

This application requests the removal of Condition 28, because the condition is very onerous and conflicts with the ability to use the tract in accordance with the customary zoning and wetland regulations, as well as for additional housing. That condition states:

28. The developer shall be authorized to sell the wetland tract to a private entity. The sale shall include a restrictive covenant that prevents further subdivision or development of the wetlands tract in a manner that would cause the PUD to exceed development limitations placed by the Warrenton Planning Commission. The restriction will also limit tree clearing to upland areas as part of an approved Oregon Department of Forestry permit. Wetland areas shall be managed pursuant to Section 16.156.040 of the WDC, except that agricultural uses and tree clearing shall be prohibited.

The applicant understands the City has several interests that are being advanced through this condition. These include consideration of the various Fort Stevens uses north and west of the site including the public and private campgrounds, protection of wetlands, and tree preservation.

In addition there is a state law limit that protects the development of housing within the PUD. ORS 197A.400(3)(c) authorizes the city to apply subjective criteria to a PUD for housing, so long as the criteria “authorize a density at or above the density level authorized in the zone[.]” The September 14, 2023 staff report calculates the authorized density on this site as ranging between 1107 and 1309 allowed housing units. Only 450 housing units are proposed. As the PUD criteria were applied in Condition 28, the Planning Commission effectively imposed a strict limit of 450 housing units. Therefore, the condition is not consistent with the statute, and it is incumbent upon the city to approve this application to delete the condition.

Thus the applicant requested that two statements be deleted from Condition 28, because the statements exceed the code requirements for open space in a PUD. Upon further consideration, the applicant requests that Condition 28 be deleted in its entirety, because there are existing provisions in the city code and state law to regulate the wetlands and tree removal. The wetlands are regulated by the city, the US Army Corps of Engineers and the Department of State Lands. Tree removal is regulated by the Oregon Department of Forestry. Compliance with those regulations is required for any future use of the proposed tract, and is the least restrictive means of accomplishing the city’s resource protection goals.

To the extent the city is not willing to delete Condition 28, then we recommend this simplified text for a replacement condition.

“The developer shall be authorized to convey the open space tract to a private entity. The transfer shall include a notice that informs the new owner that the wetland areas are subject to city, state, and federal regulations, and that tree removal is subject to Department of Forestry and federal regulations.”

Thank you for your consideration of this request, and we look forward to the upcoming Planning Commission meeting.