

MEMO

TO: Linn County Board of Commissioners

FROM: Sophie Adams, Interim Economic Development Manager, City of Albany

DATE: July 6, 2023

SUBJECT: Formally Documenting Extended Enterprise Zone Abatement

Action Requested:

Approve, by resolution, the extended enterprise zone abatement agreement for investment made by CorrQuest Automation, Inc.

Discussion:

CorrQuest Automation, Inc., (CorrQuest) specializes in system development, automation, installation, and management for primary corrugated cardboard producers worldwide. Facing the challenge of growth and space, CorrQuest chose to purchase and is now developing a site in Albany. Currently, they employ 12 individuals and plan to hire an additional seven over the next three years. Not only are they growing here and hiring additional workforce, but they also plan to bring their Nevada operations to Albany with consolidation and investment in a larger space. The new facility is nearly 30,000 square feet for manufacturing, assembly, offices, and sales. Additionally, CorrQuest is building in 5,000 square feet as leasable manufacturing/flex space for smaller companies in need of space to grow. The leasable space can be divided into two smaller spaces if needed and additional office space is also available.

Oregon has very little to offer new business by way of incentives compared to many other states in the country. One of the few statewide incentive tools afforded to local communities is the Enterprise Zone Program. Communities with designated Enterprise Zones can offer up to five years of local property tax exemption on new investments in exchange for new job creation and capital investment by a qualified business. In partnership with the County Assessor's Office, requirements to qualify for this exemption by a business are monitored annually and failure to maintain investment or job creation will disqualify the business from the benefit. CorrQuest will be making an investment of over eight million dollars and hiring seven new employees paid an average of 150 percent of Linn County's median wage. This investment and job creation qualifies them for a five-year abatement and this incentive was critical to CorrQuest's decision to invest and hire in Albany. CorrQuest's abatement has been approved, but some housekeeping in the form of a resolution is required by the State of Oregon to document this agreement. This benefit will serve to strengthen their investments and support them in building long-term viability.

SA:km

Attachments: 2



Linn County Road Department

*Providing safe and efficient transportation to
citizens and visitors of Linn County.*

Memorandum

Date: 8/24/2023
To: Linn County Board of Commissioners
From: Wayne Mink, Roadmaster *WEM*
RE: Background Information for Agenda Items – 8/29/2023

The Road Department has the following items on the Board of Commissioners agenda for the weekly meeting on August 29, 2023. The following is a brief description of the items.

Resolution & Order 2023-215 – Acceptance of a Permanent Easement – Seven Mile Lane, Tax Lot 300

This is a Resolution & Order to accept a permanent easement along Seven Mile Lane for the Seven Mile Lane Selmet Entrance Improvement Project. Grantors are Kenneth D. Roth and J. Evon Roth Trustees ET AL. Easement cost is \$13,000.

Resolution & Order 2023-217 – Acceptance of a Permanent Easement – Seven Mile Lane, Tax Lot 501

This is a Resolution & Order to accept a permanent easement along Seven Mile Lane for the Seven Mile Lane Selmet Entrance Improvement Project. Grantors are Kenneth D. Roth and J. Evon Roth Trustees ET AL. Easement cost is \$2,900.

Resolution 2023-308 – Authorize Road Closure, North River Drive & Quartzville Road

This is a Resolution to authorize the closure of a portion of North River Drive and Quartzville Road for the Best in the West Triathlon Festival on Saturday, September 9 and Sunday, September 10. Closure times are as follows:

September 9 – North River Drive 7:00 am – 4:00 pm
September 9 – Quartzville Road 9:00 am – 4:00 pm
September 10 – North River Drive 7:00 am – 3:00 pm
September 10 – Quartzville Road 8:00 am – 2:00 pm

Ordinance No. 2023-327 – Emergency Adoption of Linn County Code Chapter 860

This is an Ordinance to adopt Linn County Code Chapter 860 to comply with NPDES MS4 Permit requirements.

Resolution & Order 2023-330 – Fee Schedule

This is a Resolution & Order to adopt the fee schedule for the stormwater and erosion control permits.

We request your approval.



Linn County Road Department

*Providing safe and efficient transportation to
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Memorandum

Date: August 15, 2023
To: Linn County Board of Commissioners
From: Daineal Malone, County Engineer *DM*
RE: Notice of Proposed LCC 860

Linn County has obtained a Department of Environmental Quality National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer Systems (MS4) Phase II General Permit. The permit requires that by September 1, 2023, county code be implemented to fulfil the requirements of this permit. In addition to the code, we are required to have a stormwater Operation & Maintenance Agreement in place.

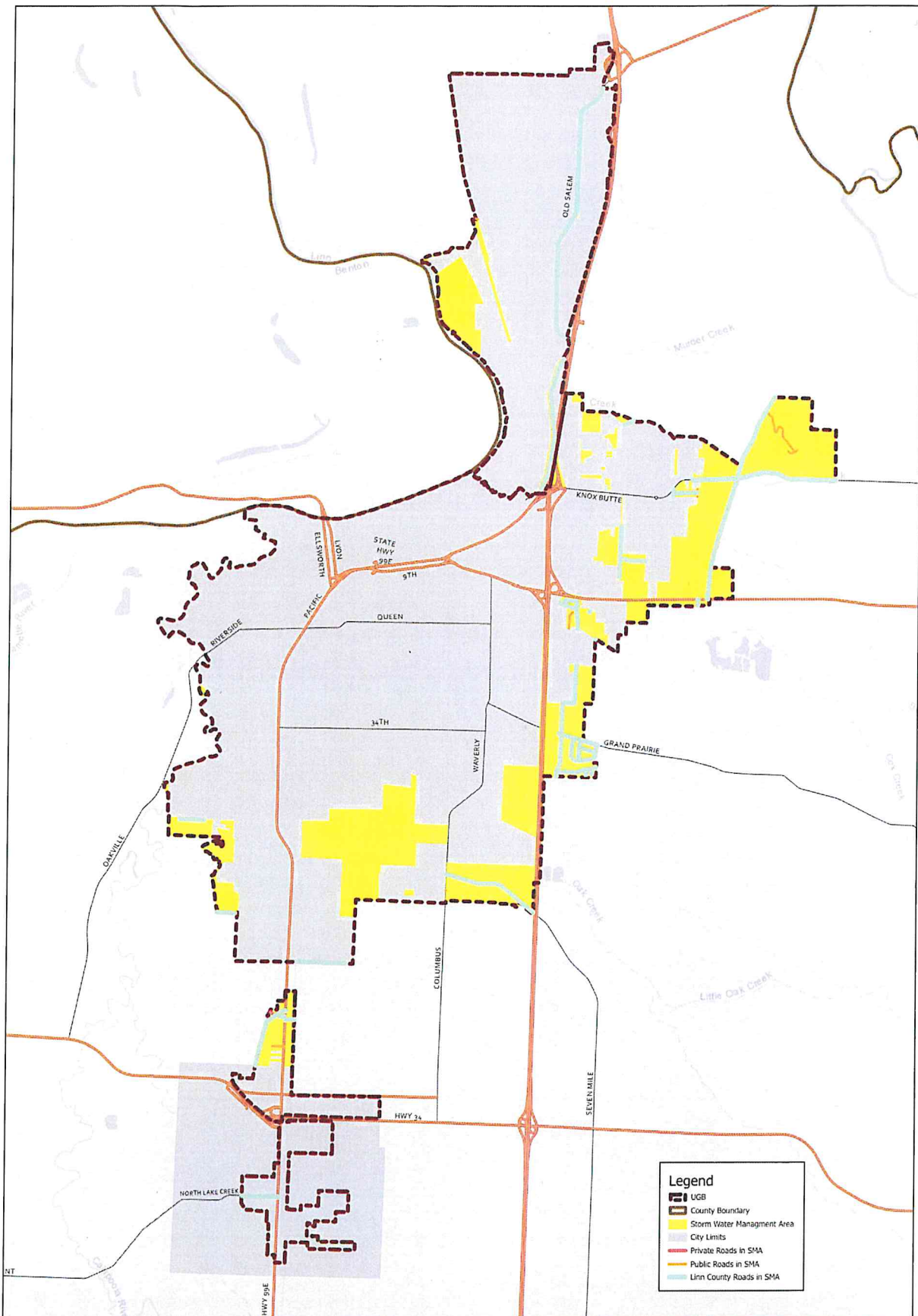
We are proposing to implement LCC 860, Surface Waters code, with Appendix A, Operation & Maintenance Agreement. This will need to pass as an emergency adoption in order to meet the permit requirement timeline.

The Road Department will be implementing a stormwater permit and an erosion and sediment control permit to track MS4 permit requirements. With these permits, we are proposing the following fee schedule:

Stormwater Permit (simple): \$180
Stormwater Permit (O&M requirements): \$540
Erosion and Sediment Control Permit: \$360

I have been working with Phillip Van Leuven, Deputy County Attorney, to prepare these code documents. You may contact Phillip, or myself, if you have any questions.

We request your concurrence with hearing this matter as an emergency.

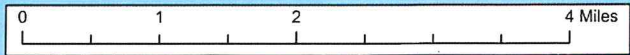


Legend

- UGB
- County Boundary
- Storm Water Management Area
- City Limits
- Private Roads in SMA
- Public Roads in SMA
- Linn County Roads in SMA



Linn County Stormwater Management Area



Map by Linn County GIS Department
 Printed on July 20, 2023

TITLE 8

COPY

BUILDING CODE

CHAPTER 860

SURFACE WATERS

- 860.215 Permit required
- 860.220 Permit fee
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discharge of a significant amount of construction related sediment or turbidity to surface waters; and,

(2) Construction materials and waste have been removed and disposed of properly. This includes any sediment that was being retained by temporary erosion and sediment controls; and,

(3) All temporary erosion and sediment controls have been removed and disposed of properly, unless doing so conflicts with local requirements; and,

(4) All ground disturbing activities have stopped and all stormwater discharges from construction activities that are authorized by the appropriate permit have ceased; and,

(5) All disturbed or exposed areas of the site are covered by either final vegetative stabilization or permanent stabilization measures. However, temporary or permanent stabilization measures are not required for areas that are intended to be left unvegetated or unstabilized following construction (such as dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials); provided that, measures are in place to eliminate or minimize erosion.

(O) **“Ground disturbing activities”** means any activity that exposes soil, including, but not limited to, construction, landscaping, removal of vegetation, stockpiling of soil or construction debris, grading, excavating, filling, clearing, trenching, drilling, transport or fill, or utility work, or working of land at a particular location.

(P) **“Hazardous materials”** mean any material, including any substance, waste, or combination thereof, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise mismanaged.

(Q) **“Hearings Officer”** means the Linn County Administrative Officer or their designee.

(R) **“Illicit connection”** means either of the following:

(1) Any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the public storm drainage and surface water system including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash-water to enter the public storm drainage and surface water system and any connections to the public storm drainage and surface water system from indoor drains and sinks, regardless of whether the drain or connection had been previously allowed, permitted, or approved by a government agency; or,

(2) Any drain or conveyance connected from a commercial or industrial land use to the public storm drainage and surface water system that has not been documented in plans, maps, or equivalent records and approved by the County.

(S) **“Illicit discharge”** means any direct or indirect non-stormwater discharge to the public storm drainage and surface water system, except as exempted in LCC 860.105(B). “Illicit discharge” as used in this chapter shall have the same meaning as the term “illegal dumping” as used by the Department of Environmental Quality.

(T) **“Industrial activity”** means activities which require an NPDES industrial permit.

(U) **“Major Land Disturbance Activities”** means activities which:

(1) Affect an area over one acre in size; or,

(2) Contain average slopes throughout the disturbed area that exceed 10 percent; or,

(3) Contain slopes greater than 3H:1V which exceed six feet in height; or,

(4) Have concentrated runoff through the disturbed area that comes from over one acre off-site; or,

(5) Contain sensitive areas (wetlands, streams, etc.) located on, or adjacent to, the site work.

(V) **“National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit”** means general, group, and individual stormwater discharge permits that regulate facili-

ing envelope which serves one or multiple building storm drains, catch basins, area drains, or other drainage facilities.

(LL) “Storm event” means a storm event (as defined at 40 CFR 122.21(g)(7)(ii)) with greater than 0.1 inch of rainfall and at least 72 hours after the previously measurable storm event with greater than 0.1 inch of rainfall.

(MM) “UIC” means underground injection control. A UIC structure is a subsurface distribution system for stormwater; usually an assemblage of perforated pipes, drain tiles or other mechanisms intended to distribute stormwater below the surface of the ground.

(NN) “Waters of the State” means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the state of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

(OO) “Waterway” means a body of water (whether natural or manmade) that periodically or continuously contains waters of the state and has a definite bed and banks that serve to confine the water.

[Adopted xx-xxx eff xx/xx/xx]

860.020 Applicability

This chapter applies to all water entering the public storm drainage and surface water system generated on any developed and undeveloped lands inside a stormwater management area.

[Adopted xx-xxx eff xx/xx/xx]

860.025 Regulation of agricultural activities prohibited

Linn County shall not enforce the terms of this chapter against agricultural activities regulated by the Oregon Department of Agriculture.

[Adopted xx-xxx eff xx/xx/xx]

860.030 Ultimate responsibility of property owner

The standards set forth in this chapter are minimum standards. This chapter does not mean or imply that compliance with this chapter by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into waters of the state by a responsible person. The property owner is ultimately responsible for all conditions on or created by the owner’s property. This chapter shall not create liability on the part of Linn County, or any agent or employee of Linn County, for any damages that result from a responsible person’s or property owner’s reliance on this chapter or any administrative decision lawfully made under this chapter.

[Adopted xx-xxx eff xx/xx/xx]

860.035 Requirement to prevent, control, and reduce stormwater pollutants be the use of best management practices

The Director may require best management practices (BMPs) for any activity, operation, or facility which may cause or contribute to the introduction of pollutants to rights-of-way, wetlands, drainage ways, the municipal stormwater system, receiving waters, and/or areas that include or contribute directly to the Waters of the State. Where BMP requirements are promulgated by the Director, the owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from the discharge of pollutants, as described above, through the use of these structural and/or nonstructural BMPs.

Further, any person responsible for a property or premises that is, or which may reasonably be expected to be, the source of an illicit or prohibited discharge may be required to implement, at said person’s expense, additional structural and nonstructural BMPs to prevent any further discharges of pollutants.

[Adopted xx-xxx eff xx/xx/xx]

permit, waiver, or order and other applicable laws and regulations; and provided, that Linn County has granted written approval for any discharge to the public storm drainage and surface water system.

[Adopted xx-xxx eff xx/xx/xx]

860.110 Prohibition of illicit connections

The construction, use, maintenance or continued existence of illicit connections to the public storm drainage and surface water system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

[Adopted xx-xxx eff xx/xx/xx]

860.115 Waste disposal prohibitions

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drainage and surface water system, UICs, or waters of the state, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in proper waste receptacles for the purposes of collection are exempt from this prohibition.

[Adopted xx-xxx eff xx/xx/xx]

860.120 Discharges in violation of industrial or construction activity NPDES stormwater discharge permit

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of the permit. Failure to comply with all provisions shall constitute a violation of this chapter. Proof of compliance with the permit may be required in a form acceptable to the Director prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any en-

forcement proceeding or action; or for any other reasonable cause.

[Adopted xx-xxx eff xx/xx/xx]

860.125 Waterway protection

Every person responsible for property through which a waterway passes shall maintain and stabilize that portion of the waterway that is within the responsible person's property lines in order to protect against erosion and degradation of the waterway originating from the property. "Maintain" and "stabilize" as used in this section means keeping that portion of the waterway that is within the property lines free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or retard the flow of water through the waterway. "Maintain" also includes the maintenance of existing privately owned structures within or adjacent to a waterway, so that the structures will not become a hazard to the use, function, or physical integrity of the waterway. "Erosion" as used in this section includes the removal of bank vegetation that will result in bare slopes subject to erosion. This chapter shall not be interpreted to restrict a person responsible for property from enhancing or establishing the planting of riparian buffers or to perform maintenance within those areas.

[Adopted xx-xxx eff xx/xx/xx]

860.130 Requirement to monitor and analyze

The Director may require by written notice to the property owner that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution, illicit discharges, and/or non-stormwater discharges to the public stormwater drainage, groundwater and surface water systems, UICs, or waters of the state, to undertake at the owner's expense any monitoring and analyses and furnish any reports to the Director as deemed necessary to determine compliance with this chapter.

[Adopted xx-xxx eff xx/xx/xx]

860.135 Illicit discharge procedure

Notwithstanding any other requirements of law, as soon as any person responsible for a

will result in or has resulted in pollution of stormwater, the stormwater drainage, groundwater and surface water systems, or waters of the state, the Director may require by written notice to the property owner that the pollution be remediated and the affected property restored within a specified time. Failure to comply with the requirements of the notice within the time stated shall constitute a violation of this chapter.

[Adopted xx-xxx eff xx/xx/xx]

III. POST-CONSTRUCTION RUNOFF CONTROL

860.205 Engineering standards

The stormwater quantity and quality treatment engineering standards (“the Linn County Stormwater Management Program Manual”) shall specify exactly what kinds of permanent stormwater treatment facilities are required (if any) for a developed site.

[Adopted xx-xxx eff xx/xx/xx]

860.210 Stormwater management and design

Stormwater management and design calculations are required for project sites inside a stormwater management area if construction site activity(ies) will create or replace at least 1/4 acre (10,890 square feet) of impervious surface, either in isolation or as part of a common plan of development.

[Adopted xx-xxx eff xx/xx/xx]

860.215 Permit required

(A) The Linn County Stormwater Management Program shall establish under what circumstances an on-site stormwater drainage permit is required inside a stormwater management area. The permit shall require an applicant to install any applicable stormwater treatment facilities as required by the Linn County Stormwater Quality Treatment Engineering Standards in effect on the date of the applicant’s application for a stormwater permit.

(B) For project sites discharging stormwater

to the stormwater management area that create 1 acre (43,560 square feet) or more of land disturbance area, the permit shall include a required operation and maintenance plan and checklist, and an operation and maintenance agreement.

[Adopted xx-xxx eff xx/xx/xx]

860.220 Permit fee

The County may establish a fee for review of plans and inspections required by this chapter by order of the Board of Commissioners. The Board of Commissioners shall set the fee to recover the engineering department costs of providing an applicant’s stormwater permit, inspections, and plan review.

[Adopted xx-xxx eff xx/xx/xx]

860.225 On-site stormwater drainage plan

(A) An on-site stormwater drainage plan is required for all on-site stormwater drainage permits. The plan must be submitted by the applicant and approved by the Director for issuance of the on-site stormwater drainage permit, prior to the issuance of a stormwater permit and commencement of work at the construction site. The plan must contain protection techniques that will eliminate runoff siltation created after the completion of the development. Site-specific considerations shall be incorporated.

(B) If landscaping is part of the stormwater treatment facilities, then the applicant must prepare and submit for approval with the on-site stormwater drainage plan a detailed landscaping plan for management of vegetation at the site after construction, which shall be attached to the maintenance agreement and the operations and maintenance plan. The landscaping plan shall include a description of what practices will be employed to ensure that adequate vegetation cover is preserved.

(C) The Road Department shall perform at least one inspection of stormwater treatment facilities required under an on-site stormwater drainage permit during installation to ensure compliance with this chapter and the permit. The Road Department shall perform at least one inspection of stormwater treatment facilities

square feet) of land, either in isolation or as part of a common plan of development.

[Adopted xx-xxx eff xx/xx/xx]

860.315 Permit fee

The County may establish a fee for review of plans and inspections required by this chapter by order of the Board of Commissioners. The Board of Commissioners shall set the fee to recover the Road Department costs of providing an applicant's erosion prevention and sediment control permit, inspections, and plan review.

[Adopted xx-xxx eff xx/xx/xx]

860.320 Erosion prevention and sediment control plan

(A) An erosion prevention and sediment control plan is required for all erosion prevention and sediment control permits. The plan must be submitted by the applicant and approved by the County Engineer for issuance of the erosion prevention and sediment control permit, prior to the issuance of a Linn County permit or exemption approval and commencement of ground disturbing activities. The plan must contain protection techniques that will eliminate runoff siltation created from the construction activity both during and after construction. Site-specific considerations shall be incorporated.

(B) For Major Land Disturbance Activities, the erosion prevention and sediment control plan must include sizing criteria, performance criteria, design specifications, guidance on selection and placement of controls, and specifications for long-term operation and maintenance, including appropriate inspection intervals and a self-inspection checklist.

(C) The County may require that the applicant design and construct a temporary drainage system that will ensure any off-site impacts caused by the construction site activity can be mitigated.

(D) The County may perform inspections to ensure compliance with this chapter at the discretion of the County Engineer.

(E) The erosion prevention and sediment control plan is required to be kept on site and

available for review by inspectors.

(F) The erosion prevention and sediment control plan must include clear steps for project phase completion, final stabilization, and permit closure.

[Adopted xx-xxx eff xx/xx/xx]

860.325 Construction site deposits on public streets and into storm drains

No person shall cause or allow visible and measurable erosion or sediment related to construction site activity inside a stormwater management area as defined herein to enter the public storm drainage and surface water system. Any person causing visible and measurable erosion or sediment shall immediately abate or remove it. The removal shall be accomplished by hand labor or approved mechanical means.

[Adopted xx-xxx eff xx/xx/xx]

860.330 Maintenance

(A) The applicant shall maintain all erosion and sediment control measures in proper functioning order for the duration of the ground disturbing activities or until adequate ground cover has been established.

(B) The applicant shall inspect, maintain, adjust, repair, and replace erosion and sediment control measures as necessary within 24 hours following a storm event to ensure that the measures are functioning properly.

(C) During active ground disturbing activity, the applicant shall inspect and maintain erosion and sediment control measures weekly or within 24 hours of a storm event.

(D) The erosion prevention and sediment control plan must be maintained and updated as site conditions change, to prevent sediment or pollutant contaminated water from leaving the site.

(E) Permit finalization requires one of the following to be achieved:

(1) Individual lots or phases of a qualifying common plan of development obtain individual erosion prevention and sediment control permit coverage prior to the issuance of Linn County permit(s) or exemption approval(s). The

repairs, the County will bill the property owner for the costs;

(6) Include an estimate of the costs anticipated for the County to cause abatement or repair for the correction of the violation;

(7) Inform the property owner that failure to pay the County for its costs to correct the violation will result in filing of a lien on the property;

(8) Inform the property owner of the rights spelled out in LCC 860.430 and 860.435, including the right to a hearing, and individuals the property owner may contact for additional information.

(C) The notice shall be served on the property owner by personal service consistent with ORCP 7D(2)(a).

(D) If a stormwater treatment facility is maintained by the County pursuant to LCC 860.105, the owner is not responsible for violations of this chapter other than violations caused by the owner.

[Adopted xx-xxx eff xx/xx/xx]

860.415 Abatement and/or repair of violation

If the property owner has not corrected the violation as directed within the time allowed in the notice given pursuant to LCC 860.120, the Director may take all measures necessary to abate the violation and/or restore the property. The Director or persons authorized by the Director may enter upon property to abate and/or restore the property upon obtaining consent of the property owner or through a court-issued warrant.

[Adopted xx-xxx eff xx/xx/xx]

860.420 Emergency abatement

The Director is authorized to require immediate abatement of any violation of this chapter that constitutes an immediate threat to the health, safety or well-being of the public. The Director or persons authorized by the Director may enter upon property to abate and/or restore the property upon obtaining consent of the property owner or through a court issued warrant.

[Adopted xx-xxx eff xx/xx/xx]

860.425 Collections of costs

(A) The County may collect all costs associated with the repair or abatement of a violation, or both, from the property owner.

(B) The County shall keep detailed records of all costs associated with the abatement or repair due to a violation of this chapter.

(C) Upon completion of the abatement or repair of the violation by the County, a notice of final costs shall be served on the owner by personal service consistent with ORCP 7D(2)(a). Payment must be made within 30 days from the date of the notice of final costs. The notice must contain the following:

(1) The total cost of repair or abatement, or both;

(2) A statement that the total cost may be filed as a lien with the County Clerk unless paid within 60 days from the date of the hearings officer's order described in LCC 860.440; and

(3) A statement that the owner may contest the charges at a hearing that will be scheduled on the matter pursuant to LCC 860.440.

[Adopted xx-xxx eff xx/xx/xx]

860.430 Hearing request

A property owner who is served with a notice of violation as described in LCC 860.410, may request a hearing before the Linn County hearings officer. Hearing requests must be filed in writing with the Linn County hearings officer within five business days from the date the notice was served.

[Adopted xx-xxx eff xx/xx/xx]

860.435 Hearing on notice of violation

(A) Upon receiving a written request for a hearing pursuant to LCC 860.430, the hearings officer, or their designee, shall set a time and place for a hearing that shall be no more than seven days from the date of filing of the hearing request, or as soon as practicable. The hearings officer, or their designee, shall notify the person requesting a hearing of the time and date of the hearing. The Director, or their designee, shall appear and present evidence pertinent to the alleged violation and its abatement or repair. The owner of the property may also present evidence

VI. PENALTIES

860.905 Penalties

(A) Any person who is cited for a violation of this chapter shall be subject to a Class A violation under LCC 240.900 (C) - (D).

(B) Each day that this chapter is violated shall constitute a separate violation under LCC 240.900 (F).

[Adopted xx-xxx eff xx/xx/xx]

Statutory References and Other Authorities:

Legislative History of Chapter 400:

Adopted _____

Amendments to _____:

#1

#2

#3

6. Renewable Energy for wind systems - 50.01KVA through 100KVA \$469

NOTE: 1 hr min; charged where no other permit is required.

NOTE: 2 hr min; includes inspections outside of normal business hours

- 7. Reinspection \$103.50
- 8. Appeal of Building Official decision to the Specialty Code Appeals Board \$143.75
- 9. Appeal of Specialty Code Appeals Board to the Board of Commissioners \$287.50
- 10. Investigation fee - for work for which a permit is required, but for which no permit was obtained prior to commencement of work \$75 per hour
- 11. Permit extension \$57.50
- 12. Temporary certificate of occupancy (30 days) \$140
- 13. Weekly permit report \$224.25/yr
- 14. Monthly permit report \$166.75/yr
- 15. Reports for which no fee is listed (½-hr min) \$75/hr
- 16. State surcharges (required on all permits issued) as mandated in ORS and OAR (paid to BCD) 12%
- 17. Reinstatement fee 50% of original permit fee
- 18. Permit Research \$28.75/per hour
- 19. Expedited plan review fee - structural, in addition to standard plan review fees - plan review services outside of normal time frames established, must be pre-approved, subject to availability/resources - hourly \$224.25, minimum one hour
- 20. Copy fees (per side) \$12 for first 25 pages, \$0.25 per page > 25
- 21. Staff research - hourly \$28.75
- 22. Returned check Fee (NSF) \$25
- 23. Master plans - structural - setup fee \$150 (initial review at standard plan review rate).
- 24. Master plans - structural - second and subsequent reviews 50% of initial plan review fee
- 25. Refund processing fee - not subject to state surcharge \$25

PROPERTY MANAGEMENT

- A. Copies \$0.25/pg
- B. Easement \$100

ROAD DEPARTMENT

- A. Grading request:
 - 1. Less than ½ hr \$95
 - 2. ½ hr or greater \$150/hr
- B. LID application/petition (credited to petitioner if LID is approved) \$250
- C. Restricted area key deposit - refundable \$25
- D. Restricted area vehicle permit:
 - 1. Annual fee \$15
 - 2. Additional vehicle \$10/ea

- E. Road access permit:
 - 1. Commercial (non-farm) \$250
 - 2. Field/farm \$55
 - 3. Public street \$250
 - 4. Residential \$65
 - 5. Heavy Agriculture Use \$250
- F. Road improvement permit \$250
(Plus actual cost if inspection required)
- G. Road naming application:
 - 1. No hearing required \$110
 - 2. Hearing required \$355
 - 3. Private road sign installation \$150
(Includes lifetime replacement)
- H. Utility permit (where not prohibited by state law) \$80
(Plus actual cost if inspection required)
- I. Vacation of road right-of-way:
 - 1. No hearing required \$250
 - 2. Hearing required \$550
- J. Private driveway review and inspection:
 - 1. Less than 50 feet \$60/free with access permit
 - 2. 50 to 200 feet \$60
 - 3. Greater than 200 feet \$60+\$0.10/ft over 200 ft
- K. Tourist-oriented Directional Signs \$200 per sign
(Does not include replacement if stolen or vandalized)
- L. Road Use Event (run, walk, bicycle, etc.):
 - 1. No Road Closures or Traffic Control Required \$50 plus \$100 refundable deposit
 - 2. Board Order/Traffic Control Required \$150 plus \$100 refundable deposit
- M. Stormwater Permits:
 - 1. Stormwater Permit (¼ acre or more) \$180
 - 2. Stormwater Permit (1 or more acre) \$540
- N. Erosion and Sediment Control Permit \$360

SHERIFF'S OFFICE

GENERAL FEES

- A. Records Fees:
 - 1. General Records Fees (not covered elsewhere):
 - a. First 25 pages \$12
 - i. Every page after (single sided) \$0.25/page
 - 2. Copy of Law Enforcement Report:
 - a. First 25 pages \$12
 - i. Every page after (single sided) \$0.25
 - 3. Private Party Records Check:
 - a. Name Scan or Address Scan \$10 per scan
 - 4. Booking Sheet \$10
- B. Rich Media Information:
 - 1. CD, DVD or secure digital download of photographs, audio or video files:
 - a. First 15 min of staff time \$10
 - i. Each additional 15 min of staff time \$12
 - 2. Redaction services (if necessary) \$30 hr (staff time)
 - 3. Mug Shot for ID \$5
- C. Discovery (Per Incident/Case #) (Includes All Reports and Media):
 - 1. Felony/Misdemeanor \$75
 - 2. Violations \$25



STAFF REPORT

Limited Public Hearing on Remand

TO: Linn County Board of Commissioners (Board)
FROM: Linn County Planning and Building Department
PREPARED BY: Alyssa Boles, Planning Manager
DATE ISSUED: August 20, 2023
HEARING DATE: August 29, 2023
RE: **BC19-0002;** A hearing on remand from the Oregon Land Use Board of Appeals (LUBA) of Linn County Ordinance 2021-397 and Resolution and Order No. 2021-396, which approved applications by Ronald & Virginia Henthorne for a *Comprehensive Plan (Plan)* Map amendment and Zoning Map amendment on a 108.59-acre property. The amendments would change the *Plan* designation on the subject property from Farm/Forest to Non-Resource and change the zoning from Farm/Forest (F/F) to Non-Resource 5 acre minimum (NR-5). The property is located on the north side of Crawfordsville Drive, approximately 0.47 miles west of the intersection of Crawfordsville Drive and Scott Mountain Road, and approximately 0.68 miles northeast of the rural center of Crawfordsville. The property is identified as T14S, R01W, Section 8, Tax Lot 101.

I. REMAND HEARING LIMITATIONS:

The remand hearing is limited to accepting argument and evidence regarding the specific issues identified in the remand order. New argument and evidence will be accepted regarding only the issues identified in the LUBA Order and listed in this staff report. Other testimony or evidence will not be accepted or considered.

LUBA's remand is limited to wanting the County to interpret the wildlife dwelling density standards in LCC 903.510(B)(7) and (8) and to explain how they would be complied with if the property is rezoned to NR. Therefore, LUBA instructed the County to do three things:

- (1) Interpret how the County's density standards in LCC 903.510(B)(7) and (8) work. Specifically, is the dwelling density counted based on dwellings located within the mapped habitat area within a section or is the dwelling density counted based on dwellings located within the entire section? Alternatively, is the dwelling density counted by lot or parcel size?
- (2) If Condition of Approval 1 is reimposed to limit future development to a maximum of 10 dwellings on the peripheral big game habitat portion of the subject property regardless of whether the density standard would allow more, then LUBA wanted the County to explain how that 10-dwelling unit density limit is consistent with the LCC 903.510(B)(7) and (8) density standards; and
- (3) If Condition of Approval 1 is reimposed, then LUBA wants the County to explain how Condition 1 would work –how would it be triggered to bind a subdivision or partition application for the subject property once the property is rezoned NR-5.

The hearing will be conducted on the existing record and on new argument and evidence addressing only the issues on remand. The existing record and all previously adopted findings remain in effect. The existing record is contained in land use application file number BC19-0002. The Board may consider information contained within the existing record that pertains to the limited issues on remand.

A decision made on remand is a final decision on the applications. The scope of this hearing is limited to the assignment of error identified in LUBA Final Opinion and Order Nos. 2022-003/004, which is identified in this report. All other elements of the County's findings in Resolution and Order No. 2021-396 are affirmed by LUBA and are not under review. Argument, evidence, and testimony are therefore limited to the issues identified in this report and no other evidence, argument or testimony will be accepted or considered.

II. REMAND HEARING PROCEDURES:

The hearing procedures for final County action on remand of a land use decision are described in *Oregon Revised Statutes (ORS) 215.435* (Below)

215.435 Deadline for final action by county on remand of land use decision; exception.

"(1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a county, the governing body of the county or its designee shall take final action on an application for a permit, limited land use decision or zone change within 120 days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the 120-day period established under this subsection shall not begin until final resolution of the judicial review.

(2)(a) In addition to the requirements of subsection (1) of this section, the 120-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the county proceed with the application on remand, but if the county does not receive the request within 180 days of the effective date of the final order or the final resolution of the judicial review, the county shall deem the application terminated.

(b) The 120-day period established under subsection (1) of this section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The county shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.

(3) The 120-day period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the county.

(4) Subsection (1) of this section does not apply to a remand proceeding concerning a decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610. [1999 c.545 §2; 2011 c.280 §11; 2015 c.522 §1]"

III. EXECUTIVE SUMMARY

A. APPLICATION

Ronald and Virginia Henthorne (Applicant) submitted applications to amend the *Linn County Comprehensive Plan (Plan)* map and the Linn County Land Development Code (LCC) zoning map designations on a 108.59-acre property. The proposed amendments would change the *Plan* map designation of the property from the Farm/Forest to Non-Resource; and change the zoning map designation from Farm/Forest (F/F) to Non-Resource, Five Acre Minimum (NR-5).

The subject property is identified on Linn County Assessor maps as T14S, R01W, Section 8, Tax Lot 101. The property is located on the north side of Crawfordsville Drive, approximately 0.47 miles west of the intersection of Crawfordsville Drive and Scott Mountain Road, and approximately 0.68 miles northeast of the rural center of Crawfordsville.

The application states the current use of the property is personal recreation and forestry. The application indicates that the purpose of the *Plan* and Zoning map amendments is to enable the property to be developed into residential lots between 5 and 10 acres in size through the application of the Non-Resource zone.

B. BACKGROUND

1. Board of Commissioners Decisions – 2019-2021

On June 25, 2019, the Board conducted a duly advertised public hearing to consider the proposed map amendments. After the close of the public hearing, the Board left the record open for: any party to submit new testimony, argument or evidence by July 9, 2019; any party to provide written responses to new written testimony, argument or evidence by July 16, 2019; and the Applicants to provide a final written rebuttal by July 23, 2019.

On August 6, 2019, the Board, having reviewed the record and conducted deliberations, adopted a motion to approve the *Comprehensive Plan Map* amendment and Zoning Map amendment applications as proposed. The motion passed by a vote of 2-0. The Board signed Resolution and Order No. 2019-127 and Ordinance 2019-128 on September 17, 2019, approving the map amendments and adopting Board findings.

1000 Friends of Oregon (Appellant) appealed the Board decisions in Resolution and Order No. 2019-127 and Ordinance 2019-128 to the Land Use Board of Appeals for the State of Oregon.¹ LUBA issued its Final Opinion and Order in LUBA No 2019-103/104 on May 8, 2020. LUBA's Order reversed the decision on the grounds the Board erred in concluding that the *Comprehensive Plan* allowed a plan designation change to Non-Resource in areas of protected big game habitat. LUBA also held the findings were inadequate to demonstrate compliance with Linn County Code (LCC) 921.874(A)(1) because it did not adopt findings regarding plan policies LCC 903.510(B)(3) and LCC 903.550(B)(1). LUBA affirmed all other aspects

¹ Debra Branson, Effie Ogan, Corby Wilson, and Brenda Wilson also filed an appeal of the Board's decision. LUBA dismissed that appeal on May 8, 2020. *Branson v. Linn County*, __ Or LUBA __ (LUBA Nos. 2019-099/100, May 8, 2020).

of the Board's decision and findings. *1000 Friends of Oregon v. Linn County*, __ Or LUBA __ (LUBA No 2019-103/104, May 8, 2020) (*1000 Friends I*).

Applicants appealed LUBA's decision in Final Opinion and Order No. 2019-103/104 to the Oregon Court of Appeals, challenging only the grounds for LUBA's reversal of the Board's decision. The Court of Appeals reversed LUBA's Final Opinion and Order on September 10, 2020, concluding that the Board of Commissioners' interpretation that the *Comprehensive Plan* allows the use of the NR-5 plan and zone designation in land mapped as wildlife habitat was plausible and therefore must be sustained. Because the Applicants had not challenged LUBA's conclusion that the findings had not evaluated certain plan policies, the court remanded the decision back to LUBA. *1000 Friends of Oregon v. Linn County*, 306 Or App 432 (2020) (*1000 Friends II*).

On February 9, 2021, in a Final Opinion and Order on remand from the Court of Appeals, LUBA acknowledged the correctness of this Board's interpretation of the county plan to allow non-resource plan and zone designations for the property and remanded the decision back to the county to conduct the plan policies that LUBA decided had not been adequately addressed in the adopted findings. *1000 Friends of Oregon v. Linn County*, __ Or LUBA __ (LUBA Nos. 2019-103/104, Feb 9, 2021). (*1000 Friends III*). LUBA's opinions required the County to address LCC 921.874(1)'s requirement to demonstrate that the proposed amendment "is consistent with and does not alter the intent of" *Comprehensive Plan* policies embodied in LCC 903.510(B)(3) and LCC 903.550(B)(1).

On April 7, 2021, the Applicants, through their representative, submitted a request to initiate remand proceedings based on the remand ordered by LUBA in *Friends III*.

On August 3, 2021, the Board conducted a duly advertised remand proceeding on the map amendments. The remand staff report specified that the scope of the proceeding was limited to the issues identified in LUBA's Final Opinion and Order Nos. 2019-103/104 and that all other elements of the County's findings in Resolution and Order No. 2019-127 and Ordinance 2019-128 were affirmed by LUBA and were not under review. The remand staff report also indicated that the testimony was limited to written argument and evidence regarding the two *Linn County Comprehensive Plan* policies identified in the remand order; and the meaning of LUBA's Order as it relates to those two policies. Staff explained the process and procedures for the remand proceeding. No oral testimony was allowed, but the proceeding was open to the public. Staff further explained that the record would be held open for fourteen days to receive additional written testimony, evidence, and argument; an additional fourteen days for written responses; and an additional fourteen days for the Applicant to submit final written rebuttal. The Board by consensus agreed to continue the matter to September 21, 2021.

The Board reconvened the final proceeding on September 21, 2021. The Board moved to accept documents into the record. After accepting documents into the record, the Board closed the record and conducted deliberations. The Board, having reviewed the record, deliberated, and then adopted a motion to approve BC-19-0002 subject to conditions of approval. The motion was approved by a vote of 3-0.

A copy of Resolution and Order No. 2021-396 is attached in **Exhibit B**. A copy of Ordinance No. 2021-397 is attached in **Exhibit C**.

2. Land Use Board of Appeals Opinion and Remand Order

1000 Friends of Oregon appealed the Board decision in Resolution and Order No. 2021-396 and Ordinance No. 2021-397 to the Land Use Board of Appeals (LUBA) for the State of Oregon. The LUBA issued its Final Opinion and Order in LUBA Nos. 2022-003/004 on Sept 26, 2022. The LUBA's Order remanded the Board decision, directing the County to interpret the wildlife density standards in LCC 903.510(B)(7) and (8) and to explain how they would be complied with if the property is rezoned to a Non-Resource zoning district. A copy of LUBA Nos. 2022-003/004 is attached in **Exhibit A**.

3. Request for Remand Hearing

Applicant submitted a request for a remand hearing on June 21, 2023, within the timelines specified under *ORS 215.435*. The public hearing to consider the issues on remand was scheduled pursuant to the request.

C. DECISION CRITERIA

The decision criteria applicable to this review are contained in LCC 921.822(A) and 921.874 (**Exhibit D**). The adopted findings in compliance with the issues on the previous remand are cited in Board Resolution and Order No. 2021-396 (**Exhibit B**).

The scope of this hearing is limited to the assignments of error identified in LUBA Nos. 2022-003/004. All other elements of the County's findings in Resolution No. 2021-396 are affirmed by LUBA and are not under review. Testimony is therefore limited to argument and evidence regarding the specific issues identified in the remand order. No other evidence, argument or testimony will be accepted or considered.

IV. ASSIGNMENTS OF ERROR AND ADDITIONAL ARGUMENT PROVIDED ON REMAND

The County is not required to address the findings adopted in Resolution No. 2021-396 that are affirmed by LUBA. Those findings are not under review as a result of the remand order. Applicant provided additional argument to address the specific assignments of error on remand. Applicant argument addressing the assignments of error on remand is included in this staff report as **Exhibit E**.

LUBA's remand is limited to wanting the County to interpret the wildlife dwelling density standards in LCC 903.510(B)(7) and (8) and to explain how they would be complied with if the property is rezoned to NR. Therefore, LUBA instructed the County to do three things:

- (1) Interpret how the County's density standards in LCC 903.510(B)(7) and (8) work.
- (2) If Condition of Approval 1 is reimposed to limit future development to a maximum of 10 dwellings on the peripheral big game habitat portion of the subject property regardless of whether the density standard would allow more, then LUBA wanted the County to explain how that 10-dwelling unit density limit is consistent with the LCC 903.510(B)(7) and (8) density standards; and
- (3) If Condition of Approval 1 is reimposed, then LUBA wants the County to explain how Condition 1 would work –how would it be triggered to bind a subdivision or partition application for the subject property once the property is rezoned NR-5.

LCC 903.510(B)(7-8)

The *Comprehensive Plan* policies LUBA remanded to the County to provide additional analysis about are the density standards for peripheral big game habitat contained in LCC 903.510(B)(7) and (8). Approximately 90 acres of the subject property is located within the mapped peripheral big game habitat.

LCC 903.510(B)(7) and (8) state:

"(7) The county recognizes that within the peripheral habitat the ODFW recommended density is one unit per 40 acres (16 units per section). When dwellings are sited using clustering techniques, then the ODFW finds one unit per 20 acres (32 units per section) is acceptable.

(8) The county shall require clustering provisions for new dwellings located in the major and peripheral habitat. Application of clustering techniques will preserve habitat and provide for uniform density standards of 16 units per section in the unimpacted major habitat and 32 units per section in the unimpacted peripheral habitat."

LUBA requested the County interpret the *Plan* policies to explain how the County applies the density standards for peripheral big game habitat. The question before the Board is how is the density standard applied. Is the dwelling density counted based on dwellings located within the mapped habitat area within a section or is the dwelling density counted based on dwellings located within the entire section? Alternatively, is the dwelling density counted based on lot or parcel size?

The applicant provides the following analysis in support of the interpretation that the dwelling density is counted based on dwellings located within the mapped habitat area:

"LCC 903.510(B)(7) states that "within peripheral habitat" the recommended dwelling density is "one unit per 40 acres (16 units per section)" or, if using clustering techniques, "one unit per 20 acres (32 units per section)."

First, LCC 903.510(B)(7) says that it applies "within the peripheral habitat." Opponent's interpretation is contrary to LCC 903.510(B)(7), which plainly says the density analysis is for dwellings that are "within the peripheral habitat." Dwellings located outside the peripheral habitat are not "within the peripheral habitat." Opponents can't just ignore the policy's words that expressly say that the dwelling density calculation happens only within the peripheral habitat area, just to reach their desired result. Even though the words of the standard are clear, to put an end to the matter, the County should adopt findings explaining the County rejects opponent's interpretation that dwellings outside of the peripheral habitat are counted in the density calculation.

Second, the plain text of LCC 903.510(B)(7) that talks about "unit per acres" works with the words "units per section" language. Those words say that the density standard applies per section but to do the math to determine the number of permissible dwelling units you may need to know the number of acres in the section that has mapped peripheral habitat. This is because the peripheral habitat mapping does not always follow section lines. Where peripheral habitat is mapped in only a part of the section, the permitted density is worked out by the "1 unit per x acres" in the section, text. When the mapped habitat covers the entire section, the permitted density is provided by the "units per section," text. But the analysis is always limited by the number of acres in a particular section that has peripheral habitat on it, not by lot or

parcel sizes. This interpretation gives effect to all the words used in the standard, does not make anything up, and importantly does not ignore the terms that the standard uses. This interpretation is therefore consistent with ORS 174.010, which is a state law that says how regulations are to be interpreted, and opponent's interpretation is not consistent with that state law.

We can see how this works by applying this interpretation to the facts here. Here, there are 332.2 acres of Section 14S01W08 (Section 8) in mapped peripheral habitat. Within that peripheral habitat, the standard (LCC 903.510(7)2) allows density of one dwelling per each 20 acres in Section 8 that is covered by the peripheral habitat, if clustering is used, or one dwelling per each 40 acres in Section 8 that is covered by the peripheral habitat, if clustering is not used. Because LCC 903.510(B)(8) requires clustering for all new development in peripheral habitat, and because development of the property will necessarily be new, the number of new dwellings allowed within Section 8's peripheral habitat is worked out under the express terms of the standard, as follows:

The 332.2 acres in Section 8 that is covered by peripheral habitat is divided by 20 acres, which equals 16.7 dwelling units. Consequently, LCC 903.510(B)(7) allows the peripheral big game habitat mapped area of Section 8 to have 16 dwellings when clustering is used (which LCC 903.510(B)(8) requires).

Opponents argued that LCC 903.510(B)(7) requires either 40-acre or 20-acre parcels/lots, depending upon whether clustering techniques are used. Their interpretation cannot be drawn from the words that the standard uses. The limiter they want to insert of "parcels/lots" does not exist anywhere in the standard. LCC 903.510(B)(7) does not say anything about lot or parcel sizes, rather it talks about dwelling density limitations for sections, based upon the number of acres in a section covered by peripheral habitat. The plain words of LCC 903.510(B)(7) then limit the number of dwellings in the part of Section 8 that is covered by peripheral habitat, to one unit per 40 acres or per 20 acres (20 acres if clustering is used, as required). None of the policies in LCC 903.510, including LCC 903.510(B)(7) and (8), require 20- or 40-acre lot or parcel sizes and none of the policies even uses the terms "lots" or "parcels". Opponent's 40- or 20-acre lots / parcels interpretation is not only contrary to the words used in the standard but also is wrong because it frustrates LCC 903.510(B)(8)'s requirement for clustering new dwellings in major and peripheral habitat. It is difficult to see how 20- or 40-acre lots or parcels could be effectively "clustered" to provide more than a 4 dwelling "cluster." Instead of mandating lot or parcel sizes, LCC 903.510(B)(7) and (8) anticipates flexibility in lot sizes, to facilitate using clustering set forth under LCC 903.510(B)(8) and (10). LUBA would likely reverse any decision that relies on opponent's wished-for interpretation based on lot sizes because it is inconsistent with the express language of LCC 903.510(B)(7) and its context of LCC 903.510(B)(8) and (10).

Other context also supports the proper interpretation of LCC 903.510(B)(7) and (8) that the density limit is calculated by dividing the number of acres covered in peripheral habitat in the section by 20 acres to get the dwelling density allowed. LCC 903.510(B)(6), the related provision for major habitat, uses the same "within the major habitat" and "1 unit per x acres (y units per section)" wording that is used in LCC 903.510(B)(7). Similarly, the clustering requirement of LCC 903.510(B)(8) uses the "x units per section" wording in discussing uniform density standards. But none of the relevant standards allows, nonetheless requires, density to be based on a per lot or parcel sizes, and none of the policies requires any minimum lot or parcel size.

The County should decide in adopted findings that LCC 903.510(B)(7) means what it says: that the dwelling density standard is applied based upon the acreage of the section that lies within the mapped big game habitat using a density of 1 dwelling per the specified number of acres within the peripheral habitat. And if the entire section is encumbered with big game habitat, that will result in a density of 16 or 32 dwelling units depending upon whether clustering techniques are used. The County Board can and should reject petitioner's desired 20-acre or 40-acre lot size interpretation."

Another interpretation of the language in LCC 903.510(B)(7) is to count the number of existing or approved dwellings located within an entire section. This is how this policy has been administered by the Planning & Building Department on previous land use decisions.

In interpreting LCC 903.510(B)(7) and (8), LCC 903.510(B)(4) is instructive. LCC 903.510(B)(4) indicates the County's interpretation of dwelling density within a mapped habitat area. That policy states, "The major and peripheral habitat map shows dwelling unit density per section (640 acres)."

As described in the *Comprehensive Plan* background reports addressing Statewide Planning Goal 5, a dwelling density of 1 dwelling per 40 acres, or 1 dwelling per 20 acres with cluster development was recommended for dwellings within the peripheral big game range. This dwelling density standard is based on the 640 acres contained within a section.

The recommendations detailed in the background reports are implemented in LCC 903.510(B)(7). Language contained in LCC 903.510(B)(7) includes the ODFW recommended dwelling density with clarification that the dwelling unit density equals a certain number of dwellings per section.

The clustering provisions mentioned in LCC 903.510(B)(8) are detailed in LCC 903.510(B)(10). These include: (a) Locating dwellings and structures near each other and existing roads; (b) Locating dwellings and structures to avoid habitat conflicts and utilize least valuable habitat areas; and (c) Minimize road development to that necessary to support the residential use.

The dwelling density standard based on dwellings located within the entire section would be interpreted as described below:

Based on Linn County GIS maps and Linn County Assessor data, T14S, R01W, Section 8 contains 21 dwellings, which have been determined to be clustered in accordance with the requirements of LCC 903.510(B)(8) and (10). The clustering determination is made by looking at previously approved and final land use decisions for dwellings on other properties within the section, looking at the location of existing dwellings and other structures in proximity to roads within the section and considering usage of the remaining acreage of a property, and using aerial photography, elevation maps, and address information. Because dwellings in Section 8 are clustered, the applicable standard in LCC 903.510(B)(7) is one dwelling unit per 20 acres (32 units per section).

Because it has been determined that the dwellings within Section 8 are clustered and based on the number of existing and approved dwellings in the section, 11 potential new dwellings may be approved or constructed within the section.

Development of the property within the habitat area is required to comply with the dwelling density standards contained in the *Plan*. Based on the number of existing and

approved dwellings in Section 8, development of the property may, at a maximum, permit for 11 additional dwellings, and be consistent with the density standards contained in the *Plan*.

There are a total of nine (9) vacant properties within Section 8, including the subject property. Three (3) of the properties are large acreage properties zoned FCM and F/F and are employed for commercial forest use, owned by a private timber company. It is highly unlikely that those properties would be developed for dwellings based on the zoning and historical use of the property. Of the other five (5) vacant properties, one is zoned Forest Conservation Management, which does not allow for a dwelling and two are tracts that already contain a dwelling. The other two vacant properties are zoned Rural Residential and are developable for a dwelling.

The County, as part of a review of an application for a subdivision, has to make a finding under LCC 926.170(B)(3) that the tentative plan conforms to the *Comprehensive Plan*, which includes all applicable policies, including wildlife habitat policies. The County would be limited in how many lots it could approve for dwellings based on the wildlife habitat dwelling density standards contained in the *Plan*.

Linn County Code allows for a property owner to apply for a variance to the wildlife habitat dwelling density standard on lands zoned Exclusive Farm Use or Farm/Forest, subject to compliance with the applicable variance criteria contained in LCC 938.400. However, Non-Resource zoned land is not eligible for a variance to the wildlife habitat dwelling density standard under the provisions of County Code, so development of new dwellings within the NR zone within the habitat area is limited to the dwelling density per section described in the *Plan*.

The County can also include conditions of approval on land use decisions that ensure compliance with the intent of the Land Development Code and the *Comprehensive Plan* and to aid in achieving compatibility with the applicable decision criteria (LCC 933.100). LCC 933.100(A)(13) allows the imposition of permit conditions to protect and preserve existing trees, vegetation, water resources, wildlife habitat, or other significant natural resources. Conditions include requiring clustering of development on the properties located both inside and outside the mapped habitat area, and any other measure the decision maker deems necessary in order to ensure compliance with the intent of wildlife policies contained in the *Plan* and to mitigate impacts to the areas within the mapped wildlife habitat.

Based on the plain language in the *Plan*, the dwelling density standard is not based on a minimum parcel or lot size standard. Testimony in opposition submitted at the previous remand hearing and at LUBA argued that the acreage is enough to allow for new lots that could contain dwellings that would exceed the dwelling density standard, thereby impacting the wildlife habitat due to density of dwellings exceeding the amount allowed in the *Plan*. While the County could potentially approve 21 lots based on the size of the subject property and the proposed minimum property size, the County would be limited in how many lots it could approve for dwellings based on the wildlife habitat dwelling density standards contained in the *Plan*. Other factors can also affect the number of potential lots and dwellings, such as topography, location of wetlands or geologic hazard areas, ability to obtain septic approval or availability of an adequate supply of potable water, and access improvements. Staff also notes that 5 acres is the minimum property size standard. An applicant can propose property sizes larger than the 5-acre minimum. Staff concurs with the applicant's analysis regarding this interpretation.

Both interpretations, based on the number of existing or approved dwellings within Section 8 and both within and outside the mapped habitat area, support a finding that the *Plan* and Zoning map amendment comply with LCC 903.510(B)(7) and (8) because both interpretations do not permit a dwelling density that exceeds the amount allowed by the *Plan*.

The Board should consider the information in the record and the analysis in the staff report in order to make a determination regarding the applicable interpretation of the dwelling density standards in LCC 903.510(B)(7) and (8).

Condition #1 of Resolution & Order 2021-396 & Ordinance 2021-397

Condition of Approval #1 of Resolution & Order 2021-396 and Ordinance 2021-397 limits future development to a maximum of 10 dwellings within the peripheral big game habitat portion of the subject property, regardless of whether the density standard would allow more. On remand, LUBA asked the County to address how that 10-dwelling unit density limit is consistent with the LCC 903.510(B)(7) and (8) density standards.

Condition #1 states:

"If the property is subdivided, use of the property shall be limited to a residential subdivision and its accessory uses. If the property is partitioned, use shall be limited to residential and accessory uses. A maximum of 10 dwellings shall be allowed within the Peripheral Habitat designated area on the subject property and dwellings must be approved in compliance with LCC 905.310(B)(7) through (10)."

Condition #1 was adopted as an additional measure to address public concern that any proposed future development of the property would exceed the wildlife habitat area dwelling density requirements. Condition #1 was unnecessary to demonstrate compliance with the *Plan* policies in LCC 903.510(B)(7) and (8) on the previous remand and it is not necessary to demonstrate compliance with LCC 903.510(B)(7) and (8) as part of this remand. The Board is not required to re-adopt the condition on remand.

As noted in the analysis above, both plausible interpretations of the dwelling density standard in the *Plan* support a finding that the *Plan* and Zoning map amendment comply with LCC 903.510(B)(7) and (8) because both interpretations do not permit a dwelling density that exceeds the amount allowed by the *Plan*.

Measures already exist within the *Plan* and the Land Development Code to ensure that wildlife habitat density standards and clustering requirements are complied with as part of development. These measures include the requirement for development permit applications to comply with the policies in the *Plan*, analysis of development permits for compliance, and review of development permits to ensure that requirements and standards are satisfied at the time of site development.

In regards to the *Plan* and Zoning map amendment applications, the application of the NR zoning district does not preclude the property owner from complying with the wildlife habitat density standards. Those standards and requirements still apply.

The County Code contains provisions to ensure the requirements in LCC 903.510(B)(7) and (8) are met as part of a development permit review, notably Chapter 924 (Partitioning Code), Chapter 926 (Subdividing Code), and Chapter 933 (Condition, Requirements, & Decision Criteria Code).

Potential future partitioning of the property (up to three parcels) is subject to compliance with the criterion in LCC 924.200(B)(1) and also 924.250(B)(1) if there is no recognized access.

LCC 924.200(B)(1) requires that absent a variance, the partitioning of land must meet established minimum parcel sizes, established setbacks and other applicable property development standards in the Development Code. In most cases, partitioning of land involves land outright buildable for residential development, such as Rural Residential land or land within unincorporated communities. These zones are not generally located within wildlife habitat areas or are considered impacted by the policies in the *Plan* and are not subject to wildlife habitat considerations. Rural Resources zones, such as the EFU or F/F zones, are generally not dividable based on the statutory acreage requirement and are not outright buildable for a dwelling. Partitions are permitted on resource land for resource use, which is compatible with wildlife habitat areas pursuant to LCC 903.510(B)(3).

Other zones, in this case the NR zone proposed to be applied to the property, are subject to the wildlife habitat clustering requirements and dwelling density standards. The criterion in LCC 924.200(B)(1) allows the County to make a determination whether a proposed partition in the NR zone can comply with the dwelling density standards and clustering requirements in LCC 903.510(B)(7) and (8).

LCC 924.250(B)(1) states: "*The land partition complies with the Comprehensive Plan and all other applicable provisions of the Linn County Code.*"

The criteria for partitions without recognized access apply to partitions to create up to three parcels where access would be provided via some means other than frontage on a public road, typically by an easement. Any application to divide the subject property if the NR zone is applied and where an easement is proposed would require compliance with this criterion. Additional partitions (series partition, or serial partitions as referenced in the LUBA opinion) would require a review under this criterion because additional parcels serving dwellings are proposed, which requires modification of the original easement to serve the additional parcels.

If the property is proposed to be subdivided, LCC 926.170(B)(3) requires the tentative plan conform to the Comprehensive Plan, including all applicable policies. Additionally, LCC 926.120(B)(24) (Tentative plan map; contents) states:

"(B) Contents of tentative plan map. The tentative plan map shall be in sufficient detail to illustrate the proposed development and shall include, but not be limited to, the following information:

(24) Additional information as the Director deems appropriate."

Because of the presence of mapped wildlife habitat, the Director can require the tentative plan map to indicate a general development footprint to demonstrate that development will comply with the clustering requirements in the *Plan*. The Director can also require that the inventoried wildlife habitat area be indicated on the tentative map. LCC 926.310 (Final plat information) also allows the Director to require the final

plat include any conditions specified by the Director upon granting preliminary approval, which may include additional plat requirements in order to ensure compliance with applicable *Plan* and Code criteria.

Linn County Code allows for a property owner to apply for a variance to the wildlife habitat dwelling density standard on lands zoned Exclusive Farm Use or Farm/Forest, subject to compliance with the applicable variance criteria contained in LCC 938.400. Non-Resource zoned land is not eligible for a variance to the wildlife habitat dwelling density standard under the provisions of County Code, so development of new dwellings within the NR zone within the habitat area is limited to the dwelling density per section described in the *Plan*.

The County can also include conditions of approval on land use decisions that ensure compliance with the intent of the Land Development Code and the *Comprehensive Plan* and to aid in achieving compatibility with the applicable decision criteria (LCC 933.100). LCC 933.100(A)(13) allows the imposition of permit conditions to protect and preserve existing trees, vegetation, water resources, wildlife habitat, or other significant natural resources. Conditions include requiring clustering of development on the properties located both inside and outside the mapped habitat area, and any other measure the decision maker deems necessary in order to ensure compliance with the intent of wildlife policies contained in the *Plan* and to mitigate impacts to the areas within the mapped wildlife habitat.

Staff would point out that LUBA case law demonstrates that once the dwelling density limit in a protected wildlife habitat area is reached, applications simply are denied in whole or part. The Department would make a similar determination based on the provisions in the *Plan*.

What triggers are in place to bind a subdivision or partition application for the subject property to the density standard and clustering requirements if the property is rezoned NR-5.

LCC 930.510(B)(7) and (8) apply to the density and clustering of dwellings in peripheral habitat areas. The application narrative explains that the ultimate use of the property is for a residential subdivision. The question in this LUBA remand is whether subsequent land divisions under NR-5 zoning will have to comply with the County Comprehensive Plan, including LCC 930.510(B)(7) and (8).

LCC 926.170(B) provides the criteria for tentative plan subdivision applications. LCC 926.170(B)(1) requires a demonstration that "*The tentative plan conforms to the Comprehensive Plan.*" Condition 1 is unnecessary to ensure that any subdivision of the property complies with the comprehensive plan's density standards because the Code already decides that all *Plan* standards including the habitat dwelling density standard, apply to subdivisions. Thus, to obtain approval of a subdivision, any applicant must demonstrate compliance with the *Plan*, including its density standards and clustering requirements, with or without any conditions of approval.

Partitions must also demonstrate compliance with the *Plan*, including demonstrating compliance with the density standard of LCC 930.510(B)(7) and (8). LCC Chapter 924 distinguishes between partitions for property with recognized access and for properties without recognized access. Compare LCC 924.210 (criteria for partitions with recognized access) with LCC 924.250 (criteria for partitions without recognized access). The County has previously found that the subject property does not have

recognized access and that LCC 924.250 will apply to an application to partition the subject property. And as analysis indicates above, both LCC 924.200 and 924.250 apply and allow the County to determine whether a partition application complies with LCC 903.510(B)(7) and (8).

Additionally, the County previously found that the property does not have recognized access. That finding was not challenged at LUBA. That issue is final and not subject to review under this remand.

Any future partitions of the subject property will be subject to the LCC 924.250(B)(1) requirement to demonstrate compliance with the *Plan*. This is not an issue as a practical matter, because the application is clear that the applicant intends to apply for a residential subdivision.

All permit conditions are binding on all subsequent subdivision or partition applications by operation of the normal LCC procedures and requirements [LCC 933.100(B)], which include enforcement actions if necessary. LCC 921.920(E) states that no person may initiate development of a property authorized by a development permit issued under the Land Development Code unless that person fulfills all conditions and requirements imposed on a permit. A person may only initiate development of a property authorized by a development permit issued under the Land Development Code if that person first fulfills all conditions and requirements imposed on a permit, or if the development permit authorizing development was issued without any conditions or requirements imposed on the permit.

The mechanism for compliance with the conditions is that, even if they are not complied with at the subdivision or partition stage if the property is zoned NR-5, they are enforceable through an enforcement action. The County can enforce conditions and opponents can enforce conditions. Concerning the former, LCC 921.960(B)(1) allows the County to revoke a permit or other approval if the permittee failed to comply with a condition of approval. LCC 921.970 allows the Director to issue a stop work order for work being done without the necessary authorization. ORS 197.825(3)(a) authorizes opponents to enforce the conditions.

V. PUBLIC NOTICE, COMMENTS AND PROCEDURE

A. PUBLIC NOTICE AND COMMENTS

Public notice of the remand hearing was published in the Albany Democrat Herald newspaper at least 20 days prior to the initial remand hearing. Public notice was mailed to the owners of all properties within 1,000 feet of the subject property boundaries and to all parties who participated in the previous remand hearing on this matter, either in person or in writing, at least 20 days prior to the scheduled public hearing (**Exhibit G**).

No written comments were submitted as of the date this staff report was prepared. Written comments submitted after preparation of the staff report will be provided to the Board prior to the scheduled hearing.

B. AGENCY NOTICE AND COMMENTS

Public notice was provided to the following public agencies at least 20 days prior to the initial remand hearing. The table below indicates agencies that have received notice and agencies that have submitted comments for the record before this staff report was completed (**Exhibit F**).

AGENCY	NOTICE	RESPONSE	AGENCY	NOTICE	RESPONSE
Linn County EHP	x		ODSL	x	
Linn County Assessor	x		DLCD	x	
Linn Co. GIS	x		OWRD	x	
Linn County Road Dept.	x	x	ODFW	x	
Linn County Sheriff	x	x	ODSF	x	
			RFPD: Sweet Home	x	

C. PUBLIC HEARING PROCESS

The Board will conduct a public hearing on this matter on **Tuesday, August 29, 2023 at 10:00 a.m.**, in Room 200 of the Linn County Courthouse, Albany Oregon. The Board will make a final land use decision after the close of the public hearing.

The scope of this hearing is limited to the assignment of error identified in LUBA Final Opinion and Order Nos. 2022-003/004, which is identified in this staff report. All other elements of the County's findings in Resolution and Order No. 2021-396 are affirmed by LUBA and are not under review. Argument, evidence, and testimony are therefore limited to the issues identified in this report and no other evidence, argument or testimony will be accepted or considered. The Board may consider information contained within the existing record that pertains to the limited issues on remand.

The Board will consider all the argument and evidence submitted in this matter and may act to:

- (1) Approve the application;
- (2) Deny the application; or
- (3) Modify the application.

All testimony and evidence must be directed toward the applicable decision criteria including applicable criteria in the Plan or other land use regulations. Failure to raise an issue before the close of the record, or failure to provide statements or evidence sufficient to afford the decision maker(s) and the parties an adequate opportunity to respond to each issue raised precludes an appeal based on that issue.

D. EXHIBITS

- EXHIBIT A: LUBA Nos. 2022-003/004
- EXHIBIT B: Resolution and Order No. 2021-396
- EXHIBIT C: Ordinance No. 2021-397
- EXHIBIT D: Decision Criteria
- EXHIBIT E: Request for Remand Hearing
- EXHIBIT F: Written Comments
- EXHIBIT G: Public Notice