

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

Regarding an application by Clackamas County Parks )	<b><u>FINAL ORDER</u></b>
for a conditional use permit to establish a new County park )	<b><u>REVISED</u></b>
Hardscrabble Quarry / Madrone Wall Park in the Timber )	<b>Casefile No.</b>
Zone. )	<b>Z0522-09-C</b>
)	<b>(Clackamas County Parks)</b>

**A. SUMMARY**

1. This revised order is issued to clarify the requirements for the private road which will serve the proposed park. At the public hearing held on October 22, 2009, the applicant requested revisions in the width of the private driveway. There were no objections from any party to this change. Other than clarifications to the width of the road surface no other changes were made to the original order issued on November 9, 2009. This revised order replaces the prior order in its entirety.

2. The applicant, Clackamas County Parks, requests approval of a conditional use permit to establish a new County park – Hardscrabble Quarry / Madrone Wall Park, on 43.99 acres in the Timber zone. The proposal includes parking spaces for 20 vehicles, bike parking, one vault toilet, trails for all levels of visitors from ADA to advance hikers, Madrone Wall for climbing, interpretive signs, trailhead kiosk and an improved overlook above Madrone Wall. The park will have operational hours from approximately 6 am to 9 pm, April through October and from approximately 6 am to 6 pm, November through March. The park will be open for day use only. Access to the property is from Hwy 224.

a. Clackamas County Parks initiated a public concept planning process for the Hardscrabble Quarry site in spring of 2008. Public involvement included 3 public workshops, meetings with the neighbors and additional interested parties, as well as an opportunity for public comment to the Parks Advisory Board. The process was completed in early 2009 with concept plan approval by the Clackamas County Board of County Commissioners. Components of the “Concept Site Plan for Madrone Wall” park include:

- New 20-foot wide gravel driveway along existing roadbed.
- Eight-foot wide gravel path to connect pedestrians to the Eastbound TriMet bus stop
- New gate at entrance
- Gravel parking for 20 vehicles in the existing clearing at the east end of the entry driveway
- Passenger drop-off at northeast portion of the parking lot
- One vault toilet building near the parking lot
- Loop trails will be provided for a variety of skill levels and experiences. Beginners, intermediate, and advanced expert trails

are shown on the Concept Plan (Exhibit 5). Trails will typically be 4-5 ' wide and soft-surface (dirt or there similar compacted surface)

- South of the proposed park area, a new quarter-mile ADA accessible nature trail will {be developed} to teach site visitors about the unique ecosystem of the Madrone Wall site. The accessible trial will be of a firm and stable surface (e.g. permeable pavement or compacted sub-base with crusher fines)
- Three types of signs will be utilized in the park: educational signs, interpretive signs, and an entry monument. A trailhead kiosk will feature information about the park and Clackamas County Parks
- Bike parking
- Stairs that provide advanced access to the top of the wall
- An improved overlook above the wall.
- It is estimated that approximately 50-100 people (including local seniors, children, families and employees/volunteers) will use the park over the course of a day.
- Park rangers from nearby Barton and Carver Parks will open and close the gate daily for use.

3. On October 22, 2009 hearings officer Kenneth Helm (the "hearings officer") conducted a public hearing to receive testimony and evidence about the application. County staff recommended approval of the application with 35 conditions of approval. Several parties testified in support of the application. There was no opposition testimony. There are no contested issues associated with this application. The applicant requested clarifying modifications to conditions 7, 13, 19 and 22.

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The hearings officer received testimony at the public hearing about this application on October 22, 2009. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The hearings officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums. The following is a summary by the hearings officer of selected relevant testimony.

a. At the hearing, County planner Sandy Ingalls summarized the staff report and the history of the subject property. Staff recommended approval of the application.

b. The applicant made a short presentation and requested the following modifications to the conditions of approval:

“7. Park hours of operation shall be from no earlier than 6:0 a.m. to no later than 9:00 p.m. April – October and no earlier than 6:00 a.m. to no later than 6:00 p.m. November – March.”

“19. At the applicant’s discretion, a pedestrian path may be constructed along the site frontage of tax lot 3401. If built, the applicant shall design and construct improvements along the site frontage of tax lot 3401 consisting of an eight-foot wide paved pedestrian path with appropriate ADA accessible ramps at each end of the path transitioning either to Highway 224 or the site’s private road/driveway.”

c. The applicants also requested that the requirements for the shared private driveway identified in conditions 13 and 22 explicitly allow for a 16 foot wide one lane road with 10’ x 30’ turnouts to allow cars to pass each other. This was agreed to by the Clackamas County Department of Transportation and Development.

2. No party requested that the record be left open and the record and hearing closed on October 22, 2009.

### C. DISCUSSION

1. I find that the staff report identifies all of the applicable approval standards for the application and contains sufficient findings showing the application does or can comply with those standards subject to recommended conditions of approval. The hearings officer adopts the findings in the staff report as his own.

2. The Conceptual Site Plan for Madrone Wall, dated August 26, 2009 is incorporated into this decision by this reference. The site plan shall be used to assist the County in interpreting and applying the findings and conclusions of this decision, the staff report and conditions of approval.

3. I find that the applicant’s requested clarifications to the conditions of approval identified above are consistent with code requirements. With respect to the private drive or road identified in conditions 13 and 22, Robert Hixson of the Clackamas County Department of Transportation and Development agreed at the hearing that a 16 foot wide roadway would be sufficient to comply with county standards. These conditions should be interpreted to allow, among other potential configurations, for a 16 foot wide one lane road with 10’ x 30’ turnouts.

4. Pursuant to the applicant’s request, the conditions of approval are modified as follows:

“7. Park hours of operation shall be from no earlier than 6:00 a.m. to no later than 9:00 p.m. April – October and no earlier than 6:00 a.m. to no later than 6:00 p.m. November – March.”

“19. At the applicant’s discretion, a pedestrian path may be constructed along the site frontage of tax lot 3401. If built, the applicant shall design and construct

improvements along the site frontage of tax lot 3401 consisting of an eight-foot wide paved pedestrian path with appropriate ADA accessible ramps at each end of the path transitioning either to Highway 224 or the site's private road/driveway."

"13.a. The minimum width for the driving surface shall be 12 feet with two-foot wide shoulders, resulting in an overall width of 16 feet. Minimum vertical clearance shall be 13.5 feet for the full length of the private road/driveway."

To condition 22 the following language shall be added: "This condition shall allow, at the applicant's discretion, a 16 foot wide one lane road surface with 10' x 30' turnouts to allow cars to pass each other consistent with Clackamas County Road Standards."

#### **D. CONCLUSION**

Based on the above findings and discussion, the hearings officer concludes that conditional use application Z0522-09-C should be approved.

#### **E. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby **APPROVES** Z0522-09-C subject to the following conditions of approval:

1. Approval is for the specific use identified in the application materials and on the submitted site plan to the extent they are consistent with the remaining conditions of approval.
2. All necessary development permits (septic, building, electrical, driveway, etc.) shall be obtained prior to any construction. All development shall comply with the development standards of the TBR district except as modified by the conditions herein.
3. Prior to any development or issuance of any development permits, the applicant shall submit a fire prevention plan in accordance with the policies Clackamas Community Wildfire Prevention Plan and the standards of ZDO Section 406.09. The plan shall be reviewed and approved by the Oregon Department of Forestry, Sandy/Boring Fire District and Clackamas County Planning Division. The plan shall address the requirements for open campfires, accumulation of dead fuels and fuel reduction, smoking and other applicable fire suppression techniques. This plan should also address any required signing or enforcement procedures necessary to carry out the plan. Signing shall be provided in the park to notify users of these requirements.
4. Prior to Planning approval of a Building Permit or Septic permit the following fire siting standards shall be completed. A notarized Fuel Break Standards Compliance document shall be submitted to this planning file. Any structure greater than 120

square feet in size shall be sited so as to accommodate the fire siting standards in Section 406.09 of the Zoning and Development Ordinance. This will require structures to be setback at least 130 feet (based on slopes less than 10%) from all adjacent property lines.

Fuel Break Standards:

a. Primary Safety Zone:

The primary safety zone is a fire break extending a minimum of 30 ft. (based on slopes less than 10%, 80 feet based on slopes ranging from 10-20%, etc.) in all directions around structures. The goal within the primary safety zone is to remove fuels that will produce flame lengths in excess of one ft. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 ft. between the crowns and pruned to remove dead and low (less than 8 ft.) branches. Accumulated leaves, needles, limbs and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house.

b. Secondary Fuel Break:

The secondary fuel break is a fuel break extending a minimum of 100 ft. in all directions around the primary safety zone. The goal of the secondary fuel break shall be to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent the spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

5. The address to the subject property shall be posted at the driveway entrance at the public road in numbers a minimum of 3 inches in height for easy identification by emergency service providers.
6. **Prior to Planning approval of a Building Permit or Septic permit**, the property owner shall sign, notarize and record in the deed records for the County a document binding then landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming and forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. A copy of the aforementioned-recorded deed shall be submitted to this Planning file. A sample is attached to the decision.
7. Park hours of operation shall be from no earlier than 6:00 a.m. to no later than 9:00 p.m. April – October, and no earlier than 6:00 a.m. to no later than 6:00 p.m. November – March.
8. The applicant shall provide landscaping plan to the Planning Division for review and approval with native vegetation per ZDO Section 1009, to be planted along the

parking area including the vault restroom, and trail head kiosk and submit a one year vegetation guarantee to the County, prior to final Certificate of Occupancy.

9. All signs shall be reviewed and approved pursuant to Section 1010 of the ZDO.
10. The applicant shall provide a minimum of 2 bicycle parking spaces, to be located in the parking lot area, per ZDO 1007.
11. All on site improvements shall be in compliance with *Clackamas County Roadway Standards*. Frontage improvements in, or adjacent to State of Oregon right-of-way, shall be in compliance with Oregon Department of Transportation standards.
12. The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
13. The applicant shall design and construct the proposed shared private road/driveway to standards contained in the *Clackamas County Roadway Standards*. The private road/driveway shall meet the following standards:
  - a. The minimum width for the driving surface shall be 12 feet with two-foot wide shoulders, resulting in an overall width of 16 feet. Minimum vertical clearance shall be 13.5 feet for the full length of the private road/driveway.
  - b. Beyond the private road/driveway approach (the first 30 feet as measured from the edge of the Highway 224 pavement) the private road/driveway shall be constructed with a minimum of 6 inches of 3/4" minus crushed, graded and compacted rock on a compacted base and subgrade, if the grade is 10% or less, and shall be able to support a 75,000-pound fire apparatus. If the private road/driveway grade is greater than 10% and does not exceed 15%, a two inch asphalt concrete surface, a minimum of 20 feet in width, shall be constructed over the gravel section. Private road/driveway grades in excess of 15% shall not be permitted.
  - c. The applicant shall construct a paved approach to Highway 224 in accordance with Roadway Standards Drawing D500, if ODOT does not specify a preferred alternative design. The driveway approach to Highway 224 shall be constructed at a 90° angle and there shall be a platform, minimum 20 feet in length and measured from the edge of Highway 224, with a grade not to exceed plus or minus 5%. Minimum driveway width shall be 28 feet for the first 30 feet of driveway length, measured from the easterly edge of the Highway 224 travel lane. Beyond the first 30 feet of driveway length the driveway may taper to a 16-foot width. Surface water shall not be permitted to flow off the driveway approach onto Highway 224.
  - d. Written verification must be received from the Fire District that the private road/driveway will support a 75,000-pound fire apparatus, that a sufficient turnaround exists or will be constructed, that corner radii are acceptable, and that vertical and horizontal clearances are acceptable. Attention must be given to weight limits of culverts and bridges. All culverts shall be cleaned and maintained in a clean condition. The applicant shall obtain written approval of the road

construction plans from the Fire District prior to issuance of a Development Permit.

- e. Positive drainage must be provided for surface water to an acceptable outfall. Erosion control measures shall be installed and maintained throughout the construction process. (ZDO section 1008)
  - f. Construction or reconstruction of the shared private road/driveway requires plans prepared and stamped by an Engineer registered in the State of Oregon and a Development Permit. To obtain a permit the applicant shall also provide a Performance Guarantee equal to 100% of the estimated cost of construction plus a 25% contingency and pay an Inspection Fee.
14. The applicant shall design and construct the loop road adjacent to the parking spaces at a minimum width of 24 feet if 90-degree parking spaces are proposed. Alternatively, if angled parking spaces are proposed, a narrower loop road may be constructed, with a minimum width of 16 feet.
  16. The applicant shall provide and maintain wheel stops, one for each parking space, measuring approximately six feet in length, in accordance with ZDO subsection 1007.07(A)(8).
  17. The applicant shall design and construct a gate between the Highway 224 right-of-way and the proposed parking area, generally as located on the undated concept plan, with a locking mechanism evaluated and approved by the local Fire District. In addition, the local Fire District shall be provided the knowledge and necessary equipment to be able to open the gate whenever deemed necessary by the local Fire District.
  18. The applicant shall design and construct a turnaround between the gate and Highway 224, within 50 feet of the gate and outside the limits of the right-of-way of Highway 224. The turnaround shall adequately accommodate the maneuvering characteristics of a single unit truck (SU-30) measuring 30 feet in length.
  19. At the applicant's discretion, a pedestrian path may be constructed along the site frontage of tax lot 3401. If built, the applicant shall design and construct improvements along the site frontage of tax lot 3401 consisting of an eight-foot wide paved pedestrian path with appropriate ADA accessible ramps at each end of the path transitioning either to Highway 224 or the site's private road/driveway.
  20. The applicant shall provide a copy of the Engineer's drainage study and surface water management plan to DTD Engineering, Deana Mulder.
  21. The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the turnaround and the parking and maneuvering areas, including a minimum of 24 feet of back up maneuvering room for all 90-degree parking spaces.
  22. If the private road/driveway and/or loop road is less than 20 feet in width, the applicant shall show the paths traced by the extremities of anticipated large vehicles

(fire apparatus, garbage and recycling trucks, etc), including off-tracking, on the site plan to insure adequate turning radii are provided for the anticipated large vehicles maneuvering on the site and using the on site turnaround adjacent to the gate. Alternatively, wherever on site roadways are a minimum of 20 feet in width, inside radii of turns shall be a minimum of 28 feet and outside radii of turns shall be a minimum of 48 feet. (*ZDO* subsection 1007.07(A)(12)) This condition shall allow, at the applicant's discretion, a 16 foot wide one lane road surface with 10' x 30' turnouts to allow cars to pass each other consistent with Clackamas County Road Standards.

23. Parking spaces shall meet minimum *ZDO* section 1007 requirements, both in number and dimensions. The applicant shall provide a minimum of 20 parking spaces, including one ADA van space. The plans shall list the number of parking spaces required and the number of parking spaces provided. The applicant shall label all compact and carpool parking spaces, and parking spaces for the disabled (minimum of one van accessible parking space) on the plans.
24. The applicant shall design and construct one van accessible parking space, access to the accessible trail, and the restroom facility, in close proximity to one another.
25. The applicant shall provide and maintain adequate intersection sight distance in accordance with ODOT requirements.
26. The applicant shall provide adequate corner vision in accordance with the Zoning and Development Ordinance corner vision requirement. No sight-obscuring structures or plantings exceeding 30 inches in height, measured from the roadway surface, shall be located within a 20-foot radius of the lot corner nearest the intersection of two public, County, or State roads, or from the intersection of a private driveway, access drive, or private road and a public, County, or State road. Trees located within a 20-foot radius of such an intersection shall be maintained to allow eight feet of visual clearance below the lowest-hanging branches. The limits of a public, County or State road are defined by the entire right-of-way width.
27. If required by ODOT, the applicant shall install and maintain either a 30-inch or 36-inch "STOP" sign, per ODOT direction, with the bottom of the sign positioned seven feet above the pavement surface, at the driveway intersection with Highway 224. (*Manual on Uniform Traffic Control Devices*)
28. All traffic control devices on private property, located where private driveways intersect County facilities shall be installed and maintained by the applicant, and shall meet standards set forth in the *Manual on Uniform Traffic Control Devices* and relevant Oregon supplements.
29. Applicant shall design and construct, or install and maintain, appropriate garbage and recycling facilities in accordance with Clackamas County Community Environment staff's requirements.
30. Prior to the issuance of a building permit, the applicant shall submit to Clackamas County Engineering Office:

- a. Written approval from the local Fire District for the planned access, circulation, turnaround, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
  - b. Written approval from the Department of Transportation and Development for surface water management facilities and erosion control measures.
  - c. Written approval from ODOT, in the form of a permit, for access to Highway 224 and for all work in Highway 224 right-of-way and on tax lot 3401. Contact: Michael Keyes, Access Coordinator, ODOT District 2C, 503-667-7441 for information on the written permit application process.
  - d. A set of street and site improvement construction plans, including a striping and signing plan, for review, in conformance with *Clackamas County Roadway Standards* Section 130, to Deana Mulder in Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit. The permit will be for road, driveway, drainage, parking and maneuvering area, and other site improvements. The minimum fee is required for eight or fewer, new or reconstructed parking spaces. For projects with more than eight parking spaces, the fee will be calculated at a per parking space rate according to the current fee structure for commercial/industrial/multi-family development at the time of the Development Permit application. The applicant shall have an Engineer, registered in the state of Oregon, design and stamp the construction plans for all required improvements.
31. Prior to final acceptance of the project, the applicant shall submit written approval from ODOT that the ODOT required improvements have been completed.
  32. This Conditional Use is granted subject to the conditions of approval. Non-compliance with any of these conditions constitutes a violation of this permit and shall be cause for revoking this approval.
  33. Pursuant to Section 1203.02(A)(3) this approval is valid for a period of ten years from the date of final written decision. If the proposed use has not been established within that time, the approval shall expire unless a timely application for extension of the permit is filed with the County under ZDO Section 1203.03 and the application is approved. The conditional use approval is implemented when all necessary permits for the development have been secured and are maintained.
  34. Approval is subject to the above stated conditions. Failure to comply with any of the conditions of approval may be cause for revocation of this approval.

DATED this 12th day of November, 2009.



Kenneth D. Helm  
Clackamas County Hearings Officer

## **ENDANGERED SPECIES ACT NOTICE**

The federal Endangered Species Act (ESA) is not a criteria for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

## **APPEAL RIGHTS**

ZDO 1304.01 provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. 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 (which date appears on the last page herein).

CERTIFICATE OF MAILING

I certify that on the date set forth below I mailed a copy of the above HEARINGS OFFICER REVISED FINAL ORDER by first class mail to the following participants at the address shown:

Clackamas County Parks  
Attn: Katie Dunham  
150 Beaver Creek Road  
Oregon City, OR 97045

John Armentrout  
20060 SE Hwy 224  
Damascus, OR 97089

Charlene DeBruin  
P.O. Box 224  
Eagle Creek, OR 97022

Michael Ferrell  
5315 SE Hill Road  
Milwaukie, OR 97267

Clackamas County Parks  
Attn: Michelle Healy  
150 Beaver Creek Road  
Oregon City, OR 97045

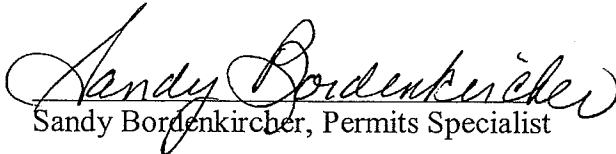
Keith Daellenbach  
5815 N.E. 31<sup>st</sup> Avenue  
Portland, OR 97211

City of Damascus  
Attn: Anita Yap  
19920 SE Hwy 212  
Damascus, OR 97089

ODOT Region One  
Development Review  
123 NW Flanders  
Portland OR 97209

The original of this decision has been filed with the Planning Division, Clackamas County Department of Transportation and Development.

DATED this 18<sup>th</sup> day of November, 2009

  
Sandy Bordenkircher, Permits Specialist