



Washington County
Department of Land Use and Transportation
Planning and Development Services
155 N First Ave, Suite 350
Hillsboro, OR 97124

NOTICE OF DECISION OF THE HEARINGS OFFICER

PROCEDURE TYPE: III

CPO: 5

COMMUNITY PLAN:

Washington County Comprehensive
Framework Plan for the Urban Area

LAND USE DISTRICT:

Future Development 20-acre (FD-20)

PROPERTY DESCRIPTION:

ASSESSOR MAP#: 3S102B

TAX LOT#: 000302, 000303, 000309,
000310, 000311

SITE SIZE: 10.78 acres

ADDRESS: 9675, 9775, 9779 and 9805 SW
Day Road

CASEFILE: L2400001-D(IND)

APPLICANT:

Emrick Investments LLC

Attn: Sean Emrick

PO Box 26439

Eugene, OR 972402

APPLICANT'S REPRESENTATIVE:

AKS Engineering

Attn: Chris Goodell & Marie Holladay

12695 SW Herman Road, #100

Tualatin, OR 97062

OWNER:

Emrick Investments LLC

Attn: Sean Emrick

PO Box 26439

Eugene, OR 972402

LOCATION:

On the north side of SW Day Road,
approximately 625 feet west of the intersection
with SW Boones Ferry Road.

PROPOSED DEVELOPMENT ACTION: Development Review for the expansion of an existing
Contractor's Establishment in the FD-20 District approved through Casefile L1400431-D(IND).

DATE OF DECISION:

July 16, 2024

A summary of the decision of the Hearings Officer and supplemental findings are attached.

This decision may be appealed to the Land Use Board of Appeals (LUBA) by filing a notice of Intent to Appeal with LUBA within 21 days of the date of this decision. Contact your attorney if you have any questions in this regard.

For further information contact the Land Use Board of Appeals at 503-373-1265.

The complete case, including Notice of Decision, Application, Staff Report, Findings and Conclusions, and Conditions of Approval, if any, are available for review at no cost at the Department of Land Use and Transportation. Copies of this material will be provided at reasonable cost.

Notice to Mortgagee, Lien Holder, Vendor or Seller: ORS Chapter 215 requires that if you receive this notice it must promptly be forwarded to the purchaser.

Notice of Decision of Hearings Officer
July 16, 2024
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CASEFILE NUMBER: L2400001-D(IND)

SUMMARY OF DECISION:

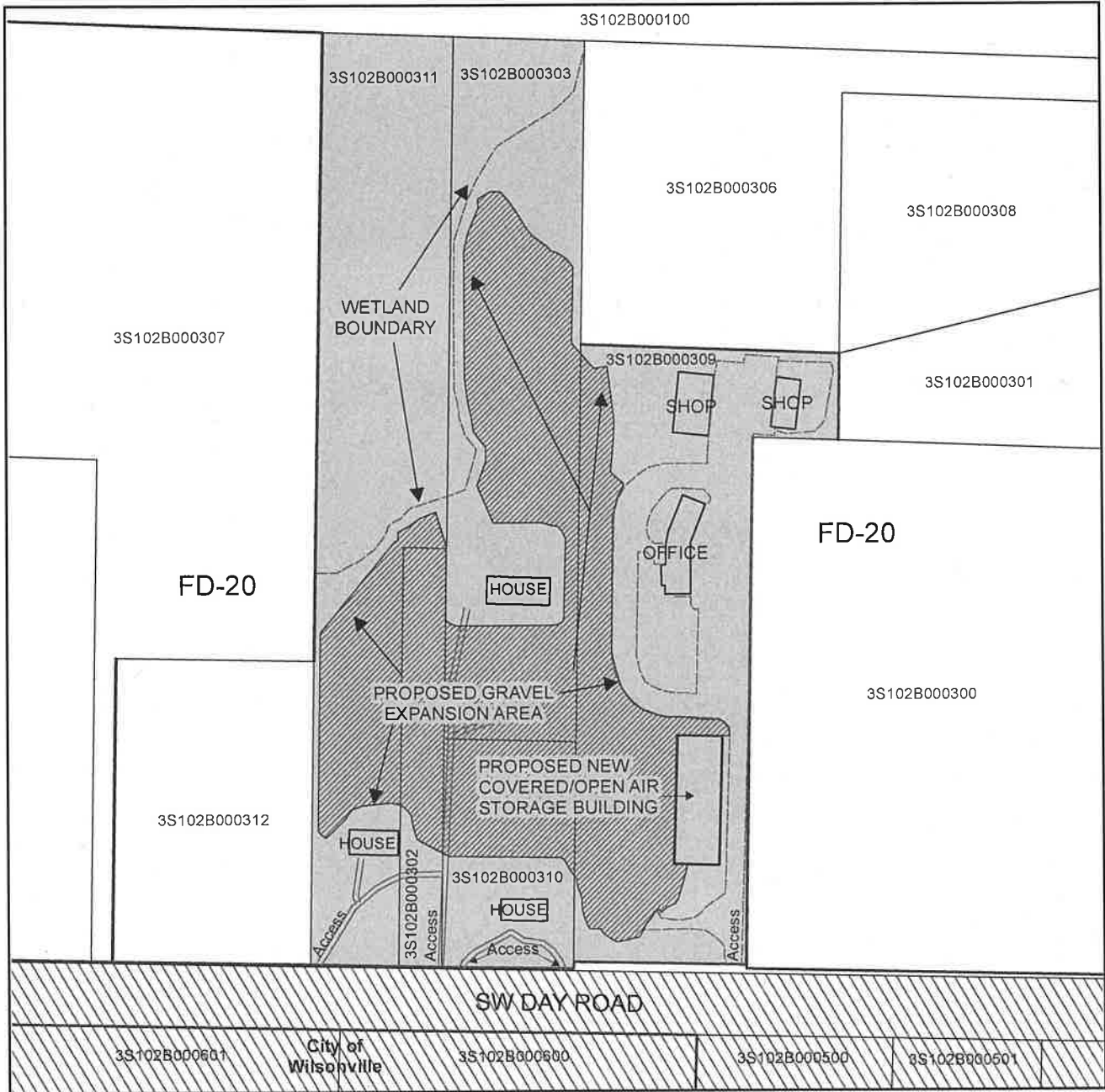
On July 16, 2024, the Washington County Hearings Officer issued a written decision (Attachment 'B') for Development Review approval for the expansion of an existing Contractor's Establishment in the FD-20 District approved through Casefile L1400431-D(IND). The development site is located on the north side of SW Day Road approximately 625 feet west of the intersection with SW Boones Ferry Road in CPO #5 and is described as Tax Lots 302, 303, 309, 310 and 311 of Assessor Map 3S1 02B W.M., Washington County, Oregon. The Hearings Officer's decision is as follows:

ORDER:

The applicant is Approved subject to Conditions of Approval set forth in Attachment B.

Attachments:

- A. Vicinity Map
- B. Hearings Officer's Findings, Conclusion and Order



↑ NORTH



AREA OF CONSIDERATION

NOT TO SCALE

SITE & SURROUNDING LAND USE DISTRICTS:

Future Development 20-Acre District (FD-20)

City of Wilsonville

REVIEW STANDARDS FROM CURRENT OR APPLICABLE ORDINANCE OR PLAN

- A. Washington County Comprehensive Plan
- B. Applicable Community Plan (See Front of Notice)
- C. Transportation System Plan
- D. Washington County Community Development Code:
 - ARTICLE I, Introduction & General Provisions
 - ARTICLE II, Procedures
 - ARTICLE III, Land Use Districts
 - ARTICLE IV, Development Standards
 - ARTICLE V, Public Facilities and Services
 - ARTICLE VI, Land Divisions & Lot Line Adjustments
 - ARTICLE VII, Public Transportation Facilities
- E. R & O 86-95 Traffic Safety Improvements
- F. ORD. NO. 738, Road Design and Construction Standards
- G. ORD.691-A, 729, 741, 746, 751, 793-A Transp. Development Tax

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

Regarding an application by Emrick Investments LLC) **FINAL ORDER**
for Development Review approval for expansion of a) **Casefile No.**
contractor's establishment at 9675, 9775, 9779, and 9805) **L2400001-D(IND)**
SW Day Road in unincorporated Washington County) **(Brown Construction)**

A. SUMMARY

1. The applicant, Emrick Investments LLC, requests Development Review approval for expansion of an existing contractor's establishment on a 3.58-acre parcel located at 9675, 9775, 9779, and 9805 SW Day Road; also known as Tax Lots 000302, 000303, 000309, 000310, and 000311, 3S102B (the "site").

a. The site is located in unincorporated Washington County and abuts SW Day Road, which is within the boundary of the City of Wilsonville. The City of Wilsonville is also the road authority for SW Day Road. The site and surrounding properties are zoned FD-20 (Future Development, 20-acre minimum lot size).

b. In 2014, in Casefile 14-431-D(IND) (Brown Construction), the County approved a contractor's establishment on the property located at 9675 SW Day Road; also known as Tax Lot 3102B000309 (the "existing site"). Access to the existing operation was approved through Casefile L1400431-D(IND). The applicant is a concrete contractor. The existing contractor's establishment includes an industrial office building, accessory structures, looped site circulation, and natural vegetation & landscaping. The current contractor's establishment involves the storage of contractor's equipment including trucks, trailers, heavy machinery, and construction equipment. On-site storage of construction material such as rock, gravel, piping, and concrete blocks was also approved in Casefile L1400431-D(IND). The site plan does not indicate that rock or gravel stockpiles are present on Tax Lot 309. The approved site is open only to employees of the contractor and not the general public (i.e., no retail use or sales).

c. With this application the applicant intends to expand the use onto four lots to the west of the existing site: Tax Lots 3102B000302, 303, 310, and 311 (the "expansion site"). The expansion site includes an additional 7.32-acres. The applicant proposes to use the expansion site for additional outdoor storage. The applicant also proposes to construct a new 7,500 square foot covered open-air structure on the existing site to protect equipment and materials from the elements. The applicant plans for the existing site to "continue to be used to store and maintain contractor's equipment, including machinery, excavators, vehicles (e.g. trucks, trailers, and vans), tools, and materials (e.g. rock, gravel, soil, piping, concrete blocks, etc.)."

d. Three of the four lots that make up the expansion site (Lots 303, 310, and 311) contain existing single-family dwellings that will be retained. These homes are owned by the applicant and are currently rented out to employees of the company. Lastly,

Tax Lot 302 is approximately 0.55 acres and has driveway access to SW Day Road that serves the existing residence on Tax Lot 303, via an easement over Tax Lot 302. This access is planned to serve the existing and expanded contractor's establishment and as a construction entrance for construction of the proposed expansion.

e. Casefile L1400431-D(IND) approved an exception to the critical and essential service standards of Section 501-8 of the Community Development Code (the "CDC"), as urban water, sanitary sewer, and surface water management services were not presently available at the site. The hearings officer found that granting the exception for these services would not interfere with the ability to later provide these services to anticipated uses in the vicinity of the subject property, nor would granting the exception cause a danger to the public or residents in the vicinity of the subject property (Section 501-6.1). During review of this application the applicant modified its application to include an exception to the critical and essential service standards for the proposed expansion.

e. Additional basic facts about the site and surrounding land are provided in the Staff Report to the Hearings Officer dated May 16, 2024 (the "Staff Report").¹

2. Washington County Land Use Hearings Officer Joe Turner (the "hearings officer") conducted a duly noticed public hearing regarding the application. County staff recommended that the hearings officer approve the application subject to conditions included in the Staff Report. The applicant accepted the findings and conditions in the Staff Report with certain exceptions. Four persons, including representatives of the City of Wilsonville, testified orally with questions and concerns about the proposed development. Other persons testified in writing. Contested issues in this case include:

- a. Whether the City of Wilsonville received adequate notice of the application;
- b. Whether the hearings officer has jurisdiction to reconsider the County's completeness determination;
- c. Whether there are existing violations on the site and whether approval of this application will resolve any violations that may exist;
- d. Whether the proposed use is allowed in the FU-20 zone;
- e. Whether the proposed development complies with the screening and buffering requirements of the Code;
- f. Whether grading limitations are necessary to protect the wetlands and riparian areas on the site;

¹ This application was originally scheduled for April 18, 2024. A different hearings officer opened the hearing and continued this item to May 16, 2024. No testimony was offered at the initial hearing on April 18, 2024.

g. Whether the development complies with the Environmental Performance Standards of the Code;

h. Whether the application complies with the standards for an exception to the critical and essential service standards of CDC Section 501-8; and

i. Whether the applicant can be required to dedicate additional right-of-way and easements and construct frontage improvements along the site's SW Day Road frontage.

3. Based on the findings provided and/or incorporated herein, the hearings officer approves the application subject to the conditions of approval in Attachment B of this Final Order.

B. HEARING AND RECORD HIGHLIGHTS

1. Washington County Land Use Hearings Officer Joe Turner received testimony at the duly noticed public hearing about this application on May 16, 2024. At the hearing, the hearings officer received into the record and physically inspected the file maintained by the Department of Land Use and Transportation regarding the application. The hearings officer made the declarations required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts and any bias or conflicts of interest.

2. County planner Paul Schaefer summarized the Staff Report, the applicable approval criteria, and his PowerPoint presentation (*Exhibit H1*).²

a. The applicant currently owns and operates a contractor's establishment on a 3.58-acre parcel located at 9675 SW Day Road; also known as Tax Lot 000309, 3S102B. With this application the applicant proposes to expand the existing contractor's establishment onto three adjacent parcels to the west of the existing site. The applicant also proposes to construct a new covered open air structure on Tax Lot 309 for storage of equipment and materials from the elements.

b. There are wetlands and Title 13 riparian reserve areas located in the west and northwest portions of the expansion site. No impacts are proposed to these areas. However, a prior tree removal violation impacted roughly 1,700 square feet of riparian reserve area on Tax Lot 311. The applicant will be required to mitigate for that prior impact as a condition of this approval.

c. The County approved a grading permit for the existing site on May 27, 2016. The approved grading was finalized on February 7, 2019.

² The hearings officer expanded the Exhibit List that the County created for this application to include exhibits submitted at the hearing and during the open record period. A copy of the Exhibit List is included as Attachment A of this Final Order.

d. The existing site has a functioning stormwater facility. The County will review the existing stormwater facility through its grading permit review process to determine if improvements, alterations, or expansion are needed to accommodate additional runoff from the proposed expansion.

e. Tualatin Valley Fire and Rescue (“TVF&R”) submitted a service provider letter stating that fire services can be provided to the site. Public water service is not needed; TVF&R can bring water to the site if needed for fire suppression.

f. Proposed Conditions III.B.9 and VII are intended to limit future expansions of the site. Condition III.B.9 requires the applicant to provide an inventory of construction vehicles and heavy machinery stored on the site and condition VII requires additional County approval if the number of vehicles and machinery or employees increases by more than 25%.

3. Planner Marie Holladay, attorney Andrew Stamp, acoustical engineer Kerry Standlee, appeared for the applicant.

a. Ms. Holladay summarized her PowerPoint presentation (Exhibit H2) and responded to issues raised at the hearing.

i. The applicant currently operates a contractor’s establishment on the existing site. The facility generally operates Monday through Friday from 7:00 a.m. to 5:00 p.m. Approximately 15 employees work on the site and an additional 15 employees park on the site and use company vehicles or carpools to commute to job sites.

ii. With this application the applicant proposes to expand the existing contractor’s establishment onto 7.32-acres of land west of the existing site and add a covered storage structure on the existing site. The applicant will retain the existing access on Tax Lot 309 and construct a new access on Tax Lot 311. The applicant will not use the existing residential driveway on Tax Lot 302 for access to the contractor’s establishment use.

iii. The applicant will preserve the wetlands and Title 13 riparian reserve areas on the site.

iv. The proposed use will generate roughly 136 Average Daily Trips (“ADT”), based on the applicant’s traffic study, less than the 500 ADT for which the Code requires a full traffic impact analysis.

v. The expanded contractor’s establishment will continue to utilize the existing groundwater well and on-site septic system on the existing site.

vi. The 2014 approval included an exception to the critical and essential service standards of CDC 501-8, as urban water, sanitary sewer, and surface water management services were not presently available at the site. No new structures are

proposed with this application that will require such services. The proposed covered shelter structure will not have walls and is not an occupied structure.

vii. The applicant will manage stormwater runoff on the site; collecting runoff from new impervious surfaces and directing it to a stormwater facility for treatment and infiltration or discharge to the on-site wetlands.

viii. Access to a fire hydrant is not required to meet Fire Code requirements. If necessary, the applicant could add an on-site water storage tank for firefighting purposes.

ix. Washington County approved a grading permit for all of the prior grading on the site, including the additional areas of paving and concrete on the driveway access noted by the City of Wilsonville. County staff finalized the grading permit in March 2017. All of the impervious surfaces on the site were included in the applicant's stormwater analysis, including all areas of pavement and gravel.

b. Mr. Stamp responded to the Staff Report and issues raised by the City of Wilsonville and the public.

i. He noted that the Staff Report cites to a prior version of CDC 423-6, the County noise standards, which required compliance with the Oregon Department of Environmental Quality ("DEQ") noise regulations. Current CDC 423-6 requires compliance with the noise regulations of Chapter 8.24 of the Washington County Code of Ordinances (the "WCCO"). WCCO 8.24.040 specifies certain "enumerated acts" that are deemed "[p]rima facie evidence of a violation of this chapter..." The enumerated acts include "Construction or Repairing of Structures", WCCO 8.24.040.F. But it does not include any limitations on noise generated by normal contractor business activities that do not involve construction of structures. WCCO 8.24.030 includes a "catchall" provision prohibiting noise that "[u]nreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any person of normal sensitivity in a noise sensitive unit." This subjective standard can be problematic for businesses and difficult for the County to enforce. The DEQ standards provide a reasonable objective standard for measuring noise that is based on science. It has been the County's practice to require compliance with DEQ noise standards. Noise levels between 50 and 60 dBA is considered moderate. Noise greater than 60 dBA is considered loud, very loud, to dangerous. The noise levels on the site are well below what most people consider "annoying." A home refrigerator generates noise at 50 dBA. A conversation between people standing on the street would be roughly 60 dBA.

(A) The applicant is trying to be a good neighbor and minimize offsite noise impacts. They built a three-inch thick sound barrier near the north boundary of the site to limit off-site noise. Mr. Standlee suggested additional modifications to further mitigate noise impacts from the site and the applicant included those in its plans. The applicant has installed signage reminding its employees to limit

noise. The Code does not prohibit noise generating business activities on Sundays. WCCO 8.24.040.F only prohibits the construction or repairing of structures on Sundays.

(B) The site and surrounding area, including the high value residences north of the site, are located in the urban area and also zoned FD-20, which allows this type of use. The site and surrounding properties are also planned for future industrial zoning and development when these areas are annexed into the City of Wilsonville. Therefore, noise and other impacts can be expected, citing *Thornburg v. Port of Portland*, 233 Or. 178, 376 P.2d 100 (1962). The applicant's sound study demonstrates that noise from the site may be audible on adjacent properties but it will not exceed DEQ noise limits or violate the County's noise ordinance.

(C) Backup beepers are exempt from noise regulations, as they are a necessary safety measure. They are designed to be loud and annoying in order to get peoples' attention. OSHA regulations prohibit the applicant from modifying or disabling the beepers.

(D) The applicant occasionally works on road construction projects that must take place at night in order to minimize traffic impacts. However, those activities are very rare, constituting a small portion of the applicant's operations. When those projects occur the applicant's employees come to the site around 6:00 p.m., load vehicles and equipment, and leave between 7:00 and 8:00 p.m. to work at the job site. At the end of the night they come back, park their vehicles, and leave. In addition, this type of activity generally occurs in the southern portion of the site, well away from surrounding properties.

ii. He objected to certain proposed conditions in the Staff Report.

(A) Condition II.A prohibits grading or fill in the northern portion of Tax Lot 303 and the west portion of Tax Lot 311. This condition restricts the applicant's use of 14-percent (1.16-acres) of the usable area of the site, the area shown in red on his PowerPoint presentation. (Exhibit H2 at 18). The applicant needs to grade in these areas to create a level area for the proposed contractor's establishment as shown the preliminary grading plan. CDC 207-5.1 authorizes the County to impose conditions. However, the conditions must relate to some applicable approval criteria. The Staff Report refers to CDC 422 as support for this condition, but the condition clearly relates to Tax Lot 306. It has nothing to do with wetlands or significant natural resource areas. If the intent was to protect the wetland, the no-use area would extend along the entire boundary of the wetland. The applicant will build a sight and sound obscuring fence on the west boundary of Tax Lot 306, extending to the north end of the proposed grading, to buffer the adjacent property from activities occurring on the site. The applicant is also willing to construct a fence on the west boundary of Tax Lot 311 as required by condition III.B.4. But a 45-foot setback in addition to the fence "is just overkill." Patty Keif, the owner of the property west of the site, submitted a letter in support of the application. (Exhibit OR2-G at 872/Applicant's Exhibit 26).

(B) Condition II.B requires the applicant to obtain approval from the City of Wilsonville to use the existing access on Tax Lots 302 and 310 for construction vehicle access. The construction access use is temporary while grading and other activities are occurring on the site. However, the applicant intends to use two of the existing driveways for daily access to the site. The applicant would be willing to close some of the five existing driveways, creating shared driveways for some of the residences. However, consolidating driveways may require additional tree removal. The applicant is willing to work with the City on that issue.

(C) Conditions III.A(1)-(5) require the applicant to dedicate right-of-way and easements and fund the construction of a sidewalk along the site's SW Day Road frontage. The County and the City failed to demonstrate that these exactions comply with the nexus and proportionality requirements of *Nollan* and *Dolan*. They identify a public problem, but there is no evidence that this development will make the identified problem worse. SW Day Road is designated an arterial because it is needed to carry regional traffic. An arterial is not needed to carry the limited volume of traffic generated by this use. There is no evidence that the cost of these exactions is roughly proportional to the impact of the proposed development. In addition, the applicant is a concrete contractor and could construct a sidewalk for much less than it would cost the City to do so.

(D) Condition III.B.3.c requires the applicant to close one of the two driveways serving Tax Lot 310. However, there is no nexus between the proposed development and this condition. Approval of this application will have no impact on the volume or type of traffic using this existing residential driveway. No commercial use of this driveway is proposed; it will continue to serve the existing resident on this parcel.

(E) Condition VIII.B prohibits the storage of or noxious materials within 25 feet of Tax Lots 306 and 312, relying on CDC 423-13 relating to with the state Department of Environmental Quality standards pertaining to omission of toxic or noxious matter. However, this condition goes well beyond the scope of that criterion and does not cite to the DEQ standard. A gallon of gas would violate this condition. He requested the hearings officer modify this condition to be consistent with CDC 423-13. The applicant does have an above ground fuel storage tank on the site. However, DEQ only regulates underground tanks. The applicant is willing to accept a condition of approval requiring that the fuel tank and similar items be located on the southern portion of the site, away from adjacent properties.

(F) Condition VIII.C prohibits idling of construction vehicles or revving of engines near the boundaries of the site. However, the applicant's two existing shop buildings are located in the portion of the site regulated by this condition. In addition, the condition does not define the terms "revving of engines" or "construction vehicle." The construction vehicle prohibition could arguably prohibit use of the applicant's telehandler or pickup trucks. This condition is unnecessary to limit noise, as activities on the site are subject to the County noise regulations and the

applicant's noise analysis demonstrates that it is feasible to meet Code requirements and the DEQ noise standards. In addition, this condition would modify the applicant's existing permit, which does not restrict vehicle operations on Tax Lot 309. This condition restricts the applicant's use of 38-percent of the site. The applicant would prefer to install a sight and sound obscuring fence on the north boundaries of the site.

(G) With the above exceptions, he accepted the remaining findings and conditions in the Staff Report.

iii. The letter from the City of Wilsonville and DKS Engineering (*Exhibit PH5*) contains a number of errors.

(A) The City argues that the application must be denied because TVF&R cannot provide fire protection service to the site without relying on fire hydrants served by City water and the applicant must annex into the City for that purpose. However, the City cannot prohibit the Fire Department from using hydrants served by City water to fight fires outside of the city limits. In addition, TVF&R regulations (*Exhibit PH 6, Attachment 8*) do not require an on-site firefighting water supply for commercial buildings smaller than 24,000 square feet in rural and suburban areas where public water is not available. The Fire Marshall concluded that adequate fire service can be provided and that determination is conclusive. The Fire Marshall is not relying the presence of a fire hydrant and public water supply. In the event of a fire the Fire District can bring water trucks and other equipment that can siphon water out of a pond or wetland for fire suppression and there is a large wetland on the site.

(B) The County's 2015 approval included an exception to the critical services requirements of CDC 501-8 and the County did not require a new exception for this application. The proposed expansion is limited to a single small pole building for storage of equipment and materials. The building is an open air structure with no walls and is not habitable. It will not increase the need for water, sewer, stormwater, or other public services. The City argues that a new transportation services exception is required because the applicant is proposing a second access to the site. The applicant may modify its application to include an exception for this minor issue, which should not constitute a major change to the application.

c. Mr. Standlee summarized his PowerPoint presentation of his noise analysis of the site. (Mr. Standlee's sound study was later submitted as Exhibit OR2-D). The DEQ standards provide the following noise limits: 50 dBA for 50% of any one-hour period (30 minutes), known as L₅₀; 60 dBA for 10% of any one-hour period (six minutes), known as L₁₀; and 75 dBA for one-percent of any one-hour period (36 seconds), known as L₁, which is effectively the maximum noise level allowed. Noise generated by a dump truck operating on the site for one hour will not exceed the L₅₀ limit. His firm measured ambient noise levels 25 feet from the residence on the property to the north of the site, Tax Lot 306 on the site at 42.8 dBA L₅₀. They also measured noise generated by telehandler (equipment similar to a forklift) and a dump truck operating on the site. Noise from the dump truck idling next to the north boundary was

46.7 dBA, four dB louder than the measured ambient levels. The increase in noise is “just noticeable” to human hearing.

i. He noted that there is construction activity occurring on the property east of the site, in the north quadrant of the Amazon facility. He observed an excavator loading dump trucks on that property while he was taking noise measurements on the site. Neighboring residents may be attributing that construction noise to the applicant. He never observed any loud noises from the site while he was working there. The site is just a storage yard. The applicant’s employees load materials onto trucks by hand or with the telehandler, but the uses and activities on this site do not generate significant noise impacts. Dump trucks start up on the site and leave. The pickup trucks are standard street legal passenger vehicles.

ii. This is not a quiet area. There are times when trucks operating on SW Day Road are louder than activities on the site.

4. City of Wilsonville planning manager Dan Pauley and City of Wilsonville development engineer Amy Pepper testified on behalf of the City of Wilsonville.

a. Mr. Pauley argued that this application must be denied because there is insufficient evidence demonstrating compliance with all of the applicable approval criteria.

i. DKS Engineering has been running traffic models in the Basalt Creek area for decades. The models are based on traffic camera data.

ii. The site and surrounding area is within the UGB, zoned for future urbanization, and planned for future industrial development when it is annexed into the City. Therefore, it is important to comply with all of the applicable standards. The applicant’s history of code violations supports denial, as it undermines certainty about the applicant’s willingness and ability to comply with the conditions of approval. If the applicant cannot comply with the applicable approval criteria then this site may not be the appropriate location for this use. He noted a recent contractor’s establishment in Clackamas County that was exceeding its scope of approval. The County tried to address the issue through enforcement, but was unsuccessful and the operator had to relocate the business. The fact that the applicant is currently operating a contractor’s establishment on the site does not change the standards.

iii. The City is a service provider and the County’s inadequate and confusing notices limited the City’s ability to review and respond to the application and work with the applicant and County to address the City’s concerns.

iv. The City is the road authority for this area, so transportation is a significant issue. The City is also concerned with downstream stormwater impacts and the ability of its infrastructure to accommodate increased runoff from this site consistent with its adopted plans for the area.

v. He requested the hearings officer continue the hearing as noted in the City's letter.

b. Ms. Pepper noted that section 3.100 of the City Code prohibits the use of city water outside of the city limits. In an emergency the Fire District can utilize hydrants served by city water, but such emergency use of city water should not be the basis of approval of this application. If city water is needed for the proposed building to meet Fire Code requirements the applicant should either annex the site into the City or remove the proposed building.

i. She objected to the applicant's proposal to revise the application to include an exception. The County has no authority to approve additional driveways onto SW Day Road; that is within the City's exclusive jurisdiction. The existing driveways do not meet intersection spacing requirements, which may create a safety hazard. Requiring the applicant to construct street improvements on the site's SW Day Road frontage would resolve these concerns. The proposed street improvements are less than the City would require for a single-family residence.

ii. The proposed stormwater infiltration facility will require DEQ approval as an injection facility and there is no evidence in the record that it feasible to obtain such approval.

5. Jackie Mathys testified in opposition to the proposed expansion due to noise impacts on her property, located on SW Boones Ferry Road, two parcels north of the site. She showed an aerial photo of the site and surrounding area (attached to Exhibit OR2-F(5)). She has submitted noise complaints to the County in the past. All of the homes north of the site are located at the top of a canyon with water below, which amplifies and carries noise generated on the site. Noise from the site is louder on her property than it is on Tax Lot 306. PGE is currently building a substation to the west of the site. Noise from construction activities and heavy equipment on that property generated significant noise for several months. This use is likely to generate similar impacts. The sound of dump truck gates slamming shut is very loud. The owner of Tax Lot 306 was unable to attend the hearing due to a family medical emergency.

6. William (Billy) O'Neal reiterated Ms. Mathys' concerns about noise impacts from the site. He testified that noise from the site has increased over the past year. The sound of backup warning beepers is clearly audible and annoying. The site is at a lower elevation than the residential properties to the north and noise from the site echoes upwards. The noise is unsettling and it often occurs on Sundays and early in the morning, before 7:00 a.m.

7. Stephanie O'Neal testified that she and her husband both work from home, so noise from the site has a greater impact on them.

8. County principle planner Stephen Shane noted that Eric McClendon, the owner of Tax Lot 306 north of the site, requested the hearings officer hold the record open as he was unable to attend the hearing due to a family emergency.

a. He testified that the grading limitations set out in Condition II.A are based on CDC 207-5 rather than CDC 422. CDC 207-5 authorizes the County to impose conditions of approval “[t]o protect the public from potential adverse impacts of the proposed use...” Mr. McClendon, the owner of Tax lot 306, has filed numerous complaints about noise generated by the applicant’s existing operation. Those complaints have not been resolved. Condition II.A is intended to limit noise impacts from the proposed expansion by preventing operations in the northern and western portions of the site.

b. He understands that the applicant has a fuel pump on the site. He questioned whether the applicant would agree to a modified Condition VIII.B requiring the applicant provide confirmation from DEQ that the proposed use does not involve the storage or use of noxious or toxic matter.

c. This application is for an expansion of the applicant’s existing operation. The applicant is changing and expanding its use and its potential impacts on adjacent properties.

d. The County sent notice of this application to the City of Wilsonville on December 20, 2023. The City failed to respond by the deadline set out in that notice.

9. At the end of the hearing the hearings officer held the record open subject to the following schedule:

a. For one week, until 4:00 p.m. on May 23, 2024, to allow the applicant and County staff to submit revised conditions of approval;

b. For a second week, until 4:00 p.m. on May 30, 2024, to allow all parties an opportunity to submit additional testimony and evidence and respond to the revised conditions;

c. For a third week, until 4:00 p.m. on June 6, 2024, to allow all parties an opportunity to respond to testimony and evidence submitted during the first week; and

d. For a final week, until 4:00 p.m. on June 13, 2024, to allow the applicant an opportunity to submit a final written argument without any new evidence.

C. APPLICABLE CRITERIA

- A. Washington County Comprehensive Plan
- B. Washington County Community Development Code:
 - 1. Article II, Procedures:

- Section 202-3 Type III Procedure
- Section 207-5 Conditions of Approval
- 2. Article III, Land Use Districts:
 - Section 308 FD-20 District
- 3. Article IV, Development Standards:
 - Section 403 Applicability
 - Section 406 Building, Siting and Architectural Design
 - Section 407 Landscape Design
 - Section 408 Neighborhood Circulation
 - Section 410 Grading and Drainage
 - Section 411 Screening and Buffering
 - Section 413 Parking and Loading
 - Section 414 Signs
 - Section 418 Setbacks
 - Section 419 Height
 - Section 421 Flood Plain and Drainage Hazard Area
 - Development
 - Section 422 Significant Natural Resources
 - Section 423 Environmental Performance Standards
 - Section 426 Erosion Control
- 4. Article V, Public Facilities and Services:
 - Section 501 Public Facility and Service Requirements
- C. Ordinance No. 793-A - Washington County Transportation Development Tax Ordinance

D. AFFECTED JURISDICTIONS

Streets: City of Wilsonville
 Fire Protection: Tualatin Valley Fire & Rescue
 Police Protection: Washington County Sheriff

E. FINDINGS

A. Washington County Comprehensive Framework Plan:

The goals and policies which relate to the development of land are implemented by the Washington County Community Development Code (the Code). The applicant is not required to address, consider or implement any goal, policy or strategy of the Plan except where required by the Code. In accordance with Section 308-3 of the Code, the proposed use is subject to Policy 41 of the Comprehensive Framework Plan for the Urban Area.

The subject site is located within Area of Special Concern No. 5, as designated on Map C of Policy 41. Area of Special Concern No. 5 is subject to the following:

- 5. *Area of Special Concern 5 is comprised of approximately 645 acres of land located generally between Tualatin and Wilsonville and between I-5 and the Burlington Northern railroad alignment. The boundary of ASC 5 is shown on Map C (Future Development*

Areas Detailed Areas) of Policy 41. The properties included in this Area of Special Concern are designated Future Development 20-Acre (FD-20) District on the Future Development Areas Map (Map A). These properties were added to the UGB by Metro Ordinance 04-1040B (adopted on June 24, 2004) and designated as Industrial land on Metro's 2040 Growth Concept Plan.

Title 11 planning and FD-20 development applications within this Area of Special Concern are subject to the following criteria:

- b) *Until the effective date of new regulations adopted pursuant to Title 11, development applications within this Area of Special Concern shall be subject to Community Development Code Section 308, except as otherwise provided below:*
 - 1) *Day care facilities, cemeteries, churches and schools are prohibited due to the area's designation as an Industrial Area.*

The development site is located on the north side of SW Day Road, between SW Grahams Ferry and SW Boones Ferry Roads and within the boundary of the City of Wilsonville's Basalt Creek Concept Plan. The proposed development does not include any of these uses.

In 2004, the Basalt Creek Planning Area was added to the UGB by Metro in order to accommodate growth in industrial employment. The planning area consists of approximately 847 acres, located west of I-5 between the cities of Tualatin and Wilsonville, and comprising the Basalt Creek and West Railroad Areas. The concept plan provides a guide for the industrial and technology development of the planning area. The Wilsonville City Council approved the Basalt Creek Concept Plan on August 6, 2018, with the adoption of R&O 2697.

The site is designated as Employment Transition (eastern portion) and Basalt Creek Canyon (western portion) and will be rezoned consistent with these designations once it is annexed to the City of Wilsonville. Until such time, the application remains subject to the requirements of Section 308 (Future Development 20-acre district (FD-20)). No land division is proposed. The application does not involve development review for commercial retail uses. For further information, see Section 308 of this Final Order.

According to the Rural/Natural Resource Plan Map, there are designated significant natural resources on the subject property. See Section 422 regarding these resources.

C. Washington County Community Development Code:

1. Article II, Procedures:

Section 202 Procedure Types and Determination of Proper Procedure

202-3 Type III Procedures

202-3.1 Type III actions involve development or uses which may be approved or denied, thus requiring the exercise of discretion and judgment when applying the development criteria contained in this Code or the applicable Community Plan. Impacts may be significant and the development issues complex. Extensive conditions of approval may be imposed to mitigate impacts or ensure compliance with this Code and the Comprehensive Plan.

This request is being processed through the Type III procedure of the Community Development Code, pursuant to Section 308-4.5 of the Code. In accordance with the Type III procedural requirements, public notice was sent to surrounding property owners within 20 days of the scheduled April 18, 2024, hearing.

The hearings officer finds that the County provided the City of Wilsonville adequate notice of the application and the opportunity to respond. The County mailed the City of Wilsonville a notice of application and request for comments on January 1, 2024.³ (*Exhibit OR2-E*). The City did not respond by the deadline set out in the notice. Representatives of the City appeared at the hearing and testified about issues of concern. The hearings officer held the record open after the hearing to provide the opportunity to submit additional testimony and evidence. The City's assertions of an alleged lack of coordination and cooperation between City and County are not relevant to issues before the hearings officer.

Service provider issues are addressed in Section 501-8 below

Section 203 Processing Type I, II and III Development Actions

203-5 Application Submittal and Acceptance

203-5.3 Except as provided in Sections 203-5.6 and 203-5.7, after the application is deemed complete consistent with the requirements of ORS 215.427, the Review Authority shall take final action on Type II and III applications for development, including resolution of appeals within the following timelines:

203-5.4 If an application is incomplete, the Review Authority shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of Section 203-5.3 upon receipt by the governing body or its designee of:

203-5.8 The decision of the Director as to completeness of an application, including any required engineering, traffic or

³ According to the City, the notice was dated December 28, 2023, but it was postmarked January 1, 2024.(Exhibit OR2-E at 3).

other such studies, shall be based on the criteria for completeness, adequacy and methodology set forth in this Code by Resolution and Order of the Board or by action of the Director. Rejection by the Director for incompleteness shall be based solely on failure to address the relevant standards or supply required information and shall not be based on differences of opinion as to quality or accuracy. Acceptance indicates only that the application is ready for review.

The City of Wilsonville's assertion (*Exhibit OR3-A(4)*) that the application is incomplete because it does not include a Service Provider Letter (SPL) from the City is irrelevant. The submittal requirements are not applicable approval criteria. The Director accepted the application as complete without an SPL. The hearings officer has no authority to review the County's completeness determination or to deny the application for failure to comply with the submittal requirements. The SPL requirements are discussed further in Article V below.

203-3 Neighborhood Meeting

The proposed use is a Type III use in the FD-20 District but is not a type of application for which a neighborhood meeting is required, per Section 203-3.2.A, as the site is not located within 125 feet of a residential land use district or zone. The applicant may hold such a meeting but is not required to do so by the Community Development Code.

207-5 Conditions of Approval

207-5.1 The Review Authority may impose conditions on any Type II or III development approval. Such conditions shall be designed to protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development. Conditions shall not restrict densities to less than that authorized by the development standards of this Code.

All of the conditions included in this approval relate to and implement the specific requirements of the Code. The applicant shall comply with all applicable Code regulations, conditions of approval, and agency requirements.

Section 215 Code Compliance

215-1

No person shall engage in or cause to occur any development; erect, construct, reconstruct, alter, maintain, use or transfer any building or structure; or alter, use or transfer any land in violation of the Comprehensive Framework Plan including but not limited to this Development Code or the applicable Community Plan.

215-2

No building or development permit shall be issued unless it has first been determined whether there are existing violations on the property. A building or development permit may be denied where there is an existing violation or may include a condition addressing any existing violation. In addition to any other materials required by law, applications for building permit shall be accompanied by a valid development permit or a statement specifying the applicable exemption.

The county received two separate land use complaints (violations) involving the four additional parcels involved in the proposed expansion: for grading (ENFPDS22-00044) and tree removal (ENFPDS22-00004 and 23-00024). The alleged violations and resolutions are summarized in the finding below. Further detail on compliance history can be found in the cited casefiles.

The tree removal violation remains open and is addressed under Casefile L2400019-TREE. Abatement must be obtained prior to issuance of the grading permit and prior to issuance of Final Approval. (See condition of approval II.G).

The County Grading Engineer reviewed the site in response to the report of a grading violation and determined that the site had been cleared but no grading or fill placement had occurred. Therefore, this violation was closed on February 13, 2023. There are no existing grading violations on the site.

The McClendons filed additional complaints about noise generated on the site. Noise complaints are handled by Health and Human Services (during regular business hours) and by the Sheriff's department (after regular business hours and on weekends). The Sheriff's Office issued a noise citation that the Court later dismissed. Future compliance with the County noise ordinance is discussed below regarding CDC 423-6.

There are allegations that the applicant has "[expanded beyond the operational limits of Condition III of the 2014 staff report [and is] no longer operating within the 2014 perimeters." (See Exhibit OR3-B at 225). Approval of this application will authorize any prior expansions of the existing use on Tax Lot 309, thereby curing the alleged violations.

The hearings officer finds that CDC 215-2 imposes an affirmative duty on the County to investigate the site and determine whether any violations exist on the property prior to approval. "No... development permit shall be issued unless it has first been determined whether there are existing violations on the property." CDC 2145-2. (Emphasis added). The County investigated all alleged violations and determined that a single violation exists: the tree removal violation. Therefore, the County complied with the first part of CDC 215-2.

In addition, the County may, but is not required to, deny an application or include a condition addressing any existing violation(s) pursuant to CDC 2145-2. In this case the hearings officer finds that approval of this application will cure the alleged violations. As noted above, condition of approval II.G requires that the applicant abate the tree violation prior to issuance of the grading permit and Final Approval. Approval of this application will authorize any prior expansion of this use beyond the scope of the prior (2015) approval. Therefore, the County complied with the second part of CDC 215-2.

Allegations of past violations by the applicant are not relevant to determining whether the applicant can or will comply with the remaining approval criteria. The applicant's past behavior does not show that they cannot or will not operate the use in a manner that complies with the ZDO. If the applicant sustains the burden of proof that the application complies with the approval standards, or if it can comply provided certain conditions are imposed, the hearings officer must as a matter of law approve the application subject to those conditions, ORS 197.522(4).

The hearings officer imposed conditions of approval requiring ongoing compliance with all applicable approval criteria. It is in the applicant's best interest to comply with those conditions as failure to do so can be a basis for enforcement. The County will monitor and enforce such compliance. The County's enforcement section exists for the purpose of identifying, responding to, and remedying alleged violations of County land use decisions and codes. Neighboring residents can assist in the enforcement process by reporting any violations they observe. If the applicant fails to comply with the conditions of approval the planning director may initiate proceedings to revoke the permit. But the hearings officer cannot assume that the applicant will not comply and deny the application on that basis.

The fact that neighbors can assist in monitoring the use does not shift the responsibility to them to do so. The County continues to bear the responsibility for enforcing its laws. However neighbors may be in a better position to monitor the use on a continuing basis because of their proximity, and it may be in their interests to do so given the complaint-driven nature of the enforcement process.

2. Article III, Land Use Districts:

Section 308 FD-20 District:

308-1 Intent and Purpose

The FD-20 District applies to the unincorporated urban lands added to the urban growth boundary by Metro through a Major or Legislative Amendment process after 1998. The FD-20 District recognizes the desirability of encouraging and retaining limited interim uses until the urban comprehensive planning for future urban development of these areas is complete. The provisions of this District are also intended to implement the requirements of Metro's Urban Growth Management Functional Plan.

308-4 Uses Which May Be Permitted Through a Type III Procedure

The following uses may be permitted unless specified otherwise by the applicable Community Plan or Policy 41 of the Comprehensive Framework Plan for the Urban Area. These uses may be permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 430, as well as the general standards for the District, the Development Standards of Article IV and all other

applicable standards of the Code. Approval may be further conditioned by the Review Authority pursuant to Section 207-5.

308-4.5 Contractor's Establishment.

Contrary to neighbors' assertions, the FD-20 is not a residential zone and this area is not intended to transition to residential uses. Residential uses are only allowed "*when a city's future comprehensive plan designation for the subject property is single-family residential; or when the county land use district that was applicable to the property prior to designating the subject property FD-20 permitted a detached dwelling through a Type I procedure.*" (CDC 308-2.4). In this case, the City of Wilsonville's plans designate the site and surrounding area for industrial development. (See *Basalt Creek planning map attached to Exhibit OR3-C at 4*).

Neighbors' assertions that this use should be located in an industrial zone are incorrect and irrelevant. Contractor's Establishments are allowed as a Type III use in the FD-20 zone. (CDC 308-4.5). The FD-20 also allows certain commercial agricultural uses (chicken or rabbit raising, greenhouse, and equestrian uses), which could generate adverse impacts (odors, noise, dust, traffic, etc.) similar to the proposed use. All uses in the FD-20 zone are intended as "[l]imited interim uses..." that will be replaced by more permanent uses "[w]hen planning for future urban development of these areas is complete." (CDC 308-1).

The Code does not define the term "Contractor's Establishment." However, the existing and proposed uses of the site are consistent with prior Contractor's Establishments approved by the County. (See *Exhibits PH-12 and OR2-G at 504-599*). The applicant proposes an expansion of an existing contractor's establishment onto four adjacent parcels to the west of the current site. The approved uses were described as involving storage and maintenance of contractor's equipment including trucks, trailers, heavy machinery, and construction equipment. On-site storage of materials such as rock, gravel, piping, and concrete blocks was also planned. Two existing outbuildings are utilized for the planned use as a shop (eastern outbuilding) and an office/shop (western outbuilding), and the existing dwelling unit was converted to office space. The site will not be open to customers or the public.

The existing approximate 3.5-acre site is currently used for storage, maintenance, and on-site circulation of contractor's equipment, noted below. Approval of this application will allow the current operations to continue in accordance with the Conditions of Approval imposed through Casefile L1400431-D(IND). A break-down of the current business operations listed in the current application include the following:

- *Park, store, load/unload, and operate heavy equipment, machinery, excavators, dump trucks, utility rigs, and vehicles (e.g. trucks, trailers, vans);*
- *Inspect, maintain, and repair equipment;*
- *Truck washout facilities;*
- *Office and field staff parking;*
- *Materials stockpile (e.g. aggregate, sand, gravel, sediment, rock, soil, piping, concrete blocks, etc.);*

- *Temporarily stockpile excavation spoils from offsite operations for subsequent reloading and transfer to available legal landfills;*
- *Storage for construction-related materials and supplies for subsequent off-site/infield use;*
- *Deliveries to the contractor's establishment of such materials, etc.*

As stated previously, the application includes four additional Tax Lots on which to expand the existing contracting business. The expansion also includes a large new open-air pole building located between the office building and SW Day Road. The proposed expansion area will enable the applicant *"to store and maintain contractor's equipment, including machinery, excavators, vehicles (e.g. trucks, trailers, and vans), tools, and materials (e.g. rock, gravel, soil, piping, concrete blocks, etc.)."*

The applicant has adequately described the proposed new outbuilding, which will meet all dimensional requirements of the proposed expansion. Any future conversion of the three existing dwelling units to include operations of the business shall be processed as an expansion of the contractor's establishment.

The requirements of the Washington County Noise ordinance are addressed in Section 423-6 below.

308-5 Prohibited Uses

- 308-5.9 *Any parking or storage of tractor-trailers, semi-trucks, or heavy equipment, except in conjunction with an approved development or with a farm or forest use.*

The applicant continue to park and store some of the vehicles and equipment listed in this section on Tax Lot 309 and expand those parking and storing activities onto the remainder of the site. Approval of this request constitutes development approval, thereby permitting the storage of the above vehicles and heavy equipment on the site, as specified in the application.

308-6 Dimensional Requirements

- 308-6.2 *Yard Requirements:*

The minimum yard requirements shall be:

- A. *Thirty (30) foot front yard;*
- B. *Ten (10) foot side yard;*
- C. *Thirty (30) foot street side yard;*
- D. *Twenty-five (25) foot rear yard;*
- E. *Additional setbacks may be required as specified in Sections 411 and 418; and*
- F. *Required yards shall be horizontally unobstructed except as provided by Section 418.*

The applicant's plans show that existing structures meet the requirements of this section. The only new structure proposed (a new open-air pole building located between the office and SW Day Road) will also comply with these setbacks. The new structure will be

located approximately 35 feet from the east property line and 140 feet from the south property line (front). Any new structures or any structures relocated on the site shall comply with the setback standards of the FD-20 District. Additional land use approvals and/or permits may be required for demolition, relocation, reconstruction, or modification of structures on site.

308-6.3 Height:

- A. The maximum height for structures shall be thirty-five (35) feet, except as modified by other Sections of this Code.*
- B. The maximum height for accessory structures shall be fifteen (15) feet except as modified by other Sections of this Code.*
- C. Normal building appurtenances and projections such as spires, belfries, cupolas, chimneys, ventilators, elevator housings or other structures placed on or extending above roof level may exceed the thirty-five (35) foot building height limit to a maximum height of sixty (60) feet.*

All existing structures are required to meet the height limitations of the District. The applicant stated that the new open-air covered structure "is not planned to exceed the maximum height of 35 feet, and is not planned to have walls, enclosed area, or indoor occupiable space." Verification of compliance with the maximum structure height of 35 feet will be made prior to issuance of the building permit.

308-6.4 Lot Dimensions:

- A. The minimum lot width at the street shall be forty (40) feet;*
- B. The minimum lot width at the building line shall be seventy (70) feet; and*
- C. The minimum lot depth shall be one-hundred (100) feet.*

The proposed site meets the applicable requirements of this section.

308-7 Additional Standards

308-7.1 All new permitted uses shall be constructed in a manner which does not interfere with future conversion of the land to planned urban densities and/or uses.

308-7.2 Lawful nonconforming uses in the FD-20 District may be expanded or rebuilt to the limit of available services, through a Type II procedure when in conformance with the adopted Comprehensive Plan for the area. Expansion or replacement shall be subject to the provisions of development review and shall not include new uses.

308-7.3 Property in an Area of Special Concern on the Future Development Areas Map in the Comprehensive Framework

Plan for the Urban Area is subject to the applicable Area of Special Concern provisions in Plan Policy 41.

Everything on the site can be easily removed in the future when the site is annexed into the City and rezoned for more intense land uses. All of the vehicles and equipment on the site are mobile and can be driven away or loaded onto trailers for transport. The applicant frequently loads and transports the materials stored on the site for use in off-site construction projects. The only new construction proposed with this development is for an additional outbuilding to be located between the existing office and SW Day Road. The proposed building would add a minimal amount of structural footprint to the site. The new structure is a pole building without walls that can be easily dismantled. Therefore, the hearings officer finds that the proposed use will not interfere with future conversion of the larger site to planned urban densities and/or uses and is consistent with the applicable requirements of Policy 41 of the Comprehensive Framework Plan for the Urban Area at such time as the site annexes into the City of Wilsonville.

308-8 Access

All lots in this District shall either:

308-8.1 Abut a public street; or

308-8.2 Have an easement of record at least forty (40) feet wide at the street or as approved by the appropriate fire marshal. In cases where no fire marshal has jurisdiction, the easement shall be subject to the standards of Fire District #1.

The subject site abuts and takes access from SW Day Road, an Arterial under the jurisdiction of the City of Wilsonville. The current approved operation is located on Tax Lot 3S102B000309 and access for that parcel was approved through Casefile L1400431-D(IND). The proposed expansion includes four lots to the west: 3S102B000302, 303, 310 and 311. The existing dwelling units on those parcels, to be retained, each have access to SW Day Road, with access to Tax Lot 303 facilitated by an access easement over the western ten feet of Tax Lot 310. The applicant proposes to utilize the existing driveway on Tax lot 209 and the existing residential access on the west edge of Tax Lot 310 for access to the expanded contractor's establishment. Utilization of the existing residential driveway for the expanded contractor's establishment will require approval by the City of Wilsonville. The criteria above are met.

3. Article IV, Development Standards:

Section 403 Applicability

The applicant has provided a site plan and written information to address the Development Review standards of Article IV.

Section 406 Building, Siting and Architectural Design

The site currently contains three single-family dwellings which are not proposed for use associated with the Contractor's Establishment. One new industrial building is proposed at this time. The applicant proposes a large open-air (non-walled) structure on Tax Lot

309 to provide covering for materials and equipment protecting items from the elements. The new structure will be primarily accessed from the existing access (on Tax Lot 309) constructed to serve the original Contractor's Establishment. For information regarding compliance with height and setback requirements, see staff findings for Section 308 above.

Section 407 Landscape Design

The Code has no specific provisions for landscaping of a contractor's establishment, except subsection 407-1.4 B.(1), which states 15% of the site shall be landscaped for development proposed in industrial districts. The applicant's site plan (plan sheet P6) depicts areas of landscaping. The six existing landscape areas encompass 87,400 square feet or two acres. The area of landscaping exceeds the 1.6 acres or 15% of the site required for landscaping in accordance with this section.

The narrative indicates that over 15% of the site will be landscaped. Plan sheet P6 shows that this requirement is met. However, after closer inspection of the current site plan and aerial photograph of the site (Tax Lot 309) and the original landscape plan, staff identified areas that were proposed in 2014 and required by Final Order L1400431-D(IND) to be either landscaped or maintained with native vegetation (e.g., west and south of the western-most shop). This has yet to occur. The proposed new structure would also remove a significant amount of approved landscaping/native vegetation. The final landscape plan needs to ensure that at least 15% of the site will be landscaped.

Existing landscaping around each of the dwellings to be retained will remain. In addition, existing trees will be preserved where possible. Grading and tree removal will not extend into the wetland boundaries or Title 13 Riparian resources to the west nor within landscape areas around each of the existing homes. Additionally, no tree removal is proposed along the west property line of Tax Lots 303 or 311. Tree removal outside of the resource areas are permitted pursuant to Section 407-3.

407-7 Urban Street Tree Standards

Inside an urban growth boundary, all new structures or land divisions fronting on public or private roadways or access drives, except the construction of a detached dwelling unit on an existing lot, shall be required to plant street trees in accordance with the following standards:

The proposed development application does not include a land division but does include a new industrial structure subject to Section 407-7. The new structure is located on the original development site (Tax Lot 309). The applicant stated that the existing trees along SW Day Road, as shown on the plans (see sheet P4), will remain. Existing trees on Tax Lot 309 maintain spacing of no less than approximately 20 feet and can be incorporated into the street tree plan for the proposed expansion. No other structures are proposed. No grading activities associated with the proposed expansion will encroach around the dwelling units or between the dwelling units and SW Day Road.

Section 408 Neighborhood Circulation

This Section requires the applicant to provide a circulation plan for the area based on the proposed development. The proposed project is not identified as a Local Street Connectivity Area; therefore, this project is subject to the requirements of Section 408-5.

The hearings officer finds that the applicant should be granted a modification to the requirements of Section 408-5.4, based on the existing development patterns in the project vicinity, arterial access restrictions on SW Day Road, the presence of significant natural resources along the western portions of the site, and the interim nature of the proposed development consistent with the purpose of the FD-20 zone. The extension of streets and/or pedestrian and bicycle accessways from SW Day Road through the site is not necessary or conducive to the day-to-day operations of the proposed Contractor's Establishment. Streets and/or pedestrian accessways are also not needed to extend to abutting properties to the north as these properties have access to SW Boones Ferry Road. As stated above, the significant natural resources located generally along the west property line preclude any future access to the west while limiting any circulation to the north.

Notwithstanding, the proposed development will not preclude opportunities to provide a street and/or pedestrian connection to the north or east in the future upon more intense urbanization of the site when it is annexed into the City of Wilsonville and developed for more intensive urban uses. The proposed new accessory structure does not preclude the construction of a street and/or pedestrian and bicycle accessway to the north from SW Day Road to stub to Tax Lot 306.

Section 410 Grading and Drainage

As stated previously, the county processed a grading permit violation involving the lots included in the expansion area. On February 13, 2023, the violation was abated, and the case closed. The current land development application requests approval to expand the current Contractor's Establishment onto the four western parcels noted above, to include some grading of these areas. Approval of the land use application and subsequent grading permit will ensure compliance with all applicable grading requirements. See also Section 422 of this Final Order.

The applicant submitted preliminary details and grading and drainage plans as required by this section. According to the application, grading will affect approximately four acres of the approximate eleven acre site. Estimated cut and fill numbers listed are for about 1,500 cubic yards of cut and about 12,000 cubic yards of fill.

The Washington County Grading Engineer has reviewed the preliminary details and determined the submitted preliminary plans meet the requirements of Section 410-1.1. A Grading Permit shall be obtained prior to any on-site work and shall comply with conditions of approval of this Casefile. As a Recommended Condition of Approval, the applicant shall obtain a grading permit from the Washington County Building Services Division that meets applicable requirements of Section 410, as determined by the county Grading Engineer.

Section 411 Screening and Buffering

The applicant has proposed a contractor's establishment on the site, which has a land use designation of FD-20. The Code includes no specific provisions for screening and buffering in FD-20 areas, with screening and buffering to be determined by the review authority. However, inside the UGB, Code provisions specifically require screening and buffering when commercial and industrial uses adjoin residential uses. In this case, the site is in the FD-20 District and is bordered on the west, north, and east by similarly designated FD-20 District land. Land to the south (across SW Day Road) is zoned by the City of Wilsonville as PDIA-RSIA. The closest residentially zoned land (to the north in the City of Tualatin) is over 1,000 feet from the site.

The original site is bordered on the north with a residential use and was bordered on the west by residential uses, also located in the FD-20 District (owned by the applicant). As a result of the proximity of residential uses to this site, in the Recommendation and Staff Report for Casefile L1400431-D(IND) staff determined that screening and buffering was appropriate in this instance and should be required along the north and west property lines of Tax Lot 3S102B000309. Consequently, staff at that time recommended the following Condition of Approval II.B.5:

5. *Evidence that screening and buffering as indicated on the site plans to a S-2 Standard per Section 411-7 has been installed along the north and west property lines, in a manner that is not highly visible from SW Day Road and positioned such that it does not interfere with intersection sight distance standards.*

The Hearings Officer included this Condition of Approval in the Notice of Decision for Casefile L1400431-D(IND). The Condition of Approval required a six-foot sight obscuring fence located on the north boundary of the site. The condition remains binding along the north property line. According to recent site pictures, a six-foot sight obscuring fence has been installed along the majority of the north property line of Tax Lot 309 screening the existing buildings and storage yard areas from the adjacent property to the north. However, the developed portions of Tax Lot 309 are at a higher elevation than the north boundary and The McClendons' property north of Tax Lot 309, which reduces the effectiveness of the required six-foot sight obscuring fence. (See "Plan Sheet P2 [Existing Conditions]"). Therefore, the applicant built a solid wall setback from the north boundary on the higher elevation portion of the site along much of the northern portion of Tax Lot 309. The applicant installed a fabric screen between the east end of the wall and the east boundary of the site at the same height as the wall. This barrier screens views of the majority of the site from McClendon's property, Tax Lot 306. (Ex OR2-C(1), OR2-F(4)(O), and OR3-A(2)(B)).

The western end of this barrier ends roughly 100 east of the west boundary of Tax Lot 309, roughly 15 feet west of the westernmost shop building. The majority of existing storage and activity areas on Tax Lot 309 are located south of the westernmost shop building, roughly 115 feet or more south of the common boundary between The McClendons' property and the site. A roughly 15-foot wide gravel "flagpole" area on the west boundary of Tax Lot 309 extends to within roughly 25 feet of the north boundary. (See "Plan Sheet P2 [Existing Conditions]"). Therefore, the hearings officer finds that additional screening is not required between the existing wall and the west boundary of the site. Although storage and activity areas on the portion of Tax Lot 309 west of the

western shop are visible from The McClendons' property, the physical distance between these storage and activity areas limits the visual impacts of the use on The McClendons' property.

The west property line of Tax Lot 3S102B000309 no longer serves as the western boundary of the development site as it did in Casefile L1400431-D(IND). Based on the addition of four new Tax Lots located west of Tax Lot 3S102B000309, the new western boundary of the development site is approximately 300 feet west of the current western property line (Tax Lot 3S102B000309). As in the original application, there are existing large lot residential uses to the west of Tax Lot 3S102B000311, the western-most of the lots involved in the proposed expansion. The proposed expansion onto Tax Lot 303 will also extend the site along the west boundary of Tax Lot 306.

The proposed expanded Contractor's Establishment should provide the same screening and buffering along the west property line of Tax Lot 3S102B000311. A six-foot sight obscuring fence will provide adequate visual screening on these boundaries at these portions of the site are and will remain at roughly the same elevation as the abutting properties the fence is intended to buffer. The following Conditions of Approval should be imposed on the applicant to ensure that adequate screening and buffering is provided and maintained:

1. *Plans and details for a six foot sight obscuring fence (an S-2 fence) per Section 411-7 to be installed:*
 - a. *Along the west property line of Tax Lot 311 in a manner that it does not interfere with intersection sight distance standards for nearby driveways and shall otherwise extend from the right-of-way north to the wetland boundary; and*
 - b. *Along the east property line of Tax Lot 303, extending from the right-of-way north to the wetland boundary.*

Section 413 Parking and Loading

Section 413 does not contain specific parking requirements for a contractor's establishment. The most similar use is an "Industrial Establishment" (Section 413-7.5.A), which requires 1.6 spaces per each 1,000 square feet of gross floor area. The applicant indicates that the main on-site building encompasses 4,400 square feet of floor area. Using this ratio, a total of nine parking spaces would be required. The applicant has indicated that 23 parking spaces are provided for employee parking. No customers are proposed to visit the site, and the site is closed to the general public. The applicant also stated that the purpose of the proposed 7,500 square foot open-air structure (e.g., no walls or enclosed occupiable space) is to bring existing outdoor materials out of the elements. Consequently, the storage area does not require additional surface parking. Therefore no additional parking is required under this section.

The applicant also has industrial trucks that will be parked on site when not in use. In accordance with Section 413-5.4 of the Code, and based upon approval of a grading plan pursuant to Section 410, parking areas for the storage of heavy equipment or vehicles in the Industrial District may consist of a gravel surface with a minimum four (4) inches of base rock with two (2) inches of three-quarter (3/4) inch minus leveling course. While the

FD-20 district is not generally considered an industrial district, the applicant proposes an industrial use in an area identified in Policy 41 of the Comprehensive Framework Plan for the Urban Area as a future industrial area.

Accordingly the applicant should be required to provide, prior to Final Approval, a written certification from an engineer that any new truck parking areas have been constructed in accordance with the requirements of Section 413-4.4.

Section 414 Signs

The applicant has not proposed a sign at this time. If the applicant proposes to erect or otherwise locate any signs on the subject site at a later time, a sign permit shall be obtained from Washington County Current Planning Services.

Section 418 Setbacks

418-4 Fences and Retaining Walls

The setback requirements of this Code are not applicable to the following fence or retaining wall structures (or any combination thereof) except as required by Section 418-3:

- 418-4.1 A fence, wall (includes retaining wall), screen or lattice work not more than seven (7) feet in height.*
- 418-4.2 A fence, wall (includes retaining wall), screen or lattice work not more than eight (8) feet in height along a rear, side or front yard which abuts an arterial or limited-access highway.*
- 418-4.3 A combination fence (not more than six [6] feet in height) and retaining wall structure (not more than four [4] feet in height) located in a side or rear yard (for design standards see Section 419-4).*
- 418-4.4 Tiered retaining wall structures not exceeding seven (7) feet in height in any required yard. The maximum height measurement includes all tiers located within the yard or setback area. All non-tiered retaining walls located within the yard or setback area shall not exceed a combined total of seven (7) feet in height.*

Section 419 Height

- 419-3 A fence, lattice work, screen or wall (includes retaining wall) not more than 7 feet in height may be located in any required side, front or rear yard, except as required by Section 418-3 (corner vision). Where a rear, side or front yard abuts an arterial or limited access highway, fence height along the yard may be increased to 8 feet. Any fence over 7 feet in height requires a building permit. Any*

retaining wall over 4 feet in height requires a building permit (the height measurement of a retaining wall is from the bottom of footing to the top of the retaining wall).

A retaining wall is proposed to create a level buildable area for the proposed open-air storage building. The wall ranges from about two to thirteen feet in height. The section of the retaining wall on the east side of the structure maintains about a 30 foot side yard setback, which exceeds the minimum ten-foot side yard setback of required by the Code. The retaining wall meets the height and setback standards of these sections.

Section 421 Flood Plain and Drainage Hazard Area Development

Tapman Creek, as shown on sheet P8, is located more than 300 feet from the proposed grading activities associated with the expanded Contractor's Establishment. The creek is mapped as a Drainage Hazard Area. The proposed grading activities do not encroach within or otherwise impact the off-site creek (DHA) or the portion that is located within the northern part of the site (3S102B000311). The county's Flood Plain Manager has confirmed that a Drainage Hazard Area Alteration permit is not required at this time.

Section 422 Significant Natural Resources

The Comprehensive Framework Plan for the Urban Area (CFP) indicates the presence of significant natural resources on the subject site. Policy 41 of the CFP describes the area in the vicinity of the site as containing Significant Natural Areas and Natural Resource areas (Water Areas and Wetlands and Fish and Wildlife Habitat). The Significant Natural Area consists of the Tonquin Scablands. In staff's review of Casefile L1400431-D(IND), which covered the original Contractor's Establishment and Tax Lot 3S102B000309, staff found that Significant Natural Areas and Natural Resource areas (Water Areas and Wetlands and Fish and Wildlife Habitat) were not present on Tax Lot 3S102B000309.

The applicant included an assessment of the new lots and found that wetlands and Title 13 Riparian Resources are present generally along the western part of three of the added lots (see Figure 7 of Attachment D of the application). The assessment concluded that none of the proposed site grading or tree removal encroaches within the mapped wetlands and Title 13 Riparian resources (see Figure 8 of Attachment D of the application). At such time as the site is annexed into the City of Wilsonville subsequent development of the property would be subjected to Wilsonville's significant resource protection regulations. (Vegetative Corridors are not currently required since the site is not within the CWS service district boundary).

The McClendons argued that "The wetland boundary is not static, and we have seen portions of the currently proposed grading area underwater during the winter." OR2-F(3) at 4. The fact that areas of the site outside of the identified wetland boundaries are seasonally inundated does not make these areas wetlands. Wetlands are defined by the U.S. Army Corps of Engineers' wetland manual, which requires the presence of hydric soils, wetland hydrology, and hydrophytic vegetation. No wetland exists if any one of these three is not present. Standing water alone is not evidence of a wetland. The hearings officer finds that the applicant's Natural Resource Assessment (Attachment D of the application), which was prepared by professional biologist, provides the best evidence of the location of the wetland boundaries on the site.

Staff proposed a condition of approval to prohibit grading or fill in the area of Tax lot 303 north of the east-west lot line between Tax Lots 306 and 309 and on Tax Lot 311 west of the west facade of the existing dwelling. The proposed condition prohibits the applicant from using roughly 1.16 acres (14%) of the useable site area as illustrated in Exhibit H-2 at 18. Staff argued that these restrictions are necessary “[t]o ensure adequate protection of the existing wetlands and Title 13 Riparian resources...” (Staff Report Attachment C at 19). However, there is no support for Staff’s contention that this limitation is intended to protect the wetlands and riparian resources. As shown in Exhibit H-2 at 18, this condition only restricts grading near slightly more than 50-percent of the on-site wetland/riparian area boundary. This condition does nothing to protect the remainder of the wetland boundary.

Staff further argued that these restrictions are necessary “[t]o minimize impacts on adjacent residential uses to the north and west...” (Staff Report Attachment C at 19). However, the hearings officer finds that additional protection is not warranted. The required sight obscuring fence will screen views of the site from the abutting properties as discussed above and additional setbacks are not required to ensure compliance with applicable noise regulations, as discussed below. Therefore, the second paragraph of the “Note” in proposed Condition II.A should be deleted.

The applicant’s assessment also concluded that the geologic features characteristic of the designated Significant Natural Area (i.e., Tonquin Scablands Geologic Area) were not present on the development site. The applicant further concluded that the proposed site grading (i.e., surface level site improvements) will not impact the unique geological characteristics of the area. This is due in large part to the fact that very little removal (cut) of earthen material will be required to develop the site. Rather, fill material will be brought on site to provide a level expansion area. Consequently, the existing geological substrate will not be adversely impacted (altered) given that the expanded parking and storage areas will be leveled with pervious gravel, lessening impacts to the areas geological resource.

Based on this assessment the hearings officer finds that the planned site improvements shown on the Preliminary Plans (*Exhibit A of the application*) and the Natural Resource Assessment (*Exhibit D of the application*) will not impact or otherwise encroach within the wetlands and Title 13 Riparian Resources and will provide preservation of natural resources in accordance with Section 422. The standards of Section 422 are met.

Section 423 Environmental Performance Standards

423-4 Air Quality

All development shall comply with the State Department of Environmental Quality Air Quality Standards.

The State Department of Environmental Quality (DEQ) standards pertaining to air quality apply to all land uses. No unusual air quality problems as regulated by DEQ are anticipated as a result of the proposed expansion. The proposed Contractor’s Establishment expansion is expected to operate in compliance with DEQ standards, which the applicant has acknowledged. The applicant stated that the current operation complies with Department of Environmental Quality (DEQ) standards.

The McClendons testified that they observed employees on the site blowing “concrete dust” into the air and onto adjacent lots. (*Exhibits OR2-F(3) [letter] and OR2-F(4)(M) [video]*). Don Brown, one of the owners of Brown Contracting, LLC, testified that the video shows an employee blowing dust from the driveway on the site. The dust is not concrete dust. He went on to note “[i]n retrospect it would have been wiser for us to have swept the dust using a broom instead of using a leaf blower...” (*Exhibit OR3-C at 134/Applicant’s Exhibit 39 at 6*). Dust discharged into the air in this manner could potentially violate this standard. Therefore, a condition of approval is warranted prohibiting the use of leaf blowers or similar machinery in a manner that discharges visible dust into the air.

Mr. McClendon submitted a video showing what he argues is a machine generating smoke. (*Exhibit OR3-A(2)(I)*). However, Mr. Brown testified that this is actually steam from a steam cleaner. (*Exhibit OR2-A(2)(A)*). Mr. Brown’s testimony is consistent with what is shown in the video; whatever is being discharged into the air quickly dissipates, like steam. There is no evidence to the contrary.

423-5 Odor

All development shall comply with the State Department of Environmental Quality Standards pertaining to odor.

The hearings officer finds that it is feasible to comply with this criterion. There is no evidence that any activities on the site generate odors that are detectable offsite.

423-6 Noise

All development shall comply with Chapter 8.24 of the Washington County Code of Ordinances relating to noise control. Documentation required to demonstrate compliance may include analysis from a registered professional acoustical engineer.⁴

The County noise regulations set out in WCCO 8.24 regulate noise in two ways, through general standards set out in WCCO 8.24.030 and enumerated acts which “[a]re prima facie evidence of a violation of this chapter...” set out in WCCO 8.24.040. WCCO 8.24.015 provides the following relevant definitions:

"Noise sensitive unit" means any building or portion thereof, vehicle, boat or other structure used as a church, day care center, hospital, nursing care center, school, or place used for overnight accommodations of persons, including, but not limited to, individual homes, individual apartments, trailers and nursing homes.

⁴ The Staff Report quotes the prior version of CDC 423-6, which provides:

All development shall comply with the State Department of Environmental Quality Standards relating to noise. Demonstration of compliance may be required by the Review Authority.

However, this language was replaced by the current version of CDC 423-6 in Ordinance 855, which became effective on November 28, 2019. This application, which was deemed complete on December 28, 2023, is subject to the current version of CDC 423-6.

"Plainly audible" means any sound for which the information content of that sound is unambiguously communicated to the listener, such as, but not limited to, understandable spoken speech, comprehensible musical rhythms or vocal sounds.

WCCO 8.24.030, General Standards

Standards generally

It is unlawful for any person to make, continue or cause to be made or continued, any noise which unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any person of normal sensitivity in a noise sensitive unit. The standard which shall be utilized in determining whether a violation of the provisions of this chapter exists shall include, but not be limited to, the following:

- A. The volume of the noise;
- B. The intensity of the noise;
- C. Whether the nature of the noise is usual or unusual;
- D. Whether the origin of the noise is natural or unnatural;
- E. The volume and intensity of the background noise, if any;
- F. Whether the noise is plainly audible within a noise sensitive unit;
- G. The nature and zoning of the area within which the noise emanates;
- H. The density of the inhabitation of the area within which the noise emanates;
- I. The time of day or night the noise occurs;
- J. The duration of the noise;
- K. Whether the noise is recurrent, intermittent, or constant.

The hearings officer finds that it is feasible to operate the proposed contractor's establishment in compliance with these standards, based on the following findings and conditions.

The hearings officer finds that the volume and intensity of sound generated on the site is not unreasonably annoying, disturbing or injurious, as the applicant's sound study (Exhibit OR2-D) demonstrates that sound noise levels are well below the maximum daytime and nighttime noise levels allowed in OAR 340-035-0035 Table 8 (the "DEQ noise regulations"). The DEQ noise regulations prohibit L₅₀ noise above 55 dBA between 7:00 a.m. and 10:00 p.m. and 50 dBA between 10:00 p.m. and 7:00 a.m. in excess of The applicant measured maximum noise levels of 48.5 dBA, which is below the sound generated by a residential refrigerator. (Exhibit H2 at 17).

The hearings officer is not substituting the DEQ noise regulations for the County's noise ordinance. The DEQ noise regulations merely provide an

objective basis for determining what may be considered a reasonable volume and intensity of noise for purposes of determining compliance with WCCO 8.24.030.A and B.

WCCO 8.24.030.A requires consideration of whether the noise is usual or unusual while WCCO 8.24.030.G requires consideration of the nature and zoning of the area within which the noise emanates. The hearings officer finds that these two standards should be considered together, as what may be considered “usual” or “unusual” depends in part on the nature and zoning of the area. Noise which may be considered unreasonable in a residential neighborhood may be acceptable in an industrial zone. In this case, the site and surrounding area are in the FD-20 zone, where this type of use is allowed. In addition, the site and surrounding area are planned for future industrial use pursuant to the City of Wilsonville’s Basalt Creek Concept Plan.

WCCO 8.24.030.D requires consideration of whether the origin of the noise is natural or unnatural. Noise generated on the site is not “natural”; it is manmade, resulting from machinery and equipment operating and the loading and unloading of materials on the site. However, as discussed below, vehicle traffic on area roads is the primary source of background noise in this area. Traffic noise is also not a “natural” noise.

WCCO 8.24.030.E requires consideration of volume and intensity of the background noise, if any. Contrary to opponents testimony, this is not a “quiet area”; the applicant’s sound study measured considerable background noise. Roads in the area carry significant volumes of traffic, which generated the majority of background noise measured on the site. Construction of the Amazon facility east of the site and the PGE substation expansion to the west also generate noise from construction vehicles and backup beepers and, until recently, from generators used to power lights on the Amazon parcel. (*Exhibit OR3-C at 75, 79, 80/Applicant’s Exhibit 28 at 7, 11, and 12, and OR2-F(5) at 4*). The sound study measured background noise levels between 42.8 and 43.4 dBA, whereas noise generated on the site ranged from 42.6 to 48.5 dBA.

WCCO 8.24.030.F requires consideration of whether the noise is plainly audible within a noise sensitive unit. Based on the McClendons’ videos, some noise appears to be plainly audible from inside their residence, which is a “noise sensitive unit” as defined by WCCO 8.24.015. (*See Exhibits OR2-F(4)(S), OR2-F(4)(N), and Exhibit OR2-F(4)(V)*).

The McClendons submitted additional videos of noise from the site, most of where were taken at or near the common boundary between the site and the McClendons property. However, the County noise standards only apply to impacts from noise “in a noise sensitive unit.” The McClendons’ residence, a noise sensitive unit, is located a considerable distance from north boundary of the site. (*Exhibits OR2-F(4)(C), OR2-F(5) at 4, OR3-A(2)(B), and OR3-C at 223-227/Applicant’s Exhibit 41*). The sound of backup beepers is audible inside the McClendons’ residence in Exhibit OR2-F(4)(V). However, the noise audible in that video was not generated by activities on the site. (*Exhibit OR3-C at 130-131/Applicant’s Exhibit 39 at 2-3*).

Ms. Mathys testified about noise from the site being audible on hers and her neighbors' properties. However, there is no evidence that the noise is plainly audible from inside residences or other "noise sensitive units" on those properties.

WCCO 8.24.030.G requires consideration of the nature and zoning of the area within which the noise emanates and WCCO 8.24.030.H requires consideration of the density of the inhabitation of the area within which the noise emanates. Residential development in the area is relatively low density with homes dispersed on large lots. Most residences are located on large lots. dispersed. OR2-F(5) at 4

WCCO 8.24.030.I requires consideration of the time of day or night the noise occurs. The majority of activities on the site occur during the day, as most of the applicant's concrete construction occurs during the day. However, employees may come to the site in the early morning hours to pick up vehicles, equipment, and materials for use on job sites. (*Exhibit OR3-A(2)(A) at 37, 50, 57, 58, and 69; Exhibit OR3-A(2)(H) at 16 and 18*). The applicant's diesel trucks idle for some period of time to warm up before they may be driven off of the site. Trucks must idle for longer periods in cold weather. (*Exhibit OR3-A(2)(A) at 32*). Idling is also necessary to build up pressure in the air tank used to operate the air brake system. (*Exhibit OR3-C at 76/Applicant's Exhibit 9 at 11*). In addition, the applicant occasionally works on projects that must be constructed at night. For those projects the applicant's employees generally stage vehicles, equipment, and materials needed for use on job site prior to 7:00 p.m., pick up the loaded vehicles and drive to the job site, then return these items to the site, sometimes in the early morning hours. (*Stamp hearing testimony*). Those activities generate noise that is audible on adjacent properties. (*Exhibits OR3-A(2)(C), OR2-F(4)(H), OR3-A(2)(L), OR2-F(4)(S), and OR2-F(4)(V)*).

WCCO 8.24.030.K requires consideration of whether the noise is recurrent, intermittent, or constant. The applicant's operation generates a wide variety of noise on the site. Idling trucks generate constant noise. Truck noise increases as trucks accelerate to leave, but it is generally short lived as the vehicles are departing the site. Vehicles and equipment operating on the site may generate intermittent noise as they move from one location to another (the Gator) or raise and lower materials (the Telehandler). Loading and unloading of materials also generates intermittent noise. Backup beepers generate recurrent noise. Noise occurs throughout the day as the applicant's employees load and unload materials and equipment used for offsite construction projects related to the applicant's concrete contracting business. Based on the videos and testimony in the record, the hearings officer finds that most noise generating activities are of limited duration as employees load and unload materials and equipment used for offsite construction projects related to the applicant's concrete contracting business and repair and maintain equipment stored on the site. However, these noise generating activities continue on and off throughout the day. Nighttime noise is generally short lived as employees move vehicles and equipment on and off the site when the applicant is performing nighttime construction.

There is no dispute that this use generates noise that is audible on surrounding properties. However, the hearings officer finds that such noise will not “unreasonably annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of any person of normal sensitivity in a noise sensitive unit.” WCCO 8.24.030. The site and surrounding area is currently zoned FU-10 where this type of use is allowed. In addition, this area is planned for future industrial development when the site is annexed into the City of Wilsonville. Therefore, noise can be expected in this area. Activities on the Amazon facility east of the site also generates noise from vehicles, including backup beepers. The applicant’s sound study and the videos in the record demonstrate that the noise is not overwhelming. Although it is impossible to determine the actual volume of noise from the videos, background sounds of birds, traffic and other sources are clearly audible over sounds emanating from the site.

However, the hearings officer finds that some limitations on the use of the site are warranted in order to limit noise impacts on surrounding properties. The hours between 10:00 p.m. and 7:00 a.m. are generally considered “quiet time”, when lower noise levels are expected and enforced. (See, e.g., WCCO 8.24.040.B, D; WCCO 8.24.020.G; and OAR 340-035-0035 Table 8; 340-035-0035(1)(d)(a) and (b); 340-035-00330(1)(e)(B); and 340-035-0015(11)). Therefore, the following Condition of Approval should be imposed on the applicant in order to limit noise impacts on adjacent properties:

Starting, idling, or operating of vehicles or equipment and moving or loading of materials is prohibited between 10:00 p.m. and 7:00 a.m. on any portion of the site located north of the south walls of the shop buildings on Tax Lot 309 or west of the west facade of the existing dwelling on Tax Lot 311.

WCCO 8.24.040, Enumerated acts

The hearings officer finds that the proposed use does not involve any of the enumerated acts set out in WCCO 8.24.040.

WCCO 8.24.040.A prohibits the use of “Horns, Signaling Devices, Etc. ...except as a danger warning.” Certain pieces of mobile equipment operating on the site are outfitted with backup beepers that generate “loud or harsh sound”, which is arguably a violation of WCCO 8.24.040.A. However, backup beepers are a safety device required by state law. Therefore, they are exempt from the County’s noise regulations pursuant to WCCO 8.24.020.F (Sounds regulated by federal and state law). However, this use is also subject to the Oregon Department of Environmental Quality (“DEQ”) “*Noise Control Regulations for Industry and Commerce*” set out in OAR 340-035-0035. Subsection 5 of that rule includes a similar exemption for warning devices, but only when such warning devices are not “operating continuously for more than five minutes.” OAR 340-035-0035(5). The McClendons submitted a video of equipment on the site with the backup warning beeper operating continuously for roughly one minute. (*Exhibit OR2-F(4)(J)*). Mr. Brown testified that the employee operating the telehandler unfortunately failed to put it in neutral for the better part of the one-minute video, which meant the backup beeper was sounding when it did not need to be. (*Exhibit OR3-C at 136/39 at 8*). A

condition of approval is warranted to prohibit backup beepers operating continuously on the site for more than five minutes to facilitate enforcement of this rule.

The applicant did not propose the use of radios, phonographs, televisions, musical instruments and other items listed in WCCO 8.24.040 on the site. Therefore, the application complies with this standard.

WCCO 8.24.040.C prohibits the use of “exhaust brakes.” However, the Code does not define the term “exhaust brakes” and this is the only section of the Code that uses that term. As noted in Mr. Stamp’s letter dated June 10, 2024 (*Exhibit OR3-C*), Wikipedia defines “exhaust brakes” as “[a] valve which essentially creates a back-pressure in the exhaust system, which applies enough force onto the engine’s pistons to slow the engine.” (*Wikipedia, The Free Encyclopedia, Wikimedia Foundation, 24 June 2024*). Mr. Brown testified that “Brown Contracting employees never utilize an “exhaust brake” or a “jake brake” on the subject property... Exhaust breaks will not engage even on demand unless and until you’re traveling ~20+ mph and at high RPM’s... Our trucks do have air brakes, and we do disengage air brakes when releasing them after having parked.” (*Exhibit OR3-C at 130/Applicant’s Exhibit 39 at 2*). There is no substantial evidence to the contrary.

The Code uses the specific term “exhaust brakes.” Based on Mr. Brown’s un rebutted testimony, exhaust brakes are not used on the site, as vehicles operating on the site do not travel at sufficient speed to engage exhaust brakes. The air brakes used on the site are not “exhaust brakes” subject to WCCO 8.24.040.C. Therefore, the hearings officer must find that the application complies with WCCO 8.24.040.C.

WCCO 8.24.040.D prohibits “Yelling Shouting, Etc. ... between the hours of ten p.m. and seven a.m.” Such activities are not proposed with this application and would constitute an enforceable violation if they occur. Therefore, the application complies with WCCO 8.24.040.D.

WCCO 8.24.040.E requires that engines be equipped with “a muffler or other device which will effectively prevent loud or explosive noises therefrom.” A condition of approval is warranted to prohibit the use of engines with unmuffled exhaust on the site. As conditioned, the application complies with WCCO 8.24.040.E.

WCCO 8.24.040.F prohibits the “The erection (including excavating), demolition, alteration or repair of any structure...” during certain hours and days. The hearings officer finds, based on the plain meaning of the words in the Code, that this section only applies to the construction of “structures.” It does not apply to all construction activity or the operation or repair of construction equipment. Such an interpretation would violate ORS 174.010, which prohibits adding or deleting words from a statute. The applicant proposed to create a new structure on the site. Construction of that structure is subject to the limitations of this section. However, the day to day activities of the applicant’s contractor’s establishment are not subject to this provision, because those activities do not constitute the construction of structures. Therefore, the application complies with WCCO 8.24.040.F.

WCCO 8.24.040.G prohibits the use of “[a]ny piledriver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other equipment, the use of which is attended by loud or unusual noise...” during certain hours. However, the applicant did

not propose to utilize any of the listed equipment on the site. The McClendons cited the use of “hammers” and they submitted a video of pounding noise on the site. (*Exhibits OR2-F(3) at 5 and OR2-F(4)(B)*). However, these activities do not constitute the use of a pneumatic hammer” prohibited by WCCO 8.24.040.G. Use of the term “pneumatic” indicates a powered hammer, not a person using a hand tool hammer.

The McClendons appear to argue that equipment on the site falls within what Mr. Stamp referred to as the “catchall provision” of this section, which prohibits the use of “[o]ther equipment, the use of which is attended by loud or unusual noise...” during certain hours. WCCO 8.24.040.G. However, under the rule of *ejusdem generis*, this type of catchall provision is limited to things that are similar to the specific items listed in the provision. See the cases and parentheticals cited in footnote 18 of Mr. Stamp’s letter dated June 10, 2024:

State v. Hutchins, 214 Or App 260, 267, 164 P3d 318 (2007), rev. granted, 344 Or 280 (2008), appeal dismissed, 345 Or. 690, 201 P.3d 911, rev. den., 346 Or. 590, 214 P.3d 822 (2009) (quoting *State v. Tucker*, 28 Or App 29, 32, 558 P2d 1244 (1977), rev den 346 Or. 590, 214 P.3d 822, 2009. In other words, “the general words are not to be construed in their broadest sense, but are to be limited to conduct of the same kind or class” as the specific examples. *Hodges*, 40 Or App at 247. The rule rests on the proposition that “if the legislature had intended the general words of the enactment to be used in their unrestricted sense, the specific, particularized words would have been unnecessary.” *Hodges*, 40 Or App at 247.

(*Exhibit OR3-C at 26*)

Equipment on the site is limited to dump trucks, “Ready-Mix” trucks, cement trucks, excavators, utility trucks, a Bobcat, a wood chipper (which is no longer used on the site), a forklift, various trucks, and trailers. (*Exhibits OR3-A(2)(a), OR2-F(4)(O), and OR2-F(4)(Q)*). None of these items are similar to a piledriver, steam shovel, pneumatic hammer, derrick, steam or electric hoist. Therefore, the application complies with WCCO 8.24.040.G.

WCCO 8.24.040.H prohibits the operation of any blower or power fan unless the noise from such blower or fan is properly muffled and the operation of motor-driven cycles unless such engine is equipped with a muffler device sufficient to reduce such noise. A condition of approval is warranted to prohibit the use of unmuffled blowers, fans, and engines consistent this regulation. As conditioned, the application complies with WCCO 8.24.040.H.

Although not proposed, it is possible that some of the above enumerated acts could occur on the site; employees, contractors, or other persons may play music, shout, sing, yell, construct or repair structures on the site during prohibited hours or use unmuffled engines on the site. However, these activities can occur on any property in the County and can only be addressed through the County’s enforcement process.

The McClendons argue that equipment on the site falls within the “catchall provision” of WCCO 824.040, which provides that the equipment and activities enumerated in this section “shall not be deemed to be exclusive...” However, as discussed above under

WCCO 8.24.040.G, under the rule of *ejusdem generis*, this type of catchall provision is limited to things that are similar to the specific items listed in the provision. The hearings officer finds that, with the exception of the specific items noted above, the equipment and activities on the site are not similar to the “enumerated acts” listed in WCCO 8.24.040.

Objections to the Sound Study:

Mr. McClendon argued that the sound study is subject to a protective order ... and was not allowed to be used outside of Washington County Circuit Court Case No. 22CV23711.”(Exhibit OR2-F(3) at 1). However, he failed to provide any evidence to support his assertion. Mr. McClendon submitted a “Proposed” protective order prepared by his attorney that was not signed by the Court. (Exhibit OR2-F(4)(D)). The Court issued a “Motion to Compel Inspection” (Exhibit OR3-C at 94/Applicant’s Exhibit 30 at 1) and a signed protective order (Exhibit OR3-C at 95/Applicant’s Exhibit 30 at 2). However, these documents did not include any limitations on use of the sound study, the protective order only applied to confidential health information. It did not limit use of the sound study from that proceeding. (*Id.*). The attorney representing the applicant in Washington County Circuit Court Case No. 22CV23711 stated that “The plaintiff’s [McClendons] asked for a protective order related to products of the inspection but the Court did not issue a protective order. (Exhibit OR3-C at 93/Applicant’s Exhibit 30 at 1).

Mr. McClendon argues that the Mr. Standlee’s team repeated sound measurements in order to obtain a desired sound level reading. (Exhibit OR2-F(3) at 10). Mr. Standlee reported that noise measurements were repeated because background noise from traffic and/or aircraft affected the measurements. (Exhibit OR3-C at 72/Applicant’s Exhibit 28 at 4). There is no evidence in the record to support Mr. McClendon’s assertion.

Mr. McClendon noted that the sound study measured noise at a location over 125 feet from the site boundary. (Exhibits OR2-F(3) at 7 and OR2-F(4)(C)). However, the analysis location is consistent with WCCO 8.24.030, which require analysis of noise “in a noise sensitive unit”, and OAR 340-035-0035(3)(b)(A), which requires noise measurements be taken “25 feet (7.6 meters) toward the noise source from that point on the noise sensitive building nearest the noise source.” Mr. Standlee measured noise “at the loudest point 25 feet from the southwest corner of the [McClendons’] residence in the direction of where noise is generated.” (Exhibit OR2-D at 3). The McClendons’ residence is a noise sensitive unit as defined by WCCO 8.24.015 and a noise sensitive building as that term is used in OAR 340-035-0035(3)(b)(A). Therefore, the hearings officer finds that sound measurements used were taken in the correct location.

Mr. McClendon argues that the sound study excluded “[t]he noisiest and worst vibration-causing machines and tools” as it did not include cement trucks, volumetric trucks, tankers, impact wrenches or woodchippers. (Exhibit OR2-F(3) at 7). However, Mr. Standlee measured noise generated from the various vehicles and equipment normally used on the site and determined that “sound radiating from one of their older dump trucks was actually louder than the sound radiating from the concrete batch truck.” (Exhibit OR3-C at 72/Applicant’s Exhibit 28 at 4). Therefore, they used the older dump truck in the sound analysis. They did not use a volumetric truck or wood chipper in the sound analysis because a volumetric truck is operated on the site and the wood chipper

was moved to another site due to noise complaints. (*Id. at 72-73/Applicant's 4-5*). The sound study did measure sound generated by an "impact" wrench, which was identified as a "torque" wrench in the analysis. (*Id. at 73/Applicant's 5*). The McClendons failed to submit any contrary evidence to support their assertion.

Mr. McClendon argued that testing individual pieces of equipment in isolation "[c]reated very misleading measurements." (*Exhibits OR2-F(3) at 7*). Mr. Standlee responded that this is a standard practice, which allows them to combine individual sound measurements in various analysis scenarios. (*Exhibit OR3-C at 73/Applicant's Exhibit 28 at 5*).

Mr. McClendon disputed the applicant's sound study based on his decibel measurements "in the 60s, 70s 80s." (*Exhibits OR2-F(3) at 7 and OR2-F(4)(I)*). However, Mr. McClendon's sound measurements were taken at a location very close to the boundary between the site and the McClendons' property, not 25 feet from the residence as required by OAR 340-035-0035(3)(b)(A). In addition, Mr. Brown testified that Mr. McClendon's sound measurements were taken before the applicant installed a sound wall on the site. (*Exhibit OR3-C at 136/Applicant's Exhibit 39 at 8*). Furthermore, Mr. Standlee noted that McClendon's sound level meter was set to the dBC scale, rather than the dBA scale required by the DEQ noise regulations and used in the applicant's sound analysis, resulting in a roughly 15 dB difference between Mr. McClendon's and the applicant's measurements of the noise generated by the operation of the applicant's Gator. (*Exhibit OR3-C at 74/Applicant's Exhibit 28 at 6*).

Ms. Mathys argues that the "canyon" north of the site, below her residence, amplifies sounds from the site. (*Testimony and Exhibit OR2-F(5)*). Mr. Standlee argued that this area is actually a "wide valley", as that the topography west of Ms. Mathys' residence rises gradually, rather than a steeply sloped "canyon". Higher elevations on such a wide valley such as this "[c]an experience sound levels that would be higher than would be expected if the terrain between the source and receiver was flat...[as] there is less ground reduction between a source located at a lower elevation and the receiver located at a higher elevation when there is direct acoustic line-of-sight." (*Exhibit OR3-C at 78/Applicant's Exhibit 28 at 10*). However, given the roughly 900 feet of distance between the site and the Mathys' residence, noise from the site will not exceed the limits set out in the DEQ regulations. (*Id.*).

Based on the above, the hearings officer finds that the applicant's noise study, which was prepared by a professional engineer in compliance with state regulations and accepted engineering practices, provides the best evidence of the noise levels generated by vehicles, equipment, and activities on the site. Unsupported assertions by neighboring residents are not sufficient to overcome the Mr. Standlee's expert testimony.

423-7 Vibration

No development shall generate ground vibration which is perceptible by the Director beyond the property line of origin without use of instruments. Ground vibrations caused by motor vehicles, trains, aircraft, or temporary construction work are exempt from strict application of these standards, but good faith efforts to control such vibrations shall be made by the originator.

Based on the text of the Code, this provision only regulates “ground vibration.” Mr. Brown testified that they do not operate equipment on the site that can produce ground vibration. They drive wheeled vehicles in and out of the site on paved surfaces. Although they have a “roller” (vibrating compactor), they do not use it on the site. Vibrating rollers were being used on the Amazon property east of the site. (*Exhibit OR3-C at 134/Applicant’s Exhibit 39 at 6*)

Mr. Standlee testified that the vibrations noted by neighboring residents are a result of low frequency acoustic energy traveling through the air, rather than ground vibrations. (*Exhibit OR3-C at 71/Applicant’s Exhibit 28 at 12*).

Normally, ground borne vibration is caused when the ground is impacted by a source with enough energy to cause the ground to undergo compression and refraction in the immediate vicinity of the impact similar to the way in which acoustic energy is generated and travels from a sound source through the atmosphere. For ground vibration to be generated, there first has to be an impact imparted to the ground of sufficient energy to cause the ground to transmit the energy. Relative to moving equipment causing ground vibration, we normally find that to be associated with either a heavy piece of equipment that has direct contact with the earth, such as a steel-tracked dozer or an earth-moving scraper or with a heavy tire supported vehicle that moves across an offset joint in the surface of a roadway at a speed that would not be found on the contractor yard site.

Neither of the two examples of vibration causing sources are found at the contractor yard site so it is highly unlikely that the vibration referred to by Mr. McClendon and others are a result of ground borne vibration.

(*Id.*).

This is consistent with the McClendon’s video showing “vibrations” generated by the noise of vehicles and equipment idling on the site. Vehicles that are not moving, and therefore not impacting the ground, are unlikely to generate ground vibrations. (*Exhibits OR3-A(2)(C)*).

The hearings officer finds that it is feasible to comply with this criterion. Any future violations can be addressed through the enforcement process as the Code prohibits ground vibrations “[p]erceptible by the Director beyond the property line of origin without use of instruments.”

423-8 Heat and Glare

Heat and glare shall be limited as follows:

- 423-8.1 Except for exterior lighting, operations producing heat or glare shall be conducted entirely within an enclosed building.*
- 423-8.2 Exterior lighting shall be directed entirely away from adjacent properties.*

According to the applicant, no heat and/or glare causing activities will be undertaken on-site. Also, future lighting is planned to be designed to be shielded from adjacent properties. There is no substantial evidence to the contrary.

423-9 Storage

- 423-9.1 *All materials, including wastes, shall be stored and all grounds maintained in a manner which will not attract or aid the propagation of insects or rodents or create a health hazard.*
- 423-9.2 *No open storage of materials and equipment shall be permitted unless contained by a sight obscuring fence or landscaped screening.*
- 423-9.3 *Fencing will be allowed between the required landscaping and use where necessary to protect the property concerned or to protect the public from a dangerous condition subject to the following provisions:*
 - A. *No fence shall be constructed in the required setback from the public road right-of-way.*
 - B. *Fences shall be constructed as required through development review.*
 - C. *Fencing or sight obscuring screening for storage areas must be at least 6 feet, but no more than 10 feet high.*

Storage does and will continue to occur on site. None of the materials are expected to attract or aid the propagation of insects or rodents or create a health hazard and no record has been submitted to the county code compliance section alleging health hazards from animals. The recycling and garbage storage area is located south of the existing office building.

Open storage of materials and equipment also exists on Tax Lot 309 and is proposed to continue and expand onto Tax Lots 302, 302, 310, and 311.

The open storage areas on Tax Lot 309 are contained by a six-foot sight obscuring fence. The applicant also installed a taller wall and fabric barrier on the majority of the north boundary of Tax Lot 309 that provides additional screening. The existing fence does not completely obscure offsite views of these open storage areas due to topographic differences between the site and the property to the north. (*Exhibits OR3-A(2)(B) and OR3-A(2)(E)*). However, the Code only requires that open storage areas be “[c]ontained by a sight obscuring fence...” It does not prohibit any views of such storage.

As discussed under CDC 411 above, the applicant will be required to install additional sight obscuring fencing on the outer boundaries of Tax Lots 303, 310, and 311. As conditioned, this criterion is met.

423-9.4 Storage of Hazardous Materials

Developments which store hazardous materials must comply with State standards, OAR Chapter 340 Division 63, and the Federal standards, 40 CFR Part 262 and 264 and shall

demonstrate such compliance. All hazardous materials must be stored above ground. Transport of and disposal of such materials shall be in conformance with all applicable local, State and Federal regulations with such compliance demonstrated.

The contractor's establishment does not involve the storage, transport, or disposal of hazardous materials. The applicant is storing fuel on the site and tanker trucks come to the site to fill those tanks (*Exhibits OR2-F(4)(K), OR2-F(4)(T)OR3-A(2)(J)*). However, that use is not regulated by the state and federal standards note in this Code section. The fuel tanks are located roughly 350 feet south of the boundary with the McClendon's property. (*Exhibit OR3-C at 121/Applicant's Exhibit 37*). Mr. Brown testified that the Fire District confirmed the location of the fuel tanks and determined that they are not subject to regulation given the amount of fuel stored on the site. (*Exhibit OR3-C at 137/Applicant's Exhibit 39 at 9*).

Mr. McClendon argued the applicant is storing "[h]azardous chemicals such as hydrochloric acid and sulfuric acid, among others, in dozens of 5-gallon buckets staged near our fence." (*Exhibits OR2-F(3) at 12, OR2-F(4)(E) and OR2-F(4)(O)*). However, there is no evidence that the buckets visible in the photos contain hazardous materials regulated by the state and federal standards note in this Code section. The applicant testified that these buckets originally contained grouts, cold patch, curing compounds, and similar materials used in the applicant's concrete business that are available at Home Depot. They reuse the empty buckets to store tools and supplies. On the day the photos in OR2-F(4)(E) and OR2-F(4)(O) were taken, the applicant had temporarily stockpiled all of its buckets outside while they cleaned and reorganized the warehouse, (*Exhibit 137-138 at 227/Applicant's Exhibit 39 at 9-10*). There is no evidence that the applicant is using, storing, transporting, or disposing of any hazardous materials regulated by this section.

423-10 Drainage and Waste Water

All development shall comply with the State Department of Environmental Quality Water Quality Standards for all runoff, drainage and waste water.

The applicant states that stormwater runoff, drainage, and wastewater management will be designed to comply with applicable Department of Environmental Quality (DEQ) water quality standards. Stormwater management is proposed to be met by providing an above-ground stormwater facility, below-ground stormwater facility, or a combination of the two. Compliance with this standard will be evaluated as part of County Grading Permit review. DEQ's website provides the following information regarding if a DEQ permit is required for construction activities:

"Construction activities that disturb one acre or more, including clearing, grading and excavation, are required to have a National Pollutant Discharge Elimination System general permit #1200-C. Projects that disturb one acre or more over a period of time or are part of a common plan are also required to apply for permit. This permit will require that erosion at the construction site be controlled to prevent sediment from entering waters of the state. An Erosion and

Sediment Control Plan must be submitted to DEQ for approval prior to beginning construction.”

As such, Condition of Approval is warranted requiring the applicant to provide evidence from the State DEQ that a 1200-C permit (construction stormwater permit) has been obtained or that it is not required.

The City of Wilsonville argues that the existing stormwater facility on Tax Lot 309 is undersized, because the applicant paved areas of the site that were initially proposed to be gravel surfaced. (*Exhibit PH5 at 2*). However, the applicant submitted as-built plans and County approvals demonstrating that the design of the stormwater facility accounted for all impervious surfaces on the site and the existing facility is actually oversized: the facility was designed for 2.1-acres of impervious area but the site only contains 1.88-acres of impervious area. (*Exhibits PH6-A at 17-21, OR2-G at 642, and OR4 at 6*).

The City asserts that it, not Clean Water Services, should be the stormwater service provider for the site, because the City is the road authority of SW Day Road where public stormwater facilities are located. (*Exhibit PH 5 at 5*). However, this site is located in unincorporated Washington County, not the City of Wilsonville. The applicant has not proposed to discharge stormwater runoff to SW Day Road. As shown in the applicant's Existing Conditions plan and discussed in the applicant's stormwater report (*Exhibit OR2-G at 642*) the topography of the site slopes downhill to the west and northwest. Stormwater falling on the site flows into the on-site wetlands in the northwest portion of the site. The applicant designed the stormwater plan for this site to replicate that existing condition. The applicant will collect, treat, and detain all stormwater runoff from the site. The applicant will discharge treated runoff into the on-site wetlands at less predevelopment rates, replicating existing conditions. (*See Exhibit OR2-G Table 5-1 at 644*).

The City asserts that the applicant should be required to provide a downstream stormwater analysis. (*Exhibits PH5 at 6 and OR2-F(6) at 3*). However, they failed to provide any justification for that assertion. Mr. Stamp addressed that issue in his letter dated May 30, 2024. (*Exhibit OR2-G at 17*).

The City further argued that the existing and proposed stormwater infiltration facility will require DEQ approval as an injection facility. The hearings officer finds that it is feasible to apply for a DEQ permit if it is required. The applicant is not required to demonstrate compliance with DEQ requirements for injection facilities, because any required DEQ permit will be subject to DEQ review. *Wal-Mart Stores, Inc. v. City of Bend*, LUBA No. 2006-040, 52 Or LUBA 261, 285-287 (2006). A condition of approval is warranted requiring the applicant to provide a statement from DEQ that the infiltration facility is exempt from regulation as an injection facility or obtain a DEQ injection permit.

423-11 Adequate Water Supply

*All development shall be required to have an adequate water supply.
Adequacy shall include:*

423-11.1 Adequate supply for the use prior to issuance of a building permit (see Section 501-5.1, Critical Services).

The applicant proposes to obtain water from sources presently available on site. The existing well is adequate to serve the current operation and proposed expansion. As discussed below under CDC 501, public water is not needed for fire protection service on the site. The new open-air building is not proposed to include an enclosed or occupiable space or any plumbing (water) fixtures. The applicant also stated that the existing landscaping incorporates drought-tolerant and/or native plant species. Consequently, the applicant stated that public water is not necessary and further that approval of this application will not preclude the site's ability to obtain public water service from the City of Wilsonville in the future. See findings for Section 501 below.

423-12 Radioactive Materials

The handling and storage of radioactive materials, the discharge of radioactive materials into air or water, and the disposal of radioactive waste in connection with all uses shall be in conformance with all applicable local, State, and Federal regulations with such compliance demonstrated.

No radioactive materials are proposed to be used, created, or disposed of on the site. Toxic or noxious materials are anticipated to be created or disposed of on-site.

423-13 Toxic or Noxious Matter

All development shall comply with the State Department of Environmental Quality standards pertaining to omission of toxic or noxious matter and such compliance shall be demonstrated.

The hearings officer assumes that this provision was intended to say "emissions" rather than "omission", as DEQ generally regulates the release of harmful or objectionable substances. The word "omission" means:

1 a : something neglected or left undone

There are a few *omissions* in the list.

B : apathy toward or neglect of duty

The police officer was reprimanded for the *omission* of his duty to inform the suspect of his rights.

("Omission." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/omission>. Access 9 Jul. 2024).

However, the hearings officer must apply the plain language of the Code as adopted by the City Council. *Weston Kia v. City of Gresham*, LUBA No. 2014-085 (2014), citing ORS 174.010. The hearings officer finds that compliance with DEQ standards will ensure that these materials are not omitted. Therefore, to ensure continued compliance with Section 423-13 the following Condition of Approval should be imposed:

The existing and expanded development shall comply with the state Department of Environmental Quality standards pertaining to the emission of toxic or noxious matter and such compliance shall be demonstrated.

This condition will also ensure compliance with DEQ standards regarding the emission of toxic or noxious matter.

The McClendon's assertions that the applicant is storing toxic and noxious chemicals on the site are addressed under CDC 423-9.4 above. However, the additional condition recommended by staff will address the McClendon's concerns.

Only construction-related materials and materials that are not toxic or noxious may be stored on the property and located no closer than twenty-five (25) feet of Tax Lots 3S102B000306 and 00312.

Section 426 Erosion Control

The applicant/property owner shall submit sedimentation/erosion control plans prior to any site disturbances and issuance of a building permit. The applicant shall obtain a grading permit and all grading shall be conducted using erosion control which meets the standards of the Washington County Erosion Control Plans Technical Guidance Book (January 1991).

4. Article V, Public Facilities and Services:

Section 501 Public Facility and Service Requirements

501-6 Exceptions for Critical and Essential Services

501-6.1 Development proposals that cannot ensure critical and essential services within the required time frames shall be denied unless all of the following findings can be made:

Casefile L1400431-D(IND) approved an exception to the critical and essential service standards of Section 501-8 of the Community Development Code, as urban water, sanitary sewer, and surface water management services were not presently available at the site. The approved exception remains valid for the existing business. A new exception is not required because none of the proposed expansion activities (e.g., the open air structure) require water or sewer service. Physical alterations proposed on the new parcels included with the application include grading and graveling vehicle and equipment parking/storage areas and the covered open-air structure. New water and sewer service is not required for the proposed expansion.

However, "as a precaution," the applicant requested to modify the application to specifically request a new exception for the expanded use. (*Stamp testimony and Exhibit OR2-G at 1*). The hearings officer finds that this request does not constitute a major change to the application, as the findings in the application and Staff Report addressed this issue and the City of Wilsonville addressed it in their comment letters. Therefore, the hearings officer will allow the applicant to amend the application to include a new exception for the expanded use.

The hearings officer finds that the exception criteria are met based on the following findings.

- A. *The particular inadequate facility(ies) or service(s) is not necessary for the particular proposal within the time period identified by the service provider;*

Critical Facilities and Services

In accordance with Section 501-8.1 of the Code, the following facilities and services are considered critical:

- Water;
- Sewer;
- Fire protection;
- An adequate level of access to the proposed development;
- Adequate drainage and adequate provisions for storm water, surface water and water quality management; and
- No development shall be approved on property that is located outside of the Washington County Urban Road Maintenance District;

Water

The site is currently located outside an established water district. The City of Wilsonville currently has a water service line within SW Day Road, south of the site. However, the City cannot provide water to the site unless and until it is annexed into the City. An existing groundwater well on Tax Lot 309 serves the water needs of the proposed use. No new water service is required for this proposal.

Mr. McClendon argued that groundwater withdrawal by this use and the existing residences on the site may reduce water level in the aquifer for this area. (*Exhibit OR3-A(1) at 6*). The applicant argued that "Overall, the level of water usage as part of the business is generally the same or slightly more than a typical residence" (*Exhibit OR2-G at 15*). Water use is limited to flushing toilets, washing hands, making coffee, drip irrigation of landscaping, and power washing equipment. (*Id.*). Regardless, water use on this site is subject to ORS 537.545(1)(f), which limits groundwater withdrawal by industrial and commercial uses to a maximum 5,000 gallons a day and the applicant is subject to that limitation. The residences retained on the site will not increase groundwater withdrawal, as these are existing uses that currently withdraw groundwater. The hearings officer finds that adequate water is available and public water is not necessary to serve the proposed use.

Sewer

Sewer service is not currently available to the site, as the site is located outside Clean Water Services service boundaries. The City of Wilsonville will provide sewer service if and when the site annexes into the city. Timeframes for the provision of surface water management services are unknown. The site is currently served by an on-site septic treatment system. The applicant provided, through Casefile L1400431-D(IND), evidence demonstrating that the applicant held a valid permit from the Washington County Health and Human Services Department for the on-site septic treatment system. The hearings officer finds that adequate effluent disposal is available and public sewer service is not necessary to serve the proposed use.

The applicant agreed to a condition of approval requiring annual inspection of the existing septic system serving the contractor's establishment to ensure that it continues to function as designed. If the inspections revealed that the system was at risk of failure, the applicant could reduce water flows by installing high efficiency urinals and low flow sinks, etc. (*Exhibit OR4 at 6*). A condition of approval is warranted to that effect.

Fire Protection

The applicant has provided a service provider letter from Tualatin Valley Fire and Rescue ("TVF&R") indicating that service for fire protection is available to the site. (*Exhibit E of the application*).

The City of Wilsonville argued that "The TVF&R service provider letter ... is inaccurate" because fire protection is available by use of the fire hydrant in SW Day Road, which is connected to City water which is only available to serve properties within the City. (Exhibit PH5 at 4). However, CDC 501-7.4 provides:

The service provider's information shall be treated as a rebuttable assumption as to the ability to provide an acceptable level of service. However, the evidence that can rebut it must be compelling evidence based upon objective data in order to controvert the determination of the service provider.

The City failed to provide any support for its assertion that the Fire District relied on the presence of this hydrant in issuing the service provider letter. The checklist included with the TVF&R letter noted that fire hydrant requirements were not applicable. (*Fire Department Access and Water Supply Permit Checklist Item #34*). The site plan included with the service provider letter does not indicate the presence of this fire hydrant. The 7,500 square foot open-air structure proposed with this application is exempt from firefighting water supply requirements as TVF&R regulations do not require evidence of a firefighting water supply for commercial structures less than 24,000 square feet in rural and suburban areas. (*TVF&R "New Construction Fire Code Applications for Commercial and Multi-Family Development" at 10*). Therefore, the hearings officer finds that the City failed to rebut the assumption that information in TVF&R's letter is inaccurate.

In addition, the City's proposed solution, that the applicant must annex the site into the City, would preclude this use, as the proposed contractor's facility is not an allowed use in the City. The site and surrounding area are zoned Washington County FU-20 because urban services are not currently available. The FU-20 zone is an interim zone that only applies until urban services are provided and the site is annexed into the City and rezoned for urban development. This use is an allowed use in the current Washington County FU-20 zoning.

Access

The site is within unincorporated Washington County and abuts SW Day Road, which is within the boundary of the City of Wilsonville. The City of Wilsonville is the road authority for SW Day Road. Access to the existing operation was approved through Casefile L1400431-D(IND). The residences on the site also have existing driveway accesses to SW Day Road. With this application the applicant proposes to utilize the existing access on Tax Lots 302 and 310 for additional access for the expanded contractors establishment. Modification of the existing driveway access within the City's right-of-way will require approval from the City of Wilsonville. The hearings officer finds that it is feasible to apply for access approval from the City of Wilsonville. Therefore, it is feasible to provide an adequate level of access to the proposed development.

The City argued that the applicant should be required to close some of the existing driveways on the site in order to increase compliance with its access spacing requirements. (*Exhibit PH5 at 27 and OR2-F(6) at 2 and Attachment A at 12*). The applicant disputes the City's authority to require closure of the existing driveways. However, the hearings has no jurisdiction over the City of Wilsonville. The applicant must apply for access approval from the City. If the applicant believes the City is imposing unlawful conditions on its access approval or improperly denies access the applicant has adequate legal recourse to address those issues outside of this proceeding.

Stormwater

The site is currently outside of the Clean Water Services service boundaries. Storm sewer will be provided by the City of Wilsonville if and when the site annexes into the city. Timeframes for the provision of surface water management services are unknown. The existing site has a functioning stormwater facility. The County will review the existing stormwater facility through its grading permit review process to determine if improvements, alteration, or expansion are needed to accommodate additional runoff from the proposed expansion consistent with County requirements. The applicant provided, through Casefile L1400431-D(IND), evidence from the State DEQ that a 1200-C permit had been obtained, or that no State DEQ permits were required. The hearings officer finds that drainage is available and public storm sewer service is not necessary to serve the proposed use.

The City asserts that it should be the stormwater service provider for the site, because it is the road authority of SW Day Road where public stormwater facilities are located. (*Exhibit PH 5 at 5*). However, as discussed above, this site is located in unincorporated Washington County, not the City of Wilsonville. The applicant has not proposed to discharge stormwater runoff to the public stormwater facilities in SW Day Road.

Urban Road Maintenance District

Local and Neighborhood Route Roads are maintained by the County Urban Road Maintenance District (URMD). CDC Section 501-8.1 D requires properties to be annexed into the URMD prior to approval of development or redevelopment. The subject property is not currently in the URMD; however, Policy 41 (Urban Growth Boundary Expansions) of the Comprehensive Framework Plan for the Urban Area provides that properties in the FD-20 district shall not be required to annex into the URMD. Therefore, CDC Section 501-8.1 D. does not apply to the subject property, and annexation into the URMD shall not be required.

Essential Facilities and Services

In accordance with Section 501-8.2 of the Code, the following facilities and services are considered essential:

- Schools
- Police or Sheriff protection
- Transit agency service
- Adequate Level of Arterial and Collector Roads
- Street Lighting

- Gravel roads are unacceptable for development within the Urban Growth Boundary
- Future alignments of Collectors or Arterials
- Half street improvements

CDC 501-8.2.A(1) requires applicants to submit service provider letters from “the appropriate school district, police or sheriff department, transit agency, trail provider and highway department.”

The proposed development application does not include residential land uses (i.e., housing) and therefore will not generate new students. For this reason, an adequate level of school service is not considered applicable to this development application for a contractor’s establishment.

The applicant submitted a service provider letter from the Washington County Sheriff’s Department establishing that police protection is available to the site. The site is not required to annex into the Sheriffs Enhanced Patrol District, as per Policy 41 of the Washington County Comprehensive Framework Plan for the Urban Area.

Nothing in the language of the Code requires a service provider letter from the transportation provider. CDC 501-8.2.B requires “an adequate level of Arterial and Collector roads available to the proposed development in place or assured at the time of occupancy.” However, this provision provides “This requirement is satisfied by payment of the Transportation Development Tax.” Condition V.B requires payment of Transportation Development Tax. Therefore, this criterion is met as conditioned.

Further information relating to transportation standards can be found in the Transportation Findings below.

B. The approval of the development application will not substantially interfere with the ability to later provide the particular inadequate facility(ies) or service(s) to anticipated uses in the vicinity of the subject property;

The development proposed in this application will not interfere with the ability to later provide these services to anticipated uses in the vicinity of the subject property. This use is intended as an interim use until the urban comprehensive planning for future urban development of these areas is complete. (CDC 308-1). The proposed development, which is limited to grading, construction of a single new open-air pole building, and the installation of fencing and landscaping, will not interfere with the ability to extend public facilities and services to the site in the future.

C. The approval of the development application without the assurance of the particular inadequate facility(ies) and service(s) will not cause a danger to the public or residents in the vicinity of the subject property; and

The applicant is required to provide evidence relating to compliance with appropriate on-site water usage, septic treatment, and surface water management and drainage. As such, it is considered that use of the site without the provision of urban water, sewer, and

surface water management services will not cause a danger to the public or residents in the vicinity of the subject property.

D. It is shown that the applicant has exhausted all practical methods within the ability of the applicant to ensure the provisions of the unacceptable facility(ies) and service(s).

As described above, timeframes for the provision of urban water, sewer, and surface water management services to the site are unknown. As such, the applicant is unable to practically ensure the provisions of the unacceptable services. Service is predicated upon annexation into the City of Wilsonville.

501-6.2 All exceptions to the Public Facility and Service Standards identified above will be reviewed through a Type III process.

The request for exceptions to the Public Facility and Service Standards identified above was reviewed and approved through the Type III process for Casefile L1400431-D(IND) and again through the Type III process for this application.

Therefore the hearings officer approves the requested an exception to the critical and essential service standards of Section 501-8 of the Community Development Code, as urban water, sanitary sewer, and surface water management services are not presently available at the site.

C. Ordinance No. 793-A; Transportation Development Tax:

The Transportation Development Tax (TDT) is required of all new development and constitutes an assurance to satisfy a development's requirement to provide additional capacity to major collectors and arterial streets needed for development. This fee is based on the number of daily trips a site generates and is due at issuance of a building permit.

D. Transportation Findings:

Trip Generation:

This request is to expand an existing contractor's establishment approved through Casefile L1400431-D(IND). The application involves five tax lots, all owned by the applicant. There are three existing single-family detached residences on three lots within the project site, which the applicant indicates will remain in use as residences. The existing residences generate 9.43 average daily vehicle trips (ADT), based on ITE Code 210 (Single-Family Detached Housing). The total residential ADT would be 28.29.

The ITE does not publish trip generation data for contractor's establishments. In Casefile L1400431-D(IND) County staff conservatively estimated trip generation for the proposed contractor's dwelling as approximately 52 ADT. (*Staff Report Attachment D at section 1.b*). However, the conditions of approval for Casefile L1400431-D(IND) did not include any limitation on the number of vehicle trips generated by the proposed use. The applicant utilized ITE Category 180, Specialty Trade Contractor, to estimate that the existing contractor's establishment with 30 employees generates 108 weekday ADT.⁵ The applicant also performed traffic counts at the site driveway during the a.m. and p.m.

⁵ 15 employees work on-site and another 15 employees park on-site and carpool in company vehicles to off-site job locations. (*Attachment G of the application at 1*).

peak hours on June 6, 2023, which generated p.m. trip counts consistent with ITE estimates. (*Attachment G of the application at 2*). On May 1, 2024, DKS, the City of Wilsonville's consulting traffic engineering firm, counted 138 vehicle trips at the driveway serving the existing contractor's establishment on Tax Lot 309. DKS counted 46 vehicle trips at the driveways serving the three existing single-family detached residences on the site. (*Table 2 of the DKS report, Exhibit PH5, Attachment C, at 5*).

The hearings officer finds that the applicant's trip estimates, which are based on ITE trip estimates and confirmed by p.m. trip counts, provide the best evidence of the current traffic volumes generated by the existing uses on the site. The hearings officer finds that DKS's single day trip counts overstate the traffic impact, as the daily trip counts for residential driveways 2 and 3 greatly exceeded the ITE estimate and driveway the trip counts for residential driveway 1 was well below the ITE estimate. The hearings officer finds that the trip generation estimates in the ITE Manual, which are based on average counts taken at multiple sites over longer periods of time, provide a more accurate trip generation estimate of traffic than DKS's single day traffic count.

The proposed expansion is not expected to increase the number of vehicle trips generated by the existing and proposed use. The expansion will not include any buildings with occupiable space (e.g., office or enclosed warehouse or storage space). The applicant does not anticipate hiring additional employees for the foreseeable future. (*Attachment G of the application at 3*). Condition of approval VII requires additional County review and approval if the number of employees or construction vehicles and/or heavy equipment increases by more than 25%. Therefore, the proposed expansion will not substantially increase the number of vehicle trips generated by this use.

Dedications and Improvements:

The County proposed conditions of approval requiring the applicant to dedicate eight feet of right-of-way, a 15-foot pedestrian and bicycle easement, and a ten-foot public utility easement and pay a fee of 130% of the engineers estimate for construction of sidewalk along the SW Day Road frontages of Tax Lots 302, 310, and 311. (*Proposed conditions III.A.2 through III.A.5*).

The County also required the applicant to close one of the two driveways serving Tax Lot 310. (*Proposed Condition III.B.3.c in the Staff Report*).

The City of Wilsonville argued that the applicant should be required to dedicate 16 feet of right-of-way along the SW Day Road frontages of Tax Lots 302, 310, and 311 and construct partial-width frontage improvements consisting of an additional travel lane, curb, planter strip, street trees, bike lane, sidewalk, streetlights, along the entire site frontage; from the eastern boundary of Tax Lot 309 to the western boundary of Tax Lot 311.

The County and the City bear the burden of demonstrating an essential nexus between impacts of the proposed development and the requested exactions (dedications and improvements) and that the requested exactions are roughly proportional to the impacts of the proposed development. (*ORS 197.796(4)*). The hearings officer finds that the County and the City failed sustain their burden of demonstration in this case.

The County based its requirement for right-of-way and easement dedications on the fact that the applicant agreed to similar exactions with the approval of Casefile L14-004341-D(IND). (*Staff Report Attachment D at section 3.b.i*). The County failed to provide any justification for the required payment for sidewalk improvements along the site's SW Day Road frontage. The County did not otherwise address the nexus and proportionality issues. Therefore, the hearings officer finds that the County failed to sustain its burden of demonstrating that the required exactions are necessary to address the impacts of the proposed development or that the cost of the improvements are roughly proportional to the impacts of the proposed development.

The City argued that there is an essential nexus between the impact of this development and the required road improvements because this use will add traffic, including "freight traffic", to SW Day Road, which is designated a Major Arterial in the City's Transportation System Plan ("TSP"). (*Exhibit OR2-F(6) Attachment A at 11*).

The City argued that the cost of the required improvements is roughly proportional to the impact of the development based on the analysis in Section E of its Memorandum dated May 30, 2024. (*Exhibit OR2-F(6) Attachment A at 12*). The City notes that the applicant's frontage represents 8.33% of the frontage on the section of SW Day Road between SW Grahams Ferry Road and SW Boones Ferry Road and 20.83% of all driveways along SW Day Road. The City is requiring the applicant to construct 3.83% of the SW Day Road cross-section, the width of the section of SW Day Road abutting the site.⁶ The site currently generates 2.05% of the existing p.m. peak hour vehicle trips on SW Day Road. (*Id.*).

The *Dolan* decision and its progeny require an analysis of nexus and proportionality based on the impacts of the proposed use. In this case the City based its analysis on trips generated by the applicant's existing contractor's establishment, which the County approved in 2015. The 2015 approval notes that "[S]taff developed a conservative estimate of trip generation for the proposed [use and concluded that] the minimum trip generation from the proposed contractor's establishment use can be assumed as approximately 52 trips per day...[not including] additional trips by materials suppliers, office employees, and other potential additional trips to/from the site." (*Exhibit PH5 at 23*). However, the conditions of approval did not impose any limitations on the number of vehicle trips generated by the proposed use. The applicant dedicated right-of-way along the frontage of Tax Lot 309 to compensate for the impacts of that use. In addition, the site includes three existing residences, each of which generates 9.57 ADT, based on the trip generation rates in the ITE Manual. Vehicle trips generated by those residences will occur whether or not this application is approved. Vehicle trips generated by the previously approved contractor's establishment and the existing residences on the site are not relevant to the analysis as they are existing trips that are not generated by the proposed development.

However, the hearings officer finds that there is an essential nexus between the impacts of the proposed use and the required exactions. The proposed expansion limits future

⁶ The City states "Of the 19 feet that the City will require Applicant to construct, 17 feet is the financial responsibility of Applicant." (*Exhibit OR2-F(6) Attachment A at 1*). However, the City does not explain how the applicant will be relieved of the cost of constructing the additional two feet of improvements.

increases in employees and vehicles (and therefore trip generation) to 25% of the existing, previously approved, use. Therefore, the proposed expansion will generate some, albeit small, increase in vehicle traffic on SW Day Road. The existing road improvements are currently sufficient to accommodate existing traffic and the small volume of traffic generated by the proposed expansion. However, traffic volumes on SW Day Road are expected to increase significantly over time as this area continues to develop, leading to the need for a wider roadway with sufficient capacity to carry the additional traffic. Traffic from this development will contribute to that need. Therefore, the hearings finds that there is some nexus between the impacts of the proposed expansion and the need for improvements to SW Day Road. The amount of that contribution is addressed through the proportionality analysis discussed below.

The hearings officer finds that the City failed to demonstrate that the required improvements are roughly proportional to the impact of the proposed development. Using the City's analysis, the traffic generated by the proposed expansion represents 0.50% of the current traffic on SW Day Road. (25% of the 23 existing p.m. peak hour trips generated by the site = 5.75 new p.m. peak hour trips. $5.75 \text{ new trips} / 1,144 \text{ existing trips on SW Day Road} \times 100 = 0.50\%$). According to the City, "[t]he Applicant is only financially responsible for 3.83% of the SW Day Road cross-section..." (*Exhibit OR2-F(6) Attachment A at 13*). The hearings officer finds that a 0.50% increase in vehicle trips is not roughly proportional to requirement to fund 3.83% of the planned roadway improvement.

Access:

Casefile L14-004341-D(IND) approved a new access near the southeast corner of Tax Lot 309 (the original development site). Physical access was approved by the City of Wilsonville. Three of the four lots added to the proposed expansion area each have an existing dwelling unit and driveway access to SW Day Road for each dwelling unit. The access that currently serves the retained home on Tax Lot 303 is identified as a construction access and a secondary access to the expanded contractor's establishment. This scenario represents the only change to the existing accesses on the site. Alterations to the existing accesses requires approval from the City of Wilsonville. The applicant shall obtain approval from the City that this access can be used for construction and secondary access to the expanded contractor's establishment.

Each of the existing dwelling units on the site has a single driveway except for Tax Lot 310, which as a circular access comprised of two driveways. The existing driveway spacing does not meet the City's access spacing standards as discussed in Exhibit PH5 Attachment C at 2. The County argued that the applicant should be required to close one of the two driveways serving Tax Lot 310 "[i]n order to minimize accesses to an Arterial road and to increase the safe traffic maneuvering on SW Day Road." (*Staff Report Attachment D at section 2.b.*). The City argued that the applicant should be required to consolidate the existing driveways to increase compliance with the City's access spacing standards. (Exhibit PH5 at 6).

The hearings officer finds that the County failed to demonstrate a required nexus between the impacts of the proposed development and the requirement to close one of the one of the driveways on Tax Lot 310. This is an existing driveway serving the existing residence

on this lot. (*Proposed Condition of Approval III.B.3.c in the Staff Report*). No changes to this driveway or residence are proposed with this application. This driveway and residence will continue to exist whether or not this application is approved. There is no evidence that this driveway is hazardous. Therefore, the hearings officer finds that there is no nexus between the proposed development and this condition as approval of this application will have no impact on the volume or type of traffic using this existing residential driveway. Proposed Condition of Approval III.B.3.c in the Staff Report should be deleted.

The City proposed to require that the applicant consolidate the site's existing residential driveways on SW Day Road. (*Exhibit PH5 at 6; proposed conditions b, c, and d*). The City, as the road authority for SW Day Road, may have the authority to require closure or consolidation of driveways on SW Day Road as discussed in Exhibit OR3-A(4) at 3. However, nothing in the County Code requires such closure as a condition of this approval. There is no evidence that such closure is needed to improve safety on SW Day Road. As the applicant notes (*Exhibit OR3-C at 81/Applicant's Exhibit 29 at 1*), there is no evidence that the existing driveways are hazardous.

Abutting Roadway Designations, Standards, and Right-Of-Way:

The only roadway abutting the site is SW Day Road. This road is within the city limits of the City of Wilsonville. The City of Wilsonville is also the road authority for SW Day Road. As such, standards including, but not limited to, roadway designation, dedication, improvements, access, sight distance, and safety are under the jurisdiction of the City of Wilsonville. Therefore, any construction work done within the City's right-of-way shall need to be constructed in conformance with the City's Public Works Standards and done under a City of Wilsonville Public Works Permit, available through the City Engineering Division. Please submit plans of proposed construction within the right-of-way for review by engineering staff; plan review fee is 2% of the engineer's estimate and Public Works Permit fee is an additional 5% of the engineer's estimate.

F. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that the Casefile No. L2400001-D(IND) (Brown Contractor's Establishment) should be approved subject to the conditions of approval recommended by county staff, because the applicant sustained the burden of proof that the proposal does or will comply with the applicable approval standards in the Washington County Community Development Code subject to those conditions.

G. ORDER

The hearings officer hereby approves the Special Use approval requested in Casefile No. L2400001-D(IND) (Brown Contractor's Establishment), subject to the conditions of approval in Attachment B of this decision.

DATED this 16th day of July 2024.

A handwritten signature in black ink, appearing to read 'Joe Turner', with a long horizontal stroke extending to the right.

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

ATTACHMENT B
CONDITIONS OF APPROVAL
Casefile No. L2400001-D(IND)
(BROWN CONTRACTOR'S ESTABLISHMENT)

- I. THIS APPROVAL SHALL AUTOMATICALLY EXPIRE FOUR YEARS FROM THE DATE OF THIS APPROVAL, UNLESS DEVELOPMENT HAS COMMENCED, AN APPLICATION FOR AN EXTENSION IS FILED, OR THIS APPROVAL IS REVOKED OR INVALIDATED (SECTION 201-4).
- II. PRIOR TO COMMENCING ANY ON-SITE IMPROVEMENTS, INCLUDING GRADING, EXCAVATION AND/OR FILL ACTIVITIES:
- A. Obtain a Grading Permit from the Washington County Building Services Division. The Grading Permit application must follow the grading submittal package checklist from the Building Services Division.
 - B. Confirm with the City of Wilsonville whether the existing access on Tax Lot 302 is adequate for construction vehicle access. City approval will identify any improvements and which, if any, access locations need to be closed and/or combined to meet city access spacing requirements.
 - C. Site-specific geotechnical engineering report with recommendations for the development of the site is required. The report should be stamped and signed by an Oregon registered engineer.
 - D. Provide driveway structural details on the plans per site-specific geotechnical engineering recommendations for the existing driveway access to Lot 309 and any residential drive of adjacent lots used for construction access.
 - E. Provide a drainage analysis report stamped by a registered engineer licensed in the state of Oregon that shows how stormwater and any new impervious areas as a result of this proposed work will not negatively impact surrounding properties or the public right of way.
 - F. The applicant shall provide written evidence from the State Department of Environmental Quality (DEQ) that a 1200-C permit and an injection permit has been obtained or is not required.
 - G. Abatement of ENFPDS 23-00024 shall be completed prior to applicant submittal for Final Approval for Casefile L2400001-D(IND).
 - H. The applicant/property owner shall submit sedimentation/erosion control plans prior to any site disturbances and issuance of a building permit. The applicant shall obtain a grading permit and all grading shall be conducted using erosion control which meets the standards of the Washington County Erosion Control Plans Technical Guidance Book (January 1991).
- III. PRIOR TO FINAL APPROVAL:
- A. Complete the following items through the City of Wilsonville:

1. If any construction work is done within the City right-of-way, the work shall be constructed in conformance with the City's Public Works Standards and done under a City of Wilsonville Public Works Permit, available through the City Engineering Division. Please submit plans of proposed construction within the right-of-way for review by engineering staff; plan review fee is 2% of the engineer's estimate and Public Works Permit fee is an additional 5% of the engineer's estimate.

B. Submit Final Approval Application to Land Development Services, Project Planner (Paul Schaefer, 503-846-3832), including the following:

1. Final Approval form (Type I procedure; two copies).

NOTE: *The final approval application shall contain a written statement and complete evidence/documentation that all Conditions of Approval have been met.*

2. Final Approval fee.
3. Final plans illustrating the following:
 - a. Plans and elevations of the proposed structure demonstrating compliance with setback and height standards of the FD-20 District.
 - b. Landscape plans that provide at least 15% of the site in landscaping.
4. Plans for an S-2 sight obscuring fence:
 - a. Along the east boundary of Tax Lot 303, extend from the north boundary of Tax Lot 309 to the wetland boundary north of Tax Lot 309; and
 - b. Along the west property line of Tax Lot 311 in a manner that does not interfere with intersection sight distance standards for nearby driveways and otherwise extending from the right-of-way north to the wetland boundary.
5. Written certification from an engineer that the truck parking area has been constructed in accordance with the requirements of Section 413-4.4.
NOTE: Plans in the future to pave any of the graveled parking and storage areas is subject to land use review (Type I Procedure).
6. Documentation that ENFPDS22-00004 has been abated.
7. Evidence from the State Department of Environmental Quality that a 1200-C permit has been obtained for the expanded site development or is not required.
8. Written inventory of the vehicles and heavy machinery (e.g., dump trucks, cement trucks, loaders, forklifts/boom lifts, telehandler, backhoe, excavators, utility rigs, trucks & trailers) used by the contracting business kept on site during non-business hours for the approved business operation.

IV. PRIOR TO THE SUBMITTAL OF A BUILDING PERMIT THE APPLICANT SHALL:

A. Obtain Final Approval in accordance with Condition III.B.

V. PRIOR TO THE ISSUANCE OF A BUILDING PERMIT THE APPLICANT SHALL:

A. Submit to Building Services (503-846-3470) site plans showing:

1. Final site plans and details, including setbacks.

B. Pay the Transportation Development Tax and any other applicable System Development Charges conditioned in Casefile 14-431-D(IND) or provide documentation that payments have been made. Payments shall be based on the rates in effect when the applicant submitted Casefile 14-431-D(IND).

VI. PRIOR TO FINAL BUILDING INSPECTION:

A. Complete all required on-site improvements, including but not limited to installing an S-2 sight obscuring fence along the east boundary of Tax Lot 303, extend from the north boundary of Tax Lot 309 to the wetland boundary north of Tax Lot 309 and along the west property line of Tax Lot 311 in a manner that does not interfere with intersection sight distance standards for nearby driveways and otherwise extending from the right-of-way north to the wetland boundary, and obtain final sign-off by Project Planner, Paul Schaefer. Please contact staff a minimum of 48 hours in advance of the requested final Current Planning inspection.

B. Provide documentation that all remaining applicable requirements identified by the Fire Marshal in the updated Fire Department Access and Water Supply Permit Checklist have been satisfied.

VII. OPERATIONAL LIMITATIONS FOR THE CONTRACTOR'S ESTABLISHMENT:

This approval is limited to vehicles, equipment, and scope of operation as outlined in this Staff Report. Expansion of the scope of operation and addition of other uses, operating conditions, vehicles, or heavy equipment to this Contractor's Establishment at this site may require subsequent approval through the land use application process. An increase of 25% or more in total number of employees (currently 30), construction vehicles and/or heavy equipment and/or any paving of the expanded gravel parking and storage areas shall be subject to additional land use review. (Section 207-5)

VIII. ADDITIONAL CONDITIONS:

- A. Obtain a building permit for the fence located north of the existing shop buildings on Tax Lot 309. The fence is limited to a maximum height of seven feet, unless either a Type II Adjustment (formerly Hardship Relief Variance) or a Type III Variance (for greater than a 20% increase in height) is applied for and approved to allow fence height over seven feet.**
- B. All operational activity and storage shall comply with State Department of Environmental Quality standards pertaining to of the presence and use of toxic materials.**
- C. Only construction-related materials and materials that are not toxic or noxious may be stored on the property and located no closer than twenty-five (25) feet of Tax Lots 3S102B000306 and 00312.**
- D. Idling construction vehicles shall be kept no closer than 50 feet from the boundaries of Tax Lots 306 and 312.**
- E. Starting, idling, or operating of vehicles or equipment and moving or loading of materials is prohibited between 10:00 p.m. and 7:00 a.m. on any portion of the site located north of the south walls of the shop buildings on Tax Lot 309 or west of the west facade of the existing dwelling on Tax Lot 311.**
- F. Adequate sight distance shall be continuously maintained by the property owner(s). This may require the property owner(s) to periodically remove obstructing vegetation from the road right-of-way (and on site).**
- G. The existing and expanded development shall comply with the state Department of Environmental Quality standards pertaining to the emission of toxic or noxious matter and such compliance shall be demonstrated.**
- H. The use of engines with unmuffled exhaust on the site is prohibited pursuant to WCCO 8.24.040.E.**
- I. The use of unmuffled blowers, fans, and engines prohibited pursuant to WCCO 8.24.040.H.**
- J. Warning devices (backup beepers”) shall not operate continuously for more than five minutes. OAR 340-035-0035(5).**
- K. Leaf blowers or similar machinery shall not discharge visible dust into the air.**
- L. The septic system on the site shall be inspected on an annual basis to ensure that it continues to function as designed. If the inspections revealed that the system was at risk of failure, the applicant could reduce water flows by installing high efficiency urinals and low flow sinks, etc.**
- M. This development shall be constructed in accordance with the conditions of this decision, the approved final plans and the standards of the Community Development Code (Section 207-5).**

- N. All conditions of approval shall be binding upon all heirs, successors and assigns (Section 207-5).**
- O. Transferability of this Development Permit shall be in accordance with Section 201-8.**