0.5%	0.60%	#0, #1, #2, 1.2mm	\$5.34		
5.0%	0.06%	1.5 mm & larger	\$2.89	See note regarding medicated feeds at the bottom of this page.	
3.0%	0.099%	1.5 mm & larger	\$3.03		
2.0%	0.15%	1.5 mm & larger	\$3.23		
1.0%	0.30%	1.5 mm & larger	\$3.78		
0.5%	0.60%	1.5 mm & larger	\$4.92		

TM-200 Medicated Feed				CCF Effective: July 1, 2022 Expires: December 31, 2022	
Feed Rate % bwt per day	Drug Inclusion Rate	Feed Size	Feed Price * \$/lb.		
3.75%	0.5%	#0, #1, #2, 1.2mm	\$3.17		Orders for TM200 require a VFD or registration in an INAD.
1.88%	1.0%	#0, #1, #2, 1.2mm	\$3.25		
1.25%	1.5%	#0, #1, #2, 1.2mm	\$3.32		
0.94%	2.0%	#0, #1, #2, 1.2mm	\$3.41		
0.75%	2.5%	#0, #1, #2, 1.2mm	\$3.49		
0.63%	3.0%	#0, #1, #2, 1.2mm	\$3.59		
3.75%	0.5%	1.5 mm & larger	\$2.75	See note regarding medicated feeds at the bottom of this page.	
1.88%	1.0%	1.5 mm & larger	\$2.83		
1.25%	1.5%	1.5 mm & larger	\$2.92		
0.94%	2.0%	1.5 mm & larger	\$2.99		
0.75%	2.5%	1.5 mm & larger	\$3.08		

Aqua-100 Medicated Feed				CCF Effective: July 1, 2022 Expires: December 31, 2022	
Feed Rate % bwt per day	Drug Inclusion Rate	Feed Size	Feed Price * \$/lb.		
4.0%	1.125%	#0, #1, #2, 1.2mm	\$3.33		Orders for AQUA-100 require registration in an INAD.
2.5%	1.8%	#0, #1, #2, 1.2mm	\$3.55		
2.0%	2.25%	#0, #1, #2, 1.2mm	\$3.71		
1.5%	3.0%	#0, #1, #2, 1.2mm	\$3.94		
1.0%	4.5%	#0, #1, #2, 1.2mm	\$4.42		
4.0%	1.125%	1.5 mm & larger	\$3.14	See note regarding medicated feeds at the bottom of this page.	
2.5%	1.8%	1.5 mm & larger	\$3.36		
2.0%	2.25%	1.5 mm & larger	\$3.49		
1.5%	3.0%	1.5 mm & larger	\$3.73		
1.0%	4.5%	1.5 mm & larger	\$4.21		

NOTE Regarding Medicated Feeds: The manufacture of medicated feeds is exceedingly complicated due to the variability of raw materials and drug concentrations within the specialized diet. Consequently, medicated feeds are more likely to be dusty or to float, especially at higher drug concentrations. Feeds medicated with TM-200F may appear especially dusty. Sometimes the diet's proximate analysis (incl. Protein & Fat levels) will vary from standard specifications due to the top coating of drug and oil onto finished feeds. Bio-Oregon will make every effort to minimize these effects but no discounts or credits will be issued for quality claims on medicated feed. Our goal is to provide medicated feed as quickly and efficiently as possible to best serve our customers.

*** FREIGHT RATES (Washington & Oregon)**

For orders of 6600 lbs or more - Freight charges are included in the above prices.
 For orders of less than 6600 lbs - Freight charges will be added.
 Customer pickup discount of \$0.06/lb.

Exhibit C



COOPERATIVE AGREEMENT

00088866

RECORDED

OCT 14 2021

Doc# 2021100014

Mail Invoice To:
fwinvoices@bpa.gov
F & W Invoices - KEWB-4
P. O. Box 3621
Portland OR 97208-3621

Please Direct Inquiries To:

DANIEL AFFONSO
Title CONTRACT SPECIALIST
Phone: 503-230-5918
Fax

Vendor:

ANDREA NEYS
CLATSOP COUNTY FISHERIES
800 EXCHANGE
RM 400
ASTORIA OR 97103

Title

1993-060-00 EXP SAFE - CLATSOP CO 2022

Contract Value

Total Value \$479,561.00 USD ** NOT TO EXCEED **

Pricing Method COST, NO FEE Start Date 10/01/2021

Contract Type COOPERATIVE End Date 09/30/2022

Signatures

Vendor Authorized Signature

County Manager
Printed Name/Title

10/14/21 503-325-1000
Date Signed Phone

Digitally signed by WESLEY SAWAY
Date: 2021.09.15 15:02:36 -07'00'

Authorized Signature

Wesley J. Saway / Contracting Officer
Printed Name/Title

15 September 2021 503-230-3985
Date Signed Phone



DEPARTMENT OF ENERGY
Bonneville Power Administration
P.O. BOX 3621 • PORTLAND, OREGON 97208-3621



CONTINUATION PAGE

**COOPERATIVE AGREEMENT NO. 88866
1993-060-00 EXP SAFE - CLATSOP CO 2022**

BPA Contracting Officer's Representative (COR)	Anne Creason	503-230-3859	amcreason@bpa.gov
BPA Contracting Officer (CO)	Wesley Saway	503-230-3985	wjsaway@bpa.gov
BPA Contracting Specialist (CS)	Daniel Affonso	503-230-5918	dxaffonso@bpa.gov

This award is hereby executed between the Bonneville Power Administration (BPA) and the Clatsop County Fisheries.

This Cooperative agreement is issued as follows and consists of:

- Signature page
- Continuation page
- Terms and Conditions
- Project Description and Budget

ATTACHMENT – TERMS AND CONDITIONS

CLAUSES INCORPORATED BY REFERENCE

This award incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at the following address:

Bonneville Financial Assistance Instructions Manual clauses:
<https://www.bpa.gov/Doing%20Business/finassist/Pages/default.aspx>

- Clause 1 Regulations Applicable To BPA Financial Assistance (JUL 2017)
- Clause 2 Legal Authority And Effect (JUL 2017)
- Clause 3 Non-assignability (JUL 2017)
- Clause 4 Compliance With Federal, State, And Municipal Law (JUL 2017)
- Clause 5 Inconsistency With Federal Law (JUL 2017)
- Clause 7 Contracting Officer's Representative (OCT 2018)
- Clause 10 Federal Stewardship (OCT 2018)
- Clause 11 Substantial Involvement (OCT 2018)
- Clause 12 Nondisclosure And Confidentiality Agreements Assurances (JUL 2017)
- Clause 13 Foreign Work and Travel (JUL 2021)
- Clause 14 Purchases (JUL 2017)
- Clause 15 Lobbying Restrictions (JUL 2017)
- Clause 16 Export Controls (JUL 2017)
- Clause 18 Extensions Of Period Of Performance (JUL 2017)
- Clause 19 Property Trust Relationship & Insurance Coverage (JUL 2017)
- Clause 21 Property – Supplies And Equipment (JUL 2017)
- Clause 22 Title To And Disposition Of Property (OCT 2018)
- Clause 23 Record Retention (JUL 2021)
- Clause 24 Audits (OCT 2018)
- Clause 25 Suspension Or Termination (JUL 2017)
- Clause 26 Claims, Disputes, And Appeals (JUL 2017)
- Clause 27 Reporting Program Performance (JUL 2021)
- Clause 29 Payment Requests (JUL 2017)
- Clause 31 Reimbursement Payment & Financial Reporting Requirements (OCT 2018)
- Clause 32 Budget Changes (JUL 2021)
- Clause 34 Insolvency, Bankruptcy Or Receivership (OCT 2018)
- Clause 35 Nondiscrimination In Federally Assisted Programs (JUL 2017)
- Clause 36 Environmental Protection (JUL 2021)
- Clause 37 Endangered Species Act Requirements (JUL 2021)
- Clause 38 NEPA Requirements (JUL 2021)
- Clause 39 Felony Conviction And Federal Tax Liability Assurances (JUL 2017)
- Clause 40 Drug-Free Workplace Requirements For Financial Assistance Awards (JUL 2017)
- Clause 43 Indemnity (OCT 2018)
- Clause 44 Environmental, Safety, And Health (OCT 2018)
- Clause 45 Small Unmanned Aircraft (UAS) (JUL 2021)
- Clause 46 Closeout (JUL 2021)
- Clause 47 National Historic Preservation Act Requirements (JUL 2021)

CLAUSES INCORPORATED BY FULL TEXT

CLAUSE 17 PUBLICATIONS (JUL 2017)

BPA encourages the Recipient to publish or otherwise make publicly available the results of work performed under this Award. The Recipient is required to include the following acknowledgement in publications arising out of or relating to work performed under this Award:

Acknowledgment: “The information, data, or work presented herein was funded in part by the Bonneville Power Administration under Award Number 88866. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

STATUTORY AND NATIONAL POLICY REQUIREMENTS

Financial assistance awards are subject to the following statutory and national policy requirements below. By signing or accepting the funds under the financial assistance award, the recipient agrees that it will comply with applicable provisions below.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
NONDISCRIMINATION				
On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by: DOE at 10 CFR Part 1040	All	All	All	Requirements flow down to subrecipients.
On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR Part 60 and EPA at 40 CFR Parts 7 and 12.	Grants, cooperative agreements, and other prime awards defined at 40 CFR 60-1.3 as "Federally assisted construction contract."	All	Awards under which construction is to be done.	Requirements flow down to construction subrecipients.
On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.). DOE at 10 CFR Part 1040	All	Education al institution [for sex discrimination, excepts all Institution controlled by religious organization, when inconsistent with the organization's religious tenets].		
On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90. DOE at 10 CFR Part 1040	Grants, cooperative agreements, and other awards defined at 45 CFR 90.4 as "Federal financial assistance."	All	All	Requirements flow down to subrecipients.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
On the basis of handicap, in: 1. Section 504 of the Rehabilitation Act of 1973 (29 USC 794), as implemented by Department of Justice regulations at 28 CFR Part 41 and DOE at 10 CFR Part 1040.	Grants, cooperative agreements, and other awards included in "Federal financial assistance"	All	All	Requirements flow down to subrecipients.
2. The Architectural Barriers Act of 1968 (42 USC 4151, et seq.).	Grant or loan	All	Construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel.	
3. Americans with Disabilities Act. 42 USC 12101 et. seq	All	All		
LIVE ORGANISMS				
For human subjects:				
For human subjects, the Common Federal Policy for the Protection of Human Subjects. Codified by the: DOE at 10 CFR Part 745	All	All	Research, development, test, or evaluation involving live human subjects.	Requirements flow down to subrecipients
P.L. 104-191 Health Insurance Portability and Accountability Act (HIPAA)	As applicable	Covered Entities	As applicable	Limits uses of protected health information (PHI) collected or maintained by researchers within a covered entity or access to PHI from a covered entity. Research uses do not require Business Associate Agreements (defined at 45 CFR part 164 504 (e)(1) between collaborating institutions. Guidance available at http://privacyruleandresearch.nih.gov/
For animals:	All	All		Requirements flow down to subrecipients.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
<p>Rules on animal acquisition, transport, care, handling, and use in: (i) 9 CFR Parts 1-4, Department of Agriculture rules that implement the Laboratory Animal Welfare Act of 1966 (7 US+A160C. 2131-2156). Public Health Service Agencies must follow requirements in the PHS Policy on Humane Care and Use of Laboratory Animals, which implements PL 99-158, Sec. 495. NASA requirements for animal welfare are set forth at 14 CFR Part 1232 EPA at 40 CFR Part 40. For USDA/CSREES, "In the case of domestic farm animals housed under farm conditions, the institution should adhere to the principles stated in the Guide for the Care and Use of Agricultural Animals in Agriculture and Teaching, Federation of Animal Science Societies, 1999."</p>	All	All	<p>Research, experimentation, or testing involving the use of animals USDA regulations exempt birds, most rats and mice bred for research, and farm animals used for agricultural research.</p>	
<p>Rules of the Departments of Interior (50 CFR Parts 10-24) and Commerce (50 CFR Parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.</p>	All	All	<p>Activities which may involve or impact wildlife and plants.</p>	
ENVIRONMENTAL STANDARDS				
<p>Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. Seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799].</p> <p>EPA at 40 CFR Part 6</p>	All	All	<p>All, for Clean Air Act, Clean Water Act, and Executive Order 11738.</p>	<p>Requirements flow down to subrecipients.</p>

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
<p>The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.</p> <p>DOE at 10 CFR Part 1021</p>				
<p>Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas.</p> <p>DOE at 10 CFR Part 1022</p>	All	All	<p>Awards involving construction, land acquisition or development, with some exceptions [see 42 U.S.C. 4001, et. seq.].</p>	<p>The Council on Environmental Quality's regulations for implementing NEPA are at 40 C.F.R. Parts 1500-1508. Executive Order 11514 [3 CFR, 1966-1970 Comp., p. 902], as amended by Executive Order 11991, sets policies and procedures for considering actions in the U.S. Executive Orders 11988 [3 CFR, 1977 Comp., p. 117] and 11990 [3 CFR, 1977 Comp., p. 121] specify additional considerations, when actions involve floodplains or wetlands, respectively.</p>
<p>All existing or proposed components of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C.1271, et seq.).</p> <p>EPA at 40 CFR Part 6</p>	Grants, cooperative agreements , and other "financial assistance" (see 16 U.S.C. 3502).	All	<p>Awards that may affect existing or proposed element of National Wild and Scenic Rivers system.</p>	<p>Requirements flow to subrecipients.</p>
<p>Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).</p> <p>EPA at 40 CFR Part 6</p>	All	All	<p>Construction in All area with aquifer that the EPA finds would create public health hazard, if contaminated.</p>	<p>42 U.S.C. 300h-3(e) precludes awards of Federal financial assistance for all projects that the EPA administrator determines may contaminate a sole-source aquifer so as to threaten public health.</p>

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Resource Conservation and Recovery Act 42 USC 6901	All	Awards to states or a political subdivision of a state (which for this purpose includes state and local institutions of higher education or hospitals)		
HEALTH & SAFETY GUIDELINES				
Applicable OSHA Standards in Laboratories 29 CFR 1910.1030 Bloodborne Pathogens; 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories	All	All	Research involving use of hazardous chemicals or bloodborne pathogens	
Handling and transport of etiologic agents Procedures for Domestic Handling and Transport of Diagnostic Specimens and Etiologic Agents, 1994 (3rd ed.), H5a3doc.75, National Committee for Clinical Laboratory Standards	All	All	Research involving etiologic agents	
Hotel and Motel Fire Safety Act of 1990 - P.L. 101-39 40 USC 327-333	Conference or meeting support	All	Alterations and Renovations > \$500,000	
Labor Standards under Federally Assisted Construction: Construction Work Hours and Safety Standards Act 40 USC 327-333	All	All	Alterations and Renovations > \$500,000	
Text Messaging While Driving - EO 13513	All	All	When performing work for or on behalf of government	Adopt and enforce policies that ban text messaging while driving.
Increasing Seat Belt Use in the United States Executive Order 13043, Increasing Seat Belt Use in the United States, dated, April 16, 1997	All	All		In accordance with the Executive Order, "grantees are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles."

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
NATIONAL SECURITY GUIDELINES				
Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, dated September 23, 2001.	All			
GENERAL/MISCELLANEOUS REQUIREMENTS				
Drug Free Workplace 41 USC 701 et seq. DOE at 10 CFR Part 607	All	All		
Civil False Claims Act 31 USC 2739	All	All	All	
Criminal False Claims Act 18 USC 287 and 1001 31 USC 3801, 45 CFR 79	All	All	All	
Government-wide Debarment and Suspension (Nonprocurement) DOE at 10 CFR 1036	All	All		
Lobbying Prohibitions 31 USC 1352, stipulates that (1) No Federal appropriated funds have been paid or will be paid, any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit the SF Form LLL, "Disclosure of Lobbying Activities", in accordance with its instructions. DOE at 10 CFR Part 601	All			Requirements flow down to construction subrecipients.
Metric System 15 USC 205 and Executive Order 12770	All	All	All	

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
<p>Misconduct in Science</p> <p>Policies and responsibilities associated with prevention, detection, and handling of misconduct in science allegations as stipulated in regulations:</p> <p>DOE at 10 CFR Part 733</p> <p>[Federal Register: December 6, 2000 (Volume 65, Number 235)] [Notices] [Page 76260-76264]</p>	All	All	All	
<p>National Historic Preservation</p> <p>The recipient agrees to identify to the awarding agency all property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide all the help the awarding agency may need, with respect to the award.</p> <p>16 USC 470f</p>	All	All	All	
<p>Paperwork Reduction Act</p> <p>44 USC 3501</p>	All	All	<p>When data is collected from respondents using a questionnaire or other survey instrument. See, however, M-11-07 dated 12/9/10 entitled, "Facilitating Scientific Research by Streamlining the Paperwork Reduction Act Process." https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-07.pdf</p>	<p>Data collection activities, if any, performed under this project are the responsibility of the recipient, and awarding agency support of the project does not constitute approval of any survey design, questionnaire content, or data collection procedures. The recipient shall not represent to respondents that such data are being collected for or in association with Bonneville without the specific written approval of the Bonneville CO. However, this requirement is not intended to preclude mention of Bonneville support of the project in response to an inquiry or acknowledgment of such support in any publication of these data.</p>

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
<p>U.S. Flag Air Carriers</p> <p>49 USC 40118 See also General Services Administration amendment to the Federal Travel Regulations, Federal Register (Vol. 63, No. 219, 63417-63421)</p>	All	All	<p>Any air transportation to, from, between, or within a country other than the U.S. of persons or property, the expense of which will be assisted by Federal funding, must be performed by or under a code-sharing arrangement with a U.S.-flag air carrier if service provided by such a carrier is available (see Comp Gen. Decision B-240956, dated September 25, 1991).</p>	
<p>Trafficking in Persons By signing or accepting funds under the agreement, the recipient agrees that it will comply with Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)) as implemented by 2 CFR 175.</p>	All	<p>175.15 (b)l.a. applies to private entities 175.15(b) l.b. applies to other than private entities if award includes subrecipient award to a private entity 117.15(b)l .c. applies to all recipients</p>		Requirements flow down to subrecipients.
<p>Whistleblower Protection</p> <p>Awardees are notified of the applicability of 41 U.S.C. § 4712, as amended by P.L. 112-239, providing protection for whistleblowers.</p>	All	All	All	
<p>Use of United States Flag Vessels</p> <p>46 CFR 381</p>	All	All		
<p>Patents, Trademarks and Copyrights</p> <p>35 USC 202-204 and 37 CFR 401</p>	All	Awards to non-profits and small businesses		

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Privacy Act 5 USC 552a	All	All		
Pro Children Act 20 USC 7183	All	All	All awards performed in facilities where children are served.	
Uniform Relocation Assistance and Real Property Acquisition Policies Act 42 USC 4601 and 49 CFR 24	All	All		
Constitution Day PL 108-447	All	Education al Institutions		
Copeland Act 40 USC 4135	All	All		
Davis Bacon Act 40 USC 3141 et.seq	All	All		
Earthquake Hazards Reduction Act 42 USC 7701 et seq., EO 12699	All	All	Construction awards within applicable geographic areas	
Freedom of Information Act 5 USC 552	All	All		
Hatch Act 5 USC 7321-7328	All	State or Local Governments		
Limited English Proficiency EO 13166	All	All		
Native American Graves Protection and Repatriation 25 USC 3001-3013	All	All		Precludes use of funds to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography, unless the activity fits within a law enforcement exception as noted in the provision.



Statement of Work Report

Data Current as of: 09/14/2021
 Report Printed: 09/14/2021

Project Title: Select Area Fisheries Enhancement
Project #: 1993-060-00
Contract Title: 1993-060-00 EXP SAFE - CLATSOP CO 2022
Contract #: 88866
Province: Columbia River **Subbasin:** Columbia Estuary
 Estuary
Workorder Task(s): WO: 00032127
 Task: 1
Perf. Period Budget: \$479,561 **Perf. Period:** 10/1/2021 - 9/30/2022
Contract Type: Coop **Pricing Type:** Cost Reimbursement (CNF)
Contractor(s): Clatsop County Fisheries (Prime - CLATCOUN00)
BPA Internal Ref: 88866
SOW Validation: Last validated 08/12/2021 with 0 problems, and 1 reviewable items
Contract Documents: [Transmittal Memo \(08/09/2021\)](#) Transmittal Memo for CR-349758

[Property Inventory \(06/30/2021\)](#) 2022 Property Inventory List

[Budget - Contract \(08/06/2021\)](#) CR349758 Budget

Contract Description:

The Select Area Fisheries Enhancement Project is a well-established cooperative program that strives to deliver quality commercial and recreational salmon fishing opportunities in a setting which maximizes the return of hatchery production into fisheries. Funding support of this project is shared by the Bonneville Power Administration, the states of Oregon and Washington, Mitchell Act funds, and fisher/processor voluntary contributions.

The objectives of this project are mitigation, protection of endangered species, minimizing negative impact of SAFE fisheries and production on the environment, and providing for the most efficient use of hatchery stocks. All objectives are accomplished by producing salmon for harvest in the lower Columbia River commercial and sports fisheries locally, and regionally for commercial and sports fisheries in the Pacific Northwest coastal zones. The fish produced are select area bright fall Chinook, spring Chinook and lower Columbia River hatchery coho provide fish for harvest when fishing is curtailed to protect endangered stocks of fish and in Select Areas where the incidence of endangered fish is minimal and closely monitored. The fish produced from this program are able to be identified separate from the endangered stocks by marking with coded wire tags. Avoiding negative impact of rearing activities on the environment is accomplished through the successful net-pen rearing strategies that facilitate rapid out-outmigration and reduce incidence of disease. Minimizing the incidence of hatchery fish on the spawning grounds by maximizing harvest of hatchery fish occurs through active in-season management of the commercial fisheries, fishing periods, gear restrictions and area boundaries, which have been refined over time to minimize impacts to listed species. Harvest rates are monitored under the Oregon Department of Fish & Wildlife's SAFE contract.

This project will continue the development of the SAFE sites to maximize harvest of returning adults and minimize catch of non-SAFE stocks at existing sites; coordinate activities with Washington and Oregon Departments of Fish and Wildlife, Clatsop County, Bonneville Power Administration, and the National Oceanic and Atmospheric Administration; and compile project results and information.

Contacts:

Name	Role	Organization	Phone/Fax	Email	Address
John Skidmore	F&W Approver	Bonneville Power Administration	(503) 230-5494 / NA	jtskidmore@bpa.gov	905 NE 11th Ave. Portland OR 97232



Tracy Hauser	COTR	Bonneville Power Administration	(503) 230-4296 / (503) 230-4563	tlhauser@bpa.gov	905 NE 11th Avenue - EWL-4 Portland OR 97232
Geoffrey Whisler	Interested Party	Oregon Department of Fish and Wildlife	(971) 673-6024 / (971) 673-6072	geoffrey.s.whisler@state.or.us	Ocean Salmon & Columbia River Program 17330 SE Evelyn Street Clackamas OR 97015
Tucker Jones	Interested Party	Oregon Department of Fish and Wildlife	(971) 673-6067 / NA	tucker.a.jones@state.or.us	
Steve Meshke	Contract Manager	Clatsop County Fisheries	(503) 325-6452 / NA	spmeshke@co.clatsop.or.us	2001 Marine Drive, Rm 253 Astoria OR 97103
Patrick Hulett	Interested Party	Washington Department of Fish and Wildlife (WDFW)	(360) 577-0197 / NA	patrick.hulett@dfw.wa.gov	
Daniel Gambetta	Env. Compliance Lead	Bonneville Power Administration	(503) 230-3493 / NA	dagambetta@bpa.gov	OR
Erica Keyser	Administrative Contact	Clatsop County Fisheries	(503) 325-6452 / (503) 325-2753	ekeyser@co.clatsop.or.us	Clatsop County Fisheries 2001 Marine Drive, Rm 253 Astoria OR 97103
Cameron Duff	Interested Party	Oregon Department of Fish and Wildlife	(971) 673-6057 / NA	cameron.m.duff@state.or.us	17330 SE Evelyn St. Clackamas OR 97015
Daniel Affonso	Contracting Officer	Bonneville Power Administration	(503) 230-3893 / NA	dxaffonso@bpa.gov	P.O. Box 3621 Portland OR 97208-3621
Julian Gingerich	Supervisor	Clatsop County Fisheries	(503) 325-6452 / NA	jgingerich@co.clatsop.or.us	2001 Marine Drive, room 253 Astoria OR 97103

Work Element Budget Summary:

<u>Work Element - Work Element Title</u>	<u>EC Needed*</u>	<u>Estimate</u>	<u>(%)</u>
A : 165. Produce Environmental Compliance Documentation - Produce Environmental Compliance Documentation		\$9,591	(1.99%)
B : 174. Produce Plan - Produce Hatchery Management Plan for spring Chinook, fall Chinook and coho salmon	*	\$9,591	(1.99%)
C : 176. Produce Hatchery Fish - 2020 brood hatchery spring Chinook	*	\$177,438	(37.00%)
D : 176. Produce Hatchery Fish - 2020 brood early stock lower Columbia River hatchery Coho	*	\$225,394	(47.00%)
E : 141. Produce Other Report - Other Reports for BPA		\$14,387	(3.00%)
F : 119. Manage and Administer Projects - Select Area Fisheries Enhancement Project Management		\$14,387	(3.00%)
G : 132. Produce (Annual) Progress Report - Multi Year 2020-2022 SAFE Report - CCF Contribution provided to ODFW		\$19,182	(3.99%)



H : 185. Produce Pisces Status Report - Quarterly Status Reports

\$9,591 (1.99%)

Total: \$479,561

* Environmental Compliance (EC) needed before work begins.

Statement of Work Report

Work Element Details

A: 165. Produce Environmental Compliance Documentation

Title: Produce Environmental Compliance Documentation

Description: All environmental compliance related to fish production is covered under NMFS Biological Opinion (1998) and 300-J NPDES permits from OR DEQ. All fisheries actions and fisheries research are covered under NMFS Biological Opinion regarding "2008-2017 U.S. v Oregon Management Agreement".

Link to ESA Biological Opinion (1998) for SAFE https://pcts.nmfs.noaa.gov/pls/pcts-pub/sxn7.pcts_upload.summary_list_biop?p_id=459

Deliverable Specification: All environmental compliance related to fish production is covered under NMFS Biological Opinion (1998)

* 300-J National Pollutant Discharge Elimination System (NPDES) permit from OR DEQ. Clatsop County Fisheries has finalized the permitting review process and was issued a new NPDES Permit from DEQ effective January 1, 2019 with an expiration date of November 30, 2023. The Federal Permit Number is OR0040631.

* ESA permit - Section 10 permit
Work Element Budget: \$9591 (2.00%)

Planned Metrics:

- * Are herbicides used as part of work performed under this contract?: No
- * Will water craft, heavy equipment, waders, boots, or other equipment be used from outside the local watershed as part of work performed under this contract?: No

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Complete and document public involvement activities and provide to EC Lead	10/1/2021	10/31/2021	Inactive	Public involvement is any outreach to the public or landowners about specific actions that are proposed. This could be public letters, meetings, newspaper notices, posted notices at local facilities, or information booths at local events.
B. Participate in ESA Consultation	10/1/2021	10/31/2021	Inactive	Work may include drafting BA (or other ESA documentation), completing HIP forms, submitting high risk project designs to the EC Lead, providing copies of Section 10, 4(d), or 6 permits, etc., or submitting Hatchery Genetic Management Plan to BPA for review and ESA consultation initiation, and providing input for the ensuing consultation. Once the program has completed Section 7 consultation and has obtained relevant permits or authorizations (Section 10, 4 (d), etc), be familiar with and follow all terms and conditions, including annual reporting, associated with the ESA consultation or permit. Notify BPA immediately of any instances when take has been exceeded or terms and conditions or conservation measures have been violated.
C. Inspect water craft, waders, boots, etc. to be used in or near water for aquatic invasive species	10/1/2021	9/30/2022	Inactive	Aquatic Invasive Species Guidance: Uniform Decontamination Procedures: http://www.aquaticnuisance.org/wordpress/wp-content/uploads/2009/01/Recommended-Protocols-and-Standards-for-Watercraft-Interception-Programs-for-Dreissenid-Mussels-in-the-Western-United-States-September-8.pdf -- Best management guidance for boaters: http://www.westernais.org -- Aquatic Nuisance Species newsletter: http://www.aquaticnuisance.org/newsletters -- State Aquatic Invasive Species Management Plans: Oregon: http://www.aquaticnuisance.org/wordpress/wp-content/uploads/2009/01/Recommended-Protocols-and-Standards-for-Watercraft-Interception-Programs-for-Dreissenid-Mussels-in-the-Western-United-States-September-8.pdf -- Washington: http://www.wdfw.wa.gov/publications/pub.php?id=00105 -- Montana: http://www.anstaskforce.gov/Montana-FINAL_PLAN.pdf -- Idaho: http://www.anstaskforce.gov/stateplans.php



Milestone Title	Start Date	End Date	Status	Milestone Description
D. Inspect and, if necessary, wash vehicles and equipment infested with terrestrial invasive species	10/1/2021	9/30/2022	Inactive	Prevent spread of invasive species by identifying and removing invasive species from work vehicles and equipment. Consult resources such as the Plants Database (http://plants.usda.gov/index.html) or the NatureServe Explorer (http://www.natureserve.org/explorer/) with assistance identifying invasive plants. Other resources include state natural resource offices (https://www.fws.gov/offices/statelinks.html) or a local U.S. Fish and Wildlife Service Office (https://www.fws.gov/offices/).
E. Obtain/Renew applicable local, state, federal and tribal environmental permits	10/1/2021	10/31/2021	Inactive	Work done to obtain permits such as Sec. 401 or 404 (including RGP process), shoreline, NPDES, or any other required federal, state, or local permits. Send copies of final permits to EC Lead as requested.
Deliverable: F. BPA EC Compliance Met		10/31/2021	Inactive	<i>See the Deliverable Specification above</i>

B: 174. Produce Plan

Title: Produce Hatchery Management Plan for spring Chinook, fall Chinook and coho salmon
Description: Provide attachment of the 2022 hatchery management plan for hatchery spring Chinook, SAB fall Chinook and early lower Columbia River coho reared and released from Clatsop County Fisheries' rearing sites.
Deliverable Specification: Hatchery management plan attached in Pisces and delivered to co-managers
Work Element Budget: \$9591 (2.00%)
Primary Focal Species: Chinook (*O. tshawytscha*) - Upper Willamette River ESU

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Discuss HIP ESA coverage with BPA EC Lead and obtain risk determination	10/1/2021	10/1/2021	Inactive	FOR HABITAT ACTIONS ONLY: The EC Lead will determine if work under this work element may be able to have full ESA-coverage (NMFS & USFWS) under the Habitat Improvement Program Biological Opinion (HIP). The HIP has expanded coverage for projects that may pose a moderate to high risk of impacting an ESA-listed species or critical habitat that would normally require a Biological Assessment. For work that qualifies, projects will undergo a review by the EC Lead and Engineering Technical Services (ETS) team. Before conceptual design commences, contact the EC Lead for HIP consideration, instruction, and information needs and requirements for coverage eligibility.
B. Environmental compliance requirements complete	10/1/2021	10/1/2021	Completed	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
C. Produce and upload under attachments Annual 2022 Hatchery Management Plan	10/1/2021	10/1/2021	Inactive	Upload document under attachments for this CR (contract)
Deliverable: D. Produce 2022 Hatchery Management Plan		10/1/2021	Inactive	<i>See the Deliverable Specification above</i>

C: 176. Produce Hatchery Fish

Title: 2020 brood hatchery spring Chinook
Description: Perform all activities associated with over-winter rearing and release of spring Chinook smolts at Youngs Bay and Blind Slough. All fish are received as fingerlings from Gnat Creek Hatchery and Big Creek Hatchery into net pens for final rearing to smolt stage and released from the pens. Receipt of fish, feeding, net changing and washing, weighing, mortality monitoring, and possible disease treatment all take place during rearing.
Deliverable Specification: 650,000 2020 brood spring Chinook released from Youngs Bay net pens and 150,000 from Blind Slough net pens.
 The over-winter fish are received as fingerlings in November 2021. 400,000 from Gnat Creek Hatchery and 250,000 from Big Creek Hatchery will be received into the Youngs Bay net pens. 150,000 will be received from Gnat Creek Hatchery at the Blind Slough net pens. The fish are reared (fed, weighed, treated, inventoried, change nets) until March of the following year and released directly from the pens.
Work Element Budget: \$177438 (37.00%)



Planned Metrics: * Purpose of production program : Harvest Augmentation
 * Secondary purpose of production program (if any) : Harvest Augmentation
 * Brood Year: 2020
 * # juveniles transferred to a non BPA-funded facility: 800000
 * # of juveniles imported from a non BPA-funded facility: 800000

Locations: 2

Primary Focal Species: Chinook (O. tshawytscha) - Upper Willamette River ESU

Country: US **NPCC Subbasin:** Columbia Estuary

State: OR **HUC5 Watershed:** Multiple

County: Clatsop **HUC6 Name:** Multiple

Salmonid ESUs Present: Columbia River Chum Salmon ESU (Accessible) | Lower Columbia River Chinook Salmon ESU (Accessible) | Lower Columbia River Coho Salmon ESU (Accessible)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	10/1/2021	10/1/2021	Completed	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Receive spring Chinook fingerlings and rear at Youngs Bay net pens until release	10/1/2021	3/31/2022	Inactive	Receive 400,000 2020 brood spring Chinook fingerlings from Gnat Creek Hatchery and 250,000 2020 brood spring Chinook from Big Creek hatchery to rear over winter at Youngs Bay net pens until release
C. Receive spring Chinook fingerlings at Blind Slough net pens and rear until release	10/1/2021	3/31/2022	Inactive	Receive 150,000 2020 brood spring Chinook fingerlings from Gnat Creek Hatchery to rear at Blind Slough net pens until release
D. Release spring Chinook smolts from Youngs Bay net pens	3/1/2022	3/31/2022	Inactive	Release 650,000 2020 brood spring Chinook smolts at Youngs Bay net pens. For optimum release conditions to avoid as much predation as possible, a time is chosen when the tides are highest during hours after dark and then the nets are pulled out and the fish leave the pens of their own volition.
E. Release spring Chinook smolts from Blind Slough net pens	3/1/2022	3/31/2022	Inactive	Release 150,000 2020 brood spring Chinook smolts from Blind Slough net pens. For optimum release conditions to avoid as much predation as possible, a time is chosen when the tides are highest during hours after dark and then the nets are pulled out and the fish leave the pens of their own volition.
F. Site maintenance	10/1/2021	9/30/2022	Inactive	The infrastructure and equipment required for the rearing of salmon smolts at the various net pens site requires continuous ongoing repair and replacement. After several seasons of use many items fail due to normal wear and the harsh wet environment that the times are used in. These are a few examples of times that need regular replacement: Bird covers, nets for the net pens, mooring lines and chains for the pens structures, pressure washers, scales used for doing fish weight samples, net pen decking, and other hand tools used in daily maintenance of the pens. Many of the infrastructure items of the project have been around since the 1980's and are in need of replacement or upgrading. These items include the feed storage trailer and storage buildings, gangways, pier walkways and handrails, and the net pen structures.
Deliverable: G. 800,000 2020 brood spring Chinook smolts		3/31/2022	Inactive	<i>See the Deliverable Specification above</i>

D: 176. Produce Hatchery Fish

Title: 2020 brood early stock lower Columbia River hatchery Coho

Description: Perform all activities associated with over-winter rearing and release of 2020 brood early stock lower Columbia River Coho at Tongue Point MERTS net-pen site and Youngs Bay net pens Fish are received as fingerlings into net pens for final rearing to smolt stage and released from the pens. Receipt of fish, feeding, net changing and washing, weighing, mortality monitoring and possible disease treatment all take place during rearing.

Deliverable Specification: 540,000 Coho 2020 brood received in October as fingerlings from Clackamas Hatchery and reared over-winter at the Tongue Point MERTS net-pen site for release in April.

825,000 Coho 2020 brood received from Oxbow Hatchery and reared over-winter at the Youngs Bay net pen site for release in April.

Work Element Budget: \$225394 (47.00%)



Planned Metrics:

- * Purpose of production program : Harvest Augmentation
- * Secondary purpose of production program (if any) : Harvest Augmentation
- * Brood Year: 2020
- * # juveniles transferred to a non BPA-funded facility: 1365000
- * # of juveniles imported from a non BPA-funded facility: 1365000

Locations: 1

Primary Focal Species: Coho (Oncorhynchus kisutch) - Lower Columbia River ESU

Country: US **NPCC Subbasin:** Columbia Estuary

State: OR **HUC5 Watershed:** Baker Bay-Columbia River

County: Clatsop **HUC6 Name:** Baker Bay-Columbia River

Salmonid ESUs Present: Columbia River Chum Salmon ESU (Accessible) | Lower Columbia River Chinook Salmon ESU (Accessible) | Lower Columbia River Coho Salmon ESU (Accessible)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	10/1/2021	10/1/2021	Completed	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Receive and rear Coho fingerlings at Tongue Point MERTS site	10/1/2021	4/30/2022	Inactive	Receive 540,000 2020 brood Coho fingerlings from Clackamas Hatchery to rear over-winter at the Tongue Point MERTS net-pen site
C. Release Coho smolts from Tongue Point MERTS net pens	4/1/2022	4/30/2022	Inactive	Release 540,000 2020 brood Coho smolts from Tongue Point MERTS net pens. For optimum release conditions to avoid as much predation as possible, a time is chosen when the tides are highest during hours after dark and then the nets are pulled out and the fish leave the pens of their own volition.
D. Receive and rear Coho fingerlings at Youngs Bay net pens	10/1/2021	4/30/2022	Inactive	Receive and rear 825,000 Coho fingerlings at Youngs Bay net pens
E. Release Coho smolts from Youngs Bay net pens	4/1/2022	4/30/2022	Inactive	Release 825,000 2020 brood coho smolts from Youngs Bay net pens. For optimum release conditions to avoid as much predation as possible, a time is chosen when the tides are highest during hours after dark and then the nets are pulled out and the fish leave the pens of their own volition.
Deliverable: F. 1,365,000 2020 brood early stock lower Columbia River hatchery coho smolts		4/30/2022	Inactive	<i>See the Deliverable Specification above</i>

E: 141. Produce Other Report

Title: Other Reports for BPA

Description: Summarize contribution (equaling ten percent of harvested poundage value) receipts from processors and landing information provided by Oregon Department of Fish and Wildlife from Blind Slough, Tongue Point and Youngs Bay Select Area fisheries to determine level of fishermen and processor participation and contribution to the voluntary assessment program

Deliverable Specification: Actual contribution receipts will be compared with fish landing information at each Select Area site to determine level of participation. A spreadsheet showing the amount collected by each processor for fisherman and processor portions is generated and kept on file as part of the financial records of the program. The 2021 summary report will be prepared and attached after landings have been received from Oregon Dept. of Fish and Wildlife at the end of each season.

Work Element Budget: \$14387 (3.00%)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Complete summary of 2021 summer and fall fishery contributions	11/1/2021	5/31/2022	Inactive	Complete receipt and summary of 2021 summer and fall fishery contributions
B. Prepare & attach 2021 winter, spring, summer and fall assessment contributions	1/1/2022	5/31/2022	Inactive	Complete summary spreadsheet of all Oregon 2021 SAFE voluntary assessment contributions and attach in Pisces.



Milestone Title	Start Date	End Date	Status	Milestone Description
C. Complete summary of 2022 winter and spring fishery contributions	2/1/2022	7/31/2022	Inactive	Complete receipt and summary of 2022 winter and spring fishery contributions
D. Begin receiving 2022 summer and fall fishery contributions	7/1/2022	9/30/2022	Inactive	Receive contributions from 2022 summer and fall fishery
Deliverable: E. Complete and attach 2021 winter, spring, summer and fall assessment contributions		5/31/2022	Inactive	<i>See the Deliverable Specification above</i>

F: 119. Manage and Administer Projects

Title: Select Area Fisheries Enhancement Project Management

Description: Complete administrative work in support of Bonneville Power Administration's programmatic requirements for the Select Area Fisheries Enhancement Project. This will require coordination meetings with all three entities; Washington Dept. of Fish & Wildlife, Oregon Dept. of Fish & Wildlife, and Clatsop County Fisheries. These will occur on a bi-monthly basis (6/year).

Deliverable Specification:

- * SAFE coordination meetings
- * FY23 SOW and budget renewal
- * Respond to BPA 2021 Cost Share request

Work Element Budget: \$14387 (3.00%)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Error-check & update actual WE budget spending w/in 4 months (reflect contract close-out value)	10/1/2021	1/31/2022	Inactive	No later than 4 months after the end of the previous contract 86170, (a) open the prior-year contract SOW at the "WE Budget" tab; and (b) enter "Updated" WE budget amounts to reflect the final contract close-out amount actually spent by the contractor.
B. Submit final invoice for prior contract 86170 within 90 days to facilitate contract closeout	10/1/2021	12/31/2021	Inactive	Within 90 days of the last day of the PRIOR contract 86170, the contractor shall issue a final invoice. In instances where more than 90 days is needed (e.g., because subcontractors have not invoiced), the contractor shall: 1. review records, 2. estimate all outstanding costs, and 3. provide BPA with a single, cumulative estimate of all completed, but uninvoiced work. This amount shall be emailed to FWinvoices@bpa.gov and the COTR.
C. Facilitate inputting Cost Share information into Pisces at the Project level	10/1/2021	11/15/2021	Inactive	There are multiple contractors under this project, and I am not the lead project Proponent. I will email federal FY Cost Share information for my contract to the lead project Proponent by Nov 1.
D. Comply with all applicable federal, state, tribal and local safety requirements, including reporting	10/1/2021	9/30/2022	Inactive	As described in the contract's Terms and Conditions, the contract manager and contractor shall comply with all applicable federal, state, tribal and local safety laws, rules, regulations and requirements.
E. Bi-monthly project coordination meetings with WDFW and ODFW	10/1/2021	9/30/2022	Inactive	Co-host bimonthly meetings for coordination of all project activities
F. Submit 2023 Draft SOW/budget to BPA PM	6/1/2022	6/30/2022	Inactive	Complete draft SOW in PISCES and submit via PISCES SOW tab "submit button" and a draft line item budget in excel to PM. Respond to COTR comments and suggestions for SOW/budget and conduct internal review if necessary. A CR will be created by the BPA PM in PISCES for a draft and BPA will notify Clatsop County with CR number and appropriate due date.



Milestone Title	Start Date	End Date	Status	Milestone Description
G. Finalize 2023 contract package with BPA PM	7/1/2022	7/17/2022	Inactive	Work with PM to finalize 2023 contract package - responding to comments and suggestions. Providing final line item budget and property if applicable. Allows BPA contracting officer adequate time to issue a new contract and sufficient time for Clatsop County's review and return of package with signatures.
Deliverable: H. BPA project administration requirements		9/30/2022	Inactive	See the Deliverable Specification above

G: 132. Produce (Annual) Progress Report

Title: Multi Year 2020-2022 SAFE Report - CCF Contribution provided to ODFW
Description: SAFE project proponents will prepare a three-year report covering winter, spring, summer and fall activities from years 2020, 2021 and 2022. The SAFE January 2020 through December 2022 report will be located under the Oregon Department of Fish and Wildlife SAFE contract for FY 2023. The multi year report will be due July 1, 2023.

For more information on reporting requirements, please see report guidance located at <https://www.cbfish.org/Help.mvc/GuidanceDocuments>.

Deliverable Specification:

Work Element Budget: \$19182 (4.00%)

Planned Metrics:
 * Start date of reporting period : 1/1/2020
 * End date of reporting period : 12/31/2022

H: 185. Produce Pisces Status Report

Title: Quarterly Status Reports
Description: Clatsop County shall report on the status of milestones and deliverables in Pisces on a quarterly basis. Additionally, when indicating a deliverable milestone as COMPLETE, the contractor shall provide metrics and the final location (latitude and longitude) prior to submitting the report to the BPA COTR.

Deliverable Specification:

Work Element Budget: \$9591 (2.00%)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Oct-Dec 2021 (10/1/2021 - 12/31/2021)	1/1/2022	1/15/2022	Inactive	
B. Jan-Mar 2022 (1/1/2022 - 3/31/2022)	4/1/2022	4/15/2022	Inactive	
C. Apr-Jun 2022 (4/1/2022 - 6/30/2022)	7/1/2022	7/15/2022	Inactive	
D. Final Jul-Sep 2022 (7/1/2022 - 9/30/2022)	9/16/2022	9/30/2022	Inactive	

Inadvertent Discovery Instructions

BPA is required by section 106 of the National Historic Preservation Act (NHPA) to consider the effects of its undertakings on historic properties (16 USC 470). Prior to approving the expenditure of funds or conducting a federal undertaking, BPA must follow the section 106 process as described at 36 CFR 800. Even though BPA has completed this process by the time an undertaking is implemented, if cultural materials are discovered during the implementation of a project, work within the immediate area must stop and the significance of the materials must be evaluated and adverse effects resolved before the project can continue (36 CFR 800.13(b)(3)). The Inadvertent Discovery of Cultural Resources Procedure form outlines the steps



to be taken and notifications to be made. If the undertaking takes place on tribal lands (16 USC 470w), BPA must also “comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action” (36 CFR 800.13(d)).

Inadvertent Discovery of Cultural Resources Procedure form:

<https://www.bpa.gov/efw/FishWildlife/InformationforContractors/IFCDocuments/InadvertentDiscoveryProcedure.pdf>

**1993-060-00 - Select Area Fisheries Enhancement Project
Clatsop County Fisheries Budget
October 1, 2021 - September 30, 2022**

				Costs
A	PERSONNEL - SALARIES AND BENEFITS	Qty	Qty	\$374,288
	Natural Resource Manager (0.5 FTE)	7 mo @	4,245.91	\$29,721
	Benefits			@ 31.02% \$9,220
	Natural Resource Manager (0.5 FTE)	3 mo @	4,373.28	\$13,120
	Benefits			@ 31.02% \$4,070
	Project Supervisor	7 mo @	6,902.31	\$48,316
	Benefits			@ 63.57% \$30,715
	Project Supervisor	3 mo @	7,109.38	\$21,328
	Benefits			@ 63.57% \$13,558
	Staff Assistant (.65 FTE)	3 mo @	2,938.63	\$8,816
	Benefits			@ 29.05% \$2,561
	Biological Aide KB	9 mo @	4,318.21	\$38,864
	Benefits			@ 49.70% \$19,315
	Biological Aide KB	3 mo @	4,670.14	\$14,010
	Benefits			@ 49.70% \$6,963
	Fisheries Biologist RL	9 mo @	5,183.98	\$46,656
	Benefits			@ 81.43% \$37,992
	Fisheries Biologist RL	3 mo @	5,339.50	\$16,019
	Benefits			@ 81.43% \$13,044
B	TRAVEL			\$9,105
	GSA Vehicle lease - A	200 mo @	10 mo	\$2,000
	GSA Vehicle lease - B	200 mo @	10 mo	\$2,000
	Vehicle Mileage A		5,000.00 mi @	0.27 \$1,325
	Vehicle Mileage B		14,000.00 mi @	0.27 \$3,780
C	FIELD/OFFICE SUPPLIES/EQUIPMENT			\$52,572
	Site Maintenance			\$2,000
	Portable sanitation Youngs Bay	8 mo @	100.00 mo	\$800
	Portable sanitation MERTS	12 mo @	75.00 mo	\$900
	Moorage/Leases - Oregon Division of State Lands			
	Blind Slough			\$1,500
	Fish Food/Supplies (see FCB tab for details)			
	Spring Chinook - 800,000 (Oct - Apr)			\$16,795
	Coho- 540,000 (Oct- May)			\$10,444
	Coho - 825,000 (Oct - May)			\$18,133
	Misc. Materials/Supplies - tools, scales, vaccine, fish treatment chemicals			\$2,000
D	DIRECT COSTS (Sum of Items A thru C)			\$435,965
E	INDIRECT		10%	\$43,596
F	TOTAL			\$479,561

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: Ecola State Park Pine Street Vacation Petition
Category: Consent Calendar
Presented By: Vance Swenson, County Surveyor

Issue Before the Commission: Vacation of a portion of unbuilt Pine Street right-of-way located in Ecola State Park in the Northeast Quarter of Section 19, Township 5 North, Range 10 West, Willamette Meridian.

Informational Summary: On June 10, 2022 a petition to vacate the remaining portion of Pine Street was submitted to the County Surveyor. The notarized signatures of Suzanne Johnson from Clatsop County and Lisa Sumption from Oregon State Parks and Recreation Department represent 100% of the adjoining ownership of the property to be vacated.

Clatsop County owns a tract of land surrounded by Ecola State Park. This tract of land is a remnant of the Town Plat of Seal Rock Beach consisting of lots and a now-landlocked portion of unbuilt Pine Street right-of-way. Clatsop County is intending to transfer this land to Oregon State Parks who can better manage it. The remnant of Pine Street needs to be vacated before Oregon State Parks will accept the transfer.

This is the first step in the process; to adopt the Resolution and Order Initiating Vacation and order a Road Master Report from the County Engineer pursuant to ORS 368.346. The second step in the process will be to accept the Road Masters report. This report will contain detailed information and staff recommendations on the options presented by the petitioners.

Fiscal Impact: This vacation is for county business on county property, therefore no fee was collected.

1. Requested Action:

Accept the petition for vacation of a portion of Pine Street and authorize the Board Chair to sign the resolution and order initiating proceedings.

Attachment List

- A. Vicinity map of area of proposed vacation
- B. Exhibit Map
- C. Portion of Town Plat of Seal Rock Beach
- D. Petition for Vacation of a Public Right-of-Way
- E. R&O Initiating Proceedings to Vacate a Portion of Pine Street.

IN THE BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY

IN THE MATTER OF INITIATING)
PROCEEDINGS TO VACATE A) RESOLUTION AND ORDER
PORTION OF PINE STREET IN THE)
PLAT OF SEAL ROCK BEACH)

WHEREAS, a petition has been received for the vacation of the remaining portion of Pine Street in the Town Plat of Seal Rock Beach containing the acknowledged signatures of all adjoining property owners.

NOW THEREFORE, IT IS HEREBY RESOLVED AND ORDERED that the petition for vacation of a portion of Pine Street in Seal Rock Beach is accepted.

BE IT FURTHER RESOLVED AND ORDERED that the Clatsop County Engineer shall prepare and file with the Board of County Commissioners a written report pursuant to ORS 368.346.

Dated this ____ day of _____, 2022.

BOARD OF COMMISSIONERS FOR
CLATSOP COUNTY, OREGON

Mark Kujala, Chair

IN THE BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

IN THE MATTER OF THE VACATION OF)
)
PINE STREET, SEAL ROCK BEACH, CLATSOP) PETITION FOR VACATION
COUNTY) OF A PUBLIC ROADWAY
pursuant to ORS 368.326 – ORS 368.366)

(WE), HEREBY PETITION THE BOARD OF COUNTY COMMISSIONERS TO VACATE THAT PORTION OF A PUBLIC ROADWAY KNOWN AS PINE STREET AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

All of Pine Street lying Northerly of the Easterly extension of the south line of Lot 10, Block 10, in the Town Plat of Seal Rock Beach, Book O, Page 77, Clatsop County Town Plat Records.

THE VACATION OF THIS ROADWAY IS REQUESTED FOR THE FOLLOWING REASON (S):

The purpose of this request is based on Clatsop County’s intent to transfer two tax lots in the Seal Rock Beach area to the State of Oregon Parks and Recreation. The state does not accept transfers of property unless all streets, alleys and right of ways have been vacated. Staff believes that the State can better manage the beach and prohibit overnight camping; which has been a concern to the adjoining neighborhood. Currently, the County does not have the resources and staff to manage this area of the beach.

THE NAMES AND ADDRESS OF ALL PERSONS OWNING ANY REAL PROPERTY ABUTTING THE PUBLIC ROADWAY PROPOSED FOR VACATION ARE AS FOLLOWS:

Oregon Parks and Recreation Department
Clatsop County, Oregon

THE NAMES AND ADDRESSES OF ALL PERSONS OWNING ANY IMPROVEMENTS CONSTRUCTED ON THE PROPERTY PROPOSED FOR VACATION ARE AS FOLLOWS: (INCLUDE ANY UTILITY EASEMENTS KNOWN)

Not applicable

THE NAMES AND ADDRESSES OF ALL PERSONS HOLDING ANY RECORDED INTEREST IN THE PROPERTY PROPOSED TO BE VACATED ARE AS FOLLOWS:

Oregon Parks and Recreation Department
Clatsop County, Oregon

PETITIONER (S) ACKNOWLEDGE THAT HE/THEY CONSENT TO THE PROPOSED VACATION AND THAT HE/THEY OWN AT LEAST SIXTY PERCENT OF THE LAND ABUTTING THE PROPERTY PROPOSED TO BE VACATED OR HE/THEY REPRESENT AT LEAST SIXTY PERCENT OF THE OWNERS OF PROPERTY ABUTTING THE PROPERTY PROPOSED TO BE VACATED.

Dated this 14th day of May, 2022.

PETITIONER(S) SIGNATURE

Suzanne Johnson

ADDRESS AND TELEPHONE NUMBER

820 Exchange St. Suite 210
Astoria OR 97103

This instrument was acknowledged before me on 5/11/2022 by Suzanne Johnson

[Signature]
NOTARY PUBLIC FOR OREGON



My commission expires: 11/9/2025

Dated this 9th day of June, 2022.

PETITIONER(S) SIGNATURE

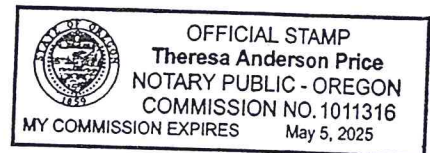
Lisa Sumpton

ADDRESS AND TELEPHONE NUMBER

725 Summer St NE
Salem, OR 97301

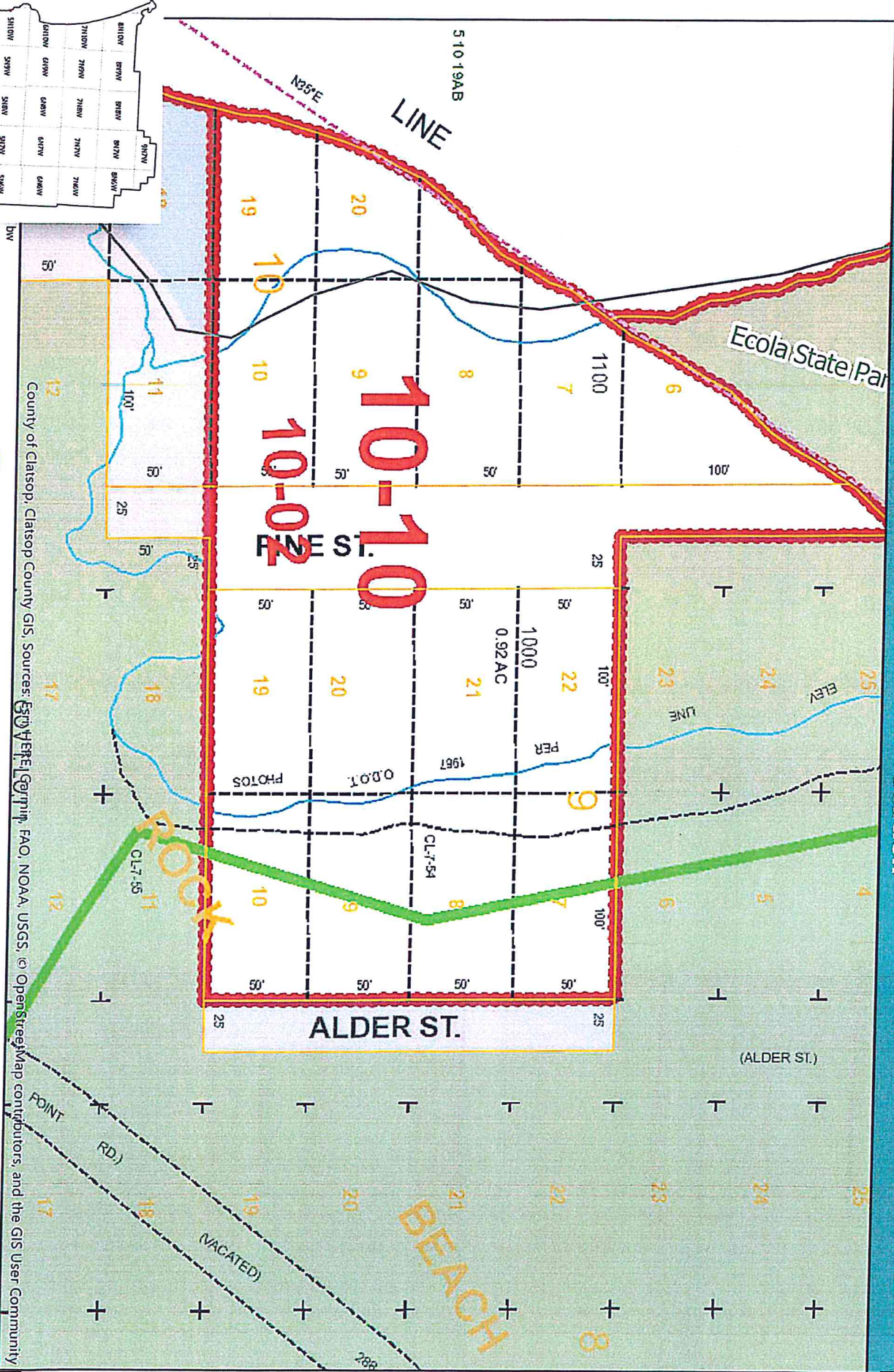
This instrument was acknowledged before me on June 9, 2022 by Lisa Sumpton

[Signature]
NOTARY PUBLIC FOR OREGON



My commission expires: May 5, 2025

Seal Rock Beach Vacation



4N10W	4N9W	4N8W	4N7W	4N6W	4N5W	4N4W	4N3W	4N2W	4N1W
5E10W	5E9W	5E8W	5E7W	5E6W	5E5W	5E4W	5E3W	5E2W	5E1W
6E10W	6E9W	6E8W	6E7W	6E6W	6E5W	6E4W	6E3W	6E2W	6E1W
7E10W	7E9W	7E8W	7E7W	7E6W	7E5W	7E4W	7E3W	7E2W	7E1W
8E10W	8E9W	8E8W	8E7W	8E6W	8E5W	8E4W	8E3W	8E2W	8E1W
9E10W	9E9W	9E8W	9E7W	9E6W	9E5W	9E4W	9E3W	9E2W	9E1W
10E10W	10E9W	10E8W	10E7W	10E6W	10E5W	10E4W	10E3W	10E2W	10E1W

5/4/2021 3:20 PM



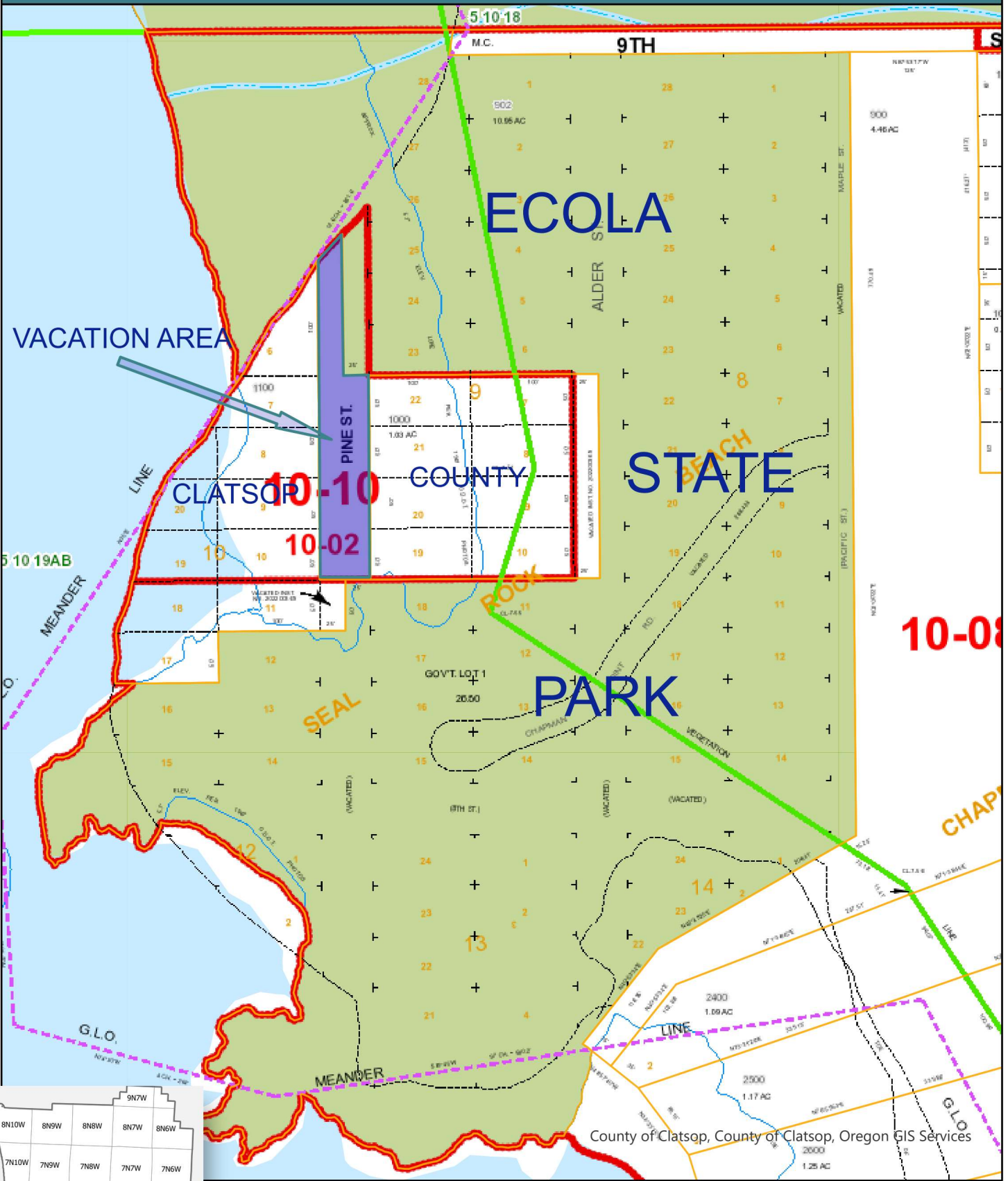
Clatsop County

0.03 mi



This map was produced using Clatsop County GIS data. The data is maintained by Clatsop County to support its governmental activities. Clatsop County is not responsible for any map errors, possible misuse, or misinterpretation.

VACATION AREA



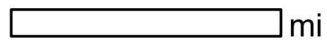
10-08

			9N7W	
8N10W	8N9W	8N8W	8N7W	8N6W
7N10W	7N9W	7N8W	7N7W	7N6W
6N10W	6N9W	6N8W	6N7W	6N6W
5N10W	5N9W	5N8W	5N7W	5N6W
			4N7W	4N6W

Agenda Item #6.



Clatsop County
0.05



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Vicinity Map

Ecola State Park
Pine Street Vacation

Seaside

ECOLA
STATE
PARK

Highway 101

Highway 26

Cannon
Beach

Pacific Ocean



0 3,850 7,700 15,400 23,100 30,800 Feet

This map was produced using Clatsop County GIS data. The data is maintained by Clatsop County to support its governmental activities. Clatsop County is not responsible for any map errors, possible misuse, or misinterpretation.

PROPOSED VACATION 2022

Seal

Rocks

27	1	28	1
27	2	27	2
26	3	26	3
25	4	25	4
24	5	24	5
23	6	23	6
22	7	22	7
21	8	21	8
20	9	20	9
19	10	19	10
18	11	18	11
17	12	17	12
16	13	16	13
15	14	15	14

50

1	24	1
2	23	2
13	22	13
4	21	4

24	1	24	1
23	2	23	2
14	3	14	3
4	4	4	4

"VACATED"
BOOK 572 PAGE 58
R.A.H

MAP
OF

SEAL ROCK BEACH

S.19.T.5.N.R.10.W.

Scale: 300ft = 1inch
R. HARRY CIV. ENG.

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: Contract Amendment No. 3, Terracon Consultants, Inc
Category: Consent Calendar
Presented By: David Dieffenbach, Capital Improvement Projects Manager

Issue Before the Commission: Request to approve amendment No. 3 with Terracon Consultants, Inc. for special inspections. Total amendment is \$20,000

Informational Summary: The Contract total will be adjusted to \$130,725.

- Original contract \$29,500
- Amendment No. 1 \$51,725
- Amendment No. 2 \$29,500
- Amendment No. 3 \$20,000
- Total \$130,725
- This amendment is to add the remainder of the required special inspections; including proprietary anchors, welding, and fire proofing

Fiscal Impact: The funding for this work will be from the planned expenses for the Jail Project which is funded by voter approved bond funds and County reserves.

Requested Action: Approve the amendment to the contract with Terracon Consultants, Inc. The amendment total is \$20,000. Authorize the County Manager to sign and approve Amendment No. 3.

Attachment List

- A. Amendment document No. 3
- B. Contract C7584

Contract Amendment #3
Contract C7584

Amendment to Contract for Special Inspections at the Clatsop County Jail.

Clatsop County and Terracon Consultants, Inc. agree to the following changes to the Contract:

Add remainder of inspection services, per proposal including: propriety anchors, welding and fire proofing.

<u>Original Contract sum</u>	<u>\$ 29,500</u>
<u>The net change by previous change orders</u>	<u>\$ 81,225</u>
<u>The Contract sum prior to this amendment</u>	<u>\$110,725</u>
<u>The Contract sum will be increased by this amendment in the amount of</u>	<u>\$ 20,000</u>
<u>The new Contract sum including this change order will be</u>	<u>\$130,725</u>

This document shall become an amendment to the contract and all provisions for the contract will apply. All other terms and conditions of the contract remain the same. The parties hereby reserve all rights and remedies accruing prior to the date of execution of this agreement.

Contractor:  Date: 7/6/22

Title: MATERIALS DEPT. MANAGER

For Clatsop County: _____ Date: _____

Title: County Manager: _____

RECORDED
MAY - 4 2021
Doc# 2021050009



CLATSOP COUNTY, OREGON
800 Exchange Street, Suite 222
Astoria, Oregon 97103
An Equal Opportunity Employer

Contract No. C7584

PERSONAL/PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT is by and between Clatsop County ("County") and **Terracon Consultants, Inc.** ("Contractor"). Whereas County has need of the services which Contractor has agreed to provide; NOW THEREFORE, in consideration of the sum not to exceed **\$29,500** to be paid to Contractor by County, Contractor agrees to perform between date of execution and **April 22, 2022**, inclusive, the following specific personal and/or professional services: Special Inspections for the Clatsop Jail Project, based on the quote dated April 22, 2021 and the Construction Documents.

(Attach additional information as Attachment A if appropriate or necessary. (Quote dated April 22, 2021).

Payment Terms: *(progress payments, etc. – based on Fee Schedule in Quote):*

- 1. COMPLETE AGREEMENT.** This Agreement contains the entire understanding of the parties and supersedes all prior agreements, oral or written, and all other communication between the parties relating to the subject matter of this Agreement.
- 2. WRITTEN NOTICE.** Any notice of termination or other communication having a material effect on this Agreement shall be served by U.S. Mail on the signatories listed.
- 3. GOVERNING LAW/VENUE.** This Agreement shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Agreement shall be in the Circuit Court of Clatsop County. The prevailing party shall be entitled to reasonable attorney fees and costs, including an appeal. All rights and remedies of County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of County according to law.
- 4. COMPLIANCE.** Contractor shall comply with all applicable Federal, State, and local laws, rules and regulations. All provisions of ORS 279B.220-235 (Public Contracts and Purchasing) are incorporated herein to the extent applicable to personal/professional service agreements. Specifically, Contractor shall:
 - a. Promptly pay, as due, all persons supplying labor and material for the prosecution of the work provided of in such contract. If Contractor fails to pay any such claim, County may pay the claim and charge the payment against the funds due Contractor, pursuant to ORS 279B.220;
 - b. Pay any required contributions due the Industrial Accident Fund incurred in the performance of the contract;
 - c. Not permit any lien or claim to be filed or prosecuted against County, on account of any labor or material furnished by Contractor;
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

- e. Not employ any person more than 10 hours a day, or 40 hours a week, unless permitted under ORS 279B.235, and any employee working over 40 hours per week shall be paid overtime as provided in ORS 279B.235.
- f. Pay promptly, as due, any payment for medical surgical or hospital care furnished to employees of Contractor, pursuant to ORS 279B.230.
- g. If Contractor is a subject employer, Contractor will comply with ORS 656.017.

5. JUDICIAL RULINGS. If any provision of this-as applied to either party or to any circumstances shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement or the validity of enforceability of the Agreement.

6. INDEPENDENT CONTRACTOR. Contractor, in carrying out the services to be provided under this Agreement, is acting as an "independent contractor" and is not an employee of County, and as such accepts full responsibility for taxes or other obligations associated with payment for services under this Agreement. As an "independent contractor", Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties, on other matters, for the duration of this Agreement.

7. INDEMNIFICATION. Contractor shall save harmless, indemnify County for any and all claims, damages, losses and expenses including but not limited to cost of defense and reasonable attorney's fees arising out of or resulting from Contractor's performance of or failure to perform the obligations of this Agreement to the extent same are caused by the negligence or misconduct of Contractor or its employees or agents.

8. INSURANCE. Contractor shall purchase and maintain at Contractor's expense, Comprehensive General Liability, Automobile Liability, and Professional Liability insurance. This insurance is to provide separate coverage for each of the required types of insurance at a minimum of \$700,000 for property damage and minimum of \$800,000 per person for bodily injury and no less than \$1,600,000 for each occurrence. In addition, all such insurance, with the exception of Professional Liability, shall name County, its Commissioners, employees and agents, as an **Additional Insured**. A copy of the policy or certificate of insurance acceptable to County shall be submitted to County. Some, or all, of the required insurance may be waived or modified if approved by County's counsel as follows:

_____ (approved by County Counsel) _____ (Contractor's Initials) _____

9. WORKER'S COMPENSATION. Contractor shall comply with ORS 656.017 for all employees who work in the State of Oregon. If Contractor hires employees, he or she shall provide County with certification of Worker's Compensation Insurance, with employer's liability in the minimum of \$100,000.

10. NONDISCRIMINATION. No person shall be subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age or national origin. Any violation of this provision shall be considered a material violation of this Agreement and shall be grounds for cancellation, termination or suspension in whole or in part by County.

11. TERMINATION OF AGREEMENT. This Agreement may be terminated under the following conditions:

- a. By written mutual agreement of both parties. Termination under this provision may be immediate.
- b. Upon fifteen (15) calendar days written notice by either Party to the other of intent to terminate.
- c. Immediately on breach of the contract.

12. SUBCONTRACTING/NONASSIGNMENT. No portion of this Agreement may be contracted to assigned to any other individual, firm, or entity without the express and prior approval of County.

13. SURVIVAL. The terms, conditions, representations and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

14. FUNDING. In the event the Board of Commissioners of County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, Contractor agrees to abide by any such

decision including termination of service.

15. STANDARD OF SERVICES AND WARRANTY. Contractor agrees to perform its services with that standard of care, skill and diligence normally provided by a professional individual in the performance of similar services. It is understood that Contractor must perform the services based in part on information furnished by County and that Contractor shall be entitled to rely on such information. However, Contractor is given notice that County will be relying on the accuracy, competence and completeness of Contractor's services in utilizing the results of such services. Contractor warrants that the recommendations, guidance and performance of any person assigned under this Agreement shall be in accordance with professional standards and the requirements of this Agreement.


16. COUNTY PRIORITIES. Contractor shall comply promptly with any requests by County relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to said work.

17. OWNERSHIP AND USE OF DOCUMENTS. All documents, or other material submitted to County by Contractor shall become the sole and exclusive property of County. All material prepared by Contractor under this Agreement may be subject to Oregon's Public Records Laws.

18. TAX COMPLIANCE CERTIFICATION. Contractor hereby certifies, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge, Contractor is not in violation of any of the tax laws of this state or political subdivision of this state, including but not limited to ORS 305.380(4), 305.620 and ORS chapters 316, 317 and 318. Contractor represents that Contract will continue to comply with the tax laws of this state and any applicable political subdivision of this state during the term of the public contract. If Contractor's fails to comply with the tax laws of this state or a political subdivision of this during the term of this agreement, the Contractor shall be in default and County may terminate this agreement and pursue its remedies under the agreement and under applicable law.

This Agreement will not be effective until approved by the authorized signatory for County.

FOR COUNTY:



Signature
5/3/21

Date
County Manager

Title

FOR CONTRACTOR:

Trevor A. Tickner

Signature
04/28/21

Date
Trevor A. Tickner, PE

Title

700 NE 55th Ave. Portland, Oregon 97213

Address

April 22, 2021

David Dieffenbach
Clatsop County
800 Exchange ST, Suite 222
Astoria, OR 97103

ATTACHMENT "A"

Re: Testing and Inspection Services
Clatsop County Jail
Warrenton, OR
Terracon Consultants, Inc. Proposal No. P82201061

Dear Mr. Dieffenbach,

Terracon Consultants has an excellent track record of successful projects which means you will have fewer demands on your time, reduced risk, and the likelihood of completing on or under budget. The attached proposal for the Clatsop County Jail project is based on careful review of the structural plans dated 12/18/2019. The Addendum is based off of updated structural plans dated 08/11/2020, tilt wall plans dated 03/31/2021 and Emerick's Master Schedule dated 04/19/2021.

The inspection and testing scope of work includes:

- Reinforced Concrete
- Non-Shrink Grout/Baseplate Grout
- Proprietary Anchors
- Welding of Piles
- Structural Steel Erection
- Nondestructive Testing (Steel)

We assume all soils related testing and inspection will be performed by the geotechnical engineer of record. We assume structural steel members will come from a local Puget Sound or Portland area AISC Certified fabrication shop.

Terracon Consultants has been performing testing and inspection services in the Pacific Northwest since 1984. You will find we have the trust and respect of the local building department. We are certified and perform tests in accordance with ASTM and IBC standards. With the largest staff of WABO registered inspectors in the State, we have ample capacity to staff this project with multi-licensed inspectors. Oregon State Professional Engineers directly supervise inspection activities.

As an integral part of the project team, we work with our clients to provide realistic testing and inspection budgets. Because this project is outside of our regular service area, mileage charges will apply. Our clients will only be invoiced for actual work performed. A 4-hour minimum charge

Proposal for Materials Testing and Observation Services



Page 2 of 2

Mr. Dieffenbach

April 22, 2021

Terracon Consultants, Inc. Proposal No.: P82201061

applies to all inspections and time will be charged portal-to-portal from our Portland office. All charges will be applied in 2-hour increments after 4-hour minimum is met. A premium rate of 1.5 times the regular rate will be charged for all work outside of normal working hours of 7:00am to 4:00pm, in excess of 8 hours per day and on Saturdays. A rate of 2.0 times the regular rate will be charged for all work in excess of 12 hours per day, Sundays and Legal Holidays. Payment is net 30 days from date on invoice. This proposal is valid for 90 days from the date of this letter. Final costs may vary up or down depending on the contractor's scheduling of the work. All services will be billed in accordance with the attached fee schedule.

Estimate	Cost	Cost with options
Original dated 02/18/2020	\$ 57,525.60	\$ 57,825.60
Addendum dated 04/22/2021	\$ 23,398.80	\$ 23,398.80
Total Cost	\$ 80,924.40	\$ 81,224.40

If you have any questions or if we may be of further assistance, please do not hesitate to call. If you find this proposal acceptable, please sign and return one copy to our office. We look forward to your favorable response.

Respectfully Submitted,
Terracon Consultants, Inc.

Douglas M. Strobehn II
Project Manager

Trevor A. Tickner P.E.
Materials Department Manager III

Attachments: Cost Estimate
Fee Schedule "J1"
Agreement for Services

Terracon

**Clatsop County Jail
Testing and Inspection Services
Terracon Consultants, Inc. Cost Estimate No. P82201061**

SERVICES	RATES	VISITS	UNITS	TOTAL
Field Services				
Reinforced Concrete Inspection	62.00 /hr	38	152	9424.00
- Foundations:		10	40	
- Walls:		3	12	
- Resteel:		10	40	
- Slabs on grade:		7	28	
- Slabs on deck:		3	12	
- Miscellaneous:		5	20	
Nonshrink Grout Inspection	62.00 /hr	5	20	1240.00
Baseplate Grout Inspection	62.00 /hr	2	8	496.00
Structural Steel Fabrication Inspection	72.00 /hr	20	80	5760.00
Structural Steel Erection Inspection	72.00 /hr	20	80	5760.00
Ultrasonic Testing	75.00 /hr	8	32	2400.00
Magnetic Particle Testing	75.00 /hr	4	16	1200.00
			Sub-total:	26280.00
Laboratory Services				
Concrete Compressive Strength Cylinder Test	22.00 ea	5 cys sets	140	3080.00
Grout Compressive Strength Test	22.00 ea		21	462.00
			Sub-total:	3542.00
Project Management Services				
Project Management <i>(Includes meetings, site visits, report review, mix design review, & misc. consultation)</i>	125.00 /hr		50	6250.00
Administrative Services <i>(Report processing, project coordination, postage, & etc.)</i>	65.00 /hr		40	2600.00
			Sub-total:	8850.00
Miscellaneous Services				
Cylinder Pick-up	0.65 mi	28	5376	3494.40
Sample Pick-up	0.65 mi	7	1344	873.60
Mileage	0.65 mi	97	18624	12105.60
Per Diem	40.00 ea		17	680.00
Lodging	100.00 ea		17	1700.00
			Sub-total:	18853.60
Total Cost Estimate:				57525.60
Optional Services				
Final Letter	300.00 ea		1	300.00
			Sub-total:	300.00
Total Cost Estimate with Optional Services:				57825.60

A 4-hour minimum charge per call applies to all inspections. All charges will be applied in 2-hour increments after 4-hour minimum is met. A premium rate of 1.5 times the regular rate will be charged for all work outside of normal working hours in excess of 8 hours per day and on Saturdays, Sundays and Legal Holidays. Payment is net 30 days. This estimate is valid for 90 days.

Terracon

**Clatsop County Jail (Addendum)
Testing and Inspection Services
Terracon Consultants, Inc. Cost Estimate No. P82201061**

SERVICES	RATES	VISITS	UNITS	TOTAL
Field Services				
Reinforced Concrete Inspection	62.00 /hr	10	40	2480.00
- Resteel:		2	8	
- Tilt Walls:		8	32	
Post Installed Anchors	62.00 /hr	5	20	1240.00
Structural Steel Erection Inspection: 8 hr visits	72.00 /hr	20	160	11520.00
Welding Inspection of Piles	72.00 /hr	20	80	5760.00
Structural Steel Fabrication Inspection	72.00 /hr	20	80	-5760.00
Nonshrink Grout Inspection	62.00 /hr	5	20	-1240.00
			Sub-total:	14000.00
Laboratory Services				
Concrete Compressive Strength Cylinder Test	22.00 ea	5 cyls sets	80	1760.00
Grout Compressive Strength Test	22.00 ea		21	-462.00
			Sub-total:	1760.00
Project Management Services				
Project Management <i>(Includes meetings, site visits, report review, mix design review, & misc. consultation)</i>	125.00 /hr		19	2375.00
Administrative Services <i>(Report processing, project coordination, postage, & etc.)</i>	65.00 /hr		15	975.00
			Sub-total:	3350.00
Miscellaneous Services				
Cylinder Pick-up	0.65 mi	8	1536	998.40
Sample Pick-up	0.65 mi	5	960	-624.00
Mileage	0.65 mi	28	5376	3494.40
Per Diem	40.00 ea		3	120.00
Lodging	100.00 ea		3	300.00
			Sub-total:	4288.80
Total Cost Estimate:				23398.80

A 4-hour minimum charge per call applies to all inspections. All charges will be applied in 2-hour increments after 4-hour minimum is met. A premium rate of 1.5 times the regular rate will be charged for all work outside of normal working hours in excess of 8 hours per day and on Saturdays, Sundays and Legal Holidays. Payment is net 30 days. This estimate is valid for 90 days.

**TERRACON PORTLAND
J1 FEE SCHEDULE**

Inspection Services

Concrete Inspection (<i>includes Reinforcing Steel, Concrete Placement, Shotcrete, Augercast Grout, Grout, Batchplant</i>)	62.00 /hour
Post Tension Concrete Inspection (<i>includes placement and stressing</i>)	62.00 /hour
Proprietary Anchor Inspection (<i>includes Epoxy Grouted and Expansion Anchors</i>)	62.00 /hour
Masonry Inspection (<i>includes cmu and brick veneer</i>)	62.00 /hour
Lateral Framing Inspection (<i>includes wood and light gauge</i>)	62.00 /hour
Seismic Resistance System Inspection	62.00 /hour
Fiber-Reinforced Polymer Inspection	62.00 /hour
Fireproofing Inspection	62.00 /hour
Intumescent Paint Inspection	72.00 /hour
Soils Technician (<i>includes nuclear densometer</i>)	72.00 /hour
Asphalt Technician (<i>includes nuclear densometer</i>)	72.00 /hour
Asphalt or Concrete Coring Technician	75.00 /hour
Laboratory Technician	75.00 /hour
Lead Inspector	67.00 /hour
Structural Steel/Welding Inspection (<i>includes bolting</i>)	72.00 /hour
Non-Destructive Testing (<i>includes Dye Penetrant, Magnetic Particle, Ultrasonic Testing</i>)	75.00 /hour

Laboratory Services

Concrete Testing

Air Dry Unit Weight Test	40.00 each
Concrete Absorption, Unit Weight and Moisture Content Test	45.00 each
Concrete, Augercast Grout or Nonshrink Compressive Strength Cylinder Test (<i>includes curing, breaking & report</i>)	22.00 each
Concrete Compressive High Strength Cylinder Test (<i>over 10,000 psi</i>)	30.00 each
Concrete Core Compressive Strength Test (<i>includes trimming and testing</i>)	66.00 each
Concrete Flexural Strength Beam Test	50.00 each
Concrete Shrinkage Test (<i>ASTM C157 - set of 3</i>)	300.00 each
Length of Concrete Core Test (<i>ASTM C174</i>)	30.00 each
Mix Design 1 Point Verification & 3 Point Water Cement Curve	quoted on request
Modulus of Elasticity Test	100.00 each
Shotcrete Panel Test (<i>includes 4 cores</i>)	140.00 each
Voids and Density of Hardened Concrete Test (<i>ASTM C642</i>)	75.00 each

Masonry Testing

Brick Absorption Test (<i>24 hour soak</i>)	45.00 each
Brick Absorption Test (<i>5 hour boil</i>)	70.00 each
Brick or Masonry Efflorescence Test (<i>set of 5</i>)	85.00 each
Brick or Concrete Paver Compression Test	45.00 each
Masonry Absorption, Unit Wt. And Moisture Content Test	45.00 each
Masonry Unit Compression Test	55.00 each
Masonry Drying Shrinkage Test (<i>set of 3</i>)	300.00 each
Masonry Grout or Mortar Compressive Strength Test	22.00 each
Masonry Prism Test (<i>grouted or ungrouted</i>)	110.00 each
Retaining Wall Unit Absorption Test	45.00 each
Retaining Wall Unit Compression Test	110.00 each

Asphalt Testing

Asphalt Marshall Mix Design Test (<i>5 points</i>)	3500.00 each
Asphalt Core Density Test	35.00 each
Asphalt Ignition & Gradation Test	250.00 each
Asphalt Ignition Oven Correction	450.00 each
Asphalt Marshall Set Test (<i>flow, stability, voids</i>)	440.00 each
Asphalt Oil Content Test	80.00 each
Asphalt Rice Density Test	100.00 each
Asphalt Stripping Test	30.00 each
Asphalt Superpave Set Test (<i>VMA, VFA and VA</i>)	550.00 each

Laboratory Services**Soils and Aggregate Testing**

Atterberg Limits Tests	120.00 each
Liquid Limit Only Test	75.00 each
Plastic Limit Only Test	55.00 each
California Bearing Ratio Test (<i>CBR - with proctor</i>)	550.00 each
Clay Lumps and Friable Particles Test	90.00 each
Degradation Test	135.00 each
Flat and Elongated Particles Test	90.00 each
Fractured Face Count Test	75.00 each
LA Abrasion Test	150.00 each
Lightweight Pieces in Aggregate Test (<i>coal and lignite</i>)	80.00 each
Organic Impurities Test	45.00 each
Organic Matter Analysis (<i>loss on ignition by weight</i>)	60.00 each
R-Value Test	325.00 each
Sand Equivalent Test	60.00 each
Sieve Analysis Test (<i>includes wash over #200</i>)	130.00 each
Sieve Analysis Test (<i>percentage passing #200 only</i>)	200.00 each
Sodium Sulfate Soundness Test	250.00 each
Soil Hydrometer Analysis Test (<i>includes particles finer than #200</i>)	225.00 each
Soil Moisture Content Test (<i>natural</i>)	30.00 each
Soil Moisture Density Relationship Test (<i>proctor</i>)	200.00 each
Soil Relative Density Test	225.00 each
Soil Specific Gravity Test	85.00 each
Specific Gravities Coarse Aggregate Test	55.00 each
Specific Gravities Fine Aggregate Test	85.00 each
Unit Weight Test	45.00 each

Miscellaneous Testing

Fiber-Reinforced Polymer Tensile Test (<i>set of 5</i>)	750.00 each
Fireproofing Density Test	80.00 each
Machining Tensile Test	Cost + 15%
Macroetch Test (<i>evaluation only or sample preparation</i>)	50.00 each
Moisture Emission Test Kits	30.00 each
Reinforcing Steel #10 - #18 Tensile Test	85.00 each
Reinforcing Steel #3 - #9 Tensile Test	60.00 each
Splitting Tensile Test	80.00 each
Stressing Strand Tensile Test (<i>breaking strength only</i>)	60.00 each
Tensile Test on Coupon Assembly (<i>with slippage #3 - #9</i>)	80.00 each
Tensile Test on Coupon Assembly (<i>with slippage #10 - #18</i>)	105.00 each
Weld Fracture Test	80.00 each

Engineering Services

NDE Level III Consultation	150.00 /hour
Principal Engineer	150.00 /hour
Staff Engineer (<i>includes Pachometer Testing, Floor Flatness Testing, Impact Echo Testing, Load Testing & Moisture Emissions Testing</i>)	125.00 /hour
Engineering Technician	105.00 /hour
Project Manager	125.00 /hour

Other

Administrative Services	65.00 /hour
Trip Charge (<i>Portland-Vancouver Metro area</i>)	50.00 each
Sample Pick-up (<i>Portland-Vancouver Metro area</i>)	50.00 each
Mileage (<i>charged only outside our regular service area</i>)	0.65 /mile
Subsistence (<i>lower 48 states</i>)	Federal GSA Rate
Reimbursable Expenses (<i>commercial travel, rentals, consumables, etc.</i>)	Cost + 15%
Subconsultants	Cost + 15%
Final Inspection Letter	\$300.00 each

*A 4-hour minimum charge per call applies to all inspections. All charges will be applied in 2-hour increments after 4-hour minimum is met. A premium rate of 1.5 times the regular rate will be applied for all work outside of normal work-
 m 7:00am to 4:00pm, in excess of 8 hours per day and on Saturdays. A rate of 2.0 times the regular rate
 and for all work in excess of 12 hours per day, Sundays and Legal Holidays. Payment is net 30 days.

AGREEMENT FOR SERVICES

This **AGREEMENT** is between Clatsop County ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Clatsop County Jail project ("Project"), as described in Consultant's Proposal dated 02/18/2020 ("Proposal"), including but not limited to the Project Information section, unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Proposal, including but not limited to the Scope of Services section ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the Project.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Proposal, including but not limited to the Compensation section, unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties other than those who have executed Consultant's reliance agreement, subject to the prior approval of Consultant and Client.
- 6. LIMITATION OF LIABILITY. CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. PRIOR TO ACCEPTANCE OF THIS AGREEMENT AND UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION IN THE FORM OF A SURCHARGE TO BE ADDED TO THE AMOUNT STATED IN THE COMPENSATION SECTION OF THE PROPOSAL. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S), OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.**
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's Services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of Services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. **EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occ / \$2,000,000 agg); (iii) automobile liability insurance (\$1,000,000 B.I. and P.D. combined single

- limit); and (iv) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.
- 10. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.**
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Oregon law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client shall cause all tests and inspections of the site, materials, and Services performed by Consultant to be timely and properly scheduled in order for the Services to be performed in accordance with the plans, specifications, contract documents, and Consultant's recommendations. No claims for loss or damage or injury shall be brought against Consultant by Client or any third party unless all tests and inspections have been so performed and Consultant's recommendations have been followed. Unless otherwise stated in the Proposal, Client assumes sole responsibility for determining whether the quantity and the nature of Services ordered by Client is adequate and sufficient for Client's intended purpose. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by Services not performed due to a failure to request or schedule Consultant's Services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods. The extension of unit prices with quantities to establish a total estimated cost does not guarantee a maximum cost to complete the Services. The quantities, when given, are estimates based on contract documents and schedules made available at the time of the Proposal. Since schedule, performance, production, and charges are directed and/or controlled by others, any quantity extensions must be considered as estimated and not a guarantee of maximum cost.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of the testing procedures (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Materials unless specifically provided in the Services, and that Client is responsible for directing such disposition. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site and Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's performance of Services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Unless otherwise stated in the Proposal, Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site.

Consultant: **Terracon Consultants, Inc.**
By: _____ Date: **4/22/2021**
Name/Title: **Trevor A Tickner / Department Manager III**
Address: **700 NE 55th Ave**
Portland, OR 97213-3150
Phone: **(503) 659-3281** Fax: **(503) 659-1287**
Email: **Trevor.Tickner@terracon.com**

Client: **Clatsop County**
By: _____ Date: _____
Name/Title: **David Dieffenbach /**
Address: **800 Exchange St Suite 222**
Astoria, OR 97103
Phone: **(503) 338-3695** Fax: _____
Email: **DDIEFFENBACH@CO.CLATSOP.OR.US**



CERTIFICATE OF LIABILITY INSURANCE

1/1/2022

DATE (MM/DD/YYYY)
4/29/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	CONTACT NAME: _____	
	PHONE (A/C, No, Ext): _____	FAX (A/C, No): _____
E-MAIL ADDRESS: _____		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Lexington Insurance Company		19437
INSURER B: Travelers Property Casualty Co of America		25674
INSURER C: The Travelers Indemnity Company		25658
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES TERCO01 **CERTIFICATE NUMBER:** 17518225 **REVISION NUMBER:** XXXXXXXX

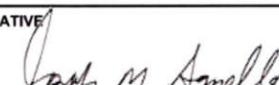
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL LIAB <input checked="" type="checkbox"/> XCU COVERAGE GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____	Y	Y	TC2J-GLSA-1118L293	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	TC2J-CAP-131J3858.	1/1/2021	1/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	TC2J-UB-6N32541-0 (AOS) TRK-UB-6N32384-6 (AZ,MA,WI)	1/1/2021 1/1/2021	1/1/2022 1/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	PROFESSIONAL LIABILITY	N	N	26030216	1/1/2021	1/1/2022	\$1,000,000 EACH CLAIM & \$1,000,000 ANNUAL AGGREGATE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: CLAPTOP JAIL - 82201061. CLAPSTOP COUNTY DIRECTORS, OFFICERS & EMPLOYEES ARE ADDITIONAL INSURED AS RESPECTS GENERAL LIABILITY AND AUTO LIABILITY. IF REQUIRED BY WRITTEN CONTRACT, WAIVER OF SUBROGATION APPLIES TO GENERAL LIABILITY AND AUTO LIABILITY WHERE ALLOWED BY STATE LAW AND IF REQUIRED BY WRITTEN CONTRACT.

CERTIFICATE HOLDER

CANCELLATION

17518225 CLAPSTOP COUNTY OREGON 800 EXCHANGE STEET SUITE 222 ASTORIA OR 97103	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: Approve Agreement with COLPAC to provide Fiscal and Administrative Services on Behalf of the Child Care Advisory Group

Category: Consent Calendar

Presented By: Don Bohn, County Manager

Issue Before the Commission: Shall the Board approve an agreement with COLPAC to provide fiscal and administrative services to the Child Care Advisory Group, on behalf of Clatsop County.

Informational Summary: On May June 15, 2022, your Board received a proposal from the Child Care Advisory Group outlining a program to retain and expand local child care programs and services. The program focuses on three central elements: business stabilization, coordination and financial support via grants. The overarching goal is to provide a program that provides stabilization support for existing child care programs and incentives to create new child care services.

On June 22, 2022 your Board formally accepted the proposal and directed staff to negotiate an agreement with COL-PAC to be the programs fiscal agent. The Board previously designated \$500,000 of American Rescue Plan Act (ARPA) for child care as part of the multi-year concept spending plan.

COLPAC's services include receiving funds from the County and other participating organizations and disbursing, monitoring and reporting on the use of the funds as directed by the County, program staff and the advisory group. COLPAC will also enter into a professional services contract for program management services. A COLPAC staff member will serve as an adhoc member of the Advisory Group.

COLPAC time will be billed at a rate of \$85/hour, with hours itemized on a monthly basis. Mileage will be reimbursed at the IRS standard mileage rate.

At the time of agenda preparation, the agreement is still in the development process. The agreement will be shared with the Board and public prior to the Board meeting.

Fiscal Impact: ARPA expenditures in an amount not to exceed \$500,000, through December 31, 2024.

Requested Action:

Staff requests the Board of Commissioners approve the agreement with COLPAC to provide fiscal and administrative services to the Child Care Advisory Group on behalf of Clatsop County in the amount of \$500,000 through December 31, 2024.

Attachment List

- A. Agreement – to be provided prior to the Board meeting

NON-PROFIT FUNDING AGREEMENT

This Agreement is made this 28th day of July, 2022, between **Clatsop County**, a Political Subdivision of the State of Oregon, hereinafter “**County**” and Columbia Pacific Economic Development District (ColPac), an Oregon Not-for-Profit Corporation in good standing, hereinafter “**Non-Profit**”.

Recitals

In May 2021, County was allocated approximately \$7.8 million in Federal American Rescue Plan Act of 2021 (ARPA) funds to respond to the impacts of the coronavirus pandemic. County has designated \$500,000 of these ARPA funds in to provide financial support as part of a multi-year concept spending plan to address child care initiatives in Clatsop County.

County desires for this investment to allow Non-Profit to provide fiscal management services for Child Care Retention and Expansion Programs in accordance with the attached Exhibit A.

NOW THEREFORE, the parties agree as follows:

1. Term: This Agreement shall be from date of execution through December 31, 2024.
2. Services and Payment: County shall provide funding to Non-Profit in a total amount of \$500,000 to be allocated as follows: FY 22/23 \$200,000; FY 23/24 \$150,000; FY 24/25 \$150,000. Funding allocations may be amended at the discretion of the County. Non-Profit represents that it shall use the funds provided solely for the purposes set forth herein, and solely for the fiscal management services for Child Care Retention and Expansion Programs, see exhibit A for a more detailed scope of services. Any funds not used for such purposes shall be returned to County. Any funds not expended by December 31, 2026 shall be returned to County.
3. Indemnity: Non-Profit shall indemnify and hold County harmless for any claim arising out of the provision of the Services. Non-Profit shall maintain liability insurance in an amount sufficient to satisfy the current Oregon Tort Claim Act limits, and shall name County as an additional insured on any policies.
4. Compliance and Reporting: Funds provided to Non-Profit by this Agreement are a subaward of State and Local Fiscal Recovery Funds (SLFRF). Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient. Non-Profit shall adhere to all SLFRF subrecipient compliance and reporting requirements as determined by the U.S. Department of the Treasury. These requirements include, but are not limited to: (a) Subrecipients are subject to audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements. (b) Subrecipients must ensure subawards are not used for ineligible purposes, and there is no fraud, waste, or abuse associated with awarded funds. (c) County may issue additional reporting requirements for SLFRF subawards greater than \$50,000, as required by the U.S. Department of the Treasury.

Non-Profit shall provide County with an annual report of Services, including an explanation of how funding was spent. Non-Profit shall follow the annual reporting schedule outlined below until all funds are expended or until December 31, 2026 (deadline for expending funds); whichever comes first.

Annual Report	Period Covered	Due Date
1	July 1, 2021 – March 31, 2022	April 15, 2022
2	April 1, 2022 – March 31, 2023	April 15, 2023
3	April 1, 2023 – March 31, 2024	April 15, 2024
4	April 1, 2024 – March 31, 2025	April 15, 2025
5	April 1, 2025 – March 31, 2026	April 15, 2026
6	April 1, 2026 – December 31, 2026	January 15, 2027

5. General: (a) Funding for this Agreement is allocated by the Clatsop County Board of Commissioners. This Agreement may be terminated by County at any time and without any cause upon ten (10) days written notice to the Non-Profit. (b) County may, in its sole discretion and upon ten (10) days written notice, unilaterally terminate or adjust any provisions of this Agreement to ensure quality performance of the Services. (c) Upon completion of the Agreement term, the Agreement shall terminate and Non-Profit shall have no right to renewal or expectation thereof. Any decision by County to renew an otherwise terminated contract for additional or extended period shall be in the sole and unfettered discretion of County.

COUNTY:

 Don Bohn, County Manager
 Name, Title

 Date

 Signature

NON-PROFIT:

 Name, Title

 Date

 Signature

 Name of Non-Profit

 Non-Profit Address

 Non-Profit Phone



COLUMBIA PACIFIC ECONOMIC DEVELOPMENT DISTRICT
Clatsop County Child Care Retention & Expansion Program
PROPOSAL

EXHIBIT A

Background

Columbia Pacific EDD (ColPac) has been asked by the Clatsop Childcare Advisory Group to provide fiscal management services for their Child Care Retention and Expansion Program. ColPac’s services would entail receiving moneys from funding organizations and disbursing the funds as directed by program staff. While the program’s operational framework is still being developed, ColPac understands that our responsibilities will include the following:

- Enter into a professional services contract with the grant program manager chosen by the Advisory Group.
- Negotiate and enter into a Memorandum of Understanding (MOU) with Clatsop County in order to receive and manage ARPA funding dedicated to the project.
- Work with Clatsop County to establish a reporting framework that can be used by the County in their reporting to the Department of the Treasury.
- Establish ongoing accountability and reporting framework for all funds received by ColPac from other organizations.
- Appoint a ColPac staff member who will be an ad hoc member of the Advisory Committee and involved in any other fiscally related program development meetings.
- ColPac staff member(s) will assist the program manager with administrative needs which may include working with ColPac’s website developers and bookkeeper.

Cost Proposal

ColPac staff time will be billed at a rate of \$85/hour, with hours itemized on a monthly basis. Any expenses will also be itemized and billed at cost. Mileage is billed at established IRS standard mileage rates. ColPac will seek approval from the Advisory Committee for a transfer of funds from the Childcare fund to our General Fund to cover our costs.

We estimate our costs during the next three months to be the following:

Month	Activity	Cost
July	Contracting, Agreements & Admin Setup	~5 hours = ~\$425
	Establish Reporting	~5 - 10 hours = \$425 - \$850
	Advisory Committee & Other Meetings	~2 - 4 hours = \$170 - \$340
	Total	\$1,020 - \$1,615
August	Reporting	~2 - 4 hours = \$170 - \$340
	Advisory Committee & Other Meetings	~2 - 4 hours = \$170 - \$340
	Total	\$340 - \$680
September	Reporting	~2 - 4 hours = \$170 - \$340
	Advisory Committee & Other Meetings	~2 - 4 hours = \$170 - \$340
	Total	\$340 - \$680

On a monthly basis, ColPac will submit to the Advisory Committee a complete accounting of all funds received and disbursed.



Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: Award Contract with Brightly Software Inc.
Category: Consent Calendar
Presented By: David Dieffenbach, Capital Projects Manager

Issue Before the Commission: Contract to provide SAS (Software As Service), provided by Brightly Software Inc. formerly Dude Solutions. The term will be 36 months from August 1, 2022 to July 31, 2025, total cost is \$42,625.16.

Informational Summary: Contract to provide software service, the service is to assist the County in Facility Management and Capital Forecasting.

The Facility Management service provides software to track requested work orders that are submitted by staff and preventative maintenance schedules that generate work orders for the buildings and equipment. The preventative work orders schedules are based on the equipment and buildings maintenance schedules, warranty requirements, and the building maintenance requirements.

The Capital Forecasting service assist staff in planning and budgeting for building maintenance and capital upgrades.

The contract is based on a contract originated by the Association of Educational Purchasing Agencies, the County is using the Oregon based Inter Mountain ESD as the basis of this contract. This agreement has been extended to February 28, 2024.

Fiscal Impact: The funds are and will be included in the General Fund budget for Building and Grounds.

Requested Action:

Award the SAS agreement to Brightly Software, Inc. and authorize County Manager to sign the contract in the amount of \$42,625.16 and authorize the County Manager to sign amendments.

Attachment List

- A. Brightly Software Inc. Service Agreement
- B. Inter Mountain ESD, Extension



PREPARED FOR

Clatsop County ("Subscriber")

PREPARED BY

Dude Solutions

11000 Regency Parkway, Suite 400

Cary, NC 27518

PUBLISHED ON

March 03, 2022

Thank you for your continued support of our market leading solutions for improving efficiency in operations. We are excited about providing you with online tools that will help you save money, increase efficiency and improve services. Dude Solutions, Inc. is dedicated to providing best in class solutions, including the following for Clatsop County.

Service Term: 36 months (07/01/2022 - 06/30/2025)

Services			
Services Invoice - Year 1			
Item	Start Date	End Date	Investment
IMESD - Intermountain Education Service District Admin Fee	7/1/2022	6/30/2023	262.53 USD
Asset Essentials Capital Forecast	7/1/2022	6/30/2023	4,377.63 USD
Asset Essentials Core	7/1/2022	6/30/2023	8,748.82 USD
Subscription			13,388.98 USD
Year 1 Total:			

The Services invoice for Year 1 will be issued upon acceptance of the Order Form. Subsequent Services Invoices will be sent annually.

*Your IMESD - Intermountain Education Service District discount has been applied.

Remaining Services Invoices

Year 2	Annual period beginning	Investment
IMESD - Intermountain Education Service District Admin Fee	7/1/2023	278.28 USD
Asset Essentials Capital Forecast	7/1/2023	4,640.29 USD
Asset Essentials Core	7/1/2023	9,273.75 USD
	Total:	14,192.32 USD
Year 3	Annual period beginning	Investment
IMESD - Intermountain Education Service District Admin Fee	7/1/2024	294.98 USD
Asset Essentials Capital Forecast	7/1/2024	4,918.71 USD
Asset Essentials Core	7/1/2024	9,830.17 USD
	Total:	15,043.86 USD

Order Form terms

- By accepting this Order Form, and notwithstanding anything to the contrary in any other purchasing agreement, Subscriber agrees to pay all relevant Fees for the full Services Term defined above.
- The "Effective Date" of the Agreement between Subscriber and DSI is the date Subscriber accepts this Order Form.
- This Order Form and its Services are governed by the terms of the Dude Solutions, Inc. Master Subscription Agreement found at <https://www.dudesolutions.com/terms> (<https://www.dudesolutions.com/terms>) ("Terms"), unless Subscriber has a separate written agreement executed by Dude Solutions, Inc. ("DSI") for the Services, in which case the separate written agreement will govern. Acceptance is expressly limited to these Terms. Any additional or different terms proposed by Subscriber (including, without limitation, any terms contained in any Subscriber purchase order) are objected to and rejected and will be deemed a material alteration hereof.
- To the extent professional services are included in the Professional Services section of this Order Form, the Professional Services Addendum found at <https://www.dudesolutions.com/terms> (<https://www.dudesolutions.com/terms>) is expressly incorporated into the Terms by reference.
- During the Term, DSI shall, as part of Subscriber's Subscription Fees, provide telephone and email support ("Support Services") during the hours of 8:00 AM and 6:00 PM EST, Monday through Friday, excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, day after Thanksgiving, Christmas Eve and Christmas Day ("Business Hours"), except Community Development Services, where Business Hours means 5:00 AM – 5:00 PM PST.
- Unless otherwise specified on this Order Form, DSI maintains the right to increase Subscription Fees within the Services Term by an amount not to exceed the greater of 6% or the applicable CPI and other applicable fees and charges every 12 months. Any additional or renewal Service Terms will be charged at the then-current rate.
- Acceptance of this Order Form on behalf of a company or legal entity represents that you have authority to bind such entity and its affiliates to the order, terms and conditions herein. If you do not have such authority, or you do not agree with the Terms set forth herein, you must not accept this Order Form and may not use the Service.
- Proposal expires in sixty (60) days

Special Terms

- Subscriber shall use reasonable efforts to obtain appropriation in the full amount required under this Order Form annually. If the Subscriber fails to appropriate funds sufficient to maintain the Service(s) described in this Order Form, then the Subscriber may terminate the Service(s) at no additional cost or penalty by giving prior written notice documenting such non-appropriation. Subscriber shall use reasonable efforts to provide at least thirty (30) days prior written notice of non-appropriation. Subscriber agrees non-appropriation is not a substitute for termination for convenience, and further agrees Service(s) terminated for non-appropriation may not be replaced with functionally similar products or services prior to the expiration of the Services Term set forth in this Order Form. Subscriber will not be entitled to a refund or offset of previously paid, but unused Fees.

Additional information



- Prices shown above do not include any taxes that may apply. Any such taxes are the responsibility of Subscriber. This is not an invoice. For customers based in the United States, any applicable taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the "Ship To" location provided by Subscriber. Tax exemption certifications can be sent to [accountsreceivable@dudesolutions.com \(mailto:accountsreceivable@dudesolutions.com\)](mailto:accountsreceivable@dudesolutions.com).
- Billing frequency other than annual is subject to additional processing fees.
- Please reference Q-286368 on any applicable purchase order and email to [accountsreceivable@dudesolutions.com \(mailto:accountsreceivable@dudesolutions.com\)](mailto:accountsreceivable@dudesolutions.com)
- Dude Solutions, Inc. maintains the necessary liability coverage for its products and professional services. Proof of insurance can be provided upon request.



As the world moves forward, we must bring our creativity and ingenuity with us into the future. Your new skills – interpersonal, problem solving, digital literacy, and more – are the key to preparing for the uncertainties of tomorrow.

You have responsibilities – to increase efficiency, mitigate risk and future-proof your organization. It's a big job. And the people you serve are depending on you.

At Virtual Dude University 2022, we want to celebrate your accomplishments, inspire your organization's transformation and provide you with the practical knowledge you need to turn your plans into reality.

Virtual Dude University is **March 7th-9th 2022**. Attendees are in for the best yet, with more knowledge, training and technology than ever before.

- Build a strategic vision for your department and ensure goals align with the mission and vision of your organization.
- Save your organization time and money by investing in the training you need to keep your operations excellent and highly efficient.
- Learn how your peers are successfully overcoming similar challenges so you can be a leader of positive change.

Your registration also includes:

- **Expert-led sessions:** Hear industry pros talk about how to future-proof your operations amidst a changing workforce, utilize data and analytics for better decision-making, and get back to basics by automating and optimizing your operations.
- **Best-in-class training:** Get training with Dude Solutions software, so you can strengthen your team's skills and confidence.
- **Hearing from your peers:** Hear what fellow clients have to say as they share their successes and lessons, and pick their brains during Q&A.
- **Community:** Leave feeling part of the Dude Solutions family and understand why we always say, "The Dude is beside you."

Admission for Virtual Dude University is \$299. Registration is open beginning January 27th through March 4th, 2022. Hurry, Register today!



Software for Smarter Operations



Signature

Presented to:

Q-286368

March 03, 2022, 10:39:44 AM

Accepted by:

Printed Name

Signed Name

Title

Date

ATTACHMENT "B"

EXTENSION OF AGREEMENT AEPA BID #020D

Contract EXTENSION AGREEMENT made by and between

**Dude Solutions (Vendor)
Facility Management Solutions**

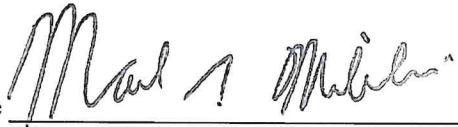
and

InterMountain ESD

The existing Agreement was initially awarded through February 28, 2021. The Term of Contract and Extension in the AEPA Bid provides the Agreement may be extended for three (3) additional 12-month periods by mutual written agreement through February 28, 2024. **AEPA has approved this extension and now the Member and the Vendor desire to extend the Agreement for an additional term to commence February 28, 2021.** Upon the signatures of an authorized officer of the Member and the Vendor, the Agreement is hereby extended.

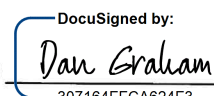
This extension shall be subject to the same Terms and Conditions as contained in the original AEPA Bid, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Member

Authorized Signature  Title Superintendent

Typed Name Mark Mulvihill Date JAN 19 2021

Vendor

Authorized Signature  Title CFO

Typed Name Dan Graham Date 1/25/2021 | 1:50:15 PM EST

The Vendor agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA Bid.

If you as the Vendor do not want to extend contract, please sign below.

Discontinue: We desire to discontinue the contract, effective February 28, 2021.

Authorized Signature _____ Title _____

Typed Name _____ Date _____

NOTE: This agreement must be received by the Member on or before January 30, 2021.

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: Dish Machine Rental Agreement
Category: Consent Calendar
Presented By: David Dieffenbach, Capital Improvement Projects Manager

Issue Before the Commission: Agreement for renting of a commercial Dishmachine from Ecolab Inc. in the amount of \$12,615.

Informational Summary: The new jail under construction in Warrenton, has an existing commercial kitchen. The Dishmachine at the building is not sized right for the new operations of the kitchen and is several decades old. We need to replace this unit and the best option is to rent a new one. This will provide a new Dishmachine with minimal up-front cost and the rental company is responsible for ongoing maintenance.

The initial monthly rental cost is \$305, with a maximum increase of 10% per year, with a term of 36 months,. The set up and delivery is \$500 maximum. We are also agreeing to purchase a minimum of \$400 per month in cleaning products from the vendor for use in the jail; the cost of the products is set by a government price agreement. The total rental and setup cost for 36 months is \$12,615.

Fiscal Impact: The \$305 monthly rental cost will come from the budgeted jail operation funds and the \$400 monthly cleaning product cost will come from the budgeted cleaning supplies funds.

Requested Action:

Approved the rental agreement with Ecolab Inc. in the amount of \$12,615 for 36 months, and authorize the County Manager to sign the agreement and amendments.

Attachment List

- A. Lease Document
- B. Dishmachine cut sheet
- C. Product Price List

ATTACHMENT "A"



Standard Dishmachine Rental Agreement

This Standard Dishmachine Rental Agreement ("**Agreement**") is between Ecolab Inc. ("**Ecolab**") and
Clatsop County Jail
1250 SE 19TH ST
WARRENTON, OR 97146-9577
Phone: 503-338-3695 Fax:
Email: ddieffenbach@co.clatsop.or.us

1. EQUIPMENT. Ecolab will provide:

(a) Rental Equipment.

Model	Base Rate	Min Purchase	Product	Term Length	Term Type	Security Deposit
EC44HH-LW	U S D 305.00	USD 400.00		36	Months	

(b) Maintenance: Ecolab will perform periodic routine service checks of the Equipment and provide all parts and labor for necessary repairs to maintain the Equipment in good condition, other than for repairs due to misuse or abuse by Customer. Ecolab will provide 24-hour/365-day access to Ecolab's service number (1-800-35-CLEAN). Ecolab reserves the right to discontinue service in the event of delinquency in the payment of any amounts due to Ecolab under this Agreement or other breach of this Agreement by Customer.

(c) Substitution: Ecolab may substitute an alternative model for a model listed above if the alternative model provides equal or better performance than the model being replaced.

2. PAYMENT. In consideration of renting the warewashing and other equipment identified above (the "**Equipment**") from Ecolab, Customer agrees to make the following payments and purchases:

(a) Delivery & Program Start-up Fee. If Equipment is to be shipped, a fee of \$250 for each unit of Equipment (with a \$500 maximum) is payable upon Customer signature; and

(b) Security Deposit: The security deposit rate is noted for each unit of Equipment in Section 1(a). The security deposit may be applied to outstanding Rental Rate or Monthly Minimum payments any time Customer is delinquent in making such payments. If the security deposit is applied to past due amounts during the Term of this Agreement, Customer shall replenish the security deposit upon receipt of written demand from Ecolab. The security deposit will be held by Ecolab as security for Customer's performance of

its obligations under this Agreement. Within sixty (60) days of the expiration or earlier termination of this Agreement, Ecolab will refund the security deposit to Customer, without interest, subject to setoff for any sums that may be due and owing to Ecolab under this Agreement. If Customer defaults on its obligations hereunder prior to installation of the Equipment, Ecolab has the option to either retain the security deposit as liquidated damages or to seek other remedies as may be provided by law

(c) Rental Rate: The monthly rental rate noted in Section 1 (a) above for each unit of Equipment (the “**Rental Rate**”) for each monthly service period (payable in advance); and

(d) Minimum Product Purchases: Customer agrees to purchase the monthly minimum of Ecolab Institutional chemical products (“**Products**”) from Ecolab or an approved distributor, as noted above in Section 1 (a), if any (the “**Monthly Minimum**”). The delivery and start-up fee, security deposit, Rental Rate, maintenance agreement payments, if any, Raburn and other equipment sales do not apply towards the Monthly Minimum requirement. If Customer does not purchase the Monthly Minimum for two consecutive months, then Customer must pay the shortfall amount. Customer may not use any detergents, sanitizers or rinse additives in the operation of the Equipment except those provided by Ecolab or approved by Ecolab in writing.

(e) Product Prices: The price for the Products will be as agreed and stated on each invoice.

(f) Payment Options: Payments due under Section 2 (a) through (d) are due net 30 days and will be made in accordance with a monthly invoice unless automated clearing house (ACH) is requested and successfully implemented. If ACH is chosen, customer hereby authorizes Ecolab to debit the bank account indicated on the Automatic Payment Authorization Form.

3. TERM. *Unless otherwise required by state law, this Agreement will continue for each term noted above in Section 1 (a) beginning on the day the Equipment is delivered (the “**Initial Term**”) and will continue from month-to-month thereafter until either party provides the other with 30 days’ written notice of its intent to terminate this Agreement.

4. TERMINATION; EARLY TERMINATION DAMAGES. A party may only terminate this Agreement before the end of the Initial Term if the other party has materially breached this Agreement and fails to cure that breach within 60 days of receiving written notice. If this Agreement is terminated for any reason before the end of the Initial Term (except if Customer terminates pursuant to this Section for Ecolab’s uncured material breach of this Agreement), Customer must promptly pay to Ecolab an amount equal to (i) the sum of the Rental Rate and Monthly Minimum, multiplied by (ii) the greater of 3 or the number of months remaining in the Initial Term following the effective date of the termination, to a maximum of \$1,500. Customer and Ecolab agree that this is equal to, or less than the reasonable estimate of the damages suffered by Ecolab for the early termination of this Agreement. Ecolab has the right to apply the security deposit to any early termination damages that may be due.

5. RATE CHANGES. The Rental Rate under this Agreement will remain in effect for one year. Thereafter, Ecolab may increase the Rental Rate by no more than 10% annually but only with at least 30 days’ notice to

6. TAXES. Where applicable, Customer must pay any sales, use or personal property taxes levied upon the Products or Equipment.

7. LOSS AND DAMAGE. Customer is responsible for any loss, damage, theft, or destruction of the Equipment while on Customer premises and beyond Ecolab's control, including any damage caused by Customer's misuse or abuse, Customer's use of non-Ecolab products, failure to comply with use, care and maintenance instructions provided by Ecolab or with the terms of this Agreement. Customer may not change, alter, or repair the Equipment. Customer will be charged for repairs required due to the foregoing at Ecolab's then-current prices for parts and service. Customer agrees that it will not permit removal or defacement of any identifying labels and/or serial numbers affixed to the Equipment and will promptly notify Ecolab if any such labels or serial numbers become illegible, missing or defaced. In addition, Customer is responsible for any damage or destruction caused by the removal of the Equipment by another person or entity other than Ecolab.

8. DELIVERY AND INSTALLATION; UTILITIES. Ecolab will deliver and install the Equipment at Customer's request or as soon thereafter as is feasible. For water softeners, Ecolab will terminate to the existing water and drain connections. Customer is responsible for locating the hard water supply line and floor drain properly sized to accommodate backwash flow rates within five (5) feet of the softener locations. Ecolab will, at Customer's request, remove and dispose of Customer's existing water softening equipment, and in that event, Customer will indemnify and hold Ecolab harmless from and against any liability, including reasonable attorneys' fees and court costs, relating to the removal and disposal of such water softening equipment. For all Equipment, Customer must provide plumbing and electrical hookups and any and all required governmental permits. Customer will provide all utilities including, without limitation, electricity, water temperatures, and water conditions necessary to operate the Equipment according to the Equipment manufacturer's specifications. If a licensed plumber and/or electrician is required by law to complete the installation of certain Equipment, then Ecolab and Customer shall mutually agree on the resource(s) to be retained for such services and the appropriate cost allocation.

9. DEFAULT. Customer will be in default under this Agreement if Customer fails to comply with any terms of this Agreement, if the Equipment is moved, substantially damaged or encumbered, Customer is dissolved or becomes insolvent, or any action for the benefit of creditors is taken with respect to Customer. Upon default, Ecolab may disable the Equipment and Customer's rights under this Agreement will, at the option of Ecolab and upon written notice to Customer, be terminated (except that Customer's outstanding obligations under this Agreement will survive any such termination) and Ecolab will have the right to take immediate possession of the Equipment and exercise any other remedies available to it in law or in equity. If Customer fails to surrender the Equipment within 30 days from the effective date of termination, Ecolab has the right to seek recovery of the Equipment and all other remedies as may be provided by law which arise out of such default including the right to invoice Customer for all costs associated with the full replacement value of the Equipment and for damages suffered by Ecolab for Customer's failure to surrender the Equipment, including but not limited to labor, removal, shipping, and restocking fees plus any other outstanding payments due to Ecolab. Customer must pay all reasonable costs incurred by Ecolab, including, without limitation, collection costs and reasonable attorneys' fees, to collect any amounts due Ecolab, or to enforce any Ecolab right, under this Agreement.

10. OWNERSHIP OF EQUIPMENT. All Equipment (including but not limited to dispensing equipment) will at all times be the sole and exclusive property of Ecolab. Customer will have no right of ownership of the Equipment, even if Customer is invoiced the full replacement value of the Equipment pursuant to Section 9. Customer shall only have the right to use the Equipment subject to this Agreement. The Equipment will remain personal property and not become a fixture of any building. Customer will not remove the Equipment without the prior written approval of Ecolab. Customer will not permit any lien or encumbrance upon the Equipment and will execute documentation as Ecolab deems necessary to evidence Ecolab's ownership.

11. RETURN OF EQUIPMENT; RIGHT TO REMOVE. Upon expiration or termination of this Agreement, Customer must return the Equipment in as good a condition as when received, excluding normal wear and tear. Ecolab will have the right to enter Customer's premises at all reasonable times and upon reasonable notice for the purpose of de-installation and removal of the Equipment. Ecolab will repair any damage it may cause to the premises during the de-installation and removal. Customer is liable for the ongoing monthly Rental Rate until the Equipment is returned.

12. GENERAL. Customer is solely liable for all claims including, but not limited to, Workers' Compensation claims, resulting from the operation or use of the Equipment or work thereon by Customer's employees or agents. **BOTH PARTIES DISCLAIM ALL CONSEQUENTIAL, INCIDENTAL, AND/OR SPECIAL DAMAGES.** With regard to third party claims, each party will defend, indemnify and hold the other party harmless from and against any liability, including reasonable attorneys' fees and court costs, relating to bodily injury, death or property damage, but only to the proportionate extent that such injury, death or property damage is caused by (i) a party's breach of this Agreement or (ii) a party's (or a party's employees' or agents') negligent or intentionally wrongful acts or omissions. A party seeking indemnification under this provision must promptly notify the other party in writing of the claim(s) or damages subject to the claim for indemnification. Neither the party having the right to indemnification nor the party having the indemnification obligation under this provision may settle or compromise any such claim, suit, action or proceeding unless the opposite party consents in writing (which consent may not be unreasonably withheld) and the terms of that settlement or compromise releases the opposite party from any and all liability with respect to that claim. This Agreement may not be assigned by Customer without Ecolab's written consent. This Agreement represents the entire agreement of the parties and it supersedes all prior agreements and understandings between the parties, whether written or oral, regarding the subject matter of this Agreement and it may only be amended in writing. The terms of any purchase order (other than the stated quantity ordered and delivery date), release, acknowledgment or other document or communication between the parties will not apply. This Agreement is governed by the internal laws of Minnesota without regard to the conflict of laws rules, provisions or statutes of any jurisdiction.

 Authorized Signature

Signature Date: X _____

Printed Authorized Signer: Don Bohn	Ecolab Assoc: Matthew Beattie	Employee #: 20134525
Date: June 15, 2022	Agreement Code: LSA-000362759	Account No:

For Office Use Only - Standard DM Rental Program Rental Agreement

This Agreement will not be binding upon Ecolab Inc. unless and until it is countersigned below by a proper official at Ecolab's offices in Eagan, Minnesota.

Accepted by (Title): _____ **Date:** _____ **Account:** _____

ATTACHMENT "B"



FAST, RELIABLE PERFORMANCE

EC-44 Dishmachine

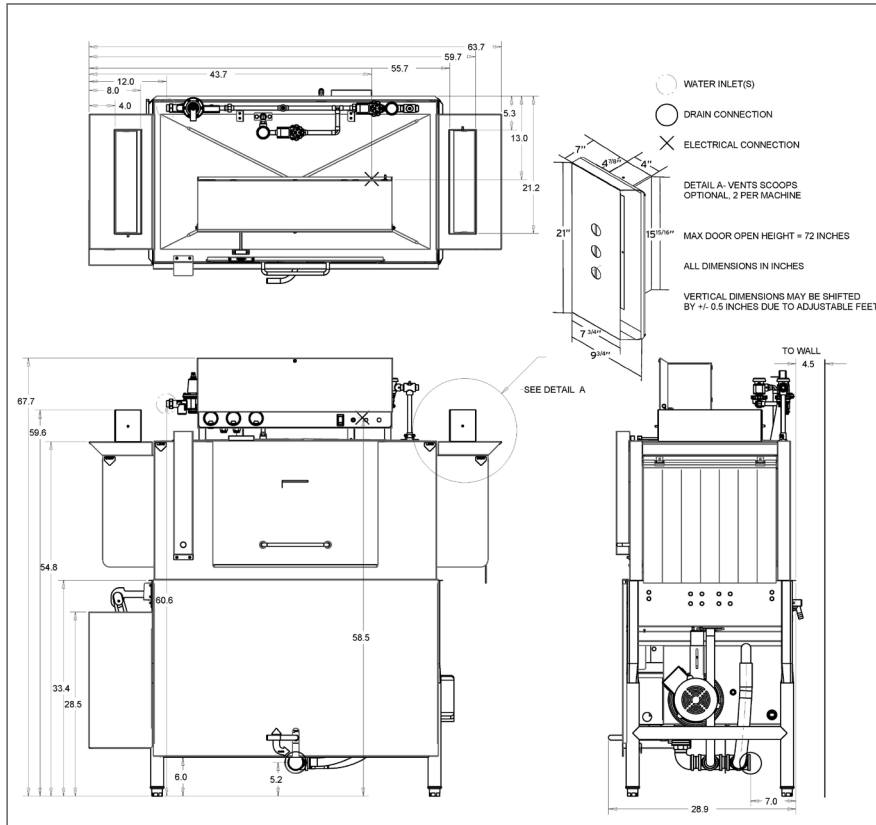
- ▲ Extended 18" wash section provides consistent results.
- ▲ Separation of wash and rinse sections help prevent water contamination in the final rinse.
- ▲ Machine design provides high throughput, 244 racks per hour.

Leasing a dishmachine from Ecolab allows you to focus on your business with the security of knowing your warewashing operation is properly managed.

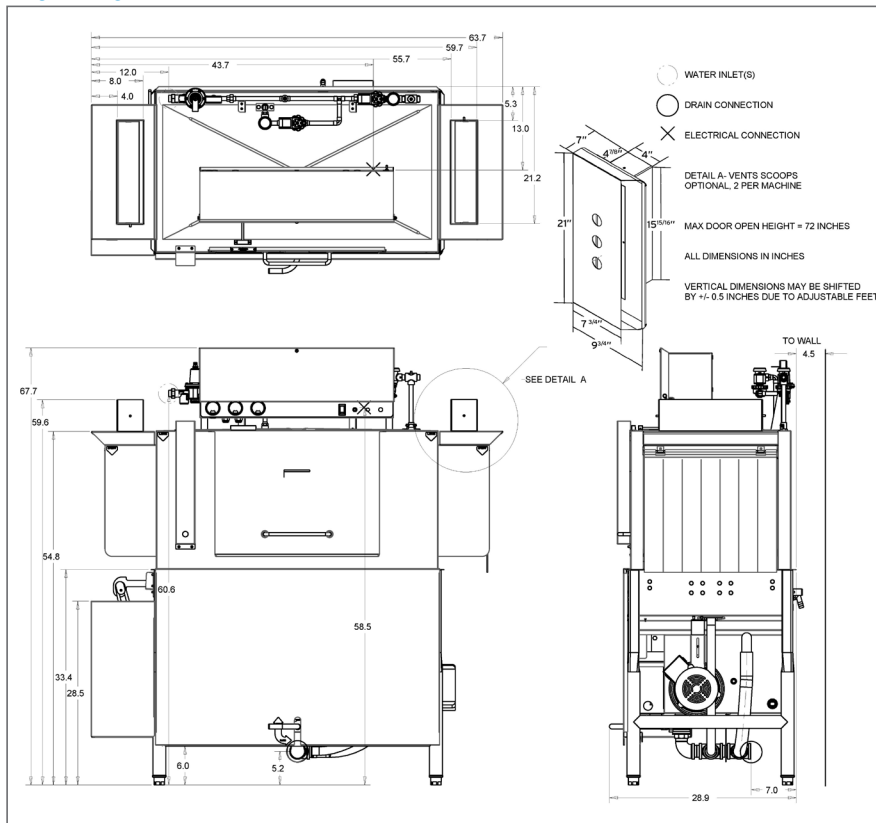


Superior Results, 24/7 Service and a Great Financial Option.

LEFT TO RIGHT



RIGHT TO LEFT



SPECIFICATIONS

OPERATING CAPACITY

Racks per Hour	244
----------------	-----

OPERATING TEMPERATURES

Wash (min)	140° F
low-temp	140° F
high-temp	160° F
Sanitizing Rinse (min)	120° F
low-temp	120° F
high-temp	180° F

WATER CONSUMPTION

Gallons per Rack	0.91
------------------	------

ELECTRICAL RATINGS

Wash Pump	2 hp
Drive Motor	1/4 hp

WASH CHAMBER

Internal Height	18"
-----------------	-----

WEIGHT

Machine Weight	626 lbs
----------------	---------

UTILITY REQUIREMENTS ELECTRICAL

Voltage/Frequency/Phase:	208V/60Hz/3 Ph
Total Amperage	48.75 A
Minimum Electrical Circuit	60 A

Voltage/Frequency/Phase:	230V/60Hz/3 Ph
Total Amperage	44.6 A
Minimum Electrical Circuit	50 A

Voltage/Frequency/Phase:	460V/60Hz/3 Ph
Total Amperage	22.3 A
Minimum Electrical Circuit	25 A

Voltage/Frequency/Phase:	208V/60Hz/1 Ph
Total Amperage	82.65 A
Minimum Electrical Circuit	90 A

Voltage/Frequency/Phase:	230V/60Hz/1 Ph
Total Amperage	75.85 A
Minimum Electrical Circuit	80 A

WATER

Waterline Size (min)	1/2"
Flow Pressure (required)	15-25 psi
Incoming Temp (min)	
low-temp	120° F
high-temp	180° F
Incoming Temp (recommended)	
low-temp	140° F
high-temp	180° F

DRAIN

Drainline Size	1 1/2"
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VENT HOOD





Flow-Cubic Feet per Minute	600
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CHEMICAL SANITIZER RINSE

Minimum chlorine, ppm (low-temp)	50
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Clatsop county Jail – Kitchen Program
Use Cost

Products	Description	Price	Use Cost	Yield
	<p>EC-44 HH Dishmachine 44 inch conveyor dishmachine dual rated for high and low temp operations with an 25" opening.</p>	\$305 per month lease	3 year term- \$400 chemical minimum purchase/ month	
	<p>Solid Power XL 4 - 9.00 lb Machine Detergent Product #6100185 Calculated based on EC-44 HH Dishmachine (0.910 GPR)</p> <p>Concentrated machine warewashing detergent a high activity formula, removing tough soils the first time. It uses ingredients that are environmentally responsible, with its 99.7% Phosphate- and Phosphorus-free formula, providing industry-leading performance for low-Phosphorus detergents. Solid Power XL® with GlassGuard™ protects against the damaging effects of etch.</p>	\$87.86	\$0.016 per rack	5,644 racks
	<p>Solid Brilliance 2 - 2.50 lb Rinse Additive Product #6125395</p> <p>Perfect for glassware and plastics, this rinse additive shines in hard water and won't foam up in soft water conditions</p>	\$139.36	\$0.009 per rack	15,094 racks
	<p>Sink & Surface Cleaner Sanitizer 1 - 2.50 gal 3rd Sink/ Surface Sanitizer Product #6102046</p> <p>EPA-registered 2-in-1 cleaner and sanitizer</p>	\$123.81	\$0.193 per 128 oz	640 - 128 oz

Products	Description	Price	Use Cost	Yield
	<p>PanTastic 4 - 1.00 gal Manual Detergent Product #6112963</p> <p>Nonphosphate, liquid pot and pan detergent that cuts through grease.</p>	\$50.73	\$0.035 per gal	1,463 gals
	<p>Sanitizing Wash 'n Walk 1 - 2.50 gal Kitchen Floor Cleaners Product #6100731</p> <p>EPA-registered cleaner and sanitizer that provides total management of floors and drains in a single product.</p>	\$79.39	\$0.496 per gal	160 gals
	<p>Peroxide Multi Surface Cleaner and Disinfectant 1 - 2.00 gal Disinfectants Product #6100693</p> <p>EPA-registered multi-purpose cleaner and disinfectant – 30 Second Covid Kill Claim; 5-minute MRSA, HIV Kill Claim as well as others</p>	\$64.98	\$0.317 per 32 oz	205 - 32 oz
	<p>Oasis 137 Orange Force 1 - 2.50 gal All-purpose / Polish Product #6114559</p> <p>Multi-purpose cleaner for use in food service and housekeeping operations</p>	\$74.27	\$0.58 per 32 oz	128 - 32 oz

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: Ordinance Declaring a Temporary Ban on Psilocybin Businesses – First Reading
Category: Public Hearing
Presented By: Joanna Lyons-Antley, County Counsel

Issue Before the Commission: Ordinance Declaring a Temporary Ban on Psilocybin Businesses

Informational Summary: In November 2020, Oregon voters approved Ballot Measure 109, known as the Oregon Psilocybin Service Act (codified at ORS chapter 475A), which allows for the manufacture, delivery and administration of psilocybin at licensed facilities. ORS 475A.235 provides that the Oregon Health Authority will regulate the manufacturing, transportation, delivery, sale and purchase of psilocybin products and the provision of psilocybin services in the state.

The Oregon Health Authority has initiated a rulemaking process to implement the state's psilocybin regulatory program and intends to begin accepting applications for psilocybin-related licenses on January 2, 2023. As of today, the Oregon Health Authority has not completed the rulemaking process for implementing the state's psilocybin regulatory program.

Staff is uncertain how the manufacture, delivery and administration of psilocybin at licensed psilocybin facilities will operate within the county. Staff recommends that further time is needed for the adoption of the state's psilocybin licensing and regulatory program, and to allow the county to adopt reasonable time, place, and manner regulations on the operation of psilocybin facilities in the unincorporated areas, is in the best interest of the health, safety and welfare of the citizens.

Staff recommends that your Board adopt an ordinance and refer to the voters of Clatsop County the question of whether to establish a two-year temporary ban on state-licensed psilocybin product manufacturers and psilocybin service centers within unincorporated Clatsop County.

Fiscal Impact: Unknown. The County is preempted from imposing local taxes on the sale of psilocybin, and will not receive any allocations of the 15% tax implemented by the State.

Requested Action:

Move to conduct a first reading of Ordinance Number 22-07, declaring a temporary ban on psilocybin businesses.

Attachment List

- A. Proposed Ordinance No. 22-07
- B. Proposed Resolution and Order Referring to the Voters of Clatsop County a Measure Proposing a Temporary Ban on Psilocybin-Related Business and Adopting a Ballot Title and Explanatory Statement

IN THE BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

ORDINANCE) AN ORDINANCE DECLARING A
NO. 22-07) TEMPORARY BAN ON PSILOCYBIN
) BUSINESSES

WHEREAS, in November 2020, Oregon voters approved Ballot Measure 109, known as the Oregon Psilocybin Services Act (codified at ORS chapter 475A), which allows for the manufacture, delivery and administration of psilocybin at licensed facilities; and

WHEREAS, ORS 475A.235 provides that the Oregon Health Authority will regulate the manufacturing, transportation, delivery, sale and purchase of psilocybin products and the provision of psilocybin services in the state; and

WHEREAS, the Oregon Health Authority has initiated a rulemaking process to implement the state's psilocybin regulatory program and intends to begin accepting applications for psilocybin-related licenses on January 2, 2023; and

WHEREAS, as of today, the Oregon Health Authority has not completed the rulemaking process for implementing the state's psilocybin regulatory program, and Clatsop County is uncertain how the manufacture, delivery and administration of psilocybin at licensed psilocybin facilities will operate within the county; and

WHEREAS, ORS 475A.718 provides that a county governing body may adopt an ordinance to be referred to the electors of the county prohibiting the establishment of state licensed psilocybin product manufacturers and/or psilocybin service centers in the area subject to the jurisdiction of the county; and

WHEREAS, the Clatsop County Board of Commissioners believes that prohibiting psilocybin product manufacturers and psilocybin service centers within the unincorporated area of the county, in order to enable further time for the adoption of the state's psilocybin licensing and regulatory program, and to allow the county to adopt reasonable time, place, and manner regulations on the operation of psilocybin facilities, is in the best interest of the health, safety and welfare of the citizens of Clatsop County; and

WHEREAS, the Board seeks to refer to the voters of Clatsop County the question of whether to establish a two-year temporary ban on state-licensed psilocybin product manufacturers and psilocybin service centers within unincorporated Clatsop County; and,

NOW THEREFORE, the Board of Commissioners of Clatsop County ordains as follows:

SECTION 1. TEMPORARY BAN

The establishment of psilocybin product manufacturers licensed under ORS 475A.290 and psilocybin service centers licensed under ORS 475A.305 is prohibited in the unincorporated area of Clatsop County.

SECTION 2. REFERRAL TO VOTERS

This ordinance is referred to the electors of Clatsop County at the next statewide general election on November 8, 2022.

SECTION 3. CONFORMANCE OF STATE LAW

This ordinance shall not substitute for nor eliminate the necessity for conformity with any and all laws or rules of the State of Oregon, or its agencies, or any ordinance, rule, or regulation of Clatsop County.

SECTION 4. INCONSISTENT PROVISIONS

This ordinance shall supersede, control and repeal any inconsistent provision of any County ordinance as amended or any other regulations made by Clatsop County.

SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 6. EFFECTIVE DATE

This ordinance takes effect and becomes operative 30 days after the day on which it is approved by a majority of the voters.

SECTION 6. SUNSET CLAUSE

This ordinance is repealed on December 31, 2024, unless sooner repealed in accordance with ORS 475A.538.

BOARD OF COUNTY COMMISSIONERS
CLATSOP COUNTY, OREGON

First Reading: _____
Second Reading: _____
Effective Date: _____

By _____
Chair

By _____
Theresa Dursse, Recording Secretary

IN THE BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

IN THE MATTER OF REFERRING TO THE) RESOLUTION AND ORDER
VOTERS OF CLATSOP COUNTY A)
MEASURE PROPOSING A TEMPORARY)
BAN ON PSILOCYBIN-RELATED)
BUSINESSES AND ADOPTING A BALLOT)
TITLE AND EXPLANATORY STATEMENT)

WHEREAS, the Clatsop County Board of Commissioners, following two public hearings, voted to enact and to refer Ordinance No. 22-07 to the voters of Clatsop County. Ordinance No. 22-07 temporarily prohibits certain psilocybin-related businesses in the unincorporated area of Clatsop County, in order to enable the adoption of the state’s psilocybin regulatory program and allow the county to consider possible code amendments and reasonable time, place and manner regulations; and

NOW THEREFORE, the Board of Commissioners of Clatsop County orders as follows:

SECTION 1. BALLOT TITLE

The Board adopts the ballot title and explanatory statement for this referral as attached hereto and incorporated herein as Exhibit A.

SECTION 2. AUTHORIZED OFFICERS

The ballot title and explanatory statement adopted by this resolution shall be filed with the county elections officer. County Counsel and the county elections officer are jointly and severally authorized and directed to take all necessary steps for and on behalf of the county to effectuate this resolution and order, including providing public notice and submitting required materials to the county elections officer to cause the measure to appear on the ballot for the November 8, 2022, election and to otherwise carry out the intent and purpose of this resolution and order.

SECTION 3. ORDINANCE

The county ordinance that is the subject of this referral is attached hereto and incorporated herein as Exhibit B.

BOARD OF COUNTY COMMISSIONERS
CLATSOP COUNTY, OREGON

By _____
Chair

By _____
Theresa Dursse, Recording Secretary

EXHIBIT A

BALLOT TITLE: Temporary ban of certain psilocybin businesses in unincorporated Clatsop County

QUESTION: Shall psilocybin manufacturers and service centers be temporarily banned in unincorporated Clatsop County for up to 2 years?

SUMMARY: Psilocybin is a psychedelic drug found in certain mushrooms. State law allows for the licensed manufacturing and supervised use of psilocybin in licensed service centers.

State law provides that a city or county may adopt an ordinance to be referred to voters to prohibit the establishment of licensed psilocybin product manufacturers and/or psilocybin service centers.

The Clatsop County Board of Commissioners adopted an ordinance to refer to the voters that temporarily prohibits those psilocybin businesses in the unincorporated area of Clatsop County, in order to enable the county to consider local regulations once the state's psilocybin regulatory program has been fully established.

If approved, this measure would approve the temporary ban in unincorporated Clatsop County. The ban will lapse on December 31, 2024, unless repealed by the Board at an earlier date.

EXPLANATORY STATEMENT:

Approval of this measure would temporarily ban the establishment of psilocybin product manufacturers and psilocybin service centers within the unincorporated area of Clatsop County until December 31, 2024. State law also allows the Clatsop County Board of Commissioners to repeal the temporary ban at any time.

Oregon voters legalized the supervised use of psilocybin through Ballot Measure 109 (2020), which directs the Oregon Health Authority (OHA) to develop a psilocybin licensing and regulatory program for the state by January 2, 2023. OHA's psilocybin regulatory program is in development, and the county would like to consider local regulations for psilocybin-related businesses once OHA's program is in place.

Ballot Measure 109 (2020) allows a local government to adopt an ordinance to be referred to the voters that prohibits the establishment of certain psilocybin-related businesses. The Clatsop County Board of Commissioners has adopted such an ordinance that temporarily prohibits psilocybin manufacturers and service centers to enable the county to consider local regulations once the state psilocybin program is fully in place. If approved, this measure would prohibit psilocybin product manufacturers and

psilocybin service centers within the unincorporated area of Clatsop County until December 31, 2024, unless repealed by the Board at an earlier date.

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: Smith Conditional Use Permit – LUBA Remand
Category: Public Hearing
Presented By: Gail Henrikson, Community Development Director

Issue Before the Commission: Adoption of supplemental findings and approval of Conditional Use Permit #21-00005.

Informational Summary: Cy and Diane Smith have submitted a land use application to construct an approach road within the platted, but unopened, Anvil Rock Road right-of-way. The approach road would extend 150 feet north from the East Shingle Mill Lane right-of-way to property owned by the Smiths (TL 41030CA04302). The gravel approach road would be 20 feet in width. Approval of the approach road is requested in order to gain access to TL 41030CA04302. The property owners do not have plans to develop their property at this time, but would install water, sewer and electric lines to the site as part of the approach road construction. The applicants also intend to construct a 50-foot-long by 14-foot-wide gravel driveway on the southeast corner of TL 41030CA03402.

The Anvil Rock Road right-of-way and TL 41030CA04302 are zoned AC-RCR (Arch Cape – Rural Community Residential). The subject area contains wetlands mapped in both the Arch Cape Local Wetland Inventory and the National Wetlands Inventory. The subject right-of-way and adjacent properties are not within the Special Flood Hazard Area identified by FEMA neither are the subject right-of-way and adjacent properties within a geologic hazard overlay. Any new public or private road development or road extension is evaluated as a Type II conditional use in the AC-RCR Zone per Section 4.0621, Table 1, Subsection (98), Clatsop County Land and Water Development and Use Code (LAWDUC) under county conditional use standards Section 2.4000, LAWDUC. Additional site-specific conditions of approval and county Public Works regulations may apply.

- A Notice of Decision for Conditional Use Permit application #21-000005 was issued on April 23, 2021. The Conditional Use Application was to allow construction of an approximately 150' x 20'

segment of Anvil Rock Road, a public road within a public platted right-of-way.

- On May 5, 2021, the Oregon Coast Alliance (ORCA), the Arch Cape Falcon Cove Beach Community Club (ACFCBCC), and Stuart Sandler filed a Notice of Appeal.
- A de novo public hearing before the Clatsop County Hearings Officer was conducted on June 22, 2021. The Hearings Officer issued a Notice of Decision on August 3, 2021. The decision denied the appeal and affirmed the conditional use approval with modifications.
- On August 16, 2022, ORCA, the ACFCBCC, and Mr. Sandler filed a Notice of Appeal with the Board of Clatsop County Commissioners (Board) [appealing the Hearings Officer's decision #21-000325](#).
- On August 25, 2022, the Board voted unanimously, 5-0, to deny the appeal and to summarily affirm the August 3, 2021 decision of the Clatsop County Hearings Office.
- On September 21, 2021, ORCA, ACFCBCC and Stuart Sandler appealed the Board's decision to the Oregon Land Use Board of Appeals (LUBA).
- Oral arguments before LUBA were conducted on March 15, 2022.
- On April 18, 2022, LUBA issued its Final Opinion and Order. LUBA's decision remanded the case back to Clatsop County for additional findings regarding two issues: 1) potential impacts to wetlands and 2) seasonal flooding. The remand does not require additional evidence. The determination from LUBA was that additional explanation was required in the findings on these two issues.
- A remand hearing was requested by the applicants Cy Smith and William Anderson, on June 6, 2022.

Fiscal Impact: None

Requested Action:

I move that the Board adopt supplemental findings dated July 13, 2022 (attached as **Exhibit A**), and approve Conditional Use Permit #21-000005 as modified by the Clatsop County Hearings Officer on August 3, 2021.

Attachment List

- A. Supplemental Findings – July 13, 2022
- B. Request for Remand Hearing – June 6, 2022
- C. LUBA Final Opinion and Order – April 18, 2022
- D. Notice of Intent to Appeal – September 21, 2021
- E. Board Resolution and Order – August 31, 2021
- F. Board of Commissioners Meeting Video – August 25, 2021 (via [link](#))
- G. Notice of Appeal – August 16, 2021
- H. Hearings Officer Notice of Decision – August 3, 2021
- I. Hearings Officer Public Hearing Video – June 22, 2021 (via [link](#))
- J. Notice of Appeal – May 5, 2021

K. Staff Report and Notice of Decision – April 23, 2021

EXHIBIT A

Supplemental Findings

July 13, 2022



SUPPLEMENTAL FINDINGS
Conditional Use Permit #21-000005

- SUPPLEMENTAL FINDINGS DATE:** July 13, 2022
- ORIGINAL STAFF REPORT DATE:** April 23, 2021
- REQUEST:** Conditional Use Permit for public road extension to access property owned by the applicants and including the installation of water, sewer and electric utilities
- APPLICANTS:** Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707
- OWNERS/TL 41030CA04302:** Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707
- OWNER/ANVIL ROCK ROAD ROW:** Publicly dedicated right-of-way, Plat of Cannon Beach Park Extension, Book 8, Page 43
- RIGHT-OF-WAY LOCATION:** Anvil Rock Road within the existing public platted right-of-way, north of the East Shingle Mill Lane, east of East Beach Road and west of Fire Rock Road
- ZONING:** Arch Cape – Rural Community Residential (AC-RCR)
- PROPERTY SIZE:** Subject area within platted Anvil Rock Road right-of-way ~6,000 SF
Adjacent TL 04302: 0.34 acres (~14,810 sq. ft.)
- IMPROVEMENTS:** Assessor records do not indicate any improvements within the right-of-way or on TL 04302
- COUNTY STAFF REVIEWER:** Gail Henrikson, Community Development Director
- STAFF RECOMMENDATION:** Approval, subject to conditions.

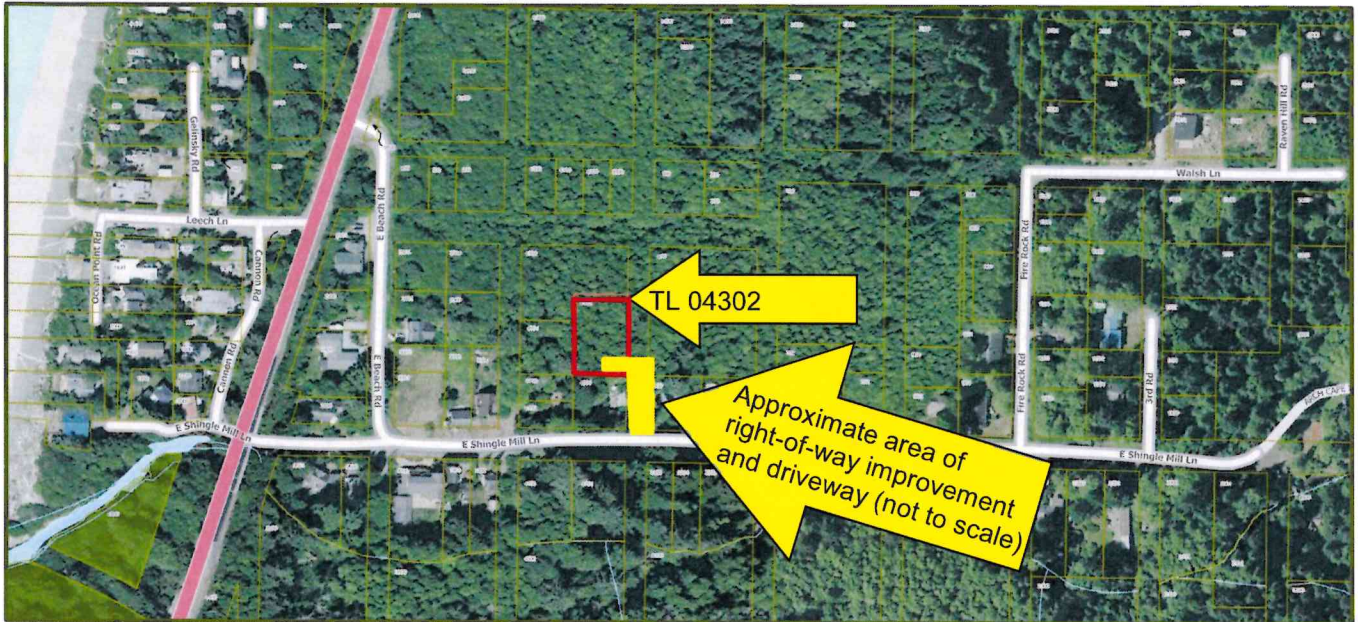
I. SUMMARY

Cy and Diane Smith have submitted a land use application to construct an approach road within the platted, but unopened, Anvil Rock Road right-of-way. The approach road would extend 150 feet north from the East Shingle Mill Lane right-of-way to property owned by the Smiths (TL 41030CA04302). The gravel approach road would be 20 feet in width. Approval of the approach road is requested in order to gain access to TL 41030CA04302. The property owners do not have plans to develop their property at this time, but would install water, sewer and electric lines to the site as part of the approach road construction. The applicants also intend to construct a 50-foot-long by 14-foot-wide gravel driveway on the southeast corner of TL

41030CA03402.

The Anvil Rock Road right-of-way and TL 41030CA04302 are zoned AC-RCR (Arch Cape – Rural Community Residential). The subject area contains wetlands mapped in both the Arch Cape Local Wetland Inventory and the National Wetlands Inventory. The subject right-of-way and adjacent properties are not within the Special Flood Hazard Area identified by FEMA neither are the subject right-of-way and adjacent properties within a geologic hazard overlay. Any new public or private road development or road extension is evaluated as a Type II conditional use in the AC-RCR Zone per Section 4.0621, Table 1, Subsection (98), Clatsop County Land and Water Development and Use Code (LAWDUC) under county conditional use standards Section 2.4000, LAWDUC. Additional site-specific conditions of approval and county Public Works regulations may apply.

2018 Aerial



Clatsop County GIS

A Notice of Decision for Conditional Use Permit application #21-000005 was issued on April 23, 2021. The Conditional Use Application was to allow construction of an approximately 150' x 20' segment of Anvil Rock Road, a public road within a public platted right-of-way.

On May 5, 2021, the Oregon Coast Alliance (ORCA), the Arch Cape Falcon Cove Beach Community Club (ACFCBCC), and Stuart Sandler filed a Notice of Appeal. A de novo public hearing before the Clatsop County Hearings Officer was conducted on June 22, 2021. The Hearings Officer issued a Notice of Decision on August 3, 2021. The decision denied the appeal and affirmed the conditional use approval with modifications.

On August 16, 2022, ORCA; the ACFCBCC, and Mr. Sandler filed a Notice of Appeal with the Board of Clatsop County Commissioners (Board). On August 25, 2022, the Board of Clatsop County Commissioners voted unanimously, 5-0, to deny the appeal and to summarily affirm the August 3, 2021 decision of the Clatsop County Hearings Office.

On September 21, 2021, ORCA, ACFCBCC and Stuart Sandler appealed the Board's decision to the Oregon Land Use Board of Appeals (LUBA). Oral arguments before LUBA were conducted on March 15, 2022. On April 18, 2022, LUBA issued its Final Opinion and Order. LUBA's decision remanded the case back to Clatsop County for additional findings regarding two issues: 1) potential impacts to wetlands and 2) seasonal flooding. The remand does not require additional evidence. The determination from LUBA was that additional explanation was required in the findings on these two issues. These two issues are specifically to be reviewed in relation to Section 2.4030(3)(C)(4) of the Clatsop County Land and Water Development and Use Code (LAWDUC).

A remand hearing was requested by the applicants, Cy Smith and William Anderson, on June 6, 2022.



II. APPLICABLE CRITERIA

The applicable criteria for these supplemental findings land use application are contained in the following documents and sources:

Land and Water Development and Use Code (LAWDUC)

2.4030(3)(C)(4)

III. APPLICATION EVALUATION

A. Land and Water Development and Use Code (LAWDUC)

SECTION 2.4000. CONDITIONAL DEVELOPMENT AND USE.

Section 2.4030. Authorization of a Conditional Development and Use

- (3) In addition to the other applicable standards of this ordinance, the hearing body must determine that the development will comply with the following criteria to approve a conditional development and use.
- (C) The site under consideration is suitable for the proposed use considering:
- 4) The natural and physical features of the site such as topography, natural hazards, natural resource values, and other features.

BACKGROUND AND OVERVIEW OF LUBA DECISION: The August 31, 2021 Resolution and Order issued by the Board of Clatsop County Commissioners (the "Board") adopted the Hearings Officer's decision dated August 3, 2021, and all code interpretations contained therein. With specific regard to LAWDUC Section 2.4030(3)(C)(4), the aforementioned Hearings Officer's decision did not adopt specific findings, and

instead adopted the findings contained in the County staff report issued on April 23, 2021.

Oregon Cost Alliance v. Clatsop County held that the staff report's finding on LAWDUC Section 2.4030(3)(C)(4) was inadequate, and remanded the matter back to the County for further findings. (LUBA No. 2021-085, April 18, 2022). As understood by the County, LUBA was troubled by the fact that the staff report was, from LUBA's perspective, internally inconsistent when it came to wetlands on the subject property. Specifically, LUBA noted that Condition 5 ("The applicants shall adhere to all requirements of Permit #21-02. The access will be constructed as indicated on the site plan submitted by the applicant in conjunction with this Conditional Use Permit application and as approved on Operations Permit #21-02. Any changes to the access must be approved by both the Planning Division and Public Works departments to ensure continued compliance with access and road standard requirements.") indirectly required the applicants' road construction to "stay out of delineated wetlands" despite the staff report findings with regard to LAWDUC Section 2.4030(3)(C)(4) which acknowledged that a 40-foot extension of the proposed road required by the County "may impact a portion of an identified wetland within the right-of-way."

The County did not participate in the LUBA proceedings and thereby could not directly explain what LUBA perceived as a potential inconsistency in the County's land use decision. The applicants argued before LUBA that Condition 9 ("The applicants shall demonstrate that any impacts to the delineated wetland from road construction activities comply with all state permit requirements prior to a development order being issued for the project.") resolved the inconsistency because that condition required compliance with all state permit requirements, including state wetland removal-fill permits. As described below, LUBA did not disagree with the applicants' argument regarding Condition 9 but nevertheless remanded that matter to the County to more directly resolve the apparent inconsistency:

"Condition 9 and associated findings suggest staff believe that allowing [the applicants] to fill or eliminate a portion of the wetlands in the right-of way, while obtaining state permits if required, is a permissible means to render a site otherwise encumbered by wetlands 'suitable.' That may well be a sustainable application of LAWDUC 2.4030(3)(C)(4), but we agree with petitioners that more adequate explanatory findings, and perhaps an express interpretation of LAWDUC 2.4030(3)(C)(4), is needed to establish compliance with the suitability standard."

As suggested by LUBA, these supplemental findings regarding LAWDUC Section 2.4030(3)(C)(4) are in two parts:

- 1) The Board adopts an expressed interpretation of LAWDUC Section 2.4030(3)(C)(4).
- 2) Pursuant to that interpretation and based on the record for this land use application, the Board provides further explanation for how the "site under consideration is suitable" for the proposed road construction project.

STAFF FINDINGS - INTERPRETATION OF SECTION 2.4030(3)(C)(4), LAWDUC:

As interpreted by this Board, the overarching purpose of LAWDUC Section 2.4030(3)(C) is to determine a proposed property's "suitability" for the proposed use. Rather than setting forth numerous *elements*, each of which must individually be satisfied to in-turn determine that a proposed property is "suitable," the Board interprets LAWDUC Section 2.4030(3)(C) as setting forth a number of *factors*, each of which should be "considered" to ultimately determine that proposed property is or is not "suitable" for the proposed use. This interpretation is supported by well-established land use precedent in Oregon preferring a factor-based analysis when codified provisions specifically directs a decision maker to "consider" certain criteria. See, e.g., *Rawson v. Hood River County*, ___ Or LUBA ___, ___ (LUBA No 2016-099, March 15, 2017); *Freeland v. City of Bend*, 45 Or LUBA 125, 131 (2003); *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 396 (1993).

Distinguishing between "elements" and "factors" is important in this case because a decision maker may still find that a proposed property is "suitable" for the proposed use even if individual factors enumerated in the subparts of LAWDUC Section 2.4030(3)(C) suggest otherwise. As interpreted by this Board, LAWDUC Section 2.4030(3)(C) directs the decision maker to focus the "suitability" determination on the

balance of the enumerated factors.

The subparts following LAWDUC Section 2.4030(3)(C) sets forth four overarching categories of factors focusing generally on (1) the “operating characteristics of the use,” (2) “transportation access to the site,” (3) “adequacy of public facilities and services,” and (4) the “natural and physical features of the site.” The findings in the April 23, 2021 staff report regarding LAWDUC Section 2.4030(3)(C) subparts (1) through (4) - which both the Hearings Officer and this Board adopted – all suggest that the proposed site in this case is “suitable” for the proposed use, with only the factors set forth in subpart (4) now being at issue following LUBA’s remand. It very well may be that the balance of the remaining factors tips the scales towards a suitability finding in this case regardless of any remaining issues with the subpart (4) factors. But, as discussed below, even the subpart (4) factors suggest that the proposed site is “suitable” for the proposed use in this case.

As noted above, subpart (4) of LAWDUC Section 2.4030(3)(C) generally directs the decision maker to consider if the “natural and physical features” of the proposed property, with the enumerated factors including (a) “topography,” (b) “natural hazards,” (c) “natural resource values,” and (d) “other features.”

When it comes to “topography,” the LAWDUC does not directly include a definition of the term. Instead, the Board must utilize [*Webster’s Third International Dictionary*](#) as the Oregon Appellate Court’s official dictionary. Of the several options suggested online, **the County interprets “topography” in the context of LAWDUC Section 2.4030(3)(C)(4) to mean “the configuration of a surface including its relief and the position of its natural and man-made features.”**

With regard to “natural hazards,” the Board notes Clatsop County’s efforts to map known geologic hazards pursuant to Statewide Planning Goal 7 and as part of adopting the County’s Comprehensive Plan. The result of those efforts was, in part, the adoption of the County’s Flood Hazard and Geologic Hazard Special Purpose Overlay zones addressed in Article 5 of the LAWDUC. Rather than an invitation to re-hash past land use planning efforts, **the Board interprets “natural hazards” in the context of LAWDUC Section 2.4030(3)(C)(4) as a specific reference to the Flood Hazard and Geologic Hazard overlay zones.**

With regard to “natural resource values,” the Board again notes Clatsop County’s past planning efforts with regard to Statewide Planning Goal 5, and **similarly interprets that term as a reference to the County’s inventoried resources pursuant to Goal 5.**

With regard to the “other features” phrase concluding LAWDUC Section 2.4030(3)(C)(4), the Board finds that the clear intent is that a decision maker may additionally consider other factors beyond “topography,” “natural hazards” and “natural resource values” to generally determine if a proposed property’s “natural and physical features” make it suitable for a proposed use. “Other features” which may be considered by a decision maker include features naturally occurring on a proposed property which, for example, enhance “natural resource values” or mitigate “natural hazards.” As such, **the Board further finds that “other features” includes any mitigation proposed by an applicant to enhance or mitigate a proposed property’s “natural and physical feature,” or other such mitigation that may be required pursuant to other local, state, or federal permits.**

As a final matter, **the Board specifically rejects any interpretation of LAWDUC Section 2.4030(3)(C)(4) that automatically disqualifies a property for any and all development because of the presence of delineated wetlands and/or associated flooding that may occur in relation to that wetland.** As discussed above, such a broad (and erroneous) interpretation ignores the factor-based analysis required by LAWDUC Section 2.4030(3)(C), and elevates one sub-factor regarding “natural hazards” above all other considerations.

STAFF FINDINGS - APPLICATION OF SECTION 2.4030(3)(C)(4), LAWDUC

Consistent with the above interpretations, these supplemental findings consider and address “topography,” “natural hazards,” “natural resource values,” and “other features.” Many of these issues were previously

by the County staff report issued on April 23, 2021, which, as noted, was subsequently reviewed

and adopted both by the County Hearings Officer and the Board. As such, these supplemental findings incorporate by reference the aforementioned staff report except to the extent inconsistent with the findings contained herein. Further, these supplemental findings primarily focus on the two overlapping issues raised by LUBA regarding wetlands and seasonal flooding.

Topography

With regard to topography, the analysis should begin by noting that the proposed site in this case is predominantly a public right-of-way that has been in existence since 1926. The proposed use – and the only use considered at this time – is a 20-foot wide gravel access road to be constructed within that right-of-way. **Relying on the definition set forth above, “topography” includes “man-made features” which this Board finds in this case to include that public right-of-way.**

As noted above, the Board also incorporated by reference the staff report issued on April 23, 2021. For ease of reference, those findings related to the proposed site’s topography are reproduced as follows:

“Per bare earth lidar hillshade information from the Department of Geology and Mineral Inventories (DOGAMI) the subject right-of-way is relatively level, varying in elevation from approximately 23 feet to 25 feet. The area is heavily wooded.

“In 2020, Public Works issued the following permits for work within the surrounding rights-of-way:
#20-17: Anvil Rock Road (clearing brush and weeds from East Shingle Mill Lane to TL 4302)
#20-33: Anvil Rock Road / Maxwell Lane (clearing for a six-foot-wide trail)
#20-49: 32009 East Shingle Mill Road (utility work)
#20-71: Walsh Lane (utility work)
#20-100: Fire Rock Road (roadway extension)

These permits, which were issued for work in the same area as the subject property and with similar or steeper topography verify that the natural and physical features of the subject right-of-way are suitable to support the proposed road. ***”

Because the proposed site has been public right-of-way since 1926, and because that public right-of-way is similar to other surrounding rights-of-way when it comes the grade and vegetation, the Board finds that topography favors that “the site under consideration is suitable for the proposed use.”

Natural Hazards

With regard to the natural hazard factor, LUBA determined that “There is *some* testimony in the record that flooding occurs on the site and that flooding might get worse if a portion of the wetland is filled for road construction.” (emphasis in original). The Board has thoroughly combed the record and agrees that the record includes what are best described as anecdotal concerns with flooding generally associated with wetlands. Most of those concerns are arguably inapplicable because they focus on the impact the proposed access road may have on the wetlands rather than on how the wetlands and any associated flooding makes the existing right-of-way unsuitable for the proposed access road. The record does not include specific evidence of flooding occurring in the existing right-of-way to the extent that said flooding would regularly and/or repeatedly damage or destroy any constructed access road thereby rendering the propose site unsuitable. Such evidence would perhaps have included pictures or other documents suggesting the depth of flooding on the subject property, dates when the flooding occurred, length of time the water remained, etc.

Consistent with the interpretation set forth above, the Board further references the County’s Flood Hazard and Geologic Hazard Special Purpose Overlay zones, and notes that the proposed property is not included within either aforementioned zones. **This Board is persuaded by that evidence, and finds that the natural hazard factor does not disfavor that “the site under consideration is suitable for the proposed use.”**

Natural Resource Values

As understood by this Board, the presence of delineated wetlands within the “site under consideration” is the most significant unresolved issue and is best addressed pursuant to the “natural resources values” factor. Similar to the aforementioned “natural hazard” factor, the Board should begin its analysis under this factor by noting that neither the applicants’ property nor the public right-of-way that is the subject of these proceedings are included on the County’s Goal 5 Inventory of significant wetlands or located within the Lake and Wetlands Zone. Consistent with the Board’s interpretation set forth above, that could be the end of the analysis under this factor.

However, although perhaps overlapping with the fourth and final factor, the Board notes an additional consideration specifically relevant to the wetlands concern. The record includes an April 1, 2021 letter from the Department of State Lands (“DSL”) calling out that “a state permit is required” in this case “for cumulative fill or annual excavation of 50 cubic yards or more in the wetlands ***.” **This Board still agrees with County Staff’s original assessment of the DSL letter:**

“State law permits removal and fill activities within a wetland and conditions may be imposed and/or mitigation required. Removal and fill activities within wetlands are under the jurisdiction of [DSL]. *** DSL has approved the [a]pplicants’ wetland delineation (WD #2020-0667). Any impacts to the wetland from road construction activities will require review, permitting and/or mitigation as determined by DSL. A copy of any federal and/or state permits must be submitted to Clatsop County in order for a development permit to be issued.”

Although not the case herein, this Board agrees that delineated wetlands left unmitigated and occupying the majority of a “site under consideration” would be a factor suggesting that a site is not suitable for a proposed use. But even in that scenario, and as discussed above, a solitary factor on its own does not compel that overarching finding. In this case, **if the construction of the access road requires fill or excavation less than 50 cubic yards, then the Board finds that the delineated wetlands on a small portion of the “site under consideration” clearly is not significant enough to compel an “unsuitable” finding under this “natural resource values” factor alone. And if the construction of the access road does require fill or excavation greater than 50 cubic yards such that a DSL permit is required, then this Board finds that the mitigation provided by that DSL permit tips the scales towards determining that the “natural resource values” factor does not render the public right-of-way unsuitable for the proposed access.**

Other Features

One last consideration deserves comments if for no other reason than it was central to LUBA remanding the County’s original land use decision. Specifically, LUBA discussed “Permit #21-02” approved by the County Public Works Department on January 12, 2021. The handwritten condition #2 included on that permit required the construction of the access road to “stay out of delineated wetlands.” **The Board finds that consideration of Permit #21-02 under this “other features” factor is fitting because Permit #21-02 on its face could frustrate the mitigation of impacts discussed under the “natural resource values” factor discussed above.**

Three things are relevant when it comes to Permit #21-02. First, pursuant to the handwritten condition #6, that permit was only valid for 6 months and thereby has already expired. Second, this Board is not aware of any provision in the LAWDUC or the County Code of Regulations compelling the aforementioned condition. Third, Permit #21-02 was issued two and a half months prior to DSL approving the applicants’ wetland delineation report. Although the County’s Public Works permits are not the subject of this land use matter nor of these supplemental findings, this Board finds it reasonable to assume that the applicants will be obliged to apply for a new permit to replace Permit #21-02, and that the new permit will be consistent with this land use permit and defer to DSL’s wetland delineation report when it comes to the need to obtain a state permit if the construction of the access road requires fill or excavation of 50 cubic yards or more.

To address the issue of Permit #21-02, these supplemental findings repeal and replace Condition #5 as adopted by the Hearings Officer and affirmed by this Board. The new Condition #5 shall appear as follows:

5. The Applicants shall apply to the County Public Works department for a new permit to replace the expired Permit #21-02. If said permit is approved, the access will be constructed consistent with that new permit and as indicated on the site plan submitted by the applicants in conjunction with this Conditional Use Permit application. Any changes to the access must be approved by both the Planning Division and Public Works departments to ensure continued compliance with access and road standard requirements.

STAFF CONCLUSION

As discussed above and for the forgoing reasons, this Board finds the proposed public right-of-way is suitable for the proposed access road considering the natural and physical features of the site, including the topography, natural hazards, natural resource values, and other features.

EXHIBIT B

Request for Remand Hearing

June 6, 2022

June 6, 2022

Garrett H. Stephenson
Admitted in Oregon
T: 503-796-2893
C: 503-320-3715
gstephenson@schwabe.com

VIA E-MAIL

Ms. Gail Henrikson
Community Development Director
Clatsop County Community Development
800 Exchange Street
Astoria, OR 97103

RE: Request for Hearing - Smith Conditional Use Permit (#21-14 000005) (Hearings Officer Decision #21-000325); *Oregon Coast Alliance et. al v. Clatsop County*, ___ Or LUBA ____, LUBA No. 2021-085 (April 18, 2022)

Dear Ms. Henrikson:

This office represents Cy Smith, applicant for the Smith Conditional Use Permit (#21-14 000005) (Hearings Officer Decision #21-000325), which was approved by the County on August 31, 2021, in Resolution and Order 2021080041. On April 18, 2022, the Oregon Land Use Board of Appeals remanded the above-referenced decision to correct certain assignments of error. *Oregon Coast Alliance et. al v. Clatsop County*, ___ Or LUBA ____, LUBA No. 2021-085 (April 18, 2022).

Pursuant to ORS 215.435(2)(a) this letter requests that the County Board of Commissioners hold an on-the-record hearing to adopt revised findings of fact and conclusions of law on remand, which respond to the assignments of error in the above-referenced Decision. Please contact me at your convenience to discuss the timing of the requested hearing.

Thank you.

Best regards,



Garrett H. Stephenson

GST:jmhi

cc: Mr. Cy Smith (*via email*)
Mr. William Anderson (*via email*)
Mr. Christopher D. Crean (*via email*)
Mr. Joseph A. Gaon (*via email*)

PDX\138461\267854\GST\33869637.1

EXHIBIT C

LUBA Final Opinion and Order

April 18, 2022

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 OREGON COAST ALLIANCE, ARCH CAPE
5 FALCON COVE BEACH COMMUNITY CLUB,
6 and STUART SANDLER,
7 *Petitioners,*

8
9 vs.

10
11 CLATSOP COUNTY,
12 *Respondent,*

13
14 and

15
16 CY SMITH and WILLIAM ANDERSON,
17 *Intervenors-Respondents.*

18
19 LUBA No. 2021-085

20
21 FINAL OPINION
22 AND ORDER

23
24 Appeal from Clatsop County.

25
26 Sean T. Malone filed the petition for review and reply brief and argued on
27 behalf of petitioner.

28
29 No appearance by Clatsop County.

30
31 Garrett H. Stephenson filed the response brief. Also on the brief was Sara
32 Kobak. Garrett H. Stephenson and Joseph Gaon argued on behalf of intervenors-
33 respondents.

34
35 RYAN, Board Member; RUDD, Board Member, participated in the
36 decision.

37
38 ZAMUDIO, Board Chair; did not participate in the decision.

APR 20 2022
SELL

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REMANDED

04/18/2022

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioners appeal a county decision approving a conditional use permit to construct an access road within an unimproved public right-of-way.

FACTS

Intervenor-respondent Smith (Smith) owns three lots in a subdivision that was platted in 1926, in an area zoned Arch Cape Rural Community Residential (AC-RCR). Some of the subdivision’s lots and roads, including Smith’s lots, are unimproved. As platted, Smith’s lots are accessed via Anvil Rock Road, a 40-foot-wide, currently unimproved, dedicated right-of-way that runs north-south and that intersects with an improved roadway, East Shingle Mill Lane, to the south.

Smith filed a conditional use permit application to improve 150 feet of Anvil Rock Road north of its connection with East Shingle Mill Lane in order to provide developed access to their three lots.¹ Amended Record (AR) 6. Intervenor-respondent Anderson (Anderson) owns 10 lots in the subdivision and testified in support of Smith’s application.² In this opinion, we sometimes refer to Smith and Anderson together as intervenors.

¹ Smith has not filed applications for development of their three lots.

² Anderson testified:

“Good morning, I would like to register to testify in support of the Smith Conditional Use Permit in Tuesday’s appeals hearing. This

1 Smith included with their application a wetland delineation for their three
2 lots and a portion of Anvil Rock Road. The delineation, approved by the Oregon
3 Department of State Lands, shows that most of Smith's lots and a significant
4 portion of Anvil Rock Road adjoining their lots consists of wetlands. Smith's
5 delineation indicates that the identified wetlands continue beyond the study area
6 to the north, east, and west. North of the subject property is a very large,
7 inventoried wetland identified as ARC-13 in the Arch Cape Local Wetlands
8 Inventory. AR 76.

9 The county planning director approved the application subject to a
10 condition recommended by the county public works department that
11 improvements to Anvil Rock Road extend an additional 40 feet to the north, to
12 include a turnaround, for a total of 190 feet of improved roadway.

13 Petitioners appealed the director's approval to the hearings officer, who
14 conducted a hearing on June 22, 2021. The hearings officer issued a decision on
15 August 3, 2021, denying the appeals and approving the application based on
16 adoption of the director's decision and additional findings addressing issues
17 raised at the hearing. Petitioners appealed the hearings officer's decision to the
18 county board of commissioners. The commissioners declined review and adopted

road is the only means of entry to the 10 lots that we own off Shingle Mill of which we plan to build a small eco-friendly family cabin on 1-2 of the lots while preserving the rest of our property and leaving it untouched. Our permit documents are complete just wanting on approval of the road to be able to formally submit." AR 467.

1 the hearing officer’s decision as their own, including any interpretations of the
2 county code.

3 This appeal followed.

4 **FIRST ASSIGNMENT OF ERROR**

5 Clatsop County Land and Water Development and Use Code (LAWDUC)
6 2.4030(3)(C) is part of a conditional use permit standard and requires a finding
7 that

8 “[t]he site under consideration is suitable for the proposed use
9 considering:

10 “* * * * *

11 “(4) The natural and physical features of the site such as
12 topography, natural hazards, natural resource values, and
13 other features.”

14 As noted, the board of commissioners adopted the hearings officer’s decision as
15 its own. In approving the conditional use permit, the hearings officer adopted
16 some new findings and incorporated by reference some findings set out in the
17 staff report. In their first assignment of error, petitioners argue that the hearings
18 officer erred in failing to adopt any of their own findings addressing LAWDUC
19 2.4030(3)(C)(4) despite testimony and issues raised below regarding the
20 suitability of the site given the existence of wetlands, seasonal flooding, and
21 potential impacts on an elk herd that is sometimes present on the subject property.

22 Adequate findings are required to support quasi-judicial land use
23 decisions. *Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 20-21,

1 569 P2d 1063 (1977). Generally, findings must (1) identify the relevant approval
2 standards, (2) set out the facts which are believed and relied upon, and (3) explain
3 how those facts lead to the decision on compliance with the approval standards.
4 *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). In their decision, the
5 hearings officer explained that they adopted specific findings addressing only
6 criteria and issues raised during the hearing process and, for all other criteria,
7 relied upon incorporation of staff findings attached to the planning director's
8 decision. AR 8. The hearings officer apparently did not understand petitioners to
9 raise any issue under the "suitability" standard at LAWDUC 2.4030(3)(C)(4)
10 and, accordingly, relied entirely upon the incorporated staff findings to address
11 that standard. However, petitioners argue that the incorporated staff findings are
12 inadequate because they fail to address issues raised regarding the suitability of
13 the site given the presence of wetlands, seasonal flooding, and potential impacts
14 on the elk herd.

15 **A. Waiver**

16 Initially, intervenors argue that no party raised prior to the close of the
17 initial evidentiary hearing any issues under LAWDUC 2.4030(3)(C)(4) regarding
18 the suitability of the right-of-way for the proposed road improvement with
19 respect to wetlands or any other natural feature. Intervenors therefore argue that

1 all of the issues raised under the first assignment of error are waived pursuant to
2 ORS 197.797(1).³

3 In the petition for review, petitioners cite a number of instances in the
4 record where opponents raised issues regarding wetlands, seasonal flooding, and
5 impacts on the elk herd. Petition for Review 3-8, 9-12.⁴ One opponent, Kerr, cited
6 the suitability standard at LAWDUC 2.4030(3)(C)(4) and discussed impacts of
7 development on the delineated wetlands. AR 402-04, 411-13 (quoting the
8 suitability standard and referring to the presence of wetlands).⁵

³ In 2021, the *former* ORS 197.763(1) (2019) “raise-it-or-waive-it” requirement was renumbered as ORS 197.797(1). The operative wording is unchanged:

“An issue which may be the basis for an appeal to [LUBA] shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.”

⁴ Some of the citations to the Amended Record are citations to an abbreviated transcript of the June 22, 2021 hearing.

⁵ In support of their obligation to demonstrate that the issues raised in the first assignment of error were preserved, petitioners also cite portions of the “Hearings Official Audio Recording.” Petition for Review 9-10. However, neither the Record nor the Amended Record include an “audio recording;” rather, the tables of contents for both records include a hyperlink to a “Video Exhibit” labeled “6/22/21 Video of Public Hearing (Hearings Officer Tommy Brooks).” AR Table of Contents 9. Identifying where a document or media recording may be accessed online is insufficient to include that material in the record before LUBA. *Terra*

1 Intervenors argue that Kerr’s comments appeared to focus on potential
2 future residential development of intervenors’ lots, not the right-of-way
3 improvements proposed in this application. Petitioners reply that Kerr’s
4 comments were made in response to the present application to develop a road,
5 and the hearings officer reasonably understood that the “development” opponents
6 objected to included the proposed road improvements impacting wetland areas in
7 the right-of-way, as the staff report itself noted. AR 25 (staff report noting that
8 the proposed road improvements “may impact a portion of an identified wetland
9 within the right-of-way”).

10 Although it is a close call, we agree with petitioners that Kerr’s testimony
11 raised the issue that, due to the presence of wetlands, the existing right-of-way is
12 not suitable for the proposed road construction, contrary to LAWDUC
13 2.4030(3)(C)(4). Kerr was clearly *also* concerned with future development of
14 wetland areas on the adjoining lots, which was not proposed in this application,
15 but that was not Kerr’s *exclusive* concern.

16 Petitioner Sandler and others also raised concerns about wetlands,
17 flooding, and impacts to elk during the hearing, although they did not specifically
18 cite LAWDUC 2.4030(3)(C)(4) in their testimony. AR 463-64. Intervenors argue
19 that, because those opponents failed to cite the suitability standard, or even use

Hydr Inc. v. City of Tualatin, 68 Or LUBA 511, 513 (2013). Accordingly, the hyperlinks in the table of contents are inadequate to include the media recordings in the record before LUBA.

1 its operative terms, their general testimony was insufficient to give the hearings
2 officer and the parties “fair notice” that the opponents intended to connect issues
3 of wetlands, flooding, or wildlife to the suitability standard at LAWDUC
4 2.4030(3)(C)(4). *Boldt v. Clackamas County*, 107 Or App 619, 623, 814 P2d
5 1078 (1991) (ORS 197.797(1) requires “fair notice” of the issues raised but not
6 “preservation” of such issues as recognized in judicial contexts).

7 We understand petitioners to allege that the seasonal flooding issue
8 identified below is related to the wetlands in the area, including in the right-of-
9 way. Although it is a close question, we agree with petitioners that the seasonal
10 flooding issue was raised below with the specificity required by ORS 197.797(1),
11 notwithstanding the failure to cite or connect the issue to LAWDUC
12 2.4030(3)(C)(4). The gist of petitioner Sandler’s testimony was that the proposed
13 development would impact wetlands and, due to existing seasonal flooding
14 associated with the presence of those wetlands, the right-of-way was not a
15 suitable site for the proposed development, although Sandler did not use the word
16 “suitable” or cite LAWDUC 2.4030(3)(C)(4). AR 463-64. Given the fairly raised
17 issues regarding wetlands in the additional 40 feet for the turnaround, we
18 conclude that testimony regarding flooding associated with the wetlands also
19 presented an issue under the suitability standard that warranted responsive
20 findings.

21 However, with respect to testimony that the local elk herd sometimes beds
22 down in forested areas including the right-of-way, we agree with intervenors that

1 that testimony was not phrased in any manner that would suggest a concern that
2 the right-of-way is not “suitable” for the proposed road construction. The county
3 and other parties apparently understood testimony related to the elk herd to
4 concern a different approval standard requiring minimization of the loss of
5 important wildlife habitat such as sensitive deer and elk range. As we discuss
6 below, the county adopted unchallenged findings that the subject area is not
7 designated as big game habitat or wildlife habitat of any kind. If petitioners
8 wished to preserve the argument that the suitability standard at LAWDUC
9 2.4030(3)(C)(4) should be interpreted to protect undesignated wildlife habitat, it
10 was incumbent on petitioners to make that argument with greater clarity and
11 specificity before the close of the evidentiary hearing. We conclude that the issue
12 of compliance with LAWDUC 2.4030(3)(C)(4) arising from impacts to the local
13 elk herd was not raised below with the specificity required by ORS 197.797(1)
14 and is waived.

15 **B. Staff Findings**

16 As noted, the hearings officer adopted no additional findings addressing
17 LAWDUC 2.4030(3)(C)(4) and, instead, simply incorporated staff report
18 findings that were, in turn, adopted as part of the planning director’s decision.

19 The staff findings state, in relevant part:

20 “The proposed access is outside of lands mapped for geologic
21 hazards and is outside the area mapped as either Major or Peripheral
22 Big Game Habitat. *The 150-foot-long extension proposed by*
23 *[Smith], with the additional 40-foot-long extension required by*
24 *Public Works (to be discussed in further detail elsewhere in this*

1 *report), may impact a portion of an identified wetland within the*
2 *right-of-way.* [Smith has] provided a wetland delineation approved
3 by the Oregon Department of State Lands. Any impacts to this
4 wetland area would be subject to the requirements of the state
5 Removal-Fill Law. Cumulative fill or removal of 50 cubic yards or
6 greater would require a state permit.

7 “Per bare earth lidar hillshade information from the Department of
8 Geology and Mineral [Industries] (DOGAMI) the subject right-of-
9 way is relatively level, varying in elevation from approximately 23
10 to 25 feet. The area is heavily wooded.

11 “* * * * *

12 “In 2020, Public Works issued [five] permits for work within the
13 surrounding rights-of-way.

14 “* * * * *

15 “These permits, which were issued for work in the same area as the
16 subject property and with similar or steeper topography verify that
17 the natural and physical features of the subject right-of-way are
18 suitable to support the proposed road. * * *

19 “**With conditions of approval staff finds the site is suitable for**
20 **the development when considering Section 2.40[3]0(3)(C)(4)**
21 **(Conditions #5 and #8).”** AR 25-26 (boldface in original; emphasis
22 added).

23 Condition 5, noted in the findings, requires Smith to “adhere to all requirements
24 of Permit #21-02,” which is apparently a permit that the county issued to Smith
25 for work on a portion of Anvil Rock Road prior to filing the present application.
26 One of the requirements of Permit #21-02 is to “[s]tay out of delineated
27 wetlands.” AR 292. The staff report notes that, in filing the present application,
28 Smith took the position that improving 150 feet of Anvil Rock Road, as proposed,
29 would not encroach on the delineated wetland. However, the staff findings also

1 note that, with the additional 40-foot extension required by the public works
2 department for a turnaround, the road improvements “may impact a portion of an
3 identified wetland within the right-of-way.” AR 25.

4 Petitioners argue that the incorporated staff findings are inadequate to
5 address compliance with the suitability standard at LAWDUC 2.4030(3)(C)(4)
6 for two reasons. First, the staff findings rely on adherence to the requirements of
7 Permit #21-02 to satisfy LAWDUC 2.4030(3)(C)(4) but fail to recognize the
8 apparent conflict between the Permit #21-02 requirement to “[s]tay out of
9 delineated wetlands” and the staff acknowledgment that, with the 40-foot
10 extension, the road improvements may well encroach on delineated wetlands in
11 the right-of-way.

12 Intervenors respond that the incorporated staff findings dealt appropriately
13 with the possibility that the road and turnaround will encroach on delineated
14 wetlands by requiring, in a different condition, Condition 9, that intervenors
15 comply with all state permit requirements, which include state wetland removal-
16 fill permits that must be obtained if construction requires at least 50 cubic yards
17 of removal or fill within a jurisdictional wetland. Intervenors argue that the
18 requirement to obtain state removal-fill permits is sufficient, without more, to
19 demonstrate compliance with the suitability standard at LAWDUC
20 2.4030(3)(C)(4).

21 We agree with petitioners that more adequate findings are necessary to
22 explain the apparent contradiction between (1) requiring that the road and

1 turnaround “[s]tay out of delineated wetlands” while (2) acknowledging that at
2 least the turnaround may encroach on delineated wetlands. The possibility of
3 obtaining state wetland permits does nothing to resolve that apparent
4 contradiction. Staff apparently concluded that adherence to Permit #21-02’s
5 requirements, including to avoid *any* encroachment into delineated wetlands, was
6 necessary to find that the site is suitable for the proposed use. Without some
7 explanation, that conclusion cannot be readily squared with allowing road
8 construction in delineated wetlands as long as the construction involves less than
9 50 cubic yards of fill or removal or, if at least 50 cubic yards are involved, state
10 wetland permits are obtained.

11 The staff findings implicitly acknowledge that the wetlands in the right-of-
12 way are one of “[t]he natural and physical features of the site such as topography,
13 natural hazards, natural resource values, and other features” that must be
14 considered in determining whether the site is “suitable” for the proposed use.
15 Presumably, the continued existence of those wetlands might render a portion of
16 the site not “suitable” for proposed development for purposes of LAWDUC
17 2.4030(3)(C)(4). Condition 9 and associated findings suggest staff believed that
18 allowing Smith to fill or eliminate a portion of the wetlands in the right-of-way,
19 while obtaining state permits if required, is a permissible means to render a site
20 otherwise encumbered by wetlands “suitable.” That may well be a sustainable
21 application of LAWDUC 2.4030(3)(C)(4), but we agree with petitioners that
22 more adequate explanatory findings, and perhaps an express interpretation of

1 LAWDUC 2.4030(3)(C)(4), is needed to establish compliance with the suitability
2 standard.

3 Petitioners also argue that the findings fail to address the suitability of the
4 site with respect to the issue of seasonal flooding that was raised before the
5 hearings officer. Petitioners cite testimony that seasonal flooding involving the
6 delineated wetland “frequently” occurs and that filling parts of the wetland may
7 exacerbate flooding events. AR 602.

8 Intervenors respond that there is no evidence in the record that the subject
9 right-of-way is located within a designated floodplain. Apart from the testimony
10 petitioners cite, intervenors argue that there is no evidence in the record of any
11 flooding associated with the delineated wetland on the subject property or any
12 basis for concern that filling a portion of the wetland might exacerbate or cause
13 flooding. Intervenors also suggest that any concerns about flooding are reduced
14 by Condition 7, which requires Smith to submit a grading, draining, and erosion
15 control plan for review by the public works department prior to commencing road
16 construction.

17 Intervenors do not dispute that, if seasonal flooding occurs on the site, that
18 would constitute one kind of “natural hazard” or “other feature” that might have
19 a bearing on whether the site is “suitable” for the proposed use for purposes of
20 LAWDUC 2.4030(3)(C)(4). There is *some* testimony in the record that flooding
21 occurs on the site and that flooding might get worse if a portion of the wetland is
22 filled for road construction. AR 602. Intervenors cite no countervailing evidence.

1 Whether the property is located in a floodplain may be dispositive or it may not,
2 but it is unclear whether floodplain designations necessarily reflect seasonal
3 water level fluctuations associated with a wetland. Neither the hearings officer's
4 decision nor the staff report includes any findings addressing flooding. The
5 drainage plan required by Condition 7 would likely go a long way toward
6 ensuring that road construction would not exacerbate and could mitigate any
7 existing flooding, but Condition 7 cannot substitute for findings addressing that
8 issue or findings establishing the suitability of the site if, in fact, seasonal
9 flooding is a problem. Accordingly, we agree with petitioners that remand is
10 necessary for the hearings officer to adopt findings on this issue, supported by
11 substantial evidence.

12 Finally, petitioners cite testimony that elk occasionally bed down in
13 forested areas within the right-of-way and argue that the right-of-way therefore
14 includes "wildlife habitat," which petitioners assert is a type of "natural feature"
15 that must be considered in determining whether the site is suitable for the
16 proposed use.

17 The above-quoted staff findings note that the property is not designated as
18 big game habitat, but they do not address, under LAWDUC 2.4030(3)(C)(4),
19 whether the forested areas on the property might nonetheless represent a "natural
20 feature" that could affect the site's suitability for road access. However, as
21 explained above, the absence of findings on this point is likely because no party
22 raised a cognizable issue during the proceedings below under LAWDUC

1 2.4030(3)(C)(4) with respect to wildlife habitat. Accordingly, that issue is waived
2 and beyond our scope of review. ORS 197.797(1).

3 The first assignment of error is sustained, in part.

4 **SECOND ASSIGNMENT OF ERROR**

5 “Road Development or Extension, Public or Private,” is listed as a category
6 of use conditionally allowed in the AC-RCR zone. *Former* LAWDUC art 4, Tbl
7 1 (Dec 9, 2020) (Table 1).⁶ Petitioners argued below that the proposed road
8 construction cannot be evaluated and approved in isolation from the development
9 that the road will serve, such as future residential development of intervenors’
10 lots. The hearings officer rejected those arguments, interpreting Table 1, in
11 context with other code provisions, to allow an application for a road
12 improvement to be approved as a separate land use without a concurrent
13 application for development to be served by the road.⁷

⁶ LAWDUC article 4 was significantly recodified in October 2021. Although Table 1 was repealed, LAWDUC 4.0630(12) still allows as a conditional use in the AC-RCR zone “[a]ny new public or private road development or road extension.”

⁷ The hearings officer’s findings state:

“The Site is located within the [AC-RCR] Zone. The AC-RCR Zone is unique in that it authorizes private and public road extensions as an independent use in addition to other permitted or conditional uses. Specifically, Section 4.0620 of the [LAWDUC] refers to Table 1 and the permitted and conditional uses allowed in the AC-RCR Zone. Item 98 of Table 1, in turn, identifies ‘Road Development or Extension, Public or Private’ as a conditional use in this zone, and

1 In their second assignment of error, petitioners argue that the hearings
2 officer's interpretation of Table 1 improperly construes that provision because it
3 is inconsistent with two LAWDUC purpose statements. ORS 197.835(9)(a)(D).
4 The first is LAWDUC 3.9810(1), which identifies the purpose of the county's
5 road and access policies and provides that the county's road standards "are
6 intended to provide access to new development in a manner which reduces
7 construction cost, makes efficient use of land, allows emergency vehicle access
8 while discouraging inappropriate traffic volumes and speeds, and which
9 accommodates convenient pedestrian and bicycle circulation." Petitioners argued
10 below that LAWDUC 3.9810(1) supports their preferred interpretation of Table
11 1 to the effect that a proposed road improvement cannot be evaluated in isolation
12 from the development to be served by the road. The hearings officer rejected that
13 argument, noting that LAWDUC 3.9810(1) is simply a purpose statement, not an
14 approval criterion. To the extent that LAWDUC 3.9810(1) has some bearing on
15 the proper interpretation of Table 1, the hearings officer noted that the purpose
16 statement does not require concurrency or any kind of temporal connection
17 between road construction and the uses to be served by the road.

18 The second purpose statement is LAWDUC 4.0610, which provides that
19 one purpose of the AC-RCR zone is to allow low-density housing that will not

no other 'Applicable Standards' or 'Additional Requirements' are listed for that use." AR 8.

1 “adversely impact adjacent resource lands.”⁸ Petitioners argue that the wetlands
2 and habitat in the right-of-way are “adjacent resource lands” referenced in the
3 purpose statement at LAWDUC 4.0610 and, therefore, the purpose statement is
4 a relevant consideration in interpreting Table 1.⁹

5 Initially, petitioners argue that the hearings officer erred in dismissing the
6 purpose statements at LAWDUC 3.9810(1) and LAWDUC 4.0610 simply
7 because they are purpose statements and not approval criteria. Petitioners argue

⁸ LAWDUC 4.0610 provides:

“The [AC-RCR] zone is intended to accommodate the immediate and foreseeable demand for low density housing in Clatsop County’s rural communities. This zone has been developed with the purpose to: (1) Allow residential development that is compatible with rural communities that wish to maintain a primarily single family rural residential character, (2) do not adversely impact adjacent resource lands, (3) allow for minimum lot sizes and densities, that will provide for an ultimate build out that is more commensurate with actual physical, and (4) environmental constraints, and the availability of community water and sewer facilities, and may provide for non-residential uses that are small in scale, intended for the needs of the local community or for people traveling through the rural community, and are compatible with surrounding uses.”

⁹ Petitioners do not explain their assertion that the phrase “adjacent resource lands” in LAWDUC 4.0610 refers to areas with natural resources within the AC-RCR zone. That assertion is dubious, at best. “Adjacent resource lands” almost certainly refers to resource lands, *i.e.*, lands designated and zoned for farm and forest uses, that are adjacent to rural residential lands zoned AC-RCR, not lands within the AC-RCR zone itself.

1 that the county cannot adopt an interpretation of Table 1 that is inconsistent with
2 its purpose or underlying policy, citing ORS 197.829(1)(b) and (c).¹⁰ According
3 to petitioners, the hearings officer must interpret Table 1 in light of the relevant
4 purpose statements at LAWDUC 3.9810(1) and LAWDUC 4.0610. Petitioners
5 contend that, properly construed, the purpose statements at LAWDUC 3.9810(1)
6 and LAWDUC 4.0610 support petitioners' preferred interpretation of Table 1 to
7 prohibit consideration of a stand-alone application for a road improvement
8 without a concurrent application for development to be served by the road
9 improvement.

10 A hearings officer's code interpretation is generally not subject to a
11 deferential standard of review on appeal. However, a governing body's
12 interpretation of its land use legislation *is* generally subject to a deferential
13 standard of review. *Siporen v. City of Medford*, 349 Or 247, 260-61, 243 P3d 776

¹⁰ ORS 197.829(1) provides, in relevant part:

“[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

“(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

“(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation; [or]

“(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]”

1 (2010). As noted above, the board of commissioners expressly adopted the
2 hearings officer’s code interpretations as its own.

3 We disagree with petitioners that the hearings officer erred. The hearings
4 officer noted, accurately, that the purpose statement at LAWDUC 3.9810(1) does
5 not, itself, include any approval criteria. The hearings officer then explained why
6 nothing in LAWDUC 3.9810(1) suggests that a road improvement authorized
7 under Table 1 must be accompanied by an application for development to be
8 served by the road. That interpretation is entirely consistent with the express
9 language of Table 1 and not inconsistent with LAWDUC 3.9810(1), assuming
10 the latter constitutes context or a relevant purpose statement for the former. We
11 affirm the county’s interpretation.

12 The hearings officer did not address the purpose statement at LAWDUC
13 4.0610, and there is no express interpretation of that purpose statement in the
14 findings. However, we agree with intervenors that petitioners have failed to
15 demonstrate that anything in LAWDUC 4.0610 suggests that a road improvement
16 authorized by Table 1 can be approved only if accompanied by a concurrent
17 application for development. Petitioners have not established that the hearings
18 officer’s plain reading of Table 1 is “inconsistent” with any context or
19 interpretive aid provided by the purpose statement at LAWDUC 4.0610.

20 The second assignment of error is denied.

1 **THIRD ASSIGNMENT OF ERROR**

2 Petitioners’ third assignment of error is that the findings are inadequate
3 because they are inconsistent. In addressing LAWDUC 2.4030(3)(C)(4), the staff
4 report that the hearings officer incorporated into their decision includes a section
5 labeled “**APPLICANT RESPONSE**” that recites Smith’s position that the
6 proposed 150-foot road extension will cause “no impact to wetlands or natural
7 features.” AR 25. The following section is labeled “**STAFF FINDINGS and**
8 **CONCLUSION,**” includes a staff discussion of the 40-foot turnaround required
9 by the public works department, and finds that the 190-foot road improvement
10 “may impact a portion of an identified wetland within the right-of-way.” *Id.*

11 Petitioners argue that the “findings” in those two sections conflict, first
12 indicating that there will be no impact on wetlands and then concluding there
13 may be an impact. Petitioners contend that remand is required for the county to
14 resolve the inconsistency in the findings.

15 Intervenors respond, and we agree, that the first section simply recites
16 Smith’s position with regard to the originally proposed, 150-foot-long road
17 improvement and is not a staff finding or conclusion that the 150-foot-long road
18 would not impact the wetland in the right-of-way. Staff’s findings and
19 conclusions are located in the second section, expressly labeled as such. The two
20 sections do not include conflicting findings. With that understanding, petitioners’
21 arguments under this assignment of error do not provide a basis for reversal or
22 remand.

- 1 The third assignment of error is denied.
- 2 The county's decision is remanded.

Certificate of Mailing


I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2021-085 on April 18, 2022, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Christopher D. Crean
Beery Elsner & Hammond, LLP
1804 NE 45th Avenue
Portland, OR 97213

Garrett H. Stephenson
Schwabe, Williamson & Wyatt PC
1211 SW 5th Avenue, Suite 1900
Portland, OR 97204

Sean T. Malone
Attorney at Law
259 E. 5th Avenue, Suite 200-C
Eugene, OR 97401

Dated this 18th day of April, 2022.


Jessica Loftis
Executive Support Specialist

Erin Pence
Executive Support Specialist

EXHIBIT D

*Notice of Intent to Appeal
September 21, 2021*

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 OREGON COAST ALLIANCE, ARCH)
5 CAPE FALCON COVE BEACH)
6 COMMUNITY CLUB, and STUART)
7 SANDLER)

8)
9 Petitioners,)

10)
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18)

LUBA No. _____

11 vs.)

13 CLATSOP COUNTY,)

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18)

Respondent.

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NOTICE OF INTENT TO APPEAL

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I.

21 Notice is hereby given that Petitioners intend to appeal the land use
22 decision or limited land use decision of Respondent as described in the
23 Resolution and Order Denying Review and Affirming the Hearings Officer
24 Decision in Land Use Case Smith Conditional Use Appeal Application #21-
25 000005 (Doc # 2021080041), attached as Exhibit A. The decision was signed
26 on August 31, 2021. *Id.* This Notice of Intent to Appeal is timely filed within
27 21 days, on September 21, 2021

28)
29)

II.

29 Petitioners are represented by:

1 Sean T. Malone, OSB # 084060
2 Attorney at Law
3 259 E. 5th Ave, Ste 200-C
4 Eugene OR 97401
5 (303) 859-0403
6 seanmalone8@hotmail.com
7

8 III.

9 Respondent has as its mailing address and telephone number as:

10
11 Clatsop County Board of Commissioners
12 800 Exchange St. Ste 410
13 Astoria, OR 97103
14 (503) 325-1000

15 and has as its legal counsel:

16
17 Christopher Crean, OSB No. 942804
18 Beery Elsner Hammond LLP
19 1804 NE 45th Ave
20 Portland OR 97213
21 (503) 226-7191
22

23 IV.

24 The Applicant is:

25
26 Cy and Diane Smith
27 17339 S. Century Drive
28 Bend OR 97707
29 (503) 348-9190
30

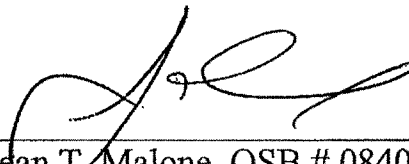
31 Other persons mailed or emailed written notice of the land use decision
32 by the Respondent, as indicated by its records, are listed in Exhibit B.

33 NOTICE:

34 Anyone designated in paragraph IV of this Notice who desires to

1 participate as a party in this case before the Land Use Board of Appeals must
2 file with the Board a Motion to Intervene in this proceeding as required by
3 OAR 661-10-0050.

4 Dated: September 21, 2021

5 
6 _____
7 Sean T. Malone, OSB # 084060
8 Attorney at Law
9 259 E. Fifth Ave, Ste 200-C
10 Eugene OR 97405
11 (303) 859-0403
12 seanmalone8@hotmail.com

13
14 Certificate of Service

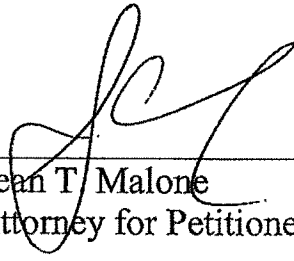
15 I hereby certify that on September 21, 2021, I served a true and correct
16 copy of the foregoing on all persons listed in paragraphs III and IV of this
17 Notice pursuant to OAR 661-010-0015(2) by first class mail or electronic mail
18 where an electronic mail address was included on the local government's notice
19 list.

20 Certificate of Filing

21 I hereby certify that on September 21, 2021, I filed the original of the
22 foregoing, together with two copies, with the Land Use Board of Appeals, DSL
23 Building, 775 Summer Street NE, Suite 330, Salem OR 97301-1283, by
24 certified mail, return receipt requested.

25 Dated this 21st day of September, 2021.

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Sean T. Malone
Attorney for Petitioner

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IN THE BOARD OF COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

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DENYING REVIEW AND AFFIRMING)
THE HEARINGS OFFICER DECISION) RESOLUTION AND ORDER
IN LAND USE CASE SMITH CONDITIONAL)
USE APPEAL APPLICATION #21-000005)

WHEREAS, on August 16, 2021, Cameron LaFollette, on behalf of Oregon Coast Alliance (ORCA); Charles Dice and Linda Eyerman, on behalf of Arch Cape Falcon Cove Beach Community Club; and Stuart Sandler filed a Notice of Appeal of the Hearings Officer's Decision (#21-000325) on the Smith Conditional Use Permit (#21-000005);

WHEREAS, on August 25, 2021, pursuant to Clatsop County Land and Water Development and Use Code Section 2.2210, the Board of Commissioners considered the scope of review for an appeal of the Hearings Officer's Decision;

WHEREAS, the Board of Clatsop County Commissioners reviewed the record of the Clatsop County Hearings Officer, attached, Exhibit 1, including the staff report and exhibits; and

WHEREAS, the Board of Clatsop County Commissioners adopts the Hearings Officer's decision in its entirety, including any and all interpretations of the Clatsop County Land and Water Development and Use Code #21-03;

NOW, THEREFORE IT IS HEREBY ORDERED:

1. Pursuant to Land and Water Development and Use Code Section 2.2210, the Board of Clatsop County Commissioners declines to review Appeal Application #21-000325; and
2. The Board of Clatsop County Commissioners adopts the Hearings Officer's decision dated August 3, 2021 as its own, including any code interpretations set forth therein.

Dated this 31st day of August, 2021

BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON



Mark Kujala, Chairperson

Annette Brodigan	Environmental Health				abrodigan@co.clatsop.or.us
Arch Cape Falcon Cove Community Club					acfbcc@gmail.com
Cameron LaFollette	Oregon Coast Alliance				cameron@oregoncoastalliance.org
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Daniel Evans	Department of State Lands				Daniel.Evans@state.or.us
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Mark Reckmann	Cannon Beach RFPD				mreckmann@cbfire.com
Misty Metcalf Ogiar	Clatsop Soil and Water Conservation District				<u>office@clatsopswcd.org</u>
ODOT	Region 2				ODOTR2PLANMGR@ODOT.STATE.OR.US
Paul Atwood	Oregon Department of Fish and Wildlife				Paul.M.Atwood@state.or.us
Phil Chick	Arch Cape Sanitary District/Arch Cape Domestic Water District				philchickacutil@gmail.com
Sandler Stuart B	Bevis Jeanne	19419 NW Reeder Rd	Portland	OR	9723 1
Smith Cy/Diane L		17339 S Century Dr	Bend	OR	97707-2524
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Terry Hendryx	Assistant Public Works Director				thendryx@co.clatsop.or.us

Vito Cerelli		vito.cerelli@gmail.com
Phillip Quarterman		philquarterman@gmail.com
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Linda Eyeran		linda@gaylordeyeran.com
Jan Siebert-Wahrmund	P.O. Box 778 Cannon Beach OR 97110-0778	
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Stuart Sandler		stusan47@gmail.com
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Dean Keranen	County Engineer	dkeranen@co.clatsop.or.us

Jevra Brown	Department of State Lands	jevra.brown@state.or.us
Lisa Phipps	DLCD	lisa.phipps@state.or.us
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Smith Cy/Diane L		ctsremodel@gmail.com
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Arch Cape Falcon Cove Community Club		acfcbcc@gmail.com
Christopher Achterman		cachterm@gmail.com
Oregon Coast Alliance		cameron@oregoncoastalliance.org
Jim Jensvold		jjjensvold@aol.com
ODOT		odotr2planmgr@odot.state.or.us
Don Reynolds		don.reynolds22@gmail.com

EXHIBIT E

Board Resolution and Order

August 31, 2021

IN THE BOARD OF COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

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DENYING REVIEW AND AFFIRMING)
THE HEARINGS OFFICER DECISION) RESOLUTION AND ORDER
IN LAND USE CASE SMITH CONDITIONAL)
USE APPEAL APPLICATION #21-000005)

WHEREAS, on August 16, 2021, Cameron LaFollette, on behalf of Oregon Coast Alliance (ORCA); Charles Dice and Linda Eyeran, on behalf of Arch Cape Falcon Cove Beach Community Club; and Stuart Sandler filed a Notice of Appeal of the Hearings Officer's Decision (#21-000325) on the Smith Conditional Use Permit (#21-000005);

WHEREAS, on August 25, 2021, pursuant to Clatsop County Land and Water Development and Use Code Section 2.2210, the Board of Commissioners considered the scope of review for an appeal of the Hearings Officer's Decision;

WHEREAS, the Board of Clatsop County Commissioners reviewed the record of the Clatsop County Hearings Officer, attached, Exhibit 1, including the staff report and exhibits; and

WHEREAS, the Board of Clatsop County Commissioners adopts the Hearings Officer's decision in its entirety, including any and all interpretations of the Clatsop County Land and Water Development and Use Code #21-03;

NOW, THEREFORE IT IS HEREBY ORDERED:

- 1. Pursuant to Land and Water Development and Use Code Section 2.2210, the Board of Clatsop County Commissioners declines to review Appeal Application #21-000325; and
- 2. The Board of Clatsop County Commissioners adopts the Hearings Officer's decision dated August 3, 2021 as its own, including any code interpretations set forth therein.

Dated this 31st day of August, 2021

BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON



Mark Kujala, Chairperson



Clatsop County

Community Development
800 Exchange St., Suite 100
Astoria, Oregon 97103
www.co.clatsop.or.us

Phone (503) 325-8611
Fax (503) 338-3666

HEARINGS OFFICER'S DECISION

Conditional Use Permit #186-21-000005

Appeal #186-21-000325-PLNG

DECISION DATE: August 3, 2021

SUMMARY OF DECISION: **APPEAL DENIED, CONDITIONAL USE APPROVAL AFFIRMED AS MODIFIED**

HEARING DATE: June 22, 2021

REQUEST: Appeal of the approval of a Conditional Use Permit for public road extension and development within existing public right-of way to access property owned by the Applicant

APPLICANT: Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707

APPELLANTS: Oregon Coast Alliance (ORCA)
Arch Cape Falcon Cove Beach Community Club (ACFCBCC)

PROPERTY DESCRIPTIONS: A portion of the Anvil Rock Road right-of-way, a publicly dedicated right-of-way, north of East Shingle Mill Lane, east of East Beach Road, and west of Fire Rock Road.

Lots 3-5, Block 46, Cannon Beach Park Extension, recorded with the Clatsop County Clerk on October 11, 1926 (Clatsop County Book of Deed Records, Book 8, Page 43) (Taxlot 4302)

ZONING ARCH CAPE – RURAL COMMUNITY RESIDENTIAL (AC-RCR)

PROPERTY SIZE: Anvil Rock Road ROW: approx. 6,000 sq. ft.
Property owned by applicant: approx. 14,180 sq. ft (0.34 acre)

COMP PLAN DESIGNATION: Southwest Coastal Community Plan

Exhibits:

A – Conditions of Approval

B – Staff Report, dated April 23, 2021

FINDINGS AND CONCLUSIONS:

A. Introduction and Background

The Applicant is the owner of Lots 3-5, Block 46, Cannon Beach Park Extension, recorded with the Clatsop County Clerk on October 11, 1926 (Clatsop County Book of Deed Records, Book 8, Page 43), also identified as Tax Lot 4302 ("Applicant's Property"). Applicant's Property is adjacent to an unimproved, publicly-dedicated right-of-way identified as Anvil Rock Road. A portion of the Applicant's Property and the unimproved right-of-way comprise the Site for purposes of this Decision.

On or about January 19, 2021, Applicant submitted an application for conditional use approval that would allow the development of Anvil Rock Road from its intersection with East Shingle Mill Lane approximately 150 feet north.

The County Planning Department ("Staff") deemed the Application complete on January 29, 2021. Staff processed the Application through the County's Type II process. On April 23, 2021, Staff recommended approval of the Application ("Staff Report"). Based on the recommendation in the Staff Report, the Director of the Community Development Department ("Director") approved the conditional use, with conditions, and issued a Notice of Decision, also on April 23, 2021 ("Director's Decision").

Appellants timely filed an appeal of the Director's Decision on May 5, 2021. On May 28, 2021, the County provided notice of a public hearing for the appeal, which was also published in *The Astorian* on June 12, 2021.

B. Hearing Summary

A *de novo* Hearing in this matter was held on June 22, 2021. Due in part to restrictions on in person meetings as a result of the COVID-19 pandemic, the hearing was held via video conference, with all participants appearing by video or phone from various remote locations.

As the Hearings Officer, I began the hearing at approximately 9:08 a.m. I provided participants with the statements required by statute related to quasi-judicial proceedings. I noted for the record that I did not have any *ex parte* contacts to disclose and that I had not visited the subject property. I explained my role as Hearings Officer and my obligation to apply the facts in the record to the applicable criteria. No participant objected to the County's jurisdiction over the Application or to me serving as the Hearings Officer, and no other procedural or jurisdictional objections were made.

Staff provided an oral summary of the Staff Report and Director's Decision, noting the applicable criteria. The Applicant appeared at the Hearing and stated its intent to rely on the application and Staff Report as the basis for approval. Three individuals spoke in support of the Application. Lisa Kerr appeared on behalf of both Appellants and also presented live testimony. Multiple individuals spoke in opposition to the Application.

During the hearing, Staff noted that some additional comments were received prior to the hearing and asked that those comments be included in the record. No objection was made, and I find no basis to exclude those materials. Thus, the record includes all of the materials provided to the Hearings Officer, including those comments that were submitted to the County prior to the Hearing. Staff has provided a copy of those materials to the Hearings Officer.

I closed the hearing and went off the record at approximately 11:10 a.m., taking this decision under advisement.

C. Decision on the Application

I find that the Director's Decision, dated April 23, 2021, and styled NOTICE OF DECISION, which incorporates the Staff Report, sets forth the applicable criteria relating to the conditional use approval for the extension of roads within the publicly-dedicated right-of-way. Based on the materials in the Application, the Director's Decision, and the information presented by other participants before and during the Hearing, I affirm the Director's Decision on appeal, as modified in this Decision. Except as supplemented below, I hereby adopt the findings in the Director's Decision as my findings. Where no participant other than the Applicant or Staff addressed an applicable criterion, my findings rely wholly on the explanation in the Director's Decision as the basis for concluding that the criterion is satisfied. Where a participant other than the Applicant or Staff did address a criterion, I provide further explanation of each criterion in these findings.

The conditions of approval are set forth in Exhibit A to this Decision and replace the conditions of approval as presented in the Director's Decision.

D. Findings for Disputed Criteria

1. Lack of Associated Development

One of the primary issues raised on appeal is whether a conditional use permit for a road can be granted if there is no specific proposal for new development to be served by the road. Appellants raised this issue in their written comments and again during live testimony. Appellants argue that the Applicant desires, but does not need, a developed road.

The Site is located within the Arch Cape - Rural Community Residential ("AC-RCR") Zone. The AC-RCR Zone is unique in that it authorizes private and public road extensions as an independent use in addition to other permitted or conditional uses. Specifically, Section 4.0620 of the Land and Water Development and Use Code ("LAWDUC" or Code) refers to Table 1 and the permitted and conditional uses allowed in the AC-RCR Zone. Item 98 of Table 1, in turn, identifies "Road Development or Extension, Public or Private" as a conditional use in this zone, and no other "Applicable Standards" or "Additional Requirements" are listed for that use.

Appellants argue that the Applicant's sole motivation for the Application is to be able to drive to the vacant Property, and that the Applicant has "has no plans or time frame for residential development." Because the Code does not impose any other applicable standards or additional requirements for the road extension use, however, only the Code's conditional use criteria are applicable, and the Applicant's motivation is irrelevant as long as the applicable criteria are satisfied. Those criteria are addressed in the Director's Decision and in the findings below. None of those criteria imposes an express requirement on a road extension that the road be developed only in conjunction with another development, or that a road be developed only to access developed property. Indeed, not all uses allowed in the AC-RCR Zone require development, and a property owner may, for example, use property for low intensity recreation as an outright permitted use. Accessing the property by car is consistent with that use. No participant in this proceeding identified any Code provision that expressly requires a conditional use permit for a road extension be approved only if new development will be served from that road.

Appellants rely in part on LAWDUC Section 3.9810 to support their argument that roads must serve new development only. The relevant language in that Code section states "[t]he Clatsop County Road Standards are intended to provide access to new development in a manner which reduces construction cost, makes efficient use of land, allows emergency vehicle access while discouraging inappropriate traffic volumes and speeds, and which accommodates convenient pedestrian and bicycle circulation." First, this Code section is a purpose statement and, itself, does not contain any approval criteria. Even so, this Code section does not contain a temporal element. In other words, proposed road extension, if approved, will provide access to new development if such

development is proposed in the future, which is consistent with the Code language cited. Third, the record indicates that the proposed road will be built to a standard that allows for emergency vehicle access, which may be necessary even if no new development occurs, which is part of the purpose of this Code section. I therefore find that this Code section does not prohibit issuance of the conditional use approval for the proposed road extension.

Appellants rely in part on LAWDUC 3.9510, which states in part “[t]he regulations in this section further the orderly layout and use of land, protect community character, and conserve natural resources by promoting well-designed road and access systems and discouraging the unplanned subdivision of land.” This Code section is a purpose statement and, itself, does not contain any approval criteria. Rather, this provision describes the end result if the access and circulation standards are applied. Even so, this Code section does not contain a temporal element. I therefore find that this Code section does not prohibit issuance of the conditional use permit for the proposed road extension.

Appellants also rely on LAWDUC 3.9620(1). LAWDUC section 3.9620(1), however, is part of the County’s Subdivision Design Standards. The proposed use here is not part of a subdivision application and, therefore, this Code provision is not applicable.

2. Conditional Use Criteria

LAWDUC Section 2.4000 sets forth the requirements for the approval of a conditional use. I find that the Director’s Decision, which incorporates the Staff Report it relies on, explains with adequate detail how these criteria are met and the evidence that can be relied on to meet those criteria. Appellants’ challenges to those criteria are addressed below.

a. LAWDUC Section 2.4030(3)(A)

Appellants first argue that LAWDUC Section 2.4030(3)(A) cannot be met. That Code section requires that a proposed use “not conflict with any provision, goal, or policy of the Comprehensive Plan.” Appellants assert that the proposed use conflicts with Objective 2 of Goal 8 in the County’s Goal 12 (Transportation) portion of the Comprehensive Plan (“Transportation Objective 8-2”). That Objective states that the County’s objective is to “[c]onsider transportation impacts when making land use decisions, and consider land use impacts (in terms of land use patterns, densities, and designated uses) when making transportation-related decisions.”

Appellants also assert that the proposed use conflicts with the Comprehensive Plan’s provisions that “requires the reviewer to weigh factors supporting road development against the environmental harm that it might cause,” citing in part to Objective 4 of Goal 7 in the County’s Goal 12 (Transportation) portion of the Comprehensive Plan (“Transportation Objective 7-4”). Appellants specifically raise concerns regarding impacts from tree removal, impacts to big game wildlife habitat, and impacts to wetlands.

It is well-established that a city or county maintains consistency with comprehensive plan provisions through the enactment of land use regulations. In other words, unless a comprehensive plan imposes a distinct approval criterion, compliance with land use regulations implementing the comprehensive plan is deemed to be in compliance with the comprehensive plan itself. “[W]hether a particular plan provision is an approval criterion for conditional use permit applications must be determined from the function that the plan itself assigns to the provision.” *Von Lubken v. Hood River Cty.*, 104 Or App 683, 689, (1990), *on reconsideration*, 106 Or. App. 226 (1991). The Land Use Board of Appeals has similarly held that to apply a comprehensive plan provision as an approval criterion, the text and context of the comprehensive plan must establish both (1) that the plan requirement is mandatory and (2) that the mandate must be applied directly as an approval standard. *See Friends of the Hood River Waterfront v. City of Hood River*, 68 Or LUBA 459, *4 (2013).

Appellants do not explain why the proposed road extension conflicts with any of the Comprehensive Plan objectives they cite to. Further, I do not find any support in the Comprehensive Plan, and no party has identified any such support, for concluding that any of those provisions are mandatory criteria. Transportation Objective 8-2, for example, simply states that land use and transportation decisions will inform each other. Here, the land use decision is the decision to develop a road within a dedicated right of way. To the extent that decision is also a transportation-related decision, it is based on land use criteria for conditional uses, and it ultimately takes into consideration the development that might be served by ensuring it can accommodate certain utilities and emergency vehicle access. The conditional use permit process, therefore, accomplishes exactly what this objective sets out to do. Transportation Objective 7-4 similarly states only that the County will minimize transportation impacts on wetlands and wildlife habitat. Those impacts are reviewed either as part of this process, or through the development permit the Applicant will have to obtain prior to actually constructing the road. As explained in these Findings, the proposed use is consistent with the County's land use regulations implementing the Comprehensive Plan. I therefore find that the proposed use does not conflict with any provision, goal, or policy of the Comprehensive Plan.

With respect to big game wildlife habitat, the County implements its Comprehensive Plan provisions by mapping and protecting such habitat in certain zones. For conditional uses, LAWDUC Section 2.4030(3)(G) requires consideration to be given to the cumulative effects of the proposed development on big game habitat. That Code section, however, applies only to land identified in the Comprehensive Plan as Agricultural Lands or Conservation Forest Lands. It is undisputed in the record that the Site is not part of any such designation and, instead, is part of the AC-RCR Zone. There is therefore no basis to apply LAWDUC Section 2.4030(3)(G) to this Application. I therefore find that the findings in the Staff Report are sufficient to determine that the proposed use does not conflict with the big game wildlife habitat portions of the Comprehensive Plan.

With respect to wetlands, the record includes evidence of a wetland delineation and the fact that most, if not all, of the proposed use will avoid the delineated wetland. As the Staff Report notes, if more than 30 cubic yards will be removed, filled, or relocated as part of the road construction project, or if construction activities will occur within 50 feet of mapped or known wetlands, the Applicant will be required to submit a grading and erosion control plan for review. Further, the Applicant will have to comply with state regulations. Compliance with these provisions can be achieved during the development permit process, and the Director's Decision proposed conditions of approval for that purpose. There is no evidence or argument in the record that these subsequent approvals are not legally available to the Applicant. I therefore find that, with the conditions of approval, the proposed use is consistent with the County's Comprehensive Plan provisions cited by Appellants.

b. LAWDUC Section 2.4030(3)(B)

Appellants next argue that LAWDUC section 2.4030(3)(B) cannot be met. That Code section requires that a proposed use meets the requirements and standards of all other applicable Code sections. As explained in the Director's Decision and in these Findings, all other Code provisions applicable to the road extension are satisfied; LAWDUC section 2.4030(3)(B) is therefore also satisfied.

In support of their argument, Appellants again rely on LAWDUC sections 3.9510 and 3.9620(1), which are addressed above. Appellants also rely on LAWDUC section 4.0610(2), which is part of the purpose of the AC-RCR Zone and is not an approval standard. In contrast, it is part of what the Code states is one of the purposes for which the AC-RCR provisions were developed. In other words, it is the end-result of applying the standards in the zone and not a standard itself to be applied.

Appellants also cite to LAWDUC 4.0630(3)(E)(5), which requires that the "landscape shall be preserved in its natural state to the maximum extent possible by minimizing tree, vegetation and

soils removal.” Although Appellants do not explain why the proposed use is inconsistent with this Code provision, they do assert in later arguments that the conditions of approval in the Director’s Decision are inadequate to show this standard is met. Because the construction of a road necessarily requires the removal of vegetation, I find that it is not possible to preserve the landscape within the developed portion of the road. Development of the road is therefore consistent with this Code provision. Outside the developed portion of the road, however, this Code provision still applies, and the landscape must be preserved in its natural state to the maximum extent possible. The Director’s Decision proposes to satisfy this criterion by requiring the Applicant to include a tree removal plan when it submits an application for grading, drainage, and erosion control to Clatsop County Public Works. The condition of approval in the Director’s Decision would expressly require that existing natural vegetation be preserved to the maximum extent possible. Whether vegetation removal can be preserved, however, is to be determined in this proceeding. The Applicant has not proposed to remove any vegetation beyond that which is necessary to construct the road extension. I therefore find that the original condition of approval in the Director’s Decision should be slightly modified to conform with the Applicant’s proposal, and that the tree removal plan should identify only those trees to be removed either because they are within the footprint of the road extension or because their removal is necessary to construct the road or to meet the County’s road standards as determined by Public Works; all other trees and vegetation on the Property should be preserved. With this revised condition, I find that 4.0630(3)(E)(5) can be satisfied.

3. Miscellaneous Issues

a. Adequacy of Conditions

Appellants argue that Conditions #5 and #10 are inconsistent with the proposed development. Condition #5 requires the Applicant to adhere to Public Works permit #21-02, which Appellants state requires the Applicant to “stay out of delineated wetlands.” Condition #10 requires the Applicant to construct the road 40 feet beyond the planned driveway access in order to accommodate a required turnaround area. I find that there is nothing inconsistent about these conditions and the proposed development of the road. Through this conditional use permit process, the Applicant is seeking conditional use approval to develop the road surface within the right-of-way. The actual development of the road will occur through development and other regulatory permits. The record does not contain any evidence or argument that these other permits are not legally available to the Applicant. Once the Applicant obtains land use approval, the risk that the Applicant cannot obtain a specific development permit lies with the Applicant. Thus, for example, if the Applicant is not able to avoid the delineated wetland as part of the development process, the Applicant may not be able to proceed with the development of the road if avoiding the delineate wetland is a condition of that permit. Requiring the Applicant to go through that subsequent process, however, is appropriate as part of this conditional use permit process. Further, Condition #5 expressly states that any changes to the access must be approved by both the Planning Division and Public Works departments to ensure continued compliance with access and road standard requirements.

Appellants also argue that Condition #6 is inconsistent with the proposed development. That condition requires the Applicant to dedicate five feet of land along the east line of Applicant’s Property to bring the right-of-way width closer to conformance with road standards. As Appellants note, the Applicant does not own all of the property adjacent to the right-of-way proposed for development. As with Conditions #5 and #10, I find that Condition #6 is appropriate, even if it imposes some risk to the Applicant. The Applicant has agreed to construct the road to a certain County standard (the “A-22” standard). As explained in the Staff Report, that standard generally requires a right-of-way that is 50 feet wide, but results in a gravel road surface that is only 20 feet wide. The record is not clear whether the road can be constructed within a narrower, 40-foot right-of-way. However, that determination can be made by Public Works as part of a subsequent permit process. While the dedication of the extra right-of-way along the Applicant’s Property will help

ensure the right-of-way width is sufficient adjacent to that property, the burden will be on the Applicant to demonstrate to Public Works that that road can be constructed along the entire area proposed for development. This conditional use permit does not alter the County's road standards or purport to allow the Applicant to construct a road that does not meet those standards. I therefore find that that Condition #6, which the Applicant has agreed to, is appropriate and is not inconsistent with the proposed development of the road, as long as the Applicant meets the other conditions of approval and constructs the road consistent with the County's standards.

b. Application Process

Appellants argue that the Director's Decision was in error because the Director did not elevate the Application to a Type II(a) review. Appellants state that the Planning Commission should be the decision maker in this proceeding. Appellants' argument is not grounded in the terms of the County's Code. A Type II(a) proceeding is to be reviewed by a Hearings Officer rather than the Planning Commission. Further, as Appellants note, the Director has discretion to elevate a Type II review to a Type II(a) review. Appellants do not cite to any Code provision that mandates use of the Type II(a) procedure in this case. Even if they had, this appeal, which has now come before a Hearings Officer as a *de novo* proceeding, provides Appellants with the same procedure as a Type II(a) proceeding. I therefore find that the Application was reviewed appropriately and that there is no basis in the Code to send this matter to the Planning Commission.

E. Conclusion

Based on the foregoing findings, the appeal is **DENIED**, the Director's Decision is **AFFIRMED**, and the conditional use approval is **APPROVED** subject to the Conditions of Approval in Exhibit A.



Tommy A. Brooks
Clatsop County Hearings Officer

Exhibit A

To Hearings Officer's Decision

Conditions of Approval

1. The roadway extension shall be constructed to the County's A-22 road standard and will have a 20-foot-wide gravel travel surface.
2. The proposed 50' x 14' gravel driveway on TL 04302 is not permitted as part of this conditional use approval.
3. The applicant shall provide documentation from Clatsop County Public Works that all required street signage has been paid for by the applicants and installed by Public Works prior to the issuance of a development permits for TL 04302.
4. The Anvil Rock Road extension shall be depicted on the final site plan, including dimensions and materials, and shall demonstrate compliance with all applicable standards found in Sections 3.9540 and 3.9830.
5. The applicants shall adhere to all requirements of Permit #21-02. The access will be constructed as indicated on the site plan submitted by the applicant in conjunction with this Conditional Use Permit application and as approved on Operations Permit #21-02. Any changes to the access must be approved by both the Planning Division and Public Works departments to ensure continued compliance with access and road standard requirements.
6. The applicants shall dedicate an additional five feet of right-of-way along the entire length of the east property line of TL 04302 prior to submitting development permits for the adjacent TL 04302.
7. The applicants shall submit a grading, drainage and erosion control plan for review and approval by Public Works prior to the commencement of construction for the roadway. The proposed roadway will be required to comply with all applicable requirements of Section 3.2000.
8. The applicant shall include a tree removal plan identifying all trees six inches in diameter or larger, measured at a height of four and one-half feet above the natural grade. This tree removal plan shall be submitted with the grading, drainage, and erosion control review documents. The tree removal plan shall show the removal of trees only where such removal is within the area to be developed for the road or where removal is necessary to accommodate the construction of the road to meet County road standards.
9. The applicants shall demonstrate that any impacts to the delineated wetland from road construction activities comply with all state permit requirements prior to a development order being issued for the project.
10. The applicants shall construct the road 40 feet beyond the planned driveway access in order to accommodate a required turnaround area.
11. The applicants will submit a development permit application, including approval from the Cannon Beach RFPD, documenting approval of the roadway extension.

Other regulations, including, but not limited to, the following also apply:

(1) Development shall comply with all applicable state, federal and local laws and regulations. The applicant shall provide the Planning Division with copies of any required state and/or federal permits.

(2) This approval is valid for a period of two (2) years from the date of approval. The Community Development Director can authorize one extension of up to 12 months.

(3) A complaint from neighbors shall be cause for review of the Conditional Use. The review may be a Type II County enforcement proceeding. In such proceeding, the Compliance Order may impose any of the conditions described in 5.025 of the Clatsop County Land and Water Development and Use Ordinance.

(4) Development shall comply with all applicable state, federal and local laws and regulations.

Exhibit B
To Hearings Officer's Decision
Staff Report



STAFF REPORT
Conditional Use Permit #21-000005

STAFF REPORT DATE: April 23, 2021

REQUEST: Conditional Use Permit for public road extension to access property owned by the applicants and including the installation of water, sewer and electric utilities

APPLICANTS: Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707

OWNERS/TL 41030CA04302: Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707

OWNER/ANVIL ROCK ROAD ROW: Publicly dedicated right-of-way, Plat of Cannon Beach Park Extension, Book 8, Page 43

DEEMED COMPLETE: January 29, 2021 (150 Days: June 28, 2021)

RIGHT-OF-WAY LOCATION: Anvil Rock Road within the existing public platted right-of-way, north of the East Shingle Mill Lane, east of East Beach Road and west of Fire Rock Road

ZONING: Arch Cape – Rural Community Residential (AC-RCR)

PROPERTY SIZE: Subject area within platted Anvil Rock Road right-of-way ~6,000 SF
Adjacent TL 04302: 0.34 acres (~14,810 sq. ft.)

IMPROVEMENTS: Assessor records do not indicate any improvements within the right-of-way or on TL 04302

COUNTY STAFF REVIEWER: Gail Henrikson, Community Development Director

STAFF RECOMMENDATION: Approval, subject to conditions.

AGENCY COMMENTS: Annette Brodigan, Clatsop County Environmental Health
Terry Hendrix, Clatsop County Public Works
Jevra Brown, Oregon Department of State Lands

PUBLIC COMMENTS: Oregon Coast Alliance (ORCA)
Arch Cape Falcon Cove Beach Community Club (ACFCBCC)
Christopher Achterman
Jim Jensvold
Stuart Sandler

EXHIBITS:

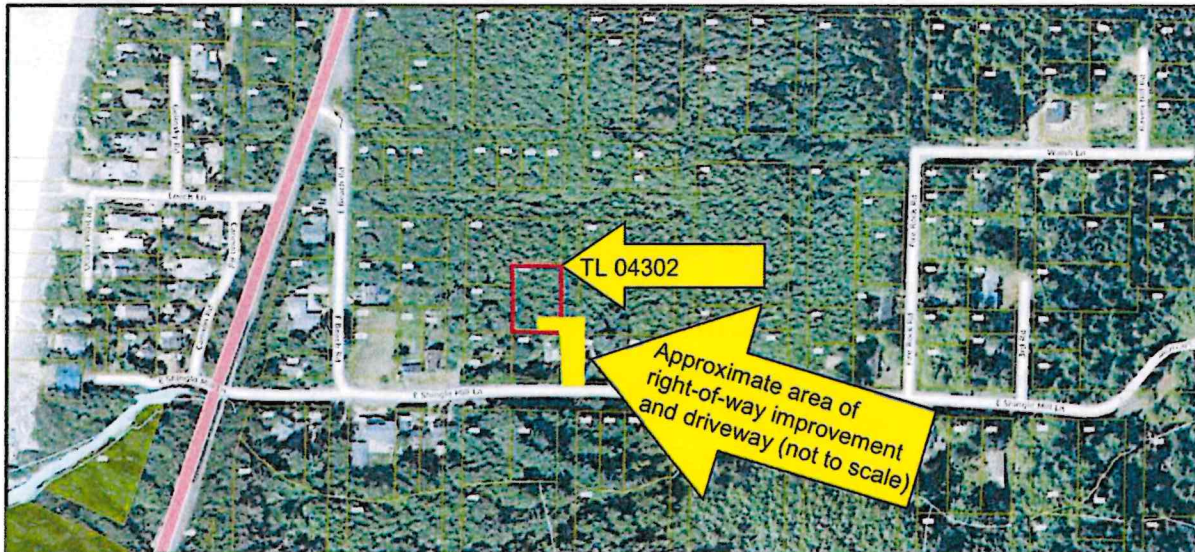
1. Application and Supporting Documents
2. Public Notice
3. Agency and Public Comments
4. Road Operations Permit #21-02
5. Arch Cape Local Wetland Inventory (2011)
6. Approved Wetland Delineation #2020-0667

I. SUMMARY

On January 19, 2021, Cy and Diane Smith submitted a conditional use application to extend the public, but unopened, Anvil Rock Road right-of-way, by constructing an access to the County's A-22 road standard. As proposed by the applicants, the access would extend north from East Shingle Mill Lane approximately 150 feet and would be approximately 20 feet in width with a gravel travel way. As will be discussed in further detail below, the applicants will be required to dedicate an additional five feet of right-of-way for Anvil Rock Road and will be required to extend the road an additional 40 feet in order to provide a required turnaround area. Concurrent with the road construction, the applicants will also be installing water, sewer and electric utilities to provide future service to TL 04302.

The proposed access would lead to a proposed 50' x 14' gravel driveway in the southeast quadrant of TL 41030CA04302 (TL 04302), owned by the Smiths. The purpose of the road extension is allow the applicants to obtain access to their property in preparation of future development of the parcel. Adequate vehicle and fire equipment access is a prerequisite to develop property with a use such as a residential dwelling, which is the predominant development type in the Arch Cape Rural Community Residential Zone (AC-RCR) and the anticipated use of the applicant's property.

2018 Aerial



Clatsop County GIS

PROPERTY STATUS

The platted right-of-way was dedicated to the public when the Plat of Cannon Beach Park Extension (Book 8, Page 43) was recorded on October 11, 1926. The public right-of-way is in the Arch Cape - Rural Community Residential (AC-RCR) zone. The property owned by the Smiths (TL 04302) consists of Lots 3-5, Block 46, Cannon Beach Park Extension, recorded with the Clatsop County Clerk on October 11, 1926 (Clatsop County Book of Deed Records, Book 8, Page 43). Tax Lot 04302 meets the county's definition of "lot of record". LAWDUC §1.0500.

PROPERTY CONDITIONS

The subject public right-of-way is heavily wooded and is slightly sloped. The subject public right-of-way and adjacent private property are served by the Arch Cape Sewer District and the Arch Cape Water District. The subject public right-of-way and adjacent private property are within the Cannon Beach Rural Fire Protection District. The public Anvil Rock Road is moderately-sloped, varying in elevation from approximately 20' at the south end of East Shingle Mill Lane to approximately 24' at the north end of the proposed road extension. Road operations permit #21-02 (Exhibit 4), discussed below, was issued by Clatsop County Public Works on January 12, 2021.



II. APPLICABLE CRITERIA

The applicable criteria for this land use application are contained in the following documents and sources:

Land and Water Development and Use Code (LAWDUC)

Article 1 Introductory Provisions

2.1020 Type II Procedure

2.2050 Procedure for Mailed Notice

2.4000-2.4050 Conditional Development and Use

3.2000 Erosion Control Development Standards

3.9800 Transportation Improvements and Road Standard Specifications for Design and Construction

4.0600 Arch Cape Rural Community Residential Zone

Clatsop County Comprehensive Plan

Goal 1 Citizen Involvement

Goal 2 Land Use Planning

Goal 5 Open Space, Historic and Cultural Areas and Natural Resources

Goal 6 Air, Water and Land Resources Quality

Goal 11 Public Facilities and Services

III. APPLICATION EVALUATION

A. Land and Water Development and Use Code (LAWDUC)

ARTICLE 1. INTRODUCTORY PROVISIONS

Section 1.0500. Definitions

ACCESS -- The way or means by which pedestrians and vehicles enter and leave property.

ACCESSORY USE -- A use customarily incidental and subordinate to the principal use and located on the same lot, tract or parcel.

BLOCK -- All land along one side of a street which is between two (2) intersections or intercepting streets, or interrupting streets and a railroad right-of-way, or unsubdivided land or water course.

BUILDING -- A structure built or placed for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

CLEAR-VISION AREAS -- A triangular shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection. (See 3.9530)

DEVELOPMENT -- Any man-made change to improved or unimproved real estate, including but not limited to: construction, reconstruction, conversion, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance, any use or extension of the use of land.

DRIVEWAY -- An improved travel surface, on privately owned property and maintained by private funds for the exclusive use of private parties, that is intended to provide access from a federal, state, county, public, or private road to no more than two lots, parcels, areas or tracts of land.

FILL -- The placement by man of sand, sediment or other material to create new uplands or raise the elevation of the land.

FRONTAGE -- All the property fronting on one (1) side of a street between intersecting or intercepting streets or between a street and right-of-way, waterway and/or dead-end street or county boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts.

LOT -- A single unit of land that is created by a subdivision of land as defined under ORS 92.010. In certain instances, this ordinance also uses the term "lot" in a broader sense inclusive of the terms parcel, unit of land, and tract of land. [Ord. 18-02]

LEGAL LOT -- A unit of land which meets the minimum requirements of the zone in which it is situated and is provided with a minimum 25-foot frontage upon a state, county or public road or which has access to a state, county, or public road by means of a private road easement.

BUILDABLE LOT -- A legal lot which is proposed for use in compliance with this Ordinance, and has received approval of the water supply and sewage disposal method as appropriate to such use.

LOT OF RECORD -- Any lot or parcel lawfully created by a subdivision or partition plat of record in the County Clerk's Office, or lawfully created by deed or land sales contract prior to land use partitioning requirements, and of record in the Deed Records of Clatsop County.

Development of a "lot of record" must meet all other applicable development standards, except for the

minimum lot size or lot dimensions of the zone. Development standards include all applicable requirements of the zone, overlay district, the Land and Water Development and Use Ordinance and the Standards Document, and state and federal statutes and administrative rules. Lot of record status does not authorize development of a lot or parcel without compliance with the requirements in Section 1.1020.

LOT CORNER -- A lot abutting on two or more streets, other than an alley, at their intersection.

LOT LINE, FRONT -- The property line separating the lot from the street, as defined in Section 1.0500, other than an alley, from which access is provided to the lot. For the purpose of establishing setback requirements, orientation of the dwelling unit is independent of access to the parcel. In the case of a corner lot, the front lot line is the property line with the narrow dimension adjacent to the street.

LOT LINE, SIDE -- Any property line which is neither a front nor a rear lot line.

LOT TYPES --

- 1) Corner lot: A lot of which at least two (2) adjacent sides border public or private streets or roads, other than alley

LOT WIDTH -- The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot lines.

PRINCIPAL USE -- The main use to which the premises are devoted and the principal purpose for which the premises exist.

PUBLIC ROAD -- A road over which the public has a right of use that is a matter of public record.

ROAD, PUBLIC -- A road over which the public has a right of use that is a matter of public record.

STREET -- A roadway dedicated to the public, which has been accepted by the Board that is created to provide ingress and/or egress to one (1) or more lots, parcels, areas or tracts of land including the terms road, highways, lanes, avenue, or similar designation.

Classification:

- 5) Local Road or Street: A road or street which a) serve primarily to provide access to adjacent land; and b) provide service to travel over relatively short distances as compared to collectors or other higher systems. They are designed specifically to have high accessibility and to connect to collector and arterial roads, and are typically not used for through traffic.

Types:

- 3) Stubbed Street: A street having only one (1) outlet for vehicular traffic and which is to be extended or continued to serve future subdivisions or development on adjacent property.

STRUCTURE -- Anything constructed, erected or air-inflated, permanent or temporary, which requires location on the ground or water, or attached to an existing structure. Among other things, structure includes residences, apartments, barns, cabins, buildings, walls, fences, billboards, poster panels, food stands and parking lots. [Ord. 18-02]

TEMPORARY STRUCTURE OR USE -- A non-permanent structure, use or activity involving minimal capital investment that does not result in the permanent alteration of the site and is removed from the site within one year. [Ord. 18-02]

TREE -- any woody plant having at least one well-defined stem at least six inches in diameter measured at a height of four and one-half feet above the natural grade.

VEHICLE -- Any device in, upon or by which any person or property is or may be transported or drawn and includes vehicles that are propelled or powered by any means.

WETLAND CREATION -- Alteration, by excavation or other means, of upland areas to allow local hydrologic conditions to convert soils and vegetation to hydric character.

WETLAND ENHANCEMENT -- An action which results in a long term improvement of existing wetland functional characteristics and processes that is not the result of a creation or restoration action.

WETLANDS -- Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

WETLANDS, SIGNIFICANT NON-TIDAL -- Non-tidal wetlands described as significant in Coastal Shorelands boundary descriptions or protected by the County's Goal 5 element.

STAFF FINDING and CONCLUSION: The above definitions are included for informational purposes and may be referenced throughout the report.

ARTICLE 2. PROCEDURES FOR LAND USE APPLICATIONS

Section 2.1000. Procedure Types and Determinations of Proper Procedure

An application for a development permit or land use action shall be processed under either a Type I, II, IIa, III or IV procedure as stated within the procedures under Sections 2.1010 to 2.1050.

All land use actions shall be classified as one of the following unless State law mandates different or additional procedures for particular land use actions or categories of land use actions or specified otherwise by this Code:

Section 2.1020. Type II Procedure

- 1) Type II land use actions generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with conditions of approval to minimize those impacts or ensure compliance with this code.
- 2) Those actions identified in this code as a conditional development and use, development permitted with review, subdivisions containing six lots or less, partitions, and applications related to non-conforming uses/structures under the Type II procedure are Type II actions.
- 3) Except as provided in subsection (5), under the Type II procedure an application for a development permit shall be processed without a need for public hearing. The Community Development Director shall determine whether or not the proposed development meets the required development standards. The Director may obtain technical assistance from a review committee or local or state agencies.
- 4) If the Director finds that the development appears to satisfy the required standards, the Director shall mail a notice of intent to issue a development permit to the applicant and to other persons pursuant to Sections 2.2040 to 2.2050.
- 5) If the Community Development Director believes that persons other than the applicant can be expected to question the application's compliance with the Ordinance, the Director may treat the application as a Type IIa procedure.
- 6) The Community Development Director shall review any information received under subsection (4) and make a finding for each of the points in dispute. The Director shall make a decision on the application by approving, conditionally approving, or denying the application.
- 7) A decision by the Community Development Director may be appealed to the Hearings Officer by the applicant or by a person who responded to the notice, pursuant to Section 2.2190.

STAFF FINDING: New public or private road development or road extension is listed as a Type II Conditional Use in Section 4.0620, Table 1(98), LAWDUC. The application is being processed under a Type II Conditional Use procedure.

Section 2.2040. Mailed Notice for a Type II Procedure

SMITH - ANVIL ROCK ROAD RIGHT-OF-WAY EXTENSION CUP #21-000005

Page 6 of 30

- 1) Notice of intent to issue a Development Permit shall be provided:
 - (A) To the applicant; and
 - (B) To owners of record of property on the most recent property tax assessment roll where such property is located:
 - 2) within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone
 - (C) To any Neighborhood/Community Organization whose boundaries include the site.
 - (D) To the Oregon Department of Transportation (ODOT) for applications related to property within 750 feet of a state highway or that in the opinion of the Community Development Director may be found to have a significant impact on State facilities.

- 2) The notice shall:
 - (A) Describe the proposed development;
 - (B) Summarize the standards and facts that justify approval of the permit;
 - (C) Invite persons to submit information relevant to the proposed development and applicable standards within ten (10) days giving reasons why the permit application should or should not be approved or proposing modifications the person believes are necessary for approval according to the standards;
 - (D) Advise of the right and the procedure to appeal the decision on the proposed development if the person's concerns are not resolved.

Section 2.2050 Procedure for Mailed Notice

Unless otherwise provided, addresses for a mailed notice required by this Ordinance shall be obtained from the County Assessor's real property tax records. Unless the address is on file with the Director, a person whose name is not in the tax records at the time of filing of an application, or of initiating other action not based on an application, need not be furnished mailed notice. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Ordinance for notice. In addition to persons who receive notice as required by the matter under consideration, the Director may provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed development.

STAFF FINDING: Public notice was sent to adjacent property owners within 250 feet of the subject property and to public agencies per Section 2.2050 on February 1, 2021. (Exhibit 2.)

All requirements of the mailed notice to affected property owners and government agencies for the Type II Conditional Use Permit application (Sections 2.2040-2.2050) have been met.

SECTION 4.0600. ARCH CAPE RURAL COMMUNITY RESIDENTIAL ZONE (AC- RCR).

Section 4.0620. Permitted and Conditional Uses

Table 1(98) Road Development or Extension, Public or Private (Type II)

STAFF FINDING and CONCLUSION: The subject property is zoned AC-RCR, Arch Cape Rural Community Residential. Conditional uses for the zone are listed in Table 1, LAWDUC. The applicants propose to construct an access to the County's A-22 road standards within the platted, but unopened, Anvil Rock Road right-of-way. As proposed by the applicants, the access would extend north from East Shingle Mill Lane approximately 150 feet and would be approximately 20 feet in width. Road operations permit #21-02 will require a gravel travel surface. **A condition of approval will require the access to be constructed to the County's A-22 road standard (Condition #1).**

Staff finds the proposed access within the platted, but unopened Anvil Rock Road public right-of-way, is an allowed conditional use in the AC-RCR Zone, subject to all applicable criteria, standards and site plan review. The criterion of Section 4.0620, Table 1(98) is met. Conditions of approval will ensure compliance with all applicable code provisions and applicable provisions within the comprehensive plan.

The applicants have also proposed construction of a 50'x14' gravel driveway in the southeast quadrant of TL 41030CA04302, which is owned by the applicants.

Per Section 4.0620, Table 1(109), Temporary Uses are permitted as a Type I use, subject to the provisions of Section 2.8200, LAWDUC. Temporary uses are only permitted during the construction phase. "Construction phase" is not defined in the code. A "temporary structure or use" is defined in Section 1.0500, LAWDUC, as a "non-permanent structure, use or activity involving minimal capital investment that does not result in the permanent alternation of the site and is removed from the site within one year. [Ord. 18-02]. Temporary uses may be permitted under Section 2.8200. However, no application has been submitted for the proposed driveway prior to construction of the residence. A road approach permit was issued by Public Works on April 20, 2021 (Permit #21-27).

Per Section 4.0620, Table 1(2), Accessory Uses, defined as a "use customarily incidental and subordinate to the principal use and located on the same lot, tract or parcel" may be permitted as a conditional use prior to the construction of a primary use. A Type II Conditional Use Accessory Use would require the following:

- A. A letter from the applicant explaining the unique or unusual circumstances and nature of the intended use
- B. The property owner obtains the primary use development permit within 1 year from the date the accessory use development permit is issued

The applicants are requesting the roadway extension in order to access their property and to install water, sewer and electric in preparation for development of their property. Per information from the applicants they do not have a timeframe for residential development. Therefore, the proposed 50' x 14' gravel driveway cannot be permitted as an Accessory Use under this Type II conditional use application. A condition of approval will verify that the proposed driveway is not part of the development approved by this conditional use permit (Condition #2).

SECTION 2.4000. CONDITIONAL DEVELOPMENT AND USE.

Section 2.4020. Application for a Conditional Development and Use.

- (1) If a development and use is classified as conditional in a zone, it is subject to approval under Sections 2.4000 to 2.4050. An applicant for a proposed conditional development and use shall provide facts and evidence and a site plan in compliance with Section 2.9400 sufficient to enable the Community Development Director or hearing body to make a determination.

STAFF FINDING and CONCLUSION: The applicant has provided the materials required by Section 2.4020 (Exhibit 1).

- (3) In addition to the other applicable standards of this ordinance, the hearing body must determine that the development will comply with the following criteria to approve a conditional development and use.
 - (A) The proposed use does not conflict with any provision, goal, or policy of the Comprehensive Plan.

APPLICANT RESPONSE: No, to the best of my knowledge the proposed use does not conflict with the applicable provisions, goals, or policies of the Comprehensive Plan

- (B) The proposed use meets the requirements and standards of th[is] Ordinance

APPLICANT RESPONSE: Yes, it meets the Clatsop County LWDUO and standards as indicated on Application

STAFF FINDINGS and CONCLUSION: Public or private road development or extension is identified in the AC-RCR Zone as a conditional use, per Section 4.0620, Table 1(98), indicating the use was examined when

the provisions, goals, and policies of the Comprehensive Plan were developed, and standards were devised at the time to ensure the use could be made consistent with the Comprehensive Plan. These standards were then adopted into the zoning ordinance, ensuring the use could be made to be consistent with the plan and meet the requirements of the zone.

Similarly, given that the use is listed among those that may be conditionally approved by the director, the use was reviewed in general previously and it was determined the use could meet the Land and Water Development and Use Code requirements and standards with appropriate conditions. The standards will be addressed elsewhere in this report, and, with conditions of approval, the development will be found to meet the requirements and standards of the ordinance.

County regulations and conditions of approval shall ensure these criteria are satisfied. (Refer to Conditions 1 through 11 and Regulations 1-4.)

- (C) The site under consideration is suitable for the proposed use considering:
- 1) The size, design, and operating characteristics of the use, including but not limited to off-street parking, fencing/buffering, lighting, signage, and building location.

APPLICANT RESPONSE: This site meets requirements for a 14 ft. wide approach road to an existing property

STAFF FINDINGS and CONCLUSION: Extension of a public road, within a platted, but unopened right-of-way, does not require off-street parking. The Anvil Rock Road right-of-way was established with the recording of the Cannon Beach Park Extension subdivision plat on October 11, 1926. The right-of-way was platted as 40 feet in width, which is 10 feet narrower than required by current code. This subdivision plat was developed and recorded in 1926, more than 40 years prior to the adoption of the County's first subdivision ordinance. Section 3.9830(1)(H) states that whenever "existing streets adjacent to or within a tract are of inadequate width, additional right-of-way shall be provided at the time of the subdivision." While this conditional use application is not a subdivision application and this criterion does not apply, Section 2.4040(5) does allow staff to apply a condition of approval that would require additional right-of-way dedication. This will be discussed in further detail below.

No fencing or buffering is required for the proposed use. No street lighting is required per the county's public road standards (Section 3.9830). Stop signs and/or street signs will be required per Section 3.9830(16)(C). **A condition of approval will require the applicant to provide documentation from Clatsop County Public Works that any required street signage has been paid for by the applicants and installed by Public Works prior to the issuance of a development permit for TL 04302 (Condition #3).**

No buildings will be permitted in the public right-of-way.

- 2) The adequacy of transportation access to the site, including street capacity and ingress and egress to adjoining streets.

APPLICANT RESPONSE: Access from Shingle Mill road to Anvil Rock Road is existing and meets all site requirements for an approach road.

STAFF FINDINGS and CONCLUSION: Anvil Rock Road is accessed via East Shingle Mill Lane, a 20-foot-wide paved travel path within a 60-foot-wide platted right-of-way. East Shingle Mill Lane is a County Road and is classified as a rural local roadway. East Shingle Mill Lane connects to Highway 101. The Anvil Rock Road right-of-way is approximately 700 feet east of Highway 101.

Clatsop County Public Works staff, who have been in communication with the applicants since December 2020, were notified of this conditional use application. Comments were received from Public Works during the 10-day public comment period confirming the requirement to construct a 20-foot-wide gravel road

within the public right-of-way. On January 12, 2021, Public Works issued a permit (#21-02) to the applicants for the road extension (Exhibit 4).

The development of the proposed access within a public, platted right-of-way, does not inherently generate trips, as the road itself is not the destination. A road only carries trips to a destination. In the future, the development of a single-family dwelling on the property owned by the applicants would generate approximately 9.44 weekday trips, 9.54 Saturday trips, and 8.55 Sunday trips (*Institute of Transportation Engineers Trip Generation Manual 10th Edition*).

The development of a 150-foot-long road extension within an existing public right-of-way, will not have a significant impact on State facilities (Highway 101).

A condition of approval shall require the Anvil Rock Road extension be depicted on the final site plan, including dimensions and materials, that meets all applicable standards found in Sections 3.9540 and 3.9830. With this condition, criteria of Section 4.2040(3)(C)(2) will be satisfied (Condition 4).

- 3) The adequacy of public facilities and services necessary to serve the use.

APPLICANT RESPONSE: Water, Sewer and electricity providers have indicated that they have the capacity to serve existing property on this approach road as per Arch Cape water and sewer district.

STAFF FINDINGS and CONCLUSION: The purpose of the proposed road development is to provide vehicle access to property owned by the applicants for the purpose of future residential development. Residential development requires vehicle access, potable water supply, and sewage disposal. While the subject right-of-way and adjacent TL 04302 are served by the Arch Cape Water District and the Arch Cape Sewer District, both of which received notice of the proposed access, no water or sewer connections are required to support the installation of the road extension. The site is also within the Cannon Beach Rural Fire Protection District, which was also notified of the proposed roadway extension. While public notice was mailed to each of these agencies, none of their representatives provided comment or expressed concern about the proposed access.

Transportation was addressed above.

Staff finds Section 4.2020(3)(C)(3) to be satisfied.

- 4) The natural and physical features of the site such as topography, natural hazards, natural resource values, and other features.

APPLICANT RESPONSE: The minimal footprint of the approach road as per the delineation study indicates that there is no impact to wetlands or natural features.

STAFF FINDINGS and CONCLUSION: The proposed access is outside of lands mapped for geologic hazards and is outside the area mapped as either Major or Peripheral Big Game Habitat. The 150-foot-long extension proposed by the applicant, with the additional 40-foot-long extension required by Public Works (to be discussed in further detail elsewhere in this report), may impact a portion of an identified wetland within the right-of-way. The applicants have provided a wetland delineation approved by the Oregon Department of State Lands. Any impacts to this wetland area would be subject to the requirements of the state Removal-Fill Law. Cumulative fill or removal of 50 cubic yards or greater would require a state permit.

Per bare earth lidar hillshade information from the Department of Geology and Mineral Inventories (DOGAMI) the subject right-of-way is relatively level, varying in elevation from approximately 23 feet to 25 feet. The area is heavily wooded.

AC-RCR Zone development standards, Section 4.0630(3)(E)(5), requires the landscape to be preserved in its natural state to the maximum extent possible by minimizing tree, vegetation and soils removal. Cut and fill construction methods are discouraged. Roads and driveways should follow slope contours in a manner that prevents erosion and rapid discharge into natural drainages. Disturbed areas shall be re-vegetated with native species. **A condition of approval shall require the applicant to include a tree removal plan with the grading, drainage, and erosion control review application. The erosion control plan shall be commensurate with Section 3.2000. Existing natural vegetation shall be preserved to the maximum extent possible and as permitted by Clatsop County Public Works (Condition #8).**

In 2020, Public Works issued the following permits for work within the surrounding rights-of-way:

- #20-17: Anvil Rock Road (clearing brush and weeds from East Shingle Mill Lane to TL 4302)
- #20-33: Anvil Rock Road / Maxwell Lane (clearing for a six-foot-wide trail)
- #20-49: 32009 East Shingle Mill Road (utility work)
- #20-71: Walsh Lane (utility work)
- #20-100: Fire Rock Road (roadway extension)

These permits, which were issued for work in the same area as the subject property and with similar or steeper topography verify that the natural and physical features of the subject right-of-way are suitable to support the proposed road. **A condition of approval will require the applicants to adhere to all requirements of Permit #21-02 (Condition #5).**

With conditions of approval staff finds the site is suitable for the development when considering Section 2.4020(3)(C)(4) (Conditions #5 and #8).

- (D) The proposed use is compatible with existing and projected uses on surrounding lands, considering the factors in (C) above.

APPLICANT RESPONSE: Yes, the proposed use is a County Road and will not impact any adjacent lands, but will be compatible with existing and projected residential uses.

STAFF FINDINGS and CONCLUSION: The proposed use is the construction of a portion of Anvil Rock Road and the installation of utilities within the existing platted public right-of-way. The proposed road extension will be public road, but will not be a County Road, which is a roadway that has been accepted by the Board of Commissioners and is maintained by Clatsop County. A public road is required to be maintained by the property owners adjacent to the right-of-way.

The uses on surrounding properties, which consist of residential dwellings and vacant residential land, necessitate the construction of a road extension within the existing platted public right-of-way. Section 2.1130(4), LAWDUC, requires applicants to provide proof of legal access to a property in order to receive development permit approval to construct improvements on the property. Section 2.1130(2)(A) requires documentation to verify that water and sewer are available to service a property prior to issuing a development permit for a residential structure. The use proposed under this conditional use application is required to support the development permitted on adjacent properties.

Staff finds the site is suitable for the development when considering Section 2.4020(3)(C)(1-4), addressed above.

- (E) The proposed use will not interfere with normal use of coastal shorelands.

APPLICANT RESPONSE: The proposed use of this road to applicants property does not have the potential to interfere with any coastal shore lands

- (F) The proposed use will cause no unreasonably adverse effects to aquatic or coastal

shoreland areas, and

APPLICANT RESPONSE: The proposed approach road is at least a quarter mile from coastal shore land areas and will have no adverse effects to aquatic or coastal areas

- (G) The use is consistent with the maintenance of peripheral and major big game habitat on lands identified in the Comprehensive Plan as Agricultural Lands or Conservation Forest Lands. In making this determination, consideration shall be given to the cumulative effects of the proposed action and other development in the area on big game habitat.

APPLICANT RESPONSE: This approach road is not within either the Major or Peripheral Big Game Habitat Overlay. This is a residential neighborhood. ACRCR

STAFF FINDINGS and CONCLUSION: Goal 17 of the County's comprehensive plan defines the "coastal shorelands planning area" as all lands west of Highway 101. The subject right-of-way, which is east of Highway 101, is neither within the coastal shoreland planning area nor adjacent to any coastal shorelands. Per the Arch Cape Local Wetland Inventory (2011) (Exhibit 5), Arch Cape Creek "is ODFW-designated essential salmonid habitat from the ocean to approximately 1 mile upstream where there is a 15-foot waterfall, a natural barrier to fish passage...Most tributaries flow out of the hills south and east of the study area, though seasonally, there are drainages which flow out of the wetlands located north of E. Shingle Mill Lane." The subject area is approximately 100 feet north of East Shingle Mill Lane and approximately 300 feet north of Arch Cape Creek. The applicants have provided a site-specific wetland delineation, prepared by a professional wetland scientist, that has been reviewed and approved by the Oregon Department of State Lands (DSL) (WD #2020-0667, Exhibit 6). DSL instructs local jurisdictions to refer to approved wetland delineations where available, rather than the LWI or NWI, because delineations represent the most precise information available. While the limits of road construction are not marked on the approved delineation, it appears that all or most of the road improvements and utility installations would avoid the delineated wetlands. However, as noted in DSL's approval letter, the study area, including the right-of-way and adjacent TL 04302, are subject to the state's Removal-Fill Law. Any fill or excavation activities within the wetland exceeding 50 CY will require a permit from the state. Mitigation for wetland impacts may also be required by DSL. **A regulation will require the applicants to provide copies of all required state and/or federal permits prior to issuing a development permit (Regulation #1).**

Construction of the proposed road is not anticipated to interfere with the normal use of coastal shorelands or to cause unreasonably adverse effects to aquatic or coastal shoreland areas. Any wetland impacts that may be proposed by the applicant will be subject to review, permitting and/or mitigation as determined by the Oregon Department of State Lands.

The road will be outside of mapped Big Game Habitat and is not proposed on Agricultural Lands or Conservation Forest Lands,

Two of these criteria do not apply. An existing regulation will require copies of all required state and/or federal permits prior to issuing a development permit.

- (H) In addition to compliance with the criteria as determined by the hearing body and with the requirements of Sections 1.1040 and 1.1050, the applicant must accept those conditions listed in Section 2.4040 that the hearing body finds are appropriate to obtain compliance with the criteria.

Section 2.4040. Requirements for Conditional Development and Use.

In permitting a conditional development and use, the hearing body may impose any of the following conditions as provided by Section 2.4030:

- (1) Limit the manner in which the use is conducted, including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.

- (2) Establish a special yard or other open space or lot area or dimension.
- (3) Limit the height, size or location of a building or other structure.
- (4) Designate the size, number, location or nature of vehicle access points.
- (5) Increase the amount of street dedication, roadway width or improvements within the street right-of-way.
- (6) Designate the size, location, screening, drainage, surfacing or other improvement of a parking or truck loading areas.
- (7) Limit or otherwise designate the number, size, location, height of or lighting of signs.
- (8) Limit the location and intensity of outdoor lighting or require its shielding.
- (9) Require diking, screening, landscaping or another facility to protect adjacent or nearby property and designate standards for installation or maintenance of the facility.
- (10) Designate the size, height, location or materials for a fence.
- (11) Require the protection of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.
- (12) Require provisions for public access (physical and visual) to natural, scenic and recreational resources.
- (13) Specify other conditions to permit the development of the County in conformity with the intent and purpose of the classification of development.

STAFF FINDINGS and CONCLUSION: As discussed above, the platted Anvil Rock Road right-of-way is 40 feet in width, while the current A-22 Road Standard requires a minimum right-of-way width of 50 feet. As permitted above in Section 2.4040(5), additional street dedication will be required as a condition of approval. **In order to bring the right-of-way closer to compliance with current Clatsop County road standards, a condition of approval will require the applicants to dedicate an additional five feet of right-of-way along the entire length of the east property line of TL 04302 prior to submitting a development permit for construction on the TL 04302 (Condition #6).**

SECTION 3.2000. EROSION CONTROL DEVELOPMENT STANDARDS

Section 3.2010. Purpose

The objective of this section is to manage development activities including clearing, grading, excavation and filling of the land, which can lead to soil erosion and the sedimentation of watercourses, wetlands, riparian areas, public and private roadways. The intent of this section is to protect the water quality of surface water, improve fish habitat, and preserve top soil by developing and implementing standards to help reduce soil erosion related to land disturbing activities. In addition, these standards are to serve as guidelines to educate the public on steps to take to reduce soil erosion.

Section 3.2030. Erosion Control Plan

- 1) An Erosion Control Plan shall be required for land disturbing activities, in conjunction with a development permit.

STAFF FINDINGS and CONCLUSION: On January 12, 2021, Public Works issued permit #21-02 to allow operations within a public right-of-way. A condition of approval for permit #21-02 is that the applicants obtain all required County permits prior to starting construction. If more than 30 cubic yards will be removed, filled, or relocated as part of the road construction project, or if construction activities will occur within 50 feet of mapped or known wetlands, the applicants will be required to submit a grading and erosion control plan for review. **A condition of approval will require the submittal of an erosion control permit, to be reviewed by Clatsop County Public Works, to certify compliance with the standards of Section 3.2000 (Condition #7).**

SECTION 3.9800. TRANSPORTATION IMPROVEMENTS AND ROAD STANDARD SPECIFICATIONS FOR DESIGN AND CONSTRUCTION

Section 3.9810. General Road and Access Policies.

- 1) **Purpose.** The establishment of the criteria to be used in Clatsop County for evaluating the appropriateness of proposed roads which are intended to provide access to lots or parcels. These criteria shall form the basis for determining what requirements are necessary to ensure that there

will be adequate provisions available now, and in the future, to provide for the transportation needs of lots, parcels, or developments.

The Clatsop County Road Standards are intended to provide access to new development in a manner which reduces construction cost, makes efficient use of land, allows emergency vehicle access while discouraging inappropriate traffic volumes and speeds, and which accommodates convenient pedestrian and bicycle circulation. The standards apply to County roads, dedicated roads and private roads.

The Road Standards to be applied are based on the density of the zone in which it will be built and shall be constructed to that standard. The Clatsop County Department of Community Development, Planning Commission or Board of County Commissioners will be a case by case basis consider possible future land divisions and whether or not the road being built should be private or dedicated.

- 2) **Conditions of Development Approval.** No development may occur unless required transportation facilities are in place or guaranteed, in conformance with the provisions of this document. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development on public facilities and services. Findings in the development approval shall indicate how the required improvements are roughly proportional to the impact.

STAFF FINDINGS and CONCLUSION: The proposed roadway has been reviewed by Clatsop County Public Works and a permit to occupy or perform operations upon a county or public road has been issued, indicating that the proposed work will comply with minimum-required county standards. **Conditions of approval will require the roadway extension to conform to all applicable requirements of Section 3.9800 and to permit #21-02, issued by Public Works (Conditions #1, #3, #4, #5, #6, #7, #8, #10 and #11).**

As discussed in this report, the public platted Anvil Rock Road right-of-way is 40 feet wide. County road standards would require a 50-foot-wide right-of-way if this road were to be platted under current standards. **In order to make the right-of-way more conforming to current standards, a condition of approval will require the applicants to dedicate an additional five feet of right-of-way (Condition #6).**

With conditions of approval, these criteria will be met.

- 3) **Criteria.** Roads in Clatsop County shall be designed, constructed, and maintained to:
- (A) Be capable of ensuring unrestricted travel to and from a property.
 - (B) Provide adequate, safe, and legal access with minimum public cost.
 - (C) Place the burden of the costs on the benefited person(s).
 - (D) Provide access for fire protection, ambulance, police, mail, school bus, public transit, and garbage services.
 - (E) Provide for drainage ways and utility services.
 - (F) Be compatible with adjoining land use.
 - (G) Minimize, with the constraints of reasonable engineering practices and costs, the creation of roads within lands designated for Exclusive Farm Use, Forest Resource, Open Space Reserve, Rural and Rural Service Areas designated by the Clatsop County Comprehensive Plan.
 - (H) Ensure that the new road will minimize interference with forest management or harvesting practices.
 - (I) Minimize within the constraints of reasonable engineering practices and costs the loss of productive agricultural or forest land, and be located on that portion of such land that is least suitable for timber or agricultural production, taking into consideration, but not limited to, the following: topography, soil capability or classification, erosion potential, and

- the size and resultant configuration of the affected tracts.
- (J) Minimize the loss of important wildlife habitat, such as sensitive deer and elk range, identified natural areas, and other significant natural features.
- (K) Streets within or adjacent to a development shall be improved in accordance with the Transportation System Plan and the provisions of this Section.

STAFF FINDINGS and CONCLUSION: Construction of the proposed road extension would ensure unrestricted access to and from properties on both the east and west sides of Anvil Rock Road, including property owned by the applicants. The applicants are responsible for the costs associated with the installation of the road extension.

The road extension is for the purpose of accessing the applicant's property. While police, fire and ambulance vehicles may be required to access the site, at this time there is not a need for mail, school bus, public transit, or garbage service to this site. Construction of the road extension to the A-22 standard will allow emergency vehicles to access the parcel, if needed. An additional 40-foot-long road extension has been required by Public Works in order to ensure adequate turnaround space for emergency and other vehicles. **A condition of approval will require the applicants to obtain a sign-off from the Cannon Beach RFPD Chief documenting approval of the road extension (Condition #11).**

The subject right-of-way is within the rural community of Arch Cape and is considered to be within a rural service area. This road extension would be designed to the county's A-22 standard, which is intended to serve ten or more lots or parcels. Any property owners who propose future development on the adjacent residential lots north of the end of the proposed road extension would be required to install an extension of Anvil Rock Road at their expense and in compliance with county road standards.

The proposed road extension will not interfere with forestry or agricultural practices and is outside of areas mapped as Major or Peripheral Big Game Habitat. There are no inventoried Goal 5 resources within the subject right-of-way.

With a condition of approval, these criteria will be met.

4) **Standards, Generally:**

- (A) The following are a variety of types or forms of access used to gain ingress and degree to property within Clatsop County:
 1. County roads
 2. Federal roads
 3. State highways
 4. Dedicated ways
 5. Flag lots
 6. Ways of necessity
 7. Public roads
 8. Private roads
 9. Prescriptive roads
- (B) Publicly dedicated and maintained roads provide superior access.

STAFF FINDINGS and CONCLUSION: The proposed roadway will be constructed within a public platted right-of-way and will be a public road.

This criterion is satisfied.

5) **Standards, Specifically:**

- (A) As far as is feasible, roads shall be in alignment with existing or appropriate projections of existing roads by continuation of their centerline.

STAFF FINDINGS and CONCLUSION: The proposed roadway will be constructed within a public platted

right-of-way and will be a public road. The Cannon Beach Park Extension subdivision street system is laid out in a grid pattern. The proposed road extension shall be constructed entirely within the existing platted public right-of-way and will be in alignment with the segment of Anvil Rock Road that has been constructed immediately south of Oceanview Lane.

This criterion is satisfied.

SECTION 5.300. SITE PLAN REVIEW.

Section 5.302. Site Plan Review Requirements.

Before a permit can be issued for development in a special purpose district or for a conditional development and use or a development and use permitted with review, a site plan for the total parcel and development must be approved by the Community Development Director or Planning Commission. Information on the proposed development shall include sketches or other explanatory information the Director may require or the applicant may offer that present facts and evidence sufficient to establish compliance with Sections 1.040, 1.050 and the requirements of this Section.

STAFF FINDINGS and CONCLUSION: Site plan review approval is required prior to the issuance of a development permit. Staff finds the information submitted by the applicant is sufficient to conduct preliminary site plan review for the purpose of preparing this report; however, **a final site plan shall be required prior to issuing the development permit for this proposed access.**

This criterion will be met by Condition #4.

B. COMPREHENSIVE PLAN

Goal 1 - Citizen Involvement

Policies

7. Clatsop County shall use the news media, mailings, meetings, and other locally available means to communicate planning information to citizens and governmental agencies. Prior to public hearings regarding major plan revisions, notices shall be publicized.
8. Clatsop County shall establish and maintain effective means of communication between decision-makers and those citizens involved in the planning process. The County shall ensure that ideas and recommendations submitted during the planning process will be evaluated, synthesized, quantified, and utilized as appropriate.
9. Public notices will also be sent to affected residents concerning zone and comprehensive plan changes, conditional uses, subdivisions and planned developments.

STAFF FINDINGS and CONCLUSION: A public notice was sent to all property owners within 250 feet of the subject property and to public agencies per Section 2.2050, LAWDUC, on February 1, 2021 (Exhibit 2). Public notice was also posted on the County's website:
https://www.co.clatsop.or.us/sites/default/files/fileattachments/land_use_planning/project/34005/publicnoticewhaler.pdf.

Appropriate measures have been taken to assure that the Type II Conditional Use Application has been processed in accordance with the applicable Citizen Involvement (Goal 1) policies of the County Comprehensive Plan (7-9) listed above.

The proposed project does not conflict with Goal 1.

Goal 2 - Land Use Planning

The County's land and water have been placed in one of six (6) Plan designations including: 1. Development; 2. Rural Agricultural Lands; 3. Conservation Forest Lands; 4. Conservation Other Resources; 5. Natural; and 6. Rural Lands.

1. Development

Development areas are those with a combination of physical, biological, and social/economic characteristics which make them necessary and suitable for residential, commercial, or industrial development and includes those which can be adequately served by existing or planned urban services and facilities.

In Clatsop County, the County has three types of such areas: cities and their urban growth boundaries; rural communities; and rural service areas, which are areas similar to cities (sewer and water) but lack size and a government structure.

- c. Rural Communities. Clatsop County has identified and established boundaries for the following rural communities: Miles Crossing - Jeffers Gardens, Arch Cape, Svensen, Knappa, and Westport. Land use plans in these areas recognize the importance of communities in rural Clatsop County. These communities are established through a process that applies OAR 660 Division 22 requirements. Portions of land identified in the Miles Crossing and Jeffers Gardens rural community plan take an exception to Statewide Planning Goal 3 and Goal 4 for portions of land zoned EFU or AF. The exceptions documentation for a portion of the Miles Crossing and Jeffers Gardens rural community boundary is adopted as part of the Comprehensive Plan, and is located at the end of this section.

STAFF FINDINGS and CONCLUSION: The subject TL 04302 is within the boundary of the Arch Cape Rural Community, an area designated "Development" in the Comprehensive Plan. The proposed development is allowed as a Type II conditional use in the AC-RCR Zone as described in Section 4.0620, Table 1(98). The use has been determined to be consistent with the "Development" designation when appropriate conditions are applied.

The surrounding properties are also located in the AC-RCR Zone; the existing and projected development pattern is single-family residential development and accessory uses. Adequate road access is required to accommodate this type of development.

The proposed project does not conflict with Goal 2.

Goal 5 - Open Spaces, Scenic and Historic Areas and Natural Resources

Wetlands Policies

Policy 1 - The County will protect identified significant freshwater wetlands, for which no conflicting uses have been identified, from incompatible uses.

STAFF FINDINGS and CONCLUSION: The subject right-of-way contains a portion of a large freshwater forested wetland complex connected to Arch Cape Creek, identified as a "locally significant wetland" in the Arch Cape Local Wetland Inventory (LWI). While categorized as significant per the LWI, the wetland is not included in the County's inventory of Goal 5 resources. As stated previously, the applicant has obtained a wetland delineation from a professional wetland scientist, which has been reviewed and approved by the Oregon Department of State Lands. It appears that a majority, if not all, of the proposed road development will occur outside of the wetland area. As discussed above, the Department of State Lands (DSL) has jurisdiction over the wetland and any impacts proposed to the wetland will require review, permitting and/or mitigation as determined by DSL. The right-of-way does not contain any significant habitat or other resources inventoried under Goal 5.

The proposed road development does not conflict with Goal 5.

Goal 6 - Air, Water and Land Resources

Policy 3

The cumulative effect of development on the County's environment should be monitored and, where appropriate, regulated. When evaluating proposals that would affect the quality of the air, water or land in the County, consideration should be given to the impact on other resources important to the County's economy such as marine resource habitat and recreational and aesthetic resources important to the tourist industry.

STAFF FINDINGS and CONCLUSION: Development within the AC-RCR Zone is regulated. Public or private road development or extension is identified in the AC-RCR Zone as a conditional use, per Section 4.0620, Table 1(98), indicating the use was examined when the provisions, goals, and policies of the Comprehensive Plan were developed, and standards were devised at the time to ensure the use could be made consistent with the Comprehensive Plan. These standards were then adopted into the zoning ordinance, ensuring the use could be made to be consistent with the plan and meet the requirements of the zone.

Conditions of approval will ensure maximum preservation of landscaping and impacts to the wetland, if any, will be reviewed, permitted and/or mitigated through the Oregon Department of State Lands. Copies of all federal and/or state permits shall be required prior to the issuance of a development permit.

With conditions of approval, the proposed road development does not conflict with Goal 6 (Conditions #8 and #9).

Goal 11 - Public Facilities and Services

Overall Policy Regarding Appropriate Levels of Public Facilities in the County

Six different Plan designations exist for lands in the County. Differing levels of public facilities and services are appropriate for the different types of development planned for the County. Certain facilities and services are available to all County residents, such as County health services, Sheriff's protection and many other social services.

1. **Development** - This is a Plan category for estuary and shoreland areas appropriate for commercial and industrial use. Consequently, a level of public facilities sufficient to carry on that type of use is appropriate. Public water and sewer services would be appropriate but may not be necessary depending on the type of development. Public fire protection is appropriate. Development here will not directly affect school services, although increased employment may result in increased housing in the vicinity which would impact schools. Those impacts will be considered in terms of the residential effects, not at the point of commercial or industrial development.
- b. **Rural Service Area (RSA)** - The RSAs in the County are Arch Cape, Fishhawk Lake Estates, Shoreline Estates and the old Naval Hospital site. All currently have public water, sewer and fire protection although the current water supply for the old Naval hospital is inadequate. Public water or sewer services and fire protection are appropriate in RSAs and further development must be based on the capacities of the systems. Development in RSAs can have significant impacts on schools. Applications for subdivisions within RSAs will be referred to the appropriate school district. The development will be allowed only if the schools are capable of handling the increased capacity expected to be generated from the proposal.

STAFF FINDINGS and CONCLUSION: The Arch Cape Rural Community Residential (AC-RCR) Zone is within a Rural Community, formerly referred to as a Rural Service Area, as described above. Public water and sewer utilities are available and the area is within the Cannon Beach Rural Fire Protection District and is served by the Clatsop County Sheriff's Office and Medix Ambulance Service. The construction of a roadway extension, within a platted public right-of-way, which is the subject of this conditional use application, will not impact school capacity.

This application is consistent with Goal 11.

Goal 12 - Transportation

Goal 1, Objective 5: Use appropriate, adopted Clatsop County road standards during development of new roadways.

Goal 3, Objective 3: Provide a County transportation system that coordinates with other local transportation system plans and rural community plans.

Goal 7, Objective 4: Minimize transportation impacts on wetlands and wildlife habitat.

Goal 8, Objective 2: Consider transportation impacts when making land use decisions, and consider land use impacts (in terms of land use patterns, densities, and designated uses) when making transportation - related decisions.

STAFF FINDINGS and CONCLUSION:

Goal 1, Objective 5: The proposed roadway extension will be subject to the County's road standards contained in Section 3.9800. As is discussed elsewhere in this report, the existing platted public right-of-way is 40 feet in width, while current county standards would require 50 feet for a newly-created right-of-way. **A condition of approval will require the applicants to dedicate an additional five feet of right-of-way in order to bring the existing right-of-way closer to compliance with current county standards (Condition #6).**

Goal 3, Objective 3: The subject right-of-way is located within the Arch Cape Rural Community, which is located within the Southwest Coastal planning area of Clatsop County. As will be demonstrated below, the proposed road extension is consistent with the applicable goals and policies of the Southwest Coastal Community Plan.

Goal 7, Objective 4: As discussed earlier in this report, the subject area is approximately 100 feet north of East Shingle Mill Lane and approximately 300 feet north of Arch Cape Creek. The Anvil Rock Road right-of-way and adjacent TL 04302 contain a portion of the wetland identified in the Arch Cape Local Wetland Inventory (LWI) (ARC-13). The applicants have provided a wetland delineation (Exhibit 6) prepared by PBS Engineering and Environmental, dated December 2020. This delineation was approved by the Oregon Department of State Lands on April 1, 2021 (WD #2020-0667). While the limits of the road construction are not shown on the approved delineation submitted to staff, any proposed impacts to the wetland would be reviewed, permitted and/or mitigated through the Department of State Lands. The subject right-of-way is outside the area mapped as either Major or Peripheral Big Game Habitat. The proposed road extension is consistent with this objective.

Goal 8, Objective 2: Transportation impacts were considered both at the time the comprehensive plan was drafted and adopted in 1980 and also when Arch Cape was designated as a Rural Community in 2003. The AC-RCR Zone is intended for low density residential use and the existing underlying plats are consistent with that stated purpose. Installation of a previously envisioned road within an existing platted public right-of-way does not change the intended use of the land or zone, will not change the envisioned land use pattern, and will not alter already permitted densities. Public or private road development or extension is identified in the AC-RCR Zone as a conditional use, per Section 4.0620, Table 1(98), indicating the use was examined when the provisions, goals, and policies of the Comprehensive Plan were developed, and standards were devised at the time to ensure the use could be made consistent with the Comprehensive Plan. These standards were then adopted into the zoning ordinance, ensuring the use could be made to be consistent with the plan and meet the requirements of the zone.

With a condition of approval, this application is consistent with Goal 12 (Condition #6).

Southwest Coastal Community Plan

Housing

Goal: To provide for a wide range of housing needs in the community. To maintain the current residential character of the community.

Policy 3: Housing developments and subdivisions should be designed to emphasize the rural, coastal appearance of the community; that is, less emphasis should be placed on curbs, sidewalks, and wide streets and more emphasis placed on the maintenance of trees, natural drainages, open space and larger lot sizes.

Policy 4: Housing shall be developed where services are readily available. Subdivision of land and planned development shall be allowed only where septic tank, sewer and water capacity is sufficient to meet its needs.

STAFF FINDINGS and CONCLUSION: The road, which will be required to meet the County's A-22 roadway standard, and which will be constructed within a public right-of-way, is proposed in order to access property platted as part of the Cannon Beach Park Extension subdivision. The ultimate goal will be residential development of the adjacent property owned by the applicants. The extension will allow the applicants to enter onto their property in order to assess the land and prepare development plans. Roadway construction, listed as a separate use in the LAWDUC, is a necessary first step in the residential development envisioned by the Southwest Coastal Community Plan Housing Goal policies. The subject right-of-way and adjacent private property are in an area served by water and sewer. Prior to the issuance of development permits, the applicants will be required to demonstrate, via signatures from the water and sewer districts, that adequate capacity is available to service the property.

This application is consistent with the Southwest Coastal Housing Goal and policies 3 and 4.

Public Facilities

Policy 2: All developments shall indicate on the plot plan or building plans how storm water is to be drained. The Planning Commission or Building Official shall require the installation of culverts, dry wells or retention facilities in developments with major storm drainage impacts.

STAFF FINDINGS and CONCLUSION: The proposed road segment would be constructed to the County's A-22 standard. County road standards have been designed to accommodate adequate stormwater drainage and minimize erosion by requiring the cross-section of the road to include specific minimum and maximum slopes, and by requiring specific subgrade and travel surface materials. The preliminary plans submitted with this conditional use application did not include an erosion control plan. **A condition of approval will require the applicants to submit a grading, drainage and erosion control plan for review and approval by Public Works, prior to the issuance of a development permit for construction for the road. The proposed access will be required to comply with all applicable requirements of Section 3.2000.**

With a condition of approval this application is consistent with Southwest Coastal Public Facilities Policy 2 (Condition #7).

Transportation

Goal: To maintain an efficient and safe transportation system in keeping with the character of the community.

Policy 7. Not only is it necessary for the County to adopt road standards which provide for economical and proper maintenance, but standards which consider the particular areas and the desires of the local citizens. To that end this plan encourages road standards which are suited to the character of development in the area. These roads generally are narrow, containing several ends, and serving few permanent users.

STAFF FINDINGS and CONCLUSION: The Arch Cape Rural Community consists of many lands that were subdivided 100 or more years ago. The plat that created the subject right-of-way was recorded in 1926, prior to the adoption of subdivision regulations within Clatsop County. These plats created publicly-dedicated rights-of-way ranging in width from 40-60 feet. The subject right-of-way is in character with the surrounding street grid.

Per Public Works, the proposed road must be constructed to the County's A-22 road standard. For a newly-created right-of-way this standard would require a minimum 50-foot-wide easement and a 20-foot-wide gravel travel surface. As discussed above, the existing platted public right-of-way is 40 feet in width. **A condition of approval will require the applicants to dedicate an additional five feet of right-of-way**

in order to bring the roadway closer to full compliance.

With a condition of approval this application is consistent with Southwest Coastal Transportation Goal and Policy 7 (Condition #6).

Rural Service Area Development

Goal: To maintain the low density, residential character of Arch Cape.

Policy 3: The designated Rural Service Area shall be limited to a land area capable of being serviced by community water, sewer, and fire protection systems based on a reasonable project of growth.

STAFF FINDINGS and CONCLUSION: The subject right-of-way and adjacent private property owned by the applicants are zoned AC-RCR, which is a low-density residential designation, per the County's comprehensive plan. Both the right-of-way and adjacent parcel are within the Arch Cape Water District and the Arch Service Sanitary District and are serviced by the Cannon Beach Rural Fire District. At the time the AC-RCR zoning designation was placed on the property, it was determined that this area was capable of sustaining reasonable growth as evidenced by the provision of the above-described services.

This application is consistent with Southwest Coastal Rural Service Area Development Goal and Policy 3.

Goal: To maintain high quality of residential development in keeping with the natural environment through the use of design standards.

Policy 1: Design review standards shall apply to all construction in the Rural Service Area (Arch Cape Rural Community). Standards shall apply to new commercial or residential construction, subdivision, site development, street construction or placement of public utilities.

STAFF FINDINGS and CONCLUSION: The applicable design review standards for this application would be the road standards contained in Section 3.9800, LAWDUC. Those standards are administered by Clatsop County Public Works. As discussed above, Public Works approved a permit to perform operations within a public road for the proposed access and has specified the A-22 road standard shall be required for the extension. **A condition of approval of this application will require the applicant to dedicate an additional five feet of right-of-way at such time as development permits are submitted for improvements on the adjacent TL 04302.**

With conditions of approval, this application is consistent with Southwest Coastal Rural Service Area Development Goal and Policy 1 (Conditions #1, #3, #4, #5 and #6).

Goal: To encourage the use of natural features of the land, such as existing topography and vegetation.

Policy 1: Design review standards shall require minimal disturbance of the landscape in land development and shall address the removal of trees, grading and excavation, protection of views of adjacent property, road construction and placement of utilities.

STAFF FINDINGS and CONCLUSION: Section 3.9830(15), LAWDUC, requires the right-of-way to be cleared of all trees. However, in subdivisions where traffic safety would not be involved and a lesser requirement would not create a hazard, the right-of-way shall be cleared a minimum of 40 feet or four feet beyond the edge of shoulder or curb line of the finished road. Allowances can also be made to preserve individual "exceptional or stately" trees.

Section 4.0630(3)(E)(5) requires the landscape to be preserved in its natural state to the maximum extent possible by minimizing tree, vegetation and soils removal. Cut and fill construction methods are discouraged. Roads and driveways should follow slope contours in a manner that prevents erosion and rapid discharge into natural drainages. Disturbed areas shall be re-vegetated with native species.

Permit #21-02, issued by Clatsop County Public Works on January 12, 2021, requires a 20-foot wide travel surface within the right-of-way. If the slope of the road exceeds 12% the road must be paved. A grading, drainage and erosion control plan must also be submitted for review and approved by Public Works. **A condition of approval shall require the applicants to include a tree removal plan with the grading, drainage, and erosion control plan. Existing natural vegetation shall be preserved to the maximum extent possible and as permitted by Clatsop County Public Works.**

With conditions of approval the project will not conflict with the Southwest Coastal Rural Service Area Development Goal and Policy 1 (Conditions #5 #8).

III. AGENCY AND PUBLIC COMMENTS

NOTE: Comments are summarized for the purpose of brevity. The full written text of all comments received are included in Exhibit 4.

Annette Brodigan, Clatsop County Environmental Health: Clatsop County Onsite Septic program has no comments or concerns. This property is located within Arch Cape Sewer District.

Staff Response: No response required.

Terry Hendryx, Clatsop County Public Works: In previous conversations with the applicants, Public Works staff indicated that the road would need to be 22-feet-wide. However, the actual standard would require a 20-foot-wide gravel surface. If the grade of the road exceeds 12%, the travel surface would be required to be paved.

Mr. Hendryx emailed a clarification to Planning staff on April 19, 2021, stating that the applicants would be required to extend the road 40 feet beyond their proposed driveway access in order to allow for a turnaround.

Staff Response: A condition of approval will ensure that the proposed road complies with the A-22 road standard, as required by permit #21-02, which was issued by Public Works on January 12, 2021 (Condition #1). Condition of approval #10 will require the applicants to construct the road 40 feet beyond the planned driveway access in order to accommodate a turnaround area.

Jevra Brown, Aquatic Resource Planner, Oregon Department of State Lands (DSL): Initial comments from DSL, dated February 1, 2021, confirm that a delineation had been received for review.

Staff Response: The DSL approval letter for the wetland delineation (WD #2020-0667, approved April 1, 2021) states that the mapped wetland is subject to the permit requirements of the state Removal-Fill Law. **A condition of approval and a regulation will require the applicants to demonstrate that any impacts to the delineated wetland from road construction activities comply with all state permit requirements prior to a development order being issued for the project (Condition #9).**

Regulation #1 explicitly states that the proposed development shall comply with all applicable state, federal and local laws and regulations. If permits are required by the Oregon Department of State Lands or other agencies, copies of the permit(s) issued by that agency would be required to be submitted to the County. All required permits must be approved by the responsible jurisdiction prior to a development permit being issued for roadway.

Oregon Coast Alliance (ORCA): The original surveyors platted Arch Cape without regard to topography. Therefore, lots and roads are platted on undevelopable steep slopes and within southern Clatsop County's largest wetland complex off Arch Cape Creek. Speculative roads threaten the unique environment and unnecessarily increase the footprint of the small residential community of Arch Cape. Public rights-of-way are being increasingly developed as speculative public roads to access undeveloped lots that have no building permit or even a development application, particularly on the east side of Highway 101.

Development of a road without a permit for development on adjacent TL 04302 or without a wetlands analysis should be denied or subject to a public hearing. The public must be involved in applications to develop what are essentially "speculation roads" to access properties for which no development is proposed.

Building a road to access the property must be considered development, as defined by code, as it involves a disturbance of land. An access road is part of the property development and without a permit to develop the property an access road should not be permitted. Doing so would be contrary to the spirit and intent of the code.

A lot of record, even those platted and recorded prior to land use requirements, must still meet all other applicable requirements of the zone. The utility of the road is clearly dependent on the viability of the development project to which it leads. Thus, to issue a permit for a road when there is no permit for the project directly contradicts county ordinance and policy, and sets a disturbing precedent.

The proximity of the road to Arch Cape Creek could have potential ramifications for environmental degradation. The proposed road leads to Arch Cape's most significant shoreline wetland complex. The wetland's connectivity to Arch Cape Creek (home to Endangered Species Act-listed Coho Salmon) requires development buffers not contemplated by the application. The County has a duty to require a wetland delineation for this road approach. The applicant must show that the road will not enter the wetland or the required shoreline buffer. Per the comprehensive plan, Significant Shoreland Resources include non-tidal wetlands and wildlife habitat and that these are resources of value and deserving of protection. Goal 6, policy 3 states: "The cumulative effect of development on the County's environment should be monitored and, where appropriate, regulated."

Broader policies must be created and enforced to address the potential degradation of Arch Cape's most productive wetlands, which are impacted without any thought of preservation of natural resources or the cumulative impacts of development of routinely platted lots, especially plats created decades ago. There was then, and often still remains, no regard for the realities of the land on which the plats were drawn, or the natural resources of the properties.

Given the controversial nature of this application and possible ramifications throughout the community, we request that this application be considered as a Type IIa or Type III procedure, which mandates a hearing and public comment period.

Staff Response: Anvil Rock Road is a public right-of-way, dedicated on the Cannon Beach Park Extension plat in 1926 to "the use of the public forever." This public interest has not been vacated and the public is able to utilize the rights-of-way to access platted property that is privately owned, as was intended by the subdivision plat. It has been anticipated for 95 years that a road could be constructed in this platted right-of-way and that residential development could occur on the adjacent platted lots. This can hardly be considered "speculative", which is defined in Webster's *Collegiate Dictionary 10th Edition*, "theoretical rather than demonstrable." While topography and fiscal considerations may have made development in this area prohibitive in 1926, subsequent advances in technology, combined with the rising value of land, have now made such development feasible.

New road development or road extension is listed as a development use independent of residential dwelling construction in the AC-RCR Zone. At the time the code was adopted it was anticipated that road construction would be permitted separately from residential development through the Type II conditional use procedure. There is no requirement within the LAWDUC to construct the road or extend the road *only* in conjunction with a permit to develop the adjacent lot or parcel.

Per Section 10.510 of *Roads and the County A Manual for Oregon County Officials*, ORS 374 addresses the control of access to public roads. In 2011, the legislature modified ORS 374.309 to provide that "counties may not apply the law so as to deny any property adjoining a road or highway reasonable access." Common

law also provides that property owners have a legal right to access to their properties. In this instance that access is via a public platted right-of-way. County ordinances require that the roadway be constructed to adopted county road standards.

The applicants submitted a copy of the Oregon Department of State Lands-approved wetland delineation (Exhibit 6). That DSL-approved delineation depicts the location of the wetland within the public right-of-way and on the adjacent TL 04302. The approval from DSL also clearly states that any cumulative fill or removal exceeding 50 cubic yards within the wetland area will be subject to state review and permitting. If impacts to the wetland from development activities are permitted by the Oregon Department of State Lands, the state will determine appropriate mitigation requirements. As discussed elsewhere in this report, the subject right-of-way, at its closest point, is approximately 300 feet north of Arch Cape Creek. Section 4.0630(3)(E)(2), LAWDUC, requires a 25-foot-wide buffer along Arch Cape Creek. There are no shoreline buffer requirements and the wetland identified in both the Arch Cape Local Wetland Inventory and on the DSL-approved wetland delineation is not an inventoried wetland in Goal 5, Goal 16 or Goal 17 of the County's comprehensive plan. Section 4.0630(2)(D), LAWDUC, requires a 50-foot-wide setback for all structures from the line of non-aquatic vegetation. However, setback requirements are not applied to roads.

Policy 3 in Goal 6 is addressed above.

Construction of the road is considered "development" and is specifically identified as a Type II conditional use in the AC-RCR Zone. The applicants have submitted this application to comply with that requirement. Conditions of approval will require that the applicants obtain approval of a development permit; submit a grading, drainage and erosion control plan, and a site plan prior to constructing the access. Any required federal and state permits must also be obtained prior to the issuance of a development permit. No development is proposed for TL 04302. When development is proposed for that property, the applicants must comply with all applicable requirements of the *Land and Water Development and Use Code*.

The crafting of broader policies is not within the purview of this application. Any individual or organization may apply at any time to amend the provisions of the LAWDUC. With regard to the old subdivision plats, it is correct that many of those subdivisions were drafted without benefit of ground-truthing. However, the parcels within those plats are now in private ownership. When the comprehensive plan and the implementing zoning ordinance and standards document were adopted in 1980, this area of the County was identified as an area capable of sustaining additional low-density residential development in the future. The construction of the roadway extension as the first progression towards that envisioned outcome would be the review and approval of the right-of-way improvements needed to access those properties.

Section 2.1020(5), LAWDUC, states: "If the Community Development Director believes that persons other than the applicant can be expected to question the application's compliance with the Ordinance, the Director *may* treat the application as a Type IIa procedure." The decision to elevate an application from a Type II to a Type IIa procedure is at the discretion of the Director. The public, pursuant to Sections 2.1020 and 2.2050, LAWDUC, have been provided with an opportunity to provide public comment on this application. The public comments received have not cited specific references where the application does not comply with the ordinance. Alternatively, many of the concerns raised are speculative in nature and relate to the future development of the adjacent privately-owned property, which is not the subject of this application.

Arch Cape Falcon Cove Beach Community Club (ACFCBCC): The ACFCBCC opposes the construction of a gravel road along 150' of platted but undeveloped right-of-way, the installation of water, sewer and electric lines to TL 04302, and the construction of a gravel driveway on TL 04302.

Tax Lot 04302 is shown on Clatsop County Webmaps as being entirely within the National Wetlands Inventory boundary, and largely within the boundary of the Local Wetlands Inventory. The wetlands complex within which this lot is located is the largest and most significant in Arch Cape.

No development has been submitted to support the need for an access road. Roads in the AC-RCR zone should be considered in tandem with the proposed use of the land to be served by the road, and not as an independent project by which a land owner gains improved access to undeveloped land. To do otherwise would conflict with Goal 12 of the Comprehensive Plan, specifically Goal 8, Objective 2 within Goal 12. The stated purpose for having vehicle access ordinances is to "further the orderly layout and use of land, protect community character, and conserve natural resources by promoting well-designed road and access systems and discouraging the unplanned subdivision of land."

The absence of a plan for how applicants might seek to develop and use their property means the application must be denied for lack of facts and evidence to support a finding that the proposed road, utility lines and driveway are needed to serve the development of TL 04302.

The applicants should have to address the fact they purchased a lot in a significant wetlands complex. Whether a future wetlands delineation discloses some portion of the parcel as being suitable for development is yet to be known, as well as whether mitigation options might exist. These considerations demonstrated why this application is premature and why it cannot be approved within an approved development plan for TL 04302.

The proposal would have a negative impact on wetlands and wildlife habitat. Goal 7: Environment, of Goal 12 (Transportation) requires that any transportation system balance services with the need to protect the environment and significant natural features. Objective #4 for this goal is to protect wetlands. There is no way to look at this application except as seeking approval of a road into the wetlands. The proposed driveway and portions of the road may be located in the wetlands themselves or at least within the 50' setback from the line of non-aquatic vegetation.

The proposal does not meet the minimum design standards for a public road. The design standards for public roads are found in Section 3.9800, LAWDUC. The application is for a 20' gravel road. These specifications do not meet the minimum design standards for public roads.

No evidence has been submitted to support the need for logging public land. The right-of-way is forested and is public property. There are no facts and evidence to support logging 3,000 square feet of public right-of-way simply to allow a landowner vehicle access to undeveloped land.

Utilities lines should not be installed until a development plan is in place for TL 04302. There is nothing in the record to justify bringing utility lines to this location.

A driveway should not be constructed without a development plan.

Staff Response: As discussed above, the Oregon Department of State Lands has approved the wetland delineation submitted by the applicant. This approved delineation shows that the majority of the area, if not all of the area, proposed for road construction is outside the wetland area. The National Wetlands Inventory is a broad overview of areas that might potentially contain wetlands. The Arch Cape Local Wetland Inventory, while more refined, is now 10 years old and ground conditions may have changed. The DSL-approved wetland delineation, which was prepared in December 2020 and approved by the state on April 1, 2021, is the most accurate information available regarding the location of the wetland boundaries.

The provisions of Goal 12 are addressed above in this report. The Anvil Rock Road right-of-way is a publicly-dedicated platted right-of-way created in 1926 with the recording of the Cannon Beach Park Extension subdivision plat. The proposed request is not an "unplanned subdivision of land", but is instead a fulfillment of the previously-approved and recorded subdivision of land.

As discussed above, road development and road extension are considered separate uses from development of a residential lot or parcel in the AC-RCR zone. There is not a requirement for a residential development permit application to be submitted in conjunction with the conditional use permit application to construct

the roadway extension. If this subdivision were to be recorded in 2021, a condition of approval would require that the roads be constructed *prior to* any development permits being issued for the adjacent platted lots. Additionally, Section 2.1130(4) requires that an applicant provide proof of legal access to the property in order for a development permit to be issued. Section 2.1130(2)(A), LAWDUC, requires an applicant to demonstrate that a year-round source of potable water has been obtained and to provide verification of hook-up to a state-approved sewer system. This documentation would be required prior to the issuance of a development permit for the adjacent TL 04302.

As discussed above, the Oregon Department of State Lands has approved the wetland delineation submitted by the applicant. Mitigation requirements, if any, for impacts to the wetland, will be determined and enforced by the Oregon Department of State Lands. The applicants will be required to submit any applicable federal and/or state permits prior to the issuance of a development permit.

As also stated above, in order for a development permit to be issued, an applicant must demonstrate that there is legal access to the property and that water and sewer service is provided to the site. The assertion that the road and utilities should not be installed until a development permit for a dwelling has been issued would leave the applicants in a circular loop of logic that would prohibit them from ever obtaining a permit to construct a home. The AC-RCR zone regulations very clearly delineate that road construction or extension is a Type II conditional use activity that requires public comment. Conversely, the construction of a single-family dwelling in this zoning district is permitted under a Type I procedure, which does require public comment.

Development parameters are already established through AC-RCR Zone. Low-density single-family residential dwellings are the primary intended use within this zone. Setbacks and maximum lot coverage requirements will limit the extent of development on the property, therefore providing a theoretical maximum scope of development that would allow the applicants to plan for the water, sewer and electrical service needs. Additionally, the Arch Cape Domestic Water District and the Arch Cape Sanitary District must also review and approve any requests to extend their utilities and would be required to verify the size of lines required to service TL 04302 and surrounding development.

While the applicants have proposed constructing a 50'x14' gravel driveway on TL 04302, as discussed above, the development of an accessory use prior to the primary use cannot be permitted at this time. The applicants have stated that there is no identified timeframe to begin residential construction on TL 04302. When development is proposed for that property, the applicants must comply with all applicable requirements of the *Land and Water Development and Use Code*.

The County A-22 road standard requires a 50-foot wide right-of-way and a 20-foot-wide paved surface. Section 12.08.010(C), Clatsop County Code states:

The Director of Public Works or the County Engineer shall be the sole granting authority for the issuance of any and all permits required pursuant to this chapter. The decision of the Director of Public Works or County Engineer with respect to the issuance of any such permit and any conditions attached thereto shall be in the Director of Public Works' or County Engineer's sole discretion and shall be final and non-appealable.

Section 12.24.020(B), Clatsop County Code states:

The Director or the Director's designee is given the authority to issue all permits provided for in this chapter and to make all decisions necessarily related to those permits.

Comment provided by Terry Hendryx, Assistant Public Works Director, states that a 20-foot wide gravel travel surface will be required for the road. This is also stated on Permit #21-02.

As discussed throughout this report, the existing platted right-of-way, created in 1926 prior to the adoption of the current standards, is 40 feet wide. **A condition of approval will require the applicants to**

dedicate an additional five feet of right-of-way in order to bring the right-of-way closer to compliance with existing standards (Condition #6).

Per Section 3.9830. Public and County Road Standards, "the right-of-way shall be cleared of all trees. However, in subdivisions where traffic safety would not be involved and a lesser requirement would not create a hazard, the right-of-way shall be cleared a minimum of forty-feet (40) or four-feet (4) beyond the edge of the shoulder or curb line or the finished road." On January 12, 2021, Clatsop County Public Works issued permit #21-02 to perform operations in the public right-of-way. The issuance of this permit demonstrated that the County has found removal of trees within the platted right-of-way to be necessary.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

Goal 12 Transportation goals, objectives and policies are addressed elsewhere in this report. Setbacks are not applicable to roads. The subject right-of-way and adjacent TL 04302 are outside the area of mapped as Major or Peripheral Big Game Habitat.

Christopher Achterman, East Shingle Mill Lane: Mr. Achterman objects to the proposed development of Anvil Rock Road as the adjacent private property that is owned by the applicants is entirely within a designated wetland. Any building on TL 04302 would disturb a functioning wildlife area. Because the proposed road would only lead to a wetland area it should not be permitted.

Staff Response: As discussed elsewhere in this report, the applicants have included a DSL-approved wetland delineation with their application materials. The state-approved delineation indicates that all or a majority of the Anvil Rock Road right-of-way that is the subject of this application is outside of the wetland area. This same delineation also indicates that there is a small upland area on the south side of TL 04302 that may be able to accommodate a residential dwelling. Removal or fill within a wetland area is regulated by the Oregon Department of State Lands. If the development activities proposed by the applicants impact wetland areas, the state will review the proposed work and determine appropriate permitting and mitigation requirements.

The County is required to permit access to the applicant's property under state statutes. This is discussed in further detail above.

Jim Jensvold, 80030 Pacific Road: The owners do not have plans to develop TL 04302 at this time, but propose to install water, sewer and electric lines to TL 04302 as part of the road. This is a "spec" road. A public hearing should be held to allow for public comment on this proposed development.

Staff Response: As discussed above, road development and road extension are considered separate uses from development of a residential lot or parcel in the AC-RCR zone. There is not a requirement for a residential development permit application to be submitted in conjunction with the conditional use permit application to construct the roadway extension. If this subdivision were to be recorded in 2021, a condition of approval would require that the roads be constructed *prior to* any development permits being issued for the adjacent platted lots. Additionally, Section 2.1130(4) requires that an applicant provide proof of legal access to the property in order for a development permit to be issued. Section 2.1130(2)(A), LAWDUC, requires an applicant to demonstrate that a year-round source of potable water has been obtained and verification of hook-up to a state-approved sewer system. This documentation must be provided prior to the issuance of a development permit for the adjacent TL 04302.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

Section 2.1020(5), LAWDUC, states: "If the Community Development Director believes that persons other than the applicant can be expected to question the application's compliance with the Ordinance, the Director *may* treat the application as a Type IIa procedure." The decision to elevate the application from a Type II to a Type IIa procedure is at the discretion of the Director. The public, pursuant to Sections 2.1020 and 2.2050, LAWDUC, have been provided with an opportunity to provide public comment on this application. The public comments received have not cited specific references where the application does not comply with the ordinance. Alternatively, many of the concerns raised are speculative in nature and relate to the future development of the adjacent privately-owned property, which is not the subject of this application.

Stuart Sandler 31941 East Shingle Mill Lane: The proposed road would encroach into the wetland and no development proposal has been submitted for the privately-owned adjacent TL 04302. If the roads are approved, the County will have no ability to deny any subsequent permits that might be submitted to develop TL 04302. This project will lead to the destruction of the wetland.

The subject area is an elk sleeping ground and protecting it to the exclusion of a housing district is a no-brainer. Approval to construct the road will be the death knell for the entire wetland. The applicants will be installing utilities without a final development plan. The applicants have done none of the wetland delineation work ultimately required for construction.

The applicants have not demonstrated how stormwater runoff, which already overflows drainage resources at peak times, will be accommodated. A public hearing should be held so that opposition to the offending roads can be seriously assessed.

Staff Response: Any permit applications submitted for future development on TL 04302 must comply with all regulations and standards in place at the time the application is submitted. If a permit application meets all applicable requirements, the permit must be approved. This would be the case regardless of the presence or absence of a wetland. State law permits removal and fill activities within a wetland and conditions may be imposed and/or mitigation required. Removal and fill activities within wetlands are under the jurisdiction of the Oregon Department of State Lands (DSL). As discussed above, DSL has approved the applicants' wetland delineation (WD #2020-0667). Any impacts to the wetland from road construction activities will require review, permitting and/or mitigation as determined by DSL. A copy of any federal and/or state permits must be submitted to Clatsop County in order for a development permit to be issued.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

The subject right-of-way and adjacent TL 04302 are outside the area mapped as Major or Peripheral Big Game Habitat. The area has been platted for residential development for 95 years. Property has been sold to private owners and there are now investment-based expectations that would preclude excluding the

housing district. Doing so would likely result in a takings issue that would need to be settled through the legal system. Other properties immediately surrounding TL 04302, have been allowed to be developed in close proximity to or adjacent to wetlands.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

Pursuant to Section 2.2040(1)(B), notices were sent to property owners within 250 feet and a 10-day public comment period was provided. All public comments received have been included in Exhibit 4 of this report.

IV. RECOMMENDED DECISION AND CONDITIONS OF APPROVAL

Based on the analysis and findings of this report staff recommends **approval** subject to the following conditions:

1. The roadway extension shall be constructed to the County's A-22 road standard and will have a 20-foot-wide gravel travel surface.
2. The proposed 50' x 14' gravel driveway on TL 04302 is not permitted as part of this conditional use approval.
3. The applicant shall provide documentation from Clatsop County Public Works that all required street signage has been paid for by the applicants and installed by Public Works prior to the issuance of a development permits for TL 04302.
4. The Anvil Rock Road extension shall be depicted on the final site plan, including dimensions and materials, and shall demonstrate compliance with all applicable standards found in Sections 3.9540 and 3.9830.
5. The applicants shall adhere to all requirements of Permit #21-02. The access will be constructed as indicated on the site plan submitted by the applicant in conjunction with this Conditional Use Permit application and as approved on Operations Permit #21-02. Any changes to the access must be approved by both the Planning Division and Public Works departments to ensure continued compliance with access and road standard requirements.
6. The applicants shall dedicate an additional five feet of right-of-way along the entire length of the east property line of TL 04302 prior to submitting development permits for the adjacent TL 04302.
7. The applicants shall submit a grading, drainage and erosion control plan for review and approval by Public Works prior to the commencement of construction for the roadway. The proposed roadway will be required to comply with all applicable requirements of Section 3.2000.
8. The applicants shall include a tree removal plan identifying all trees six inches in diameter or larger, measured at a height of four and one-half feet above the natural grade. This tree removal plan shall be submitted with the grading, drainage, and erosion control review documents. Existing natural vegetation shall be preserved to the maximum extent possible and as permitted by Clatsop County Public Works.
9. The applicants shall demonstrate that any impacts to the delineated wetland from road

construction activities comply with all state permit requirements prior to a development order being issued for the project.

10. The applicants shall construct the road 40 feet beyond the planned driveway access in order to accommodate a required turnaround area.
11. The applicants will submit a development permit application, including approval from the Cannon Beach RFPD, documenting approval of the roadway extension.

Other regulations, including, but not limited to, the following also apply:

- (1) Development shall comply with all applicable state, federal and local laws and regulations. The applicant shall provide the Planning Division with copies of any required state and/or federal permits.
- (2) This approval is valid for a period of two (2) years from the date of approval. The Community Development Director can authorize one extension of up to 12 months.
- (3) A complaint from neighbors shall be cause for review of the Conditional Use. The review may be a Type II County enforcement proceeding. In such proceeding, the Compliance Order may impose any of the conditions described in 5.025 of the Clatsop County Land and Water Development and Use Ordinance.
- (4) Development shall comply with all applicable state, federal and local laws and regulations.

EXHIBIT F

*Board of Commissioners Meeting Video
August 25, 2021 (electronic link)*

EXHIBIT G

Notice of Appeal

August 16, 2021



Clatsop County
 Community Development
 800 Exchange Street, Suite 100
 Astoria, Oregon 97103
 Phone 503 325-8611 Fax 503 338-3606
comdev@co.clatsop.or.us www.co.clatsop.or.us

NOTICE OF APPEAL

Attached is the "Procedure for Appeal" from the Clatsop County Land and Water Development and Use Code #20-03. Please read the attached information completely and follow the instructions. Also, note there is a fee that must accompany this form. If the fee is not included, the appeal is incomplete and cannot be considered. The form below is provided for your convenience.

Appellant Name: Oregon Coast Alliance (ORCA) & 2 Others Email: cameron@oregoncoastalliance.org
 (see Attachment)
Mail Address: P.O. Box 857 City/State/Zip Astoria, OR 97103
Phone: 503-391-0210 Phone: _____

Section 2.2200. Requirements of Notice of Appeal

1. An identification of the decision sought to be reviewed, including the date of decision:

File Number: 21-000005 (Smith) Date of Decision: 8/3/21

2. A statement of the standing of the person seeking review:

Each Appellant submitted public comments within the allowed period.
Each Appellant was party to the de novo appeal to the Hearings Officer and provided testimony at the hearing.

3. The specific grounds relied upon for review (attach additional pages if necessary):

See Attachment.

4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in 2.2230(1). (attach additional pages if necessary):

To save County resources, no additional hearings or review is requested.
ea

/s/ Cameron LaFollette, ORCA Executive Director (on behalf of all Appellants) 8/16/21
 Signature Date

**Smith Notice of Appeal to BOC - Attachment
Case #21-000005**

Appellants:

1. Oregon Coast Alliance
P.O. Box 857, Astoria, OR 97103
503-391-0210 (Cameron LaFollette, Executive Director)
cameron@oregoncoastalliance.org
2. Arch Cape Falcon Cove Beach Community Club
79729 Hwy 101, Arch Cape, OR 97102
503-436-0146 (Charles Dice, President)
acfbcc@gmail.com
linda@gaylordeyerman.com (Linda Eyerma, Land Use Committee Chair)
3. Stuart Sandler
19419 NW Reeder Rd, Portland, OR 97231
503-621-3255
stusan47@gmail.com

Section 2.2200

3. The specific grounds relied upon for appeal.

Appellants raised several specific grounds for review at the Hearings Officer level. All issues raised were accompanied by statements or evidence sufficient to afford the decision maker and others adequate opportunity to respond to each issue. The record includes oral and written testimony and exhibits by Appellants and others opposed to this permit approval, submitted both during the initial public comment period and at the subsequent public hearing before the Hearings Officer. The issues raised included but were not limited to the following.

Issue 1

Landowners sought a conditional use permit for 150' of undeveloped public right-of-way in order to construct an A-22 County road intended to provide vehicular and utility access to their vacant land, most of which is located in delineated wetlands. Landowners have no plans to develop or build on their land.

(A) Allowing private landowners to use a public right-of-way to construct road and utility access to vacant land, when no development project has been approved or is in-the-works, conflicts with provisions in the Comprehensive Plan, in violation of Section 2.4030(3)(A), LAWDUC.

(B) Allowing private landowners to use a public right-of-way to construct road and utility access to vacant land, when no development project has been approved or is in-the-works, conflicts with Section 3.9810 and other ordinances in the zoning code, in violation of Section 2.4030(3)(B), LAWDUC.

***Smith Notice of Appeal - Attachment
Case #21-000005***

(C) The site evaluation lacked sufficient data to establish that the site, a forested public right-of-way in close proximity to locally significant wetlands, is suitable for the proposed access road, and/or that the road would be compatible with the natural and physical features of the site and surrounding properties, in violation of Sections 2.4030(3)(C)(4) and (3)(D), LAWDUC.

(D) Landowners failed to meet their burden of showing a need for vehicular access to their undeveloped property. Findings suggesting landowners were motivated by need are not supported by facts in the record. The Hearing Officer erroneously concludes that motivation is irrelevant.

Issue 2

The environmental and public health and safety impacts of the proposed construction and use of the forested right-of-way for vehicular access were not adequately considered and addressed in the decision. This includes but is not limited to the impacts of tree removal, elimination of wildlife habitat, and damage to locally significant wetlands located on the right-of-way and on surrounding properties including the property owned by the permit applicants. .

Issue 3

The failure of Clatsop County to have a local wetlands protection program and/or to have adopted the Local Wetlands Inventory for Arch Cape ignores and violates Statewide Planning Goal 5 and related administrative rules.

Respectfully Submitted on 8/16/21 by
Oregon Coast Alliance, Appellant
Arch Cape Falcon Cove Beach Community Club, Appellant
Stuart Sandler, Appellant

EXHIBIT H

Hearings Officer Notice of Decision

August 3, 2021



NOTICE OF DECISION AND RIGHTS OF APPEAL
Conditional Use Permit #21-000005
Appeal #186-21-000325-PLNG

DATE: August 3, 2021

APPELLENTS: Oregon Coast Alliance (ORCA)
Arch Cape Falcon Cove Beach Community Club (ACFCBCC)

PERMIT APPLICANT: Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707

RIGHT-OF-WAY LOCATION: A portion of the Anvil Rock Road right-of-way, a publicly dedicated right-of-way, north of East Shingle Mill Lane, east of East Beach Road, and west of Fire Rock Road

REQUEST: Appeal of a Notice of Decision, issued April 23, 2021, for Conditional Use Permit #21-000005 to construct an approach road within the platted, but unopened, Anvil Rock Road right-of-way. The approach road would extend 150 feet north from the East Shingle Mill Lane right-of-way to property owned by the applicants (TL 41030CA04302)

Dear Ms. LaFollette, Ms. Kerr and Mr. Sandler:

The Clatsop County Hearings Officer has completed review of the request noted above. The Notice of Decision is attached for your review. The Hearings Officer's decision may be appealed to the Board of Commissioners by a person with standing by filing a completed Notice of Appeal application and the associated filing fee up to the date and time that appears at the bottom of this letter. The appeal must comply with Section 2.2190 of LAWDUC #20-03 (procedure for an appeal).

If you have any questions regarding this decision or the appeal procedure please do not hesitate to contact me at 503-325-8611.

Sincerely,

Gail Henrikson, AICP, CFM
Community Development Director

Attachment

LAST DAY TO APPEAL: 4:00 P.M. on, August 16, 2021



Clatsop County

Community Development
800 Exchange St., Suite 100
Astoria, Oregon 97103
www.co.clatsop.or.us

Phone (503) 325-8611
Fax (503) 338-3666

HEARINGS OFFICER'S DECISION

Conditional Use Permit #186-21-000005

Appeal #186-21-000325-PLNG

DECISION DATE: August 3, 2021

SUMMARY OF DECISION: **APPEAL DENIED, CONDITIONAL USE APPROVAL AFFIRMED AS MODIFIED**

HEARING DATE: June 22, 2021

REQUEST: Appeal of the approval of a Conditional Use Permit for public road extension and development within existing public right-of way to access property owned by the Applicant

APPLICANT: Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707

APPELLANTS: Oregon Coast Alliance (ORCA)
Arch Cape Falcon Cove Beach Community Club (ACFCBCC)

PROPERTY DESCRIPTIONS: A portion of the Anvil Rock Road right-of-way, a publicly dedicated right-of-way, north of East Shingle Mill Lane, east of East Beach Road, and west of Fire Rock Road.

Lots 3-5, Block 46, Cannon Beach Park Extension, recorded with the Clatsop County Clerk on October 11, 1926 (Clatsop County Book of Deed Records, Book 8, Page 43) (Taxlot 4302)

ZONING ARCH CAPE – RURAL COMMUNITY RESIDENTIAL (AC-RCR)

PROPERTY SIZE: Anvil Rock Road ROW: approx. 6,000 sq. ft.
Property owned by applicant: approx. 14,180 sq. ft (0.34 acre)

COMP PLAN DESIGNATION: Southwest Coastal Community Plan

Exhibits:

A – Conditions of Approval

B – Staff Report, dated April 23, 2021

FINDINGS AND CONCLUSIONS:

A. Introduction and Background

The Applicant is the owner of Lots 3-5, Block 46, Cannon Beach Park Extension, recorded with the Clatsop County Clerk on October 11, 1926 (Clatsop County Book of Deed Records, Book 8, Page 43), also identified as Tax Lot 4302 (“Applicant’s Property”). Applicant’s Property is adjacent to an unimproved, publicly-dedicated right-of-way identified as Anvil Rock Road. A portion of the Applicant’s Property and the unimproved right-of-way comprise the Site for purposes of this Decision.

On or about January 19, 2021, Applicant submitted an application for conditional use approval that would allow the development of Anvil Rock Road from its intersection with East Shingle Mill Lane approximately 150 feet north.

The County Planning Department (“Staff”) deemed the Application complete on January 29, 2021. Staff processed the Application through the County’s Type II process. On April 23, 2021, Staff recommended approval of the Application (“Staff Report”). Based on the recommendation in the Staff Report, the Director of the Community Development Department (“Director”) approved the conditional use, with conditions, and issued a Notice of Decision, also on April 23, 2021 (“Director’s Decision”).

Appellants timely filed an appeal of the Director’s Decision on May 5, 2021. On May 28, 2021, the County provided notice of a public hearing for the appeal, which was also published in *The Astorian* on June 12, 2021.

B. Hearing Summary

A *de novo* Hearing in this matter was held on June 22, 2021. Due in part to restrictions on in person meetings as a result of the COVID-19 pandemic, the hearing was held via video conference, with all participants appearing by video or phone from various remote locations.

As the Hearings Officer, I began the hearing at approximately 9:08 a.m. I provided participants with the statements required by statute related to quasi-judicial proceedings. I noted for the record that I did not have any *ex parte* contacts to disclose and that I had not visited the subject property. I explained my role as Hearings Officer and my obligation to apply the facts in the record to the applicable criteria. No participant objected to the County’s jurisdiction over the Application or to me serving as the Hearings Officer, and no other procedural or jurisdictional objections were made.

Staff provided an oral summary of the Staff Report and Director’s Decision, noting the applicable criteria. The Applicant appeared at the Hearing and stated its intent to rely on the application and Staff Report as the basis for approval. Three individuals spoke in support of the Application. Lisa Kerr appeared on behalf of both Appellants and also presented live testimony. Multiple individuals spoke in opposition to the Application.

During the hearing, Staff noted that some additional comments were received prior to the hearing and asked that those comments be included in the record. No objection was made, and I find no basis to exclude those materials. Thus, the record includes all of the materials provided to the Hearings Officer, including those comments that were submitted to the County prior to the Hearing. Staff has provided a copy of those materials to the Hearings Officer.

I closed the hearing and went off the record at approximately 11:10 a.m., taking this decision under advisement.

C. Decision on the Application

I find that the Director's Decision, dated April 23, 2021, and styled NOTICE OF DECISION, which incorporates the Staff Report, sets forth the applicable criteria relating to the conditional use approval for the extension of roads within the publicly-dedicated right-of-way. Based on the materials in the Application, the Director's Decision, and the information presented by other participants before and during the Hearing, I affirm the Director's Decision on appeal, as modified in this Decision. Except as supplemented below, I hereby adopt the findings in the Director's Decision as my findings. Where no participant other than the Applicant or Staff addressed an applicable criterion, my findings rely wholly on the explanation in the Director's Decision as the basis for concluding that the criterion is satisfied. Where a participant other than the Applicant or Staff did address a criterion, I provide further explanation of each criterion in these findings.

The conditions of approval are set forth in Exhibit A to this Decision and replace the conditions of approval as presented in the Director's Decision.

D. Findings for Disputed Criteria

1. Lack of Associated Development

One of the primary issues raised on appeal is whether a conditional use permit for a road can be granted if there is no specific proposal for new development to be served by the road. Appellants raised this issue in their written comments and again during live testimony. Appellants argue that the Applicant desires, but does not need, a developed road.

The Site is located within the Arch Cape - Rural Community Residential ("AC-RCR") Zone. The AC-RCR Zone is unique in that it authorizes private and public road extensions as an independent use in addition to other permitted or conditional uses. Specifically, Section 4.0620 of the Land and Water Development and Use Code ("LAWDUC" or Code") refers to Table 1 and the permitted and conditional uses allowed in the AC-RCR Zone. Item 98 of Table 1, in turn, identifies "Road Development or Extension, Public or Private" as a conditional use in this zone, and no other "Applicable Standards" or "Additional Requirements" are listed for that use.

Appellants argue that the Applicant's sole motivation for the Application is to be able to drive to the vacant Property, and that the Applicant has "has no plans or time frame for residential development." Because the Code does not impose any other applicable standards or additional requirements for the road extension use, however, only the Code's conditional use criteria are applicable, and the Applicant's motivation is irrelevant as long as the applicable criteria are satisfied. Those criteria are addressed in the Director's Decision and in the findings below. None of those criteria imposes an express requirement on a road extension that the road be developed only in conjunction with another development, or that a road be developed only to access developed property. Indeed, not all uses allowed in the AC-RCR Zone require development, and a property owner may, for example, use property for low intensity recreation as an outright permitted use. Accessing the property by car is consistent with that use. No participant in this proceeding identified any Code provision that expressly requires a conditional use permit for a road extension be approved only if new development will be served from that road.

Appellants rely in part on LAWDUC Section 3.9810 to support their argument that roads must serve new development only. The relevant language in that Code section states "[t]he Clatsop County Road Standards are intended to provide access to new development in a manner which reduces construction cost, makes efficient use of land, allows emergency vehicle access while discouraging inappropriate traffic volumes and speeds, and which accommodates convenient pedestrian and bicycle circulation." First, this Code section is a purpose statement and, itself, does not contain any approval criteria. Even so, this Code section does not contain a temporal element. In other words, proposed road extension, if approved, will provide access to new development if such

development is proposed in the future, which is consistent with the Code language cited. Third, the record indicates that the proposed road will be built to a standard that allows for emergency vehicle access, which may be necessary even if no new development occurs, which is part of the purpose of this Code section. I therefore find that this Code section does not prohibit issuance of the conditional use approval for the proposed road extension.

Appellants rely in part on LAWDUC 3.9510, which states in part “[t]he regulations in this section further the orderly layout and use of land, protect community character, and conserve natural resources by promoting well-designed road and access systems and discouraging the unplanned subdivision of land.” This Code section is a purpose statement and, itself, does not contain any approval criteria. Rather, this provision describes the end result if the access and circulation standards are applied. Even so, this Code section does not contain a temporal element. I therefore find that this Code section does not prohibit issuance of the conditional use permit for the proposed road extension.

Appellants also rely on LAWDUC 3.9620(1). LAWDUC section 3.9620(1), however, is part of the County’s Subdivision Design Standards. The proposed use here is not part of a subdivision application and, therefore, this Code provision is not applicable.

2. Conditional Use Criteria

LAWDUC Section 2.4000 sets forth the requirements for the approval of a conditional use. I find that the Director’s Decision, which incorporates the Staff Report it relies on, explains with adequate detail how these criteria are met and the evidence that can be relied on to meet those criteria. Appellants’ challenges to those criteria are addressed below.

a. LAWDUC Section 2.4030(3)(A)

Appellants first argue that LAWDUC Section 2.4030(3)(A) cannot be met. That Code section requires that a proposed use “not conflict with any provision, goal, or policy of the Comprehensive Plan.” Appellants assert that the proposed use conflicts with Objective 2 of Goal 8 in the County’s Goal 12 (Transportation) portion of the Comprehensive Plan (“Transportation Objective 8-2”). That Objective states that the County’s objective is to “[c]onsider transportation impacts when making land use decisions, and consider land use impacts (in terms of land use patterns, densities, and designated uses) when making transportation-related decisions.”

Appellants also assert that the proposed use conflicts with the Comprehensive Plan’s provisions that “requires the reviewer to weigh factors supporting road development against the environmental harm that it might cause,” citing in part to Objective 4 of Goal 7 in the County’s Goal 12 (Transportation) portion of the Comprehensive Plan (“Transportation Objective 7-4”). Appellants specifically raise concerns regarding impacts from tree removal, impacts to big game wildlife habitat, and impacts to wetlands.

It is well-established that a city or county maintains consistency with comprehensive plan provisions through the enactment of land use regulations. In other words, unless a comprehensive plan imposes a distinct approval criterion, compliance with land use regulations implementing the comprehensive plan is deemed to be in compliance with the comprehensive plan itself. “[W]hether a particular plan provision is an approval criterion for conditional use permit applications must be determined from the function that the plan itself assigns to the provision.” *Von Lubken v. Hood River Cty.*, 104 Or App 683, 689, (1990), *on reconsideration*, 106 Or. App. 226 (1991). The Land Use Board of Appeals has similarly held that to apply a comprehensive plan provision as an approval criterion, the text and context of the comprehensive plan must establish both (1) that the plan requirement is mandatory and (2) that the mandate must be applied directly as an approval standard. *See Friends of the Hood River Waterfront v. City of Hood River*, 68 Or LUBA 459, *4 (2013).

Appellants do not explain why the proposed road extension conflicts with any of the Comprehensive Plan objectives they cite to. Further, I do not find any support in the Comprehensive Plan, and no party has identified any such support, for concluding that any of those provisions are mandatory criteria. Transportation Objective 8-2, for example, simply states that land use and transportation decisions will inform each other. Here, the land use decision is the decision to develop a road within a dedicated right of way. To the extent that decision is also a transportation-related decision, it is based on land use criteria for conditional uses, and it ultimately takes into consideration the development that might be served by ensuring it can accommodate certain utilities and emergency vehicle access. The conditional use permit process, therefore, accomplishes exactly what this objective sets out to do. Transportation Objective 7-4 similarly states only that the County will minimize transportation impacts on wetlands and wildlife habitat. Those impacts are reviewed either as part of this process, or through the development permit the Applicant will have to obtain prior to actually constructing the road. As explained in these Findings, the proposed use is consistent with the County's land use regulations implementing the Comprehensive Plan. I therefore find that the proposed use does not conflict with any provision, goal, or policy of the Comprehensive Plan.

With respect to big game wildlife habitat, the County implements its Comprehensive Plan provisions by mapping and protecting such habitat in certain zones. For conditional uses, LAWDUC Section 2.4030(3)(G) requires consideration to be given to the cumulative effects of the proposed development on big game habitat. That Code section, however, applies only to land identified in the Comprehensive Plan as Agricultural Lands or Conservation Forest Lands. It is undisputed in the record that the Site is not part of any such designation and, instead, is part of the AC-RCR Zone. There is therefore no basis to apply LAWDUC Section 2.4030(3)(G) to this Application. I therefore find that the findings in the Staff Report are sufficient to determine that the proposed use does not conflict with the big game wildlife habitat portions of the Comprehensive Plan.

With respect to wetlands, the record includes evidence of a wetland delineation and the fact that most, if not all, of the proposed use will avoid the delineated wetland. As the Staff Report notes, if more than 30 cubic yards will be removed, filled, or relocated as part of the road construction project, or if construction activities will occur within 50 feet of mapped or known wetlands, the Applicant will be required to submit a grading and erosion control plan for review. Further, the Applicant will have to comply with state regulations. Compliance with these provisions can be achieved during the development permit process, and the Director's Decision proposed conditions of approval for that purpose. There is no evidence or argument in the record that these subsequent approvals are not legally available to the Applicant. I therefore find that, with the conditions of approval, the proposed use is consistent with the County's Comprehensive Plan provisions cited by Appellants.

b. LAWDUC Section 2.4030(3)(B)

Appellants next argue that LAWDUC section 2.4030(3)(B) cannot be met. That Code section requires that a proposed use meets the requirements and standards of all other applicable Code sections. As explained in the Director's Decision and in these Findings, all other Code provisions applicable to the road extension are satisfied; LAWDUC section 2.4030(3)(B) is therefore also satisfied.

In support of their argument, Appellants again rely on LAWDUC sections 3.9510 and 3.9620(1), which are addressed above. Appellants also rely on LAWDUC section 4.0610(2), which is part of the purpose of the AC-RCR Zone and is not an approval standard. In contrast, it is part of what the Code states is one of the purposes for which the AC-RCR provisions were developed. In other words, it is the end-result of applying the standards in the zone and not a standard itself to be applied.

Appellants also cite to LAWDUC 4.0630(3)(E)(5), which requires that the "landscape shall be preserved in its natural state to the maximum extent possible by minimizing tree, vegetation and

soils removal.” Although Appellants do not explain why the proposed use is inconsistent with this Code provision, they do assert in later arguments that the conditions of approval in the Director’s Decision are inadequate to show this standard is met. Because the construction of a road necessarily requires the removal of vegetation, I find that it is not possible to preserve the landscape within the developed portion of the road. Development of the road is therefore consistent with this Code provision. Outside the developed portion of the road, however, this Code provision still applies, and the landscape must be preserved in its natural state to the maximum extent possible. The Director’s Decision proposes to satisfy this criterion by requiring the Applicant to include a tree removal plan when it submits an application for grading, drainage, and erosion control to Clatsop County Public Works. The condition of approval in the Director’s Decision would expressly require that existing natural vegetation be preserved to the maximum extent possible. Whether vegetation removal can be preserved, however, is to be determined in this proceeding. The Applicant has not proposed to remove any vegetation beyond that which is necessary to construct the road extension. I therefore find that the original condition of approval in the Director’s Decision should be slightly modified to conform with the Applicant’s proposal, and that the tree removal plan should identify only those trees to be removed either because they are within the footprint of the road extension or because their removal is necessary to construct the road or to meet the County’s road standards as determined by Public Works; all other trees and vegetation on the Property should be preserved. With this revised condition, I find that 4.0630(3)(E)(5) can be satisfied.

3. Miscellaneous Issues

a. Adequacy of Conditions

Appellants argue that Conditions #5 and #10 are inconsistent with the proposed development. Condition #5 requires the Applicant to adhere to Public Works permit #21-02, which Appellants state requires the Applicant to “stay out of delineated wetlands.” Condition #10 requires the Applicant to construct the road 40 feet beyond the planned driveway access in order to accommodate a required turnaround area. I find that there is nothing inconsistent about these conditions and the proposed development of the road. Through this conditional use permit process, the Applicant is seeking conditional use approval to develop the road surface within the right-of-way. The actual development of the road will occur through development and other regulatory permits. The record does not contain any evidence or argument that these other permits are not legally available to the Applicant. Once the Applicant obtains land use approval, the risk that the Applicant cannot obtain a specific development permit lies with the Applicant. Thus, for example, if the Applicant is not able to avoid the delineated wetland as part of the development process, the Applicant may not be able to proceed with the development of the road if avoiding the delineated wetland is a condition of that permit. Requiring the Applicant to go through that subsequent process, however, is appropriate as part of this conditional use permit process. Further, Condition #5 expressly states that any changes to the access must be approved by both the Planning Division and Public Works departments to ensure continued compliance with access and road standard requirements.

Appellants also argue that Condition #6 is inconsistent with the proposed development. That condition requires the Applicant to dedicate five feet of land along the east line of Applicant’s Property to bring the right-of-way width closer to conformance with road standards. As Appellants note, the Applicant does not own all of the property adjacent to the right-of-way proposed for development. As with Conditions #5 and #10, I find that Condition #6 is appropriate, even if it imposes some risk to the Applicant. The Applicant has agreed to construct the road to a certain County standard (the “A-22” standard). As explained in the Staff Report, that standard generally requires a right-of-way that is 50 feet wide, but results in a gravel road surface that is only 20 feet wide. The record is not clear whether the road can be constructed within a narrower, 40-foot right-of-way. However, that determination can be made by Public Works as part of a subsequent permit process. While the dedication of the extra right-of-way along the Applicant’s Property will help

ensure the right-of-way width is sufficient adjacent to that property, the burden will be on the Applicant to demonstrate to Public Works that that road can be constructed along the entire area proposed for development. This conditional use permit does not alter the County's road standards or purport to allow the Applicant to construct a road that does not meet those standards. I therefore find that that Condition #6, which the Applicant has agreed to, is appropriate and is not inconsistent with the proposed development of the road, as long as the Applicant meets the other conditions of approval and constructs the road consistent with the County's standards.

b. Application Process

Appellants argue that the Director's Decision was in error because the Director did not elevate the Application to a Type II(a) review. Appellants state that the Planning Commission should be the decision maker in this proceeding. Appellants' argument is not grounded in the terms of the County's Code. A Type II(a) proceeding is to be reviewed by a Hearings Officer rather than the Planning Commission. Further, as Appellants note, the Director has discretion to elevate a Type II review to a Type II(a) review. Appellants do not cite to any Code provision that mandates use of the Type II(a) procedure in this case. Even if they had, this appeal, which has now come before a Hearings Officer as a *de novo* proceeding, provides Appellants with the same procedure as a Type II(a) proceeding. I therefore find that the Application was reviewed appropriately and that there is no basis in the Code to send this matter to the Planning Commission.

E. Conclusion

Based on the foregoing findings, the appeal is **DENIED**, the Director's Decision is **AFFIRMED**, and the conditional use approval is **APPROVED** subject to the Conditions of Approval in Exhibit A.



Tommy A. Brooks
Clatsop County Hearings Officer

Exhibit A

To Hearings Officer's Decision

Conditions of Approval

1. The roadway extension shall be constructed to the County's A-22 road standard and will have a 20-foot-wide gravel travel surface.
2. The proposed 50' x 14' gravel driveway on TL 04302 is not permitted as part of this conditional use approval.
3. The applicant shall provide documentation from Clatsop County Public Works that all required street signage has been paid for by the applicants and installed by Public Works prior to the issuance of a development permits for TL 04302.
4. The Anvil Rock Road extension shall be depicted on the final site plan, including dimensions and materials, and shall demonstrate compliance with all applicable standards found in Sections 3.9540 and 3.9830.
5. The applicants shall adhere to all requirements of Permit #21-02. The access will be constructed as indicated on the site plan submitted by the applicant in conjunction with this Conditional Use Permit application and as approved on Operations Permit #21-02. Any changes to the access must be approved by both the Planning Division and Public Works departments to ensure continued compliance with access and road standard requirements.
6. The applicants shall dedicate an additional five feet of right-of-way along the entire length of the east property line of TL 04302 prior to submitting development permits for the adjacent TL 04302.
7. The applicants shall submit a grading, drainage and erosion control plan for review and approval by Public Works prior to the commencement of construction for the roadway. The proposed roadway will be required to comply with all applicable requirements of Section 3.2000.
8. The applicant shall include a tree removal plan identifying all trees six inches in diameter or larger, measured at a height of four and one-half feet above the natural grade. This tree removal plan shall be submitted with the grading, drainage, and erosion control review documents. The tree removal plan shall show the removal of trees only where such removal is within the area to be developed for the road or where removal is necessary to accommodate the construction of the road to meet County road standards.
9. The applicants shall demonstrate that any impacts to the delineated wetland from road construction activities comply with all state permit requirements prior to a development order being issued for the project.
10. The applicants shall construct the road 40 feet beyond the planned driveway access in order to accommodate a required turnaround area.
11. The applicants will submit a development permit application, including approval from the Cannon Beach RFPD, documenting approval of the roadway extension.

Other regulations, including, but not limited to, the following also apply:

(1) Development shall comply with all applicable state, federal and local laws and regulations. The applicant shall provide the Planning Division with copies of any required state and/or federal permits.

(2) This approval is valid for a period of two (2) years from the date of approval. The Community Development Director can authorize one extension of up to 12 months.

(3) A complaint from neighbors shall be cause for review of the Conditional Use. The review may be a Type II County enforcement proceeding. In such proceeding, the Compliance Order may impose any of the conditions described in 5.025 of the Clatsop County Land and Water Development and Use Ordinance.

(4) Development shall comply with all applicable state, federal and local laws and regulations.

Exhibit B
To Hearings Officer's Decision
Staff Report



STAFF REPORT
Conditional Use Permit #21-000005

STAFF REPORT DATE: April 23, 2021

REQUEST: Conditional Use Permit for public road extension to access property owned by the applicants and including the installation of water, sewer and electric utilities

APPLICANTS: Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707

OWNERS/TL 41030CA04302: Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707

OWNER/ANVIL ROCK ROAD ROW: Publicly dedicated right-of-way, Plat of Cannon Beach Park Extension, Book 8, Page 43

DEEMED COMPLETE: January 29, 2021 (150 Days: June 28, 2021)

RIGHT-OF-WAY LOCATION: Anvil Rock Road within the existing public platted right-of-way, north of the East Shingle Mill Lane, east of East Beach Road and west of Fire Rock Road

ZONING: Arch Cape – Rural Community Residential (AC-RCR)

PROPERTY SIZE: Subject area within platted Anvil Rock Road right-of-way ~6,000 SF
Adjacent TL 04302: 0.34 acres (~14,810 sq. ft.)

IMPROVEMENTS: Assessor records do not indicate any improvements within the right-of-way or on TL 04302

COUNTY STAFF REVIEWER: Gail Henrikson, Community Development Director

STAFF RECOMMENDATION: Approval, subject to conditions.

AGENCY COMMENTS: Annette Brodigan, Clatsop County Environmental Health
Terry Hendrix, Clatsop County Public Works
Jevra Brown, Oregon Department of State Lands

PUBLIC COMMENTS: Oregon Coast Alliance (ORCA)
Arch Cape Falcon Cove Beach Community Club (ACFCBCC)
Christopher Achterman
Jim Jensvold
Stuart Sandler

EXHIBITS:

1. Application and Supporting Documents
2. Public Notice
3. Agency and Public Comments
4. Road Operations Permit #21-02
5. Arch Cape Local Wetland Inventory (2011)
6. Approved Wetland Delineation #2020-0667

I. SUMMARY

On January 19, 2021, Cy and Diane Smith submitted a conditional use application to extend the public, but unopened, Anvil Rock Road right-of-way, by constructing an access to the County's A-22 road standard. As proposed by the applicants, the access would extend north from East Shingle Mill Lane approximately 150 feet and would be approximately 20 feet in width with a gravel travel way. As will be discussed in further detail below, the applicants will be required to dedicate an additional five feet of right-of-way for Anvil Rock Road and will be required to extend the road an additional 40 feet in order to provide a required turnaround area. Concurrent with the road construction, the applicants will also be installing water, sewer and electric utilities to provide future service to TL 04302.

The proposed access would lead to a proposed 50' x 14' gravel driveway in the southeast quadrant of TL 41030CA04302 (TL 04302), owned by the Smiths. The purpose of the road extension is allow the applicants to obtain access to their property in preparation of future development of the parcel. Adequate vehicle and fire equipment access is a prerequisite to develop property with a use such as a residential dwelling, which is the predominant development type in the Arch Cape Rural Community Residential Zone (AC-RCR) and the anticipated use of the applicant's property.

2018 Aerial



Clatsop County GIS

PROPERTY STATUS

The platted right-of-way was dedicated to the public when the Plat of Cannon Beach Park Extension (Book 8, Page 43) was recorded on October 11, 1926. The public right-of-way is in the Arch Cape – Rural Community Residential (AC-RCR) zone. The property owned by the Smiths (TL 04302) consists of Lots 3-5, Block 46, Cannon Beach Park Extension, recorded with the Clatsop County Clerk on October 11, 1926 (Clatsop County Book of Deed Records, Book 8, Page 43). Tax Lot 04302 meets the county's definition of "lot of record". LAWDUC §1.0500.

PROPERTY CONDITIONS

The subject public right-of-way is heavily wooded and is slightly sloped. The subject public right-of-way and adjacent private property are served by the Arch Cape Sewer District and the Arch Cape Water District. The subject public right-of-way and adjacent private property are within the Cannon Beach Rural Fire Protection District. The public Anvil Rock Road is moderately-sloped, varying in elevation from approximately 20' at the south end of East Shingle Mill Lane to approximately 24' at the north end of the proposed road extension. Road operations permit #21-02 (Exhibit 4), discussed below, was issued by Clatsop County Public Works on January 12, 2021.



II. APPLICABLE CRITERIA

The applicable criteria for this land use application are contained in the following documents and sources:

Land and Water Development and Use Code (LAWDUC)

- Article 1 Introductory Provisions
- 2.1020 Type II Procedure
- 2.2050 Procedure for Mailed Notice
- 2.4000-2.4050 Conditional Development and Use
- 3.2000 Erosion Control Development Standards
- 3.9800 Transportation Improvements and Road Standard Specifications for Design and Construction
- 4.0600 Arch Cape Rural Community Residential Zone

Clatsop County Comprehensive Plan

- Goal 1 Citizen Involvement
- Goal 2 Land Use Planning
- Goal 5 Open Space, Historic and Cultural Areas and Natural Resources
- Goal 6 Air, Water and Land Resources Quality
- Goal 11 Pubic Facilities and Services

III. APPLICATION EVALUATION

A. Land and Water Development and Use Code (LAWDUC)

ARTICLE 1. INTRODUCTORY PROVISIONS

Section 1.0500. Definitions

ACCESS -- The way or means by which pedestrians and vehicles enter and leave property.

ACCESSORY USE -- A use customarily incidental and subordinate to the principal use and located on the same lot, tract or parcel.

BLOCK -- All land along one side of a street which is between two (2) intersections or intercepting streets, or interrupting streets and a railroad right-of-way, or unsubdivided land or water course.

BUILDING -- A structure built or placed for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

CLEAR-VISION AREAS -- A triangular shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection. (See 3.9530)

DEVELOPMENT -- Any man-made change to improved or unimproved real estate, including but not limited to: construction, reconstruction, conversion, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance, any use or extension of the use of land.

DRIVEWAY -- An improved travel surface, on privately owned property and maintained by private funds for the exclusive use of private parties, that is intended to provide access from a federal, state, county, public, or private road to no more than two lots, parcels, areas or tracts of land.

FILL -- The placement by man of sand, sediment or other material to create new uplands or raise the elevation of the land.

FRONTAGE -- All the property fronting on one (1) side of a street between intersecting or intercepting streets or between a street and right-of-way, waterway and/or dead-end street or county boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts.

LOT -- A single unit of land that is created by a subdivision of land as defined under ORS 92.010. In certain instances, this ordinance also uses the term "lot" in a broader sense inclusive of the terms parcel, unit of land, and tract of land. [Ord. 18-02]

LEGAL LOT -- A unit of land which meets the minimum requirements of the zone in which it is situated and is provided with a minimum 25-foot frontage upon a state, county or public road or which has access to a state, county, or public road by means of a private road easement.

BUILDABLE LOT -- A legal lot which is proposed for use in compliance with this Ordinance, and has received approval of the water supply and sewage disposal method as appropriate to such use.

LOT OF RECORD -- Any lot or parcel lawfully created by a subdivision or partition plat of record in the County Clerk's Office, or lawfully created by deed or land sales contract prior to land use partitioning requirements, and of record in the Deed Records of Clatsop County.

Development of a "lot of record" must meet all other applicable development standards, except for the

minimum lot size or lot dimensions of the zone. Development standards include all applicable requirements of the zone, overlay district, the Land and Water Development and Use Ordinance and the Standards Document, and state and federal statutes and administrative rules. Lot of record status does not authorize development of a lot or parcel without compliance with the requirements in Section 1.1020.

LOT CORNER -- A lot abutting on two or more streets, other than an alley, at their intersection.

LOT LINE, FRONT -- The property line separating the lot from the street, as defined in Section 1.0500, other than an alley, from which access is provided to the lot. For the purpose of establishing setback requirements, orientation of the dwelling unit is independent of access to the parcel. In the case of a corner lot, the front lot line is the property line with the narrow dimension adjacent to the street.

LOT LINE, SIDE -- Any property line which is neither a front nor a rear lot line.

LOT TYPES --

- 1) Corner lot: A lot of which at least two (2) adjacent sides border public or private streets or roads, other than alley

LOT WIDTH -- The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot lines.

PRINCIPAL USE -- The main use to which the premises are devoted and the principal purpose for which the premises exist.

PUBLIC ROAD -- A road over which the public has a right of use that is a matter of public record.

ROAD, PUBLIC -- A road over which the public has a right of use that is a matter of public record.

STREET -- A roadway dedicated to the public, which has been accepted by the Board that is created to provide ingress and/or egress to one (1) or more lots, parcels, areas or tracts of land including the terms road, highways, lanes, avenue, or similar designation.

Classification:

- 5) Local Road or Street: A road or street which a) serve primarily to provide access to adjacent land; and b) provide service to travel over relatively short distances as compared to collectors or other higher systems. They are designed specifically to have high accessibility and to connect to collector and arterial roads, and are typically not used for through traffic.

Types:

- 3) Stubbed Street: A street having only one (1) outlet for vehicular traffic and which is to be extended or continued to serve future subdivisions or development on adjacent property.

STRUCTURE -- Anything constructed, erected or air-inflated, permanent or temporary, which requires location on the ground or water, or attached to an existing structure. Among other things, structure includes residences, apartments, barns, cabins, buildings, walls, fences, billboards, poster panels, food stands and parking lots. [Ord. 18-02]

TEMPORARY STRUCTURE OR USE -- A non-permanent structure, use or activity involving minimal capital investment that does not result in the permanent alteration of the site and is removed from the site within one year. [Ord. 18-02]

TREE -- any woody plant having at least one well-defined stem at least six inches in diameter measured at a height of four and one-half feet above the natural grade.

VEHICLE -- Any device in, upon or by which any person or property is or may be transported or drawn and includes vehicles that are propelled or powered by any means.

WETLAND CREATION -- Alteration, by excavation or other means, of upland areas to allow local hydrologic conditions to convert soils and vegetation to hydric character.

WETLAND ENHANCEMENT -- An action which results in a long term improvement of existing wetland functional characteristics and processes that is not the result of a creation or restoration action.

WETLANDS -- Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

WETLANDS, SIGNIFICANT NON-TIDAL -- Non-tidal wetlands described as significant in Coastal Shorelands boundary descriptions or protected by the County's Goal 5 element.

STAFF FINDING and CONCLUSION: The above definitions are included for informational purposes and may be referenced throughout the report.

ARTICLE 2. PROCEDURES FOR LAND USE APPLICATIONS

Section 2.1000. Procedure Types and Determinations of Proper Procedure

An application for a development permit or land use action shall be processed under either a Type I, II, IIa, III or IV procedure as stated within the procedures under Sections 2.1010 to 2.1050.

All land use actions shall be classified as one of the following unless State law mandates different or additional procedures for particular land use actions or categories of land use actions or specified otherwise by this Code:

Section 2.1020. Type II Procedure

- 1) Type II land use actions generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with conditions of approval to minimize those impacts or ensure compliance with this code.
- 2) Those actions identified in this code as a conditional development and use, development permitted with review, subdivisions containing six lots or less, partitions, and applications related to non-conforming uses/structures under the Type II procedure are Type II actions.
- 3) Except as provided in subsection (5), under the Type II procedure an application for a development permit shall be processed without a need for public hearing. The Community Development Director shall determine whether or not the proposed development meets the required development standards. The Director may obtain technical assistance from a review committee or local or state agencies.
- 4) If the Director finds that the development appears to satisfy the required standards, the Director shall mail a notice of intent to issue a development permit to the applicant and to other persons pursuant to Sections 2.2040 to 2.2050.
- 5) If the Community Development Director believes that persons other than the applicant can be expected to question the application's compliance with the Ordinance, the Director may treat the application as a Type IIa procedure.
- 6) The Community Development Director shall review any information received under subsection (4) and make a finding for each of the points in dispute. The Director shall make a decision on the application by approving, conditionally approving, or denying the application.
- 7) A decision by the Community Development Director may be appealed to the Hearings Officer by the applicant or by a person who responded to the notice, pursuant to Section 2.2190.

STAFF FINDING: New public or private road development or road extension is listed as a Type II Conditional Use in Section 4.0620, Table 1(98), LAWDUC. The application is being processed under a Type II Conditional Use procedure.

Section 2.2040. Mailed Notice for a Type II Procedure

- 1) Notice of intent to issue a Development Permit shall be provided:
 - (A) To the applicant; and
 - (B) To owners of record of property on the most recent property tax assessment roll where such property is located:
 - 2) within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone
 - (C) To any Neighborhood/Community Organization whose boundaries include the site.
 - (D) To the Oregon Department of Transportation (ODOT) for applications related to property within 750 feet of a state highway or that in the opinion of the Community Development Director may be found to have a significant impact on State facilities.

- 2) The notice shall:
 - (A) Describe the proposed development;
 - (B) Summarize the standards and facts that justify approval of the permit;
 - (C) Invite persons to submit information relevant to the proposed development and applicable standards within ten (10) days giving reasons why the permit application should or should not be approved or proposing modifications the person believes are necessary for approval according to the standards;
 - (D) Advise of the right and the procedure to appeal the decision on the proposed development if the person's concerns are not resolved.

Section 2.2050 Procedure for Mailed Notice

Unless otherwise provided, addresses for a mailed notice required by this Ordinance shall be obtained from the County Assessor's real property tax records. Unless the address is on file with the Director, a person whose name is not in the tax records at the time of filing of an application, or of initiating other action not based on an application, need not be furnished mailed notice. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Ordinance for notice. In addition to persons who receive notice as required by the matter under consideration, the Director may provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed development.

STAFF FINDING: Public notice was sent to adjacent property owners within 250 feet of the subject property and to public agencies per Section 2.2050 on February 1, 2021. (Exhibit 2.)

All requirements of the mailed notice to affected property owners and government agencies for the Type II Conditional Use Permit application (Sections 2.2040-2.2050) have been met.

SECTION 4.0600. ARCH CAPE RURAL COMMUNITY RESIDENTIAL ZONE (AC- RCR).

Section 4.0620. Permitted and Conditional Uses

Table 1(98) Road Development or Extension, Public or Private (Type II)

STAFF FINDING and CONCLUSION: The subject property is zoned AC-RCR, Arch Cape Rural Community Residential. Conditional uses for the zone are listed in Table 1, LAWDUC. The applicants propose to construct an access to the County's A-22 road standards within the platted, but unopened, Anvil Rock Road right-of-way. As proposed by the applicants, the access would extend north from East Shingle Mill Lane approximately 150 feet and would be approximately 20 feet in width. Road operations permit #21-02 will require a gravel travel surface. **A condition of approval will require the access to be constructed to the County's A-22 road standard (Condition #1).**

Staff finds the proposed access within the platted, but unopened Anvil Rock Road public right-of-way, is an allowed conditional use in the AC-RCR Zone, subject to all applicable criteria, standards and site plan review. The criterion of Section 4.0620, Table 1(98) is met. Conditions of approval will ensure compliance with all applicable code provisions and applicable provisions within the comprehensive plan.

The applicants have also proposed construction of a 50'x14' gravel driveway in the southeast quadrant of TL 41030CA04302, which is owned by the applicants.

Per Section 4.0620, Table 1(109), Temporary Uses are permitted as a Type I use, subject to the provisions of Section 2.8200, LAWDUC. Temporary uses are only permitted during the construction phase. "Construction phase" is not defined in the code. A "temporary structure or use" is defined in Section 1.0500, LAWDUC, as a "non-permanent structure, use or activity involving minimal capital investment that does not result in the permanent alternation of the site and is removed from the site within one year. [Ord. 18-02]. Temporary uses may be permitted under Section 2.8200. However, no application has been submitted for the proposed driveway prior to construction of the residence. A road approach permit was issued by Public Works on April 20, 2021 (Permit #21-27).

Per Section 4.0620, Table 1(2), Accessory Uses, defined as a "use customarily incidental and subordinate to the principal use and located on the same lot, tract or parcel" may be permitted as a conditional use prior to the construction of a primary use. A Type II Conditional Use Accessory Use would require the following:

- A. A letter from the applicant explaining the unique or unusual circumstances and nature of the intended use
- B. The property owner obtains the primary use development permit within 1 year from the date the accessory use development permit is issued

The applicants are requesting the roadway extension in order to access their property and to install water, sewer and electric in preparation for development of their property. Per information from the applicants they do not have a timeframe for residential development. Therefore, the proposed 50' x 14' gravel driveway cannot be permitted as an Accessory Use under this Type II conditional use application. A condition of approval will verify that the proposed driveway is not part of the development approved by this conditional use permit (Condition #2).

SECTION 2.4000. CONDITIONAL DEVELOPMENT AND USE.

Section 2.4020. Application for a Conditional Development and Use.

- (1) If a development and use is classified as conditional in a zone, it is subject to approval under Sections 2.4000 to 2.4050. An applicant for a proposed conditional development and use shall provide facts and evidence and a site plan in compliance with Section 2.9400 sufficient to enable the Community Development Director or hearing body to make a determination.

STAFF FINDING and CONCLUSION: The applicant has provided the materials required by Section 2.4020 (Exhibit 1).

- (3) In addition to the other applicable standards of this ordinance, the hearing body must determine that the development will comply with the following criteria to approve a conditional development and use.
 - (A) The proposed use does not conflict with any provision, goal, or policy of the Comprehensive Plan.

APPLICANT RESPONSE: No, to the best of my knowledge the proposed use does not conflict with the applicable provisions, goals, or policies of the Comprehensive Plan

- (B) The proposed use meets the requirements and standards of th[is] Ordinance

APPLICANT RESPONSE: Yes, it meets the Clatsop County LWDUO and standards as indicated on Application

STAFF FINDINGS and CONCLUSION: Public or private road development or extension is identified in the AC-RCR Zone as a conditional use, per Section 4.0620, Table 1(98), indicating the use was examined when

the provisions, goals, and policies of the Comprehensive Plan where developed, and standards were devised at the time to ensure the use could be made consistent with the Comprehensive Plan. These standards were then adopted into the zoning ordinance, ensuring the use could be made to be consistent with the plan and meet the requirements of the zone.

Similarly, given that the use is listed among those that may be conditionally approved by the director, the use was reviewed in general previously and it was determined the use could meet the Land and Water Development and Use Code requirements and standards with appropriate conditions. The standards will be addressed elsewhere in this report, and, with conditions of approval, the development will be found to meet the requirements and standards of the ordinance.

County regulations and conditions of approval shall ensure these criteria are satisfied. (Refer to Conditions 1 through 11 and Regulations 1-4.)

- (C) The site under consideration is suitable for the proposed use considering:
- 1) The size, design, and operating characteristics of the use, including but not limited to off-street parking, fencing/buffering, lighting, signage, and building location.

APPLICANT RESPONSE: This site meets requirements for a 14 ft. wide approach road to an existing property

STAFF FINDINGS and CONCLUSION: Extension of a public road, within a platted, but unopened right-of-way, does not require off-street parking. The Anvil Rock Road right-of-way was established with the recording of the Cannon Beach Park Extension subdivision plat on October 11, 1926. The right-of-way was platted as 40 feet in width, which is 10 feet narrower than required by current code. This subdivision plat was developed and recorded in 1926, more than 40 years prior to the adoption of the County's first subdivision ordinance. Section 3.9830(1)(H) states that whenever "existing streets adjacent to or within a tract are of inadequate width, additional right-of-way shall be provided at the time of the subdivision." While this conditional use application is not a subdivision application and this criterion does not apply, Section 2.4040(5) does allow staff to apply a condition of approval that would require additional right-of-way dedication. This will be discussed in further detail below.

No fencing or buffering is required for the proposed use. No street lighting is required per the county's public road standards (Section 3.9830). Stop signs and/or street signs will be required per Section 3.9830(16)(C). **A condition of approval will require the applicant to provide documentation from Clatsop County Public Works that any required street signage has been paid for by the applicants and installed by Public Works prior to the issuance of a development permit for TL 04302 (Condition #3).**

No buildings will be permitted in the public right-of-way.

- 2) The adequacy of transportation access to the site, including street capacity and ingress and egress to adjoining streets.

APPLICANT RESPONSE: Access from Shingle Mill road to Anvil Rock Road is existing and meets all site requirements for an approach road.

STAFF FINDINGS and CONCLUSION: Anvil Rock Road is accessed via East Shingle Mill Lane, a 20-foot-wide paved travel path within a 60-foot-wide platted right-of-way. East Shingle Mill Lane is a County Road and is classified as a rural local roadway. East Shingle Mill Lane connects to Highway 101. The Anvil Rock Road right-of-way is approximately 700 feet east of Highway 101.

Clatsop County Public Works staff, who have been in communication with the applicants since December 2020, were notified of this conditional use application. Comments were received from Public Works during the 10-day public comment period confirming the requirement to construct a 20-foot-wide gravel road

within the public right-of-way. On January 12, 2021, Public Works issued a permit (#21-02) to the applicants for the road extension (Exhibit 4).

The development of the proposed access within a public, platted right-of-way, does not inherently generate trips, as the road itself is not the destination. A road only carries trips to a destination. In the future, the development of a single-family dwelling on the property owned by the applicants would generate approximately 9.44 weekday trips, 9.54 Saturday trips, and 8.55 Sunday trips (*Institute of Transportation Engineers Trip Generation Manual 10th Edition*).

The development of a 150-foot-long road extension within an existing public right-of-way, will not have a significant impact on State facilities (Highway 101).

A condition of approval shall require the Anvil Rock Road extension be depicted on the final site plan, including dimensions and materials, that meets all applicable standards found in Sections 3.9540 and 3.9830. With this condition, criteria of Section 4.2040(3)(C)(2) will be satisfied (Condition 4).

- 3) The adequacy of public facilities and services necessary to serve the use.

APPLICANT RESPONSE: Water, Sewer and electricity providers have indicated that they have the capacity to serve existing property on this approach road as per Arch Cape water and sewer district.

STAFF FINDINGS and CONCLUSION: The purpose of the proposed road development is to provide vehicle access to property owned by the applicants for the purpose of future residential development. Residential development requires vehicle access, potable water supply, and sewage disposal. While the subject right-of-way and adjacent TL 04302 are served by the Arch Cape Water District and the Arch Cape Sewer District, both of which received notice of the proposed access, no water or sewer connections are required to support the installation of the road extension. The site is also within the Cannon Beach Rural Fire Protection District, which was also notified of the proposed roadway extension. While public notice was mailed to each of these agencies, none of their representatives provided comment or expressed concern about the proposed access.

Transportation was addressed above.

Staff finds Section 4.2020(3)(C)(3) to be satisfied.

- 4) The natural and physical features of the site such as topography, natural hazards, natural resource values, and other features.

APPLICANT RESPONSE: The minimal footprint of the approach road as per the delineation study indicates that there is no impact to wetlands or natural features.

STAFF FINDINGS and CONCLUSION: The proposed access is outside of lands mapped for geologic hazards and is outside the area mapped as either Major or Peripheral Big Game Habitat. The 150-foot-long extension proposed by the applicant, with the additional 40-foot-long extension required by Public Works (to be discussed in further detail elsewhere in this report), may impact a portion of an identified wetland within the right-of-way. The applicants have provided a wetland delineation approved by the Oregon Department of State Lands. Any impacts to this wetland area would be subject to the requirements of the state Removal-Fill Law. Cumulative fill or removal of 50 cubic yards or greater would require a state permit.

Per bare earth lidar hillshade information from the Department of Geology and Mineral Inventories (DOGAMI) the subject right-of-way is relatively level, varying in elevation from approximately 23 feet to 25 feet. The area is heavily wooded.

AC-RCR Zone development standards, Section 4.0630(3)(E)(5), requires the landscape to be preserved in its natural state to the maximum extent possible by minimizing tree, vegetation and soils removal. Cut and fill construction methods are discouraged. Roads and driveways should follow slope contours in a manner that prevents erosion and rapid discharge into natural drainages. Disturbed areas shall be re-vegetated with native species. **A condition of approval shall require the applicant to include a tree removal plan with the grading, drainage, and erosion control review application. The erosion control plan shall be commensurate with Section 3.2000. Existing natural vegetation shall be preserved to the maximum extent possible and as permitted by Clatsop County Public Works (Condition #8).**

In 2020, Public Works issued the following permits for work within the surrounding rights-of-way:

- #20-17: Anvil Rock Road (clearing brush and weeds from East Shingle Mill Lane to TL 4302)
- #20-33: Anvil Rock Road / Maxwell Lane (clearing for a six-foot-wide trail)
- #20-49: 32009 East Shingle Mill Road (utility work)
- #20-71: Walsh Lane (utility work)
- #20-100: Fire Rock Road (roadway extension)

These permits, which were issued for work in the same area as the subject property and with similar or steeper topography verify that the natural and physical features of the subject right-of-way are suitable to support the proposed road. **A condition of approval will require the applicants to adhere to all requirements of Permit #21-02 (Condition #5).**

With conditions of approval staff finds the site is suitable for the development when considering Section 2.4020(3)(C)(4) (Conditions #5 and #8).

- (D) The proposed use is compatible with existing and projected uses on surrounding lands, considering the factors in (C) above.

APPLICANT RESPONSE: Yes, the proposed use is a County Road and will not impact any adjacent lands, but will be compatible with existing and projected residential uses.

STAFF FINDINGS and CONCLUSION: The proposed use is the construction of a portion of Anvil Rock Road and the installation of utilities within the existing platted public right-of-way. The proposed road extension will be public road, but will not be a County Road, which is a roadway that has been accepted by the Board of Commissioners and is maintained by Clatsop County. A public road is required to be maintained by the property owners adjacent to the right-of-way.

The uses on surrounding properties, which consist of residential dwellings and vacant residential land, necessitate the construction of a road extension within the existing platted public right-of-way. Section 2.1130(4), LAWDUC, requires applicants to provide proof of legal access to a property in order to receive development permit approval to construct improvements on the property. Section 2.1130(2)(A) requires documentation to verify that water and sewer are available to service a property prior to issuing a development permit for a residential structure. The use proposed under this conditional use application is required to support the development permitted on adjacent properties.

Staff finds the site is suitable for the development when considering Section 2.4020(3)(C)(1-4), addressed above.

- (E) The proposed use will not interfere with normal use of coastal shorelands.

APPLICANT RESPONSE: The proposed use of this road to applicants property does not have the potential to interfere with any coastal shore lands

- (F) The proposed use will cause no unreasonably adverse effects to aquatic or coastal

shoreland areas, and

APPLICANT RESPONSE: The proposed approach road is at least a quarter mile from coastal shore land areas and will have no adverse effects to aquatic or coastal areas

- (G) The use is consistent with the maintenance of peripheral and major big game habitat on lands identified in the Comprehensive Plan as Agricultural Lands or Conservation Forest Lands. In making this determination, consideration shall be given to the cumulative effects of the proposed action and other development in the area on big game habitat.

APPLICANT RESPONSE: This approach road is not within either the Major or Peripheral Big Game Habitat Overlay. This is a residential neighborhood. ACRCR

STAFF FINDINGS and CONCLUSION: Goal 17 of the County's comprehensive plan defines the "coastal shorelands planning area" as all lands west of Highway 101. The subject right-of-way, which is east of Highway 101, is neither within the coastal shoreland planning area nor adjacent to any coastal shorelands. Per the Arch Cape Local Wetland Inventory (2011) (Exhibit 5), Arch Cape Creek "is ODFW-designated essential salmonid habitat from the ocean to approximately 1 mile upstream where there is a 15-foot waterfall, a natural barrier to fish passage...Most tributaries flow out of the hills south and east of the study area, though seasonally, there are drainages which flow out of the wetlands located north of E. Shingle Mill Lane." The subject area is approximately 100 feet north of East Shingle Mill Lane and approximately 300 feet north of Arch Cape Creek. The applicants have provided a site-specific wetland delineation, prepared by a professional wetland scientist, that has been reviewed and approved by the Oregon Department of State Lands (DSL) (WD #2020-0667, Exhibit 6). DSL instructs local jurisdictions to refer to approved wetland delineations where available, rather than the LWI or NWI, because delineations represent the most precise information available. While the limits of road construction are not marked on the approved delineation, it appears that all or most of the road improvements and utility installations would avoid the delineated wetlands. However, as noted in DSL's approval letter, the study area, including the right-of-way and adjacent TL 04302, are subject to the state's Removal-Fill Law. Any fill or excavation activities within the wetland exceeding 50 CY will require a permit from the state. Mitigation for wetland impacts may also be required by DSL. **A regulation will require the applicants to provide copies of all required state and/or federal permits prior to issuing a development permit (Regulation #1).**

Construction of the proposed road is not anticipated to interfere with the normal use of coastal shorelands or to cause unreasonably adverse effects to aquatic or coastal shoreland areas. Any wetland impacts that may be proposed by the applicant will be subject to review, permitting and/or mitigation as determined by the Oregon Department of State Lands.

The road will be outside of mapped Big Game Habitat and is not proposed on Agricultural Lands or Conservation Forest Lands,

Two of these criteria do not apply. An existing regulation will require copies of all required state and/or federal permits prior to issuing a development permit.

- (H) In addition to compliance with the criteria as determined by the hearing body and with the requirements of Sections 1.1040 and 1.1050, the applicant must accept those conditions listed in Section 2.4040 that the hearing body finds are appropriate to obtain compliance with the criteria.

Section 2.4040. Requirements for Conditional Development and Use.

In permitting a conditional development and use, the hearing body may impose any of the following conditions as provided by Section 2.4030:

- (1) Limit the manner in which the use is conducted, including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.

- (2) Establish a special yard or other open space or lot area or dimension.
- (3) Limit the height, size or location of a building or other structure.
- (4) Designate the size, number, location or nature of vehicle access points.
- (5) Increase the amount of street dedication, roadway width or improvements within the street right-of-way.
- (6) Designate the size, location, screening, drainage, surfacing or other improvement of a parking or truck loading areas.
- (7) Limit or otherwise designate the number, size, location, height of or lighting of signs.
- (8) Limit the location and intensity of outdoor lighting or require its shielding.
- (9) Require diking, screening, landscaping or another facility to protect adjacent or nearby property and designate standards for installation or maintenance of the facility.
- (10) Designate the size, height, location or materials for a fence.
- (11) Require the protection of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.
- (12) Require provisions for public access (physical and visual) to natural, scenic and recreational resources.
- (13) Specify other conditions to permit the development of the County in conformity with the intent and purpose of the classification of development.

STAFF FINDINGS and CONCLUSION: As discussed above, the platted Anvil Rock Road right-of-way is 40 feet in width, while the current A-22 Road Standard requires a minimum right-of-way width of 50 feet. As permitted above in Section 2.4040(5), additional street dedication will be required as a condition of approval. **In order to bring the right-of-way closer to compliance with current Clatsop County road standards, a condition of approval will require the applicants to dedicate an additional five feet of right-of-way along the entire length of the east property line of TL 04302 prior to submitting a development permit for construction on the TL 04302 (Condition #6).**

SECTION 3.2000. EROSION CONTROL DEVELOPMENT STANDARDS

Section 3.2010. Purpose

The objective of this section is to manage development activities including clearing, grading, excavation and filling of the land, which can lead to soil erosion and the sedimentation of watercourses, wetlands, riparian areas, public and private roadways. The intent of this section is to protect the water quality of surface water, improve fish habitat, and preserve top soil by developing and implementing standards to help reduce soil erosion related to land disturbing activities. In addition, these standards are to serve as guidelines to educate the public on steps to take to reduce soil erosion.

Section 3.2030. Erosion Control Plan

- 1) An Erosion Control Plan shall be required for land disturbing activities, in conjunction with a development permit.

STAFF FINDINGS and CONCLUSION: On January 12, 2021, Public Works issued permit #21-02 to allow operations within a public right-of-way. A condition of approval for permit #21-02 is that the applicants obtain all required County permits prior to starting construction. If more than 30 cubic yards will be removed, filled, or relocated as part of the road construction project, or if construction activities will occur within 50 feet of mapped or known wetlands, the applicants will be required to submit a grading and erosion control plan for review. **A condition of approval will require the submittal of an erosion control permit, to be reviewed by Clatsop County Public Works, to certify compliance with the standards of Section 3.2000 (Condition #7).**

SECTION 3.9800. TRANSPORTATION IMPROVEMENTS AND ROAD STANDARD SPECIFICATIONS FOR DESIGN AND CONSTRUCTION

Section 3.9810. General Road and Access Policies.

- 1) **Purpose.** The establishment of the criteria to be used in Clatsop County for evaluating the appropriateness of proposed roads which are intended to provide access to lots or parcels. These criteria shall form the basis for determining what requirements are necessary to ensure that there

will be adequate provisions available now, and in the future, to provide for the transportation needs of lots, parcels, or developments.

The Clatsop County Road Standards are intended to provide access to new development in a manner which reduces construction cost, makes efficient use of land, allows emergency vehicle access while discouraging inappropriate traffic volumes and speeds, and which accommodates convenient pedestrian and bicycle circulation. The standards apply to County roads, dedicated roads and private roads.

The Road Standards to be applied are based on the density of the zone in which it will be built and shall be constructed to that standard. The Clatsop County Department of Community Development, Planning Commission or Board of County Commissioners will be a case by case basis consider possible future land divisions and whether or not the road being built should be private or dedicated.

- 2) **Conditions of Development Approval.** No development may occur unless required transportation facilities are in place or guaranteed, in conformance with the provisions of this document. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development on public facilities and services. Findings in the development approval shall indicate how the required improvements are roughly proportional to the impact.

STAFF FINDINGS and CONCLUSION: The proposed roadway has been reviewed by Clatsop County Public Works and a permit to occupy or perform operations upon a county or public road has been issued, indicating that the proposed work will comply with minimum-required county standards. **Conditions of approval will require the roadway extension to conform to all applicable requirements of Section 3.9800 and to permit #21-02, issued by Public Works (Conditions #1, #3, #4, #5, #6, #7, #8, #10 and #11).**

As discussed in this report, the public platted Anvil Rock Road right-of-way is 40 feet wide. County road standards would require a 50-foot-wide right-of-way if this road were to be platted under current standards. **In order to make the right-of-way more conforming to current standards, a condition of approval will require the applicants to dedicate an additional five feet of right-of-way (Condition #6).**

With conditions of approval, these criteria will be met.

- 3) **Criteria.** Roads in Clatsop County shall be designed, constructed, and maintained to:
- (A) Be capable of ensuring unrestricted travel to and from a property.
 - (B) Provide adequate, safe, and legal access with minimum public cost.
 - (C) Place the burden of the costs on the benefited person(s).
 - (D) Provide access for fire protection, ambulance, police, mail, school bus, public transit, and garbage services.
 - (E) Provide for drainage ways and utility services.
 - (F) Be compatible with adjoining land use.
 - (G) Minimize, with the constraints of reasonable engineering practices and costs, the creation of roads within lands designated for Exclusive Farm Use, Forest Resource, Open Space Reserve, Rural and Rural Service Areas designated by the Clatsop County Comprehensive Plan.
 - (H) Ensure that the new road will minimize interference with forest management or harvesting practices.
 - (I) Minimize within the constraints of reasonable engineering practices and costs the loss of productive agricultural or forest land, and be located on that portion of such land that is least suitable for timber or agricultural production, taking into consideration, but not limited to, the following: topography, soil capability or classification, erosion potential, and

- the size and resultant configuration of the affected tracts.
- (J) Minimize the loss of important wildlife habitat, such as sensitive deer and elk range, identified natural areas, and other significant natural features.
 - (K) Streets within or adjacent to a development shall be improved in accordance with the Transportation System Plan and the provisions of this Section.

STAFF FINDINGS and CONCLUSION: Construction of the proposed road extension would ensure unrestricted access to and from properties on both the east and west sides of Anvil Rock Road, including property owned by the applicants. The applicants are responsible for the costs associated with the installation of the road extension.

The road extension is for the purpose of accessing the applicant's property. While police, fire and ambulance vehicles may be required to access the site, at this time there is not a need for mail, school bus, public transit, or garbage service to this site. Construction of the road extension to the A-22 standard will allow emergency vehicles to access the parcel, if needed. An additional 40-foot-long road extension has been required by Public Works in order to ensure adequate turnaround space for emergency and other vehicles. **A condition of approval will require the applicants to obtain a sign-off from the Cannon Beach RFPD Chief documenting approval of the road extension (Condition #11).**

The subject right-of-way is within the rural community of Arch Cape and is considered to be within a rural service area. This road extension would be designed to the county's A-22 standard, which is intended to serve ten or more lots or parcels. Any property owners who propose future development on the adjacent residential lots north of the end of the proposed road extension would be required to install an extension of Anvil Rock Road at their expense and in compliance with county road standards.

The proposed road extension will not interfere with forestry or agricultural practices and is outside of areas mapped as Major or Peripheral Big Game Habitat. There are no inventoried Goal 5 resources within the subject right-of-way.

With a condition of approval, these criteria will be met.

- 4) **Standards, Generally:**
 - (A) The following are a variety of types or forms of access used to gain ingress and degree to property within Clatsop County:
 1. County roads
 2. Federal roads
 3. State highways
 4. Dedicated ways
 5. Flag lots
 6. Ways of necessity
 7. Public roads
 8. Private roads
 9. Prescriptive roads
 - (B) Publicly dedicated and maintained roads provide superior access.

STAFF FINDINGS and CONCLUSION: The proposed roadway will be constructed within a public platted right-of-way and will be a public road.

This criterion is satisfied.

- 5) **Standards, Specifically:**
 - (A) As far as is feasible, roads shall be in alignment with existing or appropriate projections of existing roads by continuation of their centerline.

STAFF FINDINGS and CONCLUSION: The proposed roadway will be constructed within a public platted

right-of-way and will be a public road. The Cannon Beach Park Extension subdivision street system is laid out in a grid pattern. The proposed road extension shall be constructed entirely within the existing platted public right-of-way and will be in alignment with the segment of Anvil Rock Road that has been constructed immediately south of Oceanview Lane.

This criterion is satisfied.

SECTION 5.300. SITE PLAN REVIEW.

Section 5.302. Site Plan Review Requirements.

Before a permit can be issued for development in a special purpose district or for a conditional development and use or a development and use permitted with review, a site plan for the total parcel and development must be approved by the Community Development Director or Planning Commission. Information on the proposed development shall include sketches or other explanatory information the Director may require or the applicant may offer that present facts and evidence sufficient to establish compliance with Sections 1.040, 1.050 and the requirements of this Section.

STAFF FINDINGS and CONCLUSION: Site plan review approval is required prior to the issuance of a development permit. Staff finds the information submitted by the applicant is sufficient to conduct preliminary site plan review for the purpose of preparing this report; however, **a final site plan shall be required prior to issuing the development permit for this proposed access.**

This criterion will be met by Condition #4.

B. COMPREHENSIVE PLAN

Goal 1 - Citizen Involvement

Policies

7. Clatsop County shall use the news media, mailings, meetings, and other locally available means to communicate planning information to citizens and governmental agencies. Prior to public hearings regarding major plan revisions, notices shall be publicized.
8. Clatsop County shall establish and maintain effective means of communication between decision-makers and those citizens involved in the planning process. The County shall ensure that ideas and recommendations submitted during the planning process will be evaluated, synthesized, quantified, and utilized as appropriate.
9. Public notices will also be sent to affected residents concerning zone and comprehensive plan changes, conditional uses, subdivisions and planned developments.

STAFF FINDINGS and CONCLUSION: A public notice was sent to all property owners within 250 feet of the subject property and to public agencies per Section 2.2050, LAWDUC, on February 1, 2021 (Exhibit 2). Public notice was also posted on the County's website:
https://www.co.clatsop.or.us/sites/default/files/fileattachments/land_use_planning/project/34005/publicnoticewhaler.pdf.

Appropriate measures have been taken to assure that the Type II Conditional Use Application has been processed in accordance with the applicable Citizen Involvement (Goal 1) policies of the County Comprehensive Plan (7-9) listed above.

The proposed project does not conflict with Goal 1.

Goal 2 - Land Use Planning

The County's land and water have been placed in one of six (6) Plan designations including: 1. Development; 2. Rural Agricultural Lands; 3. Conservation Forest Lands; 4. Conservation Other Resources; 5. Natural; and 6. Rural Lands.

1. Development

Development areas are those with a combination of physical, biological, and social/economic characteristics which make them necessary and suitable for residential, commercial, or industrial development and includes those which can be adequately served by existing or planned urban services and facilities.

In Clatsop County, the County has three types of such areas: cities and their urban growth boundaries; rural communities; and rural service areas, which are areas similar to cities (sewer and water) but lack size and a government structure.

- c. Rural Communities. Clatsop County has identified and established boundaries for the following rural communities: Miles Crossing - Jeffers Gardens, Arch Cape, Svensen, Knappa, and Westport. Land use plans in these areas recognize the importance of communities in rural Clatsop County. These communities are established through a process that applies OAR 660 Division 22 requirements. Portions of land identified in the Miles Crossing and Jeffers Gardens rural community plan take an exception to Statewide Planning Goal 3 and Goal 4 for portions of land zoned EFU or AF. The exceptions documentation for a portion of the Miles Crossing and Jeffers Gardens rural community boundary is adopted as part of the Comprehensive Plan, and is located at the end of this section.

STAFF FINDINGS and CONCLUSION: The subject TL 04302 is within the boundary of the Arch Cape Rural Community, an area designated "Development" in the Comprehensive Plan. The proposed development is allowed as a Type II conditional use in the AC-RCR Zone as described in Section 4.0620, Table 1(98). The use has been determined to be consistent with the "Development" designation when appropriate conditions are applied.

The surrounding properties are also located in the AC-RCR Zone; the existing and projected development pattern is single-family residential development and accessory uses. Adequate road access is required to accommodate this type of development.

The proposed project does not conflict with Goal 2.

Goal 5 - Open Spaces, Scenic and Historic Areas and Natural Resources

Wetlands Policies

Policy 1 - The County will protect identified significant freshwater wetlands, for which no conflicting uses have been identified, from incompatible uses.

STAFF FINDINGS and CONCLUSION: The subject right-of-way contains a portion of a large freshwater forested wetland complex connected to Arch Cape Creek, identified as a "locally significant wetland" in the Arch Cape Local Wetland Inventory (LWI). While categorized as significant per the LWI, the wetland is not included in the County's inventory of Goal 5 resources. As stated previously, the applicant has obtained a wetland delineation from a professional wetland scientist, which has been reviewed and approved by the Oregon Department of State Lands. It appears that a majority, if not all, of the proposed road development will occur outside of the wetland area. As discussed above, the Department of State Lands (DSL) has jurisdiction over the wetland and any impacts proposed to the wetland will require review, permitting and/or mitigation as determined by DSL. The right-of-way does not contain any significant habitat or other resources inventoried under Goal 5.

The proposed road development does not conflict with Goal 5.

Goal 6 - Air, Water and Land Resources

Policy 3

The cumulative effect of development on the County's environment should be monitored and, where appropriate, regulated. When evaluating proposals that would affect the quality of the air, water or land in the County, consideration should be given to the impact on other resources important to the County's economy such as marine resource habitat and recreational and aesthetic resources important to the tourist industry.

STAFF FINDINGS and CONCLUSION: Development within the AC-RCR Zone is regulated. Public or private road development or extension is identified in the AC-RCR Zone as a conditional use, per Section 4.0620, Table 1(98), indicating the use was examined when the provisions, goals, and policies of the Comprehensive Plan were developed, and standards were devised at the time to ensure the use could be made consistent with the Comprehensive Plan. These standards were then adopted into the zoning ordinance, ensuring the use could be made to be consistent with the plan and meet the requirements of the zone.

Conditions of approval will ensure maximum preservation of landscaping and impacts to the wetland, if any, will be reviewed, permitted and/or mitigated through the Oregon Department of State Lands. Copies of all federal and/or state permits shall be required prior to the issuance of a development permit.

With conditions of approval, the proposed road development does not conflict with Goal 6 (Conditions #8 and #9).

Goal 11 - Public Facilities and Services

Overall Policy Regarding Appropriate Levels of Public Facilities in the County

Six different Plan designations exist for lands in the County. Differing levels of public facilities and services are appropriate for the different types of development planned for the County. Certain facilities and services are available to all County residents, such as County health services, Sheriff's protection and many other social services.

1. Development - This is a Plan category for estuary and shoreland areas appropriate for commercial and industrial use. Consequently, a level of public facilities sufficient to carry on that type of use is appropriate. Public water and sewer services would be appropriate but may not be necessary depending on the type of development. Public fire protection is appropriate. Development here will not directly affect school services, although increased employment may result in increased housing in the vicinity which would impact schools. Those impacts will be considered in terms of the residential effects, not at the point of commercial or industrial development.
 - b. Rural Service Area (RSA) - The RSAs in the County are Arch Cape, Fishhawk Lake Estates, Shoreline Estates and the old Naval Hospital site. All currently have public water, sewer and fire protection although the current water supply for the old Naval hospital is inadequate. Public water or sewer services and fire protection are appropriate in RSAs and further development must be based on the capacities of the systems. Development in RSAs can have significant impacts on schools. Applications for subdivisions within RSAs will be referred to the appropriate school district. The development will be allowed only if the schools are capable of handling the increased capacity expected to be generated from the proposal.

STAFF FINDINGS and CONCLUSION: The Arch Cape Rural Community Residential (AC-RCR) Zone is within a Rural Community, formerly referred to as a Rural Service Area, as described above. Public water and sewer utilities are available and the area is within the Cannon Beach Rural Fire Protection District and is served by the Clatsop County Sheriff's Office and Medix Ambulance Service. The construction of a roadway extension, within a platted public right-of-way, which is the subject of this conditional use application, will not impact school capacity.

This application is consistent with Goal 11.

Goal 12 - Transportation

Goal 1, Objective 5: Use appropriate, adopted Clatsop County road standards during development of new roadways.

Goal 3, Objective 3: Provide a County transportation system that coordinates with other local transportation system plans and rural community plans.

Goal 7, Objective 4: Minimize transportation impacts on wetlands and wildlife habitat.

Goal 8, Objective 2: Consider transportation impacts when making land use decisions, and consider land use impacts (in terms of land use patterns, densities, and designated uses) when making transportation - related decisions.

STAFF FINDINGS and CONCLUSION:

Goal 1, Objective 5: The proposed roadway extension will be subject to the County's road standards contained in Section 3.9800. As is discussed elsewhere in this report, the existing platted public right-of-way is 40 feet in width, while current county standards would require 50 feet for a newly-created right-of-way. **A condition of approval will require the applicants to dedicate an additional five feet of right-of-way in order to bring the existing right-of-way closer to compliance with current county standards (Condition #6).**

Goal 3, Objective 3: The subject right-of-way is located within the Arch Cape Rural Community, which is located within the Southwest Coastal planning area of Clatsop County. As will be demonstrated below, the proposed road extension is consistent with the applicable goals and policies of the Southwest Coastal Community Plan.

Goal 7, Objective 4: As discussed earlier in this report, the subject area is approximately 100 feet north of East Shingle Mill Lane and approximately 300 feet north of Arch Cape Creek. The Anvil Rock Road right-of-way and adjacent TL 04302 contain a portion of the wetland identified in the Arch Cape Local Wetland Inventory (LWI) (ARC-13). The applicants have provided a wetland delineation (Exhibit 6) prepared by PBS Engineering and Environmental, dated December 2020. This delineation was approved by the Oregon Department of State Lands on April 1, 2021 (WD #2020-0667). While the limits of the road construction are not shown on the approved delineation submitted to staff, any proposed impacts to the wetland would be reviewed, permitted and/or mitigated through the Department of State Lands. The subject right-of-way is outside the area mapped as either Major or Peripheral Big Game Habitat. The proposed road extension is consistent with this objective.

Goal 8, Objective 2: Transportation impacts were considered both at the time the comprehensive plan was drafted and adopted in 1980 and also when Arch Cape was designated as a Rural Community in 2003. The AC-RCR Zone is intended for low density residential use and the existing underlying plats are consistent with that stated purpose. Installation of a previously envisioned road within an existing platted public right-of-way does not change the intended use of the land or zone, will not change the envisioned land use pattern, and will not alter already permitted densities. Public or private road development or extension is identified in the AC-RCR Zone as a conditional use, per Section 4.0620, Table 1(98), indicating the use was examined when the provisions, goals, and policies of the Comprehensive Plan were developed, and standards were devised at the time to ensure the use could be made consistent with the Comprehensive Plan. These standards were then adopted into the zoning ordinance, ensuring the use could be made to be consistent with the plan and meet the requirements of the zone.

With a condition of approval, this application is consistent with Goal 12 (Condition #6).

Southwest Coastal Community Plan

Housing

Goal: To provide for a wide range of housing needs in the community. To maintain the current residential character of the community.

Policy 3: Housing developments and subdivisions should be designed to emphasize the rural, coastal appearance of the community; that is, less emphasis should be placed on curbs, sidewalks, and wide streets and more emphasis placed on the maintenance of trees, natural drainages, open space and larger lot sizes.

Policy 4: Housing shall be developed where services are readily available. Subdivision of land and planned development shall be allowed only where septic tank, sewer and water capacity is sufficient to meet its needs.

STAFF FINDINGS and CONCLUSION: The road, which will be required to meet the County's A-22 roadway standard, and which will be constructed within a public right-of-way, is proposed in order to access property platted as part of the Cannon Beach Park Extension subdivision. The ultimate goal will be residential development of the adjacent property owned by the applicants. The extension will allow the applicants to enter onto their property in order to assess the land and prepare development plans. Roadway construction, listed as a separate use in the LAWDUC, is a necessary first step in the residential development envisioned by the Southwest Coastal Community Plan Housing Goal policies. The subject right-of-way and adjacent private property are in an area served by water and sewer. Prior to the issuance of development permits, the applicants will be required to demonstrate, via signatures from the water and sewer districts, that adequate capacity is available to service the property.

This application is consistent with the Southwest Coastal Housing Goal and policies 3 and 4.

Public Facilities

Policy 2: All developments shall indicate on the plot plan or building plans how storm water is to be drained. The Planning Commission or Building Official shall require the installation of culverts, dry wells or retention facilities in developments with major storm drainage impacts.

STAFF FINDINGS and CONCLUSION: The proposed road segment would be constructed to the County's A-22 standard. County road standards have been designed to accommodate adequate stormwater drainage and minimize erosion by requiring the cross-section of the road to include specific minimum and maximum slopes, and by requiring specific subgrade and travel surface materials. The preliminary plans submitted with this conditional use application did not include an erosion control plan. **A condition of approval will require the applicants to submit a grading, drainage and erosion control plan for review and approval by Public Works, prior to the issuance of a development permit for construction for the road. The proposed access will be required to comply with all applicable requirements of Section 3.2000.**

With a condition of approval this application is consistent with Southwest Coastal Public Facilities Policy 2 (Condition #7).

Transportation

Goal: To maintain an efficient and safe transportation system in keeping with the character of the community.

Policy 7. Not only is it necessary for the County to adopt road standards which provide for economical and proper maintenance, but standards which consider the particular areas and the desires of the local citizens. To that end this plan encourages road standards which are suited to the character of development in the area. These roads generally are narrow, containing several ends, and serving few permanent users.

STAFF FINDINGS and CONCLUSION: The Arch Cape Rural Community consists of many lands that were subdivided 100 or more years ago. The plat that created the subject right-of-way was recorded in 1926, prior to the adoption of subdivision regulations within Clatsop County. These plats created publicly-dedicated rights-of-way ranging in width from 40-60 feet. The subject right-of-way is in character with the surrounding street grid.

Per Public Works, the proposed road must be constructed to the County's A-22 road standard. For a newly-created right-of-way this standard would require a minimum 50-foot-wide easement and a 20-foot-wide gravel travel surface. As discussed above, the existing platted public right-of-way is 40 feet in width. **A condition of approval will require the applicants to dedicate an additional five feet of right-of-way**

in order to bring the roadway closer to full compliance.

With a condition of approval this application is consistent with Southwest Coastal Transportation Goal and Policy 7 (Condition #6).

Rural Service Area Development

Goal: To maintain the low density, residential character of Arch Cape.

Policy 3: The designated Rural Service Area shall be limited to a land area capable of being serviced by community water, sewer, and fire protection systems based on a reasonable project of growth.

STAFF FINDINGS and CONCLUSION: The subject right-of-way and adjacent private property owned by the applicants are zoned AC-RCR, which is a low-density residential designation, per the County's comprehensive plan. Both the right-of-way and adjacent parcel are within the Arch Cape Water District and the Arch Service Sanitary District and are serviced by the Cannon Beach Rural Fire District. At the time the AC-RCR zoning designation was placed on the property, it was determined that this area was capable of sustaining reasonable growth as evidenced by the provision of the above-described services.

This application is consistent with Southwest Coastal Rural Service Area Development Goal and Policy 3.

Goal: To maintain high quality of residential development in keeping with the natural environment through the use of design standards.

Policy 1: Design review standards shall apply to all construction in the Rural Service Area (Arch Cape Rural Community). Standards shall apply to new commercial or residential construction, subdivision, site development, street construction or placement of public utilities.

STAFF FINDINGS and CONCLUSION: The applicable design review standards for this application would be the road standards contained in Section 3.9800, LAWDUC. Those standards are administered by Clatsop County Public Works. As discussed above, Public Works approved a permit to perform operations within a public road for the proposed access and has specified the A-22 road standard shall be required for the extension. **A condition of approval of this application will require the applicant to dedicate an additional five feet of right-of-way at such time as development permits are submitted for improvements on the adjacent TL 04302.**

With conditions of approval, this application is consistent with Southwest Coastal Rural Service Area Development Goal and Policy 1 (Conditions #1, #3, #4, #5 and #6).

Goal: To encourage the use of natural features of the land, such as existing topography and vegetation.

Policy 1: Design review standards shall require minimal disturbance of the landscape in land development and shall address the removal of trees, grading and excavation, protection of views of adjacent property, road construction and placement of utilities.

STAFF FINDINGS and CONCLUSION: Section 3.9830(15), LAWDUC, requires the right-of-way to be cleared of all trees. However, in subdivisions where traffic safety would not be involved and a lesser requirement would not create a hazard, the right-of-way shall be cleared a minimum of 40 feet or four feet beyond the edge of shoulder or curb line of the finished road. Allowances can also be made to preserve individual "exceptional or stately" trees.

Section 4.0630(3)(E)(5) requires the landscape to be preserved in its natural state to the maximum extent possible by minimizing tree, vegetation and soils removal. Cut and fill construction methods are discouraged. Roads and driveways should follow slope contours in a manner that prevents erosion and rapid discharge into natural drainages. Disturbed areas shall be re-vegetated with native species.

Permit #21-02, issued by Clatsop County Public Works on January 12, 2021, requires a 20-foot wide travel surface within the right-of-way. If the slope of the road exceeds 12% the road must be paved. A grading, drainage and erosion control plan must also be submitted for review and approved by Public Works. **A condition of approval shall require the applicants to include a tree removal plan with the grading, drainage, and erosion control plan. Existing natural vegetation shall be preserved to the maximum extent possible and as permitted by Clatsop County Public Works.**

With conditions of approval the project will not conflict with the Southwest Coastal Rural Service Area Development Goal and Policy 1 (Conditions #5 #8).

III. AGENCY AND PUBLIC COMMENTS

NOTE: Comments are summarized for the purpose of brevity. The full written text of all comments received are included in Exhibit 4.

Annette Brodigan, Clatsop County Environmental Health: Clatsop County Onsite Septic program has no comments or concerns. This property is located within Arch Cape Sewer District.

Staff Response: No response required.

Terry Hendryx, Clatsop County Public Works: In previous conversations with the applicants, Public Works staff indicated that the road would need to be 22-feet-wide. However, the actual standard would require a 20-foot-wide gravel surface. If the grade of the road exceeds 12%, the travel surface would be required to be paved.

Mr. Hendryx emailed a clarification to Planning staff on April 19, 2021, stating that the applicants would be required to extend the road 40 feet beyond their proposed driveway access in order to allow for a turnaround.

Staff Response: A condition of approval will ensure that the proposed road complies with the A-22 road standard, as required by permit #21-02, which was issued by Public Works on January 12, 2021 (Condition #1). Condition of approval #10 will require the applicants to construct the road 40 feet beyond the planned driveway access in order to accommodate a turnaround area.

Jevra Brown, Aquatic Resource Planner, Oregon Department of State Lands (DSL): Initial comments from DSL, dated February 1, 2021, confirm that a delineation had been received for review.

Staff Response: The DSL approval letter for the wetland delineation (WD #2020-0667, approved April 1, 2021) states that the mapped wetland is subject to the permit requirements of the state Removal-Fill Law. **A condition of approval and a regulation will require the applicants to demonstrate that any impacts to the delineated wetland from road construction activities comply with all state permit requirements prior to a development order being issued for the project (Condition #9).**

Regulation #1 explicitly states that the proposed development shall comply with all applicable state, federal and local laws and regulations. If permits are required by the Oregon Department of State Lands or other agencies, copies of the permit(s) issued by that agency would be required to be submitted to the County. All required permits must be approved by the responsible jurisdiction prior to a development permit being issued for roadway.

Oregon Coast Alliance (ORCA): The original surveyors platted Arch Cape without regard to topography. Therefore, lots and roads are platted on undevelopable steep slopes and within southern Clatsop County's largest wetland complex off Arch Cape Creek. Speculative roads threaten the unique environment and unnecessarily increase the footprint of the small residential community of Arch Cape. Public rights-of-way are being increasingly developed as speculative public roads to access undeveloped lots that have no building permit or even a development application, particularly on the east side of Highway 101.

Development of a road without a permit for development on adjacent TL 04302 or without a wetlands analysis should be denied or subject to a public hearing. The public must be involved in applications to develop what are essentially "speculation roads" to access properties for which no development is proposed.

Building a road to access the property must be considered development, as defined by code, as it involves a disturbance of land. An access road is part of the property development and without a permit to develop the property an access road should not be permitted. Doing so would be contrary to the spirit and intent of the code.

A lot of record, even those platted and recorded prior to land use requirements, must still meet all other applicable requirements of the zone. The utility of the road is clearly dependent on the viability of the development project to which it leads. Thus, to issue a permit for a road when there is no permit for the project directly contradicts county ordinance and policy, and sets a disturbing precedent.

The proximity of the road to Arch Cape Creek could have potential ramifications for environmental degradation. The proposed road leads to Arch Cape's most significant shoreline wetland complex. The wetland's connectivity to Arch Cape Creek (home to Endangered Species Act-listed Coho Salmon) requires development buffers not contemplated by the application. The County has a duty to require a wetland delineation for this road approach. The applicant must show that the road will not enter the wetland or the required shoreline buffer. Per the comprehensive plan, Significant Shoreland Resources include non-tidal wetlands and wildlife habitat and that these are resources of value and deserving of protection. Goal 6, policy 3 states: "The cumulative effect of development on the County's environment should be monitored and, where appropriate, regulated."

Broader policies must be created and enforced to address the potential degradation of Arch Cape's most productive wetlands, which are impacted without any thought of preservation of natural resources or the cumulative impacts of development of routinely platted lots, especially plats created decades ago. There was then, and often still remains, no regard for the realities of the land on which the plats were drawn, or the natural resources of the properties.

Given the controversial nature of this application and possible ramifications throughout the community, we request that this application be considered as a Type IIa or Type III procedure, which mandates a hearing and public comment period.

Staff Response: Anvil Rock Road is a public right-of-way, dedicated on the Cannon Beach Park Extension plat in 1926 to "the use of the public forever." This public interest has not been vacated and the public is able to utilize the rights-of-way to access platted property that is privately owned, as was intended by the subdivision plat. It has been anticipated for 95 years that a road could be constructed in this platted right-of-way and that residential development could occur on the adjacent platted lots. This can hardly be considered "speculative", which is defined in Webster's *Collegiate Dictionary 10th Edition*, "theoretical rather than demonstrable." While topography and fiscal considerations may have made development in this area prohibitive in 1926, subsequent advances in technology, combined with the rising value of land, have now made such development feasible.

New road development or road extension is listed as a development use independent of residential dwelling construction in the AC-RCR Zone. At the time the code was adopted it was anticipated that road construction would be permitted separately from residential development through the Type II conditional use procedure. There is no requirement within the LAWDUC to construct the road or extend the road *only* in conjunction with a permit to develop the adjacent lot or parcel.

Per Section 10.510 of *Roads and the County A Manual for Oregon County Officials*, ORS 374 addresses the control of access to public roads. In 2011, the legislature modified ORS 374.309 to provide that "counties may not apply the law so as to deny any property adjoining a road or highway reasonable access." Common

law also provides that property owners have a legal right to access to their properties. In this instance that access is via a public platted right-of-way. County ordinances require that the roadway be constructed to adopted county road standards.

The applicants submitted a copy of the Oregon Department of State Lands-approved wetland delineation (Exhibit 6). That DSL-approved delineation depicts the location of the wetland within the public right-of-way and on the adjacent TL 04302. The approval from DSL also clearly states that any cumulative fill or removal exceeding 50 cubic yards within the wetland area will be subject to state review and permitting. If impacts to the wetland from development activities are permitted by the Oregon Department of State Lands, the state will determine appropriate mitigation requirements. As discussed elsewhere in this report, the subject right-of-way, at its closest point, is approximately 300 feet north of Arch Cape Creek. Section 4.0630(3)(E)(2), LAWDUC, requires a 25-foot-wide buffer along Arch Cape Creek. There are no shoreline buffer requirements and the wetland identified in both the Arch Cape Local Wetland Inventory and on the DSL-approved wetland delineation is not an inventoried wetland in Goal 5, Goal 16 or Goal 17 of the County's comprehensive plan. Section 4.0630(2)(D), LAWDUC, requires a 50-foot-wide setback for all structures from the line of non-aquatic vegetation. However, setback requirements are not applied to roads.

Policy 3 in Goal 6 is addressed above.

Construction of the road is considered "development" and is specifically identified as a Type II conditional use in the AC-RCR Zone. The applicants have submitted this application to comply with that requirement. Conditions of approval will require that the applicants obtain approval of a development permit; submit a grading, drainage and erosion control plan, and a site plan prior to constructing the access. Any required federal and state permits must also be obtained prior to the issuance of a development permit. No development is proposed for TL 04302. When development is proposed for that property, the applicants must comply with all applicable requirements of the *Land and Water Development and Use Code*.

The crafting of broader policies is not within the purview of this application. Any individual or organization may apply at any time to amend the provisions of the LAWDUC. With regard to the old subdivision plats, it is correct that many of those subdivisions were drafted without benefit of ground-truthing. However, the parcels within those plats are now in private ownership. When the comprehensive plan and the implementing zoning ordinance and standards document were adopted in 1980, this area of the County was identified as an area capable of sustaining additional low-density residential development in the future. The construction of the roadway extension as the first progression towards that envisioned outcome would be the review and approval of the right-of-way improvements needed to access those properties.

Section 2.1020(5), LAWDUC, states: "If the Community Development Director believes that persons other than the applicant can be expected to question the application's compliance with the Ordinance, the Director *may* treat the application as a Type IIa procedure." The decision to elevate an application from a Type II to a Type IIa procedure is at the discretion of the Director. The public, pursuant to Sections 2.1020 and 2.2050, LAWDUC, have been provided with an opportunity to provide public comment on this application. The public comments received have not cited specific references where the application does not comply with the ordinance. Alternatively, many of the concerns raised are speculative in nature and relate to the future development of the adjacent privately-owned property, which is not the subject of this application.

Arch Cape Falcon Cove Beach Community Club (ACFCBCC): The ACFCBCC opposes the construction of a gravel road along 150' of platted but undeveloped right-of-way, the installation of water, sewer and electric lines to TL 04302, and the construction of a gravel driveway on TL 04302.

Tax Lot 04302 is shown on Clatsop County Webmaps as being entirely within the National Wetlands Inventory boundary, and largely within the boundary of the Local Wetlands Inventory. The wetlands complex within which this lot is located is the largest and most significant in Arch Cape.

No development has been submitted to support the need for an access road. Roads in the AC-RCR zone should be considered in tandem with the proposed use of the land to be served by the road, and not as an independent project by which a land owner gains improved access to undeveloped land. To do otherwise would conflict with Goal 12 of the Comprehensive Plan, specifically Goal 8, Objective 2 within Goal 12. The stated purpose for having vehicle access ordinances is to “further the orderly layout and use of land, protect community character, and conserve natural resources by promoting well-designed road and access systems and discouraging the unplanned subdivision of land.”

The absence of a plan for how applicants might seek to develop and use their property means the application must be denied for lack of facts and evidence to support a finding that the proposed road, utility lines and driveway are needed to serve the development of TL 04302.

The applicants should have to address the fact they purchased a lot in a significant wetlands complex. Whether a future wetlands delineation discloses some portion of the parcel as being suitable for development is yet to be known, as well as whether mitigation options might exist. These considerations demonstrated why this application is premature and why it cannot be approved within an approved development plan for TL 04302.

The proposal would have a negative impact on wetlands and wildlife habitat. Goal 7: Environment, of Goal 12 (Transportation) requires that any transportation system balance services with the need to protect the environment and significant natural features. Objective #4 for this goal is to protect wetlands. There is no way to look at this application except as seeking approval of a road into the wetlands. The proposed driveway and portions of the road may be located in the wetlands themselves or at least within the 50’ setback from the line of non-aquatic vegetation.

The proposal does not meet the minimum design standards for a public road. The design standards for public roads are found in Section 3.9800, LAWDUC. The application is for a 20’ gravel road. These specifications do not meet the minimum design standards for public roads.

No evidence has been submitted to support the need for logging public land. The right-of-way is forested and is public property. There are no facts and evidence to support logging 3,000 square feet of public right-of-way simply to allow a landowner vehicle access to undeveloped land.

Utilities lines should not be installed until a development plan is in place for TL 04302. There is nothing in the record to justify bringing utility lines to this location.

A driveway should not be constructed without a development plan.

Staff Response: As discussed above, the Oregon Department of State Lands has approved the wetland delineation submitted by the applicant. This approved delineation shows that the majority of the area, if not all of the area, proposed for road construction is outside the wetland area. The National Wetlands Inventory is a broad overview of areas that might potentially contain wetlands. The Arch Cape Local Wetland Inventory, while more refined, is now 10 years old and ground conditions may have changed. The DSL-approved wetland delineation, which was prepared in December 2020 and approved by the state on April 1, 2021, is the most accurate information available regarding the location of the wetland boundaries.

The provisions of Goal 12 are addressed above in this report. The Anvil Rock Road right-of-way is a publicly-dedicated platted right-of-way created in 1926 with the recording of the Cannon Beach Park Extension subdivision plat. The proposed request is not an “unplanned subdivision of land”, but is instead a fulfillment of the previously-approved and recorded subdivision of land.

As discussed above, road development and road extension are considered separate uses from development of a residential lot or parcel in the AC-RCR zone. There is not a requirement for a residential development permit application to be submitted in conjunction with the conditional use permit application to construct

the roadway extension. If this subdivision were to be recorded in 2021, a condition of approval would require that the roads be constructed *prior to* any development permits being issued for the adjacent platted lots. Additionally, Section 2.1130(4) requires that an applicant provide proof of legal access to the property in order for a development permit to be issued. Section 2.1130(2)(A), LAWDUC, requires an applicant to demonstrate that a year-round source of potable water has been obtained and to provide verification of hook-up to a state-approved sewer system. This documentation would be required prior to the issuance of a development permit for the adjacent TL 04302.

As discussed above, the Oregon Department of State Lands has approved the wetland delineation submitted by the applicant. Mitigation requirements, if any, for impacts to the wetland, will be determined and enforced by the Oregon Department of State Lands. The applicants will be required to submit any applicable federal and/or state permits prior to the issuance of a development permit.

As also stated above, in order for a development permit to be issued, an applicant must demonstrate that there is legal access to the property and that water and sewer service is provided to the site. The assertion that the road and utilities should not be installed until a development permit for a dwelling has been issued would leave the applicants in a circular loop of logic that would prohibit them from ever obtaining a permit to construct a home. The AC-RCR zone regulations very clearly delineate that road construction or extension is a Type II conditional use activity that requires public comment. Conversely, the construction of a single-family dwelling in this zoning district is permitted under a Type I procedure, which does require public comment.

Development parameters are already established through AC-RCR Zone. Low-density single-family residential dwellings are the primary intended use within this zone. Setbacks and maximum lot coverage requirements will limit the extent of development on the property, therefore providing a theoretical maximum scope of development that would allow the applicants to plan for the water, sewer and electrical service needs. Additionally, the Arch Cape Domestic Water District and the Arch Cape Sanitary District must also review and approve any requests to extend their utilities and would be required to verify the size of lines required to service TL 04302 and surrounding development.

While the applicants have proposed constructing a 50'x14' gravel driveway on TL 04302, as discussed above, the development of an accessory use prior to the primary use cannot be permitted at this time. The applicants have stated that there is no identified timeframe to begin residential construction on TL 04302. When development is proposed for that property, the applicants must comply with all applicable requirements of the *Land and Water Development and Use Code*.

The County A-22 road standard requires a 50-foot wide right-of-way and a 20-foot-wide paved surface. Section 12.08.010(C), Clatsop County Code states:

The Director of Public Works or the County Engineer shall be the sole granting authority for the issuance of any and all permits required pursuant to this chapter. The decision of the Director of Public Works or County Engineer with respect to the issuance of any such permit and any conditions attached thereto shall be in the Director of Public Works' or County Engineer's sole discretion and shall be final and non-appealable.

Section 12.24.020(B), Clatsop County Code states:

The Director or the Director's designee is given the authority to issue all permits provided for in this chapter and to make all decisions necessarily related to those permits.

Comment provided by Terry Hendryx, Assistant Public Works Director, states that a 20-foot wide gravel travel surface will be required for the road. This is also stated on Permit #21-02.

As discussed throughout this report, the existing platted right-of-way, created in 1926 prior to the adoption of the current standards, is 40 feet wide. **A condition of approval will require the applicants to**

dedicate an additional five feet of right-of-way in order to bring the right-of-way closer to compliance with existing standards (Condition #6).

Per Section 3.9830. Public and County Road Standards, “the right-of-way shall be cleared of all trees. However, in subdivisions where traffic safety would not be involved and a lesser requirement would not create a hazard, the right-of-way shall be cleared a minimum of forty-feet (40) or four-feet (4) beyond the edge of the shoulder or curb line or the finished road.” On January 12, 2021, Clatsop County Public Works issued permit #21-02 to perform operations in the public right-of-way. The issuance of this permit demonstrated that the County has found removal of trees within the platted right-of-way to be necessary.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

Goal 12 Transportation goals, objectives and policies are addressed elsewhere in this report. Setbacks are not applicable to roads. The subject right-of-way and adjacent TL 04302 are outside the area of mapped as Major or Peripheral Big Game Habitat.

Christopher Achterman, East Shingle Mill Lane: Mr. Achterman objects to the proposed development of Anvil Rock Road as the adjacent private property that is owned by the applicants is entirely within a designated wetland. Any building on TL 04302 would disturb a functioning wildlife area. Because the proposed road would only lead to a wetland area it should not be permitted.

Staff Response: As discussed elsewhere in this report, the applicants have included a DSL-approved wetland delineation with their application materials. The state-approved delineation indicates that all or a majority of the Anvil Rock Road right-of-way that is the subject of this application is outside of the wetland area. This same delineation also indicates that there is a small upland area on the south side of TL 04302 that may be able to accommodate a residential dwelling. Removal or fill within a wetland area is regulated by the Oregon Department of State Lands. If the development activities proposed by the applicants impact wetland areas, the state will review the proposed work and determine appropriate permitting and mitigation requirements.

The County is required to permit access to the applicant’s property under state statutes. This is discussed in further detail above.

Jim Jensvold, 80030 Pacific Road: The owners do not have plans to develop TL 04302 at this time, but propose to install water, sewer and electric lines to TL 04302 as part of the road. This is a “spec” road. A public hearing should be held to allow for public comment on this proposed development.

Staff Response: As discussed above, road development and road extension are considered separate uses from development of a residential lot or parcel in the AC-RCR zone. There is not a requirement for a residential development permit application to be submitted in conjunction with the conditional use permit application to construct the roadway extension. If this subdivision were to be recorded in 2021, a condition of approval would require that the roads be constructed *prior to* any development permits being issued for the adjacent platted lots. Additionally, Section 2.1130(4) requires that an applicant provide proof of legal access to the property in order for a development permit to be issued. Section 2.1130(2)(A), LAWDUC, requires an applicant to demonstrate that a year-round source of potable water has been obtained and verification of hook-up to a state-approved sewer system. This documentation must be provided prior to the issuance of a development permit for the adjacent TL 04302.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

Section 2.1020(5), LAWDUC, states: "If the Community Development Director believes that persons other than the applicant can be expected to question the application's compliance with the Ordinance, the Director *may* treat the application as a Type IIa procedure." The decision to elevate the application from a Type II to a Type IIa procedure is at the discretion of the Director. The public, pursuant to Sections 2.1020 and 2.2050, LAWDUC, have been provided with an opportunity to provide public comment on this application. The public comments received have not cited specific references where the application does not comply with the ordinance. Alternatively, many of the concerns raised are speculative in nature and relate to the future development of the adjacent privately-owned property, which is not the subject of this application.

Stuart Sandler 31941 East Shingle Mill Lane: The proposed road would encroach into the wetland and no development proposal has been submitted for the privately-owned adjacent TL 04302. If the roads are approved, the County will have no ability to deny any subsequent permits that might be submitted to develop TL 04302. This project will lead to the destruction of the wetland.

The subject area is an elk sleeping ground and protecting it to the exclusion of a housing district is a no-brainer. Approval to construct the road will be the death knell for the entire wetland. The applicants will be installing utilities without a final development plan. The applicants have done none of the wetland delineation work ultimately required for construction.

The applicants have not demonstrated how stormwater runoff, which already overflows drainage resources at peak times, will be accommodated. A public hearing should be held so that opposition to the offending roads can be seriously assessed.

Staff Response: Any permit applications submitted for future development on TL 04302 must comply with all regulations and standards in place at the time the application is submitted. If a permit application meets all applicable requirements, the permit must be approved. This would be the case regardless of the presence or absence of a wetland. State law permits removal and fill activities within a wetland and conditions may be imposed and/or mitigation required. Removal and fill activities within wetlands are under the jurisdiction of the Oregon Department of State Lands (DSL). As discussed above, DSL has approved the applicants' wetland delineation (WD #2020-0667). Any impacts to the wetland from road construction activities will require review, permitting and/or mitigation as determined by DSL. A copy of any federal and/or state permits must be submitted to Clatsop County in order for a development permit to be issued.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

The subject right-of-way and adjacent TL 04302 are outside the area mapped as Major or Peripheral Big Game Habitat. The area has been platted for residential development for 95 years. Property has been sold to private owners and there are now investment-based expectations that would preclude excluding the

housing district. Doing so would likely result in a takings issue that would need to be settled through the legal system. Other properties immediately surrounding TL 04302, have been allowed to be developed in close proximity to or adjacent to wetlands.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

Pursuant to Section 2.2040(1)(B), notices were sent to property owners within 250 feet and a 10-day public comment period was provided. All public comments received have been included in Exhibit 4 of this report.

IV. RECOMMENDED DECISION AND CONDITIONS OF APPROVAL

Based on the analysis and findings of this report staff recommends **approval** subject to the following conditions:

1. The roadway extension shall be constructed to the County's A-22 road standard and will have a 20-foot-wide gravel travel surface.
2. The proposed 50' x 14' gravel driveway on TL 04302 is not permitted as part of this conditional use approval.
3. The applicant shall provide documentation from Clatsop County Public Works that all required street signage has been paid for by the applicants and installed by Public Works prior to the issuance of a development permits for TL 04302.
4. The Anvil Rock Road extension shall be depicted on the final site plan, including dimensions and materials, and shall demonstrate compliance with all applicable standards found in Sections 3.9540 and 3.9830.
5. The applicants shall adhere to all requirements of Permit #21-02. The access will be constructed as indicated on the site plan submitted by the applicant in conjunction with this Conditional Use Permit application and as approved on Operations Permit #21-02. Any changes to the access must be approved by both the Planning Division and Public Works departments to ensure continued compliance with access and road standard requirements.
6. The applicants shall dedicate an additional five feet of right-of-way along the entire length of the east property line of TL 04302 prior to submitting development permits for the adjacent TL 04302.
7. The applicants shall submit a grading, drainage and erosion control plan for review and approval by Public Works prior to the commencement of construction for the roadway. The proposed roadway will be required to comply with all applicable requirements of Section 3.2000.
8. The applicants shall include a tree removal plan identifying all trees six inches in diameter or larger, measured at a height of four and one-half feet above the natural grade. This tree removal plan shall be submitted with the grading, drainage, and erosion control review documents. Existing natural vegetation shall be preserved to the maximum extent possible and as permitted by Clatsop County Public Works.
9. The applicants shall demonstrate that any impacts to the delineated wetland from road

construction activities comply with all state permit requirements prior to a development order being issued for the project.

10. The applicants shall construct the road 40 feet beyond the planned driveway access in order to accommodate a required turnaround area.
11. The applicants will submit a development permit application, including approval from the Cannon Beach RFPD, documenting approval of the roadway extension.

Other regulations, including, but not limited to, the following also apply:

- (1) Development shall comply with all applicable state, federal and local laws and regulations. The applicant shall provide the Planning Division with copies of any required state and/or federal permits.
- (2) This approval is valid for a period of two (2) years from the date of approval. The Community Development Director can authorize one extension of up to 12 months.
- (3) A complaint from neighbors shall be cause for review of the Conditional Use. The review may be a Type II County enforcement proceeding. In such proceeding, the Compliance Order may impose any of the conditions described in 5.025 of the Clatsop County Land and Water Development and Use Ordinance.
- (4) Development shall comply with all applicable state, federal and local laws and regulations.

EXHIBIT I

*Hearings Officer Public Hearing Video
June 22, 2021 (electronic link)*

EXHIBIT J

Notice of Appeal

May 5, 2021



Clatsop County

Community Development
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Astoria, Oregon 97103

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comdev@co.clatsop.or.us www.co.clatsop.or.us

NOTICE OF APPEAL

Appellants must follow the "Procedure for Appeal" from the Clatsop County Land and Water Development and Use Code #20-03. Please review the attached information completely and follow the instructions. Also, note there is a fee that must be paid with the form. If the fee is not included, the appeal is incomplete and cannot be considered. The form below is provided for your convenience.

Appellant Name: Oregon Coast Alliance & see attached Email: cameron@oregoncoastalliance.org
Mailing Address: P.O. Box 857 City/State/Zip Astoria, OR 97103
Phone: 503-391-0210 Phone: _____

Section 2.2200. Requirements of Notice of Appeal

1. An identification of the decision sought to be reviewed, including the date of decision:

File Number: 21-000005 (Smith) Date of Decision: 4/23/21

2. A statement of the standing of the person seeking review:

Each appellant submitted public comments within the allowed period.

3. The specific grounds relied upon for review (attach additional pages if necessary):

See attached

4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in 2.2230(1). (attach additional pages if necessary):

Appellants request that this appeal go to the Planning Commission and that review be de novo.
See attached

Signature

5/5/21

Date

SMITH - FILE #21-000005 (4/23/21)

APPELLANTS:

1. OREGON COAST ALLIANCE

2. ACFCB COMMUNITY CLUB

79729 Hwy 101, Arch Cape, OR 97102

acfbcc@gmail.com

503-436-0146 (Charles Dice, President)

3. STUART SANDLER

6035 NE 35th Place, Portland, OR 97231

stusan47@gmail.com

503-621-3255

3. SPECIFIC GROUNDS RELIED UPON FOR REVIEW

This appeal is about implementing an orderly process for development on the east side of Hwy 101 in Arch Cape. Whether legally required or as a matter of discretion, approvals of privately-constructed access roads should be reserved for landowners who are ready to build residential dwellings on their properties, so the impacts of access roads can be evaluated in context with the development of properties the roads are intended to serve. Without an orderly process, there is the potential for Arch Cape to end up with a maze of access roads to nowhere, with attendant negative impacts on the environment and community livability.

The east side of Arch Cape is steeply sloped, heavily wooded, and rich with wetlands. It was platted in 1906 and 1926, with public rights-of-way intended to serve as roads once the area was developed. There has been little development in the past century due to steep terrain and other resource features. When there has been a request to build a home, County Development staff has evaluated road and utility access in conjunction with the application and made them conditions of approval. But recently Clatsop County has received several road construction applications like this one, from landowners seeking vehicle access to their land but without an intention, plan or time frame for developing the land. Current regulations require underground utilities to be put in at the same time roads are constructed, so approvals mean these undeveloped lots will have both road access and utility hook-ups without ever having been the subject of a development review.

In this case, the Smiths own a parcel of land (TL 4302) that is located mostly within delineated wetlands. They submitted a development application to Clatsop County asking to construct a 150' access road from East Shingle Mill Lane to the south end of their property, the only portion of

their parcel not located in wetlands. The road would be constructed on a public right-of-way (ROW) that is heavily wooded, surrounded by vacant land, and also mostly wetlands. The original proposal ended the road just before the ROW becomes wetlands, but a condition of approval requires extending the road to the edge of the wetlands or beyond.

The applicants offered no statement as to why the road was needed other than to provide vehicle access to their property. They have no plans or time frame for residential development. Decision at 39/71. The Decision at several points says the request is “in preparation of development of their property,” but the evidentiary record is clear that the purpose of the road is vehicular access to applicant’s property and nothing more.

ISSUE 1

The Director misinterpreted or misapplied the provisions and spirit of the Comprehensive Plan and implementing ordinances, and/or acted outside the range of permissible discretion, by approving an application to construct an access road to undeveloped land for which the applicant/owner has no plan or time table for development.

A. The Decision conflicts with the Comprehensive Plan and Ordinances.

Sec 2.4030(3)(A) of the LAWDUC requires that a proposed conditional use not conflict with any provision, goal, or policy of the Comprehensive Plan. The Director failed to address or give adequate consideration to those provisions of the Comprehensive Plan which envision a “system” in which roads are to be evaluated in conjunction with the development of the residential structures they will serve. *See e.g.*, Goal 12 of the Comprehensive Plan (Transportation) at Goal 8 (System Preservation), Objective 2: “Consider transportation impacts when making land use decisions, and consider land use impacts (in terms of land use patterns, densities, and designated uses) when making transportation-related decisions.”

Sec 2.4030(3)(B) requires that a proposed conditional use meet the requirements and standards of the zoning ordinances applicable to the site. The zoning code provisions relating to roads are in conflict with this approval for the same reason. *See e.g.*, Sec 3.9510, applicable to all road development including residential, which states the Purpose for having Vehicle Access ordinances is to “further the orderly layout and use of land, protect community character, and conserve natural resources by promoting well-designed road and access systems and discouraging the unplanned subdivision of land.” Sec 3.9620(1) provides: “The location, width, and grade of streets shall be considered in relation to ... the proposed use of the land to be served by the streets.”

Ordinances governing the AC-RCR zone also recognize that development cannot occur in any meaningful way unless all of the individual components of the project are viewed as a whole.

Looking at a project piecemeal does not insure that “development does not adversely impact adjacent resource lands” (Sec 4.0610(2)) (formerly LWDUO Sec 3.062) and that development will “reserve landscape in its natural state to the maximum extent possible by minimizing tree, vegetation, and soils removal” (Sec 4.0630(3)(E)(5)) (formerly LWDUO Sec 3.068).

B. The Director concluded, based on a finding that the proposed road is surrounded by vacant land in a residential zone, that “the uses on surrounding properties ...necessitate the construction.” This conclusion is outside the range of permissible discretion for several reasons.

First, this is an application based on desire rather than need or necessity. There are no facts or evidence in the record to support a finding that the existence of vacant residential land requires the construction of this access road. This would not be a through road. Applicant’s land begins 150' off a paved road (Shingle Mill), and it has an adjacent ROW for access (just not vehicle access). And no one including applicant has plans to develop the properties that would be served by the road. To conclude the road is needed is to put the cart before the horse.

Second, this is an application for a public road, not a private road. Applicants are not asking to use their own property for a specific purpose; rather, they are asking to use the public’s property. This forested public ROW will need to be clear-cut to meet road construction standards, and why? So one landowner can drive rather than walk 150' to visit their undeveloped land. The Director admits there is not much purpose for the road unless or until a residence is constructed on the land it serves: “The development of the proposed access within a public, platted right-of-way, does not inherently generate vehicle trips, as the road itself is not the destination. A road only carries trips to a destination.”

Third, the Decision is based not on facts but on an assumption that all roads are “first steps” toward eventual residential development. This assumption is especially questionable when undeveloped properties are located on challenging terrain such as delineated wetlands. If the Smiths were to decide to develop their property in the future, would they be allowed to do so? This issue is not on the table here, but it may be assumed there would be complex factors to consider, many environmental impacts to mitigate, and a variety of logistical problems to solve. This land may never be developed because it may not be technically, environmentally or financially-feasible, or perhaps the owners prefer to leave it as green space. The east side of Arch Cape has not been developed for over a century for a reason. The Decision seems to say the road is needed because some day this land will be developed, and good to have a road already in place. But if one takes that reasoning to its logical conclusion, and these stand-alone access roads are allowed, it is also possible to envision the east side of Arch Cape as being a maze of access roads with no residences to access.

Finally, the Director denied a permit for construction of a driveway on applicants’

property based on a finding that applicants have no time frame for developing their property. There is no reasonable way to reconcile this denial with approval of the access road. The Director should have denied the access road request based on the same factual finding, especially since the impacts of the access road far exceed the impacts of the driveway.

The residential nature and character of the AC-RCR zone means roads are intended to service residential development approved by the County, not to service vacant residential land. Rather than approving this application, the correct result should have been a denial, unless or until the landowners were ready to build their residence, at which time the County would be able to review the impacts of the planned development, including road and utility access, as a whole.

Issue 2

The Director acted outside the range of permissible discretion by failing to balance applicant's desire for an approach road against the negative impacts the proposed road will have on the environment. This balancing is required by the Comprehensive Plan, *see e.g.*, at Goal 12 (Transportation), Goal 7 (Environment) (requires any transportation system to balance services with the need to protect the environment and significant natural features). Goal 7, Objective 4 states: "Minimize transportation impacts on wetlands and wildlife habitat."

A. Tree Removal. County road ordinances require the gravel surface to be 20' wide and require the entire 40' right-of-way to be cleared of all trees. The loss of 7,600 sq feet of trees (190 sq feet x 40 sq feet) including tree canopy, wildlife habitat, flood control, carbon storage and other benefits provided by trees, is significant to the environmental health and visual beauty of Arch Cape. The impacts of this loss were not adequately addressed in the Decision.

B. Impact on Wildlife Habitat. Both Goals 5 and 12 of the Comprehensive Plan require that impacts on wildlife and wildlife habitat be considered in making land use decisions. The Director deals with the impacts of this proposed road on big game by stating there are no mapped big game trails in the AC-RCR zone. While this is correct, it does not mean there is no big game. One community member in the comments reported that elk sleep in the ROW the road would disrupt. And of course tree removal necessarily impacts wildlife habitat because trees are where birds and small animals live.

C. Impact on Surrounding Wetlands. The area which would be served by the proposed road is part of a large freshwater forested wetlands complex connected to Arch Cape Creek, identified as a "locally significant wetland" in the Arch Cape Local Wetlands Inventory. The ROW being discussed becomes part of this wetlands complex less than 50' north of the road terminus proposed by applicants. There are significant concerns that development, including

roads and especially road construction, within 50' of mapped wetlands has the potential to be highly detrimental to wetlands, and most jurisdictions protect wetlands with 50' setbacks. The threat to the wetlands was present in this application from the outset, but became dire when the Director imposed as a condition of approval a requirement that the road terminus be extended 40' to the north to make room for emergency vehicle turn-around. This condition brings the road, both its construction and use, to the very edge of the wetlands or beyond. This fact alone should be grounds for reversing this approval.

As a matter of law and discretion, transportation impacts on wetlands, wildlife habitat and other natural resources must be considered in an impact evaluation. The Director punts here by concluding that the impacts on wetlands are addressed at the State level through Removal-Fill laws; also, these wetlands are not part of the County's Goal 5 inventory so the impacts need not be addressed. But this hands-off approach misses the point of evaluating the impacts of development. The fact the State regulates some aspects of wetlands such as mitigation, or that a natural resource isn't in an inventory created 40 years ago, doesn't mean those resources don't exist or that their impacts can be ignored. The County has an obligation to consider the health and safety repercussions of development including access road construction near any significant wetlands located in the County.

Issue 3

The Director acted outside the range of permissible discretion by imposing conditions which conflict with ordinances, may be unenforceable, or are not proportionate to the impacts.

A. Conditions #5 and #10. The permit is conditioned on construction of a 40' roadway turnaround extending into delineated wetlands. This condition (#10) conflicts with Public Works permit #21-02 which requires the applicants to "stay out of delineated wetlands." It also conflicts with the condition of approval #5 that requires applicant to adhere to all requirements of the Public Works permit.

B. Condition #6. The permit is conditioned on applicant dedicating 5' of land along the entire east line of TL 04302 in order to bring the width of the ROW closer to current standards. But the proposed road does not run along the entire east line of TL 04302; it runs from Shingle Mill Lane north to the SE corner of TL 04302, and 40' further with the road extension imposed by the Decision. Adding land to a ROW that is unrelated to the project on the table does not mitigate the problem which the Director is trying to solve, i.e., that the old platted ROWs on the east side of Arch Cape are too narrow to meet current road standards.

C. Condition #7. As a condition of approval, applicant is required to submit a tree

removal plan, and preserve existing vegetation to the maximum extent possible. This condition, while it would make sense for the development of a lot with accompanying road access, is not proportionate to the impacts when imposed in the context of a stand-alone road project where there is an ordinance (Section 3.9830) stating: “the right-of-way shall be cleared of all trees.” The impacts of vegetation and tree loss cause by clear-cutting a ROW can be mitigated only through planting vegetation and trees on adjacent properties which, as the Decision reminds us, are not included in this review. This condition (#7) does not support approval.

Issue 4

The Director failed to exercise her discretion to upgrade this application to Type II(a) after receiving objections and questions from members of the public.

Several factors should have triggered the director to exercise her discretion to upgrade this CUP application from Type II to Type II(a) or even Type III, thereby providing the community of Arch Cape the public hearing they were requesting. The Notice mailed on 2/1/21 informed recipients that, if there were objections to issuing the permit, the Director could schedule a hearing before the Planning Commission. Objections were received but no hearing was scheduled.

Sec 2.1020(5) provides that any Type II matter may be treated as Type II(a) “if the ... Director believes that persons other than the applicant can be expected to question the application’s compliance with the Ordinance ...” The Director was aware that this application and others like it would be controversial within the affected community, and those who submitted public comments asked specifically for a public hearing.

The issues raised by the objections demonstrated that this case might require the Director to exercise more discretion or judgment, that the impacts might be significant, and that there might be extensive conditions of approval, all of which proved to be true as the Decision in this case demonstrates.

4. REQUEST FOR PLANNING COMMISSION AND DE NOVO REVIEW

Appellants request this appeal be assigned to the Planning Commission for a de novo review.

Appellants request this matter be heard de novo because there has not yet been a hearing on the issues. This application was processed as Type II which allowed public comment but nothing more. Those who submitted comments indicated a need for a hearing so the affected public could be involved in a decision which involved the use of public rather than private land. There also is intense interest in Arch Cape in preserving our remaining wetlands, and this squarely raises the issue of what uses will be allowed in the wetlands or within 50' of them. In

addition, there are many opinions about how development should proceed on the east side of Hwy 101 in Arch Cape, since the area has been platted but mostly undeveloped for over a century, and those opinions should be heard. Development is at a critical juncture, and we request the County allow citizen involvement to the greatest extent possible.

None of the Section 2.2230 factors should prevent a public hearing in this matter.

a. The applicants will not be prejudiced because any appeal, whether on the record or de novo, will delay their ability to begin construction. In addition, because the Decision imposes conditions on applicants which implicate delineated wetlands, they will need to work with both Clatsop County Public Works and the Department of State Lands to find a way to meet them prior to construction.

b. There was no initial hearing as the application was processed as Type II. Several affected neighbors offered comments, and interested groups weighed in, but the ability to present testimony which explains the impacts on both the environment and the community was not available. There also was only a short time for comments so it was difficult to get folks informed so they could submit comments.

c. Both applicants and the County will not be surprised by this request or by the evidence which is likely to be presented at the hearing.

d. We expect the hearing to be limited to testimony and evidence which is competent, relevant and material to the issues which are involved in the approval. We have no desire or need to stray beyond those issues.

We are requesting this matter be heard before the Planning Commission rather than a Hearing Officer for several reasons. One, the Planning Commission is well-suited to conduct the type of public hearing being requested, because they regularly handle Type III applications and conduct hearings on matters of great importance to communities in Clatsop County. The Planning Commission is the body responsible for Citizen Involvement and meeting Goal 1, which means they have the means in place for gathering and weighing facts and evidence presented by community members who have little or no experience with public hearings. If they are in fact not holding meetings for several months, they should have time to handle this matter. Finally, the hearings on both of the appeals (Smith and Laird) could be consolidated since the issues, while not identical, have many elements in common.

Respectfully Submitted,

Oregon Coast Alliance, ACFCB Community Club, Stuart Sandler

EXHIBIT K

Staff Report and Notice of Decision

April 23, 2021



Clatsop County
Community Development – Planning

800 Exchange St., Suite 100
Astoria, OR 97103
(503) 325-8611 phone
(503) 338-3606 fax
www.co.clatsop.or.us

NOTICE OF DECISION
Conditional Use Permit Application #21-000005

Date: April 23, 2021

Applicants: Cy and Diane Smith

Right-of-Way Description: Publicly-dedicated Anvil Rock Road right-of-way, Plat of Cannon Beach Park Extension, Book 8, Page 43

Adjacent Property: T4N, R10W, SECTION 30CA, TAX LOT 04302

Request: Conditional Use Permit for public road extension to access property owned by the applicants

Action: **APPROVAL – With Conditions**

Dear Mr. Smith and Ms. Smith:

The Clatsop County Community Development Department has completed review of the request cited above and approved the application with conditions. This decision includes findings and conditions of approval, attached.

If you, or a party with standing, wish to appeal this decision, you may do so, up to the date and time appearing at the bottom of this letter. The appeal must comply with Section 2.2190 of the Clatsop County Land and Water Development and Use Code (procedure for an appeal). This department will not issue development permits for any activities or structures until the 12-day appeal period has expired.

If you have any questions regarding this decision, appeal procedures or any of the conditions of approval, please contact me at (503) 325-8611.

Sincerely,

Gail Henrikson, Director
Community Development Department

Attachments: Conditions of Approval
Staff Report
Exhibits

LAST DAY TO APPEAL: May 5, 2021



Clatsop County

Community Development – Planning

800 Exchange St., Suite 100
Astoria, OR 97103
(503) 325-8611 phone
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CONDITIONS OF APPROVAL

Conditional Use Permit
#186-21-000005-PLNG

Based on the analysis and findings of this report staff recommends **approval** subject to the following conditions:

1. The roadway extension shall be constructed to the County's A-22 road standard and will have a 20-foot-wide gravel travel surface.
2. The proposed 50' x 14' gravel driveway on TL 04302 is not permitted as part of this conditional use approval.
3. The applicant shall provide documentation from Clatsop County Public Works that all required street signage has been paid for by the applicants and installed by Public Works prior to the issuance of a development permits for TL 04302.
4. The Anvil Rock Road extension shall be depicted on the final site plan, including dimensions and materials, and shall demonstrate compliance with all applicable standards found in Sections 3.9540 and 3.9830.
5. The applicants shall adhere to all requirements of Permit #21-02. The access will be constructed as indicated on the site plan submitted by the applicant in conjunction with this Conditional Use Permit application and as approved on Operations Permit #21-02. Any changes to the access must be approved by both the Planning Division and Public Works departments to ensure continued compliance with access and road standard requirements.
6. The applicants shall dedicate an additional five feet of right-of-way along the entire length of the east property line of TL 04302 prior to submitting development permits for the adjacent TL 04302.
7. The applicants shall submit a grading, drainage and erosion control plan for review and approval by Public Works prior to the commencement of construction for the roadway. The proposed roadway will be required to comply with all applicable requirements of Section 3.2000.
8. The applicants shall include a tree removal plan identifying all trees six inches in diameter or larger, measured at a height of four and one-half feet above the natural grade. This tree removal plan shall be submitted with the grading, drainage, and erosion control review documents. Existing natural vegetation shall be preserved to the maximum extent possible and as permitted by Clatsop County Public Works.
9. The applicants shall demonstrate that any impacts to the delineated wetland from road construction activities comply with all state permit requirements prior to a development order being issued for the project.

10. The applicants shall construct the road 40 feet beyond the planned driveway access in order to accommodate a required turnaround area.
11. The applicants will submit a development permit application, including approval from the Cannon Beach RFPD, documenting approval of the roadway extension.

Other regulations, including, but not limited to, the following also apply:

- (1) Development shall comply with all applicable state, federal and local laws and regulations. The applicant shall provide the Planning Division with copies of any required state and/or federal permits.
- (2) This approval is valid for a period of two (2) years from the date of approval. The Community Development Director can authorize one extension of up to 12 months.
- (3) A complaint from neighbors shall be cause for review of the Conditional Use. The review may be a Type II County enforcement proceeding. In such proceeding, the Compliance Order may impose any of the conditions described in 5.025 of the Clatsop County Land and Water Development and Use Ordinance.
- (4) Development shall comply with all applicable state, federal and local laws and regulations.



STAFF REPORT
Conditional Use Permit #21-000005

STAFF REPORT DATE: April 23, 2021

REQUEST: Conditional Use Permit for public road extension to access property owned by the applicants and including the installation of water, sewer and electric utilities

APPLICANTS: Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707

OWNERS/TL 41030CA04302: Cy and Diane Smith
17339 S. Century Drive
Bend, OR 97707

OWNER/ANVIL ROCK ROAD ROW: Publicly dedicated right-of-way, Plat of Cannon Beach Park Extension, Book 8, Page 43

DEEMED COMPLETE: January 29, 2021 (150 Days: June 28, 2021)

RIGHT-OF-WAY LOCATION: Anvil Rock Road within the existing public platted right-of-way, north of the East Shingle Mill Lane, east of East Beach Road and west of Fire Rock Road

ZONING: Arch Cape – Rural Community Residential (AC-RCR)

PROPERTY SIZE: Subject area within platted Anvil Rock Road right-of-way ~6,000 SF
Adjacent TL 04302: 0.34 acres (~14,810 sq. ft.)

IMPROVEMENTS: Assessor records do not indicate any improvements within the right-of-way or on TL 04302

COUNTY STAFF REVIEWER: Gail Henrikson, Community Development Director

STAFF RECOMMENDATION: Approval, subject to conditions.

AGENCY COMMENTS: Annette Brodigan, Clatsop County Environmental Health
Terry Hendrix, Clatsop County Public Works
Jevra Brown, Oregon Department of State Lands

PUBLIC COMMENTS: Oregon Coast Alliance (ORCA)
Arch Cape Falcon Cove Beach Community Club (ACFCBCC)
Christopher Achterman
Jim Jensvold
Stuart Sandler

EXHIBITS:

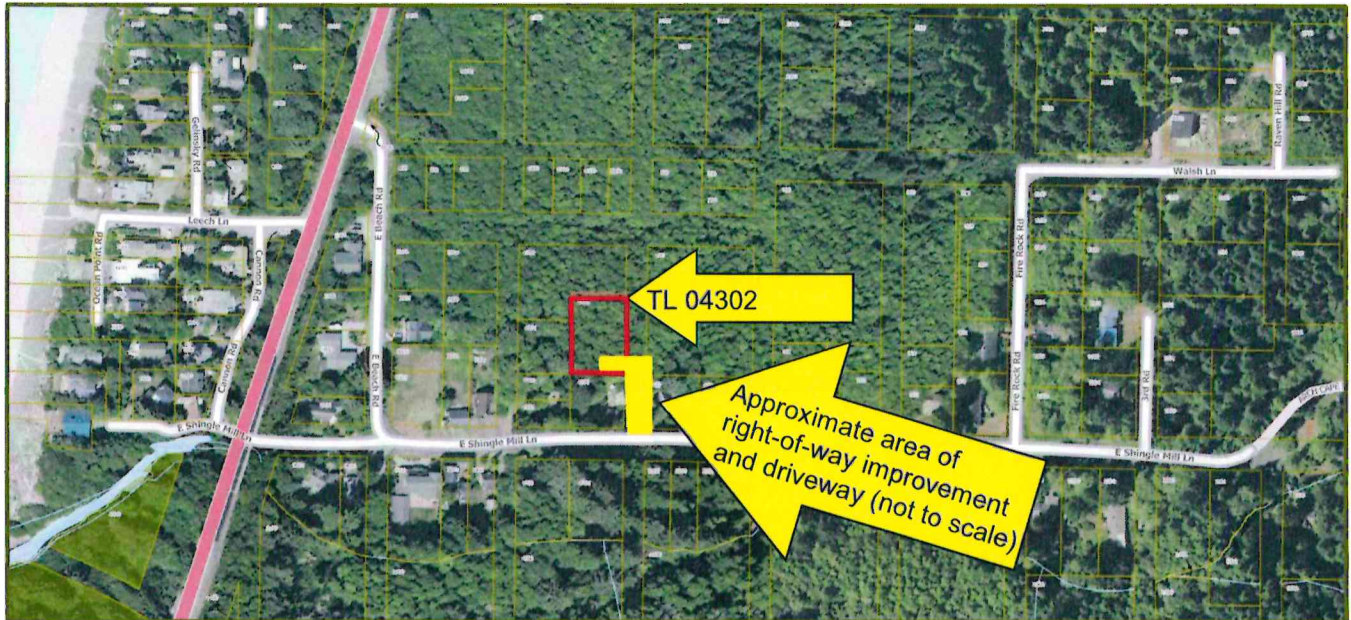
1. Application and Supporting Documents
2. Public Notice
3. Agency and Public Comments
4. Road Operations Permit #21-02
5. Arch Cape Local Wetland Inventory (2011)
6. Approved Wetland Delineation #2020-0667

I. SUMMARY

On January 19, 2021, Cy and Diane Smith submitted a conditional use application to extend the public, but unopened, Anvil Rock Road right-of-way, by constructing an access to the County’s A-22 road standard. As proposed by the applicants, the access would extend north from East Shingle Mill Lane approximately 150 feet and would be approximately 20 feet in width with a gravel travel way. As will be discussed in further detail below, the applicants will be required to dedicate an additional five feet of right-of-way for Anvil Rock Road and will be required to extend the road an additional 40 feet in order to provide a required turnaround area. Concurrent with the road construction, the applicants will also be installing water, sewer and electric utilities to provide future service to TL 04302.

The proposed access would lead to a proposed 50’ x 14’ gravel driveway in the southeast quadrant of TL 41030CA04302 (TL 04302), owned by the Smiths. The purpose of the road extension is allow the applicants to obtain access to their property in preparation of future development of the parcel. Adequate vehicle and fire equipment access is a prerequisite to develop property with a use such as a residential dwelling, which is the predominant development type in the Arch Cape Rural Community Residential Zone (AC-RCR) and the anticipated use of the applicant’s property.

2018 Aerial



Clatsop County GIS

PROPERTY STATUS

The platted right-of-way was dedicated to the public when the Plat of Cannon Beach Park Extension (Book 8, Page 43) was recorded on October 11, 1926. The public right-of-way is in the Arch Cape – Rural Community Residential (AC-RCR) zone. The property owned by the Smiths (TL 04302) consists of Lots 3-5, Block 46, Cannon Beach Park Extension, recorded with the Clatsop County Clerk on October 11, 1926 (Clatsop County Book of Deed Records, Book 8, Page 43). Tax Lot 04302 meets the county’s definition of “lot of record”. LAWDUC §1.0500.

PROPERTY CONDITIONS

The subject public right-of-way is heavily wooded and is slightly sloped. The subject public right-of-way and adjacent private property are served by the Arch Cape Sewer District and the Arch Cape Water District. The subject public right-of-way and adjacent private property are within the Cannon Beach Rural Fire Protection District. The public Anvil Rock Road is moderately-sloped, varying in elevation from approximately 20' at the south end of East Shingle Mill Lane to approximately 24' at the north end of the proposed road extension. Road operations permit #21-02 (Exhibit 4), discussed below, was issued by Clatsop County Public Works on January 12, 2021.



II. APPLICABLE CRITERIA

The applicable criteria for this land use application are contained in the following documents and sources:

Land and Water Development and Use Code (LAWDUC)

- Article 1 Introductory Provisions
- 2.1020 Type II Procedure
- 2.2050 Procedure for Mailed Notice
- 2.4000-2.4050 Conditional Development and Use
- 3.2000 Erosion Control Development Standards
- 3.9800 Transportation Improvements and Road Standard Specifications for Design and Construction
- 4.0600 Arch Cape Rural Community Residential Zone

Clatsop County Comprehensive Plan

- Goal 1 Citizen Involvement
- Goal 2 Land Use Planning
- Goal 5 Open Space, Historic and Cultural Areas and Natural Resources
- Goal 6 Air, Water and Land Resources Quality
- Public Facilities and Services

III. APPLICATION EVALUATION

A. Land and Water Development and Use Code (LAWDUC)

ARTICLE 1. INTRODUCTORY PROVISIONS

Section 1.0500. Definitions

ACCESS -- The way or means by which pedestrians and vehicles enter and leave property.

ACCESSORY USE -- A use customarily incidental and subordinate to the principal use and located on the same lot, tract or parcel.

BLOCK -- All land along one side of a street which is between two (2) intersections or intercepting streets, or interrupting streets and a railroad right-of-way, or unsubdivided land or water course.

BUILDING -- A structure built or placed for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

CLEAR-VISION AREAS -- A triangular shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection. (See 3.9530)

DEVELOPMENT -- Any man-made change to improved or unimproved real estate, including but not limited to: construction, reconstruction, conversion, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance, any use or extension of the use of land.

DRIVEWAY -- An improved travel surface, on privately owned property and maintained by private funds for the exclusive use of private parties, that is intended to provide access from a federal, state, county, public, or private road to no more than two lots, parcels, areas or tracts of land.

FILL -- The placement by man of sand, sediment or other material to create new uplands or raise the elevation of the land.

FRONTAGE -- All the property fronting on one (1) side of a street between intersecting or intercepting streets or between a street and right-of-way, waterway and/or dead-end street or county boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts.

LOT -- A single unit of land that is created by a subdivision of land as defined under ORS 92.010. In certain instances, this ordinance also uses the term "lot" in a broader sense inclusive of the terms parcel, unit of land, and tract of land. [Ord. 18-02]

LEGAL LOT -- A unit of land which meets the minimum requirements of the zone in which it is situated and is provided with a minimum 25-foot frontage upon a state, county or public road or which has access to a state, county, or public road by means of a private road easement.

BUILDABLE LOT -- A legal lot which is proposed for use in compliance with this Ordinance, and has received approval of the water supply and sewage disposal method as appropriate to such use.

LOT OF RECORD -- Any lot or parcel lawfully created by a subdivision or partition plat of record in the County Clerk's Office, or lawfully created by deed or land sales contract prior to land use partitioning requirements, and of record in the Deed Records of Clatsop County.

ment of a "lot of record" must meet all other applicable development standards, except for the

minimum lot size or lot dimensions of the zone. Development standards include all applicable requirements of the zone, overlay district, the Land and Water Development and Use Ordinance and the Standards Document, and state and federal statutes and administrative rules. Lot of record status does not authorize development of a lot or parcel without compliance with the requirements in Section 1.1020.

LOT CORNER -- A lot abutting on two or more streets, other than an alley, at their intersection.

LOT LINE, FRONT -- The property line separating the lot from the street, as defined in Section 1.0500, other than an alley, from which access is provided to the lot. For the purpose of establishing setback requirements, orientation of the dwelling unit is independent of access to the parcel. In the case of a corner lot, the front lot line is the property line with the narrow dimension adjacent to the street.

LOT LINE, SIDE -- Any property line which is neither a front nor a rear lot line.

LOT TYPES -

- 1) Corner lot: A lot of which at least two (2) adjacent sides border public or private streets or roads, other than alley

LOT WIDTH -- The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot lines.

PRINCIPAL USE -- The main use to which the premises are devoted and the principal purpose for which the premises exist.

PUBLIC ROAD -- A road over which the public has a right of use that is a matter of public record.

ROAD, PUBLIC -- A road over which the public has a right of use that is a matter of public record.

STREET -- A roadway dedicated to the public, which has been accepted by the Board that is created to provide ingress and/or egress to one (1) or more lots, parcels, areas or tracts of land including the terms road, highways, lanes, avenue, or similar designation.

Classification:

- 5) Local Road or Street: A road or street which a) serve primarily to provide access to adjacent land; and b) provide service to travel over relatively short distances as compared to collectors or other higher systems. They are designed specifically to have high accessibility and to connect to collector and arterial roads, and are typically not used for through traffic.

Types:

- 3) Stubbed Street: A street having only one (1) outlet for vehicular traffic and which is to be extended or continued to serve future subdivisions or development on adjacent property.

STRUCTURE -- Anything constructed, erected or air-inflated, permanent or temporary, which requires location on the ground or water, or attached to an existing structure. Among other things, structure includes residences, apartments, barns, cabins, buildings, walls, fences, billboards, poster panels, food stands and parking lots. [Ord. 18-02]

TEMPORARY STRUCTURE OR USE -- A non-permanent structure, use or activity involving minimal capital investment that does not result in the permanent alteration of the site and is removed from the site within one year. [Ord. 18-02]

TREE -- any woody plant having at least one well-defined stem at least six inches in diameter measured at a height of four and one-half feet above the natural grade.

VEHICLE -- Any device in, upon or by which any person or property is or may be transported or drawn and includes vehicles that are propelled or powered by any means.

WETLAND CREATION -- Alteration, by excavation or other means, of upland areas to allow local hydrologic conditions to convert soils and vegetation to hydric character.

WETLAND ENHANCEMENT -- An action which results in a long term improvement of existing wetland functional characteristics and processes that is not the result of a creation of restoration action.

WETLANDS -- Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

WETLANDS, SIGNIFICANT NON-TIDAL -- Non-tidal wetlands described as significant in Coastal Shorelands boundary descriptions or protected by the County's Goal 5 element.

STAFF FINDING and CONCLUSION: The above definitions are included for informational purposes and may be referenced throughout the report.

ARTICLE 2. PROCEDURES FOR LAND USE APPLICATIONS

Section 2.1000. Procedure Types and Determinations of Proper Procedure

An application for a development permit or land use action shall be processed under either a Type I, II, IIa, III or IV procedure as stated within the procedures under Sections 2.1010 to 2.1050.

All land use actions shall be classified as one of the following unless State law mandates different or additional procedures for particular land use actions or categories of land use actions or specified otherwise by this Code:

Section 2.1020. Type II Procedure

- 1) Type II land use actions generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with conditions of approval to minimize those impacts or ensure compliance with this code.
- 2) Those actions identified in this code as a conditional development and use, development permitted with review, subdivisions containing six lots or less, partitions, and applications related to non-conforming uses/structures under the Type II procedure are Type II actions.
- 3) Except as provided in subsection (5), under the Type II procedure an application for a development permit shall be processed without a need for public hearing. The Community Development Director shall determine whether or not the proposed development meets the required development standards. The Director may obtain technical assistance from a review committee or local or state agencies.
- 4) If the Director finds that the development appears to satisfy the required standards, the Director shall mail a notice of intent to issue a development permit to the applicant and to other persons pursuant to Sections 2.2040 to 2.2050.
- 5) If the Community Development Director believes that persons other than the applicant can be expected to question the application's compliance with the Ordinance, the Director may treat the application as a Type IIa procedure.
- 6) The Community Development Director shall review any information received under subsection (4) and make a finding for each of the points in dispute. The Director shall make a decision on the application by approving, conditionally approving, or denying the application.
- 7) A decision by the Community Development Director may be appealed to the Hearings Officer by the applicant or by a person who responded to the notice, pursuant to Section 2.2190.

STAFF FINDING: New public or private road development or road extension is listed as a Type II Conditional Use in Section 4.0620, Table 1(98), LAWDUC. The application is being processed under a Type II Conditional Use procedure.

- 1) Notice of intent to issue a Development Permit shall be provided:
 - (A) To the applicant; and
 - (B) To owners of record of property on the most recent property tax assessment roll where such property is located:
 - 2) within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone
 - (C) To any Neighborhood/Community Organization whose boundaries include the site.
 - (D) To the Oregon Department of Transportation (ODOT) for applications related to property within 750 feet of a state highway or that in the opinion of the Community Development Director may be found to have a significant impact on State facilities.

- 2) The notice shall:
 - (A) Describe the proposed development;
 - (B) Summarize the standards and facts that justify approval of the permit;
 - (C) Invite persons to submit information relevant to the proposed development and applicable standards within ten (10) days giving reasons why the permit application should or should not be approved or proposing modifications the person believes are necessary for approval according to the standards;
 - (D) Advise of the right and the procedure to appeal the decision on the proposed development if the person's concerns are not resolved.

Section 2.2050 Procedure for Mailed Notice

Unless otherwise provided, addresses for a mailed notice required by this Ordinance shall be obtained from the County Assessor's real property tax records. Unless the address is on file with the Director, a person whose name is not in the tax records at the time of filing of an application, or of initiating other action not based on an application, need not be furnished mailed notice. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Ordinance for notice. In addition to persons who receive notice as required by the matter under consideration, the Director may provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed development.

STAFF FINDING: Public notice was sent to adjacent property owners within 250 feet of the subject property and to public agencies per Section 2.2050 on February 1, 2021. (Exhibit 2.)

All requirements of the mailed notice to affected property owners and government agencies for the Type II Conditional Use Permit application (Sections 2.2040-2.2050) have been met.

SECTION 4.0600. ARCH CAPE RURAL COMMUNITY RESIDENTIAL ZONE (AC- RCR).

Section 4.0620. Permitted and Conditional Uses

Table 1(98) Road Development or Extension, Public or Private (Type II)

STAFF FINDING and CONCLUSION: The subject property is zoned AC-RCR, Arch Cape Rural Community Residential. Conditional uses for the zone are listed in Table 1, LAWDUC. The applicants propose to construct an access to the County's A-22 road standards within the platted, but unopened, Anvil Rock Road right-of-way. As proposed by the applicants, the access would extend north from East Shingle Mill Lane approximately 150 feet and would be approximately 20 feet in width. Road operations permit #21-02 will require a gravel travel surface. **A condition of approval will require the access to be constructed to the County's A-22 road standard (Condition #1).**

Staff finds the proposed access within the platted, but unopened Anvil Rock Road public right-of-way, is an allowed conditional use in the AC-RCR Zone, subject to all applicable criteria, standards and site plan review. The criterion of Section 4.0620, Table 1(98) is met. Conditions of approval will ensure compliance with all applicable code provisions and applicable provisions within the comprehensive plan.

The applicants have also proposed construction of a 50'x14' gravel driveway in the southeast quadrant of TL 41030CA04302, which is owned by the applicants.

Per Section 4.0620, Table 1(109), Temporary Uses are permitted as a Type I use, subject to the provisions of Section 2.8200, LAWDUC. Temporary uses are only permitted during the construction phase. "Construction phase" is not defined in the code. A "temporary structure or use" is defined in Section 1.0500, LAWDUC, as a "non-permanent structure, use or activity involving minimal capital investment that does not result in the permanent alternation of the site and is removed from the site within one year. [Ord. 18-02]. Temporary uses may be permitted under Section 2.8200. However, no application has been submitted for the proposed driveway prior to construction of the residence. A road approach permit was issued by Public Works on April 20, 2021 (Permit #21-27).

Per Section 4.0620, Table 1(2), Accessory Uses, defined as a "use customarily incidental and subordinate to the principal use and located on the same lot, tract or parcel" may be permitted as a conditional use prior to the construction of a primary use. A Type II Conditional Use Accessory Use would require the following:

- A. A letter from the applicant explaining the unique or unusual circumstances and nature of the intended use
- B. The property owner obtains the primary use development permit within 1 year from the date the accessory use development permit is issued

The applicants are requesting the roadway extension in order to access their property and to install water, sewer and electric in preparation for development of their property. Per information from the applicants they do not have a timeframe for residential development. Therefore, the proposed 50' x 14' gravel driveway cannot be permitted as an Accessory Use under this Type II conditional use application. A condition of approval will verify that the proposed driveway is not part of the development approved by this conditional use permit (Condition #2).

SECTION 2.4000. CONDITIONAL DEVELOPMENT AND USE.

Section 2.4020. Application for a Conditional Development and Use.

- (1) If a development and use is classified as conditional in a zone, it is subject to approval under Sections 2.4000 to 2.4050. An applicant for a proposed conditional development and use shall provide facts and evidence and a site plan in compliance with Section 2.9400 sufficient to enable the Community Development Director or hearing body to make a determination.

STAFF FINDING and CONCLUSION: The applicant has provided the materials required by Section 2.4020 (Exhibit 1).

- (3) In addition to the other applicable standards of this ordinance, the hearing body must determine that the development will comply with the following criteria to approve a conditional development and use.
- (A) The proposed use does not conflict with any provision, goal, or policy of the Comprehensive Plan.

APPLICANT RESPONSE: No, to the best of my knowledge the proposed use does not conflict with the applicable provisions, goals, or policies of the Comprehensive Plan

- (B) The proposed use meets the requirements and standards of th[is] Ordinance

APPLICANT RESPONSE: Yes, it meets the Clatsop County LWDUO and standards as indicated on Application

STAFF FINDINGS and CONCLUSION: Public or private road development or extension is identified in the AC RCP 7 one as a conditional use, per Section 4.0620, Table 1(98), indicating the use was examined w

the provisions, goals, and policies of the Comprehensive Plan where developed, and standards were devised at the time to ensure the use could be made consistent with the Comprehensive Plan. These standards were then adopted into the zoning ordinance, ensuring the use could be made to be consistent with the plan and meet the requirements of the zone.

Similarly, given that the use is listed among those that may be conditionally approved by the director, the use was reviewed in general previously and it was determined the use could meet the Land and Water Development and Use Code requirements and standards with appropriate conditions. The standards will be addressed elsewhere in this report, and, with conditions of approval, the development will be found to meet the requirements and standards of the ordinance.

County regulations and conditions of approval shall ensure these criteria are satisfied. (Refer to Conditions 1 through 11 and Regulations 1-4.)

- (C) The site under consideration is suitable for the proposed use considering:
- 1) The size, design, and operating characteristics of the use, including but not limited to off-street parking, fencing/buffering, lighting, signage, and building location.

APPLICANT RESPONSE: This site meets requirements for a 14 ft. wide approach road to an existing property

STAFF FINDINGS and CONCLUSION: Extension of a public road, within a platted, but unopened right-of-way, does not require off-street parking. The Anvil Rock Road right-of-way was established with the recording of the Cannon Beach Park Extension subdivision plat on October 11, 1926. The right-of-way was platted as 40 feet in width, which is 10 feet narrower than required by current code. This subdivision plat was developed and recorded in 1926, more than 40 years prior to the adoption of the County's first subdivision ordinance. Section 3.9830(1)(H) states that whenever "existing streets adjacent to or within a tract are of inadequate width, additional right-of-way shall be provided at the time of the subdivision." While this conditional use application is not a subdivision application and this criterion does not apply, Section 2.4040(5) does allow staff to apply a condition of approval that would require additional right-of-way dedication. This will be discussed in further detail below.

No fencing or buffering is required for the proposed use. No street lighting is required per the county's public road standards (Section 3.9830). Stop signs and/or street signs will be required per Section 3.9830(16)(C). **A condition of approval will require the applicant to provide documentation from Clatsop County Public Works that any required street signage has been paid for by the applicants and installed by Public Works prior to the issuance of a development permit for TL 04302 (Condition #3).**

No buildings will be permitted in the public right-of-way.

- 2) The adequacy of transportation access to the site, including street capacity and ingress and egress to adjoining streets.

APPLICANT RESPONSE: Access from Shingle Mill road to Anvil Rock Road is existing and meets all site requirements for an approach road.

STAFF FINDINGS and CONCLUSION: Anvil Rock Road is accessed via East Shingle Mill Lane, a 20-foot-wide paved travel path within a 60-foot-wide platted right-of-way. East Shingle Mill Lane is a County Road and is classified as a rural local roadway. East Shingle Mill Lane connects to Highway 101. The Anvil Rock Road right-of-way is approximately 700 feet east of Highway 101.

Clatsop County Public Works staff, who have been in communication with the applicants since December 2020, were notified of this conditional use application. Comments were received from Public Works during the 10-day public comment period confirming the requirement to construct a 20-foot-wide gravel road

within the public right-of-way. On January 12, 2021, Public Works issued a permit (#21-02) to the applicants for the road extension (Exhibit 4).

The development of the proposed access within a public, platted right-of-way, does not inherently generate trips, as the road itself is not the destination. A road only carries trips to a destination. In the future, the development of a single-family dwelling on the property owned by the applicants would generate approximately 9.44 weekday trips, 9.54 Saturday trips, and 8.55 Sunday trips (*Institute of Transportation Engineers Trip Generation Manual 10th Edition*).

The development of a 150-foot-long road extension within an existing public right-of-way, will not have a significant impact on State facilities (Highway 101).

A condition of approval shall require the Anvil Rock Road extension be depicted on the final site plan, including dimensions and materials, that meets all applicable standards found in Sections 3.9540 and 3.9830. With this condition, criteria of Section 4.2040(3)(C)(2) will be satisfied (Condition 4).

- 3) The adequacy of public facilities and services necessary to serve the use.

APPLICANT RESPONSE: Water, Sewer and electricity providers have indicated that they have the capacity to serve existing property on this approach road as per Arch Cape water and sewer district.

STAFF FINDINGS and CONCLUSION: The purpose of the proposed road development is to provide vehicle access to property owned by the applicants for the purpose of future residential development. Residential development requires vehicle access, potable water supply, and sewage disposal. While the subject right-of-way and adjacent TL 04302 are served by the Arch Cape Water District and the Arch Cape Sewer District, both of which received notice of the proposed access, no water or sewer connections are required to support the installation of the road extension. The site is also within the Cannon Beach Rural Fire Protection District, which was also notified of the proposed roadway extension. While public notice was mailed to each of these agencies, none of their representatives provided comment or expressed concern about the proposed access.

Transportation was addressed above.

Staff finds Section 4.2020(3)(C)(3) to be satisfied.

- 4) The natural and physical features of the site such as topography, natural hazards, natural resource values, and other features.

APPLICANT RESPONSE: The minimal footprint of the approach road as per the delineation study indicates that there is no impact to wetlands or natural features.

STAFF FINDINGS and CONCLUSION: The proposed access is outside of lands mapped for geologic hazards and is outside the area mapped as either Major or Peripheral Big Game Habitat. The 150-foot-long extension proposed by the applicant, with the additional 40-foot-long extension required by Public Works (to be discussed in further detail elsewhere in this report), may impact a portion of an identified wetland within the right-of-way. The applicants have provided a wetland delineation approved by the Oregon Department of State Lands. Any impacts to this wetland area would be subject to the requirements of the state Removal-Fill Law. Cumulative fill or removal of 50 cubic yards or greater would require a state permit.

Per bare earth lidar hillshade information from the Department of Geology and Mineral Inventories (DOGAMI) the subject right-of-way is relatively level, varying in elevation from approximately 23 feet to 25 feet. The area is heavily wooded.

AC-RCR Zone development standards, Section 4.0630(3)(E)(5), requires the landscape to be preserved in its natural state to the maximum extent possible by minimizing tree, vegetation and soils removal. Cut and fill construction methods are discouraged. Roads and driveways should follow slope contours in a manner that prevents erosion and rapid discharge into natural drainages. Disturbed areas shall be re-vegetated with native species. **A condition of approval shall require the applicant to include a tree removal plan with the grading, drainage, and erosion control review application. The erosion control plan shall be commensurate with Section 3.2000. Existing natural vegetation shall be preserved to the maximum extent possible and as permitted by Clatsop County Public Works (Condition #8).**

In 2020, Public Works issued the following permits for work within the surrounding rights-of-way:

- #20-17: Anvil Rock Road (clearing brush and weeds from East Shingle Mill Lane to TL 4302)
- #20-33: Anvil Rock Road / Maxwell Lane (clearing for a six-foot-wide trail)
- #20-49: 32009 East Shingle Mill Road (utility work)
- #20-71: Walsh Lane (utility work)
- #20-100: Fire Rock Road (roadway extension)

These permits, which were issued for work in the same area as the subject property and with similar or steeper topography verify that the natural and physical features of the subject right-of-way are suitable to support the proposed road. **A condition of approval will require the applicants to adhere to all requirements of Permit #21-02 (Condition #5).**

With conditions of approval staff finds the site is suitable for the development when considering Section 2.4020(3)(C)(4) (Conditions #5 and #8).

- (D) The proposed use is compatible with existing and projected uses on surrounding lands, considering the factors in (C) above.

APPLICANT RESPONSE: Yes, the proposed use is a County Road and will not impact any adjacent lands, but will be compatible with existing and projected residential uses.

STAFF FINDINGS and CONCLUSION: The proposed use is the construction of a portion of Anvil Rock Road and the installation of utilities within the existing platted public right-of-way. The proposed road extension will be public road, but will not be a County Road, which is a roadway that has been accepted by the Board of Commissioners and is maintained by Clatsop County. A public road is required to be maintained by the property owners adjacent to the right-of-way.

The uses on surrounding properties, which consist of residential dwellings and vacant residential land, necessitate the construction of a road extension within the existing platted public right-of-way. Section 2.1130(4), LAWDUC, requires applicants to provide proof of legal access to a property in order to receive development permit approval to construct improvements on the property. Section 2.1130(2)(A) requires documentation to verify that water and sewer are available to service a property prior to issuing a development permit for a residential structure. The use proposed under this conditional use application is required to support the development permitted on adjacent properties.

Staff finds the site is suitable for the development when considering Section 2.4020(3)(C)(1-4), addressed above.

- (E) The proposed use will not interfere with normal use of coastal shorelands.

APPLICANT RESPONSE: The proposed use of this road to applicants property does not have the potential to interfere with any coastal shore lands

- (F) The proposed use will cause no unreasonably adverse effects to aquatic or coastal

shoreland areas, and

APPLICANT RESPONSE: The proposed approach road is at least a quarter mile from coastal shore land areas and will have no adverse effects to aquatic or coastal areas

- (G) The use is consistent with the maintenance of peripheral and major big game habitat on lands identified in the Comprehensive Plan as Agricultural Lands or Conservation Forest Lands. In making this determination, consideration shall be given to the cumulative effects of the proposed action and other development in the area on big game habitat.

APPLICANT RESPONSE: This approach road is not within the either the Major or Peripheral Big Game Habitat Overlay. This is a residential neighborhood. ACRCR

STAFF FINDINGS and CONCLUSION: Goal 17 of the County's comprehensive plan defines the "coastal shorelands planning area" as all lands west of Highway 101. The subject right-of-way, which is east of Highway 101, is neither within the coastal shoreland planning area nor adjacent to any coastal shorelands. Per the Arch Cape Local Wetland Inventory (2011) (Exhibit 5), Arch Cape Creek "is ODFW-designated essential salmonid habitat from the ocean to approximately 1 mile upstream where there is a 15-foot waterfall, a natural barrier to fish passage...Most tributaries flow out of the hills south and east of the study area, though seasonally, there are drainages which flow out of the wetlands located north of E. Shingle Mill Lane." The subject area is approximately 100 feet north of East Shingle Mill Lane and approximately 300 feet north of Arch Cape Creek. The applicants have provided a site-specific wetland delineation, prepared by a professional wetland scientist, that has been reviewed and approved by the Oregon Department of State Lands (DSL) (WD #2020-0667, Exhibit 6). DSL instructs local jurisdictions to refer to approved wetland delineations where available, rather than the LWI or NWI, because delineations represent the most precise information available. While the limits of road construction are not marked on the approved delineation, it appears that all or most of the road improvements and utility installations would avoid the delineated wetlands. However, as noted in DSL's approval letter, the study area, including the right-of-way and adjacent TL 04302, are subject to the state's Removal-Fill Law. Any fill or excavation activities within the wetland exceeding 50 CY will require a permit from the state. Mitigation for wetland impacts may also be required by DSL. **A regulation will require the applicants to provide copies of all required state and/or federal permits prior to issuing a development permit (Regulation #1).**

Construction of the proposed road is not anticipated to interfere with the normal use of coastal shorelands or to cause unreasonably adverse effects to aquatic or coastal shoreland areas. Any wetland impacts that may be proposed by the applicant will be subject to review, permitting and/or mitigation as determined by the Oregon Department of State Lands.

The road will be outside of mapped Big Game Habitat and is not proposed on Agricultural Lands or Conservation Forest Lands,

Two of these criteria do not apply. An existing regulation will require copies of all required state and/or federal permits prior to issuing a development permit.

- (H) In addition to compliance with the criteria as determined by the hearing body and with the requirements of Sections 1.1040 and 1.1050, the applicant must accept those conditions listed in Section 2.4040 that the hearing body finds are appropriate to obtain compliance with the criteria.

Section 2.4040. Requirements for Conditional Development and Use.

In permitting a conditional development and use, the hearing body may impose any of the following conditions as provided by Section 2.4030:

- (1) Limit the manner in which the use is conducted, including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.

- (2) Establish a special yard or other open space or lot area or dimension.
- (3) Limit the height, size or location of a building or other structure.
- (4) Designate the size, number, location or nature of vehicle access points.
- (5) Increase the amount of street dedication, roadway width or improvements within the street right-of-way.
- (6) Designate the size, location, screening, drainage, surfacing or other improvement of a parking or truck loading areas.
- (7) Limit or otherwise designate the number, size, location, height of or lighting of signs.
- (8) Limit the location and intensity of outdoor lighting or require its shielding.
- (9) Require diking, screening, landscaping or another facility to protect adjacent or nearby property and designate standards for installation or maintenance of the facility.
- (10) Designate the size, height, location or materials for a fence.
- (11) Require the protection of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.
- (12) Require provisions for public access (physical and visual) to natural, scenic and recreational resources.
- (13) Specify other conditions to permit the development of the County in conformity with the intent and purpose of the classification of development.

STAFF FINDINGS and CONCLUSION: As discussed above, the platted Anvil Rock Road right-of-way is 40 feet in width, while the current A-22 Road Standard requires a minimum right-of-way width of 50 feet. As permitted above in Section 2.4040(5), additional street dedication will be required as a condition of approval. **In order to bring the right-of-way closer to compliance with current Clatsop County road standards, a condition of approval will require the applicants to dedicate an additional five feet of right-of-way along the entire length of the east property line of TL 04302 prior to submitting a development permit for construction on the TL 04302 (Condition #6).**

SECTION 3.2000. EROSION CONTROL DEVELOPMENT STANDARDS

Section 3.2010. Purpose

The objective of this section is to manage development activities including clearing, grading, excavation and filling of the land, which can lead to soil erosion and the sedimentation of watercourses, wetlands, riparian areas, public and private roadways. The intent of this section is to protect the water quality of surface water, improve fish habitat, and preserve top soil by developing and implementing standards to help reduce soil erosion related to land disturbing activities. In addition, these standards are to serve as guidelines to educate the public on steps to take to reduce soil erosion.

Section 3.2030. Erosion Control Plan

- 1) An Erosion Control Plan shall be required for land disturbing activities, in conjunction with a development permit.

STAFF FINDINGS and CONCLUSION: On January 12, 2021, Public Works issued permit #21-02 to allow operations within a public right-of-way. A condition of approval for permit #21-02 is that the applicants obtain all required County permits prior to starting construction. If more than 30 cubic yards will be removed, filled, or relocated as part of the road construction project, or if construction activities will occur within 50 feet of mapped or known wetlands, the applicants will be required to submit a grading and erosion control plan for review. **A condition of approval will require the submittal of an erosion control permit, to be reviewed by Clatsop County Public Works, to certify compliance with the standards of Section 3.2000 (Condition #7).**

SECTION 3.9800. TRANSPORTATION IMPROVEMENTS AND ROAD STANDARD SPECIFICATIONS FOR DESIGN AND CONSTRUCTION

Section 3.9810. General Road and Access Policies.

- 1) **Purpose.** The establishment of the criteria to be used in Clatsop County for evaluating the appropriateness of proposed roads which are intended to provide access to lots or parcels. These criteria shall form the basis for determining what requirements are necessary to ensure that th

will be adequate provisions available now, and in the future, to provide for the transportation needs of lots, parcels, or developments.

The Clatsop County Road Standards are intended to provide access to new development in a manner which reduces construction cost, makes efficient use of land, allows emergency vehicle access while discouraging inappropriate traffic volumes and speeds, and which accommodates convenient pedestrian and bicycle circulation. The standards apply to County roads, dedicated roads and private roads.

The Road Standards to be applied are based on the density of the zone in which it will be built and shall be constructed to that standard. The Clatsop County Department of Community Development, Planning Commission or Board of County Commissioners will be a case by case basis consider possible future land divisions and whether or not the road being built should be private or dedicated.

- 2) **Conditions of Development Approval.** No development may occur unless required transportation facilities are in place or guaranteed, in conformance with the provisions of this document. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development on public facilities and services. Findings in the development approval shall indicate how the required improvements are roughly proportional to the impact.

STAFF FINDINGS and CONCLUSION: The proposed roadway has been reviewed by Clatsop County Public Works and a permit to occupy or perform operations upon a county or public road has been issued, indicating that the proposed work will comply with minimum-required county standards. **Conditions of approval will require the roadway extension to conform to all applicable requirements of Section 3.9800 and to permit #21-02, issued by Public Works (Conditions #1, #3, #4, #5, #6, #7, #8, #10 and #11).**

As discussed in this report, the public platted Anvil Rock Road right-of-way is 40 feet wide. County road standards would require a 50-foot-wide right-of-way if this road were to be platted under current standards. **In order to make the right-of-way more conforming to current standards, a condition of approval will require the applicants to dedicate an additional five feet of right-of-way (Condition #6).**

With conditions of approval, these criteria will be met.

- 3) **Criteria.** Roads in Clatsop County shall be designed, constructed, and maintained to:
- (A) Be capable of ensuring unrestricted travel to and from a property.
 - (B) Provide adequate, safe, and legal access with minimum public cost.
 - (C) Place the burden of the costs on the benefited person(s).
 - (D) Provide access for fire protection, ambulance, police, mail, school bus, public transit, and garbage services.
 - (E) Provide for drainage ways and utility services.
 - (F) Be compatible with adjoining land use.
 - (G) Minimize, with the constraints of reasonable engineering practices and costs, the creation of roads within lands designated for Exclusive Farm Use, Forest Resource, Open Space Reserve, Rural and Rural Service Areas designated by the Clatsop County Comprehensive Plan.
 - (H) Ensure that the new road will minimize interference with forest management or harvesting practices.
 - (I) Minimize within the constraints of reasonable engineering practices and costs the loss of productive agricultural or forest land, and be located on that portion of such land that is least suitable for timber or agricultural production, taking into consideration, but not limited to, the following: topography, soil capability or classification, erosion potential, {

- the size and resultant configuration of the affected tracts.
- (J) Minimize the loss of important wildlife habitat, such as sensitive deer and elk range, identified natural areas, and other significant natural features.
- (K) Streets within or adjacent to a development shall be improved in accordance with the Transportation System Plan and the provisions of this Section.

STAFF FINDINGS and CONCLUSION: Construction of the proposed road extension would ensure unrestricted access to and from properties on both the east and west sides of Anvil Rock Road, including property owned by the applicants. The applicants are responsible for the costs associated with the installation of the road extension.

The road extension is for the purpose of accessing the applicant’s property. While police, fire and ambulance vehicles may be required to access the site, at this time there is not a need for mail, school bus, public transit, or garbage service to this site. Construction of the road extension to the A-22 standard will allow emergency vehicles to access the parcel, if needed. An additional 40-foot-long road extension has been required by Public Works in order to ensure adequate turnaround space for emergency and other vehicles. **A condition of approval will require the applicants to obtain a sign-off from the Cannon Beach RFPD Chief documenting approval of the road extension (Condition #11).**

The subject right-of-way is within the rural community of Arch Cape and is considered to be within a rural service area. This road extension would be designed to the county’s A-22 standard, which is intended to serve ten or more lots or parcels. Any property owners who propose future development on the adjacent residential lots north of the end of the proposed road extension would be required to install an extension of Anvil Rock Road at their expense and in compliance with county road standards.

The proposed road extension will not interfere with forestry or agricultural practices and is outside of areas mapped as Major or Peripheral Big Game Habitat. There are no inventoried Goal 5 resources within the subject right-of-way.

With a condition of approval, these criteria will be met.

4) **Standards, Generally:**

- (A) The following are a variety of types or forms of access used to gain ingress and degree to property within Clatsop County:
 1. County roads
 2. Federal roads
 3. State highways
 4. Dedicated ways
 5. Flag lots
 6. Ways of necessity
 7. Public roads
 8. Private roads
 9. Prescriptive roads
- (B) Publicly dedicated and maintained roads provide superior access.

STAFF FINDINGS and CONCLUSION: The proposed roadway will be constructed within a public platted right-of-way and will be a public road.

This criterion is satisfied.

5) **Standards, Specifically:**

- (A) As far as is feasible, roads shall be in alignment with existing or appropriate projections of existing roads by continuation of their centerline.

STAFF FINDINGS and CONCLUSION: The proposed roadway will be constructed within a public platted

right-of-way and will be a public road. The Cannon Beach Park Extension subdivision street system is laid out in a grid pattern. The proposed road extension shall be constructed entirely within the existing platted public right-of-way and will be in alignment with the segment of Anvil Rock Road that has been constructed immediately south of Oceanview Lane.

This criterion is satisfied.

SECTION 5.300. SITE PLAN REVIEW.

Section 5.302. Site Plan Review Requirements.

Before a permit can be issued for development in a special purpose district or for a conditional development and use or a development and use permitted with review, a site plan for the total parcel and development must be approved by the Community Development Director or Planning Commission. Information on the proposed development shall include sketches or other explanatory information the Director may require or the applicant may offer that present facts and evidence sufficient to establish compliance with Sections 1.040, 1.050 and the requirements of this Section.

STAFF FINDINGS and CONCLUSION: Site plan review approval is required prior to the issuance of a development permit. Staff finds the information submitted by the applicant is sufficient to conduct preliminary site plan review for the purpose of preparing this report; however, **a final site plan shall be required prior to issuing the development permit for this proposed access.**

This criterion will be met by Condition #4.

B. COMPREHENSIVE PLAN

Goal 1 - Citizen Involvement

Policies

7. Clatsop County shall use the news media, mailings, meetings, and other locally available means to communicate planning information to citizens and governmental agencies. Prior to public hearings regarding major plan revisions, notices shall be publicized.
8. Clatsop County shall establish and maintain effective means of communication between decision-makers and those citizens involved in the planning process. The County shall ensure that ideas and recommendations submitted during the planning process will be evaluated, synthesized, quantified, and utilized as appropriate.
9. Public notices will also be sent to affected residents concerning zone and comprehensive plan changes, conditional uses, subdivisions and planned developments.

STAFF FINDINGS and CONCLUSION: A public notice was sent to all property owners within 250 feet of the subject property and to public agencies per Section 2.2050, LAWDUC, on February 1, 2021 (Exhibit 2). Public notice was also posted on the County's website: https://www.co.clatsop.or.us/sites/default/files/fileattachments/land_use_planning/project/34005/publicnoticewhaler.pdf.

Appropriate measures have been taken to assure that the Type II Conditional Use Application has been processed in accordance with the applicable Citizen Involvement (Goal 1) policies of the County Comprehensive Plan (7-9) listed above.

The proposed project does not conflict with Goal 1.

Goal 2 - Land Use Planning

The County's land and water have been placed in one of six (6) Plan designations including: 1. Development; 2. Rural Agricultural Lands; 3. Conservation Forest Lands; 4. Conservation Other Resources; ; and 6. Rural Lands.

1. Development

Development areas are those with a combination of physical, biological, and social/economic characteristics which make them necessary and suitable for residential, commercial, or industrial development and includes those which can be adequately served by existing or planned urban services and facilities.

In Clatsop County, the County has three types of such areas: cities and their urban growth boundaries; rural communities; and rural service areas, which are areas similar to cities (sewer and water) but lack size and a government structure.

- c. Rural Communities. Clatsop County has identified and established boundaries for the following rural communities: Miles Crossing - Jeffers Gardens, Arch Cape, Svensen, Knappa, and Westport. Land use plans in these areas recognize the importance of communities in rural Clatsop County. These communities are established through a process that applies OAR 660 Division 22 requirements. Portions of land identified in the Miles Crossing and Jeffers Gardens rural community plan take an exception to Statewide Planning Goal 3 and Goal 4 for portions of land zoned EFU or AF. The exceptions documentation for a portion of the Miles Crossing and Jeffers Gardens rural community boundary is adopted as part of the Comprehensive Plan, and is located at the end of this section.

STAFF FINDINGS and CONCLUSION: The subject TL 04302 is within the boundary of the Arch Cape Rural Community, an area designated "Development" in the Comprehensive Plan. The proposed development is allowed as a Type II conditional use in the AC-RCR Zone as described in Section 4.0620, Table 1(98). The use has been determined to be consistent with the "Development" designation when appropriate conditions are applied.

The surrounding properties are also located in the AC-RCR Zone; the existing and projected development pattern is single-family residential development and accessory uses. Adequate road access is required to accommodate this type of development.

The proposed project does not conflict with Goal 2.

Goal 5 - Open Spaces, Scenic and Historic Areas and Natural Resources

Wetlands Policies

Policy 1 - The County will protect identified significant freshwater wetlands, for which no conflicting uses have been identified, from incompatible uses.

STAFF FINDINGS and CONCLUSION: The subject right-of-way contains a portion of a large freshwater forested wetland complex connected to Arch Cape Creek, identified as a "locally significant wetland" in the Arch Cape Local Wetland Inventory (LWI). While categorized as significant per the LWI, the wetland is not included in the County's inventory of Goal 5 resources. As stated previously, the applicant has obtained a wetland delineation from a professional wetland scientist, which has been reviewed and approved by the Oregon Department of State Lands. It appears that a majority, if not all, of the proposed road development will occur outside of the wetland area. As discussed above, the Department of State Lands (DSL) has jurisdiction over the wetland and any impacts proposed to the wetland will require review, permitting and/or mitigation as determined by DSL. The right-of-way does not contain any significant habitat or other resources inventoried under Goal 5.

The proposed road development does not conflict with Goal 5.

Goal 6 - Air, Water and Land Resources

Policy 3

The cumulative effect of development on the County's environment should be monitored and, where appropriate, regulated. When evaluating proposals that would affect the quality of the air, water or land in the County, consideration should be given to the impact on other resources important to the County's economy such as marine resource habitat and recreational and aesthetic resources important to the tourist industry.

STAFF FINDINGS and CONCLUSION: Development within the AC-RCR Zone is regulated. Public or private road development or extension is identified in the AC-RCR Zone as a conditional use, per Section 4.0620, Table 1(98), indicating the use was examined when the provisions, goals, and policies of the Comprehensive Plan were developed, and standards were devised at the time to ensure the use could be made consistent with the Comprehensive Plan. These standards were then adopted into the zoning ordinance, ensuring the use could be made to be consistent with the plan and meet the requirements of the zone.

Conditions of approval will ensure maximum preservation of landscaping and impacts to the wetland, if any, will be reviewed, permitted and/or mitigated through the Oregon Department of State Lands. Copies of all federal and/or state permits shall be required prior to the issuance of a development permit.

With conditions of approval, the proposed road development does not conflict with Goal 6 (Conditions #8 and #9).

Goal 11 - Public Facilities and Services

Overall Policy Regarding Appropriate Levels of Public Facilities in the County

Six different Plan designations exist for lands in the County. Differing levels of public facilities and services are appropriate for the different types of development planned for the County. Certain facilities and services are available to all County residents, such as County health services, Sheriff's protection and many other social services.

1. **Development** - This is a Plan category for estuary and shoreland areas appropriate for commercial and industrial use. Consequently, a level of public facilities sufficient to carry on that type of use is appropriate. Public water and sewer services would be appropriate but may not be necessary depending on the type of development. Public fire protection is appropriate. Development here will not directly affect school services, although increased employment may result in increased housing in the vicinity which would impact schools. Those impacts will be considered in terms of the residential effects, not at the point of commercial or industrial development.
 - b. **Rural Service Area (RSA)** - The RSAs in the County are Arch Cape, Fishhawk Lake Estates, Shoreline Estates and the old Naval Hospital site. All currently have public water, sewer and fire protection although the current water supply for the old Naval hospital is inadequate. Public water or sewer services and fire protection are appropriate in RSAs and further development must be based on the capacities of the systems. Development in RSAs can have significant impacts on schools. Applications for subdivisions within RSAs will be referred to the appropriate school district. The development will be allowed only if the schools are capable of handling the increased capacity expected to be generated from the proposal.

STAFF FINDINGS and CONCLUSION: The Arch Cape Rural Community Residential (AC-RCR) Zone is within a Rural Community, formerly referred to as a Rural Service Area, as described above. Public water and sewer utilities are available and the area is within the Cannon Beach Rural Fire Protection District and is served by the Clatsop County Sheriff's Office and Medix Ambulance Service. The construction of a roadway extension, within a platted public right-of-way, which is the subject of this conditional use application, will not impact school capacity.

This application is consistent with Goal 11.

Goal 1, Objective 5: Use appropriate, adopted Clatsop County road standards during development of new roadways.

Goal 3, Objective 3: Provide a County transportation system that coordinates with other local transportation system plans and rural community plans.

Goal 7, Objective 4: Minimize transportation impacts on wetlands and wildlife habitat.

Goal 8, Objective 2: Consider transportation impacts when making land use decisions, and consider land use impacts (in terms of land use patterns, densities, and designated uses) when making transportation - related decisions.

STAFF FINDINGS and CONCLUSION:

Goal 1, Objective 5: The proposed roadway extension will be subject to the County's road standards contained in Section 3.9800. As is discussed elsewhere in this report, the existing platted public right-of-way is 40 feet in width, while current county standards would require 50 feet for a newly-created right-of-way. **A condition of approval will require the applicants to dedicate an additional five feet of right-of-way in order to bring the existing right-of-way closer to compliance with current county standards (Condition #6).**

Goal 3, Objective 3: The subject right-of-way is located within the Arch Cape Rural Community, which is located within the Southwest Coastal planning area of Clatsop County. As will be demonstrated below, the proposed road extension is consistent with the applicable goals and policies of the Southwest Coastal Community Plan.

Goal 7, Objective 4: As discussed earlier in this report, the subject area is approximately 100 feet north of East Shingle Mill Lane and approximately 300 feet north of Arch Cape Creek. The Anvil Rock Road right-of-way and adjacent TL 04302 contain a portion of the wetland identified in the Arch Cape Local Wetland Inventory (LWI) (ARC-13). The applicants have provided a wetland delineation (Exhibit 6) prepared by PBS Engineering and Environmental, dated December 2020. This delineation was approved by the Oregon Department of State Lands on April 1, 2021 (WD #2020-0667). While the limits of the road construction are not shown on the approved delineation submitted to staff, any proposed impacts to the wetland would be reviewed, permitted and/or mitigated through the Department of State Lands. The subject right-of-way is outside the area mapped as either Major or Peripheral Big Game Habitat. The proposed road extension is consistent with this objective.

Goal 8, Objective 2: Transportation impacts were considered both at the time the comprehensive plan was drafted and adopted in 1980 and also when Arch Cape was designated as a Rural Community in 2003. The AC-RCR Zone is intended for low density residential use and the existing underlying plats are consistent with that stated purpose. Installation of a previously envisioned road within an existing platted public right-of-way does not change the intended use of the land or zone, will not change the envisioned land use pattern, and will not alter already permitted densities. Public or private road development or extension is identified in the AC-RCR Zone as a conditional use, per Section 4.0620, Table 1(98), indicating the use was examined when the provisions, goals, and policies of the Comprehensive Plan were developed, and standards were devised at the time to ensure the use could be made consistent with the Comprehensive Plan. These standards were then adopted into the zoning ordinance, ensuring the use could be made to be consistent with the plan and meet the requirements of the zone.

With a condition of approval, this application is consistent with Goal 12 (Condition #6).

Southwest Coastal Community Plan

Housing

Goal: To provide for a wide range of housing needs in the community. To maintain the current residential character of the community.

Policy 3: Housing developments and subdivisions should be designed to emphasize the rural, coastal appearance of the community; that is, less emphasis should be placed on curbs, sidewalks, and wide streets and more emphasis placed on the maintenance of trees, natural drainages, open space and larger lot sizes.

Policy 4: Housing shall be developed where services are readily available. Subdivision of land and planned development shall be allowed only where septic tank, sewer and water capacity is sufficient to meet its needs.

STAFF FINDINGS and CONCLUSION: The road, which will be required to meet the County's A-22 roadway standard, and which will be constructed within a public right-of-way, is proposed in order to access property platted as part of the Cannon Beach Park Extension subdivision. The ultimate goal will be residential development of the adjacent property owned by the applicants. The extension will allow the applicants to enter onto their property in order to assess the land and prepare development plans. Roadway construction, listed as a separate use in the LAWDUC, is a necessary first step in the residential development envisioned by the Southwest Coastal Community Plan Housing Goal policies. The subject right-of-way and adjacent private property are in an area served by water and sewer. Prior to the issuance of development permits, the applicants will be required to demonstrate, via signatures from the water and sewer districts, that adequate capacity is available to service the property.

This application is consistent with the Southwest Coastal Housing Goal and policies 3 and 4.

Public Facilities

Policy 2: All developments shall indicate on the plot plan or building plans how storm water is to be drained. The Planning Commission or Building Official shall require the installation of culverts, dry wells or retention facilities in developments with major storm drainage impacts.

STAFF FINDINGS and CONCLUSION: The proposed road segment would be constructed to the County's A-22 standard. County road standards have been designed to accommodate adequate stormwater drainage and minimize erosion by requiring the cross-section of the road to include specific minimum and maximum slopes, and by requiring specific subgrade and travel surface materials. The preliminary plans submitted with this conditional use application did not include an erosion control plan. **A condition of approval will require the applicants to submit a grading, drainage and erosion control plan for review and approval by Public Works, prior to the issuance of a development permit for construction for the road. The proposed access will be required to comply with all applicable requirements of Section 3.2000.**

With a condition of approval this application is consistent with Southwest Coastal Public Facilities Policy 2 (Condition #7).

Transportation

Goal: To maintain an efficient and safe transportation system in keeping with the character of the community.

Policy 7. Not only is it necessary for the County to adopt road standards which provide for economical and proper maintenance, but standards which consider the particular areas and the desires of the local citizens. To that end this plan encourages road standards which are suited to the character of development in the area. These roads generally are narrow, containing several ends, and serving few permanent users.

STAFF FINDINGS and CONCLUSION: The Arch Cape Rural Community consists of many lands that were subdivided 100 or more years ago. The plat that created the subject right-of-way was recorded in 1926, prior to the adoption of subdivision regulations within Clatsop County. These plats created publicly-dedicated rights-of-way ranging in width from 40-60 feet. The subject right-of-way is in character with the surrounding street grid.

Per Public Works, the proposed road must be constructed to the County's A-22 road standard. For a newly-created right-of-way this standard would require a minimum 50-foot-wide easement and a 20-foot-wide gravel travel surface. As discussed above, the existing platted public right-of-way is 40 feet in width. **A condition of approval will require the applicants to dedicate an additional five feet of right-of-way**

in order to bring the roadway closer to full compliance.

With a condition of approval this application is consistent with Southwest Coastal Transportation Goal and Policy 7 (Condition #6).

Rural Service Area Development

Goal: To maintain the low density, residential character of Arch Cape.

Policy 3: The designated Rural Service Area shall be limited to a land area capable of being serviced by community water, sewer, and fire protection systems based on a reasonable project of growth.

STAFF FINDINGS and CONCLUSION: The subject right-of-way and adjacent private property owned by the applicants are zoned AC-RCR, which is a low-density residential designation, per the County's comprehensive plan. Both the right-of-way and adjacent parcel are within the Arch Cape Water District and the Arch Service Sanitary District and are serviced by the Cannon Beach Rural Fire District. At the time the AC-RCR zoning designation was placed on the property, it was determined that this area was capable of sustaining reasonable growth as evidenced by the provision of the above-described services.

This application is consistent with Southwest Coastal Rural Service Area Development Goal and Policy 3.

Goal: To maintain high quality of residential development in keeping with the natural environment through the use of design standards.

Policy 1: Design review standards shall apply to all construction in the Rural Service Area (Arch Cape Rural Community). Standards shall apply to new commercial or residential construction, subdivision, site development, street construction or placement of public utilities.

STAFF FINDINGS and CONCLUSION: The applicable design review standards for this application would be the road standards contained in Section 3.9800, LAWDUC. Those standards are administered by Clatsop County Public Works. As discussed above, Public Works approved a permit to perform operations within a public road for the proposed access and has specified the A-22 road standard shall be required for the extension. **A condition of approval of this application will require the applicant to dedicate an additional five feet of right-of-way at such time as development permits are submitted for improvements on the adjacent TL 04302.**

With conditions of approval, this application is consistent with Southwest Coastal Rural Service Area Development Goal and Policy 1 (Conditions #1, #3, #4, #5 and #6).

Goal: To encourage the use of natural features of the land, such as existing topography and vegetation.

Policy 1: Design review standards shall require minimal disturbance of the landscape in land development and shall address the removal of trees, grading and excavation, protection of views of adjacent property, road construction and placement of utilities.

STAFF FINDINGS and CONCLUSION: Section 3.9830(15), LAWDUC, requires the right-of-way to be cleared of all trees. However, in subdivisions where traffic safety would not be involved and a lesser requirement would not create a hazard, the right-of-way shall be cleared a minimum of 40 feet or four feet beyond the edge of shoulder or curb line of the finished road. Allowances can also be made to preserve individual "exceptional or stately" trees.

Section 4.0630(3)(E)(5) requires the landscape to be preserved in its natural state to the maximum extent possible by minimizing tree, vegetation and soils removal. Cut and fill construction methods are discouraged. Roads and driveways should follow slope contours in a manner that prevents erosion and rapid discharge into natural drainages. Disturbed areas shall be re-vegetated with native species.

Permit #21-02, issued by Clatsop County Public Works on January 12, 2021, requires a 20-foot wide travel surface within the right-of-way. If the slope of the road exceeds 12% the road must be paved. A grading, drainage and erosion control plan must also be submitted for review and approved by Public Works. **A condition of approval shall require the applicants to include a tree removal plan with the grading, drainage, and erosion control plan. Existing natural vegetation shall be preserved to the maximum extent possible and as permitted by Clatsop County Public Works.**

With conditions of approval the project will not conflict with the Southwest Coastal Rural Service Area Development Goal and Policy 1 (Conditions #5 #8).

III. AGENCY AND PUBLIC COMMENTS

NOTE: Comments are summarized for the purpose of brevity. The full written text of all comments received are included in Exhibit 4.

Annette Brodigan, Clatsop County Environmental Health: Clatsop County Onsite Septic program has no comments or concerns. This property is located within Arch Cape Sewer District.

Staff Response: No response required.

Terry Hendryx, Clatsop County Public Works: In previous conversations with the applicants, Public Works staff indicated that the road would need to be 22-feet-wide. However, the actual standard would require a 20-foot-wide gravel surface. If the grade of the road exceeds 12%, the travel surface would be required to be paved.

Mr. Hendryx emailed a clarification to Planning staff on April 19, 2021, stating that the applicants would be required to extend the road 40 feet beyond their proposed driveway access in order to allow for a turnaround.

Staff Response: A condition of approval will ensure that the proposed road complies with the A-22 road standard, as required by permit #21-02, which was issued by Public Works on January 12, 2021 (Condition #1). Condition of approval #10 will require the applicants to construct the road 40 feet beyond the planned driveway access in order to accommodate a turnaround area.

Jevra Brown, Aquatic Resource Planner, Oregon Department of State Lands (DSL): Initial comments from DSL, dated February 1, 2021, confirm that a delineation had been received for review.

Staff Response: The DSL approval letter for the wetland delineation (WD #2020-0667, approved April 1, 2021) states that the mapped wetland is subject to the permit requirements of the state Removal-Fill Law. **A condition of approval and a regulation will require the applicants to demonstrate that any impacts to the delineated wetland from road construction activities comply with all state permit requirements prior to a development order being issued for the project (Condition #9).**

Regulation #1 explicitly states that the proposed development shall comply with all applicable state, federal and local laws and regulations. If permits are required by the Oregon Department of State Lands or other agencies, copies of the permit(s) issued by that agency would be required to be submitted to the County. All required permits must be approved by the responsible jurisdiction prior to a development permit being issued for roadway.

Oregon Coast Alliance (ORCA): The original surveyors platted Arch Cape without regard to topography. Therefore, lots and roads are platted on undevelopable steep slopes and within southern Clatsop County's largest wetland complex off Arch Cape Creek. Speculative roads threaten the unique environment and unnecessarily increase the footprint of the small residential community of Arch Cape. Public rights-of-way are being increasingly developed as speculative public roads to access undeveloped lots that have no permit or even a development application, particularly on the east side of Highway 101.

Development of a road without a permit for development on adjacent TL 04302 or without a wetlands analysis should be denied or subject to a public hearing. The public must be involved in applications to develop what are essentially "speculation roads" to access properties for which no development is proposed.

Building a road to access the property must be considered development, as defined by code, as it involves a disturbance of land. An access road is part of the property development and without a permit to develop the property an access road should not be permitted. Doing so would be contrary to the spirit and intent of the code.

A lot of record, even those platted and recorded prior to land use requirements, must still meet all other applicable requirements of the zone. The utility of the road is clearly dependent on the viability of the development project to which it leads. Thus, to issue a permit for a road when there is no permit for the project directly contradicts county ordinance and policy, and sets a disturbing precedent.

The proximity of the road to Arch Cape Creek could have potential ramifications for environmental degradation. The proposed road leads to Arch Cape's most significant shoreline wetland complex. The wetland's connectivity to Arch Cape Creek (home to Endangered Species Act-listed Coho Salmon) requires development buffers not contemplated by the application. The County has a duty to require a wetland delineation for this road approach. The applicant must show that the road will not enter the wetland or the required shoreline buffer. Per the comprehensive plan, Significant Shoreland Resources include non-tidal wetlands and wildlife habitat and that these are resources of value and deserving of protection. Goal 6, policy 3 states: "The cumulative effect of development on the County's environment should be monitored and, where appropriate, regulated."

Broader policies must be created and enforced to address the potential degradation of Arch Cape's most productive wetlands, which are impacted without any thought of preservation of natural resources or the cumulative impacts of development of routinely platted lots, especially plats created decades ago. There was then, and often still remains, no regard for the realities of the land on which the plats were drawn, or the natural resources of the properties.

Given the controversial nature of this application and possible ramifications throughout the community, we request that this application be considered as a Type IIa or Type III procedure, which mandates a hearing and public comment period.

Staff Response: Anvil Rock Road is a public right-of-way, dedicated on the Cannon Beach Park Extension plat in 1926 to "the use of the public forever." This public interest has not been vacated and the public is able to utilize the rights-of-way to access platted property that is privately owned, as was intended by the subdivision plat. It has been anticipated for 95 years that a road could be constructed in this platted right-of-way and that residential development could occur on the adjacent platted lots. This can hardly be considered "speculative", which is defined in Webster's *Collegiate Dictionary 10th Edition*, "theoretical rather than demonstrable." While topography and fiscal considerations may have made development in this area prohibitive in 1926, subsequent advances in technology, combined with the rising value of land, have now made such development feasible.

New road development or road extension is listed as a development use independent of residential dwelling construction in the AC-RCR Zone. At the time the code was adopted it was anticipated that road construction would be permitted separately from residential development through the Type II conditional use procedure. There is no requirement within the LAWDUC to construct the road or extend the road *only* in conjunction with a permit to develop the adjacent lot or parcel.

Per Section 10.510 of *Roads and the County A Manual for Oregon County Officials*, ORS 374 addresses the control of access to public roads. In 2011, the legislature modified ORS 374.309 to provide that "counties may not apply the law so as to deny any property adjoining a road or highway reasonable access." Con

law also provides that property owners have a legal right to access to their properties. In this instance that access is via a public platted right-of-way. County ordinances require that the roadway be constructed to adopted county road standards.

The applicants submitted a copy of the Oregon Department of State Lands-approved wetland delineation (Exhibit 6). That DSL-approved delineation depicts the location of the wetland within the public right-of-way and on the adjacent TL 04302. The approval from DSL also clearly states that any cumulative fill or removal exceeding 50 cubic yards within the wetland area will be subject to state review and permitting. If impacts to the wetland from development activities are permitted by the Oregon Department of State Lands, the state will determine appropriate mitigation requirements. As discussed elsewhere in this report, the subject right-of-way, at its closest point, is approximately 300 feet north of Arch Cape Creek. Section 4.0630(3)(E)(2), LAWDUC, requires a 25-foot-wide buffer along Arch Cape Creek. There are no shoreline buffer requirements and the wetland identified in both the Arch Cape Local Wetland Inventory and on the DSL-approved wetland delineation is not an inventoried wetland in Goal 5, Goal 16 or Goal 17 of the County's comprehensive plan. Section 4.0630(2)(D), LAWDUC, requires a 50-foot-wide setback for all structures from the line of non-aquatic vegetation. However, setback requirements are not applied to roads.

Policy 3 in Goal 6 is addressed above.

Construction of the road is considered "development" and is specifically identified as a Type II conditional use in the AC-RCR Zone. The applicants have submitted this application to comply with that requirement. Conditions of approval will require that the applicants obtain approval of a development permit; submit a grading, drainage and erosion control plan, and a site plan prior to constructing the access. Any required federal and state permits must also be obtained prior to the issuance of a development permit. No development is proposed for TL 04302. When development is proposed for that property, the applicants must comply with all applicable requirements of the *Land and Water Development and Use Code*.

The crafting of broader policies is not within the purview of this application. Any individual or organization may apply at any time to amend the provisions of the LAWDUC. With regard to the old subdivision plats, it is correct that many of those subdivisions were drafted without benefit of ground-truthing. However, the parcels within those plats are now in private ownership. When the comprehensive plan and the implementing zoning ordinance and standards document were adopted in 1980, this area of the County was identified as an area capable of sustaining additional low-density residential development in the future. The construction of the roadway extension as the first progression towards that envisioned outcome would be the review and approval of the right-of-way improvements needed to access those properties.

Section 2.1020(5), LAWDUC, states: "If the Community Development Director believes that persons other than the applicant can be expected to question the application's compliance with the Ordinance, the Director *may* treat the application as a Type IIa procedure." The decision to elevate an application from a Type II to a Type IIa procedure is at the discretion of the Director. The public, pursuant to Sections 2.1020 and 2.2050, LAWDUC, have been provided with an opportunity to provide public comment on this application. The public comments received have not cited specific references where the application does not comply with the ordinance. Alternatively, many of the concerns raised are speculative in nature and relate to the future development of the adjacent privately-owned property, which is not the subject of this application.

Arch Cape Falcon Cove Beach Community Club (ACFCBCC): The ACFCBCC opposes the construction of a gravel road along 150' of platted but undeveloped right-of-way, the installation of water, sewer and electric lines to TL 04302, and the construction of a gravel driveway on TL 04302.

Tax Lot 04302 is shown on Clatsop County Webmaps as being entirely within the National Wetlands Inventory boundary, and largely within the boundary of the Local Wetlands Inventory. The wetlands within which this lot is located is the largest and most significant in Arch Cape.

No development has been submitted to support the need for an access road. Roads in the AC-RCR zone should be considered in tandem with the proposed use of the land to be served by the road, and not as an independent project by which a land owner gains improved access to undeveloped land. To do otherwise would conflict with Goal 12 of the Comprehensive Plan, specifically Goal 8, Objective 2 within Goal 12. The stated purpose for having vehicle access ordinances is to “further the orderly layout and use of land, protect community character, and conserve natural resources by promoting well-designed road and access systems and discouraging the unplanned subdivision of land.”

The absence of a plan for how applicants might seek to develop and use their property means the application must be denied for lack of facts and evidence to support a finding that the proposed road, utility lines and driveway are needed to serve the development of TL 04302.

The applicants should have to address the fact they purchased a lot in a significant wetlands complex. Whether a future wetlands delineation discloses some portion of the parcel as being suitable for development is yet to be known, as well as whether mitigation options might exist. These considerations demonstrated why this application is premature and why it cannot be approved within an approved development plan for TL 04302.

The proposal would have a negative impact on wetlands and wildlife habitat. Goal 7: Environment, of Goal 12 (Transportation) requires that any transportation system balance services with the need to protect the environment and significant natural features. Objective #4 for this goal is to protect wetlands. There is no way to look at this application except as seeking approval of a road into the wetlands. The proposed driveway and portions of the road may be located in the wetlands themselves or at least within the 50’ setback from the line of non-aquatic vegetation.

The proposal does not meet the minimum design standards for a public road. The design standards for public roads are found in Section 3.9800, LAWDUC. The application is for a 20’ gravel road. These specifications do not meet the minimum design standards for public roads.

No evidence has been submitted to support the need for logging public land. The right-of-way is forested and is public property. There are no facts and evidence to support logging 3,000 square feet of public right-of-way simply to allow a landowner vehicle access to undeveloped land.

Utilities lines should not be installed until a development plan is in place for TL 04302. There is nothing in the record to justify bringing utility lines to this location.

A driveway should not be constructed without a development plan.

Staff Response: As discussed above, the Oregon Department of State Lands has approved the wetland delineation submitted by the applicant. This approved delineation shows that the majority of the area, if not all of the area, proposed for road construction is outside the wetland area. The National Wetlands Inventory is a broad overview of areas that might potentially contain wetlands. The Arch Cape Local Wetland Inventory, while more refined, is now 10 years old and ground conditions may have changed. The DSL-approved wetland delineation, which was prepared in December 2020 and approved by the state on April 1, 2021, is the most accurate information available regarding the location of the wetland boundaries.

The provisions of Goal 12 are addressed above in this report. The Anvil Rock Road right-of-way is a publicly-dedicated platted right-of-way created in 1926 with the recording of the Cannon Beach Park Extension subdivision plat. The proposed request is not an “unplanned subdivision of land”, but is instead a fulfillment of the previously-approved and recorded subdivision of land.

As discussed above, road development and road extension are considered separate uses from development of a residential lot or parcel in the AC-RCR zone. There is not a requirement for a residential development permit application to be submitted in conjunction with the conditional use permit application to construct

the roadway extension. If this subdivision were to be recorded in 2021, a condition of approval would require that the roads be constructed *prior to* any development permits being issued for the adjacent platted lots. Additionally, Section 2.1130(4) requires that an applicant provide proof of legal access to the property in order for a development permit to be issued. Section 2.1130(2)(A), LAWDUC, requires an applicant to demonstrate that a year-round source of potable water has been obtained and to provide verification of hook-up to a state-approved sewer system. This documentation would be required prior to the issuance of a development permit for the adjacent TL 04302.

As discussed above, the Oregon Department of State Lands has approved the wetland delineation submitted by the applicant. Mitigation requirements, if any, for impacts to the wetland, will be determined and enforced by the Oregon Department of State Lands. The applicants will be required to submit any applicable federal and/or state permits prior to the issuance of a development permit.

As also stated above, in order for a development permit to be issued, an applicant must demonstrate that there is legal access to the property and that water and sewer service is provided to the site. The assertion that the road and utilities should not be installed until a development permit for a dwelling has been issued would leave the applicants in a circular loop of logic that would prohibit them from ever obtaining a permit to construct a home. The AC-RCR zone regulations very clearly delineate that road construction or extension is a Type II conditional use activity that requires public comment. Conversely, the construction of a single-family dwelling in this zoning district is permitted under a Type I procedure, which does require public comment.

Development parameters are already established through AC-RCR Zone. Low-density single-family residential dwellings are the primary intended use within this zone. Setbacks and maximum lot coverage requirements will limit the extent of development on the property, therefore providing a theoretical maximum scope of development that would allow the applicants to plan for the water, sewer and electrical service needs. Additionally, the Arch Cape Domestic Water District and the Arch Cape Sanitary District must also review and approve any requests to extend their utilities and would be required to verify the size of lines required to service TL 04302 and surrounding development.

While the applicants have proposed constructing a 50'x14' gravel driveway on TL 04302, as discussed above, the development of an accessory use prior to the primary use cannot be permitted at this time. The applicants have stated that there is no identified timeframe to begin residential construction on TL 04302. When development is proposed for that property, the applicants must comply with all applicable requirements of the *Land and Water Development and Use Code*.

The County A-22 road standard requires a 50-foot wide right-of-way and a 20-foot-wide paved surface. Section 12.08.010(C), Clatsop County Code states:

The Director of Public Works or the County Engineer shall be the sole granting authority for the issuance of any and all permits required pursuant to this chapter. The decision of the Director of Public Works or County Engineer with respect to the issuance of any such permit and any conditions attached thereto shall be in the Director of Public Works' or County Engineer's sole discretion and shall be final and non-appealable.

Section 12.24.020(B), Clatsop County Code states:

The Director or the Director's designee is given the authority to issue all permits provided for in this chapter and to make all decisions necessarily related to those permits.

Comment provided by Terry Hendryx, Assistant Public Works Director, states that a 20-foot wide gravel travel surface will be required for the road. This is also stated on Permit #21-02.

As discussed throughout this report, the existing platted right-of-way, created in 1926 prior to the adoption of the current standards, is 40 feet wide. **A condition of approval will require the applicants to**

dedicate an additional five feet of right-of-way in order to bring the right-of-way closer to compliance with existing standards (Condition #6).

Per Section 3.9830. Public and County Road Standards, “the right-of-way shall be cleared of all trees. However, in subdivisions where traffic safety would not be involved and a lesser requirement would not create a hazard, the right-of-way shall be cleared a minimum of forty-feet (40) or four-feet (4) beyond the edge of the shoulder or curb line or the finished road.” On January 12, 2021, Clatsop County Public Works issued permit #21-02 to perform operations in the public right-of-way. The issuance of this permit demonstrated that the County has found removal of trees within the platted right-of-way to be necessary.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

Goal 12 Transportation goals, objectives and policies are addressed elsewhere in this report. Setbacks are not applicable to roads. The subject right-of-way and adjacent TL 04302 are outside the area of mapped as Major or Peripheral Big Game Habitat.

Christopher Achterman, East Shingle Mill Lane: Mr. Achterman objects to the proposed development of Anvil Rock Road as the adjacent private property that is owned by the applicants is entirely within a designated wetland. Any building on TL 04302 would disturb a functioning wildlife area. Because the proposed road would only lead to a wetland area it should not be permitted.

Staff Response: As discussed elsewhere in this report, the applicants have included a DSL-approved wetland delineation with their application materials. The state-approved delineation indicates that all or a majority of the Anvil Rock Road right-of-way that is the subject of this application is outside of the wetland area. This same delineation also indicates that there is a small upland area on the south side of TL 04302 that may be able to accommodate a residential dwelling. Removal or fill within a wetland area is regulated by the Oregon Department of State Lands. If the development activities proposed by the applicants impact wetland areas, the state will review the proposed work and determine appropriate permitting and mitigation requirements.

The County is required to permit access to the applicant’s property under state statutes. This is discussed in further detail above.

Jim Jensvold, 80030 Pacific Road: The owners do not have plans to develop TL 04302 at this time, but propose to install water, sewer and electric lines to TL 04302 as part of the road. This is a “spec” road. A public hearing should be held to allow for public comment on this proposed development.

Staff Response: As discussed above, road development and road extension are considered separate uses from development of a residential lot or parcel in the AC-RCR zone. There is not a requirement for a residential development permit application to be submitted in conjunction with the conditional use permit application to construct the roadway extension. If this subdivision were to be recorded in 2021, a condition of approval would require that the roads be constructed *prior to* any development permits being issued for the adjacent platted lots. Additionally, Section 2.1130(4) requires that an applicant provide proof of legal access to the property in order for a development permit to be issued. Section 2.1130(2)(A), LAWDUC, requires an applicant to demonstrate that a year-round source of potable water has been obtained and verification of hook-up to a state-approved sewer system. This documentation must be provided prior to the issuance of a development permit for the adjacent TL 04302.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

Section 2.1020(5), LAWDUC, states: "If the Community Development Director believes that persons other than the applicant can be expected to question the application's compliance with the Ordinance, the Director *may* treat the application as a Type IIa procedure." The decision to elevate the application from a Type II to a Type IIa procedure is at the discretion of the Director. The public, pursuant to Sections 2.1020 and 2.2050, LAWDUC, have been provided with an opportunity to provide public comment on this application. The public comments received have not cited specific references where the application does not comply with the ordinance. Alternatively, many of the concerns raised are speculative in nature and relate to the future development of the adjacent privately-owned property, which is not the subject of this application.

Stuart Sandler 31941 East Shingle Mill Lane: The proposed road would encroach into the wetland and no development proposal has been submitted for the privately-owned adjacent TL 04302. If the roads are approved, the County will have no ability to deny any subsequent permits that might be submitted to develop TL 04302. This project will lead to the destruction of the wetland.

The subject area is an elk sleeping ground and protecting it to the exclusion of a housing district is a no-brainer. Approval to construct the road will be the death knell for the entire wetland. The applicants will be installing utilities without a final development plan. The applicants have done none of the wetland delineation work ultimately required for construction.

The applicants have not demonstrated how stormwater runoff, which already overflows drainage resources at peak times, will be accommodated. A public hearing should be held so that opposition to the offending roads can be seriously assessed.

Staff Response: Any permit applications submitted for future development on TL 04302 must comply with all regulations and standards in place at the time the application is submitted. If a permit application meets all applicable requirements, the permit must be approved. This would be the case regardless of the presence or absence of a wetland. State law permits removal and fill activities within a wetland and conditions may be imposed and/or mitigation required. Removal and fill activities within wetlands are under the jurisdiction of the Oregon Department of State Lands (DSL). As discussed above, DSL has approved the applicants' wetland delineation (WD #2020-0667). Any impacts to the wetland from road construction activities will require review, permitting and/or mitigation as determined by DSL. A copy of any federal and/or state permits must be submitted to Clatsop County in order for a development permit to be issued.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

The subject right-of-way and adjacent TL 04302 are outside the area mapped as Major or Peripheral Big Game Habitat. The area has been platted for residential development for 95 years. Property has been sold owners and there are now investment-based expectations that would preclude excluding the

housing district. Doing so would likely result in a takings issue that would need to be settled through the legal system. Other properties immediately surrounding TL 04302, have been allowed to be developed in close proximity to or adjacent to wetlands.

As previously discussed, in order to obtain development approvals for TL 04302, the applicants will need to demonstrate that utilities are in place to service the property. In this case, while the exact footprint of the development on TL 04302 has not been finalized, the AC-RCR zoning will limit development to a single-family dwelling and associated accessory uses. Furthermore, Section 4.0630(D)(1) limits lot coverage in the AC-RCR zone to a maximum of 40%, thus providing the applicants with parameters for future development. Therefore, the type of future development that will occur on TL 04302 is known, although the details regarding the exact building footprint may not yet be.

Pursuant to Section 2.2040(1)(B), notices were sent to property owners within 250 feet and a 10-day public comment period was provided. All public comments received have been included in Exhibit 4 of this report.

IV. RECOMMENDED DECISION AND CONDITIONS OF APPROVAL

Based on the analysis and findings of this report staff recommends **approval** subject to the following conditions:

1. The roadway extension shall be constructed to the County's A-22 road standard and will have a 20-foot-wide gravel travel surface.
2. The proposed 50' x 14' gravel driveway on TL 04302 is not permitted as part of this conditional use approval.
3. The applicant shall provide documentation from Clatsop County Public Works that all required street signage has been paid for by the applicants and installed by Public Works prior to the issuance of a development permits for TL 04302.
4. The Anvil Rock Road extension shall be depicted on the final site plan, including dimensions and materials, and shall demonstrate compliance with all applicable standards found in Sections 3.9540 and 3.9830.
5. The applicants shall adhere to all requirements of Permit #21-02. The access will be constructed as indicated on the site plan submitted by the applicant in conjunction with this Conditional Use Permit application and as approved on Operations Permit #21-02. Any changes to the access must be approved by both the Planning Division and Public Works departments to ensure continued compliance with access and road standard requirements.
6. The applicants shall dedicate an additional five feet of right-of-way along the entire length of the east property line of TL 04302 prior to submitting development permits for the adjacent TL 04302.
7. The applicants shall submit a grading, drainage and erosion control plan for review and approval by Public Works prior to the commencement of construction for the roadway. The proposed roadway will be required to comply with all applicable requirements of Section 3.2000.
8. The applicants shall include a tree removal plan identifying all trees six inches in diameter or larger, measured at a height of four and one-half feet above the natural grade. This tree removal plan shall be submitted with the grading, drainage, and erosion control review documents. Existing natural vegetation shall be preserved to the maximum extent possible and as permitted by Clatsop County Public Works.
9. The applicants shall demonstrate that any impacts to the delineated wetland from road

construction activities comply with all state permit requirements prior to a development order being issued for the project.

10. The applicants shall construct the road 40 feet beyond the planned driveway access in order to accommodate a required turnaround area.
11. The applicants will submit a development permit application, including approval from the Cannon Beach RFPD, documenting approval of the roadway extension.

Other regulations, including, but not limited to, the following also apply:

- (1) Development shall comply with all applicable state, federal and local laws and regulations. The applicant shall provide the Planning Division with copies of any required state and/or federal permits.
- (2) This approval is valid for a period of two (2) years from the date of approval. The Community Development Director can authorize one extension of up to 12 months.
- (3) A complaint from neighbors shall be cause for review of the Conditional Use. The review may be a Type II County enforcement proceeding. In such proceeding, the Compliance Order may impose any of the conditions described in 5.025 of the Clatsop County Land and Water Development and Use Ordinance.
- (4) Development shall comply with all applicable state, federal and local laws and regulations.

EXHIBIT 1

Application and Supporting Documents

21-000005



Clatsop County
Community Development
800 Exchange Street, Suite 100
Astoria, Oregon 97103
Phone 503 325-8611 Fax 503 338-3606
comdev@co.clatsop.or.us www.co.clatsop.or.us

payment

Conditional Use Permit

Fee: Type II \$1,200 Type IIa-III: \$1,500
(Double if a violation exists)

Owner: Cy & Diane Smith Email: ctsremodel@gmail.com
 Mail Address: 17339 S. Century Dr. City/State/Zip: Bend, Ore 97707
 Phone: (503)348-9190 Phone: (503)348-1346

Owner: _____ Email: _____
 Mail Address: _____ City/State/Zip: _____
 Phone: _____ Phone: _____

Other: _____ Email: _____
 Mail Address: _____ City/State/Zip: _____
 Phone: _____ Phone: _____

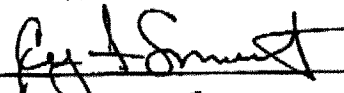

Property Address: NO Address, Lot behind 31941 E. Shingle mill Rd
 Proposed Use: Approach Road from E. Shingle mill to Anvil rock
 Comprehensive Plan Designation: _____
 Existing Zoning: AG-RCR Overlay District: LW1 (ARCH CAPE)
 Property Description: Township 4N Range 10W Section 30CA Tax Lot(s) 4302
 Directions to the property from Astoria: South on 101 TO Arch Cape, Left on Beach ST
Left on Shingle mill road.
 What is the nearest "Community" (i.e. Svensen, Arch Cape, Westport)? Arch Cape

General description of the property:
 Existing Use: NO Existing USE, vacant lot
 Topography: flat with trees with no buildings or other structures
 Proposed Development: Approach road 150 ft from E. Shingle mill Rd up Anvil Rod

General description of adjoin property:
 Existing Use: vacant lots
 Topography: flat with trees, grass vegetation

Attach a site plan of the property showing lot dimensions, sizes, and location of all existing and proposed structures setbacks of existing and proposed structures to all property lines, access to the site, parking area layout that includes the space sizes and location and the width of any parking aisles. Also, identify the location of any stream, wetland, lake or other resource on or adjacent to the property.

SIGNATURES: All owners of record, per Clatsop County Assessment records, must sign the application. Representatives of public agencies, corporations, trusts, etc. must provide documentation of signing authority. The information contained in this application is in all respects true, complete and correct to the best of my knowledge.

Signature  Date: Jan 7, 2021
Signature  Date: Jan 7, 2021

The following sections are from the Clatsop County Land and Water Development and Use Ordinance #80-14.

Section 5.000 Conditional Development and Use.

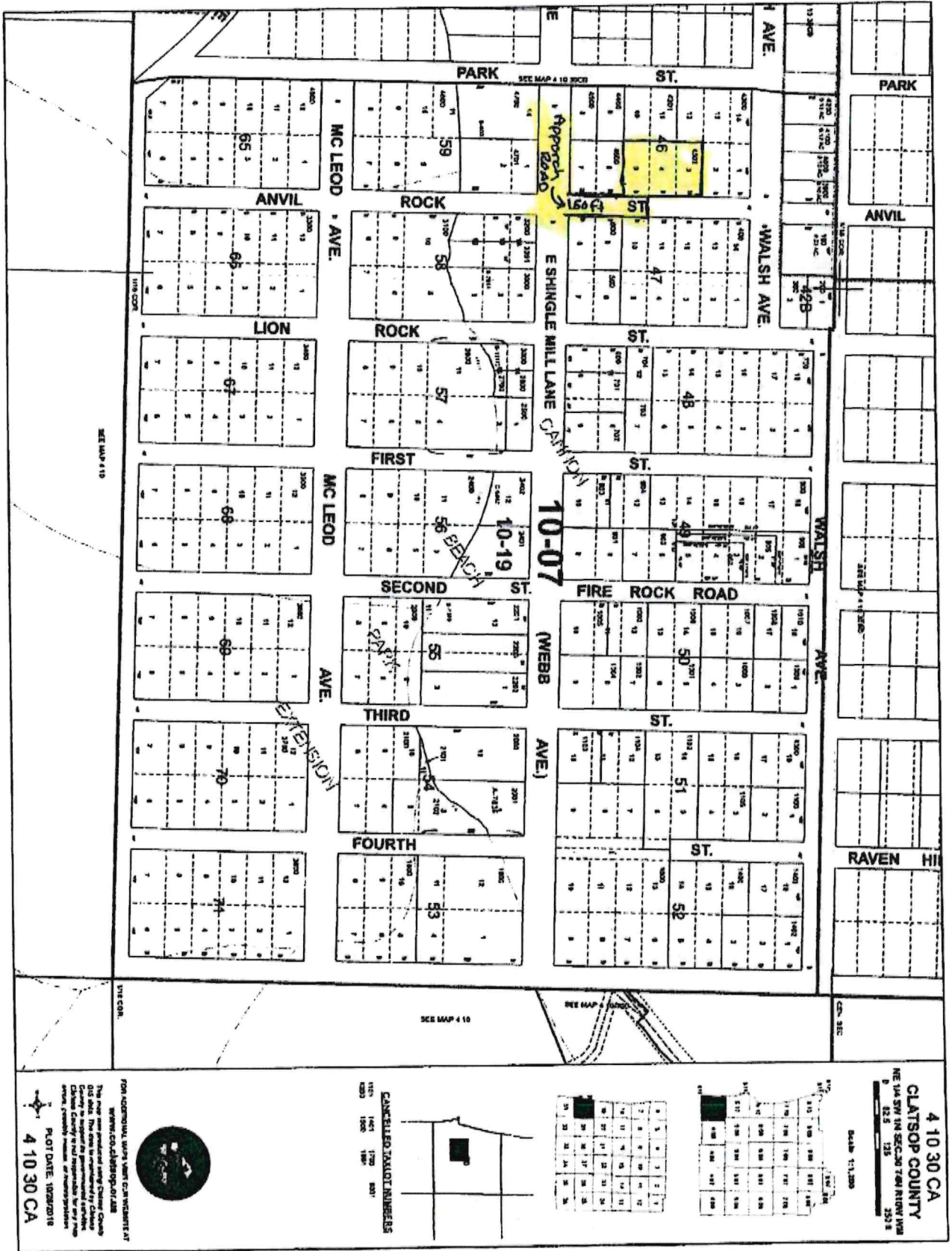
Section 5.005 General. Although each zoning district is primarily intended for a predominate type of use and development, there are a number of uses which may or may not be appropriate in a particular district depending upon all the circumstances of the individual case. For example, the location, nature of the proposed use, character of the surrounding development, traffic capacities of adjacent streets, and potential environmental effects, all may indicate that the circumstances of the development and use needs to be individually reviewed. It is the intent of this section to provide a system of review of such uses so that the community is assured that the uses are compatible with their locations and with surrounding land uses, and will further the purpose of this ordinance and the objectives of the comprehensive plan.

Section 5.010. Application for a Conditional Development and Use. If a development and use is classified as conditional in a zone, it is subject to approval under Sections 5.00 to 5.030. An applicant for a proposed conditional development and use shall provide facts and evidence and a site plan in compliance with Section 5.300 sufficient to enable the Community Development Director or hearing body to make a determination.

Section 5.015. Authorization of a Conditional Development and Use.

- (1) A new, enlarged or otherwise altered development classified by this Ordinance as a conditional development and use may be approved by the Community Development Director under a Type II procedure except that the following conditional developments and uses may be approved by the Hearings Officer under a Type Ila procedure:
- (A) Dog kennel or Kennel;
 - (B) Airport;
 - (C) Bed & Breakfast over 3 units;
 - (D) Golf courses;
 - (E) Automobile service station or repair shop, including body work, used car sales, wrecking yard;
 - (F) Public or private recreation such as riding stable, fishing or boating docks or ramps, gun club, golf course, or resort type establishment in association with recreation;
 - (G) Non-farm partition;
 - (H) Non-farm dwelling;
 - (I) Farm help relative dwelling;
 - (J) Home occupations related to auto/machinery repair or painting;
 - (K) Firearms training facility;
 - (L) Solid waste disposal site;
 - (M) Small scale, light industrial developments such as assembly, fabricating, processing, compounding, packing and similar operations within an enclosed building;
 - (N) Automobile wrecking yard;
 - (O) Amusement enterprises such as games of skill and science, thrill rides, penny arcades, and shooting galleries.

Where the proposed development involves a non-water dependent use or activity in the Marine Industrial Shoreland Zone, Section 3.620, mailed notice shall also be provided to any interested party who has submitted a written request concerning the proposed development, and to state and federal agencies with statutory planning and permit issuance authority in aquatic areas. Including the Oregon Division of State Lands, Department of Fish and Wildlife, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Corps of Engineers, and the Environmental Protection Agency.



ANVIL ROCK ROAD APPROACH RD. FROM EAST SHINGLE MILL ROAD

2A. No, to the best of my knowledge the proposed use does not conflict with the applicable provisions, goals, or policies of the Comprehensive Plan

2B .Yes, it meets the Clatsop County LWDOU and standards as indicated on Application

2C:

1. This site meets requirements for a 14 ft. wide approach road to an existing property

2. Access from Shingle Mill road to Anvil Rock Road is existing and meets all site requirements for an approach road.

3 .Water, Sewer and electricity providers have indicated that they have the capacity to serve existing property on this approach road as per Arch Cape water and sewer district.

4. The minimal footprint of the approach road as per the delineation study indicates that there is no impact to wetlands or natural features.

D. Yes, the proposed use is a County Road and will not impact any adjacent lands, but will be compatible with existing and projected residential uses.

E. The proposed us of this road to applicants property does not have the potential to interfere with any coastal shore lands

F. The proposed approach road is at least a quarter mile from coastal shore land areas and will have no adverse effects to aquatic or coastal areas

G. This approach road is not within the either the Major or Peripheral Big Game Habitat Overlay. This is a residential neighborhood. ACRCR

Gail Henrikson

From: Cy Smith <ctsremodel@gmail.com>
Sent: Tuesday, January 26, 2021 8:45 AM
To: Gail Henrikson
Subject: Re: Conditional Use Permit Application - Request for Additional Information

Here are a few answers to your questions:

1. What is the purpose of the road approach? To gain access to our property (lot 4302) on Anvil Rock Road
2. What is your approximate timeframe to develop the property? No plans at this time. Do you have any preliminary development plans at this time? At this time we do not have any plans to develop this property except to run sewer, water and electric to the property at the same time as the approach road.
3. How wide will the road approach be? The email from Terry Hendryx (attached) indicates that an A-22 Gravel standard is required, which would include a 20-foot wide road. However, the response statements included with your application indicate that only a 14-foot road is being provided. I emailed Terry Hendryx and he confirmed that the road needs to be 20 ft. wide, so that response on 2C;1 needs to be "the site meets requirements for a 20 ft. wide approach road to the existing property."
4. What materials will be used for the road approach? According to the application and permit to occupy or perform operations upon a county or public road" Permit # 04-21, materials that will be used are: 12"base rock, 3" 3/4 -0 leveling rock, Fabric, 12" diameter culvert pipe
5. Have you contacted the Department of State Lands (DSL) regarding the possible wetlands in the right-of-way? Yes If so, please provide any responses from DSL.I contacted Daniel Evans, Jurisdictional Coordinator who will be reviewing our Wetland Delineation report that was submitted 42 days ago. He will not get to our report for at least another month or so because of the long line of reports ahead of ours.This is his response to your question: You could let Clatsop County know that you've submitted a delineation to DSL and that the study area includes confirming the wetland/upland boundary in the ROW. My glance at PBS's map seems to indicate that it is for TL 4302 and the ROW. Seems like you're in good shape with having your ducks in a row.
6. Will you be doing any improvements on your property as part of the road approach construction? Yes If so, please provide additional information regarding those improvements. A 50 ft. gravel driveway in the southeast corner of the lot.

Thank you Gail, we appreciate your help with this. If there is more information that you need, please let us know.

Diane & Cy Smith

On Mon, Jan 25, 2021 at 10:07 AM Gail Henrikson <ghenrikson@co.clatsop.or.us> wrote:

Good morning.

I have reviewed your conditional use application that was submitted on January 19. I will need some additional information in order to deem the application complete:

1. What is the purpose of the road approach?

EXHIBIT 2

Public Notice



Clatsop County
Community Development – Planning

800 Exchange St., Suite 100
Astoria, OR 97103
(503) 325-8611 phone
(503) 338-3606 fax
www.co.clatsop.or.us

PUBLIC NOTICE

CONDITIONAL USE PERMIT APPLICATION – LAND USE PLANNING

PERMIT APPLICATION #21-000005

You are receiving this notice because you own property within 250 feet of the request listed below, or you are considered to be an affected state or federal agency, local government, or special district.

Cy and Diane Smith have submitted a land use application to construct an approach road within the platted, but unopened, Anvil Rock Road right-of-way. The approach road would extend 150 feet north from the East Shingle Mill Lane right-of-way to property owned by the Smiths (TL 41030CA04302, see map on Page 2). The gravel approach road would be 20 feet in width. Approval of the approach road is requested in order to gain access to TL 41030CA04302. The property owners do not have any plans to develop this property at this time, but would install water, sewer and electric lines to the site as part of the approach road construction. The applicants also intend to construct a 50-foot-long by 14-foot-wide gravel driveway on the southeast corner of TL 41030CA03402.

The Anvil Rock Road right-of-way and TL 41030CA04302 are zoned AC-RCR (Arch Cape – Rural Community Residential). The subject area contains wetlands mapped in both the Arch Cape Local Wetland Inventory and the National Wetlands Inventory. Any new public or private road development or road extension is evaluated as a Type II conditional use in the AC-RCR Zone per Section 4.0621, Table 1, Subsection (98), Clatsop County *Land and Water Development and Use Code* (LAWDUC) under county conditional use standards Section 2.4000, LAWDUC. Additional site-specific conditions of approval and county Public Works regulations may apply.

NOTICE IS HEREBY GIVEN that the Clatsop County's Department of Community Development, Planning Division has received the application described in this letter. Pursuant to Section 2.1020 of the Clatsop County *Land and Water Development and Use Code* (LAWDUC), the Department Director has the authority to approve the request in accordance with the requirements as depicted in the County Ordinance 20-03.

All interested persons are invited to submit written comments relevant to the proposed development and applicable standards to the Clatsop County Community Development Department, 800 Exchange Street, Suite 100, Astoria, OR 97103. Written comments may also be sent via FAX to [503-338-3606](tel:503-338-3606), or email to comdev@co.clatsop.or.us. Written comments must be received in this office no later than 4 p.m. on **Thursday, February 11, 2021**, in order to be considered in the review.

NOTE: If written objections are received on how the request fails to meet the standards of the zone or other ordinance requirements on or before the date above, the Community Development Director may decide to place the request on the next appropriate Planning Commission agenda for review. Failure to raise an issue precludes appeal on that issue; and in raising an issue, you must specify the relevant Zoning Ordinance criterion (see reverse side*) to which the issue is directed.

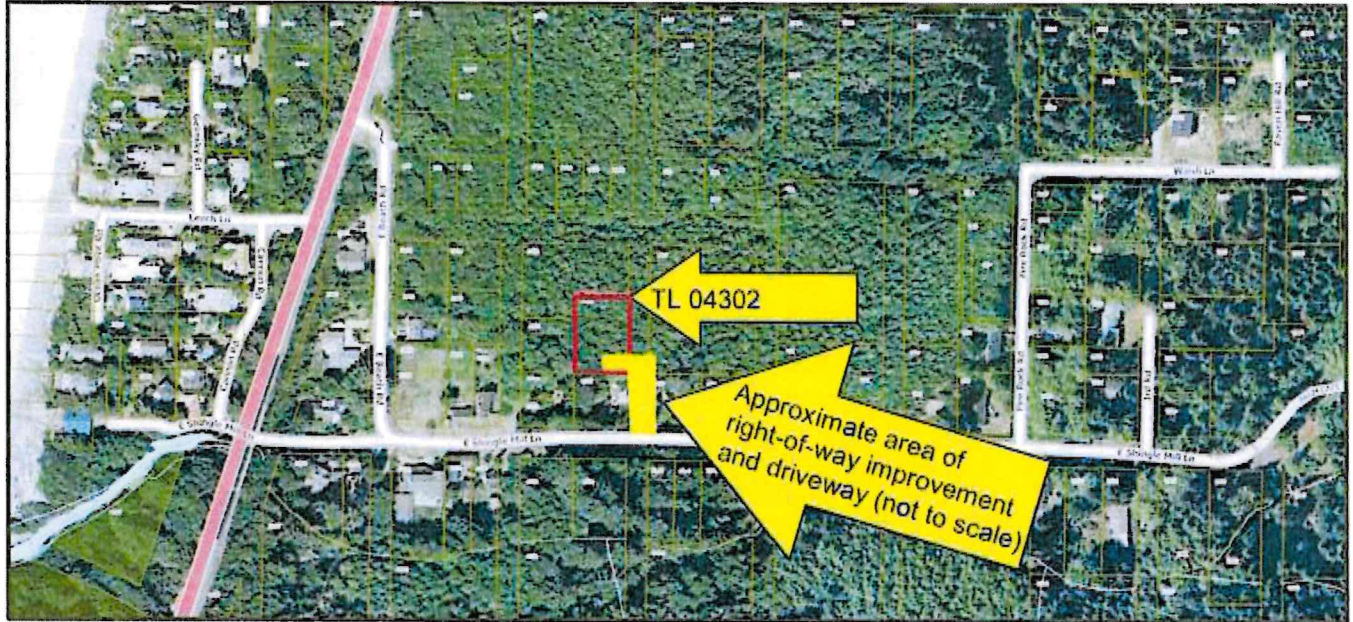
Planning representative for the application is Gail Henrikson, Community Development Director, (503) 325-8611 or ghenrikson@co.clatsop.or.us.

Notice to Mortgagee, Lien Holder, Vendor or Seller: ORS Chapter 215 requires that if you receive this notice it promptly must be forwarded to the purchaser.

APPLICABLE CRITERIA:

The following criteria from Clatsop County *Land and Water Development and Use Code (LAWDUC)* apply to the request: Article 1 Introductory Provisions; 2.1020 (Type II Procedure); 2.2060 (Procedure for Mailed Notice); 4.0600 (AC-RCR Zone); 2.4000-2.4050 (Conditional Development and Use); and 3.9800 (Transportation Improvements and Road Standard Specifications for Design and Construction).

2018 Aerial



Clatsop County GIS

In addition, the following elements of the Clatsop County Comprehensive Plan apply to the request: Goal 1 (Citizen Involvement); Goal 2 (Land Use Planning); Goal 11 (Public Facilities and Services); Goal 12 (Transportation); and Southwest Coastal Community Plan.

These documents are available for review at the Clatsop County Community Development Department office, 800 Exchange Street, Suite 100, Astoria, Oregon and on-line at the county's website, www.co.clatsop.or.us.

A copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at the Community Development Department Office during normal business hours (M-F, 7:30AM-4PM) at no cost and copies will be provided at reasonable cost.

If you have questions about this land use matter or need more information, please contact Gail Henrikson, Community Development Director, at (503) 325-8611 or via email at ghenrikson@co.clatsop.or.us.

OWNER_01	OWNER_02	ADDRESS	CITY	STATE	ZIP
Achterman Virginia A	Achterman Virginia A 2017 Trust	19265 SE Heuke Rd	Damascus	OR	97089
Anderson William	Anderson Jana	3917 S Corbett Ave	Portland	OR	97239
Beck Doris Arlene TR	Beck Doris Arlene Trust	4280 SW 164th Ave	Beaverton	OR	97078-2037
Bierlein Leonard A/ Ramona B		21120 SE Lansing Ln	Damascus	OR	97089-7203
Bryan Donna		PO Box 1197	Goleta	CA	93116-1197
Coffey Vicki L/Ostrandler Janna K Co-Tr	Coffey Vicki L Trust 1/2	8295 SW Seminole Trl	Tualatin	OR	97062-8128
Cross Rex A	Cross Patricia L	51409 SE Hoodview Dr	Scappoose	OR	97056
Dahl Eric C	Wagner Margaret G	1170 Latham Dr	Watkinsville	GA	30677-6023
Ehler Jesse Autry	Ehler S Heidi	PO Box 878	Seaside	OR	97138
Equity Trust Company Custodian FBO	Mims Ronald C IRA	4015 SE Pine St	Portland	OR	97214-2034
Flynn Marjorie V Trustee	French K D/G B Trustees	PO Box 901	Cannon Beach	OR	97110
Gredvig Gordon A Living Trust	Niemeyer Julie A Living Trust	20282 SW Inglis Dr	Beaverton	OR	97007-9001
Hill Dean A	Hill Mathew Austin	79796 E Beach Rd	Arch Cape	OR	97102-0144
Laird Squared LLC		4195 NW Carlton Ct	Portland	OR	97229
Lewis Jacob A	Lewis Vicki A	3500 NE Etna Rd	Woodland	WA	98674
Miller Jeffery L	Miller Anne M	2245 SW Winchester Pl	Portland	OR	97225
Milne Linetta S	Slemaker Jeffery L	31913 E Shingle Mill Ln	Arch Cape	OR	97102
Reynolds Donald/Jan Rothert		6035 NE 35th Pl	Portland	OR	97211-7358
Sandler Stuart B	Bevis Jeanne	19419 NW Reeder Rd	Portland	OR	97231
Sawicki Merryl	Sawicki Edward	4133 Glacier Lily St	Lake Oswego	OR	97035-1804
Schiller Timothy C	Schiller Jennifer J	25100 NE 14th St	Camas	WA	98607-9711
Sherlock Daniel C		98 Shore Dr Apt 14	St. Helens	OR	97051-1175
Smith Cy/Diane L		17339 S Century Dr	Bend	OR	97707-2524
Annette Brodigan	Environmental Health				
David Kloss	Building Official				
Dean Keranen	County Engineer				
Jevra Brown	Department of State Lands				
Lisa Phipps	DLCD				
Mark Reckmann	Cannon Beach RFPD				
Misty Metcalf Ogier	Clatsop Soil and Water Conservation District				
Phil Chick	AC Sanitary District/AC Water District				
Sirpa Duonos	Assessment and Taxation				
Ted Mclean	Public Works Director				
Terry Hendryx	Assistant Public Works Director				

abrodigan@co.clatsop.or.us
 dkloss@co.clatsop.or.us
 dkeranen@co.clatsop.or.us
 jevra.brown@state.or.us
 lisa.phipps@state.or.us
 mreckmann@cbfire.com
 office@clatsopswcd.org
 philchickacutil@gmail.com
 SDuonos@co.clatsop.or.us
 tmclean@co.clatsop.or.us
 thendryx@co.clatsop.or.us


CERTIFICATE OF MAILING
 I hereby certify I served a copy of the attached public notice to those listed on the attached page with postage paid and deposited in the US Post Office, Astoria, Oregon, on said day
 Date: 02-01-21
 Clarcie Adams, Permit Tech




EXHIBIT 3

Agency and Public Comments

Gail Henrikson

From: Annette Brodigan
Sent: Tuesday, February 2, 2021 4:34 PM
To: Clancie Adams; Jason Pollack; Julia Decker; Ian Sisson; Gail Henrikson; David Kloss
Subject: RE: Public Notice - Smith CUP

Hello,

Clatsop County Onsite Septic program has no comments or concerns. This property is located within Arch Cape Sewer District.

Thank you,

Annette Brodigan

Clatsop County Public Health

503-338-3681

Office hours Monday through Thursday 7:30 – noon and 1 – 4:30

Friday 7:30 – 11:30

From: Clancie Adams
Sent: Monday, February 1, 2021 8:08 AM
To: Jason Pollack <jpollack@co.clatsop.or.us>; Julia Decker <JDecker@co.clatsop.or.us>; Ian Sisson <isisson@co.clatsop.or.us>; Gail Henrikson <ghenrikson@co.clatsop.or.us>; Annette Brodigan <ABrodigan@co.clatsop.or.us>; David Kloss <dkloss@co.clatsop.or.us>; Dean Keranen <dkeranen@co.clatsop.or.us>; jevra.brown@state.or.us; lisa.phipps@state.or.us; 'mreckmann@cbfire.com' <mreckmann@cbfire.com>; office@clatsopswcd.org; 'philchickacutil@gmail.com' <philchickacutil@gmail.com>; Sirpa Duoos <SDuoos@co.clatsop.or.us>; Ted Mclean <TMclean@co.clatsop.or.us>; Terry Hendryx <THendryx@co.clatsop.or.us>
Subject: Public Notice - Smith CUP

Please see attached.

Clancie Jo Adams | Permit Technician
Clatsop County Community Development
Land Use Planning Division
800 Exchange Street, Suite 100
Astoria, OR 97103
Phone: 503.325.8611 | Fax: 503.338.3666

This message has been prepared on resources owned by Clatsop County, Oregon. It is subject to the Internet and Online Services Use Policy and Procedures of Clatsop County.

Gail Henrikson

From: Clancie Adams
Sent: Monday, February 1, 2021 8:31 AM
To: Gail Henrikson; Ian Sisson; Jason Pollack; Julia Decker
Subject: FW: Public Notice - Smith CUP

Please see Terry's comment below.

Clancie Jo Adams | Permit Technician
Clatsop County Community Development
Land Use Planning Division
800 Exchange Street, Suite 100
Astoria, OR 97103
Phone: 503.325.8611 | Fax: 503.338.3666

This message has been prepared on resources owned by Clatsop County, Oregon. It is subject to the Internet and Online Services Use Policy and Procedures of Clatsop County.

From: Terry Hendryx
Sent: Monday, February 1, 2021 8:23 AM
To: Clancie Adams <cadams@co.clatsop.or.us>
Cc: Dean Keranen <dkeranen@co.clatsop.or.us>
Subject: RE: Public Notice - Smith CUP

Morning Clancie,

In my conversations with The Smith's I have told them they need to construct a 22' wide road. The actual standard in an A-20 with a paved surface for the subdivision, but we are not requiring a paved surface unless the grade exceeds 12%. We are looking at the potential of oiling the Public roads at this time, which would give a 20' wide hard surface.

Thanks,
TLH

From: Clancie Adams
Sent: Monday, February 1, 2021 8:08 AM
To: Jason Pollack <jpollack@co.clatsop.or.us>; Julia Decker <JDecker@co.clatsop.or.us>; Ian Sisson <isisson@co.clatsop.or.us>; Gail Henrikson <ghenrikson@co.clatsop.or.us>; Annette Brodigan <ABrodigan@co.clatsop.or.us>; David Kloss <dkloss@co.clatsop.or.us>; Dean Keranen <dkeranen@co.clatsop.or.us>; jevra.brown@state.or.us; lisa.phipps@state.or.us; 'mreckmann@cbfire.com' <mreckmann@cbfire.com>; office@clatsopswcd.org; 'philchickacutil@gmail.com' <philchickacutil@gmail.com>; Sirpa Duoos <SDuoos@co.clatsop.or.us>; Ted Mclean <TMclean@co.clatsop.or.us>; Terry Hendryx <THendryx@co.clatsop.or.us>
Subject: Public Notice - Smith CUP

Please see attached.

Clancie Jo Adams | Permit Technician
Clatsop County Community Development
Land Use Planning Division
800 Exchange Street, Suite 100

Gail Henrikson

From: BROWN Jevra * DSL <jevra.brown@dsl.state.or.us>
Sent: Monday, February 1, 2021 4:46 PM
To: Gail Henrikson
Subject: RE: Public Notice - Smith CUP

Hi Gail,

We have received a delineation for review, WD2020-0667. This is the only record I found for either TL 4302 or 3402.

Jevra Brown, Aquatic Resource Planner
Department of State Lands
Cell 503-580-3172

Checking for wetlands and waters? – Use the STATEWIDE WETLANDS INVENTORY

To help prevent the spread of COVID-19 many of the DSL staff are telecommuting.

From: Clancie Adams <cadams@co.clatsop.or.us>
Sent: Monday, February 1, 2021 8:08 AM
To: Jason Pollack <jpollack@co.clatsop.or.us>; Julia Decker <JDecker@co.clatsop.or.us>; Ian Sisson <isisson@co.clatsop.or.us>; Gail Henrikson <ghenrikson@co.clatsop.or.us>; Annette Brodigan <ABrodigan@co.clatsop.or.us>; David Kloss <dkloss@co.clatsop.or.us>; Dean Keranen <dkeranen@co.clatsop.or.us>; jevra.brown@state.or.us; PHIPPS Lisa <lisa.phipps@state.or.us>; RECKMANN Marc <mreckmann@cbfire.com>; office@clatsopswcd.org; 'philchickacutil@gmail.com' <philchickacutil@gmail.com>; DUOOS Sirpa <sduoos@co.clatsop.or.us>; Ted Mclean <TMclean@co.clatsop.or.us>; Terry Hendryx <THendryx@co.clatsop.or.us>
Subject: Public Notice - Smith CUP

Please see attached.

Clancie Jo Adams | Permit Technician
Clatsop County Community Development
Land Use Planning Division
800 Exchange Street, Suite 100
Astoria, OR 97103
Phone: 503.325.8611 | Fax: 503.338.3666

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This message has been prepared on resources owned by Clatsop County, Oregon. It is subject to the Internet and Online Services Use Policy and Procedures of Clatsop County.



Feb 10, 2021

Clatsop Community Department of Community Development
800 Exchange St., Suite 100
Astoria, OR 97103

Via email: Gail Henrikson: ghenrikson@co.clatsop.or.us

Re: Smith Conditional Use Permit Application, #21-000005

Dear Ms. Henrikson,

The original surveyors platted Arch Cape without regard to topography. Therefore, lots and roads are platted on undevelopable steep slopes and within southern Clatsop County's largest wetland complex off Arch Cape Creek. The Smith application under consideration here is yet another proposal to build a speculative access road to undeveloped land, in a wetland-rich environment in Arch Cape.

This application is to construct an "approach road" within a platted and undeveloped right of way on Anvil Rock Road, 150 feet north from East Shingle Mill Lane. A driveway and utilities are also anticipated.

It has, and continues to be, ORCA's position that an access road is part of "development," and without a permit in place, based on a wetlands analysis, access road applications for undeveloped and unpermitted lots should be denied, or at the very least, subject to a public hearing. The public must be involved in applications to develop what are essentially "speculation roads" to access properties for which no development is proposed.

These public rights-of-way are being increasingly developed in Arch Cape as speculative public roads to access undeveloped lots that have no development application on file, let alone a building permit. Permitting the Smith road, when there is as yet no building permit in place for any development, is contrary to the spirit and intent of CCLWDO, which requires that prior to developing land, a development permit must be

in place. Construction of a road is part of a development process: therefore prior to building a public road on a public right-of-way, for the purpose of accessing a lot, there must be a development permit in place for the anticipated development. (*Wilson v. Washington County, (Or. LUBA no. 2011-007, May 17th, 2011 in which the Court found that that establishment of access roads was included in the city's definition of "development")*).

LWDUO mandates that development meet particular standards. Development is defined as "Any manmade changes to improved or unimproved real estate, including but not limited to construction, reconstruction, conversion, relocation or enlargement of any structures any mining, excavation, landfill or land disturbance, any use or extension of the use of land." (*LWDUO Article I, Section 1.030 Definitions*).

Thus, building a road to access the property must be considered part of that development plan. It involves a disturbance of land. It makes no sense to look at the development of a property without considering the development of access roads as part of the project.

This particular application is further complicated by its proximity to Arch Cape Creek and the potential ramifications for environmental degradation that could occur if this permit is approved without further analysis of impacts. This proposed road leads to Arch Cape's most significant shoreline wetland complex. The wetland's connectivity to Arch Cape Creek (home to Endangered Species Act-listed Coho Salmon) requires development buffers not contemplated by the application. If the County chooses to approve a road separate from the development of the lots the road serves, the County has a duty to require a wetland delineation for this road approach.

Applicant must show that this road will not enter the wetland or the required Shoreline buffer. Applicant has failed to do so. The Comprehensive Plan makes it clear that Significant Shoreland Resources include non-tidal wetlands and wildlife habitat and that these are resources of value and deserving of protection. Goal 6, policy 3 states: "The cumulative effect of development on the County's environment should be monitored and, where appropriate, regulated."

Years of small-scale environmental degradation have taught us that development cannot be looked at in a vacuum to truly analyze its effects on the environment. Looking at a project piecemeal in order to insure that "development does not adversely impact adjacent resource lands" (*LWDUO, section 3.062*) and that the development will "reserve landscape in its natural state to the maximum extent possible by minimizing tree, vegetation, and soils removal" (*LWDUO, section 3.068*) cannot occur in any meaningful way unless all of the individual components of the project are viewed as a whole.

A lot of record, even those platted and recorded prior to land use requirements, must still meet all other applicable requirements of the zone. A lot's status as a lot of record does not exempt it from compliance with the County land use laws and standards,

except for minimum lot size or lot dimensions. (*LWDUO, Article I section 1.030 Definitions*). The property, and the proposed development, must be looked at, to the extent possible, as a whole. The utility of the road is clearly dependent on the viability of the development project to which it leads. If applicant can even meet the Shoreline wetland buffer requirements, the amount of wetland fill and mitigation for the entire project (presumably applicant plans to build a house) may be cost prohibitive, causing the development to fail. Thus, to issue a permit for a road when there is no permit for the project directly contradicts county ordinance and policy, and sets a disturbing precedent.

In addition to these two concerns about the Smith property specifically, the bigger policy issue is the potential development of public roads on right of ways throughout Arch Cape, without approved development permits in place. This will lead to the potential filling of wetlands, cutting down of trees and clearing of vegetation for roads to nowhere. (*LWDUO Section 3.068(12)(D)*).

Broader policies must be created and enforced to address the potential degradation of Arch Cape's most productive wetlands without any thought of preservation of natural resources, or the cumulative impacts of development of routinely platted lots, especially plats created decades ago. There was then, and often still remains, no regard for the realities of the land on which the plats were drawn, or the natural resources of the properties.

Given the controversial nature of the Smith application and possible ramifications throughout the community, we request that this application be considered as a Type IIa or Type III procedure, which mandates a hearing and public comment period.

Sincerely,

/s/ Cameron La Follette

Cameron La Follette
Oregon Coast Alliance
Executive Director

ARCH CAPE FALCON COVE BEACH COMMUNITY CLUB

Public Comments - Permit Application #21-000005

(Smith Road Construction)

February 10, 2021

Arch Cape Falcon Cove Beach Community Club (Community Club) is a neighborhood community organization founded in 1966 to maintain and enhance the livability and sense of community in Arch Cape - Falcon Cove Beach, and to protect the natural, scenic, open space, historical and cultural aspects of the area and land.

The Community Club submits the following comments in opposition to the permit application submitted by Cy and Diane Smith to do the following: (a) construct a gravel road along 150' of platted but undeveloped right-of-way in Arch Cape; (b) install water, sewer and electric lines to Tax Lot 04302; and (c) construct a 50' gravel driveway on Tax Lot 04302.

It should be noted that Tax Lot 04302 is shown on Clatsop County Webmaps as being entirely within the National Wetlands Inventory boundary, and largely within the boundary of the Local Wetlands Inventory. The wetlands complex within which this lot is located is the largest and most significant in Arch Cape.

(1) No development plan has been submitted for Tax Lot 04302.

An application for a landowner-constructed road should be considered in tandem with the proposed use of the land to be served by the road, and not as an independent project by which a land owner gains improved access to undeveloped land. To do otherwise would conflict with Goal 12 of the Comprehensive Plan (Transportation), which refers to this inter-relationship between land use and transportation as System Preservation and states:

Consider transportation impacts when making land use decisions, and consider land use impacts (in terms of land use patterns, densities, and designated uses) when making transportation-related decisions. Goal 8, Objective 2.

In the LAWDUC, the stated purpose for having Vehicle Access ordinances is to “further the orderly layout and use of land, protect community character, and conserve natural resources by promoting well-designed road and access systems and discouraging the unplanned subdivision of land.” Section 3.9510 (applies to industrial, commercial and residential developments).. See also Section 3.9600(1) (“The location, width, and grade of streets shall be considered in their relation to ... the proposed use of the land to be served by the streets.”)

Applicants do not have any plans to develop Tax Lot 04302 at this time. The absence of a plan for how applicants might seek to develop and use their property means the application must be denied for lack of facts and evidence to support a finding that the proposed road, utility lines and driveway are needed to serve the development of Tax Lot 04302.

(2) Development of the Smith parcel is questionable because it is wetlands.

Before any approval can be sought for development, applicants would have to address the fact they purchased a lot in a significant wetlands complex. Whether a future wetlands delineation discloses some portion of the parcel as being suitable for development is yet to be

known, as well as whether mitigation options might exist. These considerations and others demonstrate why this application is premature, and why it cannot be approved without an approved development plan for Tax Lot 04302.

(3) The proposal would have a negative impact on wetlands and wildlife habitat.

The Comprehensive Plan, Goal 12 (Transportation), at Goal 7: Environment, requires that any transportation system balance services with the need to protect the environment and significant natural features. Objective #4 for this goal is to protect wetlands:

Minimize transportation impacts on wetlands and wildlife habitat.

There is no way to look at this application at this time except as seeking approval of a road into the wetlands. The proposed driveway and portions of the road may be located in the wetlands themselves or at least within the 50' setback from the line of non-aquatic vegetation.

(4) The proposal does not meet the minimum design standards for a public road.

LAWDUC Section 1.0500 defines "public road" as "a road over which the public has a right of use that is a matter of public record." Anvil Rock is a platted right-of-way, so turning it into a road means turning it into a public road. The design standards for public roads are found in Section 3.9800 et seq. The Smith application is for a 20' gravel road. These specifications do not meet the minimum design standards for public roads.

(5) No evidence has been submitted to support the need for logging public land.

The platted right-of-way that the proposed Smith road would occupy is public property; it is not property owned by the Smiths. The right-of-way is forested, and the design standards for public roads say: "The right-of-way shall be cleared of all trees." Section 3.9830. On this record, there are no facts and evidence to support logging 3,000 square feet (150' x 20') of public right-of-way simply to allow a landowner vehicle access to undeveloped land.

(6) Utility lines should not be installed without a development plan.

Unless or until a development plan is in place for Tax Lot 04302, there is nothing in the record to justify bringing utility lines to this location.

(7) A driveway should not be constructed without a development plan.

For the same reasons that the approach road should be denied, so should the driveway.

Thank you for considering our comments on this matter, which raises issues of significant importance to the Arch Cape community.

ACFCB Community Club
Charles A. Dice, President
cadice@hotmail.com
Linda Eyerman, Land Use Committee Chair
linda@gaylordeyerman.com

Gail Henrikson

Subject: FW: application #21000005

-----Original Message-----

From: Chris Achterman <cachterm@gmail.com>
Sent: Friday, February 5, 2021 1:29 PM
To: Clatsop Development <comdev@co.clatsop.or.us>
Subject: application #21000005

Dear Sirs:

I object to the proposed development of Anvil Rock Road in the strongest possible terms. The road itself may not be in the wet land, but the property that Cy and Diane Smith will then attempt to develop is entirely within a designated wetland. Any building on this site will disturb a functioning wildlife area. Since the proposed access road leads only to a wetland area it should not be permitted.

Christopher Achterman
property owner, East Shingle Mill Lane

Gail Henrikson

Subject: FW: Arch Cape Development

From: jpiensvold@aol.com <jpiensvold@aol.com>
Sent: Thursday, February 11, 2021 12:19 PM
To: Clatsop Development <comdev@co.clatsop.or.us>
Subject: Arch Cape Development

I am writing in regards to the Smith application to construct an approach road in the platted, but undeveloped, Anvil Rock Road right-of-way. adjacent to the East Shingle Mill Lane right-of-way

I understand that the owners do not have plans to develop the property at this time, but propose to install water, sewer and electric lines to the lot as part of the road. I suspect this is a "spec" road.

Since this would necessitate the disruption of quite a bit of previously undeveloped right-of-way land, I hope Clatsop County will have a hearing and allow for public comment on this proposed development.

Jim Jensvold
80030 Pacific Road
Arch Cape

Gail Henrikson

From: Stuart Sandler <stusan47@gmail.com>
Sent: Tuesday, February 9, 2021 9:39 AM
To: Clatsop Development
Subject: Permit Application #21-000005

To Relevant Decision Makers:

As some of you may know, 3 conditional use permits have been applied for concurrently in the Arch Cape wetland bordered on the south by East Shingle Mill Lane. These applications have two main things in common: they are all for roads into the wetland and they are all proposed without their ultimate construction projects attached. Their purpose is to get you to accept these roads without any consideration of the wetland construction projects to come, leveraging their position that you will not be able to deny their wetland projects if you have permitted their roads in.

Roads to nowhere, or rather, roads to someplace very wet; this is a State-Lands-designated wetland, and these road projects are the foot in the door for the destruction of that wetland; if these projects go through, it's highly likely there will be nothing to stop the entire wetland from disappearing.

For the locals – and there are many – who love this wetland, and its views and wildlife – it's an elk sleeping ground -- protecting it to the exclusion of a housing district is a no-brainer. The applicants have cleverly submitted proposals that – for the road ingress only – skirt the actual wetland so that the wetland as an issue might not be officially appraised for these applications. But make no mistake; this is a judgment on the continued existence of the whole wetland, not just these patches of road, and permission signals the death knell for the entire wetland. The applicants have separated these road applications from their overall projects. Yet they want to have utilities installed without any notion of the overall project requirements and with none of the wetland delineations that will ultimately be required for construction. It makes no sense at all, except to someone looking for a foot in the door. It's the cart before the horse, and it's no way to deal with a perishable resource like a wetland.

A decidedly important resource. There are numerous references available asserting the crucial value of these wetlands in absorbing large amounts of water from the hills to the east. None of these projects expresses any notion of how all this water, which already overflows drainage resources at peak times, will be accommodated. Flooding of downstream housing and consequent public safety issues could be serious expenses for the County to muster if these projects are permitted.

You will receive more pointed commentary on these objections from the Arch Cape Community Club and Oregon Coast Alliance (ORCA), organizations representing significant public opposition. ORCA points out that road construction must not be separated from overall project development. The Community Club comments on the lack of wetland delineations and that utilities should not be constructed without utility plans. What if the overall projects are never approved? More roads to nowhere?

There might be a win-win solution in view. Lot 3702 in the upper slope east of the wetland, already owned by the County, has been discussed with a potential for swapping with wetland owners for development, leaving the wetland intact. Perhaps worth considering. Barring such an outcome, however, I'm asking for denial of these potentially damaging road incursions, but if not that, at least convene public hearings where opposition to the offending roads can be seriously assessed.

Stuart Sandler

31941 East Shingle Mill Ln

Arch Cape, OR

EXHIBIT 4

Permit to Occupy or Perform Operations Upon a County or Public Road

APPLICANT NAME CY & DIANE SMITH
 APPLICANT'S ADDRESS 17339 S. CENTURY Dr. CITY BEND
 STATE OR ZIP CODE 97707-2524 PHONE 503-348-9190
 EMAIL ADDRESS CTSREMODEL@gmail.com
 CONTRACTOR BOB McEWAN CONST. INC.
 ROAD NAME ANVIL ROCK, ARCH CAPE A-22 STANDARD
 SIDE OF ROAD OR ANGLE OF CROSSING 90° TO E. SHINGLE MILL
 FACILITY DEPTH (Min. 30") 12" BASE ROCK, 3" 3/4" - 0" LEVELLING ROCK
 DISTANCE FROM EDGE OF PAVEMENT 150' NORTH FROM E. SHINGLE MILL
 METHOD OF COMPACTION VIBRATORY ROLLER
 TYPE AND SIZE OF COMPACTION EQUIPMENT 4TON STEEL DRUM
 SIZE AND TYPE OF PIPE _____
 TYPE OF CABLE _____ SPAN LENGTH 150'
 CERTIFICATE OF INSURANCE: ON FILE ATTACHED TO FOLLOW

DESCRIPTION AND LOCATION OF OPERATIONS AND/OR FACILITIES
EXTEND ANVIL ROCK 150' NORTH FROM EAST SHINGLE MILL LANE TO T.L. 4-10-30CA-4302.
 ATTACH PLANS IF APPLICABLE

- COUNTY COMMENTS AND/OR CONDITIONS
- 1) CONSTRUCT ROAD TO A-22 GRAVEL STANDARD.
 - 2) STAY OUT OF DELINEATED WETLANDS.
 - 3) HAVE ALL REQUIRED COUNTY PERMITS PRIOR TO STARTING CONSTRUCTION.
 - 4) CALL FOR INSPECTION ONCE BASE ROCK IS COMPLETE, FOR INSPECTION
 - 5) " " " " 3/4" TO ROCK IS IN PLACE FOR FINAL INSPECTION.
 - 6) PERMIT IS GOOD FOR 6 MONTHS.

Applicant must notify the Clatsop County Public Works Department at least 12 hours prior to commencing work. If work is discontinued for one or more days, the applicant must notify the Public Works Department prior to beginning work again.

COPY OF PERMIT MUST BE ON SITE DURING PERMITTED OPERATIONS

APPLICANT BOB M^CEWAN CONST. Approved by
BY Michael R. McEwan, PRES. Terry Hendry
DATE 1/9/21 Effective Date: 1/12/2021

1

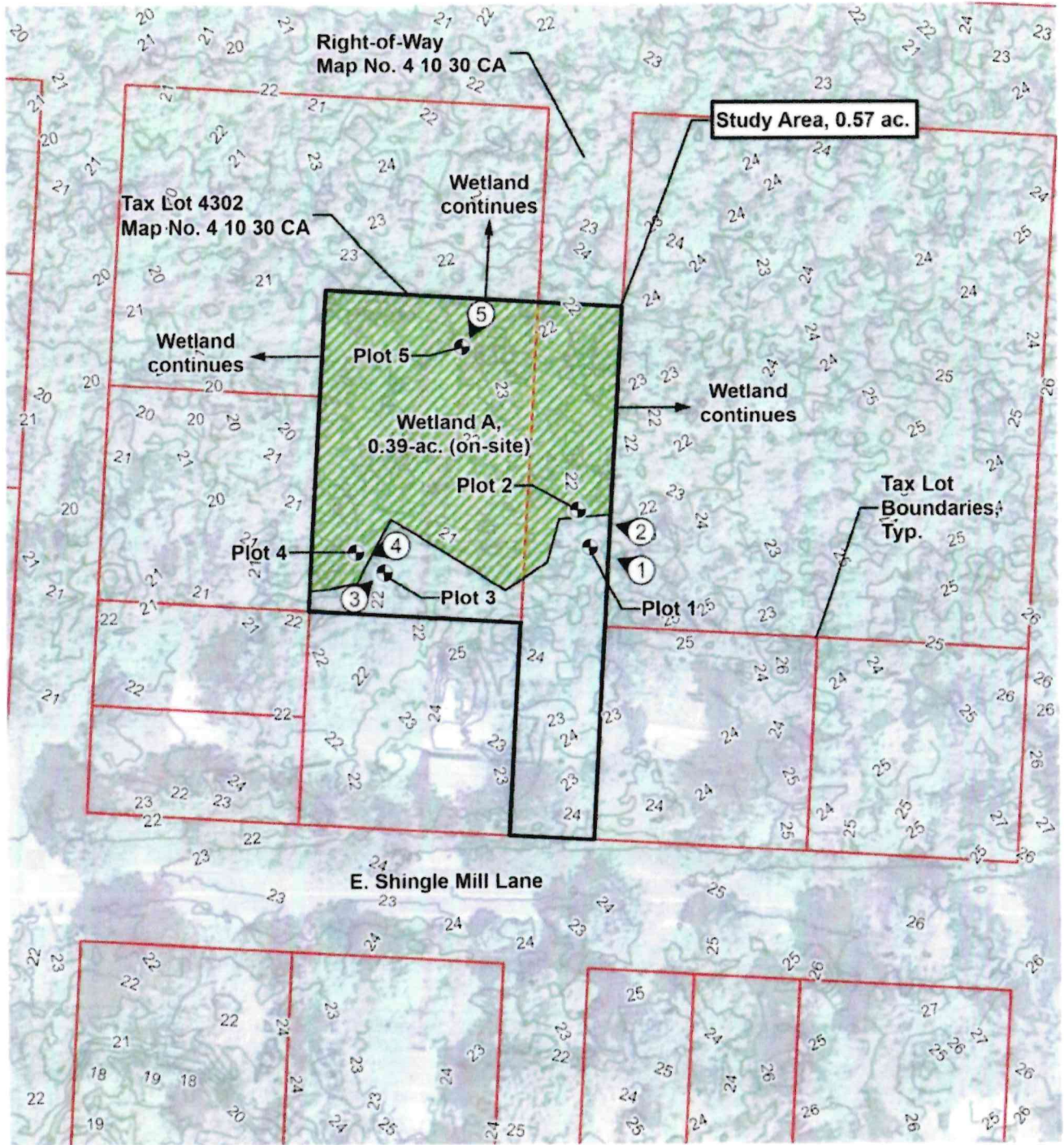
WETLAND DELINEATION / DETERMINATION REPORT COVER FORM

Fully completed and signed report cover forms and applicable fees are required before report review timelines are initiated by the Department of State Lands. Make checks payable to the Oregon Department of State Lands. To pay fees by credit card, go online at <https://apps.oregon.gov/DSL/EPS/program?key=4>.

Attach this completed and signed form to the front of an unbound report or include a hard copy with a digital version (single PDF file of the report cover form and report, minimum 300 dpi resolution) and submit to: Oregon Department of State Lands, 775 Summer Street NE, Salem, OR 97301-1279. A single PDF of the completed cover form and report may be e-mailed to Wetland_Delineation@del.state.or.us. For submittal of PDF files larger than 10 MB, e-mail DSL instructions on how to access the file from your ftp or other file sharing website.

<input checked="" type="checkbox"/> Applicant <input type="checkbox"/> Owner Name, Firm and Address: Cy & Diane Smith 17338 S. Century Drive Bend, Oregon 97707		Business phone # (503) 348-9190 Mobile phone # (optional) E-mail: ctsremodel@gmail.com
<input type="checkbox"/> Authorized Legal Agent, Name and Address (if different): N/A		Business phone # Mobile phone # (optional) E-mail:
I either own the property described below or I have legal authority to allow access to the property. I authorize the Department to access the property for the purpose of confirming the information in the report, after prior notification to the primary contact. Typed/Printed Name: <u>Cy & Diane Smith</u> Signature: <u>[Signature]</u> Date: <u>12/11/20</u> Special instructions regarding site access: <u>Please call ahead before accessing site.</u>		
Project Name: Wetland Delineation Report for Tax Lot 4302	Latitude: 45.803702 deg. decimal degree - centroid of site or start & end points of linear project	Longitude: -123.962035 deg.
Proposed Use: Site planning	Tax Map # 4 10 30 CA Tax Lot(s) Public right-of-way, 4302	Tax Map #
Project Street Address (or other descriptive location): Behind 31941 E. Shingle Mill Lane	Tax Lot(s) Township 4N Range 10W Section 30 QQ NE, SW Use separate sheet for additional tax and location information	Waterway: N/A River Mile: N/A
City: Arch Cape County: Clatsop	Wetland Consultant Name, Firm and Address: PBS Engineering and Environmental, Attn: Chris Moller 4412 S. Corbett Avenue Portland, Oregon 97239	
Wetland Consultant Signature: <u>[Signature]</u>	Phone # (503) 417-7709 Mobile phone # (if applicable) E-mail: chris.moller@pbsusa.com	Date: <u>12/11/2020</u>
The information and conclusions on this form and in the attached report are true and correct to the best of my knowledge.		
Primary Contact for report review and site access is <input type="checkbox"/> Consultant <input checked="" type="checkbox"/> Applicant/Owner <input type="checkbox"/> Authorized Agent		
Wetland/Waters Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Study Area size: 0.57 ac. Total Acreage: 0.39-ac wetland		
<input type="checkbox"/> R-F permit application submitted	<input type="checkbox"/> Fee payment submitted \$ <u>466</u>	<input type="checkbox"/> Fee (\$100) for resubmittal of rejected report
<input type="checkbox"/> Mitigation bank site	<input type="checkbox"/> Request for Reissuance. See eligibility criteria. (no fee)	DSL# _____ Expiration date _____
<input type="checkbox"/> EFSC/ODOE Proj. Mgr:	<input type="checkbox"/> Wetland restoration/enhancement project (not mitigation)	<input checked="" type="checkbox"/> LWI shows wetlands or waters on parcel Wetland ID code ARC-13
<input type="checkbox"/> Previous delineation/application on parcel If known, previous DSL #	DSL Reviewer: <u>DE</u> Fee Paid Date: ___/___/___ DSL WD # <u>2020-0667</u>	
Date Delineation Received: <u>12/11/2020</u> Scanned: <input type="checkbox"/> Electronic: <input checked="" type="checkbox"/> DSL App. # _____		

March 2018

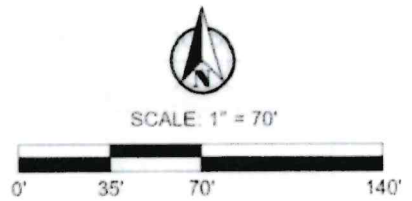


I:\Projects\750001\754000\75410\75410\000\MapInfo\GIS\APPROX\CTS Tax Lot 4302\CTS Tax Lot 4302.aprx Plot Date/Time: 12/11/2020 12:36 PM

Legend

- Plot 1 Data Plot Locations
- Ground Level Photograph Locations
- Wetland A, 0.39-ac

Sample plots, wetland boundaries, and photo points were mapped using a Trimble Geo7X handheld GPS unit. All features collected achieved submeter accuracy after post-processing. Study area boundaries based on tax lot boundaries and aerial photo interpretation (+/-1 m est. accuracy)



PREPARED FOR: CTS REMODEL.



DELINEATION MAP

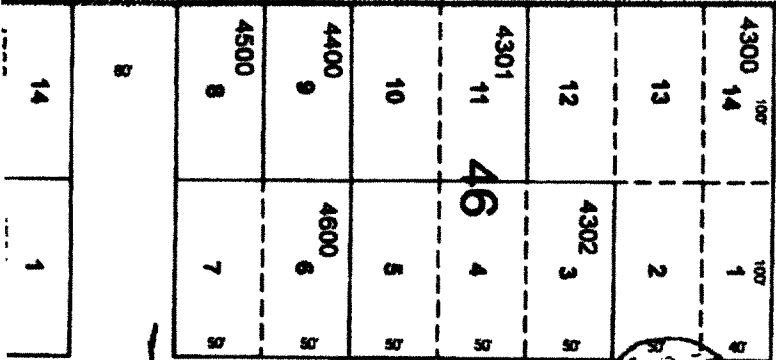
WETLAND DELINEATION FOR TAX LOT 4302
ARCH CAPE, CLATSOP COUNTY, OREGON

DEC 2020
75410.000
FIGURE

SEE MAP 4 10 30CB

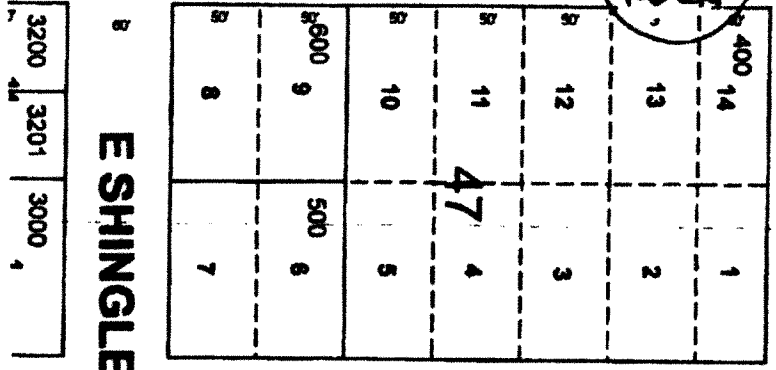
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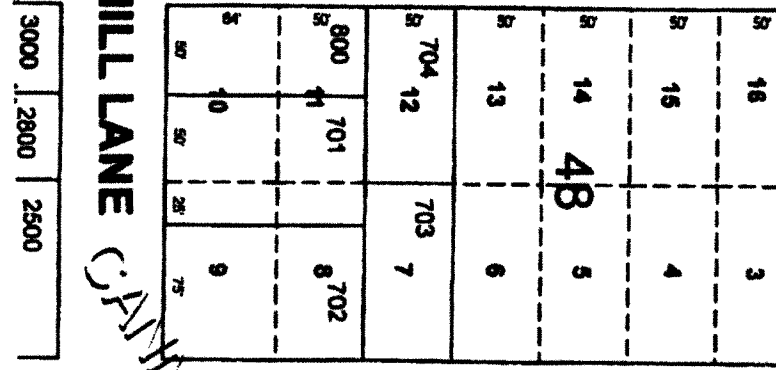
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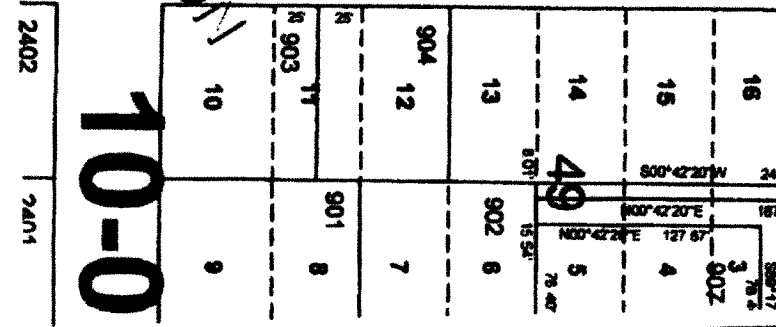
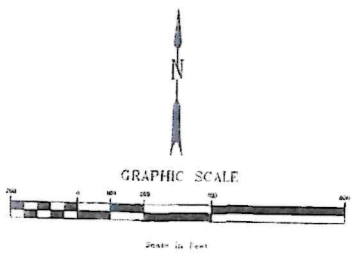


EXHIBIT 5

Arch Cape Local Wetland Inventory (2011)

9/13/2011 AB

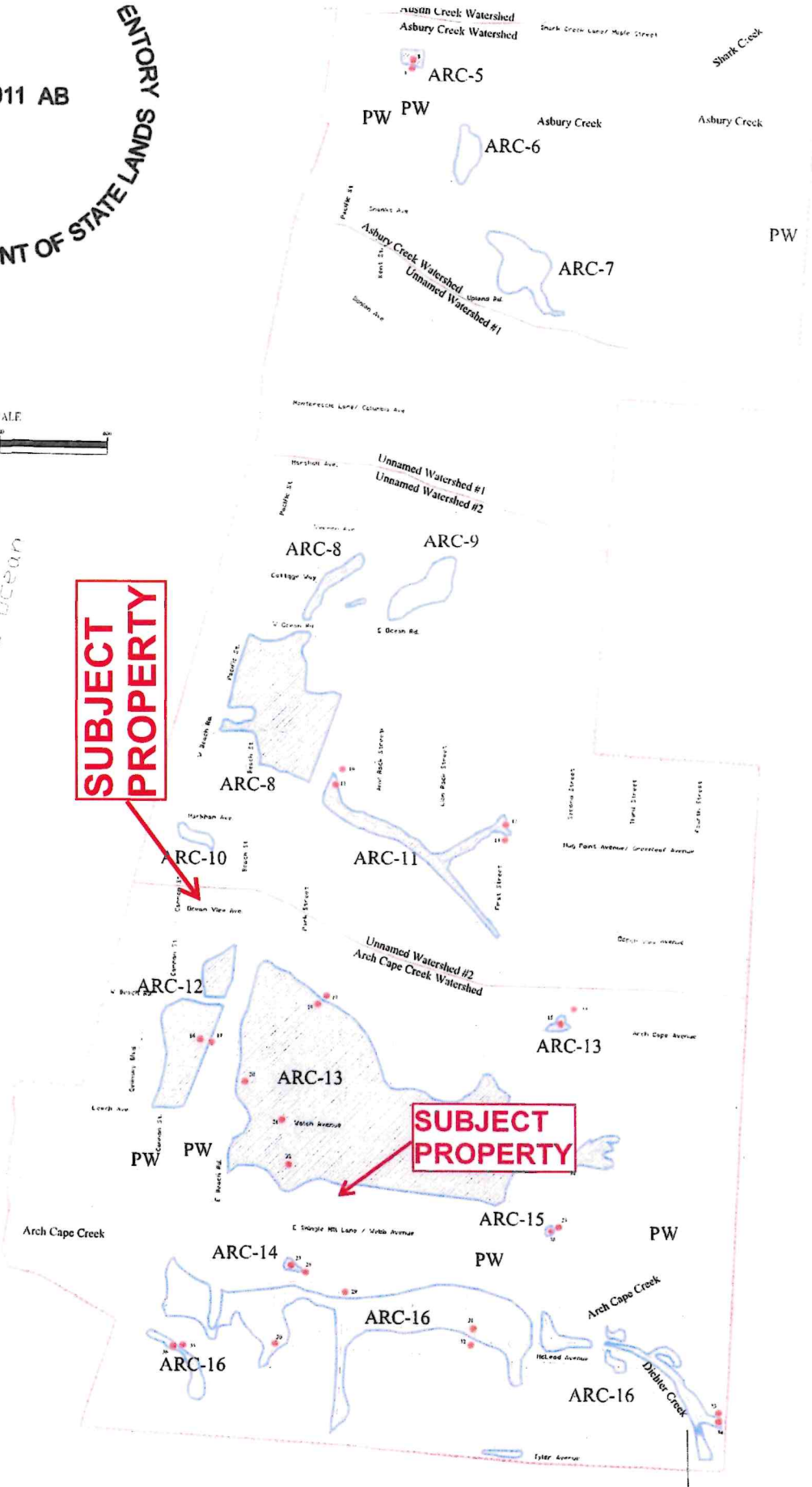
OREGON DEPARTMENT OF STATE LANDS



Pacific Ocean

SUBJECT PROPERTY

SUBJECT PROPERTY



Watershed Boundary	Wetland field verified	ARC-1
Project Boundary	Wetland NOT field verified	
Potentially Jurisdictional	Probable Wetland	PW
	Sample Point	● 24
	Wetland Code	ARC-1

Agenda Item #12.

2008

BASE MAP INFO: Supplied by Columbia River

Funding for this project was provided by the US Fish and Wildlife Service Coastal Program: The Nature Conservancy's Salmon Habitat Fund; Arch Cape Community Club; and Arch Cape Service District.

THIS MAP IS FOR PLANNING PURPOSES ONLY
 WETLAND BOUNDARIES ARE APPROXIMATE
 AND SUBJECT TO CHANGE

Information shown on this map is for planning purposes only and wetland information is subject to change. There may be unmapped wetlands subject to regulation and all wetland boundaries are approximate. In all cases actual field conditions may vary from those shown on this map. You are advised to contact the Dept. and the U.S. Army Corps of Engineers with any questions.

Arch Cape

Pacific Habitat Services, Inc.
 9450 SW Commerce Circle, Suite 100
 Wilsonville, Oregon 97070
 Phone: (503) 536-2000

EXHIBIT 6

Wetland Delineation



Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

April 1, 2021

Cy and Diane Smith
17339 S Century Drive
Bend, Oregon 97707

Kate Brown
Governor

Shemia Fagan
Secretary of State

Re: **WD # 2020-0667 Approved**
Wetland Delineation Report for TL 4302
Clatsop County; T4N R10W S30CA TLs 4302 and ROW (Portion)
Arch Cape Local Wetlands Inventory, Wetland ARC-13

Tobias Read
State Treasurer

Dear Mr. and Ms. Smith:

The Department of State Lands has reviewed the wetland delineation report prepared by PBS Engineering and Environmental for the site referenced above. Based upon the information presented in the report, we concur with the wetland boundaries as mapped in Figure 7 of the report. Please replace all copies of the preliminary wetland map with this final Department-approved map.

Within the study area, one wetland (Wetland A, totaling approximately 0.39 acres) was identified. It is subject to the permit requirements of the state Removal-Fill Law. Under current regulations, a state permit is required for cumulative fill or annual excavation of 50 cubic yards or more in wetlands or below the ordinary high-water line (OHWL) of the waterway (or the 2-year recurrence interval flood elevation if OHWL cannot be determined).

This concurrence is for purposes of the state Removal-Fill Law only. We recommend that you attach a copy of this concurrence letter to any subsequent state permit application to speed application review. Federal or local permit requirements may apply as well. The U.S. Army Corps of Engineers will determine jurisdiction under the Clean Water Act, which may require submittal of a complete Wetland Delineation Report.

Please be advised that state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.

This concurrence is based on information provided to the agency. The jurisdictional determination is valid for five years from the date of this letter unless new information necessitates a revision. Circumstances under which the Department may change a determination are found in OAR 141-090-0045 (available on our web site or upon request). In addition, laws enacted by the legislature and/or rules adopted by the Department may result in a change in jurisdiction; individuals and applicants are subject to the regulations that are in effect at the time of the removal-fill activity or complete permit application. The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months of the date of this letter.

Thank you for having the site evaluated. If you have any questions, please contact the Jurisdiction Coordinator for Clatsop County, Daniel Evans, PWS, at (503) 986-5271.

Sincerely,



Peter Ryan, SPWS
Aquatic Resource Specialist

Enclosures

ec: Chris Moller, PBS
Clatsop County Planning Department (Maps enclosed for updating LWI)
Brad Johnson, Corps of Engineers
Dan Cary, SPWS, DSL
Oregon Coastal Management Program

WETLAND DELINEATION / DETERMINATION REPORT COVER FORM

Fully completed and signed report cover forms and applicable fees are required before report review timelines are initiated by the Department of State Lands. Make checks payable to the Oregon Department of State Lands. To pay fees by credit card, go online at <https://apps.oregon.gov/DSL/EPS/program?key=4>.

Attach this completed and signed form to the front of an unbound report or include a hard copy with a digital version (single PDF file of the report cover form and report, minimum 300 dpi resolution) and submit to: Oregon Department of State Lands, 775 Summer Street NE, Salem, OR 97301-1279. A single PDF of the completed cover form and report may be e-mailed to Wetland_Delineation@del.state.or.us. For submittal of PDF files larger than 10 MB, e-mail DSL Instructions on how to access the file from your ftp or other file sharing website.

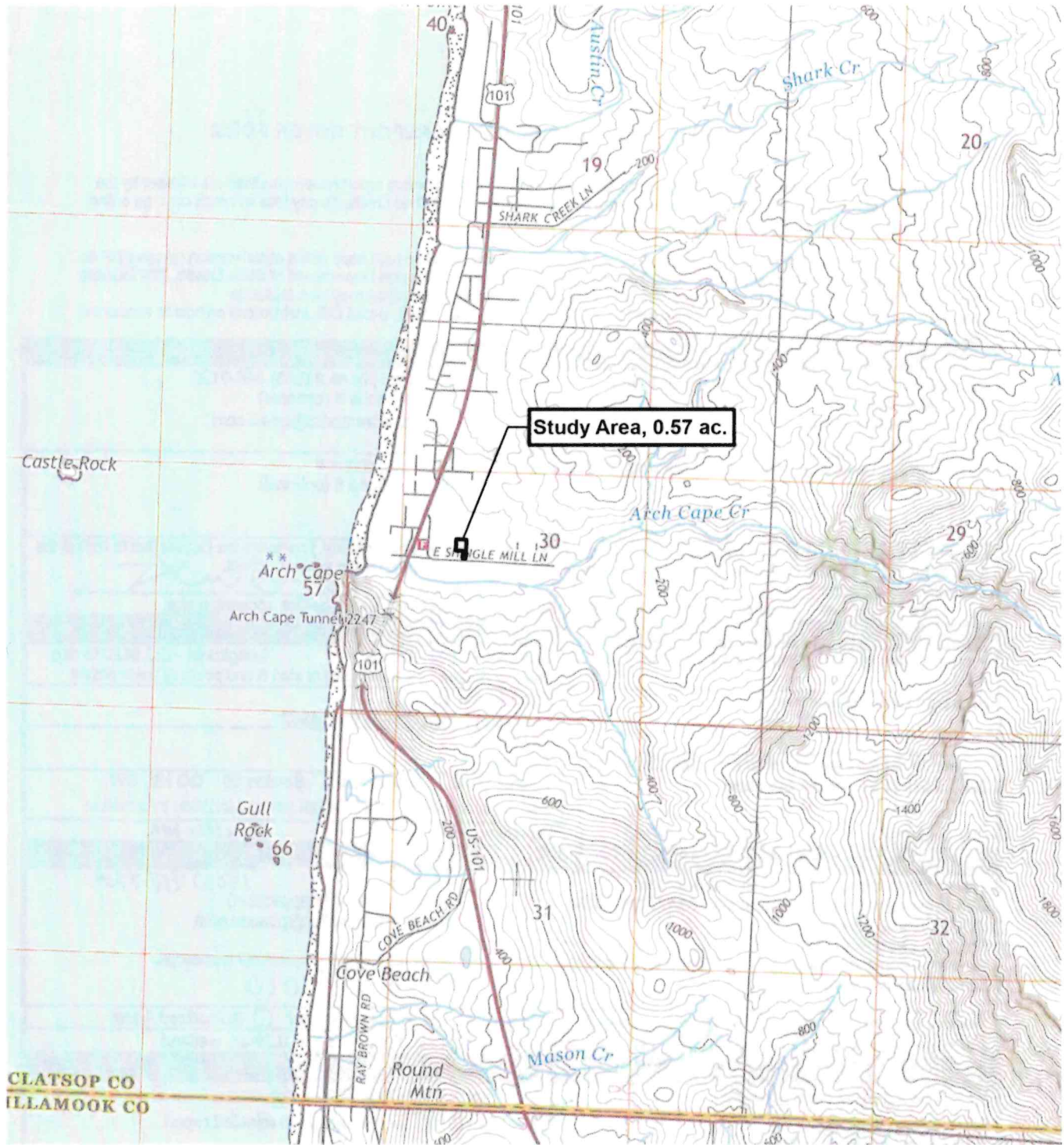
<input checked="" type="checkbox"/> Applicant <input type="checkbox"/> Owner Name, Firm and Address: Cy & Diane Smith 17339 S. Century Drive Bend, Oregon 97707		Business phone # (503) 348-9190 Mobile phone # (optional) E-mail: ctsremodel@gmail.com	
<input type="checkbox"/> Authorized Legal Agent, Name and Address (if different): N/A		Business phone # Mobile phone # (optional) E-mail:	
I either own the property described below or I have legal authority to allow access to the property. I authorize the Department to access the property for the purpose of confirming the information in the report, after prior notification to the primary contact. Typed/Printed Name: <u>Cy & Diane Smith</u> Signature: <u>[Signature]</u> Date: <u>12/11/20</u> Special instructions regarding site access: <u>Please call ahead before accessing site.</u>			
Project Name: Wetland Delineation Report for Tax Lot 4302		Latitude: 45.803702 deg. Longitude: -123.962035 deg. decimal degree - centroid of site or start & end points of linear project	
Proposed Use: Site planning		Tax Map # 4 10 30 CA Tax Lot(s) Public right-of-way, 4302	
Project Street Address (or other descriptive location): Behind 31941 E. Shingle Mill Lane		Tax Map # Tax Lot(s) Township 4N Range 10W Section 30 QQ NE, SW Use separate sheet for additional tax and location information	
City: Arch Cape County: Clatsop		Waterway: N/A River Mile: N/A	
Wetland Consultant Name, Firm and Address: PBS Engineering and Environmental, Attn: Chris Moller 4412 S. Corbett Avenue Portland, Oregon 97239		Phone # (503) 417-7709 Mobile phone # (if applicable) E-mail: chris.moller@pbsusa.com	
The information and conclusions on this form and in the attached report are true and correct to the best of my knowledge.			
Consultant Signature: <u>[Signature]</u>		Date: <u>12/11/2020</u>	
Primary Contact for report review and site access is <input type="checkbox"/> Consultant <input checked="" type="checkbox"/> Applicant/Owner <input type="checkbox"/> Authorized Agent			
Wetland/Waters Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Study Area size: 0.57 ac. Total Acreage: 0.39-ac. wetland	
<input type="checkbox"/> R-F permit application submitted <input type="checkbox"/> Mitigation bank site <input type="checkbox"/> EFSC/ODOE Proj. Mgr: <input type="checkbox"/> Wetland restoration/enhancement project (not mitigation) <input type="checkbox"/> Previous delineation/application on parcel If known, previous DSL #		<input type="checkbox"/> Fee payment submitted \$ 466 <input type="checkbox"/> Fee (\$100) for resubmittal of rejected report <input type="checkbox"/> Request for Reissuance. See eligibility criteria. (no fee) DSL# _____ Expiration date _____ <input checked="" type="checkbox"/> LWI shows wetlands or waters on parcel Wetland ID code ARC-13	
DSL Reviewer: <u>DE</u>		Fee Paid Date: ___/___/___	
Date Delineation Received: <u>12/11/2020</u>		Scanned: <input type="checkbox"/> Electronic: <input checked="" type="checkbox"/>	
		DSL WD # <u>2020-0667</u>	
		DSL App. # _____	

March 2018

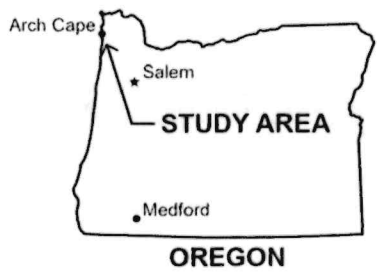
Agenda Item #12.

Page 334

Plot Date/Time: 12/11/2020 12:34 PM
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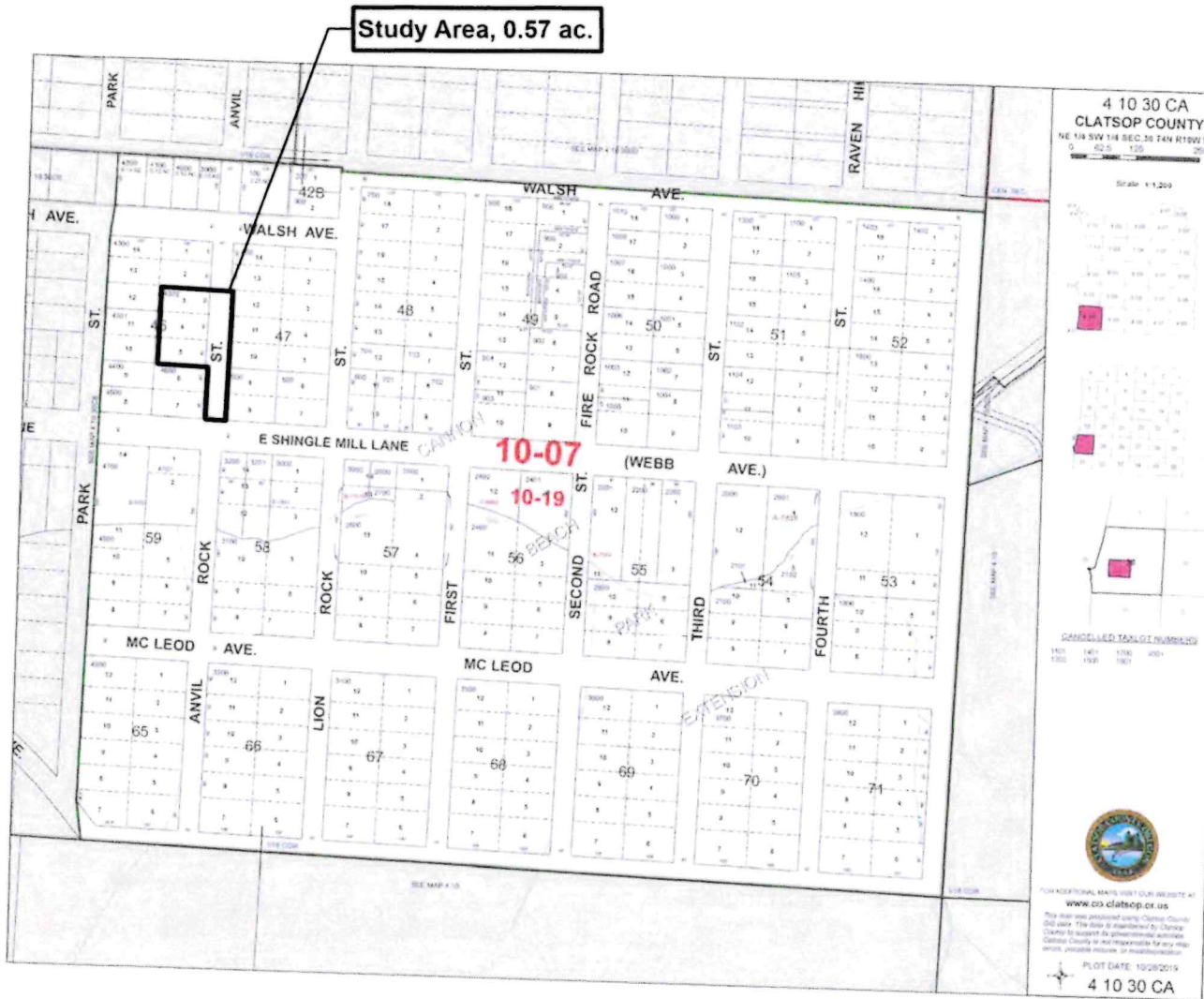
SOURCE: USGS 7.5' TOPO MAP FOR ARCH CAPE, OR.



SCALE: 1" = 2,000'



PREPARED FOR: CTS REMODEL.



4 10 30 CA
CLATSOP COUNTY
NE 1/4 SW 1/4 SEC. 30 T4N R15W W1W
S 10 40 30 2019

Scale 1"=1,200'

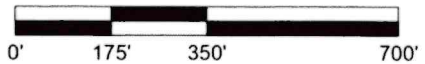
CANCELLED TAX LOT NUMBERS
1501 1502 1503 1504 1505 1506 1507 1508 1509 1510 1511 1512 1513 1514 1515 1516 1517 1518 1519 1520 1521 1522 1523 1524 1525 1526 1527 1528 1529 1530 1531 1532 1533 1534 1535 1536 1537 1538 1539 1540 1541 1542 1543 1544 1545 1546 1547 1548 1549 1550 1551 1552 1553 1554 1555 1556 1557 1558 1559 1560 1561 1562 1563 1564 1565 1566 1567 1568 1569 1570 1571 1572 1573 1574 1575 1576 1577 1578 1579 1580 1581 1582 1583 1584 1585 1586 1587 1588 1589 1590 1591 1592 1593 1594 1595 1596 1597 1598 1599 1600 1601 1602 1603 1604 1605 1606 1607 1608 1609 1610 1611 1612 1613 1614 1615 1616 1617 1618 1619 1620 1621 1622 1623 1624 1625 1626 1627 1628 1629 1630 1631 1632 1633 1634 1635 1636 1637 1638 1639 1640 1641 1642 1643 1644 1645 1646 1647 1648 1649 1650 1651 1652 1653 1654 1655 1656 1657 1658 1659 1660 1661 1662 1663 1664 1665 1666 1667 1668 1669 1670 1671 1672 1673 1674 1675 1676 1677 1678 1679 1680 1681 1682 1683 1684 1685 1686 1687 1688 1689 1690 1691 1692 1693 1694 1695 1696 1697 1698 1699 1700 1701 1702 1703 1704 1705 1706 1707 1708 1709 1710 1711 1712 1713 1714 1715 1716 1717 1718 1719 1720 1721 1722 1723 1724 1725 1726 1727 1728 1729 1730 1731 1732 1733 1734 1735 1736 1737 1738 1739 1740 1741 1742 1743 1744 1745 1746 1747 1748 1749 1750 1751 1752 1753 1754 1755 1756 1757 1758 1759 1760 1761 1762 1763 1764 1765 1766 1767 1768 1769 1770 1771 1772 1773 1774 1775 1776 1777 1778 1779 1780 1781 1782 1783 1784 1785 1786 1787 1788 1789 1790 1791 1792 1793 1794 1795 1796 1797 1798 1799 1800 1801 1802 1803 1804 1805 1806 1807 1808 1809 1810 1811 1812 1813 1814 1815 1816 1817 1818 1819 1820 1821 1822 1823 1824 1825 1826 1827 1828 1829 1830 1831 1832 1833 1834 1835 1836 1837 1838 1839 1840 1841 1842 1843 1844 1845 1846 1847 1848 1849 1850 1851 1852 1853 1854 1855 1856 1857 1858 1859 1860 1861 1862 1863 1864 1865 1866 1867 1868 1869 1870 1871 1872 1873 1874 1875 1876 1877 1878 1879 1880 1881 1882 1883 1884 1885 1886 1887 1888 1889 1890 1891 1892 1893 1894 1895 1896 1897 1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910 1911 1912 1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000

FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.clatsop.or.us
This map was prepared using Clatsop County GIS data. The data is maintained by Clatsop County to support its governmental activities. Clatsop County is not responsible for any errors, omissions, inaccuracies, or misinterpretations.
PLOT DATE: 10/28/2019
4 10 30 CA

SOURCE: ORMMap (2020).



SCALE: 1" = 350'

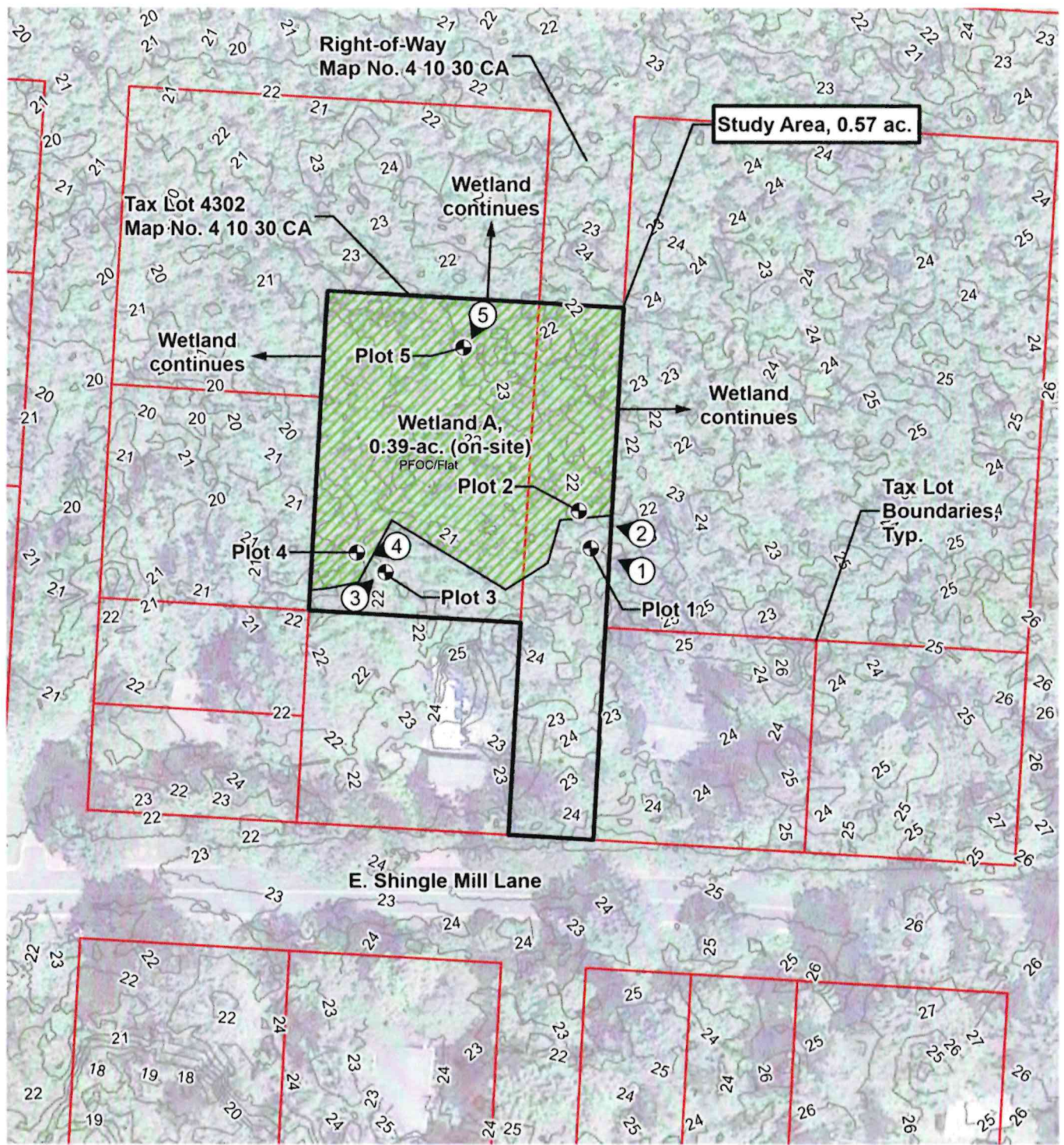


PREPARED FOR: CTS REMODEL.



TAX LOT MAP 4 10 30 CA
WETLAND DELINEATION FOR TAX LOT 4302
ARCH CAPE, CLATSOP COUNTY, OREGON

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Legend

- Plot 1 Data Plot Locations
- Ground Level Photograph Locations
- Wetland A, 0.39-ac.

Sample plots, wetland boundaries, and photo points were mapped using a Trimble Geo7X handheld GPS unit. All features collected achieved submeter accuracy after post-processing. Study area boundaries based on tax lot boundaries and aerial photo interpretation (+/-1 m est. accuracy).

DSL WD # 2020-0667
Approval Issued 4/1/2021
Approval Expires 4/1/2026



SCALE: 1" = 70'



PREPARED FOR: CTS REMODEL.



DELINEATION MAP
 WETLAND DELINEATION FOR TAX LOT 4302
 ARCH CAPE, CLATSOP COUNTY, OREGON

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

July 27, 2022

Agenda Title: Behavioral Health Resource Network Grant
Category: Business Agenda
Presented By: Jill Quackenbush, Deputy Public Health Director

Issue Before the Commission: To enter into a Memorandum of Understanding between Clatsop County, Clatsop Behavioral Health Care, Clatsop Community Action, Helping Hands Re-Entry and Outreach, Providence Seaside Foundation, Iron Tribe Network, and Morrison Child & Family Services to establish the Clatsop Behavioral Health Resource Network (“the BHRN”).

Informational Summary: Clatsop County Public Health along with community partners including: Clatsop Behavioral Health Care, Clatsop Community Action, Helping Hands Re-Entry and Outreach, Providence Seaside Foundation, Iron Tribe Network, and Morrison Child & Family Services were awarded a BHRN grant in an amount up to \$6,191,935.26 in this biennium. This is in partnership with OHA and is a health-based approach to substance use and overdose prevention as part of Measure 110 Drug Addiction Treatment and Recovery Act. The grant applications were reviewed by an Oversight and Accountability Council (OAC). Clatsop County, along with these partners, were awarded the funds based on the services.

The role of the County in this MOU will include the ongoing work provided by the Public Health department in the area of harm reduction services which includes informing and educating the community. Currently, Public Health implements a weekly Syringe Service Program (SSP) in Astoria, Seaside and Warrenton. The SSP distributes sterile needles on a one-for-one exchange basis, provides sharps containers for safe disposal, and offers community resource information and recovery resources. In addition, in partnership with Public Health’s Overdose Prevention Program, Harm Reduction provides Naloxone product and training to those who utilize our SSP as well as community members, businesses, and law enforcement.

In addition to the harm reduction services provided by Public Health, Clatsop County has included in the grant request the purchase of an automated medication dispensing system which will enable safe and efficient medication assisted treatment (MAT) services for jail inmates

with opioid use disorder. This service is shown to reduce jail recidivism and assist with treatment efficacy.

Fiscal Impact:

Contingent upon signing the MOU, the 2022 – 2023 FY impact would be approximately \$268,000 which would be offset by BHRN grant revenue. Remaining grant revenues would be included in the 2023 – 2024 FY budget process.

Requested Action:

Approve the MOU between Clatsop County, Clatsop Behavioral Health Care, Clatsop Community Action, Helping Hands Re-Entry and Outreach, Providence Seaside Foundation, Iron Tribe Network, and Morrison Child & Family Services to establish the Clatsop Behavioral Health Resource Network (“the BHRN”) and authorize the County Manager to sign along with any amendments.

Attachment List

- A. MOU - CLATSOP BEHAVIORAL HEALTH RESOURCE NETWORK (“the BHRN”)
- B. Clatsop County Proposed BHRN Budget

MEMORANDUM OF UNDERSTANDING (MOU)
CLATSOP BEHAVIORAL HEALTH RESOURCE NETWORK (“the BHRN”)

This Memorandum of Understanding (MOU) is made by and between the following signatories of this MOU (later referred to as “signatories”) in establishing the BHRN:

1. Clatsop Behavioral Healthcare
2. Clatsop County Department of Public Health
3. Clatsop Community Action
4. Helping Hands Reentry Outreach Centers
5. Providence Seaside Hospital Foundation
6. Morrison Child and Family Services
7. Iron Tribe Network

RECITALS

1. The signatories have been awarded funding under Ballot Measure 110 (2020), SB 755 (2021), and the rules developed under Oregon Administrative Rule (OAR) 944 Division 001.
2. The signatories to this MOU wish to meaningfully engage with other signatories to serve people in *Clatsop* County and to support the implementation of Ballot Measure 110 (2020), SB 755 (2021), and OAR 944 Division 001. The signatories enter this MOU to memorialize their understanding of the strategic partnership to accomplish this.

AGREEMENT

Signatories agree:

1. **PURPOSE.** This MOU memorializes the signatories’ framework for engaging in the required activities described in Ballot Measure 110 (2020), SB 755 (2021), OAR 944 Division 001, and their respective funding agreements with the State of Oregon, Oregon Health Authority (“OHA”). It provides the framework under which the signatories will coordinate services to collectively provide all required services as a BHRN.
2. **AUTHORITY.** Each signatory to this MOU represents it is duly authorized to participate in the activities described in this MOU under all applicable local, state, and federal laws, rules, policies, and executive actions. Each signatory further represents as follows:
 - 2.1. No signatory is an agent or representative of any other. No signatory has the right or authority to incur or create any obligation for or bind any other signatory in any way. This MOU does not grant any signatory authority to make any statements, representations, or commitments of any kind, or take any action binding on OHA or any other signatory.
 - 2.2. Each signatory is responsible for verifying and has verified that its participation in the activities described in this MOU does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency; and that its participation does not and will not result in the

breach of, or constitute a default or require any consent under, any other agreement or instrument to which it is party or by which it may be bound or affected.

3. **EFFECTIVE DATE AND DURATION; SIGNATORIES.** This MOU is effective when two or more signatories has each executed this MOU. This MOU remains in effect, subject to at least one review per year by all signatories, until all signatories have withdrawn. A signatory may withdraw from the MOU on written notice to OHA and other then-current signatories. Additional signatories may be added to the MOU upon award of grant to other entities and consent of other then-current signatories.
4. **RESPONSIBILITIES.** While each signatory anticipates it will be able to participate as described in this MOU, it is not responsible or liable to any other signatory for any gaps in its participation under this MOU.

Signatories acknowledge that there may be consequences under their respective funding agreements with OHA/OAC for failure to comply with those funding agreements, or failure to refer between or collaborate with other signatories or recipients of OAC funds, including but not limited to failure to comply with this MOU.

4.1. Each signatory will:

- 4.1.1. Establish and maintain a funding agreement with OHA for funds under Ballot Measure 110 (2020), SB 755 (2021), and OAR 944 Division 001.
 - 4.1.2. Comply with laws, rules, and policies applicable to its security practices and sharing of information about its practices, and disclosure of confidential information (including information protected by law) and information that is otherwise held as sensitive.
 - 4.1.3. Protect confidential and sensitive information it receives from any other signatory in accordance with applicable law, rule, and policy, and hold all information not verified or received as public information with the presumption that it is confidential or otherwise sensitive.
 - 4.1.4. Not disclose to other signatories confidential or sensitive information received from a third party without the express consent of the owner or subject of the information, unless permitted or required by law.
 - 4.1.5. Meet at least once every three months, to review how each signatory is working with the other signatories, identify best practices and opportunities for development, and discuss strategies to effectively serve persons with substance use issues and disorders within the counties to be served.
 - 4.1.6. Notify other signatories if it is unable or unwilling to meaningfully participate in the activities described in this MOU.
 - 4.1.7. Operate in a manner that honors tribal sovereignty and self-determination.
- 4.2. **Required roles.** The following shall be responsible for each required component of this BHRN (OAR 944-001-0020(3)), and signatories shall seek to refer clients to other signatory entities as appropriate:

- 4.2.1. Clatsop Behavioral Healthcare provides screening by Addiction Peer Support Specialist, Certified Recovery Mentor, Addiction Peer Wellness Specialist, or other addiction professional 24 hours a day, seven days a week, every calendar day of the year to each individual upon first contact. During business hours screenings will be conducted at a CBH clinic. After hours the CBH Crisis Program will conduct telephone screenings and/or in-person screenings as circumstances require.
- 4.2.2 Clatsop Behavioral Healthcare provides comprehensive behavioral health needs assessment, including a substance use disorder assessment by a certified alcohol and drug counselor or other credentialed addiction treatment professional within 24 hours of an individual's request for assessment.
- 4.2.3 Clatsop Behavioral Healthcare (CBH), Morrison Child and Family Services, and Providence Seaside Hospital Foundation provide peer-delivered outreach, supports, mentoring, and recovery services.

CBH has a team of six Recovery Mentors who actively engage in outreach services and supports to perspective and established clients. Lived experience Recovery Mentors provide case management, recovery services and peer-delivered outreach supportive services to anyone seeking assistance to address their substance use.

The Morrison Child and Family Services peer specialist will engage children and families who are referred to the BHRN for SUDs services.

Providence Seaside Hospital Foundation provides peer-delivered outreach, supports, mentoring, and recovery services through our Better Outcomes thru Bridges (BOB) program. BOB Outreach and Peer Support Specialists deliver peer and community outreach services and supports to people within the Clatsop County communities. Peers use their own lived behavioral health experiences, whether it be from previous homelessness, mental health or substance use issues, to help others that they work with. Outreach Specialists bring experience with case management to compliment the work of the peer in serving our most vulnerable community members. Using our Collaborative Community Approach Model, we focus working with our community partners by regular communication, co-locating services to serve our community members with needs and joint street outreach events.

- 4.2.4 Clatsop Behavioral Healthcare (CBH) and Clatsop County Department of Public Health provides harm reduction services, information, and education.

The CBH Medically Assisted Treatment program is nonjudgmental in nature, and all are welcome and accepted, with community outreach to people of color to include Asian-Island Pacific, Latinx and Native American populations. At the initial screening individuals are paired up with a certified peer recovery mentor. To increase consistent contact and increased safety the program provides cell phones, Fentanyl test strips, and Narcan. The MAT program uses a health-based approach to treat both opiate and alcohol SUDs. Following the initial assessment, if the individual needs admission to detox and residential treatment, the team helps facilitate the process. The treatment

goal is 24-48 hours to see an Independently Licensed Medical Provider (ILP). The program maintains a harm reduction model which provides weekly therapy, weekly treatment groups and UAs as required or needed to support recovery.

Clatsop County Department of Public Health will provide harm reduction services, information, and education. Public Health implements a weekly Syringe Service Program in three cities. The SSP distributes sterile needles on a one-for-one exchange basis, provides sharps containers for safe disposal, and offers community resource information and recovery resources. Other harm reduction supplies such as alcohol swabs, condoms, and lube are made available. In addition, in partnership with Public Health's Overdose Prevention Program, Harm Reduction provides Naloxone product and training to those who utilize our SSP as well as community members, businesses, and law enforcement. In addition to these services, Clatsop County has included the purchase of an automated medication dispensing system, which will enable safe and efficient MAT services for jail inmates with opioid use disorder. Providing this service will reduce jail recidivism and assist with treatment efficacy.

4.2.5 Clatsop Behavioral Healthcare provides low-barrier substance use disorder treatment and addiction recovery services as described in OAR 944-001-0020(3)(e). As the sole provider of these services for the Clatsop BHRN, CBH will accept all referrals from BHRN providers. CBH will conduct screenings and assessments to determine the type of SUD services and supports that will best meet an individual's needs, readiness, and inclination to engage.

4.2.6 Clatsop Behavioral Healthcare (CBH), Clatsop Community Action (CCA), Helping Hands Reentry Outreach Center (HHROC), and Iron Tribe Network (ITN) provide flexible and low barrier housing for individuals who use substances that cause harm or have a substance use disorder.

CBH provides low barrier and recovery oriented transitional housing for singles, couples and transgender individuals. CBH also has a SUD permanent supportive housing program for single mothers in recovery and reunited with their children

CCA is the Clatsop Community Action program that is responsible for providing Emergency housing and emergency food programs. They manage the Coordinated Entry Program and oversee the county rental assistance subsidy programming. They provide housing case managers that coordinate housing services for the majority of affordable housing in Clatsop County.

HHROC provides emergency shelter and transitional housing programs for those in recovery. They have the majority of shelter beds in Clatsop County and provide employment opportunities for many of their participants. In Clatsop County, HHROC provides drop-in navigation services including a low-barrier emergency shelter for up to 30 days. After those 30 days, HHROC offers the opportunity to enter a reentry program with a goal of pursuing sustainable housing. HHROC provides safe, trauma-informed emergency shelter. We expect to house 150 individuals annually in Clatsop County through the drop-in navigation center.

ITN Housing is a co-ed environment, with single room occupancy that is good for families, singles, same-sex couples and or transgender individuals. As they do not have to share rooms, every individual and family has a private living space. ITN community housing is safe, stable, and accountable housing. We expect to house at least 10-12 families or individuals annually. In our housing they will have a plan to achieve self-identified goals during their stay. Housing expectance will be 6-9 months, while working with BHRN partners for SUD or BH treatment.

4.2.7 Clatsop Community Action (CCA) and Clatsop Behavioral Healthcare (CBH) provide rental assistance:

CCA will provide rapid rehousing, eviction prevention rental assistance, and tenant-based vouchers to clients experiencing SUD and/or clients in need of mental health services. The actual number of vouchers provided will vary based on rent prices and the ability to find and secure affordable housing for the clients enrolled. All clients will receive services such as, but not limited to coordinated entry, rental assistance and arrears, deposit assistance, application fees, information and referral and case management.

CBH provides limited rental assistance, deposit assistance, application fees, and some assistance with providing housing items, such as beds, cooking utensils, towels/linens, and limited furniture items. CBH engages in remediation steps for those experiencing relapse in abstinence-only housing programs. CBH also provides tents, sleeping bags, backpacks, cell phones, and Narcan for those choosing to camp while in the pre-contemplative stage of recovery.

4.2.8 The providers in the Clatsop BHRN have established relationships with city, county, and state agencies to ensure coordination with social services, child welfare, and law enforcement/corrections. This includes coordination with local agencies providing services to those experiencing abuse and domestic violence. The Clatsop County Department of Public Health provides: maternal and child health programs, vaccines, communicable disease testing, reproductive health services, health promotion, and prevention programs.

As a BHRN partner, Clatsop County will participate in all network meetings and events to keep apprised of current community resources and referral pathways. Public Health has a MOU with Clatsop Behavioral Healthcare to formalize our partnership with their Prime Plus and other Peers. The Peers assist with Naloxone distribution and training and referrals to treatment and other community services. They are the key to engaging our Harm Reduction participants. We work closely with Clatsop Community Action and Helping Hands Reentry Outreach Centers for housing and shelter options. A public health nurse attends each syringe service program and provides critical health screening and referral. Finally, participants at the syringe service program are provided a list of community resources and contact information. Participation in the BHRN partnership will ensure this is kept up to date.

HHROC provides a drop-in navigation center offering emergency shelter and an opportunity to go into a long-term reentry program with wrap-around services to

pursue and enter sustainable housing. In the reentry program, participants can pursue continuing education including job training and attaining a GED, obtain health insurance through Oregon Health, and obtain crucial legal documents such as government ID that will help facilitate obtaining employment, housing, or both. Wrap-around services for parents, domestic violence survivors, and other counseling needs are available in the reentry program. After a period in the Reentry Program, participants can pursue employment with HHROC, or through the wrap-around services provided.

4.2.9 All seven BHRN providers will attempt to locate expungement services or referrals to attorneys who will provide pro-bono expungement services to facilitate housing, employment, and receipt of other recovery services since there is not an Oregon Legal Aid program serving Clatsop County. Clatsop County has made available to the BHRN providers information on how request a “Set Aside” with the Clatsop Municipal Court, which will assist in expungement services.

4.2.10. Clatsop Behavioral Healthcare will provide Supported Employment Services (SES) from the established SES program. BHRN grant funding will allow the hiring of a supported employment specialist who will provide services to referred BRHN clients with or without insurance benefits.

4.2.11. The Clatsop BHRN providers *will assess* the need for, and provision of, mobile or virtual outreach services in accordance with ORS 430.389(2)(d)(E).] Each BHRN provider will screen and assess referred individuals to determine the services and supports that the individual wants and needs to successfully pursue and engage in their own recovery. This will include mobile and virtual outreach services provided by each provider.

4.3 **Workflow.** Signatories share the goal of ensuring uninterrupted and seamless service delivery, and adopt the following processes to accomplish that goal:

The Clatsop BHRN providers will utilize clear and responsive communication within their own programming and between providers. Whether in the referral process or in on-going service coordination among providers, there will be point of contact staff at each agency assigned to manage the workflows of referrals and client coordination. Quarterly BHRN meetings will review the workflow process and address any concerns or issues that interrupt seamless service delivery.

For example, when a client has entered services with a BHRN provider, CCA would receive a referral so that we could start the coordinated entry process. They would then begin helping the client attain transitional housing opportunities and begin offering monthly case management. After finding transitional housing, CCA would provide the rent assistance voucher and offer deposit assistance, if needed.

4.4 **Referrals.** Each signatory acknowledges that tightly linked referral pathways are necessary, and shall implement the following methods for transitioning and

referring clients between signatory entities:

- 4.4.1.1. Obtain valid consent from clients prior to sharing their information with other signatories or providers, whenever required by law.
- 4.4.1.2. Referrals will be sent to point of contact staff for each BHRN partner. The receiving provider will acknowledge the receipt of the referral and following a review of the referral communicate the next steps and timeline associated with the identified service and/or supports being requested. The referring provider will inform the client of the referral status and assist in next steps to receive the referred services and supports. A warm hand-off between providers will assure the client is properly connected to the new provider and their associated services.

For example, referrals for the Providence BOB program come internally from within the Providence organization through social work when patients are admitted to the hospital. The BOB program also receives referrals from community partners through secure email or telephone call. If there is a community need, the BOB Peer Support and Outreach Specialists will respond by attempting to find the person within the community wherever they are at. Because we serve the entire community to some degree, whether they are Providence patients or not, we have the flexibility to assist a variety of vulnerable people with needs.

HHROC has an extensive network of community partners who provide referrals to their facilities in Clatsop County. To be a referral partner for HHROC, individuals from the organization receive training in having trauma-informed interactions with individuals experiencing homelessness. When a referral partner believes someone may be a good fit, they do a COVID-19 screening, and ask a series of questions to assess if HHROC is the best shelter opportunity for that individual. Once that is assessed, the community partner contacts the facility that someone is being referred to their shelter. When the individual or family arrives, HHROC begins the intake process.

4.5 Minimum staffing. To meet the minimum staffing required under OAR 944-001-0020(4),

4.5.1. Clatsop Behavioral healthcare shall maintain a certified alcohol and drug counselor or other credentialed addiction treatment professional on their staff; CBH currently has six CADC clinicians and BHRN funding will provide one additional CADC clinician.

4.5.2. Clatsop Behavioral Healthcare shall maintain a case manager on their staff; CBH currently has ten case management positions;

Providence shall maintain a case manager on its staff;

Clatsop Community Action will be hiring 2 Housing Case Managers for the BHRN;

4.5.3 Clatsop Behavioral Healthcare shall maintain a Certified Addiction Peer Support or Peer Wellness Specialist or certified recovery mentors on their staff; CBH currently has five certified recovery mentors;

Providence shall maintain a Certified Addiction Peer Support or Peer Wellness Specialist or certified recovery mentors on its staff; Providence currently has 2 Peer Support Specialists

- 4.5.4 Clatsop Behavioral Healthcare shall maintain an Addiction Peer Support and Addiction Peer Wellness Specialist Supervisor or Peer Delivered Services Supervisor on their staff. CBH currently has an Addiction Peer Support position that will become an Addition Peer Wellness Specialist Supervisor with BHRN grant funding.

4.6 Service capacity monitoring:

Each provider in the Clatsop BHRN will monitor their own service capacity and will initiate a waiting list if they reach capacity. Information on each provider’s service capacity will be discussed at quarterly BRHN meetings to see if additional or alternative services can be utilized to address the limitation in service capacity of any one provider. If limitations in service capacity cannot be addressed within the Clatsop BHRN, the providers point of contact for OHA/OAC will contact the OHA BHRN coordinator to discuss possible options to expand their program’s capacity.

For example, the Clatsop County Public Health Harm Reduction Program compiles weekly data on service recipients. We are currently initiating a comprehensive audit of our screening and data collection materials to ensure we are collecting the appropriate and correct information. As part of the BHRN, Public Health will contract with a data analyst to identify program efficiencies and challenges, including monitoring capacity. In addition, meetings with community stakeholders allow us to stay up to date on service capacity.

4.7 Verification:

Each Clatsop BHRN provider has policies and procedures in place for ensuring that consent to services is obtained by all participants engaging in their programming. Who and how consent is obtained varies by provider and verification of consent will be each provider’s responsibility. Each provider will maintain their own record of those screened for services and will verify the completion of screenings via their existing quality assurance process.

4.8 Communications:

- 4.8.1. The Clatsop BHRN will direct all media or public requests addressed to the BHRN through the Clatsop County Public Information Officer (PIO). The Clatsop County PIO will contact specific BHRN providers for information related to the request that falls in their program area. While the County will be taking the lead on media communications, all providers would like to be able to have input and be given advance notice, if possible, on media opportunities. Requests for information will be shared and discussed at the quarterly BHRN meetings.

- 4.8.2 Each signatory shall designate in writing to all other signatories and to OHA an authorized representative who will be the primary point of contact and will coordinate and communicate with other signatories. The primary point of contact may delegate coordination and communication in writing. A signatory may change

its authorized representative by written notice to other then-current signatories and OHA.

4.9 **Reporting.** Each Clatsop BHRN provider will be responsible for meeting the reporting requirements as established by the OHA/OAC BHRN coordinator. Collecting and maintaining data will be a function of each provider’s administration and will be done in the manner that best matches their program area. Reporting metrics will be shared discussed at each quarterly BHRN meeting.

5.CHANGES TO THIS MOU. Signatories may agree from time to time to change this MOU. Any change must be agreed upon in writing by all then-current signatories, with a copy to be sent to OHA.

6. INTENDED BENEFICIARIES. Signatories who have executed this MOU are the only parties to this MOU. Nothing in this MOU provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to any third party, including any natural person or group of persons.

7. NO OBLIGATION AND NO TRANSFER OF RIGHTS. This MOU is not an obligation or commitment of funds for a basis of transfer of funds. This MOU does not create any contractual obligation or commitment by any signatory or other person. This MOU does not create, transfer, or grant any rights in data, works of authorship, or other intellectual property.

8. COSTS AND EXPENDITURES. Each signatory’s expenditures in support of the activities described in this MOU are subject to its respective budget processes and approvals.

9. DISPUTE RESOLUTION. Disagreements between two or more signatories arising under or relating to this MOU will be resolved by consultation between them, and as necessary referral of the dispute to appropriate management officials of the signatories. If the dispute is unable to be resolved, which may include a change to this MOU, a signatory may withdraw its participation in accordance with this MOU. Signatories acknowledge that failure to maintain an MOU with other participants in the BHRN may have consequences under OAR 944 Div 001 or their agreement(s) with the state of Oregon.

10.COUNTERPARTS. This MOU may be executed in several counterparts, all of which when taken together constitute one document, notwithstanding that each signatory has not signed the same counterpart. Each copy of the MOU so executed constitutes an original. An electronic signature is deemed to be an original signature.

11. SIGNATURES. Each signatory represents that the individual signing below on its behalf is authorized to act on its behalf, and the individual named below as the signatory’s point of contact is authorized to act on behalf of signatory as described in this MOU.

Name of Signatory 1: Clatsop Behavioral Healthcare

Signature & Date _____

Printed Name and title: Amy Baker- Executive Director

Point of Contact: Shyra Merila - Clinical Operations Officer

Mailing Address: 65 North Highway 101 Suite 204, Warrenton OR 97146

Telephone and email 503-325-5722; shyram@clatsopbh.org

Name of Signatory 2: Clatsop County Department of Public Health

Signature & Date _____

Printed Name and title: Don Bohn, County Manager

Point of Contact: Jill Quackenbush, CCDPH Deputy Director

Mailing Address: 820 Exchange St., Suite 100

Telephone and email (503) 325-8500 x 1989; jquackenbush@co.clatsop.or.us

Name of Signatory 3: Clatsop Community Action

Signature & Date _____

Printed Name and title: Viviana Matthews – Executive Director

Point of Contact: Viviana Mathews – Executive Director

Mailing Address: 364 9th St, Astoria OR 97103

Telephone and email: 971-308-1031; vmatthews@ccaservices.org

Name of Signatory 4: Helping Hands Reentry Outreach Centers

Signature & Date _____

Printed Name and title: Alan Evans – Executive Director

Point of Contact: Mike Davis – Deputy Director

Mailing Address _____

Telephone and email: (503)265-9046: m.davis@helpinghandsreentry.org

Name of Signatory 5: Providence Seaside Hospital Foundation

Signature & Date _____

Printed Name and title: Robin Henderson Chief Executive, Behavioral Health

Point of Contact: Becky Wilkinson – **Outreach program Manager**

Mailing Address: 4400 NE Halsey St Portland, OR 97213

Telephone and email: rebecca.wilkinson2@providence.org.

Name of Signatory 6: Iron Tribe Network

Signature & Date _____

Printed Name and title: Shawn Bower – Executive Director

Point of Contact: _____

Mailing Address _____

Telephone and email _____

Name of Signatory 7: Morrison Child and Family Services

Signature & Date _____

Printed Name and title _____

Point of Contact: _____

Mailing Address _____

Telephone and email _____

Clatsop County Public Health Budget for Behavioral Health Resource Network Single Entity

Provide an itemized budget for costs between execution of the Grant and July 31 2023, noting any costs that that are one-time only for Start-Up purposes, and will not be on-going.																				
Please detail your intent to pay equitable and living wages to all staff working on the grant.																				
	Jul 2022	Aug 2022	Sep 2022	Oct 2022	Nov 2022	Dec 2022	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Jun 2023	Jul 2023	Aug 2023	Sep 2023	Oct 2023	Nov 2023	Dec 2023	Total	
Personnel Costs:																				
Health Promotion Specialist II (incl benefits) - KC	2,673.69	2,673.69	2,673.69	2,673.69	2,673.69	2,673.69	2,673.69	2,673.69	2,673.69	2,673.69	2,673.69	2,673.69	2,933.68	2,933.68	2,933.68	2,933.68	2,933.68	2,933.68	2,933.68	49,686.41
Deputy Director (incl benefits) - JQ	2,311.49	2,311.49	2,311.49	2,311.49	2,311.49	2,311.49	2,311.49	2,311.49	2,311.49	2,311.49	2,311.49	2,311.49	2,536.42	2,536.42	2,536.42	2,536.42	2,536.42	2,536.42	2,536.42	42,956.37
Staff Assistant (incl benefits) - JK	347.59	347.59	347.59	347.59	347.59	347.59	347.59	347.59	347.59	347.59	347.59	347.59	381.40	381.40	381.40	381.40	381.40	381.40	381.40	6,459.44
Accountant II (incl benefits) - SH	387.67	387.67	387.67	387.67	387.67	387.67	387.67	387.67	387.67	387.67	407.09	407.09	425.41	425.41	425.41	425.41	425.41	425.41	425.41	7,243.38
Program Staff Training Costs:																				
Ongoing training needs	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	5,400.00
Services and Supplies Costs:																				
Contracted Data Analyst	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	1,137.50	20,475.00
Syringes	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	3,183.08	57,295.38
Sharps/equivalent containers	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	747.19	13,449.33
Office Supplies	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	3,600.00
Mileage/travel	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	3,600.00
Capital Outlay Costs:																				
BD Pyxis MedStation ES			105,000.00																	105,000.00
Sub-Total	11,488.21	11,488.21	116,488.21	11,488.21	11,488.21	11,488.21	11,488.21	11,488.21	11,488.21	11,488.21	11,507.62	11,507.62	12,044.67	12,044.67	12,044.67	12,044.67	12,044.67	12,044.67	12,044.67	315,165.31
Indirect Expenses (10%)	1,148.82	1,148.82	11,648.82	1,148.82	1,148.82	1,148.82	1,148.82	1,148.82	1,148.82	1,148.82	1,150.76	1,150.76	1,204.47	1,204.47	1,204.47	1,204.47	1,204.47	1,204.47	1,204.47	31,516.53
Total:	12,637.03	12,637.03	128,137.03	12,637.03	12,637.03	12,637.03	12,637.03	12,637.03	12,637.03	12,637.03	12,658.38	12,658.38	13,249.13	13,249.13	13,249.13	13,249.13	13,249.13	13,249.13	13,249.13	346,681.84