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Portland Planning and Sustainability Commission
1900 SW 4th Avenue
Portland, OR 97201

**Re: Expiration Date Extension Project (Proposed Draft April 2020)
Request for Amendments to Extend (1) An Approved Northwest Master Plan and
(2) Nonconforming Development Upgrade “Option 2” Compliance Period**

Dear Portland Planning and Sustainability Commissioners:

We support the proposed Expiration Date Extension Project (“EDEP”) and appreciate the City’s proactiveness during this unprecedented time. We believe that the following two amendments are consistent with the policies and goals of the EDEP:

- 1. Extend an Approved Northwest Master Plan.**
- 2. Extend the “Option 2” Nonconforming Development Upgrade Compliance Period.**

Attached as Exhibit 1 is suggested language for both code amendments.

Extend an Approved Northwest Master Plan

The Con-way Master Plan (aka Slabtown) is an approved Northwest Master Plan (PCC 33.562) that will expire on October 2, 2022. LU 12-135162. Build out of the master plan is not complete,¹ and just like other pending permits, the master plan requires a limited extension to ensure that it is built out as originally intended. The master plan is a comprehensive, interrelated approval that should be built out under the same terms for each block within the master plan, particularly given that critical development entitlements like FAR have been averaged across the entire master plan area and financing of the “jughandle” extension of NW 20th Avenue was based upon the master plan. Additionally, the extension will permit the full build out of the park and remaining blocks in a coherent manner as anticipated by the master plan. Attached as Exhibit 1 is our requested code amendment which will extend the Con-way Master Plan to January 1, 2024.

¹ Our client, XPO Properties Inc. owns three of the undeveloped blocks, Blocks 16, 261 and 262. Block 292E and Block 290 are owned by third parties. The Con-way Master Plan boundary is depicted on Exhibit 2.

Extend the “Option 2” Nonconforming Development Upgrade Compliance Period

A development that triggers nonconforming development upgrades described in PCC 33.258.070.D.2.b (e.g., interior landscaping, bicycle parking) may either upgrade a portion of the site at the time of development (Option 1), or upgrade all required elements across the site over time (Option 2). When Option 2 is selected the compliance period ranges from 2 to 5 years, based upon the size of the site (see Table 258-1), and is reflected in a covenant recorded against the property. The magnitude and expense of the required upgrades depend upon the specifics of the site, and can be significant. In some situations it is not possible to comply with the required upgrades (e.g., the available setback area where landscaping is required is narrower than the required width of landscaping), so an adjustment must be obtained during the compliance period.

COVID-19 related impacts to capital and workplace safety requirements for site development work have made complying with Option 2 nonconforming upgrade requirements during the compliance period uncertain for some of our clients. We request that the Option 2 compliance period be extended to the later of January 1, 2024 or the period include in the Option 2 covenant, which aligns with the extension granted to other land use approvals. Attached as Exhibit 1 is our requested code amendment.

Conclusion

We appreciate the PSC’s consideration of our requested amendments. We look forward to offering testimony and answering questions at the May 26th public hearing. Please include our testimony in the record for EDEP and provide us with notice of the final decision.

Very truly yours,



Dana L. Krawczuk

Exhibits: 1 Proposed Amendments to PCC 33.730.130
 2 Con-way Master Plan Boundary

Exhibit 1: Proposed Amendments to PCC 33.730.130

33.730.130 Expiration of an Approval

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B. When approved decisions expire.

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12. Northwest Master Plan. An exception to the 10 year term of an approved Northwest Master Plan in PCC 33.562.300.H is an approved Northwest Master Plan that is effective on [INSERT EFFECTIVE DATE OF THIS ORDINANCE] shall expire on January 1, 2024, unless the Northwest Master Plan is amended or updated pursuant to PCC 33.562.300.H.

13. Nonconforming Development. An exception to the compliance periods in Table 258-1 and implementing covenants entered into pursuant to Option 2 in PCC 33.258.070.D.2.d(2) for covenants that are effective on July [INSERT EFFECTIVE DATE OF THIS ORDINANCE] 2017, is the compliance period expires the later of January 1, 2024 or the period in the recorded covenant.

Exhibit 2: Con-way Master Plan Boundary

