



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Approved with conditions in part and Denied in part

Permit Type: Utility Facility in EFU

File No.: Z0036-23

Proposal: To construct an emergency access road to serve a proposed water filtration facility in Multnomah County. The applicant characterizes the use as a “utility facility necessary for public service”, which is a use potentially allowed in the Exclusive Farm Use zone. The emergency access road is proposed to have an all-weather gravel surface and to vary in width from 20 to 26 feet (widening to 26 feet around the proposed fire hydrants) and will include fiber optic cable, a water supply line and two fire hydrants. The applicant also proposes a temporary construction access road with an all-weather gravel surface and a width of 30 feet. A temporary construction easement is also proposed adjacent to the emergency access road. Both the temporary and permanent easements will vary in width.

Decision Date: July 5, 2023

Deadline for Filing Appeal: July 17, 2023, at 4:00 pm.

Unless appealed, this decision is effective on July 17, 2023, at 4:00 pm.

Issued By : Joy Fields, Sr. Planner, Jfields@clackamas.us

Assessor’s Map & Tax Lot(s): T1S R4E Section 27 Tax Lots 00100 and 00200 and T1S R4E Section 26 Tax Lot 04800

Site Address: 36181 SE Bluff Rd, Boring, OR 97009

Applicant: Portland Water Bureau

Owner of Property: Surface Family Trust, Debra M. Surface, Trustee; and Nathan Burkholder and Brittany Burkholder

Zoning: Exclusive Farm Use (EFU)

Community Planning Organization (CPO) for Area:

CPO-Cottrell; Mike Dawson; cottrellcpo@gmail.com

Community Planning Organizations (CPOs) are part of the county's community involvement program. They are advisory to the Board of County Commissioners, Planning Commission and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact Clackamas County Community Engagement at 503-655-8751.

OPPORTUNITY TO REVIEW THE RECORD: The submitted application is available for review online at <https://accela.clackamas.us/citizenaccess/>. Select the Planning tab and enter the file number to search. Select Record Info and then select Attachments from the dropdown list, where you will find the submitted application. The complete application file is available for inspection at no cost by contacting the Planner listed on the first page of this decision. Copies of all documents may be purchased at the rate of \$2.00 per page for 8 1/2" x 11" or 11" x 14" documents, \$2.50 per page for 11" x 17" documents, \$3.50 per page for 18" x 24" documents and \$0.75 per sq ft with a \$5.00 minimum for large format documents.

APPEAL RIGHTS: Any party disagreeing with this decision, or the conditions of approval, may appeal this decision to the Clackamas County Land Use Hearings Officer. An appeal must include a completed County Appeal Form and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified on the first page of this decision.

Appeals may be submitted in person during office hours (8:00 am to 4:00 pm Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

The County Appeal Form is available at www.clackamas.us/planning/supplemental.html. Any party or parties appealing this decision may withdraw their appeal at any time prior to the hearing or final decision by the Hearings Officer. A party wishing to maintain individual appeal rights may file an individual appeal and pay the \$250.00 fee, even if an appeal by another party or parties has been filed.

A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

APPLICABLE APPROVAL CRITERIA: This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 401, 1002, 1003, 1004, 1006, 1007, 1009 and 1307.

PUBLIC AND AGENCY COMMENTS:

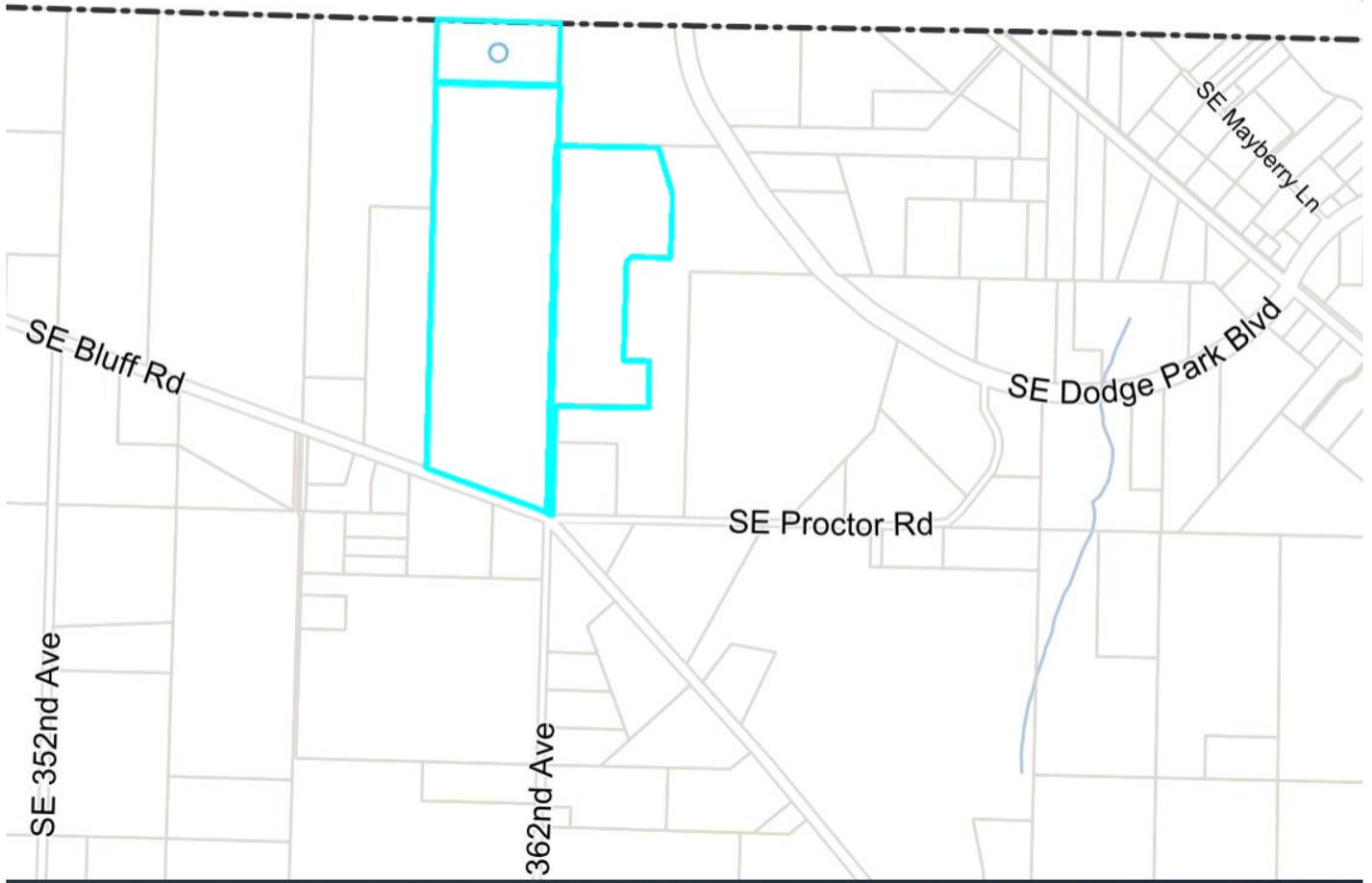
Notice was sent to applicable agencies and owners of property within 750 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. Comments from the following were received: Sandy Fire District #72, Clackamas County Development Engineering, Cottrell CPO, Oregon Trail School District #46, and over 40 members of the public.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

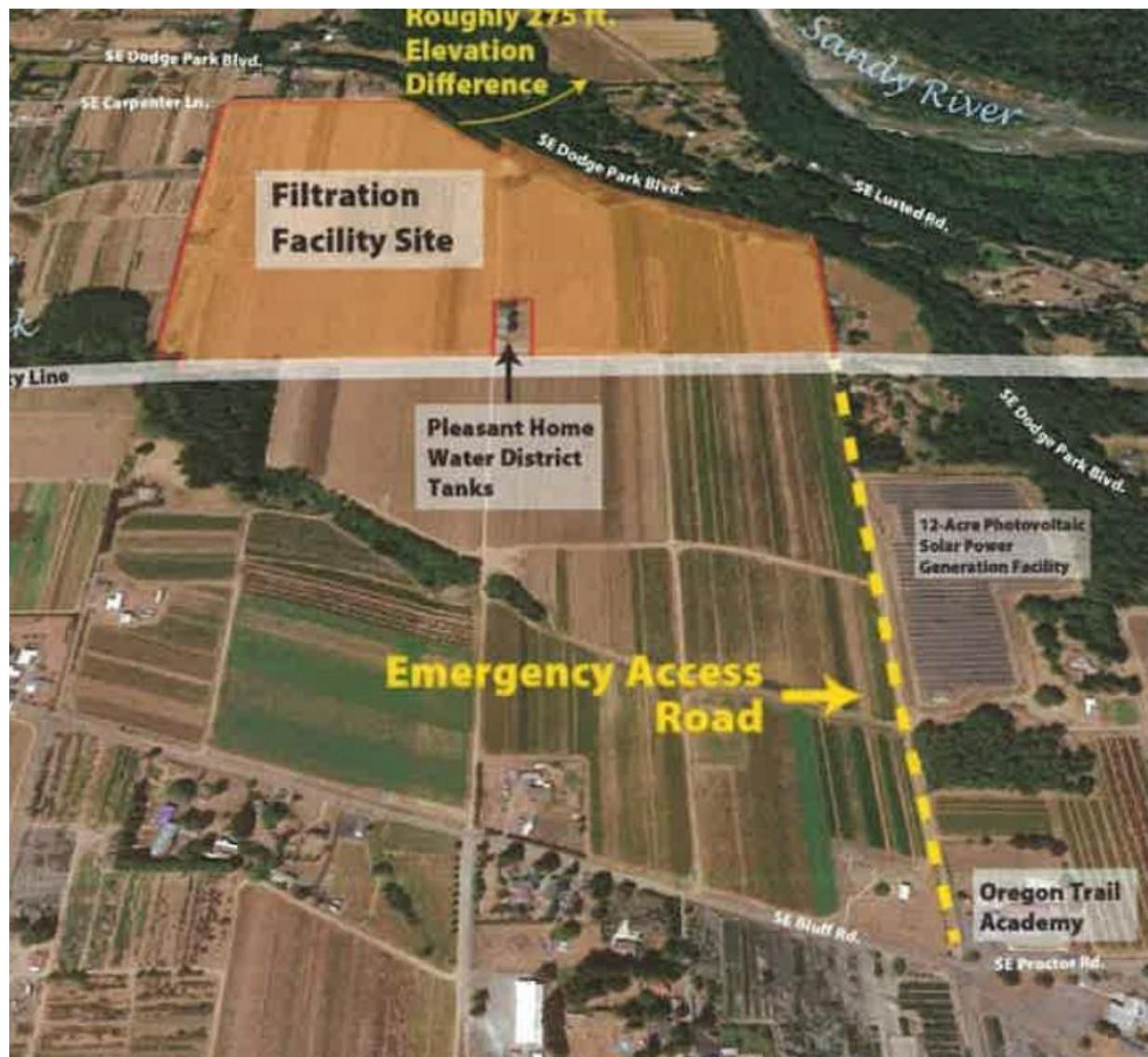
Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

503-742-4545: ¿Traducción e interpretación?| Требуется ли вам устный или письменный перевод?| 翻译或口译 ? | Cán Biên dịch hoặc Phiên dịch?| 번역 또는 통역?

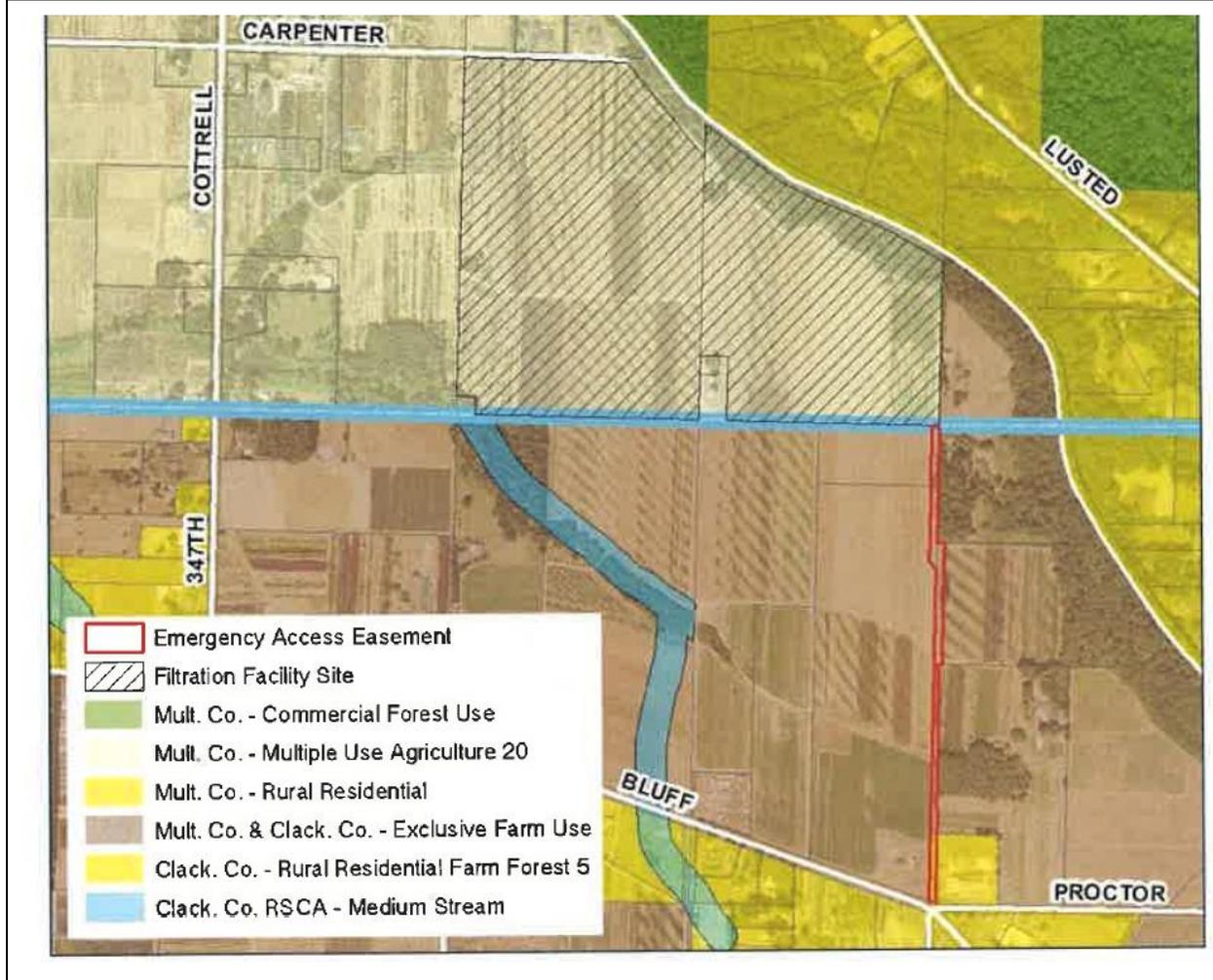
Location Map



Location in Relation to Filtration Facility Site



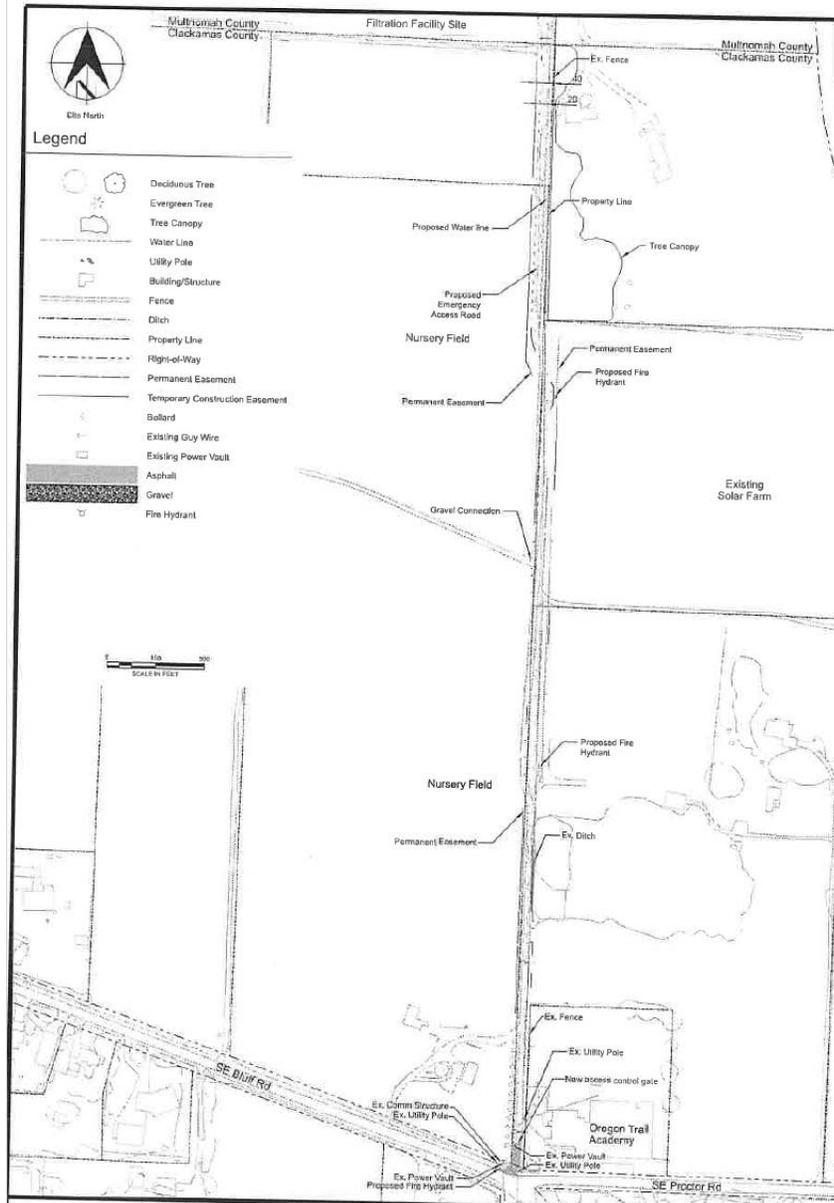
Zoning



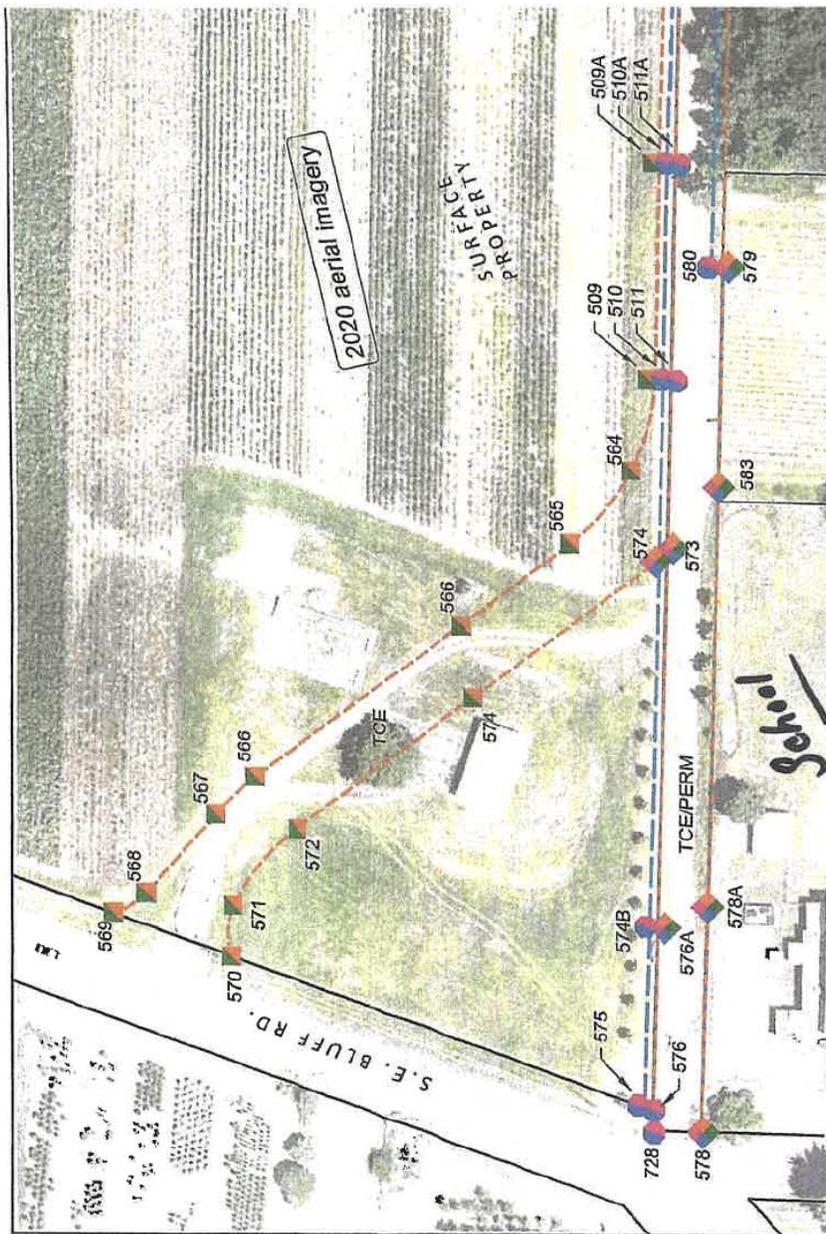
Aerial Image



Site Plan



Site Plan at Intersection with Bluff Rd



Aerial Image at Intersection with Bluff Rd

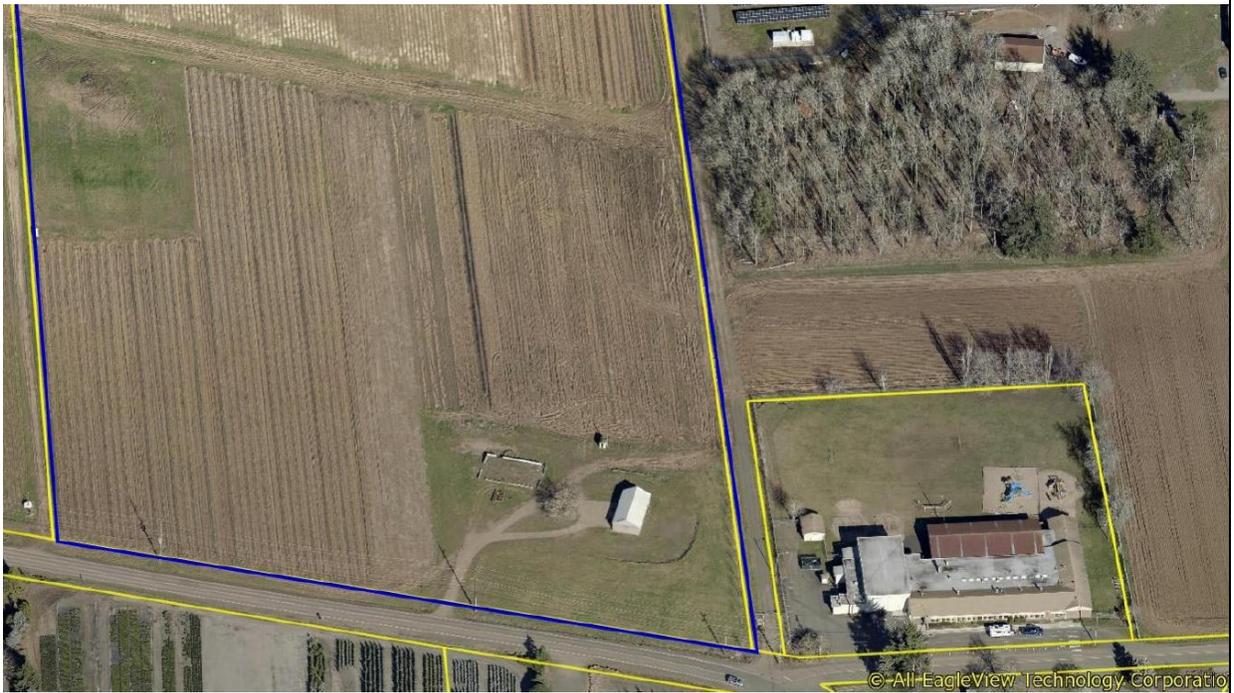
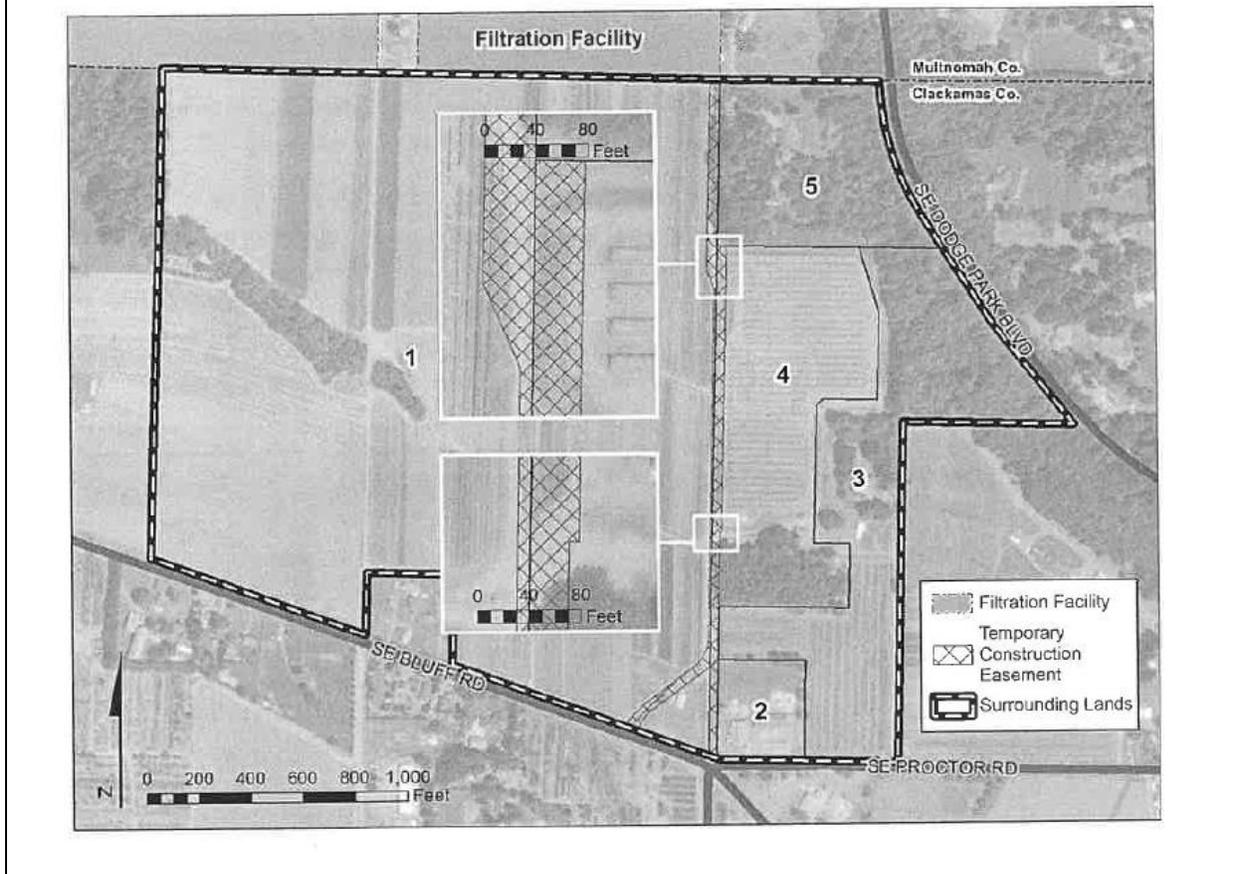


Figure 3: Temporary Access Easements for Temporary Access Road



CONDITIONS OF APPROVAL

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on January 20, 2023, and the additional documents provided on February 17, 2023; May 24, 2023; June 15, 2023; and June 23, 2023.

No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.

The temporary construction road proposed to extend southwest across tax lot 200 from the proposed emergency access road is excluded from this approval. Temporary construction easements adjacent to the emergency access road are limited to those needed to accommodate construction of the emergency

access road. This land use decision neither considers nor authorizes use of the emergency access road by filtration plant construction traffic.

2. Prior to commencing any construction activities, the applicant shall provide proof of the entry of Orders of Immediate Possession for the subject property.
3. Construction activities shall not commence unless the water filtration plant in Multnomah County receives final land use approval.
4. Following completion of construction of the emergency access road, the applicant shall comply with the Soil Restoration Plan, except to the extent that any of the temporary construction easement adjacent to the emergency access road is converted to farm road use.
5. During construction of the emergency vehicle access road:
 - a. Vehicle speeds along the access road shall be limited to 10 mph.
 - b. If a precipitation event resulting in 1/10 of an inch of rain has not occurred within a consecutive three-day period, the applicant shall use water trucks on the access road at least twice daily and more frequently as dictated by surface conditions.
 - c. Water truck passes shall be conducted in a manner that applies enough water to control dust but not to an excess that will cause runoff and erosion.
 - d. All construction vehicles shall comply with City of Portland Clean Air Construction standards.
6. All frontage improvements in, or adjacent to Clackamas County right-of-way, and providing on-site access shall comply with the *Clackamas County Roadway Standards*.
7. Prior to commencement of site work, a Development Permit shall be obtained from Clackamas County Engineering for the proposed emergency access road.
8. The emergency access road shall be developed subject to the following conditions:
 - a. The emergency access road shall be constructed with a minimum gravel width of 20 feet, per Clackamas County Roadway Standards Drawing R100. The roadway shall support a fire apparatus, per fire district standards.
 - b. A minimum 20-foot wide, paved driveway approach shall be constructed at the intersection with SE Bluff Road, per Roadway Standards Drawing D500.
 - c. Adequate storm drainage facilities shall be provided, per Chapter 4 of the Roadway Standards.
 - d. The emergency access road shall be gated and limited to emergency access only. If an emergency results in closure of the primary access to the water treatment facility from SE Carpenter Lane, resulting in vehicle access necessary

to continue operations of the facility using the emergency access road onto SE Bluff Road, the applicant shall coordinate with Clackamas County DTD on a traffic management plan.

FINDINGS

The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

1. PROJECT OVERVIEW

The applicant is proposing to construct an emergency access road located on the three subject properties. The site is south of the proposed filtration facility located in Multnomah County. The intent is to provide adequate fire access to the utility facility. The emergency access road includes a water supply line, fire hydrants spaced every 1000 feet as required by the Gresham Fire Department, and a fiber optic cable. While the emergency access road is not in itself a utility facility, it is considered an accessory use of a utility facility and is thus subject to a Type II land use review for a utility facility pursuant to Section 1307 of the Zoning and Development Ordinance (ZDO).

While the narrative provided in the application was for the permanent emergency access road only, the application appendices (see, in particular, Section 2.0 of the agricultural compatibility study in Appendix C) provided information that indicated that the project involved added width for temporary construction easements adjacent to the proposed permanent easement. The degree to which this added width is needed for construction of the emergency access road, as opposed to accommodating construction traffic for the proposed filtration plant, is unclear from the submitted application. In addition, the applicant proposes a temporary construction access road within a temporary easement that diverges from the proposed permanent emergency access road near the southern end and crosses the EFU zoned site to intersect Bluff Road west of the proposed permanent emergency access point. The intent is for traffic associated with construction of the water filtration plant to use this alternate access point/road for the estimated 5-year construction period.

2. ZDO SECTION 1307: PROCEDURES

Section 1307 establishes procedures applicable to various types of land use applications. To a large degree, this section is instructive to the County, providing a roadmap for proper processing of applications. In this case, however, Section 1307 presents a substantive issue that must be addressed.

Subsection 1307.07:

- A. *Initiation of Applications: Type I, II, II-E, and III land use permit applications may be initiated by:*
1. *The owner of the subject property;*
 2. *The contract purchaser of the subject property, if the application is accompanied by proof of the purchaser's status as such;*
 3. *The agent of the owner or contract purchaser of the subject property, if the application is duly authorized in writing by the owner or the contract purchaser, and accompanied by proof of the agent's authority; or*
 4. *If the application is for Comprehensive Plan designation or zoning of a Historic District or Historic Corridor, the owners or contract purchasers of at least 60 percent of the property within the area to be so designated or zoned.*
- C. *Application Submittal: Type I, II, II-E, and III land use permit applications are subject to the following submittal requirements:*
1. *The following shall be submitted for an application to be complete:*
 - (a) *A completed application form, such form to be prescribed by the Planning Director, and containing, at a minimum, the following information:*
 - (vii) *Signature(s) of the applicant(s) and all owners or all contract purchasers of the subject property, or the duly authorized representative(s) thereof, authorizing the filing of the application.*

Finding: ZDO 202 defines owner, as follows:

Person or persons holding fee title to a parcel, lot or tract of land, except in those instances when the land is being sold on contract, the contract purchaser shall be deemed the owner.

The applicant is the Portland Water Bureau, a bureau of the City of Portland. Clearly they are not an "owner" of the subject property as defined by ZDO 202. The records of the Office of Assessment and Taxation demonstrate that tax lots 100 and 200 are owned in fee title by Surface Family Trust, Debra M. Surface, Trustee, and tax lot 4800 is owned in fee title by Nathan and Brittany Burkholder.

When the application was initially deemed complete, all of the property owners had signed the application form, thereby authorizing the filing of the land use application and properly "initiating" the application. Subsequently, however, all of the owners withdrew their authorizations. Letters to that effect were received from Debra Surface on March 9, 2023, and from Nathan and Brittany Burkholder on March 27, 2023.

By letter dated May 24, 2023, legal counsel for the applicant notes that the applicant has the power of eminent domain and is “initiating the condemnation process by serving 40-day statutory offers on the property owners, which is a condition precedent to filing a condemnation action.” Citing an Oregon Attorney General opinion and case law, they argue that the County’s zoning code cannot effectively nullify state condemnation statutes by preventing the applicant from obtaining land use approval when such approval is needed to demonstrate the public purpose that will allow it to implement its condemnation authority. After consulting with the Office of County Counsel, staff concurs and incorporates the applicant’s arguments as their own. As agreed to by the applicant, a condition of approval will require that the applicant provide proof of the entry of the Orders of Immediate Possession prior to any construction activities commencing on the subject property.

This criterion is met as conditioned.

3. ZDO SECTION 401 EXCLUSIVE FARM USE DISTRICT (EFU):

The subject property is zoned EFU and thus Section 401 is applicable pursuant to ZDO 401.02.

TABLE 401-1: PERMITTED USES IN THE EFU DISTRICT

Finding: Table 401-1 lists those uses permitted in the EFU zone. This application for an emergency access road has been filed under the category of “utility facility necessary for public service”, which is identified as being subject to review as a Type II land use application. Although the emergency access road itself is not a utility facility, it is planned to provide emergency access to a proposed water filtration plant in Multnomah County. A secondary emergency access is required to satisfy fire code requirements for the proposed filtration plant.

Oregon Administrative Rules (OAR) 660-012-0065(3), in relevant part, provides:

(3) The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:

(a) Accessory transportation improvements for a use that is allowed or conditionally allowed by ORS 215.213, 215.283 or OAR chapter 660, division 6 (Forest Lands);

OAR 660-012-0065(4) provides:

(4) Accessory transportation improvements required as a condition of development listed in subsection (3)(a) of this rule shall be subject to the same

procedures, standards and requirements applicable to the use to which they are accessory.

A utility facility necessary for public service, a category which includes a drinking water filtration plant, is conditionally allowed by ORS 215.283(1)(c). Therefore, the emergency access road, as an accessory transportation improvement, is subject to the same procedures, standards and requirements as would be applicable to the water filtration plant.

The applicant has not addressed the criteria applicable to a “utility facility necessary for public service” for the temporary construction easements, either the additional width parallel to the permanent emergency access road easement or the temporary construction road that crosses tax lot 200 to intersect Bluff Rd west of the proposed permanent emergency access point (“the temporary construction road”). It is not, in fact, entirely clear whether the temporary construction road was actually intended to be part of the applicant’s proposal under this application. However, because it is included in some of the appendices that are part of the application and because, after questions from staff, the applicant addressed it in a supplemental letter and follow-up email, staff has addressed it in this decision.

The applicant’s primary contention is that the temporary construction easements adjacent to the emergency access road, as well as the temporary construction road, are not subject to land use regulation. (See the letter from the applicant’s attorney dated June 15, 2023, and a follow-up email from the applicant’s land use consultant dated June 23, 2023.) The applicant cites *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011) for the proposition that “temporary construction activity is not a ‘use in itself [governed by the land use regulations], but rather an accessory function that is necessary to construct the authorized use.” The applicant further argues that “[t]his is consistent with the fact that virtually every use authorized by a land use decision requires some construction activities – but the fact that construction activities are necessary does not convert the construction activities into the ‘authorized use’ itself.”

Staff concurs that construction activities are a necessary prerequisite to implementing many approved uses of land and often are not subject to land use review. If, for example, a land use approval is issued to construct a dwelling on EFU land, the construction activities associated with implementing that approval (contractor traffic, staging of building materials, framing, roofing, etc.) do not themselves require land use approval. They are simply necessary steps to implement the approved land use. However, those activities are qualitatively different than constructing new improvements to serve construction activities, particularly when those improvements involve alterations to land in the EFU zone, where nonfarm uses are heavily regulated.

In *Citizens Against LNG*, the use at issue was a natural gas line in a Statewide Planning Goal 4-regulated forest zone where state law limited the use to a 50-foot-wide easement. In order to construct the allowed land use within the permanent easement, an additional 22.5 feet of temporary easement on either side was needed to accommodate construction-related activities along the permanent easement.

In the present case, there are two different construction-related issues in play. First, there is the construction of the emergency access road. To the extent that additional width along the permanent access easement is needed, in the form of a temporary construction easement, to accommodate required activities associated with the construction of the emergency access road, *Citizens Against LNG* is on point. It follows that if the emergency access road is found to comply with the required land use approval criteria, related construction activities adjacent to the permanent easement are allowed.

Second, there is the construction of the filtration plant itself—construction that is anticipated to last five years and generate considerable traffic from construction workers, materials delivery, and materials removal. The temporary construction road is intended to accommodate that traffic. Staff finds that the construction of a road, even if that road will in part follow an existing dirt farm road, is a regulated use in the EFU District, constituting an “accessory transportation improvement” under OAR 660-012-0065, and must be evaluated under the standards for a utility facility necessary for public service.

As accessory transportation improvements, the proposed access roads may only be constructed if the water filtration plant in Multnomah County receives final land use approval. A condition of approval will be applied to that effect for the emergency access road and could be applied for the temporary construction road if it were approved.

401.05(G)

2. *A utility facility necessary for public service may be established as provided in OAR 660-033-0130(16)(a) and ORS 215.275 and 215.276, or, if the utility facility is an associated transmission line, as provided in OAR 660-033-0130(16)(b) and ORS 215.274 and 215.276.*

OAR 660-033-0130(16)(a)

A utility facility established under ORS 215.213(1)(c) or 215.283(1)(c) is necessary for public service if the facility must be sited in an exclusive farm use

zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must:

(A) Show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

- (i) Technical and engineering feasibility;
- (ii) The proposed facility is locationally-dependent. A utility facility is locationally-dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
- (iii) Lack of available urban and nonresource lands;
- (iv) Availability of existing rights of way;
- (v) Public health and safety; and
- (vi) Other requirements of state and federal agencies.

(B) Costs associated with any of the factors listed in paragraph (a) of this subsection may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

Finding: The applicant provided evidence that the proposed emergency access for the water filtration plant is locationally-dependent because the proposed location limits impact to lands zoned Exclusive Farm Use (EFU), is direct, and avoids river and stream conservation areas and wetlands that are located on lands not zoned Exclusive Farm Use (EFU) to the west of the proposed utility facility. The emergency access requirement cannot be satisfied on other lands that are not zoned Exclusive Farm Use (EFU) without significantly impacting wetlands or having multiple turns, resulting in indirect and slower access during emergencies. Areas to the east of the filtration facility are also zoned EFU and have steep topography that would not meet the maximum 10% slope required by the Gresham Fire Department.

Although there is no *public* right of way connecting the proposed filtration facility site to Bluff Road, the applicant proposes to minimize disturbance to agricultural lands by co-locating the proposed 20- to 26-foot-wide roadway “on that existing access road serving another utility facility (solar farm) and farm (nursery).” As shown in the aerial images provided and statements in the original application and supplemental material submitted on June 15, 2023, the “access road follows the alignment of an existing dirt farm road located at the edge of a field used for nursery stock as it exits the filtration facility site. It then crosses onto an existing road on the neighboring solar farm that is not devoted to farm use.”

In addition, the applicant identifies that the proposed emergency access road is needed to protect public health and safety by providing the emergency access required by the Gresham Fire Department to the filtration facility proposed in Multnomah County, a facility that is needed to “continue providing reliable, safe drinking water to nearly one million people.” The analysis for the emergency road location involved separating the emergency access from Carpenter Lane by 1,630 feet to reduce the likelihood that an event causing compromised access using Carpenter would also compromise the emergency access.

The applicant acknowledges that cost of constructing the emergency access road was considered; however, as discussed above, several other factors were determinative in selecting the preferred location.

In describing the temporary construction road, the applicant states, “Prior to reaching SE Bluff Road, the temporary construction route follows an existing farm road that allows construction traffic to avoid the intersection of SE Bluff Road, SE Proctor Road, and SE 362nd Road.” In addition, the all-weather “gravel surface will also support the construction vehicles and will minimize dust generated by construction trucks.” Based on information provided by County Development Engineering, having the construction traffic access west of the existing Bluff/Proctor/362nd intersection provides a safety benefit over using the proposed emergency access road, and appropriate intersection spacing is met. This may support a finding that the temporary construction road is locationally dependent and contributes to public safety. However, the applicant did not analyze OAR 660-033-0130(16)(a) for the proposed temporary construction road, relying instead on an argument that the access is not subject to land use review. That argument has been discussed and rejected above.

The record does not demonstrate that a secondary construction access (i.e., in addition to the proposed site access in Multnomah County) is required. If a secondary access is required, the record does not demonstrate that it must be developed on EFU land. Because construction traffic is not responding to life threatening emergencies, potentially it can access the site in a more indirect way than emergency vehicles. In summary, the applicant has not sustained their burden of proof for a finding of compliance.

These criteria are met for the permanent emergency access road and not met for the temporary construction road.

(C) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this paragraph shall prevent the owner of the utility facility from requiring a

bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(D) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

Finding: The applicant provided evidence that the farmland disturbed by the temporary construction road and adjacent to the proposed emergency access road will be restored, except to the extent that the temporary construction road is converted to farm use by the owner of tax lots 100 and 200 (currently in nursery use by Surface Nursery). The Soil Restoration Plan provided by the applicant was intended to be agreed upon between the Surface Nursery manager and the Portland Water Bureau, with the indication that the nursery would use a portion of the temporary construction road as a farm road. Although this would result in more than 0.6 acre being removed from farm production, farm roads are allowed outright in the EFU zone. With the owner of the Surface Nursery property having revoked authorization for the land use application, Staff is unsure if the conversion of the temporary construction road to farm use is still planned. The Soil Restoration Plan identifies how soil compaction will be ameliorated after the construction of the roads and after the construction of the filtration facility is complete. The applicant identified existing farm uses and improvements, including crops, fences, irrigation systems, and drainage facilities will be returned to pre-construction conditions. A condition of approval will require the applicant to comply with the Soil Restoration Plan, except to the extent that any of the temporary construction easement adjacent to the emergency access road is converted to farm road use.

Based upon the submitted application materials, the permanent emergency access will receive minimal use, thereby preventing impacts to surrounding lands devoted to farm use. In their analysis of the potential impact to farm use, the applicant states, "The use of the emergency access road by the Water Bureau will be minimal. A reasonable estimate is fewer than 20 times per year." The applicant further states that the emergency access road "will only be used under emergency conditions or when Carpenter Lane is not accessible".

Despite arguing that the temporary construction road is not subject to land use review, the applicant has provided an analysis of the farm impacts potentially generated by it (see letter dated June 15, 2023) and has agreed to conditions of approval intended to mitigate any potential impacts. These conditions are equally warranted during construction of the emergency access road as they would be for filtration plant construction traffic.

As conditioned, these criteria are met for the emergency access road. By condition, these criteria could be met for the temporary construction road.

E) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under oar 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.

(F) In addition to the provisions of paragraphs (a) to (d) of this subsection, the establishment or extension of a sewer system as defined by oar 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of oar 660-011-0060.

(G) The provisions of paragraphs (a) to (d) of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the federal energy regulatory commission.

Finding: The proposal does not include temporary workforce housing, a sewer system, or natural gas pipelines.

These criteria are not applicable.

ORS 215.275

215.275 Utility facilities necessary for public service; criteria; rules; mitigating impact of facility. (1) A utility facility established under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(a) Technical and engineering feasibility;

(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(c) Lack of available urban and nonresource lands;

(d) Availability of existing rights of way;

(e) Public health and safety; and

(f) Other requirements of state or federal agencies.

- (3) *Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.*
- (4) *The owner of a utility facility approved under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.*
- (5) *The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.*
- (6) *The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission. [1999 c.816 §3; 2009 c.850 §9; 2013 c.242 §5]*

Finding: These criteria are substantively the same as those in OAR 660-033-0130(16)(a), which are addressed above, and do not require a separate finding.

ORS 215.276

ORS 215.276 Required consultation for transmission lines to be located on high-value farmland. (1) *As used in this section:*

- (a) *“Consult” means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.*
 - (b) *“High-value farmland” has the meaning given that term in ORS 195.300.*
 - (c) *“Transmission line” means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users.*
- (2) *If the criteria described in ORS 215.275 for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a transmission line, or if the criteria described in ORS 215.274 for siting an associated transmission line are met, the utility provider shall, after the route is approved*

by the siting authorities and before construction of the transmission line begins, consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult.

(3) *The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process.*

Finding: No transmission lines are proposed as part of this application. The proposed fiber optic cable and water line are intended to serve only the filtration plant and the fire hydrants adjacent to the emergency access road, respectively.

These criteria are not applicable.

3. ZDO SECTION 1000 DEVELOPMENT STANDARDS:

ZDO 202 defines “institutional use” and includes “utility facilities” as a type of institutional use. Table 1001-1 identifies the sections within the 1000 series that are applicable to institutional uses. Due to the nature of the proposed development (i.e., access roads only) and its location, many of the 1000 series sections are not applicable to this specific institutional use. Sections that were reviewed as potentially applicable are addressed below:

1002 PROTECTION OF NATURAL FEATURES

Finding: Staff reviewed the application materials, the 2022 aerial imagery of the subject property, and publicly available electronic records of the site, and concurs with the applicant that the emergency access road will be built in a location that is predominantly an access road for a farm and solar facility and that the adjustment to the road alignment avoids impacts to the wooded area located to the north of the solar facility. No tree removal is proposed for the siting or construction of the access roads. The proposed access roads are not on, or near, steep slopes, wooded areas, streams/rivers, or significant landforms, and the site is outside the deer and elk winter range. Therefore, none of the natural features regulated by ZDO 1002 will be impacted by the proposed project.

These criteria are not applicable.

1003 HAZARDS TO SAFETY

Finding: Staff reviewed the application materials along with publicly available electronic records of the site that contain slope and landslide data. The access

roads are proposed in an area where the slope is 10% or less. There are no known landslide deposits or mass movement hazards on or adjacent to the proposed site. Therefore, none of the hazards to safety regulated by ZDO 1003 will be impacted by this project. Additionally, having an emergency access road with fire hydrants may reduce fire hazards in the area.

These criteria are not applicable.

1004 HISTORIC PROTECTION

Finding: Staff reviewed the application materials along with publicly available electronic records of the site and found no evidence of historic resources on the subject properties or on nearby properties. Therefore, known historic resources regulated by ZDO 1004 will not be impacted by this project.

These criteria are not applicable.

1006 UTILITIES, STREET LIGHTS, WATER SUPPLY, SEWAGE DISPOSAL, SURFACE WATER MANAGEMENT, AND EROSION CONTROL

Finding: The proposed utility facility emergency access road with associated fire hydrants and water line under the road will be served by the Pleasant Home Water District until the Water Bureau facility is constructed. The subject site is in the Sandy-Boring Groundwater Limited Area, and the water district service is required for the hydrants. The applicant indicates both of the water districts have capacity for this emergency use and provided preliminary statements of feasibility confirming this. No street lights, sanitary sewer service, or onsite wastewater treatment is proposed with this development. The applicant proposes to “water” the temporary construction road to reduce dust for adjacent farmland. The proposal includes an easement for fiber optic cable and a waterline to serve proposed fire hydrants. No additional utility easements are indicated.

These criteria are met.

1006.06 SURFACE WATER MANAGEMENT AND EROSION CONTROL

The following surface water management and erosion control standards apply:

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

regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.

Finding: As noted in the application, an existing culvert will be replaced with a culvert that can handle the weight of 75,000 pounds gw. In addition to the narrative, the applicant provided a Stormwater Drainage Report for the 2,650-foot-long emergency access road that identifies existing and proposed conditions along the proposed route from the Multnomah County border to SE Bluff Road. The Stormwater Drainage Report proposes to meet the water quality, detention, and infiltration requirements by dispersing stormwater from the emergency access road across adjacent farmland and other surrounding undeveloped acreage using Clackamas County Roadway Standards section 420.2. The northern 1,070 feet of the proposed emergency access road drains to the Sandy River Basin while the southern 1,580 feet drains westerly to the Johnson Creek Basin.

Clackamas County Department of Transportation and Development is the surface water management authority for the subject property. Development of the proposed emergency vehicle access and, if approved, the temporary construction access will be required to be in conformance with the rules and regulations of Clackamas County Roadway Standards, Chapter 4. The applicant has provided a Stormwater Drainage Report by Emerio Design, dated January 20, 2023, that demonstrates that it is feasible to construct the roads in compliance with the County's stormwater standards. Coordination with the Clackamas County Development Engineering staff will ensure the surface water management requirements are met.

As conditioned, these criteria are met for the emergency access road. By condition, these criteria could be met for the temporary construction road.

1007 ROADS AND CONNECTIVITY

Finding: County Development Engineering staff reviewed the submitted application and provided detailed findings and suggested conditions. The following analysis is substantially consistent with that input.

SE Bluff Road is a minor arterial roadway under the jurisdiction of Clackamas County. The proposed emergency access road is located on the north side of the SE Bluff Road/SE Proctor Road/SE 362nd Avenue intersection.

The proposed development is subject to the provisions of Clackamas County Zoning and Development Ordinance (ZDO) Section 1007 pertaining to roads and connectivity and Clackamas County Roadway Standards, Chapter 4 pertaining to surface water management. ZDO Subsection 1007.01 specifies that the location, alignment and capacity of roads are developed consistent with the county Roadway Standards.

A portion of the emergency access road extends from SE Bluff Road north approximately 850 feet, and serves as the access to a recently developed solar power generation facility. The remaining approximately 1,750 feet of the proposed road is currently a dirt farm access road. The applicant has proposed to improve the emergency access road to include a 20-foot wide gravel road, with 6 feet of additional width around the fire hydrants, located within a 40-foot wide access easement. The applicant will be required to obtain a Development Permit, as specified in Roadway Standards, Section 130 and 130.4 to construct the emergency access road to minimum county standards, per Roadway Standards Drawing R100.

As noted by the applicant, the location of the proposed emergency access road at the intersection of SE Bluff Road/SE Proctor Road/SE 362nd Avenue, does not meet minimum access spacing for a rural minor arterial roadway, per Roadway Standards Section 220. However, as proposed by the applicant as a gated emergency access with limited use, the location is acceptable.

The applicant's narrative indicates that the purpose of the access road is to meet fire district standards for a second access to the water treatment facility, based on the size of the site and square footage of the proposed buildings. The applicant also notes that the emergency access road allows for continued operation of the treatment facility if an emergency results in the primary access road, SE Carpenter Lane, not being "reasonably available." The applicant indicates that under that scenario, vehicle access necessary to continue operations of the water treatment facility, including delivery of chemicals, maintenance vehicles and staff vehicles would occur through the emergency access road onto SE Bluff Road. It is recognized that this would be a rare occurrence, but if access is necessary other than for emergency vehicles from SE Bluff Road, the applicant will be required to coordinate with Clackamas County on a traffic management plan.

The proposed temporary construction access road is located approximately 310 feet west of the proposed emergency access road, using an existing driveway entrance serving the adjacent farm use. County Engineering has worked with the applicant on a suitable location for a construction access, providing adequate separation from the SE Bluff Road/SE Proctor Road/SE 362nd Avenue intersection.

The applicant has provided a Traffic Impact Analysis (TIA) by Global Transportation Engineering, dated June 2, 2023, that evaluates construction traffic for the water treatment facility. A number of roadways and intersections were evaluated, with the majority within Multnomah County, but also including the proposed temporary construction access onto SE Bluff Road. The construction TIA finds that the temporary construction access and nearby intersection will perform within county mobility standards. The TIA also found that the proposed temporary construction access will provide adequate intersection sight distance. County Engineering concurs with the TIA findings.

If the temporary construction road were approved and based on the duration of construction and number of trucks and other vehicle trips using the temporary construction access, there is potential for damage to SE Bluff Road at the approach. Without a paved approach onto SE Bluff Road, damage to the edge of the roadway may occur during construction access. To assure any damage to the roadway caused by construction access is maintained and repaired as necessary to as good or better condition, a minimum \$10,000 financial surety would be required. The applicant also would be required to control dirt and gravel tracking onto SE Bluff Road.

As conditioned, these criteria are met for the emergency access road. By condition, these criteria could be met for the temporary construction road.

1009 LANDSCAPING

1009.09 Erosion Control

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

Finding: Staff reviewed the application materials and aerial images that show the subject property predominantly used to access farmland and a solar power generation facility. The primary farm use around the site grows landscape nursery stock. The proposal includes no buildings, no walkways, and no parking facilities, and the EFU District does not have a minimum area required for landscaping as seen in Table 1009-1. Therefore, additional landscaping is not needed or required. The majority of criteria in ZDO 1009 are, therefore, not applicable to the project. However, Subsection 1009.09 applies to the construction of an emergency access road, and the applicant proposes to comply with those criteria by limiting grading, revegetating graded areas with a seeding mix during the construction period, and reestablishing certain areas for farm use as shown in Soil Restoration Study.

As conditioned, these criteria are met for the emergency access road. By condition, these criteria could be met for the temporary construction road.

DECISION

Based on the findings and conditions above, the proposed emergency access road for a utility facility (including temporary construction easements adjacent to the emergency access road and for the purpose of constructing said access road) complies with the applicable criteria and is therefore approved with conditions. Because the applicant

failed to demonstrate compliance with OAR 660-033-0130(16)(a) and ORS 215.275, the proposed temporary construction road is denied.

ADVISORY NOTES

Advisory notes are not a part of the decision on this land use permit. The items listed below are not conditions of land use approval and are not subject to appeal. They are advisory and informational only but may represent requirements of other agencies/departments. As such, they may be required by these other agencies/departments in order to complete your proposed development.

Sandy Fire District had the following comments:

The scope of this review is typically limited to fire apparatus access and water supply, although the applicant shall comply with all applicable OFC requirements. References, unless otherwise specified, include provisions found in the Metro Code Committee's Fire Code Applications Guide, OFC Chapter 5 and Appendices B, C and D.

Comments regarding the proposed easement to construct a secondary emergency access road.

General Requirements

1. Secondary emergency access road off of Bluff Rd. is to be used for emergency use only by emergency services. For staff, maintenance equipment, and deliveries, the primary access to the facility off of Carpenter Ln. is to be used. The Fire District has concerns with the use of the secondary emergency access road by non-emergency vehicles entering and exiting at the intersection of Bluff Rd. and Proctor Rd.
2. All construction activities shall comply with the applicable Oregon Fire Code and the [Fire Code Application Guide](#).
3. Where fire apparatus access roads or a water supply for fire protection are required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except where approved alternative methods of protection are provided.
4. A KNOX padlock or KNOX key override switch will be required for any gates crossing the secondary emergency access road. To order a KNOX padlock, or key switch that is keyed for the Sandy Fire District, please visit Sandy Fire's website (<https://www.knoxbox.com/Products>) for ordering information.
5. An emergency vehicle access and maintenance agreement shall be deeded and recorded as a condition of approval. A copy of the completed agreement to be provided to the Sandy Fire District.

Fire Apparatus Access

1. The secondary emergency access grades shall not exceed 10 percent. Intersections and turnarounds shall be as level as possible and have a maximum of 5 percent grade with the exception of crowning for water run-off.
2. Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches is to be maintained.
3. The inside turning radius and outside turning radius for fire apparatus access roads shall be not less than 28 feet and 48 feet respectively, measured from the same center point.
4. The installation of security gates or barricades across a fire apparatus access road shall comply with the following:
 - a. Gates to have a minimum unobstructed width of 16-feet, or two 12-foot sections with a center post or island.
 - b. Gates or barricades shall be set back a minimum of 30 feet from the intersecting roadway.
 - c. Gates shall be of the swinging or sliding type. Barricades using cables or similar methods may be approved.
 - d. Construction of gates or barricades shall be of materials that allows manual operation by one person.

Firefighting Water Supplies

1. Fire flow testing of new fire hydrants will be required to determine available fire flow. Testing will be the responsibility of the applicant. Applicant to contact the City of Sandy Public Works for information and requirements and notify the Sandy Fire Marshal prior to fire flow testing.
2. Fire hydrants installed within the Sandy Fire District shall comply with the following requirements:
 - a. **Each new fire hydrant installed shall be ordered in an OSHA safety red finish and have a 4-inch non-threaded metal faced hydrant connection with cap installed on the steamer port (4 ½-inch NST x 4-inch Storz Adaptor).**

Z0036-23 Decision FINAL

1 message

Thornhill, Susan <SThornhill@clackamas.us>

Wed, Jul 5, 2023 at 2:23 PM

**External Sender** - Be Suspicious of Attachments, Links, and Requests for Payment or Login Information.

Please see the attachment.

Thank you,

Susan Thornhill, Permits Specialist

Clackamas County Transportation & Development

Planning and Zoning Division

[150 Beavercreek Road](#)[Oregon City, Oregon 97045](#)

503.742.4515

My office hours are M-F 7:30 am to 5:00 pm

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



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

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

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