

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of an Application by Dale Strom for
Approval of an Oregon DEQ Land Use
Compatibility Statement for the Deer Pointe
Meadows Mobile Home Park (LUCS 17-44)

ORDER NO. 80-2017

WHEREAS, on June 13, 2017, the Columbia County Land Development Services Director administratively authorized an Oregon Department of Environmental Quality (DEQ) Land Use Compatibility Statement (LUCS) that was submitted by Dale Strom, Deer Pointe Meadows LLC (Applicant) for a DEQ permit modification of the on-site wastewater treatment facility at Deer Pointe Meadows Mobile Home Park, located at 25231 Alderbark Road, near Rainier, Oregon; and

WHEREAS, on that same day, the Director mailed notice of the administrative decision to neighboring property owners within 250 feet of the subject property in accordance with ORS 197.763; and

WHEREAS, the Director's decision was timely appealed by Don Campbell on June 22, 2017; and

WHEREAS, shortly thereafter, the Board of County Commissioners (Board) took jurisdiction over the application pursuant to Columbia County Zoning Ordinance (CCZO) Section 1612; and

WHEREAS, following proper notice, the Board held a hearing on the application on August 23, 2017, where the Board accepted testimony and evidence into the record; and

WHEREAS, the Board then closed the hearing, left the record open for new evidence and rebuttal evidence and continued deliberations to October 4, 2017; and

WHEREAS, staff submitted a Supplemental Staff Report on September 12, 2017, to respond to written evidence and testimony received while the record remained open; and

WHEREAS, to disclose an *ex parte* contact that occurred after the close of the hearing, the Board sent notice that the hearing on the LUCS application would be reopened to take rebuttal on the *ex parte* contact on October 11, 2017, and deliberations would be held on that date after the hearing; and

WHEREAS, on October 11, 2017, the Board reopened the hearing to disclose a site visit by Commissioner Heimuller and a communication by Commissioner Magruder; and

WHEREAS, after receiving testimony and evidence in rebuttal of the *ex parte* contact, the Board closed the hearing, deliberated toward a decision, and voted to approve the LUCS;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS HEREBY FINDS, as follows:

1. The above recitals are adopted as findings in support of the Board's decision;

2. The Board adopts the findings and conclusions in the Administrative Decision of the Department of Land Development Services, dated June 13, 2017, which is attached hereto as Exhibit A and incorporated herein by this reference;

3. The Board adopts the findings and conclusions in the Staff Report, dated August 8, 2017, which is attached hereto as Exhibit B and incorporated herein by this reference;

4. The Board adopts the findings and conclusions in the Supplemental Staff Report, dated September 12, 2017, which is attached hereto as Exhibit C and incorporated herein by this reference.

5. The Board further finds that the lawfully established nonconforming use here is the 46-space mobile home park. The number of spaces is the most common method for measuring the scale of a mobile home park use, and this application does not propose an increase in spaces. Nor does this application propose an increase in land area, which is another method for measuring the scale of a use.

Land uses established in decades past frequently require repair and upgrade of their utility systems, without expanding the activity or the land use. The County does not require land use approvals for utility repairs and upgrades because those repairs and upgrades, absent other development activity, do not constitute an expansion of a land use, whether nonconforming or not. This applicant proposes no other development beyond the septic repairs and upgrades required by DEQ.

Moreover, ORS 215.130(5) provides, in pertinent part: "a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use." The Board finds that the modification proposed in the LUCS is an alteration of a lawful nonconforming use that is necessary to comply with DEQ health and safety requirements. The alteration is also necessary to maintain in good repair the existing mobile homes. ORS 215.130(5) therefore prohibits the County from placing conditions on the alteration proposed in the LUCS.

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS HEREBY ORDERS, based on the foregoing and the whole record in this matter, the Board approves LUCS 17-44 to allow for the repair of the on-site wastewater system for Deer Pointe Meadows Mobile Home Park.

DATED this 8th day of November, 2017.

Approved as to form

By: _____

Office of County Counsel

BOARD OF COUNTY COMMISSIONERS FOR
COLUMBIA COUNTY, OREGON]

By: _____

Henry Helmuller, Chair

By: _____

Margaret Magruder, Commissioner

By: _____

Alex Tardif, Commissioner

EXHIBIT A



Columbia County Land Development Services
Findings of Fact
June 13, 2017

Case No. : LUCS 17-44
Land Use Compatibility Statement For Proposed DEQ
WPCF Permit Modification Consisting of Upgrades To the
On-Site Wastewater Treatment System For the Deer Point
Meadows Mobile Home Park

Property Owner/Applicant: Deer Point Meadows, LLC
Dale Strom
13825 SW Weir Road
Beaverton, OR 97008

Location: 25231 Alderbark Street, Off of Price Road Four Miles West
of the City of Rainier.
Tax Lot 7315-020-01900 (Formerly Tax Lots 1900 & 2400)

Zoning: Rural Residential-5(RR-5)

Site Size: 16.27 Acres

Purpose of Review: To determine if the request by Deer Point Meadows
Mobile Home Park owner, Deer Point Meadows, LLC, to the
Department of Environmental Quality(DEQ) for a WPCF
Permit Modification to upgrade the on-site wastewater
treatment system is compatible with applicable County land
use requirements.

Criteria For Review: Columbia County Zoning Ordinance(CCZO)
Section 1506-Non Conforming Uses

Background:

The Deer Point Meadows Mobile Home Park, which has had various previous names and been under various ownerships, was originally established in 1965 prior to the imposition of County zoning. In 1984 the County zoned the property RR-5(Rural Residential) making the Mobile Home Park a non-conforming use. In subsequent years, new owners illegally expanded the mobile home spaces in the park from 33 to 46. In 1994, the then owner, Donald Caulpetzer applied to the County to expand the mobile home park to include 60 spaces. In 1996, by Order No. 38-96, the Board of Commissioners determined that the 33 space mobile home park was a lawfully established legal non-conforming use and approved an expansion from 33 spaces to 46 spaces with the conditions that the applicant repair any failing system on the property to serve the 46 spaces to the satisfaction of DEQ and that the

EXHIBIT A

expansion to 46 spaces be limited to Tax Lot 1900 as it was then configured.¹ The on-site system was repaired and DEQ issued a WPCF permit in 1996. The on-site system experienced several failures between 1996 and 2012 when then owners Michael and Denise Werner applied to repair and upgrade the on-site system in response to a system failure which DEQ had ordered them to correct. The County approved a land use compatibility statement(LUCS 12-13) for the proposed on-site system repair and upgrade noting that the mobile home park use was a legal non-conforming use in the RR-5 zone, the repair of the system was necessary to address a health and safety requirement and did not constitute an expansion of the mobile home park use. The County's LUCS determination that the proposed on-site system repairs and upgrades were compatible with applicable County land use regulations was appealed to LUBA by an adjoining land owner. The County's decision was affirmed by LUBA by a Final Opinion and Order in LUBA No. 2012-060.

Additional failures of the on-site system were confirmed by DEQ in 2016 and a "Warning Letter with Opportunity to Correct" was issued to owner, Dale Strom, on January 30, 2017. The warning letter gave Mr. Strom a schedule for corrective actions which must be taken to avoid further enforcement action which may include imposition of civil penalties and/or a DEQ order. The subject land use compatibility review(LUCS 17-44) is for a request for on-site system repairs/upgrade and a WPCF permit modification in response to the January 30, 2017 DEQ "Warning Letter with Opportunity To Correct". In view of the violations noted in DEQ's warning letter, on February 22, 2017, the County Director of Land Development Services issued a notice of Temporary Suspension of Mobile Home/RV Placement and New Occupancies to owner, Dale Strom. The purpose of the County's notice was to withhold County authorization of mobile home or RV space occupancies and related sewage flows for vacant spaces or homes until violations can be corrected per DEQ's written approval and provisions of OAR 340, Division 71, Section 130(9).

Findings of Fact:

1. Deer Pointe Meadows Mobile Home Park is a Legal Non-Conforming Use in the RR-5 Zone. The 33 space Deer Pointe Meadows Mobile home park has been determined to be a legal non-conforming use and approved by Columbia County to expand to 46 spaces in 1996(Board Order No. 38-96) in conformance with applicable provisions of CCZO Section 1506-Non-Conforming Uses. Conditions of Board approval of the legal non-conforming use included limiting expansion of spaces to Tax Lot 1900 as it was then configured and DEQ's approval of the repair of the 1996 on-site system failure. These conditions were met.
2. Repair/Modification of On-Site System Is Not an Expansion of Non-Conforming Use. As confirmed in LUBA No. 2012-060, the necessary modifications to an on-site wastewater system which are necessary to address health and safety requirements of DEQ do not constitute an unlawful second expansion but are a necessary improvement to the on-site wastewater utility system which supports the legal non-conforming Deer Pointe Meadows Mobile Home Park use authorized under provisions of CCZO Section 1506.
3. On-Site Wastewater System Is Ancillary and Necessary to the Legal Non-Conforming Use. The on-site wastewater treatment system is located on the legal non-conforming use

¹ Tax Lot 1900 as presently configured resulted from the combination by the Assessment and Taxation Department of former Tax Lots 1900 and 2400 under common ownership for taxation purposes only. Since Board Order 38-96 references TL 1900 as it was configured in 1996, Land Development Services has requested that TLs 1900 and 2400 be re-segregated as they existed in 1996.

EXHIBIT A

site and ancillary and necessary to support the legal non-conforming use.

4. Current On-Site System Violations Required to Be Corrected by DEQ. The applicant is required to correct the current violations of DEQ on-site wastewater system rules as outlined in DEQ's January 30, 2017 "Warning Letter and Opportunity To Correct".

5. Ongoing History of On-Site System Violations:

The Deer Pointe Meadows Mobile Home Park, under its various names and owners since 1996, has continued to experience repeated on-site wastewater system failures. Failures have been addressed by repeated repairs and modifications under applicable DEQ WPCF permits. The most recent failures resulting in violations noted by DEQ in their January 30, 2017 Warning Letters are under active management by DEQ. Until such time as improvements are made to correct current violations and accepted in writing by DEQ, the County's letter of Temporary Suspension of Mobile Home/RV Placement and New Occupancies dated February 22, 2017 to an owner, Dale Strom, will remain in effect to prevent a worsening of conditions resulting from said violations. Furthermore, these most recent violations must be corrected so as to provide long term operation of the on-site wastewater system in full compliance with applicable DEQ rules in order for the 46 space Mobile Home Parks to avoid a further health and safety threat to its residents and adverse impacts to neighboring properties.

6. Proposed Repairs/Modifications Are Designed to Address System Deficiencies and Violations. Proposed system repairs and modifications are designed to address system failures and design flow treatment and disposal inadequacies noted by DEQ in their January 30, 2017 "Warning Letter with Opportunity to Correct." Although DEQ, not Columbia County, has jurisdiction over the review and approval of proposed system repairs and modifications consistent with applicable State on-site system rules, the County has reviewed the proposal and has the following comments regarding its responsiveness to the deficiencies of the system which have caused ongoing system violations as noted by DEQ:

1. The system modification consists of several parts, including increasing primary treatment capability in the form of additional tank capacity, adding secondary treatment capability to the remaining two drain fields (the third drain field had this added in 2012), and the modification of the overall distribution method to all drain field areas to allow the drain field areas to be better utilized and managed. All of these changes will allow for what was previously three distinct systems to function as a one integrated system providing more flexibility regarding overall operation and maintenance.

The addition of secondary treatment to the entire system will provide the greatest change and benefit as far as mitigation of future failures. Sewage that has not received secondary treatment has a significantly greater amount of pollutants that have to be treated by the soil. While there could be many contributing factors that have caused previous failures, two main culprits have been hydraulic overloading (too much wastewater) and high strength wastewater which takes more effort and soil capability to process. The soil on this site is marginal to begin with which has affected the ability of the soil to achieve treatment along with disposal.

With secondary treatment, the sewage effluent is treated by a proprietary product to a much higher level before the effluent is even introduced into the ground. This action greatly reduces the "heavy lifting" that the soil previously had to provide and is comparable to introducing effluent that is much closer to clean water. In current or new applications, the use of secondary treatment greatly reduces the amount of drain field needed to process the same amount of wastewater versus a standard system. In the current scenario, this will allow for the same amount of drain field trenches to actually represent more disposal capacity without increasing absorption area.

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2. The design flow of the system is proposed to be increased from 8,250 gallons per day to 12,000 gallons per day. There is no proposal to actually increase the amount of wastewater that will be going into the system. The intent of increasing the design flow is to ensure that primary and secondary treatment components are sized to a level that, if high flows are experienced, the system has the ability to properly respond.

The reason for this is that ongoing system monitoring showed that during winter months, flows were exceeding the current design limit. While many steps have been taken to address the introduction of other infiltration and inflow water (be it from the ground through leaking pipes or through running fixtures during extreme weather or other causes) by way of repairs in the collection system and other plumbing considerations, the current design will build in a conservative buffer to ensure adequate treatment capability should unwanted additional flow occur during cold weather.

3. By effectively combining the previous separate systems into one system where all wastewater will be processed through secondary treatment components, all flows that are introduced into the drain field cells in the future will be able to be monitored. This is extremely important and beneficial in understanding how the drain field is working at any given time. It also provides a mechanism for troubleshooting, making better maintenance decisions, and also catching flow problems before they can overwhelm the drain field and result in failure.

Additionally, the distribution upgrades proposed will allow for better maintenance and manipulation of flows in the drain field cells. The ability to monitor, assess, and bring drain field cells on and off line will allow for the Operation and Maintenance provider to actively assist in the ability of the soil to process the wastewater and ultimately the disposal thereof. This is achieved through a plan of rotating active and resting drain field cells.

Conclusion:

Based on the above findings, the County has determined that the proposed Deer Pointe Meadows Mobile Home Park on-site wastewater system repairs/upgrades and related DEQ WPCF Permit modification are compatible with applicable Columbia County land use regulations governing legal non-conforming uses (CCZO Section 1506) and are ancillary and necessary to support the lawful continuation of the 46 space Deer Pointe Meadows Mobile Home Parks. The proposed repairs and system modifications appear to be responsive to the system deficiencies which have caused the system to fail and should be implemented to the extent that they are consistent with applicable DEQ on-site wastewater system rules.

In making the determination of land use compatibility for the subject on-site wastewater system repairs/upgrades, the County stipulates the following:

1. Until the proposed system repairs and modifications are fully implemented as indicated in writing by DEQ, the County's Temporary Suspension of Mobile Home/RV Placement and New Occupancies dated February 22, 2017 to an owner, Dale Strom, remains in effect.
2. Once the proposed system repairs and modifications are fully implemented, Columbia County requests that it receive copies of all compliance monitoring reports (DMRs) submissions on the same frequency that will be established in the modified WPCF permit.
3. Once the proposed system repairs and modifications are fully implemented according to plans and specifications approved by DEQ, if any further violations of DEQ on site system rules or provisions of the WPCF permit are documented by DEQ in writing, the County will consider options within its jurisdiction to address such violations including but not limited to measures to reduce sewage flows in order to prevent continued system failures and will request DEQ to take enforcement action consistent with its jurisdiction to do the same.

EXHIBIT B

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
BOARD OF COUNTY COMMISSIONERS STAFF REPORT
August 8, 2017
Appeal of Land Use Compatibility Statement (LUCS) 17-44

FILE NUMBER: LUCS 17-44

PROPERTY OWNERS: Deer Pointe Meadows , LLC, Dale Strom
13825 Weir Road
Beaverton, Oregon 97008

PROPERTY LOCATION: The subject property is located approximately four miles west of the City of Rainier, south and east of Price Road, at 25231 Alderbark Road.

TAX ACCT. NUMBERS: 7315-020-01900 and 7315-020-1902(Formerly Tax Parcel 2400)

ZONING: Rural Residential-5 (RR-5)

SIZE: ± 16.27 Acres ; Tax Lot 1900, ± 10.39 Acres; Tax Lot 1902(Formerly Tax Lot 2400), ± 5.88 Acres)

REQUEST: A County Land Use Compatibility Statement(LUCS) as a part of an application to DEQ for a wastewater pollution control facility(WPCF) permit modification and on site wastewater treatment system upgrade in Deer Pointe Meadows Mobile Home Park. The County Land Development Services Department determined that the application was compatible with applicable land use regulations.

REVIEW CRITERIA:

	<u>Pages</u>
Arguments of Appeal	8 - 12
Oregon Revised Statutes 215.130(5) & 215.130(9)	12-13
<u>Columbia County Zoning Ordinance</u> Section 1506 - Non-Conforming Uses	13 -14

BACKGROUND:

The Deer Pointe Meadows Mobile Home Park is located at 25231 Alderbark Road, approximately four miles west of the City of Rainier. Currently, the park consists of 46 mobile home/RV spaces and a laundry room (located on tax lot 1900) and a wastewater treatment facility, consisting of three septic systems, covered under a single Water Pollution Control Facilities (WPCF) Permit # 101436 (located on tax lots 1900 and 1902).

Deer Pointe Meadows Mobile Home Park has existed on the subject property since 1965 pre-dating the rural residential zoning(RR-5) that was applied to the property in 1996. It was determined to be a legal non-conforming use consisting of 33 spaces allowed to expand to 46 spaces by the County in 1996. A non-conforming use is defined by Section 100.72 of the Columbia County Zoning Ordinance as "a use or structure lawfully existing at the time this Ordinance became effective and which does not conform with the use regulations of the district in which it is located."

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On May 25, 2017, the applicant's consultant, Aqua Resource Design and Consulting, submitted plans for a modification of the existing WPCF permit and alteration of the existing onsite wastewater treatment system for the Deer Pointe Meadows Mobile Home Park and requested a County determination that the modification and alteration is compatible with County land use regulations in the form of a Land Use Compatibility Statement(LUCS), required part of their application to the Department of Environmental Quality(DEQ)(Attachment 1).

On June 13, 2017, the Land Development Services Director signed the LUCS, determining that the proposed on site system improvements are compatible with applicable Columbia County land use regulations governing legal non-conforming uses(CCZO Section 1506) based on written findings attached to the signed land use compatibility statement (Attachment 2).

On June 13, 2017, the Land Development Services Director gave notice of the LUCS determination consistent with ORS 215.416(11) for discretionary permit decisions including notice to affected parties pursuant to ORS 197.763.

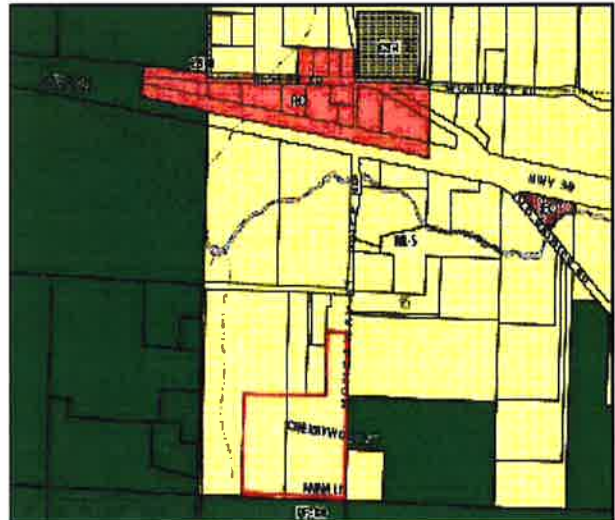
On June 22, 2017, Andrew Stamp, an attorney representing a neighboring property owner, Don Campbell, filed an appeal to LUCS decision citing procedural and substantive reasons in support of the allegation that the LUCS was issued unlawfully (Attachment 3).

On June 29, 2017, DEQ gave notice the Deer Pointe Meadows Mobile Home Park owner, Dale Strom the results of their review of the proposed on site wastewater system improvements and a draft WPCF permit renewal and modification. Comments were due by July 14, 2017. The notice indicated that after receiving applicant comments, DEQ would provide a 30 day public notice of their proposed permit action and provide an opportunity for a public hearing if a sufficient request under their rules was made.

Subject Property and Appellant's Property(2009)



Zoning



PROPOSED ON SITE WASTEWATER SYSTEM IMPROVEMENTS

Proposed system repairs and modifications are depicted in Figures 1-3 below. A copy of full design and specifications are contained in Attachment 1. Proposed system repairs and modifications are designed to address system failures and design flow treatment and disposal inadequacies noted by DEQ in their January 30, 2017 "Warning Letter with Opportunity to

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Correct.”

1. The system modification consists of several parts, including increasing primary treatment capability in the form of additional tank capacity, adding secondary treatment capability to the remaining two drain fields (the third drain field had this added in 2012), and the modification of the overall distribution method to all drain field areas to allow the drain field areas to be better utilized and managed. All of these changes will allow for what was previously three distinct systems to function as a one integrated system providing more flexibility regarding overall operation and maintenance.

The addition of secondary treatment to the entire system will provide the greatest change and benefit as far as mitigation of future failures. Sewage that has not received secondary treatment has a significantly greater amount of pollutants that have to be treated by the soil. While there could be many contributing factors that have caused previous failures, two main culprits have been hydraulic overloading (too much wastewater) and high strength wastewater which takes more effort and soil capability to process. The soil on this site is marginal to begin with which has affected the ability of the soil to achieve treatment along with disposal.

With secondary treatment, the sewage effluent is treated by a proprietary product to a much higher level before the effluent is even introduced into the ground. This action greatly reduces the “heavy lifting” that the soil previously had to provide and is comparable to introducing effluent that is much closer to clean water. In current or new applications, the use of secondary treatment greatly reduces the amount of drain field needed to process the same amount of wastewater versus a standard system. In the current scenario, this will allow for the same amount of drain field trenches to actually represent more disposal capacity without increasing absorption area.

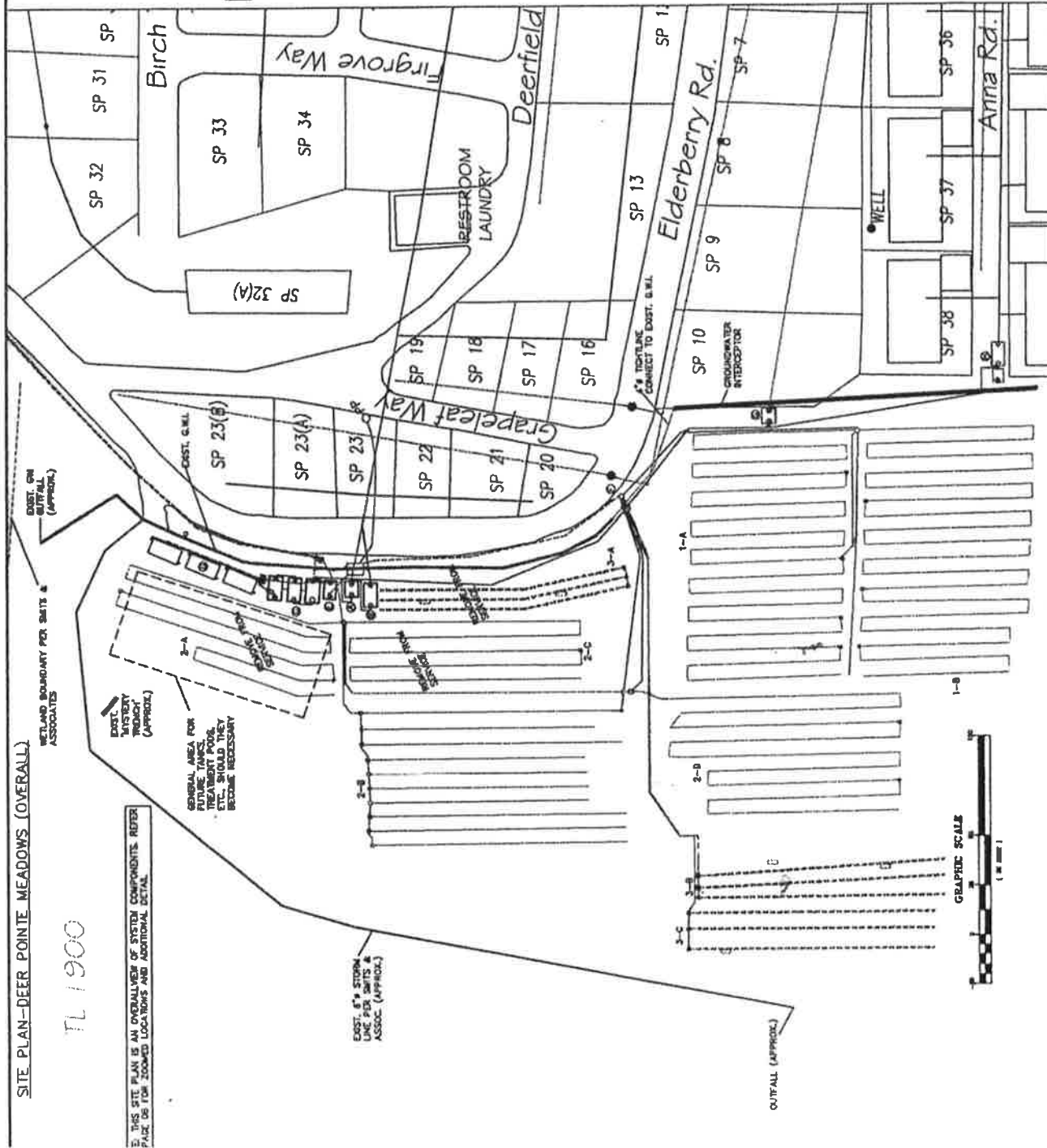
2. The design flow of the system is proposed to be increased from 8,250 gallons per day to 12,000 gallons per day. There is no proposal to actually increase the amount of wastewater that will be going into the system. The intent of increasing the design flow is to ensure that primary and secondary treatment components are sized to a level that, if high flows are experienced, the system has the ability to properly respond.

The reason for this is that ongoing system monitoring showed that during winter months, flows were exceeding the current design limit. While many steps have been taken to address the introduction of other infiltration and inflow water (be it from the ground through leaking pipes or through running fixtures during extreme weather or other causes) by way of repairs in the collection system and other plumbing considerations, the current design will build in a conservative buffer to ensure adequate treatment capability should unwanted additional flow occur during cold weather.

3. By effectively combining the previous separate systems into one system where all wastewater will be processed through secondary treatment components, all flows that are introduced into the drain field cells in the future will be able to be monitored. This is extremely important and beneficial in understanding how the drain field is working at any given time. It also provides a mechanism for troubleshooting, making better maintenance decisions, and also catching flow problems before they can overwhelm the drain field and result in failure.

Additionally, the distribution upgrades proposed will allow for better maintenance and manipulation of flows in the drain field cells. The ability to monitor, assess, and bring drain field cells on and off line will allow for the Operation and Maintenance provider to actively assist in the ability of the soil to process the wastewater and ultimately the disposal thereof. This is achieved through a plan of rotating active and resting drain field cells.

FIGURE 1 Overall View of On Site Wastewater System Improvements



SITE PLAN—DEER-POINTE MEADOWS (OVERALL)

WETLAND BOUNDARY PER SMITS & ASSOCIATES

TL 1900

NOTE: THIS SITE PLAN IS AN OVERVIEW OF SYSTEM COMPONENTS. REFER TO PAGE 08 FOR ZOOMED LOCATIONS AND ADDITIONAL DETAIL.

GENERAL AREA FOR FUTURE TANKS, TREATMENT POOL, ETC. SHOULD TANKY BECOME NECESSARY

EXIST. 6" STORM LINE FOR SMITS & ASSOC. (APPROX.)

EXIST. 6" SUTFALL (APPROX.)

OUTFALL (APPROX.)

GRAPHIC SCALE
(1" = 100')

EXHIBIT B

NOTE: THIS SITE PLAN IS AN OVERVIEW OF SYSTEM COMPONENTS. REFER TO PAGE 08 FOR ZOOMED LOCATIONS AND ADDITIONAL DETAIL.

COMPONENT	COMPONENT	REMARKS/REVISIONS
A	TOP OF EXISTING 3000 GAL. SEPTIC TANK/RECHARGE BLEC	NO/2F
B	NEW 3000 GAL. SEPTIC TANK	-1/11/0F
C	EXPANDED 1800 GAL. INLET TANK	1/11/0F
D	EXPANDED 1800 GAL. TREATMENT SYSTEM	-1/11/0F
E	EXISTING 1800 GAL. DRAINAGE TANK	NO/10F
F	EXISTING 3000 GAL. HYDROSPILLER	NO/12F
G	EXIST. 3000 GAL. SEPTIC TANK	02/07F
H	EXIST. 3000 GAL. SEPTIC TANK W/ 6000 GAL. DRAINAGE TANK	NO/12F

DRAINFIELD CELL SUMMARY

- 1-A & 1-B: DRAINFIELD CELL 0 REMAIN ONLINE
- 2-A: DRAINFIELD CELL TO BE REMOVED FROM SERVICE
- 2-B: DRAINFIELD CELL TO REMAIN ONLINE
- 2-C: DRAINFIELD CELL TO BE REMOVED FROM SERVICE
- 2-D: DRAINFIELD CELL TO REMAIN ONLINE
- 3-A: DRAINFIELD CELL TO BE REMOVED FROM SERVICE
- 3-B & 3-C: DRAINFIELD CELLS TO REMAIN ONLINE

THIS SITE PLAN IS NOT A LEGAL SURVEY. ALL LOCATIONS ARE TO BE CONSIDERED AS APPROXIMATE.

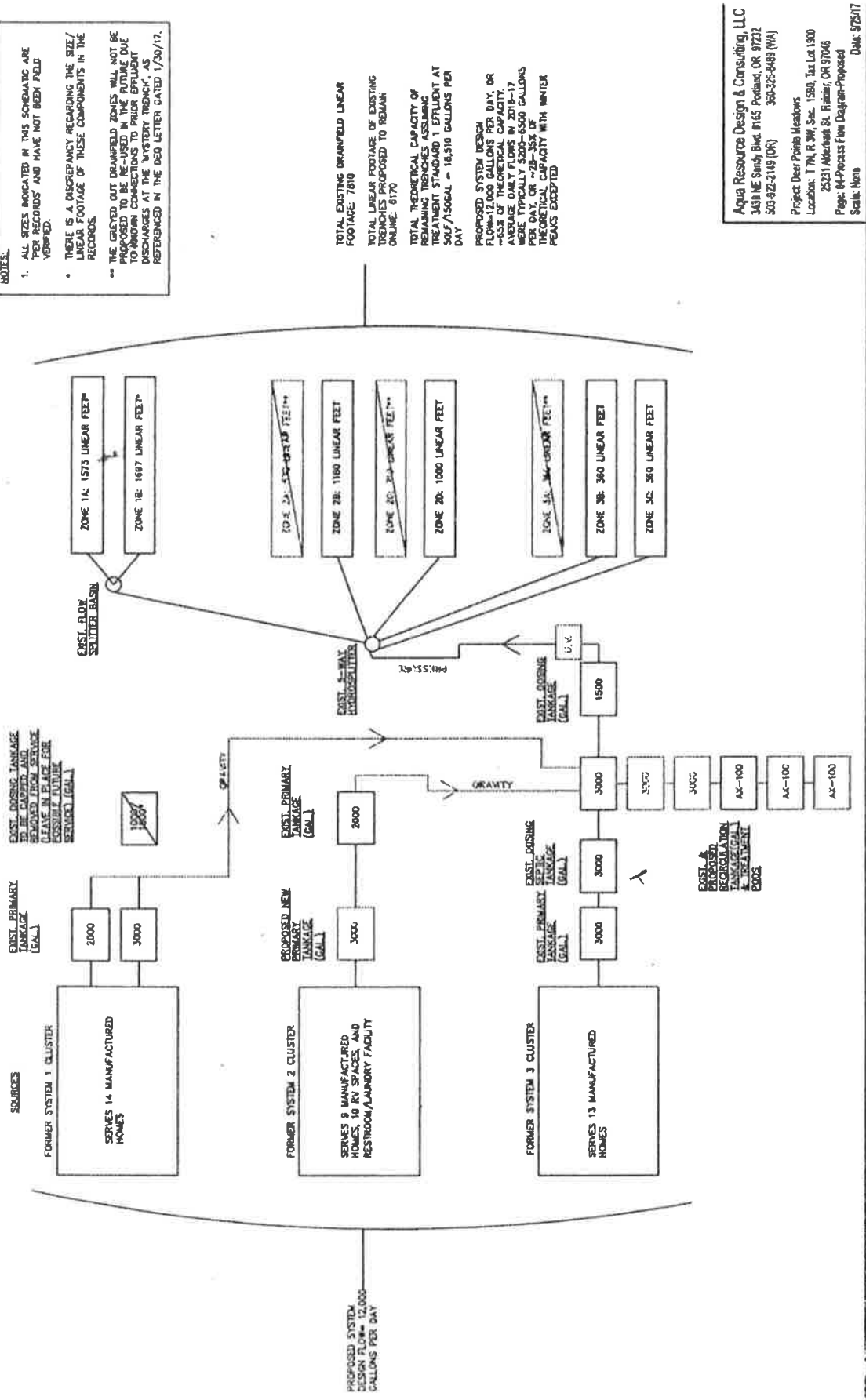
Aqua Resource Design & Consulting, LLC
 3439 NE Sandy Blvd #165 Portland, OR 97232
 503-822-7148 (OR) 360-326-0468 (WA)
 Project: Deer Pointe Meadows
 Location: T1N, R34E, Sec. 1580, Twp. Lot 1800
 25221 Alderbrook St. Rainier, OR 97046
 Page: 05-Site Plan (Overall)
 Scale: 1"=50'
 Date: 5/25/17

FIGURE 3 On Site System Treatment Process Flow Diagram

NOTES.

- ALL SIZES INDICATED IN THIS SCHEMATIC ARE PER RECORDS AND HAVE NOT BEEN FIELD VERIFIED.
- THERE IS A DISCREPANCY REGARDING THE SIZE/ LINEAR FOOTAGE OF THESE COMPONENTS IN THE RECORDS.
- THE GREYED OUT DRAINFIELD ZONES WILL NOT BE PROPOSED TO BE RE-USED IN THE FUTURE DUE TO THE LIMITED REMAINING CAPACITY OF THE DISCHARGES AT THE EXISTENT TRENCH, AS REFERENCED IN THE GED LETTER DATED 1/30/17.

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Aqua Resource Design & Consulting, LLC
 3438 NE Sandy Blvd. #165 Portland, OR 97232
 503-922-2149 (OR) 360-328-8488 (WA)

Project: Dear Pointe Meadows
 Location: 17N R. 9W, Sec. 1580, Tax Lot 1900
 25321 Alder St. Framing, OR 97048

Page: 14-Process Flow Diagram-Proposed
 Date: 5/25/17

EXHIBIT B

BASIS FOR APPEAL

The appellants allege that the County's determination that the proposed improvements to the on site wastewater treatment system are compatible with applicable County land use regulations is in error for the following reasons:

1. The LUCS is a discretionary land use decision and permit under state law and therefore requires notice to affected landowners and opportunity of a de novo local appeal.
2. The proposed improvements constitute an unlawful expansion and development of the non-conforming mobile home park use.
3. By approving the LUCS, the County erred in finding that it is permissible to increase the design flow of the system because the design is based on erroneous assumptions.
4. The proposed improvements are neither a lawful "repair" nor "alteration" as defined in State law and County ordinance because the increased design flow of the system will create surface and groundwater quantity impacts on downstream neighbors.

HISTORY OF THE MOBILE HOME PARK AS A NON-CONFORMING USE

Original Development and Non-Conforming Use Status

Deer Pointe Meadows Mobile Home Park has existed on the subject property since 1965. Columbia County's Comprehensive Plan and Zoning Ordinance (the documents that set forth land use regulations for the County) were not adopted until 1984. With the adoption of these documents, the property containing Deer Pointe Meadows Mobile Home Park was zoned Rural Residential-5 (RR-5) thus becoming a non-conforming use. A non-conforming use is defined by Section 100.69 of the Columbia County Zoning Ordinance as "a use or structure lawfully existing at the time this Ordinance became effective and which does not conform with the use regulations of the district in which it is located." Mobile home parks are not a permitted use in the RR-5 Zone, but Section 1506.1 of the Columbia County Zoning Ordinance allows uses that existed prior to the adoption of land use regulations to be continued, even if they do not conform with regulations enacted with the adoption of zoning, as legal "non-conforming" uses. Additionally, Section 1506.2 allows for the "normal maintenance and repair" of non-conforming uses and Section 1506.5 allows for alterations (rebuilding, change, moving or expansion) to a non-conforming use.

1996 Expansion of Non-Conforming Use

Historical septic permits indicate that the original (1965) mobile home park (known as Homeaway Mobile Home Park) was authorized for 33 mobile home spaces. On February 21, 1996, the mobile home park was determined to be a legal non-conforming use and approved by Columbia County for a one-time expansion from 33 spaces to 46 spaces in accordance with Section 1506.9 of the County's Zoning Ordinance. CCZO Section 1506.9 states: "A non-conforming use may be expanded one time only. This expansion shall not exceed 40% of the square footage on the ground level of the existing structure, pursuant to Section 1506.5." The Staff Report for the Non-Conforming Use Expansion (NCU 3-94) concluded that a 40% expansion of the park could result in 13 additional mobile home spaces, for a total of 46 spaces. The mobile home park is currently developed to its maximum potential.

2012 On-Site System Repairs

The DEQ WPCF Permit currently in effect for the site's wastewater treatment facility was originally issued by the Department of Environmental Quality in 1996. In response to enforcement action by DEQ in 2010, then owners, Michael and Denise Werner, submitted an application to DEQ to repair the failing system. Prior to approving and issuing the modified permit, DEQ requested verification from Columbia County, in the form of a Land Use Compatibility Statement (LUCS), that the use served by the system (the mobile home park) was an allowed use in accordance with local land use regulations. On November 3, 2011, the County verified that the mobile home use was allowed as per Section 1506 (Non-Conforming Uses) of the Columbia County Zoning Ordinance and that the on site wastewater system improvements were consistent with applicable land use regulations and signed the LUCS. On November 10, 2011, Don Campbell, a neighboring property owner, residing at 75735 Price Road, appealed the County's authorization of the LUCS. The appeal

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was based primarily on the argument that the on site wastewater system modifications constituted an unlawful expansion of the non-conforming use onto tax lot 2400. On August 6, 2012, the Board of Commissioners by Board Order 38-2012 denied the appeal. Don Campbell, owner of neighboring property, appealed the Board's decision to LUBA. On January 28, 2013, by final opinion and order No. 2012-060, LUBA affirmed the Board of Commissioners decision to deny the appeal. LUBA determined that the improvements to the on-site wastewater system did not constitute an unlawful expansion of the non-conforming use. They noted that an expansion of the non-conforming use is most reasonably understood to refer to expansion or development of additional mobile home units and that the improvements to the on-site wastewater system serving the non-conforming use were necessary to address health and safety regulations. Since issuance of the LUCS, the on-site system WPCF Permit Modification was approved by DEQ and improvements to the system were completed.

REVIEW CRITERIA:

This Staff Report is organized with a response to the appellant's arguments presented first, followed by findings on applicable State law and Columbia County Zoning Ordinance criteria not already covered.

APPELLANT'S ARGUMENT:

1. A "LUCS" is both a Land Use Decision under ORS 197.015(11) and a "Permit" under ORS 215.402.

Land use compatibility statements are generally considered to be statutory land use decisions, unless applicable exceptions apply. *Wolfram v. Douglas County*, 52 Or LUBA 536 (2006). *Farrell v. Jackson County*, 39 Or LUBA 149 (2000); *Hudson v. City of Baker*, 15 Or LUBA 650 (1987).

In this case, the County's determination that the septic drainfields located on Tax Lot 2400 are part of the non-conforming park use is a determination that involves factual, legal, and policy judgement and does not therefore fall within any exception to the statutory definition of land use decision. *Hood River Sand v. City of Mosier*, 24 Or LUBA 381, 384(1993) (application of city's nonconforming use provisions requires significant discretion and is therefore a land use decision).

2. The LUCS Requires Notice to Affected Land Owners and an Opportunity for a De Novo Local Appeal.

As a statutory land use decision, the County is generally required to give notice and provide an opportunity to be heard. The failure to provide such notice precludes the opportunity of neighbors, such as Mr. Campbell, to be heard, and therefore, may constitute an error that requires a remand.

Under State law, it is possible to process a land use decision without providing a notice and comment period. ORS 215.416(11). Such decisions require a de novo local appeal to the Planning Commission. Issues that can be raised are not limited to those issues raised in the notice of appeal. It is my understanding that the LUCS is being processed under ORS 215.416(11)."

COUNTY RESPONSE:

Finding 1: LUCS 17-44 has been processed in accordance with Oregon Revised Statutes (ORS) 215.416(11). ORS 215.416(11) allows governing bodies to approve or deny an application for a permit without a hearing if notice of the decision is provided to persons who may be adversely affected or aggrieved by the decision and the opportunity to file an appeal of the decision is

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provided to any such persons that may be so affected.

Consistent with ORS 215.416(11), Section 1701.4 of the County's Zoning Ordinance(CCZO) states the following:

"When a notice of appeal is properly and timely filed in compliance with this Section, and timely payment of the filing fee is made, a de novo appeal hearing shall be scheduled at the earliest opportunity. Notice of the hearing shall be scheduled at the earliest opportunity. Notice of the hearing shall be mailed to the appellant, the applicant, the property owner, if different from the applicant, and any other persons who requested notice of the appeal hearing in writing. Notice of the appeal hearing shall be published in a newspaper which covers the property subject to the appeal. Notice of the appeal hearing shall be mailed to the parties and distributed to the newspapers no later than 7 days prior to the scheduled hearing date."

The State Land Use Board of Appeals(LUBA) in LUBA No. 2012-060 concerning a prior appeal of a Columbia County LUCS decision on a similar application to DEQ for onsite wastewater treatment system improvements in Deer Pointe Meadows Mobile Home Park found at page 9, lines 6 thru 13:

"...the county's findings recite that the county chose to process the LUCS request pursuant to ORS 215.416(11), part of the statutory procedures governing the approval of discretionary permit decisions....That was almost certainly appropriate, given that in making the LUCS determination the county engaged in discretionary determinations regarding verification and alteration of a non-conforming use. ORS 215.130(8) provides that a proposal for verification and alteration of a use under ORS 215.130(5) shall be processed under provisions of ORS 215.416."

On June 13, 2017, the Land Development Services Director gave notice of the LUCS determination consistent with CCZO, Section 1701.4 and ORS 215.416(11) for discretionary permit decisions including notice to affected parties pursuant to ORS 197.763. Said notice described the nature of the decision and provided an opportunity for those notified to appeal the decision within 12 calendar days of the notification date. The decision was appealed by Don Campbell (75735 Price Road, Rainier, OR 92048) on June 22, 2017.

Although administrative decisions are typically appealed to the Planning Commission, the Columbia County Board of Commissioners took jurisdiction of this case on July 12, 2017. A de novo public hearing will be held by the Board of County Commissioners on August 23, 2017. Notice of the hearing was mailed to the appellant, property owner and property owners within 250 feet of the subject property. Notice of the hearing was published in The Chronicle on August 9, 2017.

Notification of the LUCS decision and of the hearing for the appeal were conducted in accordance with the requirements of Columbia County's Zoning Ordinance and ORS 215.416(11). The hearing will also be held in accordance with the procedures established in the Zoning Ordinance and by ORS 215.416(11).

Staff finds that the County followed lawful procedures in making and giving notice of the LUCS decision and in providing parties entitled to notice an opportunity for a de novo appeal and hearing regarding the decision.

APPELLANT'S ARGUMENT:

3. The County Issued the LUCS Unlawfully, Because the Factual Premise for the Expanded Septic System.

In 1994, a prior owner of Deer Pointe, Mr. Caulpetzer, sought a land use permit to

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expand the park to 75 units, but once he realized he was going to be unsuccessful, he modified his application to only ask for 60 units. In processing the expansion application, the County undertook a non-conforming use verification process. The County determined that 33 dwelling units had been lawfully established and granted non-conforming use status. See Order 38-96. Since the Zoning Code allowed a one-time 40% expansion of non-conforming uses, the decision approves an "expansion" of the park from 33 units to 46 units. The approval was contingent on the applicant repairing any failing septic system on the property. The conditions of approval say that "no further expansion of the mobile home park may be approved under these sections of the Zoning Ordinance, and that "no further development of either tax lot 1900 or 2501 may occur under the present zoning of the parcels"

DEQ issued a WPCF permit on November 25, 1996. DEQ based the authorization on the fact that the park was a "seniors only" park generating only 175 gallons/day/unit, instead of the typical 250 gal/day/unit figure used for mobile homes. This LUCS finds that it is permissible to increase the design flow of the system from 8,250 gals/day to 12,000 gals per day. Increasing design flows is not a "repair" within the meaning of ORS215.130(5). It is also not an "alteration" because there is an increased surface water and groundwater quantity impact imposed onto downstream neighbors, including Mr. Campbell. There is no evidence in the record that the storm drainage system is able to handle an addition 3,750 gallons a day of water from what was previously approved.

< COUNTY RESPONSE:

Finding 2:

First, the appellant argues that the proposed system improvements are unlawful because they violate Condition 5 of the original non-conforming use determination for the mobile home park increasing allowable mobile home units from 33 to 46(Board Order 38-96). Condition 5 stated that there can be no "further expansion of the mobile home park" nor "further development of tax lot 1900..".

This appellant made this argument in a 2012 appeal of the County's decision(LUCS 12-13) which determined that proposed septic system improvements to the Deer Point Meadows Mobile Home Park were compatible with applicable land use regulations. In LUBA No. 2012-060, the Land Use Board of Appeals(LUBA) denied this argument on pages 22 and 23 of their opinion as follows"

"According to the petitioners, the approved septic improvements on tax lots 1900 and 2400 constitute "further expansion" and "further development" prohibited by Condition 5. Intervener respond, and we agree, that Condition 5 is not properly understood to prohibit the proposed septic improvements on tax lots 1900 and 2400. The focus of the 1996 decision was rejecting the applicant's request for 60 mobile home units, but allowing the expansion of the mobile home park from the previously authorized 33 units to the existing 46 units pursuant to CCZO 1506.9. In this context, the "further" expansion or development referenced in Condition 5 is most reasonably understood to refer to expansion or development of additional mobile home units..Further..the findings to the 1996 decision contemplate that the existing septic system will need to be upgraded to accommodate the authorized 46 units. Condition 3 of the 1996 decision requires that the septic system must be repaired and certified by DEQ. Read in this context, Condition 5 cannot be reasonably understood to prohibit the DEQ-required improvements to the park's septic system."

Second, the appellant argues that by approving the LUCS, the County erred in finding that it is permissible to increase the design flow of the system even though this design is based on flawed flow assumptions based on the park being a "seniors only park generating effluent volumes of only 175 gallons per unit per day. The County lacks jurisdiction to review whether the proposed improvements to a system with a design sewage flow capacity over 2,500 gallons per day meet

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DEQ wastewater treatment rules and regulations. DEQ has this sole authority under provisions of Oregon Administrative Rules(OAR) Chapter 340. The County's decision in LUCS 44-2017 is limited to whether or not the proposed improvements are compatible with applicable land use regulations and do not address whether or not the proposed improvements comply with DEQ rules. Staff finds that the County did not and cannot make a finding that the proposed system improvements meet applicable DEQ rules.

Third, the appellant argues that the proposed on site wastewater treatment system improvements are neither a "repair" within the meaning of ORS 215.130(5) nor a lawful "alteration" of the non-conforming mobile home park use. ORS 215.130(5) & (9) address permitted alterations to non-conforming uses and provide the statutory basis for Section 1506 of Columbia County's zoning ordinance which contains land use rules governing non-conforming uses. The appellant argues that because the proposed improvements include an increase in design sewage flow for the on site wastewater treatment system, it is not a "repair of the existing structures associated with the use" as provided in ORS 215.130(5)". However, this same provision of State law prohibits a County from placing conditions on the continuation or alteration of a non-conforming use "when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use". Failure to have a properly designed sewage treatment system has historically contributed to the malfunctioning of the system and the resultant violation of state and local health and safety standards. The DEQ Onsite Wastewater Treatment System Rules define "repair" in OAR 340-071-0100(122) as the "installation of all portions of a system necessary to eliminate a public health hazard or pollution of public waters created by a failing system". As noted above, DEQ, and not the County, has the authority to determine what the nature of a proposed on site wastewater system improvement is under State rules, what State rules apply to the proposed improvements and whether or not they comply with State rules. In this case, DEQ has confirmed with the County that the proposed improvements constitute a repair of the existing system under this definition.

Further, the appellant argues that the proposed improvements are not permissible "alterations" because the proposed increase in design flow will have greater adverse surface and groundwater impacts on downstream neighbors including the appellant. Permissible alterations of non-conforming uses pursuant to ORS 215.130(5) are further defined in ORS 215.130(9). ORS 215.130(9) allows changes in non-conforming uses "of no greater adverse impact to the neighborhood" and changes to the structure or physical improvements "of no greater adverse impact to the neighborhood". The appellant is arguing that the on site wastewater treatment system improvements constitute an alteration of the non-conforming mobile home park use and that the alteration is unlawful because, by increasing the effluent design flow, it will result in increased surface and groundwater quantities which will have a greater adverse effect on the neighborhood. In DEQ's evaluation of the proposed system improvements (Attachment 4, page 2) in referring to the proposed increase in the wastewater flow to a combined treatment system states:

"This is being proposed in order to recognize seasonal wastewater flow increases, typically during the winter months due to inflow and infiltration(I/I)resulting from a combination of leaks in the system, older plumbing fixtures in the residences, and methods used by the residents to help avoid freezing water pipes. Some of these issues can be identified and corrected with upgrades to the wastewater collection portion of the system, but I/I cannot be completely removed. The approach has been to correct I/I where identified, but to recognize that I/I does exist and to design the system for the increased flow".

As noted by DEQ, the improvements to the system are designed to account for existing seasonal inflow and infiltration, while pursuing measures to reduce it where possible. Under DEQ rules, design flow is addressed under the definition for "Design Capacity" in OAR 340-071-0100(41) as "...the maximum daily flow a system is designed to treat and disperse." Therefore, the increase in design flow capacity of the system from 8,250 gallons per day to 12,000 gallons per day does not create a greater adverse groundwater or surface water impact on the neighborhood but is necessary to

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properly address existing seasonal effluent volumes which exceed the current system's capability. It should also be noted that design flows represent the planned design effluent treatment capacity of the system to accommodate the highest seasonal loading the system may experience based on historical experience, but during off peak times of the year daily flows are expected to be only 50% to 60% of maximum design flows. With respect to possible groundwater quality impacts, in DEQ's system evaluation report (Attachment 4, page 3), DEQ's Senior Groundwater Hydrologist, addresses the potential for groundwater quality impacts from the proposed system improvements as follows:

"A Groundwater Prioritization Screening was completed and it was concluded that there is a low potential to adversely impact groundwater. The proposed new system will be utilizing enhanced wastewater treatment resulting in higher effluent quality."

As previously noted, if the system was not designed to handle expected flows, there would be a threat of greater adverse impact on the neighborhood in the form improperly treated effluent water in volumes consistent with historic seasonal conditions. No evidence is presented in support of the assertion that increasing the design flow of the system will result in greater adverse surface and groundwater quantity or quality impacts on the neighborhood.

Within the meaning of ORS 215.130(5) &(9), whether the proposed improvements are regarded as alterations or repairs or some combination of the two, staff finds that they would be improvements to the on site system necessary to comply with DEQ health and safety requirements and would also qualify as a lawful repair of "existing structures associated with the use" necessary to eliminate a public health hazard or pollution of public waters created by a failing system" as defined in DEQ rules.

Beginning with the OREGON REVISED STATUTES 215.130(5) & (9):

ORS 215.130 is the statutory basis for Columbia County's non-conforming use regulations found in Chapter 1506 of the Columbia County Zoning Ordinance. As noted in Finding 2, State law provides more specific guidance regarding alteration of non-conforming uses.

- .5 The lawful use of any building, structure or land and the time of the amendment any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215(Reestablishment of a nonfarm use), a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change in ownership or occupancy shall be permitted.

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- .9 As used in this section, "alteration" of a nonconforming use includes:
 - (a) A change in the use of no greater adverse impact to the neighborhood;
 - and
 - (b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

Finding 3:

This section of State law addresses what "alterations" are permissible to a non-conforming use including changes to structures associated with the non-conforming use. Compliance with ORS 215.130(5) & (9) is discussed in Finding 2. To summarize, staff found that:

- 1) Repairs or alterations to the existing on site wastewater treatment system do not constitute an expansion of the non-conforming 46 space Deer Pointe Meadows Mobile Home Park use

EXHIBIT B

because it does not add spaces/units.

2)The system improvements are lawful because there is no evidence that they would create greater adverse groundwater or surface water quantity or quality impacts to the neighborhood. To the contrary, without a properly designed system to address historic seasonal effluent flows, greater adverse impacts to the neighborhood from improperly treated effluent is made much more likely.

3)Proposed system improvements are necessary to comply with the requirements of DEQ on site system rules(ORS Chapter 340) and to comply with State health and safety requirements.

Beginning with the COLUMBIA COUNTY ZONING ORDINANCE:

Section 1506 Non-Conforming Uses:

.2 Normal Maintenance and Repairs: Normal maintenance of a Non-Conforming Use is permitted, including structural alterations to the bearing walls, foundation, columns, beams, or girders, provided that:

A. No change in the basic use of the building occurs that would make the use less conforming to the district.

Finding 4: CCZO Section 1506.2 allows for the “normal maintenance and repair” of non-conforming uses which would make the non-conforming use less conforming to the district. As noted in Finding 2 of this report, proposed improvements to the on site wastewater treatment system constitute a lawful repair under applicable DEQ rules and ORS ORS 215.130(5) which are the statutory basis these County’s non-conforming use regulations in Chapter 1506 of the CCZO. Repair and improvement of the on site wastewater treatment system would not constitute a change in the non-conforming mobile home park use, that is, they would not increase the number of spaces, nor would they make the mobile home park use less conforming to the existing RR-5 zoning district regulations. Staff finds that the criterion is met.

Continuing with the COLUMBIA COUNTY ZONING ORDINANCE Section 1506:

.5 Rebuilding, Change, Moving, or Use Expansion: A Non-Conforming building or use may be rebuilt, moved, or changed in use to a use of the same restrictive classification or expanded, subject to the provisions outlined herein, if upon review in accordance with Section 1601 the Director finds all the following to exist:

- A. That such modifications are necessary because of practical difficulties or public need;
- B. That such modifications are not greater than are necessary to overcome the practical difficulties or meet the public need;
- C. That such modifications will not significantly interfere with the use and enjoyment of other land in the vicinity, nor detract from the property value thereof; and
- D. That such modification will not endanger the public health, safety, and general welfare

Finding 5:

As discussed in Finding 2, improvements to the on site wastewater system proposed in the application to DEQ do not constitute an expansion of the non-conforming mobile home park use, that is, do not add mobile home park spaces nor add site area for the use. Likewise the proposed improvements to the existing utility system do not constitute rebuilding, changing nor moving of

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the non-conforming mobile home park use. Therefore, staff finds that CCZO, Section 1506.5 does not apply to the proposed on site wastewater system treatment improvements.

STAFF RECOMMENDATION:

Based on the facts and findings of this staff report for the Appeal of LUCS 17-44, Staff recommends that the Board of County Commissioners DENY the Appeal and APPROVE LUCS 17-44 determining that the proposed improvements to the Deer Pointe Meadows Mobile Home Park on site wastewater treatment system on tax lots 7315-020-01900 and 7315-020-01902 are compatible with applicable land use regulations.

ATTACHMENTS:

1. LUCS Request
2. LUCS County Decision
3. LUCS Appeal
4. DEQ Proposal Evaluation

EXHIBIT C
COLUMBIA COUNTY BOARD OF COMMISSIONERS
Supplemental Staff Report
September 12, 2017

FILE NUMBER: LUCS 17-44 Appeal of Land Use Compatibility Statement

APPLICANT Deer Point Meadows LLC
OWNERS: 13825 SW Weir Road
Beaverton, OR 97008

APPELLANT: Don Campbell
75735 Price Road, Rainier. OR

Staff has prepared responses below to several of the arguments made by Appellant in his written testimony dated September 6, 2017 submitted following the August 23, 2017 public hearing during the extended period of written testimony ending on September 6, 2017.

Argument 1: The LUCS Should Be Denied Because Past Deer Point Meadows Mobile Home Park On Site Wastewater Treatment System Failures Have Negatively Impacted Adjoining Property Owners.

The Appellant references past system failures and the environmental impacts of these failures on adjoining land owner, Robert Krause as reported by Mr. Krause in his testimony at the August 23d public hearing. The Appellant is critical of the County and DEQ for not fixing the system so as to prevent past failures. He attributes faulty design assumptions used as a basis for past repairs to the system and incorporated into the related WPCF permit in 1998 and 2012 as the reason for subsequent failures.

Staff Response:

The Appellant highlights past faulty on site system design as a basis for continuing on-site system failures. Past system failures have significantly negatively impacted adjoining neighbors. Continuing on site system failures are unacceptable and a comprehensive long term fix to the system such as that proposed in the application for which the County's land use compatibility statement was issued must be made based on solid design assumptions to avoid any additional negative impacts on neighbors such as those documented in testimony. Either the system can be fixed to properly treat and distribute effluent from the authorized 46 spaces or effluent must be reduced(spaces reduced) to levels that are able to be accommodated by the comprehensive improvement to the system. Whether or not the proposed improvements will be adequate to serve 46 spaces or spaces may ultimately have to be reduced, the proposed improvements must be made to address system failures. Staff proposes that the current February 22, 2017 temporary suspension on the occupancy of vacant spaces be maintained in effect until such time as the system improvements are installed have been verified to properly perform through a winter season.

Argument 2: The LUCS Should Be Denied Because the Park Violated A Condition Placed On the 1996 County Decision To Expand the Spaces in the Park from 33 to 46 Requiring that the On Site System Be Repaired and That Decision Should Be Revoked.

The Appellant proposes that as a part of the decision to deny the LUCS the Board should act to reduce mobile home park spaces from 46 to 33 based on a finding that the Park violated the 1996 condition on the expansion requiring that "any failing septic systems on the property must be repaired and certified operational.

Staff Response:

The repairs to the septic system following the 1996 land use decision were made and approved by DEQ. It is questionable whether subsequent system failures and repairs would invalidate the expansion decision based on this condition alone. However, the action to revoke the 1996 land use decision would be out of the scope of the current land use compatibility review and would

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require initiation of a separate land use or nuisance abatement process. The LUCS decision before the Board is limited to whether or not the application to DEQ for proposed on-site wastewater treatment system improvements and related modifications to the current WPCF permit violate current applicable State and County land use regulations.

Argument 3: The LUCS Should Be Denied Because the Proposed System Improvements Are Neither A “Repair”, “Lawful Requirement” Nor “Health and Safety” Alteration Within the Meaning of ORS 215.130(5).

The Appellant argues that since the proposed improvements are more than a “repair of the existing structures associated with the use” they are unlawful alteration of the non-conforming use under State law. Further, the Appellant argues that the improvements are not a “lawful requirement” since DEQ is not requiring that the system treatment capacity be increased and DEQ has given the Park owner a choice of either improving the system to handle expected flows or reducing effluent flows.

Staff Response:

The proposed improvements may be understood as more than a normal maintenance and repair of the existing system even though DEQ defines the proposed work as a repair under their rules. However, it is at least a repair of parts of the system. Staff finds that the proposed improvements do qualify as a lawful requirement and health and safety alteration because:

1)As LUBA found in the 2012 decision regarding an appeal of the County LUCS decision to approve a LUCS for improvements to the Park septic system:

“The fact that intervener had some choice in how the required septic improvements were designed...does not mean that those improvements do not qualify as either a “lawful requirement” or “health and safety” alteration.” and

2)The fact that DEQ has given the Park owner a choice of fixing the system or reducing spaces(flow) does not invalidate the choice he has made to fix the system as a ‘legal requirement” and “health and safety” alteration. In effect, either choice would qualify under these types of authorized alterations.

Argument 4: The LUCS Should Be Denied Because The Proposed Improvements Will Add 1/3 More Water to the System.

The Appellant argues that if the LUCS is approved and improvements are made, that 1/3 more water will be added to the system and this additional water will adversely affect downstream neighbors in violation of ORS 215.130(9) which does not allow an alteration that has an increased adverse effect of neighbors

Staff Response:

Staff disagrees with the Appellant that increasing the treatment capacity of the system itself increases flows. It is an undisputed fact that parts of the existing system have been under-designed or overloaded based on improper effluent distribution and have not been able to handle existing flows. As Staff found in our August 8, 2017 Staff Report(pages 11 &12), the improvements have been designed to handle the historic peak flows generated by the Park during seasonal weather conditions. Therefore, it is more appropriate to say that adding 1/3 more treatment capacity to the system, increasing pre-treatment of effluent and redistributing treated effluent are designed to help reduce impacts to the neighborhood resulting from improperly treated wastewater and hydraulic overloading of portions of the system rather than to say that the proposed improvements “add 1/3 more water to the system” as the Appellant asserts.

Argument 5: The LUCS Should Be Denied Because Even If the Improvements Result in Properly Treated Effluent, Water Volumes Will Continue to Negatively Impact Neighbors. The Appellant argues that, even if properly treated, the volume of effluent anticipated by the proposed system design will still negatively impact neighbors without adequate drainage easements or other conveyance measures to handle the flow. DEQ required that immediate measures be taken to address system failures in early 2017. Among those measures taken in March of 2017 were to shut off a cross connection to portions of Systems 2 and 3 which was diverting effluent water onto adjoining properties, to redistribute flow from cells which were failing due to hydraulic overloading to other cells within the systems and to take measures to reduce inflow and infiltration into parts of the system. DEQ has tested and inspected these

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portions of the system and have noted no system failures since these measures were taken in March 2017. Proposed system improvements are designed to handle expected flows, to more evenly distribute flows to the drainage system and to account for some I/I while taking measures to reduce I/I where possible. DEQ acknowledges that we cannot know how effective the system improvements will be until they are implemented and reporting based on the enhanced monitoring capability of the system is made and reviewed for compliance with permit requirements. DEQ believes that the proposed improvements will address the hydraulic overloading problem, but if after monitoring for a peak flow winter season, the system fails, they are prepared to require flow reduction(elimination of spaces).

Concluding Comments:

Testimony has well documented the impacts of past system failures on the Park and its neighbors. DEQ has required measures to address the most recent failures and have noted no further failures since these measures were taken in March of 2017. Appellants have given testimony that the proposed improvements are not inadequate to handle design flows and prevent future failures. That is a determination that only DEQ can make. Whether or not they will be effective as designed to prevent future system failures can only be answered if the improvements are made. If the improvements are made and new failures occur, both the County and DEQ staff are in agreement that flow reduction must be required. The scope of this LUCS review is limited to whether the proposed improvements are consistent with applicable land use regulations. Staff finds that they are and should be implemented and given a chance to work whether or not flow reduction may eventually be necessary.

Although it is not appropriate to condition the LUCS decision given the limited scope of the review, Staff recommends that the County formally request that DEQ condition the WPCF permit modification as follows:

1. System Monitoring:

Careful monitoring of system flows and performance is critical once the improvements are made to assure that the system performs in compliance with DEQ rules. The proposed system has enhanced flow monitoring capability to find and address problems earlier.

The County should recommend that the WPCF permit require monthly flow monitoring and reporting to DEQ with a copy to the County.

2. Continuation of February 22, 2017 County Temporary Suspension Order.

County permits are required to site a mobile home on a vacant Park space. Land Development Services has issued an order suspending the siting of mobile homes on mobile home spaces that were vacant on February 22, 2017 or which have been subsequently vacated; the occupancy of an RV space which was vacant on February 22, 2017 and the occupancy of a Park owned mobile home vacant on February 22, 2017 or subsequently vacated. Staff is recommending that this order remain in force until April 1, 2018 to make sure that the improved system is functioning properly and within DEQ rules and to avoid unnecessary dispossession of residents during the winter season should the system experience additional failures.

The County should recommend to DEQ that the WPCF permit acknowledge and require compliance with the County's suspension order until April 1, 2018 and current County review procedures used to enforce it.

ATTACHMENT:

Appellant's Testimony Dated September 6, 2017

RECOMMENDATION:

Based on the facts and findings contained in the Staff June 13, 2017 Findings of Fact, the August 8, 2017 Staff report and this September 12, 2017 supplemental staff report, Staff recommends denial of the appeal of LUCS 17-44.