

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

Regarding an appeal of an administrative decision) **FINAL ORDER**
approving verification and alteration of a nonconforming)
use at 20189 and 20195 S. Springwater Road) **Z0087-22-E**
in unincorporated Clackamas County, Oregon) **(Bent Shovel NCU)**

A. SUMMARY

1. On February 17, 2022, Richard E. Strauss (the “applicant”) filed an application for verification and alteration of a nonconforming use (“NCU”) (File No. Z-0591-08-E) on 4.5 acre parcel located at 20189 and 20195 S. Springwater Road; also known as Tax Lots 2000 and 2100, Section 13, Township 3 South, Range 3 East of the Willamette Meridian, Clackamas County, Oregon (the “site”). The applicant requests verification that an existing restaurant/bar/beer garden/grocery store use is lawfully nonconforming, and an alteration of the nonconforming use to:

- a. Change the use to a “brew pub”, with certain modifications to the interior of and entrance to an existing building;
- b. Operate within certain specified hours;
- c. Expand an existing outdoor seating/serving area (beer garden);
- d. Add a covered area, and allow certain outdoor activities, in the existing beer garden;
- e. Add buildings for storage and barbecue cooking facilities;
- f. Allow for amplified outdoor music/announcements;
- g. Allow for quarterly “special events”;
- h. Allow for an annual on-site American Legion car show and an annual on-site “business party”;
- i. Allow for portable toilets; and
- j. Replace existing signage.

2. On November 3, 2022, the planning director (the “director”) issued a written decision verifying that a commercial restaurant/bar/lounge/retail use, with a patio, an outdoor customer serving/seating area, and certain accessory uses (e.g., vehicle parking), was lawfully established and has never discontinued for 12 consecutive months. In addition, the director approved the following alterations to the lawfully established nonconforming use:

- Interior modifications to the existing restaurant building (e.g., removal of certain interior walls separating a lounge area from restaurant seating, conversion of some seating to a game room, and conversion of an upstairs dining area into office space), and a new entrance to the restaurant building on the same side of the building as the existing entrance;
- A 400-square-foot storage building south of the restaurant building by the beer garden;
- An 800-square-foot "pre-fab" cold storage building and a separate 400-square-foot dry storage building to the west of the restaurant building;
- Replacement of the existing free-standing business sign near S. Springwater Road;
- Outside activities and "games for kids and families" (e.g., corn hole, large Jenga, giant Connect Four, board games) in the beer garden area; and
- Outdoor cooking during approved restaurant hours, within a roughly 200-square-foot covered barbecue area.

(Exhibit 1).

3. The director *denied* the following alterations to the lawfully established nonconforming use:

- Expansion of the beer garden area;
- A "pole barn" covering in the beer garden for sheltered seating;
- Annual "car shows";
- Amplified outdoor music/announcements;
- Use of portable toilets ("porta-potties"); and
- Operating hours as follows:
 - 8:00 a.m. - midnight, seven days per week for the restaurant/bar/event space/retail store and patio; and
 - 11:00 a.m. - 10:00 p.m., every Friday-Sunday for the beer garden.

The conditions of approval limited the operating hours as follows:

- For the restaurant and patio:
 - 11:00 a.m. - 9:00 p.m. on Wednesdays, Thursdays, and Sundays; and
 - 11:00 a.m. - 11:00 p.m. Fridays and Saturdays;
- For the beer garden: Noon until 8:00 p.m., Friday-Sunday during good weather, with additional operating days only from time to time;
- Everything closed on Mondays and Tuesdays.

(Exhibit 1).

4. On November 14, 2022, the applicant filed a written appeal objecting to limitations on the hours of operation of the restaurant, bar, and patio. (Exhibit 19).

5. County Hearings Officer Joe Turner (the "hearings officer") conducted an online public hearing regarding the appeal. County staff recommended that the hearings officer deny the appeal and affirm the director's decision. The applicant testified in support of the appeal. One area resident submitted written testimony in support of the appeal. (Exhibit 20). Two area residents testified in opposition to the appeal. Principal contested issues in the case include the following:

a. Whether the applicant sustained its burden of proof that the hours of operation of the restaurant, bar, and patio have not been reduced for more than 12 consecutive months below the hours determined for this nonconforming use in File No. Z0470-00-E (Barkle/Viewpoint Restaurant);

b. Whether the outdoor patio may be used in conjunction with the restaurant as well as the bar; and

c. Whether the outdoor patio remains in compliance with the screening requirements set out in File No. Z0470-00-E (Barkle/Viewpoint Restaurant).

6. The hearings officer concludes the new evidence submitted with the appeal demonstrates that the restaurant, bar, and patio have been operating from 8:00 a.m. to 9:00 p.m. Monday through Thursday and 8:00 a.m. to 11:00 p.m. Friday and Saturday and the use has not been operating at the reduced hours noted in the director's decision for more than 12 months. However, the applicant failed to bear the burden of proving that the use has been operating during the extended hours noted in File No. Z0470-00-E (Barkle/Viewpoint Restaurant) without any reductions of 12 months or more. Therefore the hearings officer grants the appeal in part, modifies the planning director's decision in part, and approves the application subject to the revised conditions of approval at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about the appeal on December 22, 2022. In addition, the hearings officer takes official notice of the prior approvals for this use, casefiles: 851-81-E (Hinkle), 851-81-E,D (Hinkle), Z0470-00-E(Barkle/Viewpoint Restaurant), Z0125-03-E (Garfield/Viewpoint Restaurant), Z0261-12-E (Joln Properties), and Z0227-18-E (Herman/Viewpoint on Springwater). All exhibits and testimony are filed with the Clackamas County Department of Transportation and Development. At the start of the hearing, the hearings officer made the declaration required by ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected testimony offered at the hearing.

2. County planner Annabelle Lind summarized the director's decision(Exhibit 1) and her PowerPoint presentation (Exhibit 21) and responded to the appeal.

a. She noted that the applicant reduced the hours of operation during the 12 months prior to submittal of the application, based on the hours of operation listed on

the applicant's website. The applicant now proposes to expand the hours of operation, to operate the restaurant/bar/event space/retail store and patio from 8:00 a.m. - midnight, seven days per week and the beer garden from 11:00 a.m. - 10:00 p.m., every Friday-Sunday. The employee timesheets the applicant submitted with the appeal are insufficient to support the applicant's assertions regarding longer hours of operation.

b. The applicant has the burden of proof to demonstrate that the use has continued at the same level of operation, including hours of operation, without interruptions longer than 12 months. The last review of this use was in 2018, so the applicant must demonstrate that the use has continued without interruption or reduction since that date.

3. The applicant, Richard Strauss, testified that he has owned the business for just under one year. The former owners operated the restaurant from 8 a.m. until midnight or later, seven days a week. He continued operating the use consistent with the previously established hours of operation well into 2022. He only reduced the operating hours in mid-May 2022, due to the economic downturn and a lack of employees. He submitted employee time cards with his appeal as evidence of the hours of operation between January and May 2022.

a. From January until mid-May 2022, the restaurant was open from 8:00 a.m. to 9:00 or 10:00 p.m. Sunday through Thursday and from 8:00 a.m. to midnight or later Friday and Saturday. The employee timesheets and time clock data he submitted with his appeal support these hours of operation. The hours of operation are typical for this type of restaurant/bar use.

b. Beginning in mid-May 2022 the restaurant was closed on Mondays and Tuesdays due his inability to hire sufficient staff to cover all shifts. The restaurant continued to operate from 8:00 a.m. to 10:00 p.m. Sunday through Thursday and from 8:00 a.m. to midnight or later Friday and Saturday. Some time later the restaurant ceased all breakfast service due to further staff shortages. The restaurant began opening at 11:00 a.m. Wednesday through Sunday while maintaining the prior closing hours. County staff relied on the hours listed on restaurant website, which shows the current reduced hours of operation, to support the director's determination regarding the historic hours of operation for the use. However, those reduced hours are not permanent and are not reflective of past operating hours. The applicant only reduced the operating hours because they could not find sufficient staff to fill all available shifts. County staff did not make any mention of a need for historic data regarding the hours of operation of the use.

c. He testified that he is only appealing the decision regarding the hours of operation of the restaurant, bar, and patio. He is not appealing the decision regarding the hours of operation of the beer garden.

d. He does not propose to change the use of the patio area from its historic use.

e. He requested that the hearings officer allow him until January 17, 2023, to submit a final written argument. He agreed to extend the 150-day clock for two weeks, until February 12, 2023, to accommodate the longer period for submittal of his final argument.

4. Doug Towsley testified on behalf of himself and his wife, Linda Towsley. They have no objections to the proposed hours of operation. They only object to any expansion of the area of the use.

a. He noted that the operating hours of the beer garden are different from the restaurant and bar hours.

b. In addition, the restaurant and bar were operated separately. The bar would usually continue to operate after the restaurant was closed for the evening. The patio area was used as an extension of the bar, not the restaurant. The patio was historically used as a smoking area for the bar with a few picnic tables. The applicant has reconfigured the facility to combine the bar and restaurant and appears to be proposing to use the patio for meal service associated with the restaurant. Use of the patio for meal service could increase the number of people using the patio area, which would increase the level of noise generated on the site and impacting adjacent properties. In addition, the applicant has removed required screening around the patio.

5. At the conclusion of the hearing the hearings officer held the record open to until January 17, 2023, to allow the applicant an opportunity to submit a final written argument. The record in this case closed at 5:00 p.m. January 17, 2023. The applicant did not submit a final argument prior to the close of the record.

C. DISCUSSION

1. ZDO 1305.02.D(2) authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), appeals of administrative decisions must be reviewed as a *de novo* matter. The hearings officer is required to conduct an independent review of the record. He is not bound by the prior decision of the planning director and does not defer to that decision in any way. New evidence may be introduced in an appeal, and new issues may be raised. The hearings officer must decide whether the applicant carried the burden of proof that the application complies with all applicable approval criteria in light of all relevant substantial evidence in the whole record, including any new evidence.

2. The hearings officer adopts as his own the findings in the director's decision, Exhibit 1, except to the extent that those findings are inconsistent with the findings in this final order. The hearings officer finds, based on those findings, that the appeal should be granted in part and the nonconforming use application should be approved subject to the revised conditions of approval provided at the end of this Final Order

3. A nonconforming use is "A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but,

due to a change in the zone or zoning regulations, is now prohibited in the zone.” ZDO 202. A nonconforming use may be continued although not in conformity with the regulations for the zoning district in which the use is located. ZDO 1206.02. A nonconforming use that has been discontinued for a period of more than 12 consecutive months may not be resumed unless the resumed use complies with the current zoning requirements. ZDO 1206.03.A. The applicant bears the burden of proof to demonstrate that the use has not been discontinued. *Besseling v. Douglas County*, LUBA No. 2000-155 (Or. LUBA 2001).

4. A nonconforming use can be partially abandoned or discontinued through reductions in the intensity of the use or through discontinuance of component uses. “Short of the point that it is abandoned or discontinued, the intensity of a nonconforming use may be reduced without its being lost.” *Hendgen v. Clackamas County*, 115 Or App 117, 120, 836 P.2d 1369, 1370, *appeal after remand*, 110 Or.App. 55, 849 P.2d 1135 (1992). However,

[t]he law of nonconforming uses is based on the concept, logical or not, that uses which contravene zoning requirements may be continued only to the extent of the least intensive variations --- both in scope and location --- that preexisted and have been continued after the adoption of the restrictions.

Clackamas County v. Gay, 133 Or. App. 131, 135, 890 P.2d 444 (1995).

5. As noted in the director’s decision, the County initially determined in 1981 that a commercial use that included a restaurant, lounge, and convenience store had been lawfully established on the site prior to any zoning and that use was allowed to continue as a legally established nonconforming use. See File No. 851-81-E. Subsequent decisions concluded that the nonconforming use had continued without being discontinued for 12 months or more and approved certain alterations or expansions of the nonconforming use:

a. Later in 1981 the County approved use of the upstairs portion of the restaurant as a banquet room. See File No. 851-81-E,D.

b. In 2000 the County approved “[a] 20 ft. by 50 ft patio/deck for outdoor seating of patrons of the restaurant and lounge use... located at the south end of the existing restaurant/store structure.” See File No. Z0470-00-E (Barkle/Viewpoint Restaurant). In that decision the County determined that “The days and hours of operation are 6:30 a.m. to 12:30 a.m. during the week and 6:30 a.m. to 2:30 a.m. on weekends.” *Id* at p. 4. In addition, Condition 4 of that approval provided, “The patio seating area shall be surrounded by sight-obscuring fencing at least six (6) ft. in height with no more than two and one-half (2.5) ft of this height consisting of lattice type material.” *Id* at p. 5.

c. In 2003 the County approved a mobile drive-thru coffee stand at the southeast corner of the existing parking lot.¹ See File No. Z0125-03-E (Garfield/Viewpoint Restaurant).

d. In 2012 the County approved “[u]se of an outdoor patron serving/seating area in the wooded area south of the existing building use” , along with a portable refrigerated trailer and barbeque to be placed near the area in the parking lot. (what is now referred to as the “beer garden”). See File No. Z0261-12-E (Joln Properties).

e. In 2018, the County denied a request to allow amplified sound systems and unamplified musical performances in the previously approved beer garden. File No. Z0227-18-E. (Herman/Viewpoint on Springwater).

f. With the exception of File No. Z0470-00-E (Barkle/Viewpoint Restaurant), none of these decisions addressed the hours of operation of the restaurant, bar, and patio.

6. With this application the applicant proposed to operate the restaurant/bar/event space/retail store and patio between 8:00 a.m. and midnight, seven days per week. The applicant did not include any evidence demonstrating the historic hours of operation of these uses since the 2000 or 2018 approvals.

7. The director’s decision restricted the use to the following operating hours:

- For the restaurant and patio, 11:00 a.m. - 9:00 p.m. on Wednesdays, Thursdays, and Sundays and 11:00 a.m. -11:00 p.m. Fridays and Saturdays;
- For the beer garden, noon until 8:00 p.m., Friday-Sunday during good weather, with additional operating days only from time to time; and
- Everything closed on Mondays and Tuesdays.

See Condition 5 of File No. File No. Z0087-22-E.

a. The director’s decision did not provide any discussion of how the director determined these hours of operation. Based on the applicant’s testimony, the director may have determined the hours based on the applicant’s current website. The applicant testified that, beginning in May 2022, he reduced his hours of operation due to a lack of available restaurant staff to fill all shifts and those reduced hours are reflected on the restaurant website. However, those reduced hours are intended as a temporary

¹ The site plan submitted with the application for Z0261-12-E and aerial photos included with the record show the drive-thru coffee stand approved in 2003 had subsequently been removed.

measure and the applicant intends to resume historic operating hours when he is able to hire sufficient staff to cover the additional shifts.

8. A reduction in the hours of operation constitutes a partial discontinuance of the use that may not be resumed if that reduction continues for more than 12 consecutive months. However, the hearings officer finds that the use has only been operating at the reduced hours noted in the director's decision since May 2022, less than 12 consecutive months. Therefore, the hearings officer finds that the applicant has not yet discontinued the longer hours of the use, based on the evidence submitted with the appeal.

a. The applicant's appeal included employee timeclock (p 6-42 of Exhibit 19) and income data (pp 8-12 of Exhibit 19) for the restaurant and bar use during April and May 2022. The hearings officer condensed this data into a table showing the start and end times for each day of operation during these months. See Attachment A of this Final Order. Based on that data, and the complete lack of findings or evidence to support the hours of operation set out in the director's decision, the hearings officer finds that the applicant demonstrated that:

i. The restaurant, bar, and patio have been opening at 8:00 a.m. seven days per week;

ii. The restaurant, bar, and patio have been closing around 9:00 p.m. Monday through Thursday;² and

iii. The restaurant, bar, and patio have been closing around 11:00 p.m. Friday and Saturday.³

b. In mid-May 2022, the applicant reduced the operating hours of the restaurant to 11:00 a.m. - 9:00 p.m. on Wednesdays, Thursdays, and Sundays, 11:00 a.m. - 11:00 p.m. Fridays and Saturdays, and closed Mondays and Tuesdays. However, those modified hours have not continued for more than 12 consecutive months. Therefore, the applicant has not permanently reduced the scope of the nonconforming use.

i. If the applicant continues to operate the use at the current reduced hours through mid-May 2023, that reduction will become permanent, as the applicant will have discontinued longer hours for more than 12 months. The fact that the reduced hours are due to a lack of available staff is irrelevant. The Code and state law prohibit the resumption of a nonconforming use that has been discontinued for more than 12 months, regardless of the reason for the discontinuance.

c. The applicant testified that he and the prior owner previously operated the restaurant, bar, and patio between 8:00 a.m. and midnight, seven days per week, consistent with the historic hours of operation noted in the County's 2000 decision, File No. Z0470-00-E (Barkle/Viewpoint Restaurant). However, the applicant failed to provide

² The last employee generally checked out sometime after 9:00 p.m. on those dates.

³ The last employee generally checked out sometime after 11:00 p.m. on those dates.

any evidence to support that assertion. The only evidence in the record demonstrates that the restaurant, bar, and patio have open for business between 8:00 a.m. and 9:00 p.m. Sunday through Thursday and between 8:00 a.m. and 11:00 p.m. Fridays and Saturdays. As noted above, the applicant must bear the burden of proof that the nonconforming use has continued at the same scope and scale, including hours of operation, without being discontinued in whole or part for more than 12 consecutive months. There is no evidence in the record to support a determination that the restaurant, bar, and patio were open for business beyond the hours shown in the applicant's timesheet and sales data for April and May 2022 since the County last confirmed the continuity of this nonconforming use in 2018.

d. The appellant's assertion that longer hours of operation are typical for this type of restaurant/bar use is irrelevant. This is not a "typical" restaurant/bar use located in a commercial zone where that type of use is allowed. This is a nonconforming use located in the RRFF-5 zone where restaurant/bar uses are prohibited. Therefore, this use is limited to the scope and scale of use that existed when the use became nonconforming and that continued without discontinuance or reductions that continued for more than 12 consecutive months.

9. The appellant did not object to the hours of operation of the beer garden as determined by the director. Therefore, the hearings officer will not address that issue.

10. The Towsleys argued that the patio has historically been used in conjunction with the bar, not as part of the restaurant. However, the 2000 application approved by the County for modification of the nonconforming use expressly proposed "a 20 ft. by 50 ft patio/deck for outdoor seating of patrons of the restaurant and lounge use." (See p. 1 of the director's decision in File No. 20470-00-E (Barkle/Viewpoint Restaurant)). The hearings officer has no authority to reconsider that approval in this proceeding.

11. The conditions of approval in File No. 20470-00-E (Barkle/Viewpoint Restaurant) required that "The patio seating area shall be surrounded by sight-obscuring fencing at least six (6) ft. in height with no more than two and one-half (2.5) ft of this height consisting of lattice type material." (*Id* at p. 5). The Towsleys testified that the applicant has removed portions of the required patio screening. The applicant should be required to demonstrate that the required screening remains in place or restore the required screening. A condition of approval is warranted to that effect.

D. CONCLUSIONS

Based on the findings adopted or incorporated above, the hearings officer concludes that the applicant sustained the burden of proof that the nonconforming use and design review applications do or can comply with the applicable approval criteria. Therefore the appeal should be granted and the applications should be approved subject to the conditions of approval recommended by County staff as modified at the hearing.

E. DECISION

Based on the above findings and discussion, the hearings officer hereby grants the appeal, modifies the director's decision, and approves File No. Z0087-22-E (Bent Shovel NCU), subject to the following revised conditions of approval:

CONDITIONS OF NONCONFORMING USE APPROVAL

1. Approval of this land use permit is based on the submitted written narrative and plans and accompanying documentation deemed complete on August 16, 2022, as well as on the additional project details submitted on October 6, 11, and 18, 2022, and the timesheets and sales data submitted with the appeal, Exhibit 19. 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 documents and the limitation of any approval resulting from the decision described herein.
2. This decision approves certain elements of a nonconforming use alteration, as listed on Pages 11-12 of the director's decision. Approval of these elements is valid for four years from the date of the final written decision on this application. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval for these elements shall be implemented, or their approval will become void. "Implemented" means all major development permits are obtained and maintained for the approved elements, or if no major development permits are required to complete the approved elements, "implemented" means all other necessary County development permits (e.g., electrical permits, plumbing permits) shall be obtained and maintained. (ZDO Subsection 1206.08(A))
3. If the approved elements are not implemented within the initial four-year approval period described in Condition 2 above, a two-year time extension may be approved pursuant to ZDO Section 1310, Time Extension. (ZDO Subsection 1206.08(B))
4. The verification in response to ZDO Subsection 1206.07 that certain aspects of the nonconforming use are lawfully nonconforming is valid for 12 months from the date of the County's final written decision on this application. The approved elements of the nonconforming use alteration shall be implemented within this 12-month period, or a new nonconforming use verification approval may be required. (ZDO Subsection 1206.03(A))
5. Operating hours shall be limited as follows:
 - a. For the restaurant, bar, and patio, 8:00 a.m. to 9:00 p.m. Monday through Thursday and 8:00 a.m. to 11:00 p.m. Friday and Saturday.
 - b. For the beer garden, noon until 8:00 p.m., Friday-Sunday during good weather, with additional operating days only from time to time.

(ZDO Subsections 1206.06(B) and 1206.07(A) and Exhibit 19)

6. The 1,000-square-foot outdoor covered patio on the south side of restaurant building shall continue to be surrounded by the six-foot-high board fence required by File No. Z0470-00-E, the top part of which shall also continue to consist of lattice-type material. Customers shall continue to only enter this patio through the restaurant building. The applicant shall provide photos or other evidence to the County demonstrating that the required screening is in place. (ZDO Subsection 1206.06(B))
7. The beer garden in the southeast corner of the subject property shall continue to be limited to 12,000 square feet approved in File No. Z0261-12-E. The area shall also continue to be fenced with sight-obscuring materials on all sides. The applicant shall provide photos or other evidence to the County demonstrating that the required screening is in place. Any lighting of the beer garden area shall continue to be limited in height and directed in such a manner as to avoid lighting adjacent property. The beer garden shall continue to be required to comply with relevant building and electrical codes, and with fire district, health department, Oregon Liquor Control Commission (OLCC), and septic system requirements. (ZDO Subsection 1206.06(B))
8. Outside activities and “games for kids and families” (e.g., corn hole, large Jenga, giant Connect Four, board games) shall be located only in the 12,000-square-foot existing beer garden area, and shall be limited to the beer garden’s operating hours listed in Condition 5.b above. (ZDO Subsection 1206.06(B))
9. The 200-square-foot barbecue area shall be: covered and enclosed as proposed in the application; located at least 100 feet from all property lines; and, unless otherwise authorized in writing by the County’s Septic and Onsite Wastewater Program, located at least ten feet from all septic drainfield areas and replacement drainfield areas. (ZDO Subsection 1206.06(B))
10. All new structures (i.e., the 400-square-foot storage building south of the restaurant building by the beer garden, the 800-square-foot “pre-fab” cold storage building, the 400-square-foot dry storage building to the west of the restaurant building, and the 200-square-foot covered and enclosed barbecue area), and all modifications to the restaurant building, shall be permitted (e.g., with building permits, electrical permits, plumbing permits) as required by the County’s Building Codes Division, and shall comply with the requirements of the local fire district and the County’s Septic and Onsite Wastewater Program. (ZDO Subsection 1206.06(B))
11. The total sign area of a replacement business road sign shall be no greater than that of the existing pole sign shown in the photographs included with the submitted application, with “sign area” defined in ZDO Section 202, Definitions. Prior to approval of any building permit, sign permit, or electrical permit for the replacement sign, and prior to the installation of the replacement sign, the

Applicant shall provide to Planning & Zoning a diagram prepared by a licensed architect showing the dimensions of both the existing and proposed replacement sign. The replacement sign shall be located entirely outside of a public right-of-way. (ZDO Subsection 1206.06(B))

12. Vehicle parking associated with the nonconforming use is prohibited in the public right-of-way and on the east side of S Springwater Rd. The property owners shall: locate the right-of-way line in relation to their property; indicate (e.g., with signage) that parking in the right-of-way by their customers and employees is prohibited; and inform customers and employees who are parking in the right-of-way to park their vehicles in the existing parking areas entirely on the subject property. (ZDO Subsection 1206.06(B))

DATED this 30th day of January, 2023



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

ENDANGERED SPECIES ACT NOTICE

This decision addresses only the applicable criteria under the ZDO. It does not address whether the activities allowed by this decision will comply with the provisions of the federal Endangered Species Act (“ESA”). This decision should not be construed or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsible for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated, and maintained in a manner that complies with the ESA.

APPEAL RIGHTS

ZDO 1304.01 provides that the Land Use Hearings Officer’s decision is the County’s final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when

and how an appeal must be filed with LUBA. Presently, ORS 197.830(8) requires that any appeal to LUBA “shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.” ZDO 1304.02 provides that this decision will be “final” for purposes of a LUBA appeal as of the date of mailing of this final order (which date appears on the last page herein).

**Attachment A, Employee Time Card Data Summary
Hearings Officer Final Order
Z0087-22-E (Bent Shovel NCU)**

APRIL 2022		Start a.m.	End p.m.
F	4/1/23	6:42	11:57
SAT	4/2/23	6:32	11:23
SUN	4/3/23	6:03	9:29
M	4/4/23	6:33	9:27
TU	4/5/23	6:27	10:02
W	4/6/23	6:31	9:43
TH	4/7/23	6:03	9:35
F	4/8/23	7:31	10:45
SAT	4/9/23	6:34	11:16
SUN	4/10/23	6:35	10:09
M	4/11/23	6:36	9:23
TU	4/12/23	6:26	9:12
W	4/13/23	5:03	10:01
TH	4/14/23	6:33	10:05
F	4/15/23	6:03	11:14
SAT	4/16/23	6:34	12:58
SUN	4/17/23	6:42	10:53
M	4/18/23	6:57	10:14
TU	4/19/23	6:27	9:21
W	4/20/23	6:03	10:35
TH	4/21/23	6:28	10:51

F	4/22/23	6:03	11:16
SAT	4/23/23	6:03	11:37
SUN	4/24/23	6:44	10:03
M	4/25/23	6:03	11:14
TU	4/26/23	6:28	10:15
W	4/27/23	6:32	10:02
TH	4/28/23	6:33	10:02
F	4/29/23	6:34	11:33
SAT	4/30/23	6:29	11:09
MAY			
2022			
Day	Date	Start a.m.	End p.m.
SUN	5/1/23	6:32	10:03
M	5/2/23	6:35	9:55
TU	5/3/23	6:30	10:03
W	5/4/23	6:31	10:43
TH	5/5/23	6:37	10:01
F	5/6/23	6:33	10:34
SAT	5/7/23	6:33	10:43
SUN	5/8/23	6:35	10:29
M	5/9/23	8:57	10:04
TU	5/10/23	7:58	10:24
W	5/11/23	6:40	12:31
TH	5/12/23	6:34	9:43

F	5/13/23	6:33	10:30
SAT	5/14/23	6:26	12:18
SUN	5/15/23	6:31	11:07
M	5/16/23	6:31	10:17
TU	5/17/23	6:36	9:37
W	5/18/23	6:28	9:24
TH	5/19/23	6:27	9:51
F	5/20/23	6:34	11:44
SAT	5/21/23	6:33	1:04
SUN	5/22/23	6:33	12:05
M	5/23/23		
TU	5/24/23	7:18	12:08
W	5/25/23	6:29	10:35
TH	5/26/23	6:30	8:58
F	5/27/23	7:18	11:25
SAT	5/28/23	6:29	12:02
SUN	5/29/23	6:30	9:58
M	5/30/23		
TU	5/31/23		