BEFORE THE LAND USE HEARINGS OFFICER
OF WASHINGTON COUNTY, OREGON

In the Matter of a Preliminary Review for a 30-Lot Subdivision in the AF-5 Zoning District **Applicant**: Tess Properties **Applicant's Representative**: Chris Goodell, AKS Engineering & Forestry Andrew Stamp, VF Law	**INTERIM ORDER** Casefile No. L2400303-S Applicant's Motion to Reopen Record **Denied** as Moot

Background

On April 15, 2025, Tess Properties (the "Applicant") submitted a motion asking the Hearings Officer to reopen the record. The Applicant seeks to respond to comments from the county dated April 9 regarding stormwater management. A staff member in the county's engineering department submitted the comments during the second open record period ("OR-2"), which closed on April 10. The record identifies the April 9 comments as Exhibit OR-2C.

According to the Applicant, the comments do not respond in substance to stormwater-related issues the Applicant raised in the first open record period. Instead, the Applicant believes Exhibit OR-2C contains new evidence responding to a January 28, 2025, "Preliminary Stormwater Report" that the Applicant submitted approximately six weeks before the March 13 hearing. The Applicant alleges the comments amount to a late staff report and thus violate ORS 197.797(4)(b), which requires "any staff report used at the hearing" to be available at least seven days before the hearing. Pursuant to ORS 197.797(6)(c), the Applicant asks the Hearings Officer to reopen the record for the limited purpose of allowing the Applicant to respond to the alleged new evidence in Exhibit OR-2C.

On April 17, the county submitted a response to the motion. The county disagrees with the characterization that Exhibit OR-2C constitutes a late staff report. According to the county, Exhibit OR-2C responds in substance to stormwater-related issues the Applicant raised in the first open record period and therefore does not violate ORS 197.797(4)(b). The county also disputes that Exhibit OR-2C contains any new evidence. Instead, the county asserts that any evidence contained in Exhibit OR-2C reflects evidence that was already in the record when the county submitted the document.

Regardless of its opposition to the motion on its merits, the county ultimately asks the Hearings Officer to reject Exhibit OR-2C from the record rather than reopen the record in accordance with the Applicant's request.

Discussion and Decision

The open record periods the Hearings Officer established reflect a common approach to keeping the record open after a hearing. Consistent with ORS 197.797(6)(c), the Applicant correctly

notes that OR-2 was an opportunity for the parties to only respond to evidence and argument submitted during the first open record period. Parties were not permitted to raise new issues during OR-2.

Under this approach, if a party submits material during a second open record period that raises new issues and another party objects, the Hearings Officer has historically remedied the violation by rejecting the material from the record. While this may result in future arguments about whether the Hearings Officer correctly rejected the material at issue, it resolves the concern that an applicant's substantial rights would be prejudiced by not having an opportunity to respond to the new issues.

In this case, the party that submitted the disputed material now requests the Hearings Officer reject that material from the record. In the opinion of the Hearings Officer, granting that request would obviate the need for any response to OR-2C from the Applicant. There would be no issues (new or otherwise) to which it could properly respond, and the Applicant's substantial rights would be preserved. In other words, granting the county's request to reject Exhibit OR-2C would moot the basis for the motion.

As such, the Hearings Officer: (1) grants the county's request and rejects Exhibit OR-2C in its entirety from the record; and (2) denies the Applicant's motion to reopen the record as moot.

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David F. Doughman
Washington County Land Use Hearings Officer
April 18, 2025