

From: Stephenson, Garrett H. <GStephenson@SCHWABE.com>
Sent: Monday, April 1, 2024 1:40 PM
To: Deborah Jacob <Deborah.Jacob@columbiacountyor.gov>
Cc: Suzie Dahl <Suzie.Dahl@columbiacountyor.gov>; Spencer Parsons <Spencer.Parsons@columbiacountyor.gov>; Jamie Viveiros <Jamie.Viveiros@columbiacountyor.gov>; Victor Broto <vbrot@gmail.com>; Flora Bowley <flora@florabowley.com>; Rachel Jones <raykoayon@hotmail.com>
Subject: CU 24-01 & DR 24-02 - Applicant's comments regarding proposed conditions.

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Debbie:

I hope this message finds you well. I was very recently engaged to help Victor, Flora, and Rachel through the process on the Pittsburg Road private campground. I want to say at the outset that I think the staff report generally looks very good and I know my clients greatly appreciate the County's help. We are supporting of staff's recommendation and plan to ask the Planning Commission to vote tonight so my clients can move on to the next step.

As you know, Oregon state law requires us to raise any concerns regarding the project before the close of the record. We are generally supportive of the proposed conditions, but recommend that some of the them be tightened up a bit. In particular, we want to make sure that non-structures, like the camping spaces and yurts, are not somehow prohibited by the County's flood hazard regulations and, as no regulated fills in any wetlands are proposed, the Applicant wishes to avoid having to commission a complete wetland delineation, which can be quite expensive.

Below is our list of minor concerns. Can you please include them in the record and place them before the Planning Commission?

(1) OAR Ch. 918. The applicant wishes to clarify that the regulations in OAR Ch. 918 are not approval criteria for these land use applications. Under ORS 197.175(2)(e), the County is required to "make land use decisions and limited land use decisions in compliance with compliance with the acknowledged plan and land use regulations." OAR Ch. 918 concerns the rules of the Department of Consumer and Business Services, Building Codes division. They are not incorporated into the County's land use regulations or applicable criteria. While the Applicant agrees that the project can and will meet these standards, to the extent they apply, they are to be applied as part of a building permit review.

Also, my clients have explained that they do not propose a commercial kitchen or any food preparation by the owners themselves. This, it is not clear quite yet whether OHA approval is necessary for the use. For these reasons, the Applicant requests that Conditions 9 and 10 be amended as follows, to preserve flexibility should these regulations not require state approvals:

"9. Per the requirement in the OAR 918.650.0025. (1) (f), any and all eating and drinking establishments for park occupants must comply with the applicable regulatory requirements of the Oregon Department of Human Services and/or the Oregon Health Authority. If approval for eating and drinking establishments from DHS and/or OHA is required, written confirmation of said approval ~~from DHS and/or OHA~~ shall be submitted to Land Development Services."

“10. Per the requirement in the OAR 918.650.0025. (2) Recreation Park and Organizational Camp Operating License Approved parks and camps must comply with any operating license requirements established by the Department of Human Services Oregon Health Authority. If such an operating license is required, a copy of required License from Department of Human Services Oregon Health Authority shall be submitted to Land Development Services.”

(2) Camping spaces in flood hazard areas. Camping spaces and yurts should not be subject to the County’s flood hazard regulations. CCZO 1104.3.A requires a development permit “for all structures, including manufactured dwellings, and for all other development, as defined in section 1103, including fill and other development activities.” However, the proposed tent camping spaces are plainly not “structures” and do not meet the definition of “development” in section 1103. Under that definition, “Development” “means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.” However, designating certain spaces of existing field for tent or other camping spaces is not a “man-made change to improved real estate,” and certainly not of the type in the examples stated in that section. In this instance, the camping sites require no permanent structures nor any filling or grading. For these reasons, the Planning Commission can find that a floodplain development permit should not be required for the designation of a camping space. This pertains with as much force to RV sites, as separate RV hookups (which would arguably be permanent structures) are not permitted under CCZO 505.4.A and B.

Similarly, under CCZO 505.4.C, a yurt is not permitted to have a foundation (it must be either placed on the ground or on a wood flood), meaning that it likely does not meet the County’s definition of “structure” as “a building or other major improvement that is built, constructed, or installed.” At any rate, the CCZO’s prohibition of any permanent foundation for a yurt should qualify the County’s application of the definition of “development” in CCZO Sec. 1103. That is, the definition of “development” should be read in context with the prohibition in CCZO 505.4.C of any permanent foundation for a yurt. For this reason, the Planning Commission can find that the a floodplain development permit should not be required for yurt.

Finally, as a practical matter, none of the County’s flood hazard construction standards can fairly be applied to a tent camping space or yurt. For example, the fact that neither are permanent structures nor are permitted a foundation means that they cannot be “anchored,” or “constructed with materials and utility equipment resistant to flood damage.” And, their base floor elevations cannot be elevated for the same reasons.

For the above reasons, the Applicant requests that Condition 8 be modified as follows:

“8. Per the provisions in CCZO Section 1100, the applicant shall submit Floodplain Development Permits for the County Floodplain Administrator to review and approve before any of these structures and areas can be utilized:

- ~~The 4 Yurts~~
- ~~The 2 Recreational Vehicle (RV) sites~~
- The northern proposed toilets and shower area
- ~~The 6 Tent Campsites~~

a. If the County Building Official deems *Substantial Improvements* as defined in CCZO Section 1103 are required to bring the 1926 "Retreat House" structure up to code for the proposed commercial use, the Final Building Plans must be accompanied by a Floodplain Development Permit for review and approval by the County Floodplain Administrator.”

(3) Fuel Break Requirements. The Planning Commission should clarify that camping spaces, yurts, and RV spaces are not subject to the 30-foot primary fuel break requirement. CCZO 505.4.A provides that: “A campground shall be designed and integrated into the rural agricultural and forest environment in a

manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campsites may be occupied by a tent, travel-trailer or recreational vehicle.” Thus, the CCZO contemplates that campsites should be in very close proximity to the “natural amenities of the site,” which includes “native trees and vegetation.” Further, as campsites themselves are not structures, they would not be subject to the Oregon Fire Code’s fire break requirements. See Oregon Fire Code 3103.2.1 (2022) (exempting recreational camping tents from the approval standards for “Tents and Temporary Special Event Structures”).

(4) Wetland delineation. The Planning Commission should not require a wetland delineation, but instead require a delineation of the riparian corridor. Under CCZO 1172 “Riparian Corridor Standards,” the County’s riparian regulations apply within a certain distance of fish-bearing lakes, rivers, and streams. There are no County regulations for wetlands not within that buffer area. Rather, under Oregon State law, no wetlands can be filled without a permit from the Department of State Lands. Further, under CCZO 1175.C, DSL need only be notified of any potential development proposed on wetlands identified in the state wetlands inventory. The only wetlands on the site identified in the state wetlands inventory are comprised of the creek itself and a small area east of the existing 1926 home. This is visible on the National Wetland Inventory map below:



For this sort of wetland, a DSL-regulated fill is any cumulative fill of 50 cubic yards or more (roughly 5 dump truck loads). The site plan does not propose any new structures or regulated fills within the

identified wetland area. Thus, there is no basis for the County to require a complete wetland delineation. Rather, the Applicant requests that Condition 3 be modified as follows:

~~“3. Per the provisions in CCZO Section 1170, the applicant shall submit a Wetlands Delineation Permit Application to the Oregon Department of State Lands (DSL) for the wetlands associated with fish-bearing Milton Creek on the subject tract. DSL shall review and approve the Wetlands Delineation and the applicant shall provide LDS with a copy of this approved delineation. The Applicant shall delineate the extent of the 50-foot riparian corridor, as defined in CCZO 1172.A. The portions of the subject property that are located within this fish-bearing stream's protected 50' riparian corridor as reflected in the delineation shall also be accurately identified on the Final Site Plan and Final Building Plans submitted for CU 24-01 and DR 24-02.~~

We hope that staff can support some or all of these changes. Thanks very much for your work on this.

Best regards,

Garrett

[Garrett Stephenson](#)

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Shareholder

D: [\(503\) 796-2893](tel:(503)796-2893)

C: [\(503\) 320-3715](tel:(503)320-3715)

gstephenson@schwabe.com

Schwabe