



Temporary Use Permit Extension

Community Development
210 East Fourth Street
La Center, WA 98629

Subject: Tapani Temporary Use Permit Extension

Project Description: Type I Extension (**File No. 2023-003-TUP**)

Applicant: Shane Tapani
Tapani Materials
1904 Southeast Sixth Place
Battle Ground, WA 98604

The City's Community Development Division and consulting planner (WSP Inc.) reviewed application materials requesting an extension request for the La Center Rockery Type II temporary use permit originally approved on March 23, 2022 (File No. 2022-005-TUP/SEPA). The applicant is seeking a maximum extension of the temporary use permit, which can be extended up to thirty-six months (three years) from the date of the original approval. According to LCMC 18.265.060(3), Type II temporary use permit extensions are subject to a Type I review process.

Permit Background

Under the original approval, the applicant proposed "The Rockery," a commercial "rockery" business selling landscaping products (rock, bark, soil, etc.) at 31313 Northwest Paradise Park Road, Ridgefield, WA 98642 (PIN: 211226-0000). The landscaping products are stored in bins constructed of eco blocks. The applicant estimates that approximately 50 trips per day occur for material drop off by supplies and pickup by customers. The property is serviced with electric power and water through the Clark Public Utilities District. The existing uses on the site operate on a septic system, but the proposal was approved for use of a portable toilet. A temporary office is established on site. Water service has been extended from the existing water line in Northwest Paradise Park Road. Two to four employees are on site at a time during business hours.

The subject property is 4.42 acres and is zoned Junction Plan (JP). However, the site is vested in the City's Community Commercial (C-2) zone under a 2011 development agreement which expires 15 years after approval or on August 23, 2026. The C-2 zoning standards were repealed by the City in 2017 with the adoption of the Junction Plan, but the proposed landscaping business was reviewed and approved under the vested C-2 zoning standards. While the development agreement vests the site to the C-2 standards (since repealed), it did not vest the property to the other provisions of the 2011 code. For instance, the temporary use permit standards in LCMC 18.265 that apply to the property are the City's currently adopted standards, not the temporary use permit standards from 2011. Prior to the temporary use permit approval, approximately half the site was a gravel lot with two existing structures that remain on site.

The Type II temporary use permit was originally approved (File No. 2022-005-TUP/SEPA) on March 23, 2022 and required to cease after one year unless an extension is filed prior to expiration. The original temporary use permit was reviewed to comply with the following standards and approval criteria: LCMC

Chapter 18.30, Procedures; Chapter 18.150, Commercial Districts; Chapter 18.215, Site Plan Review; 18.265, Temporary Use Permits; 18.300, Critical Areas; 18.310, Environmental Policy; 18.360 Archaeological Resource Protection; Chapter 18.320, Stormwater Erosion Control; and Chapter 3.35, Impact Fees. The permit was approved and subject to conditions of approval as listed on File No. 2022-005-TUP/SEPA.

Subsequent to approval of the Type II temporary use permit, the City updated its temporary use permit code (Ordinance 2022-09). Relevant to the extension request, the City revised the code to allow temporary use permits to exist for up to thirty-six months from the date of the original approval, rather than a total of one year. Therefore, the applicant is requesting, and the subject application is eligible to receive an extension totaling thirty-six months from March 23, 2022, or until March 23, 2025.

Planning Comments

The applicant is approaching one year since approval of the temporary use permit and is seeking an extension that would allow the temporary use permit to exist up to thirty-six months from the date of the original approval. The extension would cease, if approved, on March 23, 2025. Extensions of a Type II temporary use permit, pursuant to LCMC 18.265.060(3), are subject to a Type I review process. Extensions are subject to the following per LCMC 18.30.140 Expiration and extension of decisions:

- (1) Except as otherwise expressly provided by the La Center Municipal Code or the decision in question, decisions made pursuant to this chapter expire two years after the effective date of the decision unless, within that time, the applicant or a successor in interest files an application for an extension of the decision or submits an application for project review or a building permit, or undertakes substantial development of the use authorized by the decision. Approval of a preliminary long plat or short plat shall expire within five years from the date of approval.*
- (2) An application for extension of a decision is subject to a Type I process. An applicant for an extension shall submit the requisite fee, a completed application review form provided for that purpose by the city, and text describing how the application complies with the approval criteria for an extension, and basic facts and other substantial evidence to support the text.*
- (3) The director may approve a single one-year extension of a decision if he or she finds that the relevant facts and the law have not changed substantially since the original approval, or that the application can comply with the law in effect on the date the application for the extension was filed by complying with certain additional and/or modified conditions of approval, and those additional conditions and/or modifications are adopted.*

Finding: As discussed in the permit background, the approval of the temporary use permit (LCMC 18.265) is valid for one year and the applicant has filed an extension of the decision prior to the permit's expiration. The applicant has submitted the requisite fee, a completed application review form, and text describing how the application complies with the approval criteria for an extension. Additionally, an approved Type II temporary use permit may be extended up to a total of thirty-six months from the original approval under LCMC 18.265.060. Since the original approval, the temporary use code has been amended and the extension request shall comply with the following requirements in the updated temporary use permit code contained in LCMC 18.265.050:

- (1) The review authority shall approve or approve with conditions an application for a temporary use permit in any zone if he or she finds the applicant has sustained the burden of proving that:*

- a. *The use is compatible in intensity and appearance with existing land uses that could be approved in the specific zoning district in which it will be located. The temporary use shall be one of the approved, conditional, or limited uses listed in the applicable zone. Intensity shall consider percent of the site placed in impervious surface, structure height, and traffic and parking demand as compared with what could be approved for permanent uses;*

Finding: The application is vested with a development agreement under the C-2 zoning code standards. Both “temporary uses” and retail sales for “lumber and other building materials stores and yards, with only incidental cutting and planting of products” are a permitted use in the zone. Therefore, the use is compatible in intensity and appearance with existing land uses that could be approved in this specific zoning district. This includes the intensity of the site’s impervious surface area, structure height, and traffic and parking demand as determined in the findings of the original approval.

- b. *Structured proposed for the temporary use shall be located within the boundaries of the parcel of land on which they are located and shall comply with the setback and vision clearance requirements and with applicable provisions of the building and fire codes;*

Finding: The proposed structure for the site is a temporary mobile office and is located within the boundaries of the parcel of land. The required setbacks for C-2 zoned properties are pursuant to the buffering and screening standards of LCMC 18.245. Properties to the north are zoned C-2 under the same development agreement and properties to the south are zoned industrial. LCMC 18.245 does not require a buffer between C-2 or industrially zoned properties, therefore, no setbacks apply to the proposed temporary office. The site also complies with vision clearance requirements and applicable provisions of the building and fire code as the temporary office remains in the same location from the original approval.

- c. *The number of parking spaces available to serve the temporary use shall meet the requirements of Chapter 12.280 LCMC and, if applicable, the use does not occupy required off-street parking areas for adjacent or nearby uses;*

Finding: Table 18.280.040 indicates that for a “building materials and lumber store” land use, 0.57 parking spaces are required for every 1,000 square feet of gross floor area. The temporary office building is 300 square feet. Therefore, 0.17 parking spots are required. LCMC 18.280.040(2) states that when parking space requirements result in a fractional calculation, they shall be rounded up to the nearest whole number, therefore, 1 parking space is required on the site. The applicant provided one parking stall and meets this requirement. The use does not occupy required off-street parking areas for adjacent or nearby uses.

- d. *Access to the site is appropriate considering the anticipated volume of traffic resulting from the use;*

Finding: The applicant estimates that approximately 50 trips per day occur for material drop off by suppliers and pickup by customers. Staff determined that access to the site is appropriate

considering the anticipated volume of traffic resulting from the use under the original approval. Conditions have not changed since the original approval that would necessitate a different access arrangement.

- e. Hours of operation of the use are specified and are consistent with the type of use proposed and take into consideration adjacent uses. Temporary uses shall generally operate between the hours of 7:00 a.m. and 8:00 p.m. If there are noise or other off-site adverse impacts, the city may restrict hours of operation to protect adjacent uses;*

Finding: The rockery is in operation from 8:00 a.m. to 4:00 p.m. Monday through Saturday as approved in the original temporary use permit. The rockery is not proposing to alter the hours of operation. The hours of operation of the temporary use are consistent with the type of use. Staff find that these hours adequately take into consideration adjacent uses, which are primarily zoned commercial and industrial properties, including nearby residential uses to the south, which respect early morning and evening needs for quiet.

- f. The use will not cause noise exceeding the limits specified in LCMC 18.245.060 and Chapter 173-60 WAC or light, vibration, smoke, or glare that adversely impacts surrounding land uses and cannot be mitigated by conditions of approval; and*

Finding: The original approval includes findings for noise limits in accordance with LCMC 18.245.060 and WAC 173-60. Noise readings at the site were performed and due to its proximity to Interstate 5 (I-5), the site already exceeded noise limits prior to the temporary use. However, to meet regulatory noise requirements of the State and the City, a condition of approval and SEPA mitigation was placed on the original approval. See condition of approval number 2 below. This condition shall apply for the extension of the temporary use.

- g. Hazardous materials use or disposal associated with the use must comply with applicable federal, state, and local regulations and shall not generate life safety hazards.*

Finding: There are no known hazardous materials use or disposal associated with the use. However, in case of any stormwater or surface water runoff discharge, the applicant is conditioned to comply with the mitigation measures outlined in the letter dated February 28, 2022, from Ecology.

In addition, the applicant must continue to comply with the conditions of approval and SEPA mitigations of the original temporary use permit (File No. 2022-005-TUP/SEPA) approval as follows:

Planning Conditions

1. The applicant will dismantle and remove the temporary use from the site within 48 hours of cessation or convert it to a permanent use.
2. The applicant will: (a) comply with LCMC 18.245.060 for the duration of the temporary use permit; (b) respond within seven calendar days to any noise complaints by obtaining noise

measurements in accordance with WAC chapters 173-58 and 173-60; and (c) modify operations if necessary to comply with maximum permissible noise levels.

3. The applicant will obtain all applicable building permits and approvals, including complying with WAC 51-50-0108.
4. The temporary use permit shall expire one year after the date of the notice of decision, after which time the rockery operation will cease.

Finding: The applicant is applying for an extension request for a temporary use that is currently in operation. This request is to extend the operation of the temporary use until March 23, 2025; therefore, condition of approval number 4 is not applicable. The applicant shall continue to comply with conditions of approval 1, 2, and 3.

5. The applicant will post signage stating the presence of a wetland and a stream and to not disturb the area. Signage will be placed at the edge of the existing graveled area and will be in place during construction and throughout the duration of the temporary use. Signage shall meet City standards in LCMC 18.300.090(2)(n) AND 18.300.090(6)(f).

Finding: The applicant has installed the required signage and shall continue to maintain the posted signage during the duration of the temporary use as conditioned.

6. The applicant must comply with the recommendations of the geotechnical review conducted by NV5 dated January 12, 2022. Material cannot be stored within 20 feet of the top of the slope, and surface water from the rockery activities cannot flow over the face of the slope.

Finding: The applicant has complied and is currently complying with recommendations made by the geotechnical review. Additionally, Staff have verified the applicant is complying with the placement of stored material and surface water restrictions for the use. This condition shall continue to apply for the extension of the temporary use.

7. In the event that any archaeological or historic materials are encountered during project activity, work in the immediate area (initially allowing for a 100-foot buffer; this number may vary by circumstance) must stop and the following actions must be taken:
 - Implement reasonable measures to protect the discovery site, including any appropriate stabilization or covering;
 - Take reasonable steps to ensure confidentiality of the discovery site; and,
 - Take reasonable steps to restrict access to the site of discovery.
 - Notify the concerned Tribes and all appropriate county, city, state, and federal agencies including DAHP and the City of La Center.
8. In the event the applicant fails to adhere to the terms and conditions of this decision, the City has the authority to exercise all rights and remedies reserved to it under LCMC 18.50, Enforcement and Penalties.

Finding: Conditions of approval 7 and 8 are intended to be applicable throughout the duration of the temporary use permit, including the extension. This shall remain in effect as conditioned.

SEPA Mitigation Measures

- Earth: Same as condition of approval number 6 above.
- Water: The applicant is required to comply with the provisions of LCMC 18.300 (critical areas) with regard to mapped fish and wildlife habitat conservation areas and wetlands, including those activities and operations of the proposed use must be located within the existing graded and graveled area to prevent impacts to potential critical areas and buffers.
- Water: The applicant must maintain erosion and sediment control along the northern graveled area of the development to prevent runoff from entering the mapped wetlands and stream.

Finding: The applicant is in compliance with the above earth and water SEPA mitigation measures. The temporary use activities and operations are located within the existing graded and gravel area and is maintaining erosion and sediment control along the northern graveled area. The storage of materials and surface water requirements are in compliance. These mitigation measures shall be:

- Air: While not in operation, all vehicles, including graders, loaders, dump trucks, and customer vehicles, must have engines shut off and must not idle to reduce excess fumes and particulates. In addition, all commercial vehicles must have manufacturer’s emission equipment installed and in proper working order.
- Air: The applicant shall implement standard best management practices such as spraying to prevent dust and particulates from crossing the property line.
- Environmental Health: same as planning condition #2 above.
- Light and Glare: Any lighting used must comply with the requirements of LCMC 18.245.040, must not reflect or cast glare into any residential zone, and must not exceed one foot-candle measured at any property line.
- Historic and cultural preservation: No ground disturbance is permitted due to the site’s location in medium to high-risk areas for encountering archaeological resources.

Finding: These SEPA mitigations are intended to be applicable throughout the duration of the temporary use permit, including the extension. This shall remain in effect as conditioned.

SEPA Mitigation Measures Based on Public Comments

- The applicant will comply with the mitigation measures outlined in the letter dated February 28, 2022, from Ecology.
- The applicant will comply with the mitigation measures outlined in the letter dated February 28, 2022, from CCPH.
- The applicant shall not impede and/or limit access to monitoring wells and probes. This includes ensuring that materials or vehicles do not block access to these areas, ensuring that debris is kept free of the area, and preventing damage to these wells and probes from rockery operations.

Finding: These measures are intended to be applicable throughout the duration of the temporary use permit, including the extension. This shall remain in effect as conditioned.

Public Works and Engineering Comments

- Public Works and Engineering do not have any comments at this time.

Conclusions and Decision

The review authority finds that the applicant has sustained the burden of proving the application complies with the applicable provisions of La Center's Municipal code. Therefore, the subject application is hereby APPROVED subject to the following **conditions of approval**:

1. The applicant shall continue to comply with the original conditions of approval and SEPA mitigations for the temporary use permit through the duration of the extension (File No. 2022-005-TUP/SEPA).
2. The extension of the temporary use shall expire on March 23, 2025, or thirty-six months (three years) from the original approval, after which time the rockery operation will cease.

Signed:  Date: 11/3/23
Bryan Kast, P.E, Public Works Director