BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director Decision Approving in Part and Denying in Part A Composting Operation on Exclusive Farm Use Land.	))))	**Case File No. Z0303-15-PDR (Stroupe Appeal)**

A. SUMMARY

1. The owner and applicant is Duane Stroupe.
2. The appellant is Duane Stroupe.
3. The subject property is located at 24800 NE Boones Ferry Road, Aurora, Oregon 97002. The legal description is T3S R1W, Section 26, Tax Lots 3100, 3200, and 3300 W.M. The subject property is approximately 77.06 acres and is zoned EFU – Exclusive Farm Use – 80 Acre.
4. On December 4, 2015, the Hearings Officer opened a public hearing to receive testimony and evidence about the application. The public hearing was continued to January 28, 2016. At the conclusion of the January 28, 2016 public hearing, the record was left open two weeks for the submission of new evidence, two additional weeks for responses to the new evidence, and one final week for the applicant's final legal argument.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearings on this application on December 4, 2015 and January 28, 2016. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearings, 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 Planning Director's decision, 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.

2. At the hearing, county planner Gary Hewitt discussed the Planning Director's decision and recommended that the decision approving in part and denying in part the proposed composting application be upheld.
3. The applicant and his representatives testified in favor of the application.
4. A number of opponents and their representatives testified in opposition to the application.
5. At the conclusion of the second public hearing, the Hearings Officer left the record open two weeks for the submission of new evidence, two additional weeks for responses to the new evidence, and a final week for the applicant's legal argument.

C. FACTS

The subject property is Exclusive Farm Use (EFU) and is approximately 77.06 acres. The subject property is high value farmland and is developed with a farm dwelling, agricultural buildings, and mixed farm uses. The applicant currently operates a feed lot with approximately 160 head of cattle. The applicant wants to expand the operation to approximately 400 head of cattle. The applicant brings in sawdust and wood chips from off-site as bedding for the cattle. The bedding subsequently gets mixed in with cattle manure and urine. The applicant then composts the mix of manure, urine, and sawdust/woodchips. The applicant proposes to use some of the compost on the subject property but wants to sell the excess compost to off-site customers. Such operations are required to obtain a confined animal feeding operation (CAFO) National Pollution Discharge Elimination System (NPDES) permit. As part of an application for a CAFO, the Oregon Department of Agriculture requires operators to submit a Land Use Compatibility Statement (LUCS) to verify that the proposed use is compatible with county land use regulations. The applicant obtained such a LUCS in 2012, but did not obtain a CAFO permit. County regulations were amended subsequent to the issuance of the LUCS. Under the new regulations, a use determination is required to determine whether the composting facility is a permitted use. The use determination application is subject to a type II procedure, whereby the decision is made by the Planning Director.

The Planning Director approved the application for a composting facility in part and denied the application in part.[1] The Planning Director determined that the sawdust and woodchips were off-site materials, and therefore found that the compost could only be used on the subject property and could not be sold off-site. This appeal followed.

D. DISCUSSION

1. Preliminary Matters

The applicant spends considerable time arguing about the LUCS that was issued in 2012. According to the applicant, that LUCS is still valid and the applicant should not even be required to obtain a new LUCS. The applicant also argues that the County is required to issue the applicant a new LUCS. While it is not exactly clear, the applicant also appears to argue that a LUCS should be issued as part of this proceeding. Alternatively, the applicant argues that a County Hearings Officer "* * * lacks jurisdiction to review the Planning Director's Review and must summarily dismiss the application for lack of jurisdiction." Applicant's Hearing Memorandum 6.

While the existence, withdrawal, or issuance of LUCS for the subject property may affect the ultimate use of the property, I do not see that the existence or lack thereof of a LUCS has any effect on this appeal. The applicant submitted an application for a use determination as to whether the proposed composting facility is a permitted use on EFU land. The resolution of this appeal may determine whether a LUCS is eventually issued, but this decision only addresses whether the proposed use complies with the applicable provisions of the Clackamas County Zoning and Development Ordinance (ZDO). This decision renders no opinion on the LUCS that was issued in 2012 or any LUCS that may or may not be issued in the future.

The applicant's argument that I have no jurisdiction to review the Planning Director's decision is difficult to follow. As far as I can tell, the applicant is arguing that the ZDO provisions are contrary to state law, and the Planning Director had no authority to condition the issuance of a LUCS on compliance with such invalid ordinances. Even if the applicant is correct, that would just mean that the Planning Director's decision should be reversed – not that a Hearings Officer does not have jurisdiction to review the

[1] Under ZDO 1307.03(B), the Planning Director includes "any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]."

Planning Director's decision. ZDO Table 1307-1 clearly shows that such use determinations are Type II procedures where the initial decision is made by the Planning Director and appeals are to the Hearings Officer. I have jurisdiction to review the Planning Director's decision.

2. ZDO 401.05(G)(3)

ZDO Table 401-1 lists the proposed use "[c]omposting operations and facilities on high value farmland" as a use permitted under a Type II procedure subject to additional ZDO provisions. The parties agree that the pertinent section is ZDO 401.05(G)(3), which provides:

> "Composting operations and facilities allowed on high-value farmland, subject to the following:
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> "a. Composting operations and facilities on high value farmland must:
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> "i. Compost only on-farm produced compostable materials; or
>
> "ii. Compost only off-site materials and use all on-site generated compost for on-farm production in conjunction with, and auxiliary to, the farm use on the subject tract; or
>
> "iii. Compost any off-site materials with on-farm produced compostables and use all on site generated compost for on-farm production in conjunction with, and auxiliary to, the farm use on the subject tract; and
>
> "iv. Be an accepted farming practice in conjunction with and auxiliary to farm use on the subject tract; meaning that if off-site materials are added to on-farm produced compostables, the total amount of compost generated by the operation or facility does not exceed the amount of compost reasonably anticipated to be used on the subject tract; and
>
> "v. Limit buildings and facilities used in conjunction with the composting operation to those required for the operation of the subject facility; and
>
> "v. Meet the performance and permitting

requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060.

"b. Excess compost from operations and facilities on high value farmland may only be sold or transported if:

"i. The operation or facility does not use off-site materials; and

"ii. It is sold or transported to neighboring farm operations within two and one-half miles of the subject tract; and

"iii, It is sold or transported in bulk loads of not less than one unit (7.5 cubic yards) in size that are transported in one vehicle.

ZDO 401.05(G)(3)(a) begins by stating that composting facilities on high value farmland must fall under one of three categories listed in ZDO 401.05(G)(3)(a)(i-iii). The first category allows for compost of "on-farm produced compostable materials" with no restriction on where the compost must be used. The second category allows for compost of "only off site materials" and restricts the use of the compost to the subject tract. The third category allows for the compost of a combination of "off-site materials with on-farm produced compostables" and restricts the use of the compost to the subject tract.

The applicant argues that the proposed use falls under the first category, while opponents and the Planning Director found the proposed use could only fall under the third category. Because the Planning Director found that the only category the applicant could meet was the third category, he conditioned the approval on restricting the amount of compost to the amount that could be used on the subject property. As discussed earlier, the applicant uses sawdust and woodchips as bedding for the cattle. The bedding unavoidably gets mixed in with the manure and urine from the cattle. The applicant argues that the resulting combination of manure, urine, and bedding is an on-farm produced compostable. The Planning Director determined that the off-site sawdust and woodchips never lose their off-site nature and therefore the applicant could not qualify under the first category:

"The applicant has taken the position that there is no off-site material because it is eventually used as bedding. This fact somehow negates the

> bedding material from being *off-site material* as it becomes *on-farm produced material*. In a sense, staff understands what the applicant is saying but also must disagree that the bedding material is not from off-site. The applicant most likely believes if the farm cannot have the off-site material called '*on-farm produced*' it becomes problematic in two ways. First, when material comes from off-site it can't be sold but must be used exclusively on the farm. Second, if this is the case, the raising of beef becomes self limiting on high value farmland. The limitation is that a farm on high value farmland must be large enough to allow the desired number of cattle to be raised at the farm *and* provide composting as a manure handling strategy. In other words, the more cattle raised, the larger the acreage requirements will be in order to use all the compost for the farm only. This language was purposefully crafted within the ordinance so a farm only produces what it needs if material comes from off-site. The composting facility would then become manufacturing of compost for sale, a use not allowed on high value farmland by ordinance. So, on the one hand staff agrees when the off-site material is used as bedding it eventually becomes *on-farm produced compostables* but on the other hand, the off-site material never became *on-site* material. This is an important distinction from the position the applicant is taking. Planning Director's Decision 7-8 (emphasis in original, footnote omitted).

ZDO 401.05(G)(3)(a) clearly draws a distinction between "on-farm produced compostable materials" and "off-site materials." There does not seem to be any dispute that if the applicant did not use any materials for bedding that the resulting manure would be an "on-farm produced compostable material." If the sawdust and woodchips were not used as bedding and were just mixed with the manure purely for composting purposes then that would certainly seem to be the composting of "off-site material with on-farm produced compostables" as provided for in ZDO 401.05(G)(3)(a)(iii) and restricted to use on the property. The question in the present case is whether the use of the sawdust and woodchips as bedding that unavoidably gets mixed in with manure and urine renders the resulting combination of materials "on-farm produced compostable material."

The applicant cites the Oregon Administrative Rule (OAR) definition of "manure" in support of the position that the combination of bedding, manure, and urine is all "manure." OAR 603-074-0010(9) defines "manure" as: "manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal." While this definition comes from the Oregon Department of Agriculture (ODA) CAFO regulations, it certainly supports the position that the bedding becomes part of the

manure. The Planning Director's decision even recognizes that the bedding "eventually becomes on-farm produced compostables."

I agree with the applicant and the Planning Director's decision that the combination of bedding, urine, and manure all eventually just becomes manure that is an "on-farm produced compostable." This is not a situation where the manure is generated independently of the bedding and then the bedding is later mixed into the manure. This is not a situation where the manure is transported to the composting area and then the bedding is added to the mix to assist composting. This is a situation where the bedding gets mixed into the manure as part of the practice of providing bedding for cattle.

The Planning Director's decision recognizes that the combination of bedding and manure becomes an "on-farm produced compostable" but then states that the "on-farm produced compostable" never becomes an "on-site material." ZDO 401.05(G)(3)(a), however, does not use the term "on-site material."[2] ZDO 401.05(G)(3)(a)(i) states that a composting operation and facility is permitted if it "[c]ompost[s] only on-farm produced compostable materials." The Planning Director determined that the combination of bedding and manure is an "on-farm produced compostable material." The applicant proposes to "compost" those "on-farm produced compostable materials." That is precisely what ZDO 401.05(g)(3)(a)(i) allows. There is nothing in ZDO 401.05(G)(3)(a)(i) that requires an examination of where the materials that result in on-farm produced compostable materials originated from. Most if not all of the food that eventually becomes manure comes from off-site as well, but once it becomes manure it is an on-farm produced compostable material. The manure that is a combination of manure, urine, and bedding is an on-farm produced compostable material that is proposed to be composted on the property. That satisfies the requirements of ZDO 401.05(G)(3)(a)(i).

ZDO 401.05(G)(3)(a)(ii) applies to composting only off-site materials and therefore is inapplicable. ZDO 401.05(G)(3)(a)(iii) applies to composting a combination of off-site materials with on-farm produced compostables. The Planning Director believed this was the applicable subsection, which would only allow as much compost as could be used on the property. As discussed, however, I agree with the applicant that the

[2] ZDO 401.05(G)(3)(a) uses the term "on-site generated compost," but that clearly refers to composting occurring on the property rather than off site. It does not have anything to do with materials – whether on-site or off-site.

combination of bedding, manure, and urine is an on-farm produced combustible. Therefore, ZDO 401.05(G)(3)(a)(iii) is also not applicable. The applicant is required to demonstrate the proposed use meets the requirements of one of the three subsections of ZDO 401.05(G)(3)(a)(i-iii). The proposed use satisfies ZDO 401.05(G)(3)(a)(i).

In addition to satisfying one of the three categories in ZDO 401.05(G)(3)(a)(i-iii), the proposed use must also satisfy ZDO 401.05(G)(3)(a)(iv-vi). ZDO 401.05(G)(3)(a)(iv) provides that the proposed use must:

> "Be an accepted farming practice in conjunction with and auxiliary to farm use on the subject tract; meaning that if off-site materials are added to on-farm produced compostables, the total amount of compost generated by the operation of facility does not exceed the amount of compost reasonably anticipated to be used on the subject tract[.]"

The first prong of ZDO 401.05(G)(3)(a)(iv) is that the proposed use be "an accepted farming practice." The Planning Director's decision persuasively explains why the use of bedding with cattle is an accepted farming practice:

> "Although bedding of cattle is a relatively new concept in the industry mostly due to cost, studies have shown that bedding is actually beneficial to the animal for weight gain, insulating the animal from the concrete floor so in turn the animal does not use additional calories to keep its body temperature up. A conversation with Jerome Rosa of the Oregon Cattleman's association finds the practice of bedding cattle is slowly becoming an accepted farming practice in Oregon." Planning Director's Decision 9 (footnote omitted).

Opponents argue that the proposed use is not an accepted farming practice, but instead of arguing that providing bedding for cattle is not an accepted farming practice they argue using compost on the property is not an accepted farming practice. Opponents rely on an earlier case involving the same applicant on a different property, File No. Z0141-12-PDR, September 19, 2012 (Redlands). In the Redlands case, the applicant sought to import green feedstock from off-site to a 139-acre property. The green feedstock would be composted and applied to the hay fields and Christmas trees on the property. The amount of compost generated would be substantially more than necessary for the amount of hay and Christmas tree land on the property. The Redlands case preceded ZDO 401.05(G)(3), so the case was analyzed under OAR 660-033-0130(29)(a), which provides:

> "Composting operations and facilities allowed on high-value farmland are limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility."

The Hearings Officer in the Redlands case first found that importing green feedstock to make compost was not an accepted farming practice. The Hearings Officer explained that while compost was sometimes used for fruits and vegetable, such compost was not generally used for hay and Christmas trees on high value farmland and certainly not in the amount of proposed by the applicant. Redlands 16-17. The Hearings Officer further found that because the proposed use was not an accepted farming practice that the same activity could not be found to be in conjunction with and auxiliary to a farm use.

> "Since the proposed activity may not be necessary at all to allow profitable farm use, that same activity cannot be found to be auxiliary to the production of those farm crops. To allow the applicant to process the amount of raw feedstock when it has not been shown that the hay and Christmas trees require that amount of compost would transform the composting activity into the primary activity on the property as opponents have argued. That result contradicts the plain meaning of the word 'auxiliary' which is generally understood to mean an action that is a subsidiary, supplementary or subordinate function." Redlands 19-20.

Unlike the Redlands case, as the Planning Director explained and I agree with, the proposed activity is an accepted farming practice. In addition to the use of bedding in cattle operations being an accepted farming practice, the Planning Director also explained that the proposed use of the compost on site was a reasonable use of compost.

> "The compost application amount provided by the applicant, at one-half pound per square foot, is within the parameters of most soil experts on the use of compost in farming. Of course one must take into consideration a base and adjust for the climate, soil type and most importantly what type of crop one wants to grow. The one-half pound per square foot is reasonable for pasture land or hay production." Planning Director Decision 10.

I agree with the Planning Director that the proposed composting use is an

accepted farm practice. The second prong of ZDO 401.05(G)(3)(a)(iv) is that the proposed composting use must be "auxiliary" to the farm use on the property. Because the Planning Director found that the bedding was an off-site material, he followed the analysis in the second part of ZDO 401.05(G)(3)(a)(iv) which provides that if off-site materials are added to on-farm produced compostables "the total amount of compost generated by the operation of the facility does not exceed the amount of compost reasonably anticipated to be used on the subject tract." The Planning Director's analysis makes perfect sense if off-site materials were added to the on-farm produced compostables. Because I find off-site materials are not used to produce the compost, the proposed use is not restricted to the amount of compost that can be reasonably used on the property. Thus, the fact that the proposed use would generate more compost than can be reasonably used on the property does not mean that it is not an auxiliary use. This conclusion is also consistent with OAR 660-033-0130(29)(a) which expressly allows for the sale of excess compost.

The mere fact that the proposed use will generate more compost than can be used on site does not mean that the proposed use is not auxiliary to the farm use on the property. That does not, however, mean that it is an auxiliary use to the farm use. The subject property has 50 acres of pasture and 5 acres of truck gardening that compost could be applied to. The Planning Director explained that 550 tons of compost per year would be appropriate to use on the property. The proposed use would generate 3400 tons of compost, which would be enough compost for 312 acres. Therefore, approximately 84% of the compost would be would need to be sold or otherwise disposed off-site. The Planning Director found that this rendered the proposed use not an auxiliary use.

> "Since 2,850 tons or 84% of the proposed composted material will not be added as a soil amenity to the 55 acres of the subject tract, it does not appear to be an auxiliary use to the farm use on the subject tract. Auxiliary is defined as a subsidiary, secondary or subordinate use. The fact that 84% of the composted material will be sold to other local area farms, persuades staff to conclude this composting requesting a larger percentage of the operation of the farm and not an auxiliary use to the farm." Planning Director Decision 10 (footnotes omitted).

If the question of whether the proposed use is an auxiliary use were determined by how much of the compost would be used on site versus being sold off-site then I would

agree with the Planning Director and opponents that the proposed use is not an auxiliary use. I do not see, however, that that is the proper question for determining whether something is an auxiliary use. The omitted footnotes define "auxiliary" as "functioning in a subsidiary capacity or one that helps, one that functions or serves in a supplementary often subordinate position" and "subsidiary" as "functioning in the provision of aid, support, or other benefit usually in a subordinate or inferior status or capacity."[3] The question is what is the primary use of the property and what is the auxiliary use of the property.

The primary use of the property is the raising of cattle. That is why the applicant wants to expand the operation – to raise more cattle. An unavoidable by product of raising cattle is manure, and manure must be disposed of in some way. Composting the manure is a way for the applicant to obtain some value from the manure by using some of the compost on site and selling the remainder. I do not see that the size of the property should be determinative of whether raising cattle or composting is the primary use of the property. Some cattle operations have very large acreages where they grow lots of the feed for the cows and can use compost on those fields, while others are on smaller acreages and import most or all of their feed and would have little or no use for compost. In either case, raising cattle is the primary use and any composting of manure would be a supplementary activity. I do not believe the applicant is raising cattle for the purpose of generating manure just so he can make compost. This is a different situation from the Redlands case where the composting was not a subordinate and supplementary use of the property. In the Redlands case the primary use was growing hay and Christmas trees. No materials used in the proposed composting were generated on site. The massive amounts of compost proposed to be used on fields that did not really need compost convinced the Hearings Officer that the primary use would be the composting rather than growing hay or Christmas trees. In the present case, I find that raising cattle is clearly the primary use of the property and the proposed composting is an auxiliary use. ZDO 401.05(G)(3)(a)(iv) is satisfied.

ZDO 401.05(G)(3)(a)(v) provides that a composting operation must: "[l]imit buildings and facilities used in conjunction with the composting operation to those

[3] Both definitions are from the Webster's Third International Dictionary Unabridged 2002 Edition.

required for the operation of the subject facility[.]" The Planning Director's decision states that the composting slab appears to be approximately 80 feet by 220 feet. The Planning Director found that such an area would be larger than necessary to produce compost for the property.

As explained, however, the applicant is not restricted to producing just enough compost for the subject property, so the proposed composting facility is appropriately sized. ZDO 401.05(G)(3)(a)(v) is satisfied.

ZDO 401.05(G)(3)(a)(vi) requires that the proposed use "[m]eet the performance and permitting requirements of the Department of Environmental Quality [DEQ] under OAR 340-093-0050 and 340-096-0060." The Planning Director's decision found that this criterion was not applicable because a CAFO permit is allowed in lieu of the DEQ permitting requirements. Opponents argue that because the applicant does not have a CAFO he is not in compliance with the criterion. Opponents further state that it is not feasible that the applicant can obtain a CAFO. The Planning Director's decision included a proposed condition of approval that the applicant obtain a CAFO. The language of ZDO 401.05(G)(3)(a)(vi) mirrors the language of OAR 660-033-0130(29)(a). Therefore, I think it is appropriate to include as a condition of approval that the applicant comply with the DEQ permitting requirements. It may well be that by obtaining the CAFO that the applicant would comply with the DEQ requirements. I do not agree with opponents that it is not feasible for the applicant to obtain a CAFO or that he should be faulted for not having already obtained a CAFO. As the applicant explains, he cannot obtain a CAFO until he obtains a LUCS from the County, and he cannot obtain a LUCS from the County until he obtains a favorable use determination under ZDO 401.05(G)(3). ZDO 401.05(G)(3)(a)(vi) can be satisfied with conditions.

ZDO 401.05(G)(3)(b)(i) provides that excess compost on high value farmland may only be sold or transported if "[t]he operation or facility does not use off-site materials." The Planning Director's decision found that this criterion was not satisfied because he found that the bedding that combines with the manure is an off-site material. As explained earlier, I agree with the applicant that the resulting combination of manure, urine, and bedding is an on-farm produced compostable material. ZDO 401.05(G)(3)(b)(i) refers to using off-site materials in the composting operation. As

explained, off-site materials are used for the bedding, but those materials become part of the on-farm produced compostables before the manure is composted. Therefore, the proposed use would not use off-site materials for composting. Therefore, excess compost may be sold under ZDO 401.05(G)(3)(b)(i).

ZDO 401.05(G)(3)(b)(ii) provides that excess compost on high value farmland may only be sold or transported if "[i]t is sold or transported to neighboring farm operations within two and one-half miles of the subject tract." ZDO 401.05(G)(3)(b)(iii) provides that excess compost may only be sold or transported if "[i]t is sold or transported in bulk loads of not less than one unit (7.5 cubic yards) in size that are transported in one vehicle." The Planning Director's decision found that because excess compost could not be sold or transported off site that these two criteria were not applicable. Because I agree with the applicant that excess compost may be sold or transported off site, these two approval criteria can be satisfied with conditions.

The applicant argues that the conditions requiring the excess compost be sold or transported within two and one-half miles from the property and transported in bulk loads of not less than one unit are impermissible. The applicant's position is part of a larger argument that seeks to invalidate all of ZDO 401.05(G)(3). According to the applicant, an auxiliary farm use such as composting is a use permitted as of right under *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), and therefore the County may not impose any additional requirements other than that provided by state law. I need not address that issue because I find that the applicant satisfies the requirements of ZDO 401.05(G)(3). As to the conditions required by ZDO 401.05(G)(3)(b)(i & ii), even if the proposed use is a use permitted as of right, those conditions are taken verbatim from OAR 660-033-0130(29)(a). Therefore, the County is not imposing any requirements stricter than state law.

The applicant has satisfied the requirements of ZDO 401.05(G)(3).

3. Other Requirements

The Planning Director's decision explains that the proposed use is "an accepted farming practice" under ORS 215.203(c). I agree with the Planning Director's decision, and that issue was discussed earlier under ZDO 401.05(3)(a)(ii). Opponents also raise the issue of adverse effects of a composting operations on nearby properties. For instance,

opponents argue the composting operation will increase truck traffic, create noxious odors, attract pests, create dust, and pollute water. While I certainly sympathize with the opponents concerns, there is nothing in ZDO 401.05(G)(3) that considers adverse impacts and opponents have not cited any other provision that would require consideration of adverse impacts similar to a conditional use. Opponents have not provided any other basis to deny or restrict the application.

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** application Z0303-15-PDR, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

General Conditions

1. Approval of this land use permit is based on the submitted written narrative and plan(s) submitted. No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document and the limitation of approval as described herein.
2. Buildings and facilities used in conjunction with the composting operation shall be limited to the size required for the operation of the subject facility.
3. The owner shall obtain all necessary permits from the Oregon Department of Agriculture for the composting prior to processing bulk materials into compost.
4. The owner shall meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Obtaining a CAFO may satisfy those requirements.
5. Excess compost must be sold or transported to neighboring farm operations within two and one-half miles of the subject tract.
6. Excess compost must be sold or transported in bulk loads of not less than one unit (7.5 cubic yards) in size that are transported in one vehicle.
7. Approval is subject to the above stated conditions. Failure to comply with all conditions of approval shall be cause for revocation of this permit.

8. The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the County concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated, and maintained in a manner that complies with the ESA.
9. Approval Period: Approval of an administrative action under Section 401 is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented. "Implemented" means:

    A building permit for the new roof structure for the concrete slab shall be obtained and maintained. If no building permit is required, all other necessary County development permits shall be obtained and maintained.

Aurora Fire District: Contact - Dan Jones State Fire Marshall (503) 934-8289

10. Prior to planning approval of a building permit the applicant's development plan shall comply with all Fire, Life, and Safety standards and requirements of the Aurora Fire District. Documentation from the Aurora Fire District indicating compliance is met shall be submitted by the applicant to this Planning File. It shall be the responsibility of the applicant to contact the Aurora Fire District to determine the applicable requirements.

Engineering Division: Contact - Robert Hixson (503) 742-4708

11. All improvements in, or adjacent to Clackamas County public road right-of-way, shall be in compliance with the Clackamas County Road Standards.
12. All on site improvements and roadway improvements shall be in compliance with Clackamas County Roadway Standards or alternatives approved by the local Fire District.

13. The applicant shall consult with the Engineering Division to determine if a Development Permit from Clackamas County Department of Transportation and Development is necessary prior to the initiation of any construction activities associated with the project may require further review. Improvements associated with the access or on site improvements that are required by the local Fire District may include, but are not necessarily limited to turnouts, turnarounds, adequate structural section, adequate turning radii, and road grades satisfying Fire District standards.

Oregon Department of Agriculture: Contact – Wym Matthews (503) 986-4792

14. The applicant shall make application for a Confined Animal Feeding Operation (CAFO) permit from the Oregon Department of Agriculture. A CAFO permit must be issued to livestock owners that meet the guidelines of a confined feeding operation so manure does not pollute ground and surface water.

DATED this 24th day of March, 2016.

Fred Wilson
Clackamas County Hearings Officer

ENDANGERED SPECIES ACT NOTICE

The federal **Endangered** Species Act (ESA) is not a criterion 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 1307.10(F) 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(9) 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." 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).