

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an application by Mark Dane Planning Inc. for) **FINAL ORDER**
a zone change from R-15 to R-10 and a tentative plan for) **Z0051-25-ZC**
a 43-lot subdivision and PUD on a 3.89-acre parcel at 6320) **and Z0052-25-SL**
SE Roethe Road in unincorporated Clackamas County) **(Roethe Road Subdivision)**

A. SUMMARY

1. The applicant, Mark Dane Planning Inc., requests approval of a zone change from R-15 (Urban Low Density Residential, 15,00-square foot minimum lot size) to R-10 (Urban Low Density Residential, 10,000-square foot minimum lot size) and a 43-lot subdivision as a Planned Unit Development (PUD) on a 3.89-acre parcel located at 6320 SE Roethe Road, also known as Tax Lot 00100, Section 07DA, Township 2 South, Range 2 East, WM, Clackamas County, Oregon (the “site”).

a. The site is currently zoned R-15 and developed with a single-family detached residence and associated outbuildings. The site consists of a mix of open field and forest land. The southern portion of the site contains steep (20%-35%) slopes associated with a perennial stream that flows into the site from the southeast corner and exits near the northeast corner of the site and a “diurnal” stream originating near the southwest boundary of the site and joining the perennial stream as shown in the applicant’s “Existing Conditions Plan.” (p. 3 of Exhibit 2a). The northeast portion of the site is identified as a water resource area mapped by the Statewide wetland inventory and included on Comprehensive Plan Map 4-6 as a Resource Protection Open Space area. Therefore, the site must be developed as a PUD.

2. In File No. Z0051-25-ZC, the applicant requests approval to change the zoning of the site from R-15 (Urban Low Density Residential, 15,00-square foot minimum lot size) to R-10 (Urban Low Density Residential, 10,000-square foot minimum lot size).

3. In File No. Z0052-25-SL (SE Roethe Road Subdivision), assuming that the zone change is approved, the applicant requests approval of a tentative plan to divide the northern portion of the site into 43 lots for single-family attached (townhome) dwellings, a 0.06-acre stormwater tract (Tract B), and a roughly 1.1-acre open space tract (Tract A) as a Planned Unit Development (“PUD”). The proposed lots range in size from 1,740 to 3,495 square feet.

a. The applicant proposed to remove all of the existing structures on the site in order to accommodate the proposed development. The applicant will retain the streams and the majority of the steep slopes in proposed open space Tract A. By preserving sensitive areas in Tract “A,” the applicant will utilize the Planned Unit Development (PUD) provisions, that allow flexible lot sizes smaller than the typical minimum lot size requirements in the R-10 zoning district.

b. The applicant will extend SE Roethe Road into the site from its existing terminus at the northwest boundary, near the southwest corner of the site. As proposed, SE Roethe Road will extend into the site along the northwest boundary of the site before intersecting a proposed loop road extending southeast from the north end of the SE Roethe Road extension, then southwest, then northwest to reconnect with the on-site section of SE Roethe Road.¹ The applicant will extend a new public street from the southeast corner of the on-site loop street to the northeast boundary of the site to allow for further extension when the abutting property redevelops. (Exhibit 26).²

c. The Oak Lodge Water Services District (OLWSD) and Clackamas County Service District No. 1, administered by the County Water Environment Services (WES), will provide domestic water and sanitary sewer services, respectively. The applicant proposes to collect storm water from impervious surfaces within the site and direct it to a facility in proposed Tract B for treatment and detention consistent with WES regulations. The applicant will infiltrate the majority of the treated runoff, discharging excess runoff to the on-site perennial stream at less than predevelopment rates.

4. Hearings Officer Joe Turner (the "hearings officer") held a public hearing about the applications. County staff initially recommended denial of the applications due to traffic safety concerns and lack of information regarding solar access. See the Staff Report and Recommendation to the Hearings Officer dated July 3, 2025 (the "Staff Report"). (Exhibit 1). However, after the applicant submitted additional information addressing those issues County staff recommended that the hearings officer approve the application subject to conditions. The applicant accepted the findings and conditions of approval as recommended by County staff. Seven area residents testified orally in opposition to the applications. Other person testified in writing. The principal contested issues in the case include the following:

- a. Whether the County provided adequate notice of the proposed development;
- b. Whether the proposed zone change complies with applicable standards, especially comprehensive plan policy 4.R.3.6 regarding "need for neighborhood livability and variety;"
- c. Whether the proposed development density and the townhome development comply with applicable zoning or conflicts with the "livability of the area;"
- d. Whether traffic generated by this development will exceed the capacity of area streets or create a hazard;

¹ Pursuant to the approved design modification (Exhibit 2h), roads within the site are subject to different standards. Therefore, in order to distinguish these roads, the hearings officer refers to the extension of SE Roethe Road along the northwest boundary of the site as "SE Roethe Road," the streets extending southeast from the on-site section of SE Roethe Road, forming a loop with SE Roethe Road, as the "loop road" or "loop street." and the street stubbed to the northeast boundary of the site as the "stub road."

² Exhibit 26 shows a private street to the site boundary. However, as discussed in the Findings below, the applicant will be required to provide a public street connection in this location.

e. Whether, and to what extent, the applicant is required to provide public street access to the abutting property northeast of the site and whether the applicant can be required to locate this street connection on the northwest boundary of the site;

f. Whether the hearings officer has jurisdiction to review the County's design modification approval;

g. Whether the applicant is required to obtain Fire Marshall approval of a single access prior to preliminary approval;

h. Whether the applicant can be required to construct offsite sidewalks;

i. Whether on-street parking on existing and proposed streets in the area will preclude emergency vehicle access;

j. Whether the utility easement on proposed Lot 12 precludes development on this lot;

k. Whether the applicant is required to preserve additional trees on the site;

l. Whether clearing and development on the site will have prohibited impacts on wildlife;

m. Whether the development complies with the solar access requirements of ZDO 1017, or applicable exceptions to those standards;

n. Whether the site should be developed as a public park;

o. Whether townhomes should be allowed on the site; and

p. Whether the applicant is required to modify or remove the existing culvert carrying water from the Baker's property through the site.

5. Based on the findings provided or incorporated herein, the hearings officer concludes that the applicant sustained the burden of proof that the proposed zone change to R-10 for the entire site is consistent with the relevant Comprehensive Plan policies and that development on the site at an R-10 density can be served by adequate public facilities and services and will not have prohibited impacts on the transportation system. The hearings officer further concludes that the proposed 43-lot PUD subdivision does or can comply with applicable ZDO standards, subject to conditions of approval included in this Final Order. Therefore the hearings officer approves the applications subject to conditions at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the duly noticed public hearing about this application on July 17, 2025. All exhibits and records of testimony have been filed

with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, 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 following is a summary by the hearings officer of selected relevant testimony.

2. County planner Joy Fields summarized the Staff Report and her PowerPoint presentation (Exhibit 27) and responded to neighbors' testimony.

a. She noted that the site is currently zoned R-15. The applicant is requesting approval to rezone the site to R-10 (Z0051-25-ZC). The applicant also requests approval of a planned unit development to divide the site into 43 lots for single-family detached dwellings and tracts for stormwater facilities and open space (Z0052-25-SL).

b. Townhome dwellings are allowed in both the R-15 and R-10 zones with up to 65% lot coverage when proposed as a PUD. No side or rear yard setbacks are required for townhomes, except for a 20-foot rear yard is required for lots abutting the perimeter of the development site. The current R-15 zone would allow the applicant to develop the site with a maximum 32 townhome dwellings. The proposed R-10 zoning would allow 43 townhomes. Therefore, the proposed 43-lot subdivision is dependent on approval of the requested zone change.

c. The Staff Report recommended denial based on transportation safety issues and the applicant's failure to address solar access standards. However, the transportation issues have been addressed based on the findings from County transportation engineering staff (Exhibit 14) and the applicant addressed solar access (Exhibit 17). Therefore, she recommended approval of the application subject to conditions.

i. The applicant will need to provide reasonable access to the proposed open space tract and show such access on the plat.

ii. The site is adjacent to the Oak Lodge Water District and the District stated that it can extend water service to the site to serve the proposed development.

d. ZDO 1007.06 requires street trees on all public streets. Street trees can be provided outside of the right-of-way, on the abutting lots. Condition of approval 2h should be modified to that effect.

3. County transportation engineering division senior planner Kenneth Kent testified that the proposed street stub to the northeast boundary must be developed as a public right-of-way as it is intended to serve additional development on properties to the northeast of the site. The applicant will be required to construct a minimum 20-foot wide street with a sidewalk on one side as a "Urban alternate 1 road." A 20-foot paved width is adequate to accommodate two-way traffic. The County approved a design modification to reduce the width of the road and right-of-way, requiring a 20-foot paved width within a 26-foot right-of-way and a sidewalk located partially within the public utility easement.

a. The applicant is only required to construct SE Roethe Road as a full-width road where it abuts Tax Lot 22E07DA02200 to the northwest, as that property is fully developed and will not complete the roadway. The next property to the north, Tax Lot 22E07DA00200, is large enough to redevelop and construct the remainder of the roadway improvement. Therefore, the applicant can construct SE Roethe Road as a partial-width improvement northeast of Tax Lot 22E07DA02200.

4. Mark Dane testified on behalf of the applicant, Mark Dane Planning Inc. and responded to neighbors' concerns.

a. The applicant will extend a public street to the northeast boundary of the site to allow for further extension when the abutting properties redevelop. The applicant is proposing the narrowest possible street width in order to minimize impacts to the steep slopes and streams in the southern portion of the site. In addition, a wider road width would require more grading and retaining walls on the property to the northeast.

b. The proposed loop road will allow emergency vehicles to turnaround on the site.

c. There is no room for a sidewalk on the north side of SE Roethe Road northeast of Tax Lot 22E07DA02200. The applicant will extend SE Roethe Road into the site as a 32-foot wide road abutting Tax Lot 22E07DA02200. Once the road extends past Tax Lot 22E07DA02200 it will taper to a partial width roadway that can be widened to a full width road with sidewalk on both sides when the abutting property northwest of the site (Tax Lot 22E07DA00200) redevelops. The applicant's goal is to match the existing curb and sidewalk on existing SE Roethe Road abutting the site. Therefore, there may not be room for street trees on the full-width section of SE Roethe Road.

d. The development will preserve all of the existing trees within the proposed open space Tract A. The applicant will remove most of the trees within the remainder of the site in order to develop the site as proposed.

e. The applicant is proposing the maximum number of on-street parking spaces possible. However, the 20-foot wide lots with 12-foot driveways will limit on-street parking for those street sections with front entry homes. The lots in the center of the loop street will have alley access, which will allow on-street parking in front of the lots. On-street parking will also be available on both sides of the full-width portion of SE Roethe Road on the site.

f. He noted that this development will provide street stubs to the northwest and northeast; therefore, it will not create a "closed end street" in violation of ZDO 1007.02(C)(2). The proposed street widths will allow for two ten-foot travel lanes sufficient to allow oncoming vehicles to pass.

g. This development will not impact trees on the Bakers' property as the rear yards of proposed Lots 36-43 will abut their land. In addition, the Bakers' driveway is located on the north boundary of their property, abutting the site.

h. The culvert noted by Mr. Baker is an existing condition, it was installed 40 to 50 years ago and currently functions as intended. No changes are proposed to that culvert and drainageway with this development.

5. Jeff Vanderdasson appeared on behalf of Majestic Investments LLC and Macher Development, the owners of the abutting properties northeast of the site and summarized his written testimony, Exhibit 6. He noted that the two parcels to the northeast of the site were approved with “shadow plats” for 14 additional lots. Recent Code changes allowing middle housing could increase the number units that could be built on those parcels. A third lot northeast of the site may also have some development potential. All of those lots will require access via the proposed street stubbed to the northeast boundary of the site. Therefore, wider roadways should be required to accommodate all potential development on land to the northeast of the site. An “Urban alternate 1 road” requires a 26-foot paved width within a 48-foot right-of-way. Therefore, the stub road to the northeast boundary of the site should be constructed to that standard consistent with County road detail C-110. He requested the hearings officer hold the record open to allow additional written testimony.

6. Jerry Jones testified on behalf of Macher Development. He testified that he and Jim Pence own properties northeast of the site and want to ensure that this development preserves their ability to develop their lands. Road access through the site is necessary to allow their development. The proposed 20-foot paved width and 26-foot right-of-way are not adequate to serve future development to the northeast.

a. He argued that the proposed zone change is inconsistent with the character of the surrounding area.

7. Sandra Baker testified that she is in the process of moving into her recently completed “dream home” south of the site. The County did not inform them during the construction review process for their home that this site could be developed as proposed; they would not have built their home if they had known about this development. She objected to the proposed tree removal on the site, the dust, noise, and other impacts that will occur from construction on this site, and the volume of traffic that this development will generate.

a. She argued that the development violates ZDO 1007.02(C)(2), which prohibits closed end streets in excess of 200 feet and serving more than 25 homes. SE Roethe Road already serves 15 homes. Adding 43 additional homes will violate this provision and create a safety hazard. Emergency vehicles will be unable to pass if cars are parked on the proposed narrow streets. Most people use their garages for storage, which will increase the demand for on-street parking. On-street parking will be limited to roughly 25 spaces.

b. The proposed clearing and grading on this site will impact the trees on her property, damaging the roots and increasing wind impacts. It will also eliminate habitat for coyotes, rabbits, squirrels, birds, and other wildlife. The site is a “critical habitat corridor.”

c. Housing Goal 3 of the comprehensive plan should address the needs of the people who already reside in the area.

8. John Baker testified that there is a ravine in the backyard of their property, however the on the site portion of that ravine has been filled with asphalt and dirt and an eight-inch culvert installed to carry water from his property into the on-site stream. The culvert is “not in great shape.” If the culvert fails stormwater will pond in his backyard. The on-site portion of the ravine should never have been filled. The culvert should be removed and restored to its historic condition.

9. Mick Watson testified that his property north of the site (Tax Lot 22E07DA00200) is served by a deeded easement over the site. He questioned how he will continue to access his property during construction, when the applicant extends SE Roethe Road into the site, as the proposed SE Roethe Road extension will replace the existing driveway on the site.

10. Robin Belozar argued that this development is likely to generate a significant increase in traffic on SE Wills Way, as it provides the first street connection to SE Oetkin Road, which provides the most direct access SE Oatfield and Thiessen Roads. As proposed, SE Roethe Road will be a dead-end road, so all residents of the site must travel south on Roethe to reach their destinations. There are speed bumps on SE Norma Road and severe potholes on SE McNary Road that will discourage use of these roads. There are no speed bumps on SE Wills Way, so drivers are likely to use that road as the fastest route to Oatfield. The volume of traffic on SE Thiessen Road makes it difficult to access that street. Speeding is a problem under existing conditions and many drivers ignore stop signs. This development will make things worse, exacerbating the hazard for pedestrians and children. The applicant should be required to provide a second street access to the site.

11. Lisa Lauder agreed with the prior witnesses testimony and the need for a secondary street access.

12. At the end of the public portion of the hearing, the hearings officer ordered the public record held open for one week, until July 24, 2025, to allow all parties an opportunity to submit new evidence and testimony. The hearings officer held open the record for a second week, until July 31, 2025, to allow all parties an opportunity to respond to whatever was submitted during the first week, and for a third week, until August 7, 2025, to allow the applicant to submit a final argument. The record in this case closed at 5:00 p.m. August 7, 2025. Exhibits 27-36 were submitted during the open record period.

C. DISCUSSION

Procedural Issues:

1. The second week of the open record period was limited to responses to whatever was submitted during the first week. The applicant's second period submittal (Exhibit 36) included summaries of conversations the applicant had with various neighbors. However, those summaries exceed the scope of this open record period as they do not relate to any issues raised during the first open record period. Therefore, the portion of Exhibit 36 starting with the paragraph beginning "Over the last week I have met with..." and ending with the paragraph beginning "They also mentioned their concern about residents using the open space tract,..." must be excluded from the record.

Public Notice:

2. The hearings officer finds that the County provided adequate notice of the hearing. The County mailed notice of this application and public hearing to the applicant, the neighborhood association, property owners within 300 feet of the site, and other agencies as required by ZDO 1307.11(A). The County is not required to provide notice to the owners of properties located outside of the 300-foot radius notice area and the hearings officer cannot require notice in excess of Code requirements.

3. The County was not required to notify the Bakers of this potential development on this site during the process of reviewing development on their property. Property owners are expected to perform their own due diligence to determine the type and extent of development that can occur on surrounding properties. Although the proposed zone change will increase the total number of homes on this site, townhomes are a permitted use in the existing R-15 zone.

The Zone Change Application

3. The first application considered in this Final Order is the requested zone change from R-15 to R-10. Section 1202 of the Clackamas County Zoning and Development Ordinance lists the criteria that must be addressed in order to allow this zone change. The hearings officer adopts the following findings with respect to these criteria.

ZDO SECTION 1202 ZONE CHANGES

1202.01 PURPOSE AND APPLICABILITY

Section 1202 is adopted to provide standards, criteria, and procedures under which a change to the zoning maps (hereinafter referred to as a zone change) may be approved.

Finding: Purpose statements are not applicable approval standards with which the applicant is required to demonstrate compliance. The goals set out in the purpose statements are achieved through compliance with the implementing regulations and approval criteria. The purpose statements themselves are not relevant unless they include specific approval criteria or the implementing regulations that follow are ambiguous, and resort to the purpose statements is necessary to determine the context and meaning of ambiguous terms. *See, e.g., Beck v. City of Tillamook*, 18 Or LUBA 587 (1990) (Purpose

statement stating only general objectives is not an approval criterion). **This criterion is inapplicable.**

1202.02 SUBMITTAL REQUIREMENTS

In addition to the submittal requirements identified in Subsection 1307.07(C), an application for a zone change shall include a site plan of the subject property showing existing improvements, and a vicinity map showing the relationship of the subject property to the surrounding area. An application for a zone change to NC District also shall include:

- A. The requirements listed in Subsection 1102.02;*
- B. A vicinity map, drawn to scale, showing the uses and location of improvements on adjacent properties and properties across any road; and*
- C. A site plan, drawn to scale, showing the following:*
 - 1. Property dimensions and area of property;*
 - 2. Access to property;*
 - 3. Location and size of existing and proposed improvements showing distance from property lines and distance between improvements;*
 - 4. Location of existing and proposed parking; and*
 - 5. Location of existing and proposed pedestrian and bicycle facilities, including pedestrian rest and gathering areas.*

Finding: The applicant provided an application with the above information through submittals on February 5, 24, and 27 and March 4 and 6, 2025. Additional information was then provided on March 20, June 11, 12, 19, and 24, 2025 to augment the original submittals. (Exhibits 2 through 2m). The applicant submitted additional traffic analysis on July 15, 2025 (Exhibit 22) and a revised plat on July 16, 2025 (Exhibit 26). **These criteria are met.**

1202.03 GENERAL APPROVAL CRITERIA

A zone change requires review as a Type III or IV application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

Finding: The application is being reviewed as a Type III application pursuant to Section 1307. **This criterion is met.**

- A. The proposed zone change is consistent with the applicable goals and policies of the Comprehensive Plan.*

The RESIDENTIAL section of Chapter 4 (Land Use) of the Comprehensive Plan provides, in relevant part:

This section of the Land Use Chapter primarily addresses the location and density of housing. Chapter 6, Housing, establishes policies for other aspects of housing such as structure type, affordability, and design.

Low Density Residential areas are those planned primarily for single-family residential and middle housing development, with a range of lot sizes from 2,500 square feet to 30,000 square feet, depending on location, environmental constraints, and other site characteristics.

...

Finding: The site and all surrounding properties are designated Low Density Residential on Comprehensive Plan Map 4-6. Both the existing R-15 and proposed R-10 zoning implement the Low Density Residential designation. The proposed R-10 zoning is consistent with this section. **This criterion is met.**

Chapter 4 provides of the Comprehensive Plan provides the following residential goals:

RESIDENTIAL GOALS

- *Provide opportunities to enhance neighborhoods with more diverse and affordable housing types and neighborhood-scale commercial uses.*
- *Provide for a variety of living environments.*
- *Provide for development within the carrying capacity of hillsides and environmentally sensitive areas.*
- *Provide opportunities for those who want alternatives to the single-family house and yard.*
- *Provide for lower-cost, energy-efficient housing.*
- *Provide for efficient use of land and public facilities, including greater use of public transit.*

Finding: Townhomes, which are permitted in both the existing R-15 and proposed R-10 zoning, increase the variety of living environments, provide for lower-cost housing, and increase the efficient use of land and public facilities by increasing the number of homes that can be provided on a particular parcel. The proposed R-10 zone will allow the site to be developed with more townhome units, which will increase compliance with these goals. The proposed R-10 zoning is consistent with these goals. **This criterion is met.**

- *Provide for development within the carrying capacity of hillsides and environmentally sensitive areas.*

Finding: There are steep slopes and environmentally sensitive areas (streams) in the southeast portion of the site. However, the proposed preliminary plat demonstrates that it is feasible to develop the upland portions of the site while preserving the majority of the steep slopes and all of the stream buffers in an undisturbed open space tract. The site contains areas mapped as Resource Protection Open Space. However, this same designation, as well as “Major Hazard Open Space” appears on R-10 zoned lands to the north and east. The proposed development will retain the steep slopes and

environmentally sensitive areas in Tract A. The proposed R-10 zoning is consistent with these goals. **This criterion is met.**

Section 4.R.3 provides the following relevant Low Density Residential Policies:

Zoning of Immediate Urban Low Density Residential areas and conversion of Future Urban areas to Immediate Urban Low Density Residential shall include zones of 2,500; 5,000; 7,000; 8,500; 10,000; 15,000; 20,000, and 30,000 square feet (R-2.5 through R-30). The following factors guide the determination of the most appropriate zone:

4.R.3.1 Physical site conditions such as soils, slope, and drainage:

4.R.3.1.a Land with soils subject to slippage, compaction or high shrink-swell characteristics shall be zoned for larger lots.

Finding: As noted in the Staff Report, “larger lots” include the R-10 to R-30 Urban Low Density Residential designations and “smaller lots” include the R-2.5 to R-8.5 designations. According to Oregon Department of Geology and Mineral Industries (DOGAMI) Bulletin No. 99 Geologic Hazards Map, Lake Oswego and Gladstone Quadrangle dated 1979, there are no identified soils on the site subject to slippage, compaction or which have high shrink-swell characteristics. The proposed R-10 zoning is consistent with this sub-policy. **This criterion is met.**

4.R.3.1.b Land with slopes of:

- Less than 20 percent shall be considered for the R-2.5 through R-8.5 zoning districts.*
- 20 percent and over shall be considered for the R-10 through R-30 zoning districts.*

Finding: Based on the applicant’s topographic survey, 25% (0.96 acres) of the 3.89 acre site contains slopes between 20 and 50%. Slopes on the remaining 2.93 acres are less than 20%. The proposed R-10 zoning is consistent with this sub-policy. **This criterion is met.**

4.R.3.1.c Land with hydrological conditions such as flooding, high water table or poor drainage shall be zoned for larger lots.

Finding: Based on FEMA flood insurance rate maps, the site is not susceptible to flooding and not located within a regulatory floodplain. The proposed R-10 zoning is consistent with this sub-policy. **This criterion is met.**

4.R.3.2 Capacity of facilities such as streets, sewers, water, and storm drainage systems.

Finding: Based on the expert testimony of county engineering staff, streets in the area have sufficient capacity to accommodate additional traffic generated by the maximum development allowed by the proposed R-10 zoning. There is no substantial evidence to

the contrary. Neighbors' unsupported concerns that traffic will exceed the capacity of area roadways is not sufficient to overcome the expert testimony of engineering staff. Traffic issues are discussed in more detail in relation to ZDO 1202.03(C) below.

The water and sanitary sewer providers for the area submitted Preliminary Statements of Feasibility stating that these systems have adequate capacity to serve the maximum development allowed by the proposed R-10 zoning. Clackamas County Service District No. 1, the surface water management services provider and regulatory agency for this area, determined that storm drainage systems are adequate.

The proposed R-10 zoning is consistent with this sub-policy. **This criterion is met.**

4.R.3.3 Availability of transit: Land within walking distance (approximately one- quarter mile) of a transit stop should be zoned for smaller lots implemented by the R-2.5, R-5, R-7, and R-8.5 zoning districts.

Finding: The nearest transit stop is located roughly one-mile from the site. Therefore, "smaller lot" zoning implemented by the R-2.5, R-5, R-7, and R-8.5 zoning districts is not appropriate for this site. The proposed R-10 zoning is consistent with this sub-policy. **This criterion is met.**

4.R.3.4 Proximity to jobs, shopping, and cultural activities: Areas in proximity to trip generators shall be considered for smaller lots implemented by the R-2.5, R-5, R-7, and R-8.5 zoning districts.

Finding: Neither the applicant nor staff addressed this criterion. Based on the hearings officer's review of GoogleMaps, the nearest commercial uses are located on McLoughlin Boulevard and near the intersection of Thiessen and Webster Roads, both of which are more than one-mile from the site. Therefore, "smaller lot" zoning implemented by the R-2.5, R-5, R-7, and R-8.5 zoning districts is not appropriate for this site. The proposed R-10 zoning is consistent with this sub-policy. **This criterion is met.**

4.R.3.5 Location of 2,500- and 5,000-square-foot lots: Location of 2,500 and 5,000 square foot lots, implemented by the R-2.5 and R-5 zoning districts, may be allowed in Corridor design type areas and where permitted by Community and Design Plans located in Chapter 10.

Finding: The applicant is not proposing R-2.5 or R-5 zoning. **This criterion is inapplicable.**

4.R.3.6 Need for neighborhood livability and variety: Areas that have historically developed on large lots where little vacant land exists should remain zoned consistent with the existing development pattern. Otherwise, unless physical or service

problems indicate to the contrary, areas of vacant land shall be zoned for lots of 8,500 square feet or smaller.

Finding: As the applicant notes, the site is an area where the zoning transitions from predominantly R-10 to predominantly R-15 zoning; the site and abutting lands to the north and west of the site are zoned R-10 while lands to the northeast and southeast are zoned R-15. Based on the County's North Urban Area Zoning Map, much of the surrounding property that is currently zoned R-15 has been developed with larger lots. However, although there is little land in the area that is completely "vacant," many the large lots in the area could be redeveloped under the current zoning, including with townhomes or other types of "middle housing" that are allowed in all of the County's low density residential zones. As the applicant notes, this area has been planned and zoned for urban low density residential use for at least 50 years and the Comprehensive Plan policies used to determine appropriate zoning designations and density of development have changed over that period, particularly since 1980 when the current policies in Chapter 4 of the Plan were adopted. Several properties in the area have been rezoned to higher densities since those changes occurred.

As noted above, there are areas of steep slopes in the southern portion of the site, but roughly 75% of the site includes slopes of less than 20%, therefore, "physical problems" do not weigh against the proposed rezone.

As discussed above, adequate public services are available to serve the maximum development allowed by the proposed R-10 zoning.

The proposed R-10 zoning is consistent with this sub-policy. **This criterion is met.**

4.R.3.7 *Density average: To achieve an average of 7,500 square feet or less per lot in low density Future Urban areas when conversion to Immediate Urban low density residential occurs, the R-10 zone shall be limited to areas with 20 percent slope and greater. Flexible-lot-size land divisions and other buffering techniques shall be encouraged in those areas immediately adjacent to developed subdivisions with lots of 20,000 square feet or more to protect neighborhood character, while taking full advantage of allowed densities.*

Finding: The site is not located in a Future Urban area. **This criterion is inapplicable.**

4.R.1 *Allow the following housing types:* 4.R.1.4
...
4.R.1.4 *Middle housing*
...

- 4.R.5.1 *Establish special development criteria and density standards in the following areas (see Policy 3.L.6 in the Natural Hazards section of Chapter 3, Natural Resources and Energy):*
- ...
- 4.R.7 *Encourage retention of natural landscape features such as topographic variations, trees, and water areas, and allow variation in housing type and design.*

Finding: The hearings officer finds that zone change applicants are only required to address the policies in Section 4.R.3, as these are the “[f]actors [that] guide the determination of the most appropriate zone:” (Policy 4.R.3). Policies 4.R.8 through 4.R.17, cited by staff, are not rezoning criteria. These policies apply to subdivisions and planned unit developments, not zone change proposals, and are implemented through the County’s zoning code and development procedures. Compliance with the County’s adopted zoning and development regulations will ensure future development on the site is consistent with these policies.

Based on the above findings, the hearings officer finds that the proposed zone change is consistent with the applicable goals and policies of the Comprehensive Plan. **This criterion is met.**

- B. If development under the proposed zoning district designation has a need for any of the following public services, the need can be accommodated with the implementation of the applicable service provider’s existing capital improvement plan: sanitary sewer, surface water management, and water. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.*

Finding: The applicant provided preliminary statements of feasibility from Water Environment Services indicating that sanitary sewer and surface water management were feasible as long as the development was conditioned to meet all applicable WES rules and standards and DEQ water quality requirements. Oak Lodge Water Services indicated that with the improvements completed by the developer, or the system owner, the water system has adequate capacity to source, supply, treat and distribute the needed water. **This criterion is met.**

- C. The transportation system is adequate and will remain adequate with approval of the proposed zone change. For the purpose of this criterion:*
- 1. Adequate means a maximum volume-to-capacity ratio (v/c), or a minimum level of service (LOS), as established by Comprehensive Plan Tables 5-2a, Motor Vehicle Capacity Evaluation Standards for the Urban Area, and 5-2b, Motor Vehicle Capacity Evaluation Standards for the Rural Area.*

2. *The evaluation of transportation system adequacy shall be conducted pursuant to the Transportation Planning Rule (Oregon Administrative Rules 660-012- 0060).*
3. *It shall be assumed that the subject property is developed with the primary use, allowed in the proposed zoning district, with the highest motor vehicle trip generation rate.*
4. *The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards.*
5. *The adequacy standards shall apply to all roadways and intersections within the impact area of the proposed zone change. The impact area shall be identified pursuant to the Clackamas County Roadway Standards.*
6. *A determination regarding whether submittal of a transportation impact study is required shall be made based on the Clackamas County Roadway Standards, which also establish the minimum standards to which a transportation impact study shall adhere.*
7. *Notwithstanding Subsections 1202.03(C)(4) through (6), motor vehicle capacity calculation methodology, impact area identification, and transportation impact study requirements are established by the ODOT Transportation Analysis Procedures Manual for roadways and intersections under the jurisdiction of the State of Oregon.*

Finding: A transportation impact study was not required for this application, because the maximum development allowed under the proposed R10 zoning would not generate more than 20 peak hour vehicle trips at any intersection, which is the Clackamas County Roadway Standards condition for requiring a transportation impact study. (Section 295.2(b) of the Clackamas County Roadway Standards).

The applicant provided a draft (Exhibit 2c) trip generation analysis of the subdivision that assumed up to 48 lots for townhomes would be included, although the final proposal only includes 43 lots. The final signed trip generation analysis by ARD Engineering (Exhibit 2e) looked at the number of trips generated by the proposed development and the impact for the six nearby intersections. The intersections of potential concern were identified by Clackamas County staff. The analysis by ARD Engineering found that a 48-lot townhome development will add 22 additional trips to the morning peak hour, 26 trips during the evening peak hour and generate an overall increase of 336 average daily trips. Accordingly, the traffic engineer found that the impact of the proposed development on the area intersection would be minimal/negligible.

The analysis by ARD states:

Approval of a zone change to R10 for the entire 3.88-acre property would result in a net increase of up to 9 AM trips, 10 PM trips, and 128 daily trips as compared to the current development potential under the existing R15 zoning. The total increase in site trips is roughly half of the 20-peak-hour trip threshold that Clackamas County typically uses to determine whether a detailed operational analysis is required."

(Exhibit 2e at 3).

And the report included the following findings for compliance with *Oregon Administrative Rules 660-012- 0060*:

No changes are proposed to the functional classification of existing or planned transportation facilities....No changes are proposed to the standards implementing the functional classification system...The proposed zone change is from one residential zoning type to another. The vehicle types that will access the site are similar under either zoning scenario. As such, the proposed zone change will not result in types or levels of travel or access that are inconsistent with the functional classification of any existing or planned transportation facility.

Under the reasonable worst case development scenario, a zone change from R15 to R10 on the subject property would result in no more than 6 added peak-hour trips at any of the intersections of potential concern that were identified by Clackamas County. This is one quarter of the traffic level which triggers the need for a detailed operational analysis. Since the actual impact of a more limited zone change on the property would be even less than the impact analyzed herein, the change from R15 to R10 zoning is not projected to degrade the performance of any existing or planned transportation facilities.

Based on the analysis, the proposed change from R-15 to R-10 zoning on the subject property is not projected to degrade the performance of any existing or planned transportation facilities, and the zone change meets the requirements of Oregon's Transportation Planning Rule."

(Exhibit 2e at 4-5).

Clackamas County Transportation Engineer, Christian Snuffin reviewed the analysis and found:

The analysis appears to adequately address the requirements of the Transportation Planning Rule (OAR 660-012-0060) and demonstrates that the proposed zone change would not result in a significant effect on area transportation facilities from an operational perspective. This conclusion also serves to implicitly address ZDO Section 1202.03(C), which requires a determination of whether the amendment will significantly affect a transportation facility as defined in the TPR.

There is no equally probative evidence to the contrary. **This criterion is met.**

(Exhibit 5).

D. Safety of the transportation system is adequate to serve the level of development anticipated by the proposed zone change.

Finding: The applicant provided a technical memorandum, dated July 9, 2025, evaluating the safety of the transportation system. (Exhibit 14). The memorandum reviewed crash data and found that the segment of SE Roethe Road that would receive more than 20 peak hour trips, between the site and SE Wills Way, had no reported crashes. The memorandum indicated there are no significant safety concerns and recommended no specific safety mitigations. Engineering staff reviewed the traffic memorandum and concurred with the findings. (Exhibits 5 and 13).³ Development allowed by the proposed zone change will increase the volume of traffic on streets in the area. That increased traffic will be perceptible to area residents, but it will not exceed the capacity of those streets or otherwise create a hazard, based on the expert testimony of County engineering staff.

Opponents argued that the additional traffic from this development will overwhelm the existing transportation system and create a hazard. However, they failed to provide any evidence to support these assertions. There is no dispute that the roads in the area need maintenance. However, that is a common issue throughout the County and does not impact the safety or capacity of those roads. There is no evidence that traffic generated by this residential development will generate more damage than existing traffic. The existing roads provide adequate room for oncoming vehicles to pass each other. Vehicles parked on the sides of these streets may restrict the available width and limit access, especially for larger vehicles, including fire trucks and other emergency vehicles. (See Exhibits 31, 31a, and 31b). However, the vehicles shown in these exhibits appear to be parked illegally, in violation of Section 7.01.020.F of the Clackamas County Code, which provides “No vehicle shall be parked upon any County roadway in a manner such that less than 18 feet of unobstructed roadway width is left available for the passage of other vehicles.” The County Roadway Standards limit on-street parking to one side of streets with 26 feet of pavement and prohibit on-street parking on narrower streets. (See Comprehensive Plan Figure 5-1d, footnotes 4 and 5). Compliance with applicable parking regulations will ensure that sufficient pavement remains available for these types of vehicles to travel on area roads. Reasonably prudent drivers will observe the applicable traffic and parking regulations. Unfortunately, not all drivers are prudent. However, there is no evidence that the zone change and development proposed in this application will contribute a disproportionate share of imprudent drivers.

This development will increase the volume of traffic on streets in the area. That increased traffic will be perceptible to area residents. However, County engineering staff determined that it will not exceed the capacity of streets nor create a hazard. There is no substantial evidence to the contrary. Neighbor’s unsupported concerns about increased traffic are not substantial evidence sufficient to overcome the expert testimony of the traffic engineers for the County and the applicant.

³ The hearings officer notes that the exhibit numbers are not in chronological order. The Ard Engineering memo is dated July 9, 2025, and listed as Exhibit 14 and Exhibit 22. Engineering staff’s memo is dated July 10, 2025, and listed as Exhibit 13.

The additional traffic generated by the proposed development may pose an increased risk for drivers, cyclists, and pedestrians in the area. Higher vehicular traffic volume creates a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. However, those risks are consistent with the location of the site in the urban area where County plans call for the sort of development being proposed. Reasonably prudent drivers will observe the posted speed limit and other applicable traffic regulations and there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers. If necessary, the County can address issues of speeding by providing increased enforcement of traffic laws on all streets in the area, or installing traffic calming measures on area roads, if warranted based on actual traffic conditions. Area residents can petition the County to install traffic calming measures on area streets. However, speeding is an existing problem, which the applicant cannot be required to remedy.

This criterion is met.

OPPONENT ARGUMENT

Ms. Baker argued that the comprehensive plan should address the needs of the people who already reside in the area. The hearings officer encourages Ms. Baker to raise this issue with the Board of County Commissioners and Planning Commission as they have the authority to modify the comprehensive plan. However, this application is subject to the comprehensive plan provisions that were in effect when this application was filed.

1202.04 NC DISTRICT APPROVAL CRITERIA

If the application requests a zone change to NC District, approval of the zone change shall include approval of a specific use for the subject property, including a specific site development plan. A. In addition to the standards and criteria in Subsection 1202.03, a zone change to NC District shall be subject to the following standards and criteria:

Finding: The applicant is not requesting a zone change to or from an NC District. **This criterion is not applicable.**

1202.05 ALTERNATE ZONING DISTRICT DESIGNATION

An application for a zone change may include a request for the approval of an alternate zoning district designation if it is found that the applicant's preferred designation does not comply with the approval criteria but the alternate designation does.

Finding: The application did not include a request for the approval of an alternate zoning district designation. **This criterion is not applicable.**

Summary: The hearings officer understands neighbors' objections and their desire that this neighborhood remain unchanged. These concerns are relevant to Comprehensive Plan

Policy 4.R.3.6. However, this and other policies encourage higher density zoning except in “areas that have historically developed on large lots where little vacant land exists...” As discussed above, although there is little “vacant” land in the area, i.e., land that is completely devoid of development, there are many lots in the area that are large enough to accommodate additional development. Many of the neighbors’ objections relate to the proposal to develop townhomes on the site. However, townhomes are permitted in all low density residential zones, including the current R-15 zoning. Based on the above analysis, the hearings officer finds that the proposed zone change is consistent with the current Comprehensive Plan’s support for higher density development and the proposed zone change from R-15 to R-10 the complies with the applicable approval criteria and should be approved.

The hearings officer approves the proposed zone change to R-10 for the entire 3.89-acre site.

The Subdivision Application.

4. This application is subject to Sections 315, 1001, 1002, 1003, 1006, 1007, 1010, 1011 1012, 1013, 1015, 1017, 1103, 1105 and 1307 of the Clackamas County Zoning and Development Ordinance (ZDO). The Hearings Officer has reviewed these sections of the ZDO in conjunction with this proposal and makes the following findings:

ZDO SECTION 315 URBAN LOW DENSITY RESIDENTIAL

Finding: ZDO 315, Urban Low Density Residential, sets forth allowable uses in Tables 315-1 as well as dimensional standards specifically listed in Table 315-2. Attached single-family (townhome) dwellings, the primary use proposed with this subdivision and PUD, are permitted in the R-10 and R-15 zones. Since this proposal also includes a PUD, lot sizes can be varied, and setback standards and lot coverage standards can be reduced. The proposed lots comply with the minimum dimensional standards of ZDO Table 315-2, as modified through the PUD approval. The County building department will ensure compliance with the setback, height, and other standards in Table 315-2 through the building permit review process.

There is a 20-foot wide utility easement on the northwest boundary of proposed Lot 12. However, as shown in Exhibit 26, this lot is 40.34 feet wide, allowing 20.34 feet of developable area outside of the easement, which is sufficient to allow construction of a townhome on that portion of the lot without impacting the easement.

The code does not prevent the applicant or future owners from selling lots or homes to individuals or investment companies for use as rental properties. Such restrictions could result in constitutional violations. The proposed development will attract additional people to the immediate area, which may increase the amount of trespass, litter, vandalism, and other illegal activities. However there is no substantial evidence in the record that the future residents of this development, whether property owners or renters, are any more or less likely to engage in nuisance or illegal activities than other people.

These criteria are met as conditioned.

ZDO SECTION 1105 SUBDIVISIONS, PARTITIONS, REPLATS, MIDDLE HOUSING LAND DIVISIONS, CONDOMINIUM PLATS, AND VACATIONS OF RECORDED PLATS

1105.01 PURPOSE AND APPLICABILITY

Section 1105 is adopted to provide standards, criteria, and procedures under which a subdivision, partition, replat, middle housing land division, condominium plat, or vacation of a recorded plat may be approved, except:

- A. In the EFU, TBR, and AG/F Districts, land divisions that are approved pursuant to Subsections 401.09, 406.09, or 407.08, respectively, are exempt from review pursuant to Section 1105. However, all subdivisions, as well as all partitions containing any parcel of 80 acres or smaller (based on the best available records), require completion of a final plat pursuant to Subsection 1105.11; and*
- B. Subdivisions for cemetery purposes pursuant to Oregon Revised Statutes Chapter 97 are exempt from Section 1105.*

Finding: The applicant is proposing a subdivision of one 3.89 acre property into 43 lots for a townhouse development. The underlying zone is proposed as R-10 and is an Urban Low Density Residential designation. **These criteria are met.**

1105.02 GENERAL SUBMITTAL REQUIREMENTS FOR SUBDIVISIONS, PARTITIONS, REPLATS, AND MIDDLE HOUSING LAND DIVISIONS

1105.03 ADDITIONAL SUBMITTAL REQUIREMENTS FOR SUBDIVISIONS, PARTITIONS, AND REPLATS

Finding: The applicant submitted the materials required for a subdivision, a zone change, a PUD and an open space review. **These criteria are met.**

1105.04 ADDITIONAL SUBMITTAL REQUIREMENTS FOR MIDDLE HOUSING LAND DIVISIONS

Finding: The applicant is not proposing a middle housing land division. **These criteria are not applicable.**

1105.05 APPROVAL CRITERIA FOR SUBDIVISIONS, PARTITIONS, AND REPLATS

A major subdivision requires review as a Type III application pursuant to Section 1307, Procedures. A minor subdivision or a partition requires review as a Type II application pursuant to Section 1307. A replat of property partially or wholly in the AG/F, EFU, or TBR District, or that proposes to increase the number of lots or parcels in

the recorded subdivision or partition plat, requires review as a Type II application pursuant to Section 1307. Otherwise, a replat requires review as a Type I application pursuant to Section 1307. A subdivision, partition, or replat shall be subject to the following standards and criteria:

- A. The proposed subdivision, partition, or replat shall comply with the applicable provisions of the section of this Ordinance that regulates the subject zoning district and Section 1000, Development Standards.*

Finding: The applicant is proposing a major subdivision that is being reviewed as a Type III land use decision pursuant to Section 1307. Section 1000 is evaluated below. **These criteria are met.**

- B. In an Urban Low Density Residential District, the applicant may designate the proposed subdivision, partition, or replat as a zero-lot-line development. In a zero lot-line development, there are no minimum rear and side setbacks for single-family dwellings, manufactured homes, and structures accessory to single-family dwellings and manufactured homes, except from rear and side lot lines on the perimeter of the final plat.*

Finding: The applicant indicated in the application that they are proposing a zero lot-line development with no side setbacks, except where side lot lines abut the perimeter of the site. **This criterion is met.**

- C. As part of preliminary plat approval for a subdivision, approval of a phasing plan and schedule to allow final plat review to occur in two or more phases, each of which includes a portion of the subject property, may be granted in consideration of such factors as the size of the proposed subdivision, complexity of development issues, required improvements, and other factors deemed relevant. If a phasing plan and schedule is approved, such approval shall be subject to the following.*

Finding: The applicant indicated in the application that they are proposing a single phase of development. **This criterion is inapplicable.**

- D. A nonprofit, incorporated homeowners association, or an acceptable alternative, shall be required for ownership of, improving, operating, and maintaining common areas and facilities, including, but not limited to, open space, private roads, access drives, parking areas, and recreational uses, and for snow removal and storage in Government Camp.*
 - 1. The homeowners association shall continue in perpetuity unless the requirement is modified pursuant to either Section*

- 1309, Modification, or the approval of a new land use permit application provided for by this Ordinance.*
- 2. Membership in the homeowners association shall be mandatory for each lot or parcel owner.*
 - 3. The homeowners association shall be incorporated prior to recording of the final plat.*
 - 4. Acceptable alternatives to a homeowners association may include, but are not limited to, ownership of common areas or facilities by the government or a nonprofit conservation organization.*

Finding: The applicant is proposing an open space tract to comply with the requirements of the Comprehensive Plan and Section 1013 and a homeowners association, or an acceptable alternative, is required. **These criteria can be met as conditioned.**

- E. If the subject property is in a future urban area, as defined by Chapter 4 of the Comprehensive Plan, the location of proposed easements, road dedications, structures, wells, and on-site wastewater treatment systems shall be consistent with the orderly future development of the subject property at urban densities.*

Finding: The site is not currently, and the applicant is not proposing, a future urban designation. **These criteria are not applicable.**

1105.06 ADDITIONAL APPROVAL CRITERIA FOR REPLATS

Finding: The site is not currently a platted lot, and the applicant is not proposing, a replat. **These criteria are not applicable.**

1105.09 APPROVAL PERIOD AND TIME EXTENSION

Except for a middle housing land division:

- A. Approval of a preliminary plat is valid for four years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the final plat shall be recorded with the County Clerk, or the approval will become void.*
- B. If a final plat is not recorded within the initial approval period established by Subsection 1105.09(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension, except for a replat reviewed as a Type I application pursuant to Section 1307, which may not be approved for a time extension.*
- C. If a phasing plan and schedule are approved pursuant to Subsection 1105.05(C), the following shall apply in lieu of Subsections 1105.09(A) and (B): 1. The phasing schedule may provide a preliminary plat approval period for the first phase not to exceed four years from the date of the final written decision. If*

Type of Development	1002 Protection of Natural Features	1003 Hazards to Safety	1004 Historic Protection	1005 Site and Building Design	1006 Utilities, etc	1007 Roads & Connectivity	1009 Land-scaping	1010 Signs	1011 Open Space and Parks	1012 Lot Size and Density	1013 Planned Unit Developments	1015 Parking and Loading	1017 Solar Access	1021 Solid Waste & Recyclable Material Collection
Partitions	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	
Subdivisions														
Replats														
Institutional	✓	✓	✓	✓	✓	✓	✓	✓				✓		✓
Commercial ²														
Industrial														

Finding: Pursuant to ZDO Table 1001-1, Subdivisions are subject to the following Development Standards in addition to those discussed above. **These criteria are addressed below.**

ZDO SECTION 1002, PROTECTION OF NATURAL FEATURES

1002.01 HILLSIDES

- A. *Development on slopes greater than or equal to 20 percent and less than or equal to 35 percent—except that for residential development in the RR, MRR, and HR Districts, the upper limit is 25 percent—shall require review of a Type I application pursuant to Section 1307, Procedures, and shall be subject to the following standards:*

Finding: The applicant's plan set shows approximately five square feet of the building footprint on Lot 23 with slopes over 20%. That small area will not preclude development of the lot, but will require the property owner to submit a Type I steep slope application for review prior to the development of a home on a site with greater than 20% slope. Lots 24-28 and Lots 31-36 appear to have slopes over 20% located outside of the building envelope. The slope on those lots will be evaluated and confirmed using the site plan submitted with the building permit. A Type I steep slope application will be required if development is proposed in areas with slopes over 20%. **This criterion is met as conditioned.**

1. *No partition or subdivision shall create any new lot or parcel which cannot be developed under the provisions of Subsection 1002.01.*

Finding: The overall and detailed site plans provided in Exhibits 2j show that only Lot 23 contains slopes greater than 20% within the building footprint. Because the area of steep slope on Lot 23 is so small, five square feet, the hearings officer finds that it can be developed with review of a geotechnical report and land use file. Therefore, pursuant to 1002.01, a Type I slope review will be required for Lot 23 prior to building permit approval, but building on 90% of the lot could be achieved without steep slope review by reducing the size of the home. **This criterion is met as conditioned.**

2. *Grading, stripping of vegetation, and lot coverage by structures and impervious surfaces shall be limited to no more than 30 percent of slopes 20 percent or greater. Variances to this standard may be granted pursuant to Section 1205, Variances. A variance shall not be granted unless the proposed development satisfies the following conditions:*
 - a. *The proposed lot coverage shall not exceed the maximum lot coverage standard of the zoning district;*
 - b. *The additional lot coverage, grading, or stripping shall not:*
 - i. *Decrease the stability of the slope;*

- ii. *Appreciably increase erosion, sedimentation, or drainage flow from*

Finding: The site contains slopes greater than 20% and the majority of those slopes will be protected within proposed open space “Tract A.” The applicant states geotechnical review found no indication of major active slope instability. Based on the proposed footprints of the future townhouses shown on the site plan, Lot 23 is the only lot proposed where the building footprint may extend into an area with slopes over 20%. Therefore, less than 30% of slopes 20% or greater are proposed for development through this application. The applicant shall submit and abide by an erosion Protection and Sediment Control plan approved by Clackamas Water Environment Services. **These criteria are met as conditioned.**

3. *Buildings shall be clustered to reduce alteration of terrain and provide for preservation of natural features.*

Finding: The site plan shows that the 43 proposed townhouses are clustered in approximately three acres of the site, leaving the remaining roughly one-acre as protected open space to reduce alteration of terrain and provide protection for steep slopes, waterways, and existing trees. **This criterion is met.**

4. *Creation of building sites through mass pad grading and successive padding or terracing of building sites shall be avoided.*

Finding: The applicant provided a grading plan on sheet C2.1 of exhibit 2j that identifies the extent of the grading proposed during the subdivision implementation process. As proposed, grading is confined to the areas identified as road rights-of-way, utilities, stormwater, and sidewalks. Grading for building construction will be reviewed through the building permit review process. **This criterion is met.**

5. *Roads shall be of minimum width, with grades consistent with County specifications. One-way streets may be allowed.*

Finding: The applicant requested (Exhibit 2j at 1), and the Transportation and Engineering Program approved subject to conditions (Exhibit 2j at 2-3, as modified by Exhibit 13), the following road design modifications (Case # RW014125):

Proposal 1: Reduced tangent sections at roadway intersections; reduced pavement width and tangent lengths; single access for residential development in excess of 30 units; fire access/water supply

Approved with a condition that the applicant obtain written Fire Marshal approval.

Proposal 2: Alternative 1 per Standard Drawing C110 and Section 215 for internal public streets

Approved with Conditions to provide the following minimum improvements:

- *26-feet of pavement*
- *Six-inch mountable curb*
- *Six-foot lowered curb-tight sidewalk (sidewalk may be in easement along side lots only and not frontage where driveways are present)*
- *Street trees behind sidewalk*
- *Maintain minimum 20-feet setback from back of sidewalk to front of garage*

Proposal 3: Allow 2/3 street improvements along westerly property line to be designed and constructed with future development

Approved with a condition that the applicant provide full street improvements along Tax Lot 2E07DA02200, as Tax Lot 22E07DA02200 is fully developed with no guarantee of additional development in the future.

Proposal 4: Allow a private road connection to northerly adjacent lots 22E07AD02706 and 22E08CB00507

Approved with Conditions:

- *The intent of ZDO 1007.02(B)(1) is met with providing urban private road improvements of 20-feet of pavement, six-inch curb and five-foot sidewalk;*
- *Or Provide 42-feet of right-of-way to allow for Alternative 2 per Standard Drawing C110*

Proposal 5: Allow 24-foot private access easement alleyway with 18-feet of pavement. County Staff is under the assumption that the internal lots are backloaded.

Approved with Conditions:

- *Restrict alley way parking with appropriate signage*
- *Provide cross section of alley way with land use application*

The hearings officer has no jurisdiction to review or reconsider the design modifications. Per Section 170.1.4 of the Roadway Standards, only the applicant may appeal a design modification to the Transportation Engineering Manager. The Manager's decision may be appealed to the Road Official, whose decision shall be final. No appeal was filed in this case and the County's determination is now final.

Under Proposal 4 Planning and Zoning staff concluded that dedication to the County of a minimum of 26 feet of right-of-way for a public road is required to meet ZDO 1007.02(B)(1) as discussed below. The hearings officer agrees that dedication of right-of-way for a public street connection to the adjoining property is required. However, the County has not approved a Road Modification allowing

for a narrower public street or right-of-way. Therefore, the applicant should be required to dedicate right-of-way and construct improvements for a full-width public road between the on-site loop road and the abutting property to the northeast OR obtain County approval of a road modification allowing for narrower right-of-way and road improvement. A condition of approval is warranted to that effect.

It is not feasible to provide a second access to this site, as topography and existing development preclude connections to other roads in the area. However, the Fire Marshal must approve a Fire Code modification to allow for this single access. It is feasible for the applicant to request approval of such a modification, but the applicant is not required to obtain Fire Marshal approval prior to preliminary approval. The hearings officer is not required to find that is feasible for the applicant to comply with the Fire Marshall's approval criteria for exceptions to the secondary access requirement as the hearings officer has no authority to interpret or apply the Fire Code. It is feasible for the applicant to apply for such approval and there is no evidence that such approval is precluded as a matter of law. *Wal-Mart Stores, Inc. V. City of Bend*, 52 OR LUBA, 261, 285-287 (2006). Therefore, a condition of approval requiring the applicant to obtain such approval is permitted.

As conditioned, all roads will meet minimum width, with grades consistent with County specifications. **This criterion can be met as conditioned.**

6. *Re-vegetation of all graded areas shall be the responsibility of the developer and shall occur as soon as feasible following the final grading. Maintenance of the slopes shall be the responsibility of the developer until the property ownership is transferred*

Finding: Per ORS 197A.400, local governments cannot apply subjective standards. **This criterion is not applicable.**

- B. *Development on slopes greater than 35 percent—and residential development on slopes greater than 25 percent in the RR, MRR, and HR Districts—shall require review of a Type II application pursuant to Section 1307 and shall be subject to the following standards:*

Finding: It appears that the proposed small stormwater outfall near the creek bottom may encroach on slopes exceeding 35%. The applicant did not identify how the second outfall would be reached or if there would be a pipe down to the outfall, which would need to be revegetated once the pipe is installed. The final stormwater plan and accompanying geotechnical engineering report need to clearly identify any areas of concern and provide adequate recommendations for appropriate construction methods. **This criterion can be met as conditioned.**

1002.03 TREES AND WOODED AREAS

- A. *Existing wooded areas, significant clumps or groves of trees and vegetation, consisting of conifers, oaks and large deciduous trees, shall be incorporated in the development plan wherever feasible. The preservation of these natural features shall be balanced with the needs of the development, but shall not preclude development of the subject property, or require a reduction in the number of lots or dwelling units that would otherwise be permitted. Site planning and design techniques which address incorporation of trees and wooded areas in the development plan include, but are not limited to, the following:*

Finding: The terms “wooded areas, significant clumps or groves of trees” are not clear and objective. Therefore, per ORS 197A.400, the County cannot apply this standard. The hearings officer understands neighbors’ desire to preserve the existing mature trees on the site. However, state law precludes the County from applying this subjective standard.

Regardless, the hearings officer notes that even if the County could apply this standard it prohibits any reduction in the number of lots or dwelling units that would otherwise be permitted. Developing the site as proposed, and allowed by the Code, will require removal of most of the trees within the developable portion of the site in order to accommodate construction of roads, utilities and building sites at the allowed density. As proposed, trees in the majority of the forested hillside (slopes greater than 20%) will be contained in the Tract “A.” In addition, the applicant may be able to retain additional trees in the rear yards of lots on the perimeter of the site.

The hearings officer acknowledges that the existing vegetation on this site may serve to buffer adjacent properties from strong winds. Clearing on this site will eliminate that buffer effect, potentially exposing trees on adjacent properties to greater wind impacts and increasing the possibility that trees will be blown down during storms. However the applicant has no duty to retain trees on the site in order to protect offsite trees from wind impacts and the Code does not require consideration of such potential impacts. The site is zoned for residential development. Removal of trees on the upland portions of the site is necessary to develop the site consistent with the R-15 zoning. The hearings officer finds that, although clearing on this site may increase the potential for blowdown, that risk is not relevant to the applicable approval criteria.

Clearing and development on this site will eliminate habitat for wildlife, including birds, deer, and coyotes. But the County Code does not prohibit such an effect. To the contrary, it is an inevitable consequence of concentrating new development in the urban area. None of the animals observed on this site are listed as endangered or threatened. They are commonly observed in the area. Their presence is less likely after the site is developed, but that is to be expected. The steep slopes and stream corridors preserved within Tract A will continue to provide habitat for wildlife on the site as well as provide connections to additional offsite habitat and corridors associated with these streams.

Neighbors testified that hawks, eagles, and other raptors nest on the site. Raptor nests are protected under the Migratory Bird Treaty Act (MBTA), which prohibits removal of nests

during nesting season, generally April 1 to July 15. The MBTA is implemented by the U.S. Fish and Wildlife (USF&W) Service. It is not an approval criteria for this County approval.

Neighbors argued that this site would be “better” used as a park. However, the site is privately owned and currently planned and zoned for low density urban development. The hearings officer cannot delay action or deny approval of the application to allow the County an opportunity to purchase the site as a park. The applicant proposes to divide the site. If the application complies with the applicable standards and criteria in effect when the application was filed, then it must be approved, whether or not the site could be used as a park.

This criterion is inapplicable.

1002.04 RIVER AND STREAM CORRIDORS

The following standards shall apply to land that is outside both the Metropolitan Service District Boundary (MSDB) and the Portland Metropolitan Urban Growth Boundary (UGB).

Finding: The subject property is located inside both the MSDB and Portland Metropolitan UGB. **Therefore, these standards do not apply.**

1002.05 DEER AND ELK WINTER RANGE

Development in deer and elk winter range below 3,000 feet in elevation, as identified on Comprehensive Plan Map III-2, Scenic and Distinctive Resource Areas, shall be designed to minimize adverse wildlife impacts

Finding: The subject property is located outside of the Deer and Elk Winter Range. **These criteria are not applicable.**

1002.06 MOUNT HOOD RESOURCE PROTECTION OPEN SPACE

Development in areas shown as Resource Protection Open Space on Comprehensive Plan Maps X-MH-1 through X-MH-3, Resource Protection Open Space, proposed in or within 100 feet of natural wetlands shall be designed to:

Finding: The subject property is located outside of the Mt. Hood Resource Protection Open Space. **These criteria are not applicable.**

1002.07 SIGNIFICANT NATURAL AREAS

Five significant natural areas are identified as unique/natural features on Comprehensive Plan Map III-2, Scenic & Distinctive Resource Areas. These areas are more specifically referred to as Williams Lake Bog, the land at Marmot, Multorpor Bog, Delphridge, and Wilhoit Springs. In these significant natural areas, the following shall be restricted, to the extent necessary to protect the unique or fragile character or features that are the basis for the unique/natural feature designation: building and road

*construction, filling and excavation, paving, and tree removal.
Restrictions may be modified pursuant to Subsection 1011.03.*

Finding: The subject property does not contain a mapped significant natural area. **These criteria are not applicable.**

ZDO SECTION 1003, HAZARDS TO SAFETY

1003.01 PURPOSE

- A. To protect lives and property from natural or man-induced geologic or hydrologic hazards and disasters.*
- B. To protect property from damage due to soil hazards.*
- C. To protect lives and property from forest and brush fires.*
- D. To avoid financial loss resulting from development in hazard areas.*

1003.02 STANDARDS FOR MASS MOVEMENT HAZARD AREAS

- A. No development or grading shall be allowed in areas of land movement, slump or earth flow, or mud or debris flow, unless approved in a Type II application pursuant to Section 1307, Procedures. Unless the criteria for such development as listed in Subsection 1003.02(B) are satisfied in the review of another approved Type II application pursuant to Section 1307, a mass movement hazard area development permit is required for development in areas of land movement, slump or earth flow, or mud or debris flow.*
- B. Approval Criteria:*
- ...*
- E. The principal source of information for determining mass movement hazards is the State Department of Geology and Mineral Industries (DOGAMI) Bulletin 99 and accompanying maps. Approved site specific engineering geologic studies shall be used to identify the extent and severity of the hazardous conditions on the site, and to update the mass movement hazards data base.*

Finding: The Bulletin 99 DOGAMI map for the Lake Oswego and Gladstone Quadrangle shows that there are no landslide hazards in this area (Exhibit 3). **These criteria are not applicable.**

1003.03 STANDARDS FOR FLOOD HAZARD AREAS

- A. Development proposed in flood hazard areas, in addition to provisions of Section 703, shall be limited to the extent that:*
- ...*

Finding: The site is not located in a flood hazard area. **These criteria are not applicable.**

1003.04 STANDARDS FOR SOIL HAZARD AREAS

- A. *Appropriate siting and design safeguards shall insure structural stability and proper drainage of foundation and crawl space areas for development on land with any of the following soil conditions: Wet/high water table; high shrink-swell capability; compressible/organic; and shallow depth-to-bedrock.*
- B. *The principal source of information for determining soil hazards is the State DOGAMI Bulletin 99 and accompanying maps. Approved site specific soil studies shall be used to identify the extent and severity of the hazardous conditions on the site, and to update the soil hazards data base accordingly.*

Finding: Based on State DOGAMI Bulletin 99, none of the listed conditions exist on the site. **These criteria are not applicable.**

1003.05 STANDARDS FOR FIRE HAZARD AREAS

- A. *Development in areas with the potential for forest or brush fires shall be designed:*
 - 1. *To provide adequate water storage and pressure for purposes of maintaining minimum flows for fire protection.*
 - 2. *To provide, in cooperation with local fire districts, fire hydrants appropriate to the intensity and type of development.*
 - 3. *So that dwellings are not sited in areas subject to extreme fire hazard, such as areas of heavy fuel concentration, draws, etc.*
 - 4. *To provide for other methods of fire protection and prevention appropriate to the location and type of development, utilizing techniques recommended by the Oregon State Forestry Department.*

Finding: The property is inside the Urban Growth Boundary and is within a fire district. The utility plan on Sheet C3.0 in Exhibit 2j shows the installation of two new fire hydrants. The site is in an area of low hazard according to the Oregon Wildfire Risk maps produced by ODF and Oregon State University. **These criteria can be met as conditioned.**

ZDO SECTION 1004, HISTORIC PROTECTION

Finding: The subject property is not a Historic Landmark, and is not located in a Historic District or Historic Corridor. Tax assessor's data indicate the existing house was built in 1971. Therefore there are no known historic resources on the site. **These criteria are not applicable.**

ZDO SECTION 1006, UTILITIES, STREET LIGHTS, WATER SUPPLY, SEWAGE DISPOSAL, SURFACE WATER MANAGEMENT, AND EROSION CONTROL

1006.01 GENERAL STANDARDS

- A. *The location, design, installation, and maintenance of all utility lines and facilities shall be carried out with minimum feasible*

- disturbance of soil and site consistent with the rules and regulations of the surface water management regulatory authority.*
- B. All development that has a need for electricity, natural gas, and communications services shall install them pursuant to the requirements of the utility district or company serving the development. Except where otherwise prohibited by the utility district or company, utility service lines shall be installed underground.*
 - C. Coordinated installation of necessary water, sanitary sewer, and surface water management and conveyance facilities is required.*
 - D. Easements shall be provided along lot lines as deemed necessary by the County, special districts, and utility companies. Easements for special purpose uses shall be of a width deemed appropriate by the responsible agency.*

Finding: The location, design, installation, and maintenance of all utility lines and facilities shall be carried out consistent with the rules and regulations of the district or utility district covering the site. The surface water management regulatory authority is Clackamas Water Environmental Services (WES). The sewer district that is able to serve the site is Clackamas Service District #1, which is also a part of Water Environmental Services (WES). The water district that is available to serve the site is Oak Lodge Water District. **As conditioned these criteria are met.**

1006.02 STREET LIGHTS

Street lights are required for all development inside the Portland Metropolitan Urban Growth Boundary. The following standards apply:

- A. Street lighting shall be installed pursuant to the requirements of Clackamas County Service District No. 5 and the electric company serving the development. A street light shall be installed where a new road intersects a County road right-of-way and, in the case of subdivisions, at every intersection within the subdivision.*
- B. Areas outside Clackamas County Service District No. 5 shall annex to the district through petition to the district.*

Finding: The subject property is located inside the Portland Metropolitan Urban Growth Boundary and the proposal includes a subdivision. Therefore, the installation of street lights at every intersection within the subdivision is required. **As conditioned these criteria can be met.**

1006.03 WATER SUPPLY

- A. Development which has a need for, or will be provided with, public or community water service shall install water service facilities and grant necessary easements pursuant to the requirements of the district or company serving the development.*
- B. Approval of a development that requires public or community water service shall be granted only if the applicant provides a*

preliminary statement of feasibility from the water system service provider.

- 1. The statement shall verify that water service, including fire flows, is available in levels appropriate for the development and that adequate water system capacity is available in source, supply, treatment, transmission, storage and distribution. Alternatively, the statement shall verify that such levels and capacity can be made available through improvements completed by the developer or the system owner.*
 - 2. If the statement indicates that water service is adequate with the exception of fire flows, the applicant shall provide a statement from the fire district serving the subject property that states that an alternate method of fire protection, such as an on-site water source or a sprinkler system, is acceptable.*
 - 3. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve water system capacity for the development.*
- C. Prior to final approval of a partition or subdivision, the applicant shall provide evidence that any wells in the tract subject to temporary or permanent abandonment under Oregon Revised Statutes (ORS) 537.665 have been properly abandoned.*
- D. The following standards apply inside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:*
- 1. Land divisions or other development requiring water service shall not be approved, except as provided in Subsection 1006.03(D)(4), unless they can be served by a public water system in compliance with drinking water standards as determined by the Oregon Health Authority.*
 - 2. Development requiring water service within the boundaries of a water service system, created pursuant to ORS chapters 264, 450, or 451, shall receive service from this system.*
 - 3. New public water systems shall not be created unless formed pursuant to ORS chapters 264, 450, or 451.*
 - 4. A lot of record not located within the approved boundaries of a public water system may be served by an alternative water source.*

Finding: Oak Lodge Water District, the water service provider for this area, signed a preliminary statement of feasibility on January 13, 2025, (included in Exhibit 2) that indicated “Water service, including fire flows, is available at levels appropriate for the development and adequate water system capacity is available in source, supply, treatment, transmission, storage, and distribution, or such levels and capacity can be made available through improvements completed by the developer or the system owner.” The utility plan in the application indicated the water service would be utilized for all of the lots in the subdivision (Exhibit 2j). However, sheet C3.0 of the plans set in Exhibit 2j shows no water lines to Lots 23-26. Additional utility plans are needed to ensure adequate water

source to all of the proposed lots. The application indicates that there is an existing house on the property. However, the tax assessor's information indicates the property is not currently in a water district. Therefore, when Oak Lodge extends water service to the site the existing well will need to be properly abandoned if required by *Oregon Revised Statutes (ORS) 537.665*. **These criteria can be met as conditioned.**

1006.04 SANITARY SEWER SERVICE

- A. All development that has a need for sanitary sewers shall install the facilities pursuant to the requirements of the district or company serving the development.
- B. Approval of a development that requires sanitary sewer service shall be granted only if the applicant provides a preliminary statement of feasibility from the sanitary sewage treatment service provider and the collection system service provider.
 - 1. The statement shall verify that sanitary sewer capacity in the wastewater treatment system and the sanitary sewage collection system is available to serve the development or can be made available through improvements completed by the developer or the system owner.
 - 2. The service provider may require preliminary sanitary sewer system plans and calculations for the proposed development prior to signing a preliminary statement of feasibility.
 - 3. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve sanitary sewer system capacity for the development.
- C. Hotels and motels are permitted in unincorporated communities only if served by a community sewer system as defined by Oregon Administrative Rules 660-022- 0010(2).

Finding: The subject property is inside the Clackamas County Service District #1 service district that is part of Clackamas Water Environment Services ("WES" or "District"), which is an intergovernmental entity formed pursuant to Oregon Revised Statutes Chapter 190 for the purpose of providing regional sewerage works, including all facilities necessary for collecting, pumping, treating, and disposing of sanitary or storm sewage within its boundaries. Properties located within the WES service area shall be subject to WES Rules and Regulations, 2023, Ordinance No. 02-2023. These Rules and Regulations shall apply to any property that discharges or requests to discharge, via connection request, development permit, or change in use, to the District's public sanitary sewer system or public stormwater system, to groundwater, or to surface waters within District boundaries. Clackamas Water Environment Services (WES) signed a preliminary statement of feasibility on January 29, 2025 (included in Exhibit 2b) indicating that there sanitary sewer is available to service the land division. **These criteria can be met as conditioned.**

1006.05 ONSITE WASTEWATER TREATMENT - Not applicable

1006.06 SURFACE WATER MANAGEMENT AND EROSION CONTROL

The following surface water management and erosion control standards apply:

- A. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.*
- B. The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the Clackamas County Roadway Standards apply.*
- C. Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.*
 - 1. The surface water management regulatory authority may require a preliminary surface water management plan and report, natural resource assessment, and buffer analysis prior to signing the preliminary statement of feasibility.*
 - 2. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.*
- D. Development shall be planned, designed, constructed, and maintained to:*
 - 1. Protect and preserve existing natural drainage channels to the maximum practicable extent;*
 - 2. Protect development from flood hazards;*
 - 3. Provide a system by which water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons within the drainage basin;*
 - 4. Ensure that waters drained from the development are substantially free of pollutants, including sedimentary materials, through such construction and drainage techniques as sedimentation ponds, reseeding, and phasing of grading; and*
 - 5. Ensure that waters are drained from the development in such a manner that will not cause erosion to any greater extent than would occur in the absence of development.*
- E. Where culverts cannot provide sufficient capacity without significant environmental degradation, the County may require the watercourse to be bridged or spanned.*
- F. If a development, or any part thereof, is traversed by any watercourse, channel, stream, creek, gulch, or other natural*

drainage channel, adequate easements for surface water management purposes shall be provided to the surface water management regulatory authority.

- G. Channel obstructions are not allowed, except as approved for the creation of detention, retention, or hydropower facilities approved under this Ordinance. Fences with swing gates may be utilized.*
- H. The natural drainage pattern shall not be substantially altered at the periphery of the subject property. Greatly accelerated release of stored water is prohibited. Flow shall not be diverted to lands that have not previously encountered overland flow from the same upland source unless adjacent downstream owners agree.*
- I. A surface water management and erosion control plan is required for significant residential, commercial, industrial, and institutional development. The plan shall include:*
 - 1. The methods to be used to minimize the amount of runoff siltation and pollution created from the development both during and after construction; and*
 - 2. Other elements required by the surface water management authority.*

Finding: The applicant provided a preliminary stormwater narrative (Exhibit 2 at 59 *et seq.*) and stormwater plans (Exhibit 2j at 8-12) prepared by a professional engineer. The subject property is located inside the Clackamas County Service District #1 and Water Environment Services district (WES). WES signed a preliminary statement of feasibility on January 29, 2025 (included in Exhibit 2b) indicating that the stormwater management plan of using drywells and infiltration trenches would have to meet the DEQ requirements. Staff from Water Environment Services reviewed the updated stormwater infrastructure and storm drainage management and provided comments dated July 30, 2025. (Exhibit 4). No waterways are being crossed, or altered in the proposed plan. Per ORS 197A.400, the standards above that are subjective cannot be applied because the terms “adequate,” “feasible,” and “as deemed necessary” are not clear and objective criteria.

The hearings officer finds, based on the comments in Exhibit 4, that it is feasible to comply with WES standards. The applicant will collect, treat, and detain stormwater runoff from all impervious areas of the site. The applicant will infiltrate runoff to the extent feasible and detain and discharge excess runoff to the on-site perennial stream at less than predevelopment rates. **As conditioned these criteria can be met.**

ZDO SECTION 1007, ROADS AND CONNECTIVITY

1007.01 GENERAL PROVISIONS

- A. The location, alignment, design, grade, width, and capacity of all roads shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.*

B. Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, duplexes, triplexes, quadplexes, townhouses, cottage clusters, detached single-family dwellings, and commercial, industrial, and institutional uses, consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

Finding: The applicant has proposed a 43-lot subdivision of a 3.89-acre property located at the end of SE Roethe Road. Access to the project site is proposed from connection to the existing stub of SE Roethe Road abutting the southwest corner of the site. The existing drive at the end of SE Roethe Road extends up through the proposed development to serve the adjacent home to the north of the site that is located on Tax Lot 22E07DA00200. The design modification application and approval from the Transportation and Engineering program (Exhibit 2h) verified that the road designs shown in Exhibits 2i and 2j could be consistent with the Clackamas County Roadway Standards.

However, a review of a minor subdivision, Z0195-04, of the adjacent property to the northeast left a large 99,116 square foot lot in the upper, westerly part of the property to be reserved for future development of six additional single-family lots (22E08CB00507). The findings in that land use approval indicated that access would be taken off of SE Roethe Road for those additional lots due to the environmentally sensitive areas such as steep slopes and waterways on the remainder of that development site. Therefore, a stub street from this site is needed to provide access for future development on the adjacent property. Clackamas County Comprehensive Plan Chapter 4 Policy 4.R.13 provides “*Require stub streets in land divisions where necessary to provide access to adjacent property*” and ZDO 1007.02(B)(1) provides “*When public access to adjoining property is required, this access shall be improved and dedicated to the County.*” Therefore, the applicant should be required to replace proposed Tract C and the private road with a dedicated right-of-way and full-width public road improvement extending to the north boundary of the site.

The County approved a design modification allowing this connection as a 20-foot private road. (Exhibit 2h). A 20-foot paved width roadway is adequate to accommodate two-way traffic, provided parking is prohibited on this narrow road section. (See Comprehensive Plan Figure 5-1d, footnote 5). Such a narrow roadway section is consistent with ZDO 1002.01(5), which requires that “Roads shall be of minimum width...” to protect natural features, including steep slopes. The narrower road and right-of-way width will minimize the impact of lots 23-26 on the steep sloped areas of the site and enable protection of two trees over 12 inches dbh. (See Exhibit 2j Sheet C4.2/page 15).

However, a private road would conflict with ZDO 1007.02(B)(1). The applicant did not request, and the County has not approved, a design modification allowing a reduced public road right-of-way or improvement. Therefore, the applicant must dedicate a full-width public right-of-way and construct a full-width public street improvement between

the loop road and the northeast boundary of the site in the location of proposed Tract C or obtain County approval of a design modification allowing reduced right-of-way and road improvements. The hearings officer finds that it is feasible to construct a full width roadway; the applicant could modify or eliminate one or more lots to accommodate this improvement. It is also feasible to apply for a design modification. A condition of approval is warranted to that effect.

As conditioned these criteria are met.

- C. New developments shall have access points connecting with existing roads.*
- 1. Intersection spacing and access control shall be based on Subsection 3.08.110(E) of the Metro Code (Regional Transportation Functional Plan); Chapters 5 and 10 of the Comprehensive Plan; and the Clackamas County Roadway Standards.*
 - 2. For development on any portion of a contiguous site identified on Comprehensive Plan Map 5-6, Potentially Buildable Residential Sites > 5 Acres in UGB, the applicant shall provide a conceptual map of new streets for the entire site. The map shall identify street connections to adjacent areas to promote a logical, direct, and connected system of streets; demonstrate opportunities to extend and connect new streets to existing streets, and provide direct public right-of-way routes. Closed-end street designs shall be limited to circumstances in which barriers prevent full street extensions. Closed-end streets shall not exceed 200 feet in length and shall serve no more than 25 dwelling units. Subsequent development on the site shall conform to the conceptual street map, unless a new map is approved pursuant to Subsection 1007.01(C)(2).*
 - 3. Access control shall be implemented pursuant to Chapter 5 of the Comprehensive Plan and the Clackamas County Roadway Standards considering best spacing for pedestrian access, traffic safety, and similar factors.*
 - 4. Approaches to public and county roads shall be designed to accommodate safe and efficient flow of traffic and turn control where necessary to minimize hazards for other vehicles, pedestrians, and bicyclists.*
 - 5. Joint access and circulation drives utilizing reciprocal easements shall be utilized as deemed necessary by the Department of Transportation and Development. In the NC District, joint street access for adjacent commercial developments shall be required.*
 - 6. In the SCMU District, driveways shall be spaced no closer to one another than 35 feet, measured from the outer edge of the curb cut, unless compliance with this standard would preclude adequate access to the subject property as a result of existing*

off-site development or compliance with the Clackamas County Roadway Standards.

7. *In the VA District, no direct motor vehicle access is permitted on Sunnyside Road.*

Finding: The subject property is not in the NC, VA, or SCMU District and is not located in a station community. Joint access is not proposed. The property is less than five acres in size and is not included in Comprehensive Plan Map 5-6 that identifies potentially buildable residential sites.

The “closed-end street” provisions of Section C.2 only apply to “[d]evelopment on any portion of a contiguous site identified on Comprehensive Plan Map 5-6, Potentially Buildable Residential Sites > 5 Acres in UGB.” The site is not included on Comprehensive Plan Map 5-6. Therefore, this provision is inapplicable.

The driveway serving the site currently exists and currently serves one additional lot. The application materials do not propose to alter the location of the driveway but do propose to expand the width and provide a loop road to access the new lots. The hearings officer finds that it is feasible to maintain access during road construction to the offsite residence served by the existing driveway on the site. The applicant can stage construction activities, use flaggers, and other accepted techniques to maintain access. Construction activities may impact area residents by temporarily altering the travel surface of the roads, causing traffic congestion, short-term delays, etc. However such impacts are temporary, while construction is occurring, and are merely one of the inconveniences of living in a developing urban area.

ZDO Section 1007.02(E) and 1007.04 require that subdivision applications improve the public roadway frontage and construct new public roads to current county standards, including paved width, curbs, sidewalks and street trees based on the roadway classification and approved roadway cross-sections as adopted in the Clackamas County Roadway Standards. New developments shall have access points connecting with existing private, public, county, or state roads. The alternative designs of the road were considered and conditions of approval were given through a design modification application (Exhibit 2h).

SE Roethe Road is classified as a local roadway (Comprehensive Plan map 5-2a). Clackamas County has adopted roadway standards that pertain to the structural section, construction characteristics, minimum required right-of-way widths and access standards for local roads. The standard right-of-way width for a local roadway is 54 feet. The applicant requested, and the County approved, a design modification to have a smaller transection. (Exhibit 2h).

Per ORS 197A.400, the remaining standards in ZDO 1007.01(C)(3) And (4) cannot be applied because the terms “adequate,” “feasible,” and “as deemed necessary” are not clear and objective criteria.

As conditioned these criteria are met.

8. *Inside the Portland Metropolitan Urban Growth Boundary:*
 - a. *The development shall have no more than the minimum number of driveways required by the Department of Transportation and Development on all arterial and collector streets.*
 - b. *For properties having more than one street frontage, driveways shall be located on the street with the lowest functional classification, if feasible.*
 - c. *Driveways shall be no wider than the minimum width allowed by the Clackamas County Roadway Standards.*
 - d. *Driveways shall be located so as to maximize the number of allowed on street parking spaces, the number of street trees, and optimum street tree spacing.*

Finding: All lots are designed with a single driveway (Sheet C1.3 Exhibit 2j). Lots 1-11 take access from an alley while the other lots will access the loop road south of the on-site section of SE Roethe Road. As conditioned, only local roads make up this development, so access to higher functional classification roads is not a concern. Street spacing will comply with County Roadway Standards. **This criterion is met.**

- D. *Street alignments, intersections, and centerline deflection angles shall be designed according to the standards set forth in Chapters 5 and 10 of the Comprehensive Plan and the Clackamas County Roadway Standards.*

Finding: The development proposes the construction of new roads that were reviewed for compliance with the Roadway Standards through the design modification application. (Exhibit 2h). Actual compliance will be ensured through the final engineering design process.

- E. *All roads shall be designed and constructed to adequately and safely accommodate vehicles, pedestrians, and bicycles according to Chapters 5 and 10 of the Comprehensive Plan and the Clackamas County Roadway Standards. Development-related roadway adequacy and safety impacts to roadways shall be evaluated pursuant to the Clackamas County Roadway Standards and also to Oregon Department of Transportation standards for state highways.*

Transportation adequacy, as discussed in Section 1202 above was reviewed and found adequate and safe (Exhibits 2e, 5, and 14).⁴ Mr. Kleinman argued that “[t]he evidentiary record simply fails to demonstrate compliance with either of these provisions.” (Exhibit 32). But he failed to identify any street designs that are inconsistent with the

⁴ A second copy of Exhibit 14 is included in the record as Exhibit 22.

Comprehensive Plan or the Roadway Standards. The hearings officer relies on the expert testimony of County engineering staff to find that this criterion is met.

ORS 197A.400 prohibits the County is from applying any portion of this provision beyond the beyond the clear and objective engineering requirements of the Roadway Standards, as the terms “adequately and safely” are not clear and objective.

As conditioned these criteria are met.

F. Roadways shall be designed to accommodate transit services where transit service is existing or planned and to provide for the separation of motor vehicles, bicycle, and pedestrian traffic, and other modes as appropriate.

Finding: There is no existing or planned transit service. The site is not located on a current or planned Tri-Met route. The site is at the end of the current extent of SE Roethe Road and SE Roethe Road includes no known transit-supportive features. The nearest transit stop to the site is located roughly one-mile from the site. Bike lanes are not planned or required on the local streets within the site. The applicant will provide sidewalks throughout the development, which will provide separation between motor vehicle and pedestrian traffic. **This criterion is met.**

G. The needs of all modes of transportation shall be balanced to provide for safe and efficient flow of traffic. Where practical, pedestrian crossing lengths shall be minimized and the road system shall be designed to provide frequent pedestrian connections.

The terms balanced, safe and efficient, minimized, practical, and frequent are not clear and objective. Therefore, the County is precluded from applying this standard. **This criterion is inapplicable.**

1007.02 PUBLIC AND PRIVATE ROADWAYS

A. All roadways shall be developed according to the classifications, guidelines, tables, figures, and maps in Chapters 5 and 10 of the Comprehensive Plan and the provisions of the Clackamas County Roadway Standards.

Finding: The proposal includes the creation of 43 new residential lots, and an open space tract through a Planned Unit Development and major subdivision. Therefore, dedication of land for right of way purposes and road frontage improvements will be needed. All roadways will be developed consistent with Chapters 5 and 10 of the Comprehensive Plan and the provisions of the Clackamas County Roadway Standards, as modified by the approved road modifications. For SE Roethe Road, the road frontage improvements are contained within a 48-foot right-of-way between the site boundary and Tax Lot 2E07DA02200, transitioning to a partial width improvement for the remainder of this road section. For the loop road, the road frontage improvements are contained within a

33-foot right-of-way. These proposed improvements and right-of-way were reviewed by the Transportation and Engineering staff and their findings and recommended conditions of approval are included in Exhibit 13. As discussed above, the County approved a design modification to construct the stub road as a private road with a 20-foot paved width and 26-foot easement. However, the applicant is required to provide a public street connection. Therefore, the applicant will need to build a full-width public street or obtain County approval of a design modification allowing an alternative right-of-way and improvement.

The Clackamas County's Roadway Standards include requirements for emergency vehicle access to residential subdivisions, primarily requiring emergency vehicle turnarounds on dead end roads, minimum pavement widths to accommodate emergency vehicle access, street connections, and parking restrictions on narrower streets. Fire access standards require two points of access for subdivisions of more than 30 lots. The applicant did not address the two points of access required, but indicated that they understood "written approval from the Fire Marshal will be required." The Fire Marshall has the authority to waive this requirement based on the standards of the Fire Code. Mr. Kleinman argued that the applicant should be required to obtain Fire Marshal approval prior to preliminary approval. (Exhibit 32). However, he failed to identify any requirement to that effect. It is feasible for the applicant to request such approval and there is no evidence that approval is precluded as a matter of law. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA, 261, 285-287 (2006). The applicant cannot proceed with this development without that approval. Therefore requiring evidence of Fire Marshall approval prior to final plat provides adequate assurance that this requirement will be met.

As conditioned this criterion is met.

1. *Development along streets with specific design standards specified in Chapter 10 of the Comprehensive Plan shall improve those streets as shown in Chapter 10.*

Finding: The subject property is not located in: Government Camp; the Sunnyside Corridor; the Sunnyside Village; the Regional Center, or Mount Hood Resource Protection Area. Therefore there are no specific design standards for the road that is used to access to the site and proposed to serve the townhouse development beyond is required by the cross-section for the local road standards in Chapter 5 of the Comprehensive Plan.

This criterion is not applicable.

2. *Development along streets identified as Regional or Community Boulevards on Comprehensive Plan Map 5-5, Metro Regional Street Design Classifications, shall provide pedestrian, bicycle, transit, and visual amenities in the public right-of-way. Such amenities may include, but are not limited to, the following: street trees, landscaping, kiosks, outdoor lighting, outdoor seating, bike racks, bus shelters, other transit amenities, pedestrian spaces and access to the boulevard, landscaped medians, noise and pollution control measures,*

other environmentally sensitive uses, aesthetically designed lights, bridges, signs, and turn bays as appropriate rather than continuous turn lanes.

3. *Development adjacent to scenic roads identified on Comprehensive Plan Map 5-1, Scenic Roads, shall conform to the following design standards, as deemed appropriate by the Department of Transportation and Development:*
 - a. *Road shoulders shall be improved to accommodate pedestrian and bicycle traffic; and*
 - b. *Turnouts shall be provided at viewpoints or for recreational needs.*
4. *In centers, corridors, and station communities, as identified on Comprehensive Plan Map IV-8, Urban Growth Concept...*

Finding: The site does not abut any streets identified as Regional or Community Boulevards on Comprehensive Plan Map 5-5; is not included in Comprehensive Plan Map 5-1 as a scenic road; and is not located in a center, corridor or station community identified on Map IV-8. **These criteria are not applicable.**

- B. *The layout of new public and county roads shall provide for the continuation of roads within and between the development and adjoining developments when deemed necessary and feasible by the Department of Transportation and Development.*
 1. *When public access to adjoining property is required, this access shall be improved and dedicated to the County.*
 2. *Street stubs shall be provided to allow for future access to adjacent undeveloped property as deemed necessary by the Department of Transportation and Development.*

Finding: Access to adjoining property is required through the proposed development, because the vacant lands to the northeast of the site were involved in previous land use decisions and SE Roethe Road was identified as the access to those undeveloped lands. Access through the previously approved subdivisions was infeasible due to the location of the open space tract along the steep slopes and waterway on those properties. Therefore, access to the adjacent property is required and the access shall be improved and dedicated to the County. The applicant is required to extend a stub street to the northeast boundary of the site to allow for future access to this adjacent undeveloped property.

Mr. Vanderdasson argued that the applicant should be required to provide the required street connection by extending SE Roethe Road along the north boundary of the subdivision, as this provides the shortest and most direct access to the abutting properties, citing ZDO 1007.02(B) and Section 3.08.110.B.5 of the Metro Regional Transportation Functional Plan. The hearings officer finds that the proposed street connection is consistent with ZDO 1007.02(B), as it will “[p]rovide for the continuation of roads within and between the development and adjoining developments...” This section does not require the shortest or most direct connection or a connection preferred by the owners of adjacent properties. Section 3.08.110.B.5 of the Metro plan requires that street design

regulations allow implementation of “Short and direct right-of-way routes...” Based on the text of the Metro Plan, this section requires that local governments adopt street design regulations consistent with this requirement. It does not apply to individual developments. However, to the extent it does apply, ORS 197A.400 prohibits the County is from applying it because “short and direct” are not clear and objective criteria.

This criterion can be met as conditioned.

C. New county and public roads terminating in cul-de-sacs or other dead-end turnarounds are prohibited except where natural features (such as topography, streams, or wetlands), parks, dedicated open space, or existing development preclude road connections to adjacent properties, existing street stubs, or existing roads.

Finding: No dead end or cul-de-sac streets are proposed with this development. The applicant will extend a loop street through the site with a temporary stub to the northeast boundary to allow for further extension when the abutting property redevelops.

Transportation and Engineering staff reviewed the layout of new roads and the comments are included as an exhibit that includes findings and recommended conditions of approval. (Exhibit 13). Mr. Vanderdasson provided his own analysis of the road layout (Exhibit 6). The vacant property to the northeast is identified in Plat 3950, recorded in Book 129 Page 22 as a 2.275 acre tract reserved for future development. There are no wetlands, streams, or topography that would limit the extension of a public road in place of “Tract C” to serve the adjacent property. Therefore, the applicant will need to dedicate right of way to the county for this road pursuant to 1007.02(B)(1), which will then be considered a new public road stubbed to the boundary of the site to allow for further extension. **This criterion is met.**

D. Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:

Finding: The hearings officer finds that it is feasible to comply with County sight distance and clear zone standards as there are no topographic features, preserved vegetation, or other factors on the site that might preclude the applicant from designing and building roads within the site that comply with these standards. The applicant can conduct additional clearing and grading or modify intersection designs through the roadway design and construction process if necessary to remove potential sight distance or clear zone constraints. It is not feasible to demonstrate actual compliance with these standards at this stage, before roads are constructed on the site. Actual compliance will be confirmed through final engineering review and during construction.

This criterion can be met as conditioned.

1. *No planting, signing, or fencing shall be permitted which restricts motorists' vision; and*
2. *Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.*

Finding: Per ORS 197A.400, these standards cannot be applied because it is not clear what “restricts motorists’ vision” or “deemed appropriate” would mean for this subdivision and townhouse development. **These criteria are not applicable.**

- E. *New developments, subdivisions, and partitions may be required to dedicate land for right-of-way purposes and/or make road frontage improvements to existing rights-of-way, consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.*

Finding: The proposal includes the creation of 43 new residential lots, and an open space tract through a Planned Unit Development and major subdivision. Therefore, dedication of land for right of way purposes and road frontage improvements will be needed. The driveways, and road frontage improvements in Exhibit 2j are contained within a 33-foot wide public road right of way for the loop road and a required public stub street to the north. These proposed road frontage improvements and right-of-way was reviewed by the Transportation and Engineering staff and their findings and recommended conditions of approval are included as an exhibit. **As conditioned this criterion is met.**

- F. *Road frontage improvements within the UGB and in Government Camp, Rhododendron, and Wemme/Welches shall include:*
 1. *Surfacing, curbing, or concrete gutters as specified in Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards;*
 2. *Pedestrian, bikeway, accessway, and trail facilities as specified in Subsection 1007.04;*
 3. *Transit amenities [sic] as specified in Subsection 1007.05; and*
 4. *Street trees as specified in Subsection 1007.06.*

Finding: The proposal includes new road frontage improvements including curbs, sidewalks, and street trees on all roads within the site. The minimum improvements for a local roadway, consistent with ZDO Section 1007 include, but are not necessarily limited to a 32-foot wide paved roadway, six-inch curbs, a five-foot wide landscape strips with street trees, five -foot wide unobstructed sidewalks, and storm drainage facilities. The applicant is required to construct SE Roethe Road between the existing terminus at the site boundary and the north boundary of Tax Lot 2E07DA02200 as a full-width local roadway improvement. North of Tax Lot 2E07DA02200 the applicant may taper the improvements to a partial width improvement, as the adjacent property, Tax Lot 22E07DA00200, may redevelop in the future and construct the remaining improvements. The applicant is required to construct the street connection between the loop road and the

northeast boundary as a full-width improvement consistent with the Roadway Standards, unless the County approves a design modification for this road section. For the remaining roads, the applicant's preliminary plans were modified through a design modification application to the Transportation and Engineering Program. (Exhibits 2h and 26).

These criteria can be met as conditioned.

1007.03 PRIVATE ROADS AND ACCESS DRIVES

- A. *Private roads and access drives shall be developed according to classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, Typical Roadway Cross Sections, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards, except:*
1. *When easements or "flag-pole" strips are used to provide vehicular access;*
 2. *Where the number of lots served exceeds three,;*
 3. *Access easements or "flag-pole" strips may be used for utility purposes in addition to vehicular access;*
 4. *The standards listed above may be deviated from when deemed appropriate by the Department of Transportation and Development to accommodate one-half streets or private common access drives and roads within developed urban areas providing access to not more than seven lots; and*
 5. *The intersection of private roads or access drives with a public or county road and intersections of two private roads or access drives shall comply with the sight distance and clear zone standards pursuant to Subsection 1007.02(D).*

Finding: Access drives are defined in ZDO 202 as "ACCESS DRIVE: A private way, with a travel surface generally no more than 12 feet in width, created by deed or easement to provide vehicular ingress to, or egress from not more than two lots or parcels." Therefore, the current home is served by an access drive. However, the access to all of the newly created lots in the subdivision is proposed via public roads.

As discussed above, the applicant is required to replace the proposed private street in Tract C with a public street. Therefore, as conditioned, this development will not include any private roads.

As conditioned these criteria can be met.

1007.04 PEDESTRIAN AND BICYCLE FACILITIES

- A. *General Standards: Pedestrian and bicycle facilities shall be developed according to the classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, Typical Roadway Cross Sections, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.*

- B. *Pedestrian and Bicycle Facility Design: Pedestrian and bicycle facilities shall be designed to:*
1. *Minimize conflicts among automobiles, trucks, pedestrians, and bicyclists;*
 2. *Provide safe, convenient, and an appropriate level of access to various parts of the development and to locations such as schools, employment centers, shopping areas, adjacent developments, recreation areas and open space, and transit corridors;*
 3. *Allow for unobstructed movements and access for transportation of disadvantaged persons; and*
 4. *Be consistent with Chapters 5 and 10 of the Comprehensive Plan; Comprehensive Plan Maps 5-2a, Planned Bikeway Network, Urban, 5-2b, Planned Bikeway Network, Rural, and 5-3, Essential Pedestrian Network; North Clackamas Parks and Recreation District's (NCPRD) Park and Recreation Master Plan; and Metro's Regional Trails and Greenways Map.*
- C. *Requirements for Pedestrian and Bicycle Facility Construction: Within the Portland Metropolitan Urban Growth Boundary (UGB), except if the subject property is in the AG/F, EFU, FF-10, RA-1, RA-2, RC, RI, RRFF-5, or TBR District, sidewalks, pedestrian pathways, and accessways shall be constructed as required in Subsection 1007.04 for subdivisions, partitions, multifamily dwellings, triplexes, quadplexes, cottage clusters, townhouses where three or more dwelling units are attached to one another, and commercial, industrial, or institutional developments, except that for structural additions to existing commercial, industrial, or institutional buildings, development of such facilities shall be required only if the addition exceeds 10 percent of the assessed value of the existing structure, or 999 square feet.*
- D. *Requirement for Sidewalk Construction: Within the UGB, except if the subject property is in the AG/F, EFU, FF-10, RA-1, RA-2, RC, RI, RRFF-5, or TBR District, sidewalks shall be constructed, as required in Subsection 1007.04(F), for duplexes, detached single-family dwellings, townhouses where two dwelling units are attached to one another, and manufactured dwellings outside a manufactured dwelling park.*
- E. *Sidewalks or Pedestrian Pathways in Unincorporated Communities:*
- F. *Sidewalk Location: Sidewalks required by Subsection 1007.04(C) or (D) shall be constructed on:*
1. *Both sides of a new or reconstructed road, except that sidewalks may be constructed on only one side of the road if:*
 - a. *The road is not a through road;*
 - b. *The road is 350 feet or less in length and cannot be extended; or*

- c. In consideration of the factors listed in Subsection 1007.02(B)(3);*

Finding: As discussed above, the Clackamas County Transportation and Engineering program approved a design modification allowing the applicant to vary from the Roadway Standards for the loop road and the portion of SE Roethe Road abutting Tax Lot 22E07DA00200. Full street improvements, including sidewalks on both sides, are required for the section of SE Roethe Road abutting Tax Lot 2E07DA02200 and the stub street, unless the County approves a further road modification.

The applicant cannot be required to construct offsite sidewalks elsewhere in the area. The need for sidewalks and other improvements is one that exists generally along streets in the area, and is a need to which all adjoining properties contribute, not just the development proposed in this case. The County cannot require this applicant to bear the cost of such additional improvements, because the costs would exceed the roughly proportional impact of the proposed development and it is a need to which all of the properties in the area contribute.

These criteria can be met as conditioned.

- K. Bikeways: Bikeways shall be required as follows:*
- 1. Shoulder bikeways, bike lanes, bike paths, or cycle tracks shall be included in the reconstruction or new construction of any street if a bikeway is indicated in Chapters 5 and 10 of the Comprehensive Plan and on Comprehensive Plan Map 5-2a or 5-2b; NCPRD's Park and Recreation Master Plan; or Metro's Regional Trails and Greenways Map.*
 - 2. Shoulder bikeways, bike lanes, bike paths, or cycle tracks shall be considered in the reconstruction or new construction of any other arterial or collector.*
 - 3. Within urban growth boundaries, shoulder bikeways, bike lanes, bike paths, or cycle tracks shall be constructed from new public or private elementary, middle school, and high school facilities to off-site bikeways to provide continuous bicycle route connections within and between surrounding developments, unless precluded by existing development.*
- L. Trails: Trail dedications or easements shall be provided and developed as shown on Comprehensive Plan Map IX-1, Open Space Network & Recreation Needs; the Facilities Plan (Figure 4.3) in NCPRD's Park and Recreation Master Plan; and Metro's Regional Trails and Greenways Map.*

Finding: The project site is not located on, or near a trail, bikeway, bike lane, or bike path included on Comprehensive Plan Map 5-2a or 5-2b; Comprehensive Plan Map IX-1, Open Space Network & Recreation Needs NCPRD's Park and Recreation Master Plan; or Metro's Regional Trails and Greenways Map. There are no arterial or collector streets within the site. There are no schools on or adjacent to the site. Therefore, there is no

specific trail or bicycle infrastructure required for this subdivision. **These criteria are met.**

1007.05 TRANSIT AMENITIES

All residential, commercial, institutional, and industrial developments on existing and planned transit routes shall be reviewed by Tri-Met or other appropriate transit provider to ensure appropriate design and integration of transit amenities into the development. The design shall not be limited to streets, but shall ensure that pedestrian/bikeway facilities and other transit-supportive features such as shelters, bus pull-outs, park-and-ride spaces, and signing will be provided. The designs shall comply with Tri-Met standards and specifications.

Finding: The site is not located on a current, or planned, Tri-Met route. The applicant states in the Narrative for Sub-Policy 4.R.2.3 in Exhibit 2a that “*The nearest bust stop is at the intersection of SE Webster and Thiessen. The applicant believes that the subject property is one mile from the nearest transit stop for Tri-met Route No. 31.*” The site is at the end of the current extent of SE Roethe Road and SE Roethe Road includes no known transit-supportive features. **This criterion is met.**

1007.06 STREET TREES

A. *Within the Portland Metropolitan Urban Growth Boundary, except in the AG/F, EFU, FF-10, FU-10, RA-1, RA-2, RC, RI, RRFF-5, and TBR Districts, street trees are required on all road frontage—except frontage on private roads or access drives—for subdivisions, partitions, multifamily dwellings, triplexes, townhouses where three or more dwelling units are attached to one another, and commercial, industrial, or institutional developments, except that for structural additions to existing commercial, industrial, or institutional buildings, street trees are required only if the addition exceeds 10 percent of the assessed value of the existing structure, or 999 square feet. Street trees shall comply with the following standards:*

1. *Partial or complete exemptions from the requirement to plant street trees may be granted on a case-by-case basis.
Exemptions may be granted, for example, if the exemption is necessary to save existing significant trees which can be used as a substitute for street trees.*
2. *Street trees to be planted shall be chosen from a County-approved list of street trees (if adopted), unless approval for planting of another species is given by the Department of Transportation and Development.*
3. *Location and planting of street trees may be influenced by such conditions as topography, steep terrain, soil conditions, existing trees and vegetation, preservation of desirable views, and solar access.*

4. *Planting of street trees shall be coordinated with other uses which may occur within the street right-of-way, such as bikeways, pedestrian paths, storm drains, utilities, street lights, shelters, and bus stops.*
5. *Street trees at maturity shall be of appropriate size and scale to complement the width of the street or median area.*

Finding: The applicant's updated plan set shows street trees along the loop road and the stub street. (Plan Sheets 4.0-4.3 of Exhibit 2j). However, no street trees are proposed on the on-site section of SE Roethe Road. No exemptions were requested or needed due to topography, views, solar access, or existing trees. SE Roethe Road is classified as a local road on Comprehensive Plan Map 5-4a. Therefore, extending SE Roethe Road to serve the subdivision and Townhouse development will require street trees on all road frontages, including on both sides of the full-width section of SE Roethe Road. The condition of approval for Proposal 3 in Exhibit 2h indicate that full street improvements along Tax Lot 2E07DA02200 are needed. Therefore, street trees are needed on both sides of the on-site section of SE Roethe Road between the site boundary and the northeast boundary of Tax Lot 22E07DA02200 to meet the full street improvement requirement. Street trees are required on the entire length of the southeast side of SE Roethe Road. Although Exhibit 2j shows street trees on both sides of the loop road, the tree spacing on the northwest side of the road appears inadequate. **This criterion can be met as conditioned.**

1007.07 TRANSPORTATION FACILITIES CONCURRENCY

- A. *Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.*
- B. *Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:*
 1. *Development that is located:*
 - a. *In the Light Industrial, General Industrial, or Business Park District; and*
 - b. *North of the Clackamas River; and*
 - c. *West of Highway 224 (south of Highway 212) or 152nd Drive (north of Highway 212); and*
 - d. *South of Sunnyside Road (east of 82nd Avenue) or Harmony Road (west of 82nd Avenue) or Railroad Avenue (west of Harmony Road); and*
 - e. *East of Interstate 205 (south of Milwaukie Expressway) or the city limits of Milwaukie (north of the Milwaukie Expressway).*
 2. *Modification or replacement of an existing development (or a development that has a current land use approval even if such development has not yet been constructed) on the same*

property, provided that an increase in motor vehicle traffic does not result;

- 3. Unmanned utility facilities, such as wireless telecommunication facilities, where no employees are present except to perform periodic servicing and maintenance;*
 - 4. Mass transit facilities, such as light rail transit stations and park-and-ride lots;*
 - 5. Home occupations to host events, which are approved pursuant to Section 806; and*
 - 6. Development in Government Camp that is otherwise consistent with the Comprehensive Plan land use plan designations and zoning for Government Camp.*
- C. As used in Subsection 1007.07(B), adequate means a maximum volume-to capacity ratio (v/c), or a minimum level of service (LOS), as established by Comprehensive Plan Tables 5-2a, Motor Vehicle Capacity Evaluation Standards for the Urban Area, and 5-2b, Motor Vehicle Capacity Evaluation Standards for the Rural Area. Notwithstanding the definitions of “urban” and “rural” in Chapter 5, Transportation System Plan, of the Comprehensive Plan, Highway 212 shall be evaluated under Table 5-2a, if the subject property is inside the Portland Metropolitan Urban Growth Boundary.*

Finding: The adequacy of the transportation system was evaluated in the zone change findings above. A traffic study was not required because the proposed development will generate fewer than 20 peak hour vehicle trips through any intersection. (Section 295.2(b) of the Clackamas County Roadway Standards). Additional review by the Transportation and Engineering staff and their findings and recommended conditions of approval are included as Exhibits 5 and 13. Based on the traffic generation analysis and review of the transportation system adequacy for the zone change the hearings officer finds that these criteria are met. **These criteria can be met as conditioned.**

- D. For the purpose of calculating capacity as required by Subsections 1007.07(B) and (C), the following standards shall apply:*
- 1. The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards.*
 - 2. The adequacy standards shall apply to all roadways and intersections within the impact area of the proposed development. The impact area shall be identified pursuant to the Clackamas County Roadway Standards.*
- E. As used in Subsection 1007.07(B), timely means:*
- 1. For facilities under the jurisdiction of the County, necessary improvements are included in the Five-Year Capital Improvement Program, fully funded, and scheduled to be under construction within three years of the date land use approval is issued;*

2. *For facilities under the jurisdiction of the State of Oregon, necessary improvements are included in the Statewide Transportation Improvement Program (STIP) and scheduled to be under construction within four years of the date land use approval is issued;*
 3. *For facilities under the jurisdiction of a city or another county, necessary improvements are included in that jurisdiction's capital improvement plan, fully funded, and scheduled to be under construction within three years of the date land use approval is issued.*
 4. *Alternatively, timely means that necessary improvements will be constructed by the applicant or through another mechanism, such as a local improvement district. Under this alternative:*
 - a. *Prior to issuance of a certificate of occupancy for a conditional use or a development subject to design review and prior to recording of the final plat for a subdivision or partition, the applicant shall do one of the following:*
 - i. *Complete the necessary improvements; or*
 - ii. *For transportation facilities under the jurisdiction of the County, the applicant shall provide the county with a deposit, letter of credit, performance bond, or other surety satisfactory to county staff pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance. For transportation facilities under the jurisdiction of the state, a city, or another county, the applicant shall comply with the respective jurisdiction's requirements for guaranteeing completion of necessary improvements. This option is only available if the jurisdiction has a mechanism in place for providing such a guarantee.*
 5. *For a phased development, the first phase shall satisfy Subsections 1007.07(E)(1) through (4) at the time of land use approval. Subsequent phases shall be subject to the following:*
- F. *As used in Subsection 1007.07(E), necessary improvements are:*
1. *Improvements identified in a transportation impact study as being required in order to comply with the adequacy standard identified in Subsection 1007.07(C).*
 - a. *A determination regarding whether submittal of a transportation impact study is required shall be made based on the Clackamas County Roadway Standards, which also establish the minimum standards to which a transportation impact study shall adhere.*
 - b. *If a transportation impact study is not required, County traffic engineering or transportation planning staff shall identify necessary improvements or the applicant may opt to provide a transportation impact study.*

- G. *Notwithstanding Subsections 1007.07(D) and (F)(1)(a), motor vehicle capacity calculation methodology, impact area identification, and transportation impact study requirements are established by the ODOT Transportation Analysis Procedures Manual for roadways and intersections under the jurisdiction [sic] of the State of Oregon.*
- H. *As an alternative to compliance with Subsection 1007.07(B), the applicant may make a voluntary substantial contribution to the transportation system.*
 - 1. *As used in this subsection, “substantial contribution” means construction of a roadway or intersection improvement that is all of the following:*
 - 2. *Prior to issuance of a certificate of occupancy for a conditional use or a development subject to design review and prior to recording of the final plat for a subdivision or partition, the applicant shall do one of the following: a. Complete the substantial contribution; or b. For transportation facilities under the jurisdiction of the County, the applicant shall provide the county with a deposit, letter of credit, performance bond, or other surety satisfactory to county staff pursuant to Section 1311. For transportation facilities under the jurisdiction of the state, a city, or another county, the applicant shall comply with the respective jurisdiction’s requirements for guaranteeing completion of necessary improvements. This option is only available if the jurisdiction has a mechanism in place for providing such a guarantee.*

Finding: This application includes a proposed zone change and the issue of whether the transportation system is adequate for the R-10 district was evaluated above. Additional review by the Transportation and Engineering staff and their findings and recommended conditions of approval are included as Exhibits 5 and 13. Based on the traffic generation analysis and review of the transportation system adequacy for the zone change the hearings officer finds that these criteria are met. **These criteria can be met as conditioned.**

ZDO Section 1010, SIGNS

Finding: The applicant included no sign designs or specifications on any of the sheets or in the narrative. **These criteria are met as conditioned.**

ZDO Section 1011, OPEN SPACE AND PARKS

1011.01 AREA OF APPLICATION

- A. *Section 1011 applies to areas generally indicated as Open Space on Comprehensive Plan Map IV-6, North Urban Area Land Use Plan Map, or on the Mt. Hood Community Plan Map when one or more of the following open space resources is present:*
 - 1. *Willamette River Greenway;*

2. *Distinctive urban forests;*
 3. *Hillsides of more than 20 percent slope;*
 4. *Areas of confirmed land movement hazard;*
 5. *Areas of severe erosion or unstable soil;*
 6. *Areas of high visual sensitivity;*
 7. *Significant natural areas; and*
 8. *Other distinctive or unique natural areas, or areas of serious natural hazard.*
- B. *Section 1011 also applies to areas generally indicated as Open Space on the Mt. Hood Community Plan Map when one or more of the following open space resources is present:*

Finding: A portion of the site is identified as Resource Protection Open Space on the *Comprehensive Plan Map IV-6, North Urban Area Land Use Plan Map*. The site is not included as Open Space on the Mt. Hood Community Plan Map.

These criteria are applicable.

- C. *Open space regulated pursuant to Subsection 1011.01(A) or (B) shall be categorized as follows:*
1. *High-priority open space is:*
 - a. *Land or water necessary to assure a continuous network of open space (e.g., stream corridor, forested hillside);*
 - b. *Land over 35 percent slope;*
 - c. *Confirmed land movement hazard areas;*
 - d. *Areas judged to have severe erosion potential due to soil type, geologic structure, and vegetation;*
 - e. *Bodies of water such as rivers, lakes, or lagoons;*
 - f. *Wetlands; and*
 - g. *Significant natural areas.*
 2. *Second-priority open space is:*
 - a. *Land greater than 20 percent slope and less than 35 percent slope;*
 - b. *Distinctive urban forests;*
 - c. *Land within a special flood hazard area, as defined in Section 703, or within 25-year flood limits where special flood hazard areas have not been designated;*
 - d. *Land used as a recharge area for wetlands; and e. Areas of high visual sensitivity.*
- D. *In addition, Subsection 1011.05 applies in Sunnyside Village.*

Finding: The applicant states:

“The topographic information surveyed, and mapped by Centerline indicates that approximately 41,932 Sf or .96 acres of the 3.89 acres site or 25% of the site have slopes of between 20 – 50%. The remaining 2.93 acres have slopes of less than 20%. The applicant believes that the

proposed R-10 designation on a portion of the site with a slope of less than 20% is appropriate for the subject property and consistent with this factor given the topographical characteristics of the subject property”

The application did not distinguish the 20-35% slope from the area above 35% slope. The watershed map included in the original stormwater analysis shows the subject property is adjacent to a forested hillside. However, there is no continuous network of open space identified in the application. Comprehensive Plan Map 4-6 shows the subject property is at the intersection of three sections or fingers of resource protection Open Space. The Statewide Wetlands Inventory identifies a couple of riverine wetlands on site according to USFWS National Wetlands Inventory. The applicant identifies those waterways on their site plan. Therefore, the Resource Protection Open Space on the property is High-priority open space because of the presence of wetlands and or bodies of water. **These criteria are met.**

1011.02 DEVELOPMENT STANDARDS AND LIMITATIONS

- A. *Site planning and development shall avoid disturbance of identified open space resources, except as provided in Subsections 1011.02(B) and (C). Full use should be made of density transfers pursuant to Section 1012, Lot Size and Density, siting of structures and roads, and other appropriate means of designing the development around the open space.*

Finding: The applicant avoids the disturbance of the identified steep slopes and bodies of water by containing those resources in an open space tract identified as Tract A on Exhibit 2j. Therefore, the applicant is designing the development around the open space. **This criterion is met.**

- B. *High-priority open space shall be preserved outright, except:*
- 1. Development on hillsides over 35 percent slope shall be subject to Subsection 1002.01(B).*
 - 2. Commercial or industrial developments affecting wetlands or significant natural areas may be allowed, subject to Subsection 1011.03 and when permitted by the U.S. Army Corps of Engineers and the Oregon Department of State Lands.*

Finding: The applicant avoids the disturbance of most of the slopes over 20% and provides a 25 and 50 foot buffer around the bodies of water identified on the site plan. These open space resources are contained in an open space tract identified as Tract A on Exhibit 2j. Therefore, the proposal is designing the development around the high priority open space. Lots 23-28 and Lots 31-36 appear to include areas with slopes over 20% , but all of the land over 35 percent slope and the stream buffers will be retained in Tract A, outside of any lots. **This criterion can be met as conditioned.**

- E. *All open space requirements of Section 1011 shall be met using one or more of the following options:*
- 1. Dedication to the public;*

2. *Placement under a legally responsible group, such as a homeowner's association;*
3. *Preservation through conservation easements but maintained by individual land owners; or*
4. *Some other suitable mechanism acceptable to the County.*

Finding: The applicant preserves the open space resources by containing them in an open space tract identified as Tract A on Exhibit 2j. Additionally ZDO 1105.05(D) requires that the ownership of the open space tract has been transferred to a homeowners association, a government entity, or nonprofit conservation organization. **This criterion can be met as conditioned.**

1011.03 CONFLICT RESOLUTION FOR WETLANDS AND SIGNIFICANT NATURAL AREAS

High-priority open space wetlands and significant natural areas shall not be disturbed unless approved through review as a Type II application pursuant to Section 1307, Procedures, for a specific commercial or industrial development plan. Approval shall not be granted unless the following social, economic, energy, and appropriate environmental considerations are addressed and satisfied:

Finding: The applicant preserves all of the High-priority open space resources by designating them as an open space tract identified as Tract A on Exhibit 2j. There is no indication in the plans that the high-priority open space wetlands and significant features will be disturbed. The narrative in exhibit 2d states “Only limited disturbance of the buffer is proposed for removal of invasive species, paths, etc., but significant tree and other vegetation removal is prohibited.” Compliance with this criterion is ensured through a condition of approval. **This criterion can be met as conditioned.**

1011.04 PARK AND EASEMENT DEDICATIONS

- A. *The standards and requirements of Section 1011 shall be applied whenever land is to be dedicated for a park, recreation area, or easement*

Finding: There is no indication in the application narrative or plans that the open space tract will be dedicated for a park, recreation area, or open space easement. However, if these options are pursued in the future, open space review will be needed. Compliance with this criterion is ensured through a recommended condition of approval. **This criterion can be met as conditioned.**

ZDO Section 1012, LOT SIZE AND DENSITY

1012.01 APPLICABILITY

Section 1012 applies to the following land use permit applications in any zoning district that has a minimum lot size standard, district land area standard, or minimum density standard, except the AG/F, EFU, and TBR Districts: A. Subdivisions; B. Partitions; C. Replats reviewed as a Type II application pursuant to Section 1307, Procedures; D. Design review for

manufactured home parks, congregate housing facilities, and dwellings, including residential condominiums; and E. Conditional uses for manufactured home parks and dwellings.

1012.02 MINIMUM LOT SIZE EXCEPTIONS

In subdivisions, partitions, and replats, lots and parcels shall comply with the minimum lot size standards, if any, of the applicable zoning district, except as established by Subsections 1012.02(A) through (I).

...

- G. Townhouses: In the R-5, R-7, R-8.5, R-10, R-15, R-20, R-30, VR-4/5, or VR-5/7 District, the minimum lot size standards are waived for townhouses.*

Finding: The plan set provided in the application (Exhibit 2j) includes lot sizes below 2,000 square feet, the minimum lot size allowed in the R-10 and R-15 districts. However, the minimum lot size standard is waived because the applicant is proposing a townhouse development. **This criterion is met**

1012.03 MAXIMUM LOT SIZE

In subdivisions, partitions, and replats in the VR-5/7, VR-4/5, and VTH Districts, lots and parcels shall comply with the maximum lot size standards of the applicable zoning district, except as established by Subsections 1012.03(A) through (C) for the VR-5/7 and VR-4/5 Districts.

Finding: The property is not currently zoned and not proposed to be rezoned to VR-5/7, VR-4/5, or VTH Districts. **This criterion is not applicable**

1012.04 GENERAL DENSITY PROVISIONS

- A. Density is a measurement of the number of dwelling units in relationship to a specified amount of land. In the context of a partition, subdivision, replat, or manufactured home park, density typically relates to potential dwelling units in the form of lots, parcels, or manufactured home park spaces. Density often is expressed as dwelling units per acre; however, this Ordinance implements density standards in many zoning districts by assigning a district land area (DLA), which is the starting point for determining the maximum number of dwelling units allowed on a particular site. In general, the DLA is the minimum lot area required per dwelling unit; however, the DLA is subject to adjustment for density bonuses, restricted area development limitations, and limits on the extent of new road area that must be subtracted. In addition, for a duplex, triplex, quadplex, or cottage cluster in the R-5, R-7, R-8.5, R-10, R-15, R-20, R-30, VR-4/5, or VR-5/7 District, and for accessory dwelling units, DLA is not the minimum lot area required per dwelling unit.*
- B. The DLA and the minimum lot size standard applicable to a particular zoning district are seldom the same. Often this is*

because the maximum density derived from the DLA standard is calculated over the entire site prior to any platting of new lots or parcels. The minimum lot size standard then typically permits flexibility in determining where on the site the allowed dwelling units will be developed. For example, some lots may be relatively large while others are smaller, or open space tracts may be platted while all lot sizes are relatively small. Regardless of allowed flexible sizing of individual lots or parcels, however, the maximum density allowed for the entire site remains the same.

Finding: The DLA and maximum density are calculated below. **These criteria are informational only.**

- C. Except for middle housing land divisions approved pursuant to Section 1105, Subdivisions, Partitions, Replats, Middle Housing Land Divisions, Condominium Plats, and Vacations of Recorded Plats, if the subject property is currently developed with one or more dwelling units that will be retained, such dwelling units shall be included in demonstrating compliance with the maximum and minimum density standards of Section 1012. Notwithstanding this provision, accessory dwelling units and temporary dwellings approved pursuant to Section 1204, Temporary Permits, are not included in demonstrating compliance with the density standards, provided that these dwellings will continue to comply with the requirements for accessory dwelling units or temporary dwellings, respectively.*

Finding: The applicant is not proposing a middle housing land division. The property currently has one detached single-family home located on site, which will be removed. Therefore, the existing dwelling is not included in the compliance review. **This criterion is not applicable.**

- D. If a subdivision, partition, or replat is proposed on property currently developed with duplexes, triplexes, quadplexes, or multifamily dwellings (or with a current design review approval for such development), maximum and minimum density shall be calculated separately for each proposed lot or parcel, except:*
...

Finding: The site is not currently developed with duplexes, triplexes, quadplexes, or multifamily dwellings (or with a current design review approval for such development). **This criterion is not applicable.**

1012.05 MAXIMUM DENSITY

If this Ordinance establishes a district land area (DLA) for the applicable zoning district, the proposed development shall be limited to a maximum density. Except as necessary to implement a minimum

lot size exception granted pursuant to Subsection 1012.02 or as established by Subsection 1012.06, maximum density shall be calculated as follows.

- A. *Calculate the land area of the subject property. The result is gross site area (GSA).*

Finding: A review of the tax map and total site area identified on sheet C1.1 shows a total site area of 169,330 square feet or 3.89 acres (GSA). **This criterion is met.**

- B. *Subtract the following from GSA to determine net site area (NSA). In the event of an overlap between categories requiring a subtraction, the area of overlap shall be classified in the most restrictive category.*
 1. *The land area of new county, public, or private roads (NR) in the HR, MRR, Urban Low Density Residential, VR-4/5, VR-5/7, and VTH Districts, except:*
 - a. *If NR exceeds 15 percent of the GSA, only 15 percent of the GSA shall be subtracted.*
 - b. *No subtraction shall be made for strips of land adjacent to existing road rights-of-way when such strips are required to be dedicated as a condition of approval;*

Finding: A review of the road area, as identified on sheet C1.1, shows a total area of 33,367 square feet in public or private roads (NR). The total NR is 19.7%. Therefore, the NR for calculating density is limited to 15% of the GSA that is 25,399.5 square feet. Subtracting the roads from the total GSA results in a functional GSA of 143,930.5 square feet. **This criterion is met.**

2. *In a zoning district other than HR and MRR, any land area of the GSA in the following highly restricted areas (HRA), except that no subtraction shall be made for HRA that will remain undeveloped, in which case density accruing to these areas may be transferred to unrestricted areas:*
 - a. *Slopes greater than 50 percent;*
 - b. *Mass movement hazards regulated by Section 1003, Hazards to Safety;*
 - c. *The floodway of the Floodplain Management District regulated by Section 703, Floodplain Management District;*
 - d. *The Willamette River and the required buffer area regulated by Section 705, Willamette River Greenway;*
 - e. *Habitat Conservation Areas regulated by Section 706, Habitat Conservation Area District (HCAD); and*
 - f. *Water Quality Resource Areas regulated by Section 709, Water Quality Resource Area District; and*

Finding: In the narrative addressing Comprehensive Plan Sub-Policy 4.R.2.1(b) in Exhibit 2d, the applicant indicates that 25%, or 0.96 acres of the site have slopes between 20-50%. The remaining 2.93 acres have slopes of less than 20%. This conclusion is supported by the topographic map included in the plan set (Exhibit 2j). The mass movement hazards regulated by Section 1003 are limited to those identified in the State Department of Geology and Mineral Industries (DOGAMI) Bulletin 99 and accompanying maps. The Bulletin 99 maps do not identify landslide topography, local slump and earthflow, or mudflow and debris flow on the subject property. The Bulletin 99 maps identify the potential for steep slopes but none of the specific resources regulated by Section 1003. The site has no mapped floodplain and is not subject to the Floodplain Management District regulated by Section 703. The site is outside of the Willamette River Greenway buffer and is not subject to Section 705. The site was not included in the Habitat Conservation Areas or Water Quality Resource Areas mapped by Metro in 2002 and is therefore not subject to ZDO Sections 706 or 709. Therefore, the subject property contains no HRA. That leaves the functional GSA at 143,930.5 square feet. **These criteria are met.**

3. *In a zoning district other than HR and MRR, fifty percent of the land area of any portions of the GSA in the following moderately restricted areas (MRA), except that no subtraction shall be made for MRA that will remain undeveloped, in which case density accruing to these areas may be transferred to unrestricted areas.:*
 - a. *Slopes equal to or greater than 20 percent and less than or equal to 50 percent; and*
 - b. *Areas outside the floodway but within the Floodplain Management District regulated by Section 703.*

Finding: The applicant identifies that 0.96 of an acre or 41,817.6 square feet of the site includes slopes of 20-50%. Therefore, the GSA is reduced by 20,908.8 square feet leaving 123,021.7 as the functional Gross Site Area after the roads and steep slopes are subtracted from the area. **These criteria are met.**

4., 5, And 6. In the HR and MRR Districts....

Finding: The property is not currently or proposed to be in the HR or MRR Districts. **These criteria are not applicable.**

- C. *Divide the NSA by the DLA of the applicable zoning district. The result is base density (BD). The calculations that result in a determination of BD are represented by the following formula:*
$$\{GSA - [NR + HRA + (MRA \times 0.5)]\} / DLA = BD^*$$

** Except in the HR and MRR Districts, HRA and MRA may be reduced to zero as provided by Subsections 1012.05(B)(2) and (3).*

Finding: As discussed above, in the formula the NSA would be { 169,330-[25,399.5+20,908.8]} that is 123,022 square feet. The current R-15 zoning requires a DLA of 15,000, however pursuant to ZDO Table 315-2 footnote 4, for townhouses developed pursuant to Section 845, the DLA shall be one-quarter of the DLA. Therefore, under the R-15 zoning for townhouses the base density is 32 units.

The proposed zoning is R-10 that requires a DLA of 10,000, or 2,500 for townhouses, so under the R-10 zoning the base density is for townhouses is 49 under the original configuration proposed (See Exhibits 2d and 2a). Therefore, the density proposed by the Planned Unit Development Subdivision is contingent on the approval of the zone change proposal. **These criteria are met for the proposed R-10 zoning for the entire site.**

- D. In the MRR District, the calculation in Subsection 1012.05(C) shall be done separately for each proposed unit size category identified in Table 317-3, District Land Area Standards in the MRR District. This requires the applicant to identify the square footage of the NSA that is attributed to each unit size category. The results of each separate calculation shall be added to determine BD.*
- E. Add any applicable density bonuses to BD. Bonus density shall be allowed subject to the following criteria:*

Finding: The property is not currently or proposed to be in the HR or MRR Districts and affordable housing is not proposed so there are no density bonuses proposed or applicable. **These criteria are not applicable.**

Summary: The hearings officer understands residents' displeasure with the proposed development, but this development was foreseeable and is in the broader public's interest. The site and surrounding properties are located within the Urban Growth Area ("UGB") zoned for urban development. As large lots are sold, presumably they will be developed to the maximum extent allowed and property owners may seek zone changes when consistent with the applicable standards. The Code does not authorize the County to deny these applications or require larger lots or detached homes so that they are consistent with surrounding development. To the contrary, state laws requires the County to allow this type of development in all low density residential zones and the ZDO allows townhomes and other types of "middle housing" in all single-family residential zones. As set out in these density findings, the density proposed on this site is consistent the approved R-10 zoning that applies to this site as modified by ZDO 845. Although the proposed lots are smaller than adjacent lots, the uses are not incompatible. The applicant is proposing to provide single-family residences adjacent to existing single-family development.

Any development on this site is likely to generate additional noise and other impacts detectable on adjacent properties. But there is no evidence that this development will generate excessive noise compared to any other residential development.

Construction on this site will temporarily cause increased noise, dust, traffic, and other impacts on adjacent roads and properties. The County Code and state law regulate noise and construction activities, including requirements for maximum noise levels, dust and

erosion control, construction vehicle access, road closures etc., which will limit impacts on surrounding residents. However such impacts are merely one of the inconveniences of living in a developing urban area. The proposed development is consistent with the maximum density allowed by the Code.

Even if the subdivision will have an adverse impact on property values --- and there is no substantial evidence to that effect in the record --- protection of property values and consistency with adjoining development are not relevant to the applicable standards. The hearings officer must base the decision on the laws of the County and the State. If adjacent property owners believe that the value of their property has been reduced, they may request that the county assessor modify the assessed value of their property.

1012.08 MINIMUM DENSITY

A minimum density standard applies in the Urban Low Density

Residential, HDR, MR-1, MR-2, PMD, RCHDR, SHD, and VA Districts.

Minimum density shall be calculated as follows:

Finding: The property is not currently or proposed to be in the HDR, MR-1, MR-2, PMD, RCHDR, SHD, and VA Districts. However, the R-10 District is an Urban Low Density Residential district. **These criteria are applicable.**

- A. *Calculate the land area of the subject property. The result is gross site area (GSA).*

Finding: A review of the tax map and total site area identified on sheet C1.1 shows a total site area of 169,330 square feet or 3.89 acres (GSA). **The density calculations are consistent with this criterion.**

- B. *Subtract the following land area from GSA to determine net acreage:*
- 1 *New county, public, or private roads and strips of land dedicated adjacent to existing road rights-of-way;*
 2. *Slopes equal to or greater than 20 percent;*
 3. *Mass movement hazards regulated by Section 1003, Hazards to Safety;*
 4. *Areas in the Floodplain Management District regulated by Section 703, Floodplain Management District;*
 5. *The Willamette River and the required buffer area regulated by Section 705, Willamette River Greenway;*
 6. *Habitat Conservation Areas (HCA) regulated by Section 706, Habitat Conservation Area District (HCAD), provided that the HCA, or portion thereof, to be subtracted is protected from development by a restrictive covenant or a public dedication, and provided that the subject property was inside the Portland Metropolitan Urban Growth Boundary on January 1, 2002;*

7. *Water Quality Resource Areas regulated by Section 709, Water Quality Resource Area District (WQRAD); and 8. Land to be dedicated to the public for park or open space use.*

Finding: The applicant states “*The topographic information surveyed, and mapped by Centerline indicates that approximately 41,932 Sf or .96 acres of the 3.89 acres site or 25% of the site have slopes of between 20 – 50%.*” The square footage of the open space tract is proposed at 48,239 square feet. While the open space tract does not include all of the slopes over 20%, the applicant did not provide any detail on the amount of land with slopes over 20% located outside of the open space tract. Therefore, for the calculation of net acreage the area of the open space tract alone is subtracted from the gross site area for a total of 121,091 square feet. **The density calculations are consistent with this criterion.**

- C. *In the RCHDR District, the minimum density is 30 dwelling units per net acre. Otherwise, divide by the district land area of the applicable zoning district and multiply the result:*
 1. *By 80 percent in Urban Low Density Residential Districts. However, partitions in these districts have no minimum density requirement provided that a master plan demonstrates that the minimum density for the entire property can be met through future land division;*
 2. *By 80 percent in the PMD and MR-1 Districts, except in the case of a manufactured home park where the result shall be multiplied by 50 percent;*
 3. *By 90 percent in the MR-2, HDR, and SHD Districts; or 4. By 50 percent in the VA District.*
- D. *Any partial figure of one-half or greater shall be rounded up to the next whole number.*
- E. *The result is minimum density.*

Finding: The minimum density for a 121,091 net acreage is 10 lots for the R-10 zone, except that for townhouse developments the density is ¼ the DLA, so for a townhouse development the minimum density is 39 lots. The applicant proposes 43 lots. **These criteria are met.**

ZDO Section 1013, PLANNED UNIT DEVELOPMENTS

1013.01 APPLICABILITY *Section 1013 applies to subdivisions, partitions, and replats as follows:*

- A. *A subdivision, partition, or replat may be developed as a planned unit development in residential, commercial, and industrial zoning districts, except the FU-10 District.*
- B. *In an Urban Low Density Residential, MRR, or HR District, a subdivision, partition, or Type II replat shall be developed as a planned unit development if the subject property is larger than one acre and at least 10 percent of the subject property is designated Open Space on Comprehensive Plan Map IV-6, North Urban Area Land Use Plan Map; X-MH-1, Resource Protection Open Space;*

XMH-2, Resource Protection Open Space; X-MH-3, Resource Protection Open Space; or X-MH-5, Government Camp Village Plan Resource Protection Open Space.

Finding: Based on the Comprehensive Plan maps, more than 10 percent of the land area of the site is designated as open space (see excerpt below) and based on the site analysis by the applicant, the resource protection open space for this application is the majority of the hillsides of more than 20 percent slope, area within 50 feet of any permanent stream, and wetland areas. Therefore, the subdivision is being reviewed as a planned unit development (PUD) pursuant to ZDO Section 1013. **These criteria are applicable.**

*4.GG.2 Establish three categories of Open Space within the northwest urban area:
Resource Protection, Major Hazards, and Public and Community Use.*

4.GG.2.1 The purpose of Resource Protection Open Space is to protect natural resources and the open character of designated areas while allowing development according to the Plan. Resource Protection Open Space is land in one the following categories:

4.GG.2.1.a The flood fringe of 100-year floodplains;

4.GG.2.1.b Areas within 100 feet of mean low water on all major rivers and 50 feet of any other permanent stream

4.GG.2.1.c Land within the Willamette River Greenway

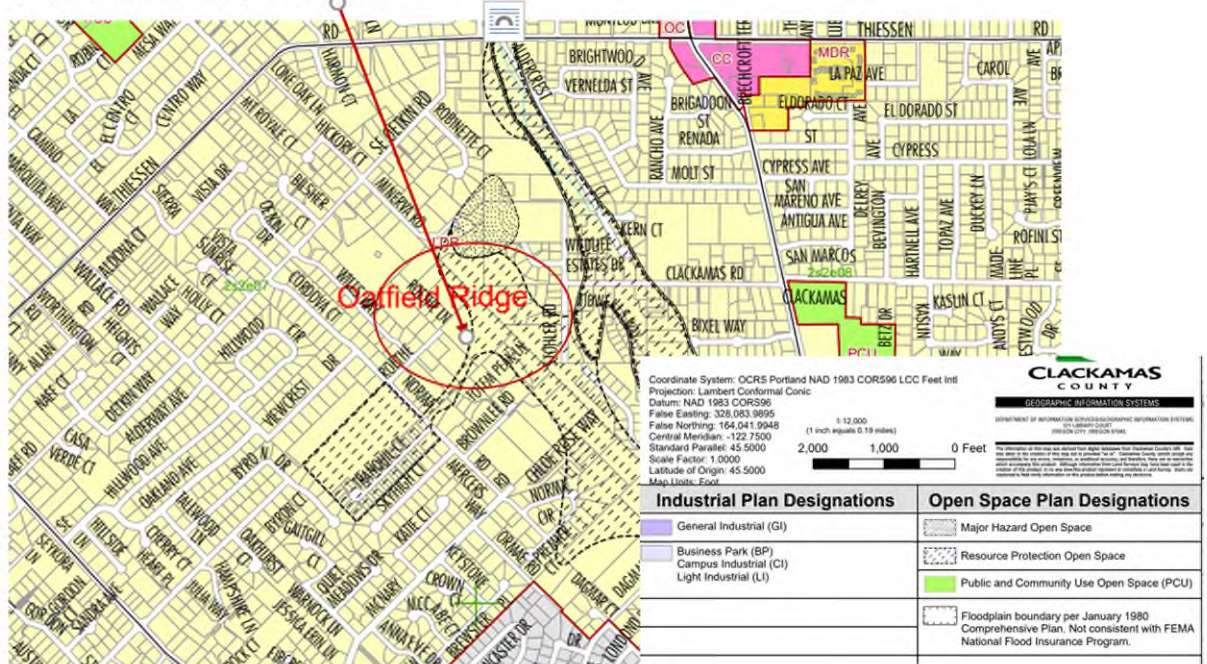
4.GG.2.1.d Wetland areas

4.GG.2.1.e Distinctive urban forests

4.GG.2.1.f Hillsides of more than 20 percent slope

4.GG.2.1.g Areas of high visual sensitivity

4.GG.2.1.h Other distinctive or unique natural areas (see Natural Resources Chapter) 4.GG.2.1.i Undeveloped public land with potential for recreation



This criterion is met.

1013.02 ACCESSORY USES

The following accessory uses are permitted in a planned unit development. As used in Subsection 1013.02, accessory use means a subordinate use, the function of which is clearly incidental to that of the main use(s) in the planned unit development.

- A. Recreational uses, such as bicycle trails, golf courses, nature preserves, playgrounds, recreation rooms, swimming pools, tennis courts, walking trails, and wildlife sanctuaries; and
- B. Offices, other buildings, and facilities required for: 1. The operation, administration, and maintenance of the planned unit development; 2. Recreational uses permitted pursuant to Subsection 1013.02(A); and 3. Vehicle parking and storage established pursuant to Subsection 1013.03(D)

Finding: The applicant is not proposing any of these accessory uses with this PUD application. **These criteria are not applicable.**

1013.03 DIMENSIONAL AND DEVELOPMENT STANDARDS

- A. Natural or Unique Features: To the maximum extent feasible, the plan and design of the planned unit development shall ensure that natural or unique features of the land and environment are preserved.

Finding: The majority of the slopes over 20%, many of the trees, as well as the two waterways identified on the Department of State Lands wetland inventory are being

preserved in an open space tract. The applicant originally included 0.89 acres of the 3.89 acre site in the Open Space tract, identified as Tract A. With the modification of the site plan for the roadway standards and design modification application processed through the Transportation and Engineering program, the amount of land within Tract A increased to 48,239 square feet with the removal of two of the lots in the southern area of the property. Therefore, staff estimate that approximately 28% of the 3.89 acre site that contains the unique natural features are being preserved as an open space tract.

As discussed above, unless the County approves a further design modification, the applicant is required to construct a full width road stub between the loop road and the northeast boundary of the site, which will require alterations to the preliminary plat. However, the applicant can expand the roadway to the northwest to avoid increased impacts to the open space.

This criterion is met.

- B. Maximum Number of Lots: In the RA-2, RR, RRFF-5, and FF-10 Districts, the number of residential lots in a planned unit development shall not exceed 10.*

Finding: The property is zoned R-15 and the zone change proposal is to change the underlying zoning to the R-10 District. **This criterion is not applicable.**

- C. Open Space:*
- 1. A minimum of 20 percent of the gross site area shall be platted as one or more open space tracts.*
 - 2. Open space tracts may include recreational uses permitted pursuant to Subsection 1013.02(A), bicycle trails, walking trails, natural or landscaped buffer areas, bus shelters, and significant natural vegetation or landscape features.*
 - 3. Open space tracts shall not include:*
 - a. Parking areas or driveways, except those serving recreational uses permitted pursuant to Subsection 1013.03(C)(2) ; or*
 - b. Roads.*

Finding: The proposal includes dedicating more than 20% of the site area as Open Space as discussed above. The site plans submitted on June 12, 2025, (Exhibit 2i) along with the plan set submitted on June 19, 2025, (Exhibit 2j) show the area of the property being included in Tract A. The site plan shows no driveways, roads, or recreational uses contained within the open space tract. As the open space tract is evaluated for recreational trails and other open space use that provides for the preservation of steep slopes, natural vegetation, and water resources, consideration of open space review is needed. **These criteria can be met as conditioned.**

- 4. The PUD shall be designed so that no lot or parcel is located more than 1000 feet from an open space tract.*

5. *All lots or parcels within the PUD shall have reasonable access to at least one open space tract.*
6. *Each open space tract shall be large enough for recreational use unless the open space is intended to protect significant natural features from impacts associated with use or development.*
7. *The open space restrictions shall continue in perpetuity, unless the restrictions are modified pursuant to either Section 1309, Modification, or the approval of a new land use permit application provided for by this Ordinance.*

Finding: The lots included in the proposal are all within 500 feet of the open space tract according to sheet C1.1 dated June 18, 2025 (Exhibit 2j). The site plan shows no access to the open space tract, but access to the open space is needed. As conditioned, the open space tract will be evaluated for recreational trails and other open space use that provides for the preservation of natural resources. **These criteria are met as conditioned.**

- D. Parking: The following may be required after consideration of street type, width, traffic volume, transit amenities, and pedestrian circulation: guest parking for dwellings and sufficient parking space for storage of residents' recreational vehicles.*
1. *If required, recreational vehicle parking shall be located so as to be compatible with the surrounding development. If located on the perimeter of the PUD, it shall be screened from adjacent properties.*
 2. *Off-street parking may be provided on each lot or parcel or in parking areas in proximity to the dwellings they serve, provided that such common parking areas shall be developed on a platted tract designated for parking.*

Finding: Each of the lots included in the proposal contain one off-street parking space according to sheet C1.1 dated June 18, 2025 (Exhibit 2j). The site plan shows no shared parking area and no recreational vehicle parking. As proposed, the development will allow on-street parking on one side of the proposed loop road and on both sides of SE Roethe Road between the site boundary and the north boundary of Tax Lot 2E07DA02200.

The hearings officer understands neighbors' concerns with the limited amount of parking on the site. However, the proposed parking is consistent with the minimum parking requirements of ZDO Table 1015-2, which requires a minimum one parking space per townhome dwelling unit in all low density residential areas. The fact that this site will develop as a PUD, concentrating development in a portion of the site in order to preserve open space on the remainder of the site, will not increase parking demand as the type of dwelling, single-family townhomes, will not change; this PUD development will not generate any more parking demand per dwelling unit than a standard townhome lot subdivision. In addition, the state's Climate-Friendly and Equitable Communities state rules prohibit the County from requiring any vehicle parking for needed housing.

The limited parking opportunities on the site may encourage residents and guests of the site to park on streets surrounding the site. The hearings officer understands that this additional demand for on-street parking will impact existing residents. However, parking on public streets is available to any member of the public for any legal use. On-street parking is not reserved for the owners of adjacent properties. It is available to all members of the public on a first come/first served basis.

These criteria are met.

ZDO Section 1015, PARKING AND LOADING

1015.01 GENERAL STANDARDS

- A. *Inside the Portland Metropolitan Urban Growth Boundary (UGB), parking, loading, and maneuvering areas shall be hard-surfaced, unless a permeable surface is required for surface water management pursuant to the regulations of the surface water management authority or in order to comply with Subsection 1006.06.*
- C. *Parking and loading requirements for uses and structures not specifically listed in Tables 1015-1, Automobile Parking Space Requirements; 1015-2, Minimum Automobile Parking Space Requirements for Dwellings; 1015-3, Minimum Required Bicycle Parking Spaces; and 1015-4, Minimum Required Off-Street Loading Berths shall be subject to the requirements for the most similar use.*
- D. *Motor vehicle parking, bicycle parking, and loading areas shall be separated from one another.*
- E. *Required parking spaces and loading berths shall not be: a. Rented, leased, or assigned to any other person or organization, except as provided for under Subsection 1015.02(D)(3)(a) for shared parking or Subsection 1015.04(C) for shared loading berths. b. Used for storing or accumulating goods or storing a commercial or recreational vehicle, camper, or boat, rendering the space(s) useless for parking or loading operations. c. Occupied by the conducting of any business activity, except for permitted temporary uses (e.g., farmers' markets).*

Finding: The subject property is inside the Portland Metropolitan Urban Growth Boundary (UGB). Due to the Climate-Friendly and Equitable Communities state rules, parking cannot be required for needed housing. However, any parking that is provided must comply with Code requirements. The site plan indicates that there will be driveways serving lots 12-22 and lots 23-43. Driveways are considered off-street parking. Therefore, the parking, loading, and maneuvering areas developed as part of the Subdivision will need follow the standards in 1015 and be hard surfaced. The site plan shows the driveways are separated from one another. These proposed parking areas were reviewed by the Transportation and Engineering staff and their findings and recommended conditions of approval are included as Exhibit 13. **These criteria can be met as conditioned.**

1015.02 MOTOR VEHICLE PARKING AREA STANDARDS

A. *Off-street parking areas shall be designed to meet the following requirements:*

1. *Off-street motor vehicle parking areas shall be provided in defined areas of the subject property. No area shall be considered a parking space unless it can be shown that the area is accessible and usable for that purpose and has required maneuvering area for vehicles. Required backing and maneuvering areas shall be located entirely onsite.*
2. *Automobile parking spaces shall be a minimum of 8.5 feet wide and 16 feet long, except that parallel spaces shall be a minimum of 8.5 feet wide and 22 feet long.*
- ...
4. *Parking areas shall comply with minimum dimensions for curb length, stall depth, and aisle width established by the Clackamas County Roadway Standards; these dimensions are based on the orientation (e.g., 45-degree, 90-degree), length, and width of the spaces.*

Finding: The submitted site plan shows parking spaces/driveways. The narrative indicated that “All front entry driveways area [sic] proposed to be 10-feet wide.” Many of these criteria refer to required parking and as stated above there is no required parking. No parking lot is proposed. Additionally, those standards that are not clear and objective are not addressed. Thus the three criteria identified above are considered and conditioned to ensure compliance. **As conditioned these criteria can be met.**

1015.03 BICYCLE PARKING STANDARDS

...

B. *Bicycle parking shall be designed to meet the following requirements:*

- ...
8. *Within the UGB, quadplexes not developed pursuant to Section 845, Triplexes, Quadplexes, Townhouses, and Cottage Clusters, and multifamily residential, commercial, and institutional developments shall designate short-term bicycle parking (less than four hours) and long-term bicycle parking (four or more hours) spaces as needed for the development.*

Finding: The submitted site plan showed no bicycle parking. Bicycle parking is required because the site is within the UGB and is for a Townhouse development. However, the number of spaces is identified in the code as “spaces needed for the development.” That does not indicate a clear and objective number that can be used to evaluate bicycle parking for needed housing. **These criteria are not applicable.**

1015.04 OFF-STREET LOADING STANDARDS – not applicable.

ZDO SECTION 1017 SOLAR ACCESS

1017.01 APPLICABILITY

Section 1017 applies to subdivisions, partitions, and Type II replats in the VR-4/5, VR-5/7, R-5, R-7, R-8.5, R-10, R-15, R-20, and R-30 Districts.

Finding: The applicant is proposing a subdivision in the R-15 or R-10 District. **These criteria are applicable.**

1017.02 DEFINITIONS

The following definitions apply to Section 1017:

- A. *CROWN COVER: The area within the drip line of a tree.*
- B. *FRONT LOT LINE: A lot line abutting a street. For corner lots, the front lot line is that with the narrowest street frontage. When the lot line abutting a street is curved, the front lot line is the chord or straight line connecting the ends of the curve. For a flag lot, the front lot line is the lot line that is most parallel to and closest to the street, excluding the pole portion of the flag lot. (See Figure 1017-1.)*
- C. *NORTHERN LOT LINE: The lot line that is the smallest angle from a line drawn east-west and intersecting the northernmost point of the lot, excluding the pole portion of a flag lot. If two lot lines have an identical angle relative to a line drawn east-west, the northern lot line shall be an east-west line 10 feet in length within the lot in the northernmost point possible. (See Figure 1017-2.*
- D. *NORTH-SOUTH DIMENSION: The length of a line beginning at the midpoint of the northern lot line and extending in a southerly direction perpendicular to the northern lot line until it reaches a lot line. (See Figure 1017-3.)*
- E. *UNDEVELOPABLE AREA: An area that cannot be used practicably for a habitable structure because of natural conditions, such as slopes exceeding 20 percent in a direction greater than 45 degrees east or west of true south, severe topographic relief, water bodies, or conditions that isolate one portion of a property from another portion so that access is not practicable to the unbuildable portion; or man-made conditions, such as right-of-way; existing development which isolates a portion of the site and prevents its further development; setbacks or development restrictions that prohibit development of a given area of a lot by law or private agreement; or existence or absence of easements or access rights that prevent development of a given area.*

Finding: These criteria are informational only.

1017.03 DESIGN STANDARD

Except as established by Subsection 1017.04, a minimum of 70 percent of the lots or parcels in the subdivision, partition, or Type II replat shall:

- A. *Have a minimum north-south dimension of 90 feet. Undevelopable area, other than a required setback area, may be included in the north-south dimension if it abuts either of the lot lines used in calculating north-south dimension; and*

Finding: The 3.89 acre site is roughly square angled at roughly 45-degrees making it nearly impossible to create lots aligned on a north-south basis. **This criterion is not met.**

- B. *Have a front lot line that is oriented within 30 degrees of a true east-west axis. (See Figure 1017-4.)*

Finding: None of the lots are 90-feet deep. The location of the one-acre open space tract required to protect the sensitive portion of the site and the need to provide road connections through the site prevent compliance with this standard. **This criterion is not met.**

1017.04 EXCEPTIONS TO THE DESIGN STANDARD

The minimum percentage of lots or parcels that must comply with Subsection 1017.03 shall be reduced to the minimum extent necessary if one or more of the following site characteristics apply:

- A. *Density and Cost: If Subsection 1017.03 is applied, either the resulting density would be less than that proposed, the minimum density would be less than that required in Section 1012, Lot Size and Density, or on-site site development costs (e.g., grading, roads, and water, surface water management and sanitary sewer systems) are at least five percent more per lot or parcel than if the standard is not applied due to one of the following conditions:*
1. *The subject property, or a portion of the subject property for which the exception is sought, has a natural grade that is sloped 20 percent or more and is oriented greater than 45 degrees east or west of true south, based on a topographic survey by a professional land surveyor registered in the State of Oregon.*

Finding: Almost 30% of the site has a natural grade of 20% or more and the site is oriented greater than 45-degrees east/west of true south. **This criterion is met.**

2. *The subject property includes a significant natural feature identified in the Comprehensive Plan, designated open space identified in the Comprehensive Plan, a highly or moderately restricted area identified in Subsection 1012.05, or a protected water resource and associated vegetated corridor regulated by the surface water management authority, that:*
 - a. *Prevents given streets, lots, or parcels from being oriented for solar access; and*
 - b. *Will remain undeveloped.*

Finding: The development parcel has a significant natural feature - a water source with a vegetated corridor - and designated open space identified in the Comprehensive Plan. These areas will remain undeveloped, and in part restrict the lots from being oriented for solar access. **This criterion is met.**

3. *Existing road patterns must be continued through the subject property or must terminate on-site to comply with applicable road standards or planned roads in a way that prevents given streets, lots, or parcels from being oriented for solar access.*

Finding: The applicant must connect with the existing street stub of SE Roethe Road, and must extend a public street to both the north and northeast boundaries of the property to comply with the County Road Standards. The extension of these roads prevents compliance with solar access requirements. **This criterion is met.**

4. *An existing public easement or right-of-way prevents given streets, lots, or parcels from being oriented for solar access.*

Finding: There is no evidence of any easements or rights-of-way preventing solar access. **This criterion is not met.**

- B. *Development Amenities: If Subsection 1017.03 is applied to a given lot or parcel, significant development amenities that would otherwise benefit the lot or parcel will be lost or impaired. Evidence that a significant diminution in the market value of the lot or parcel would result from having the lot or parcel comply with Subsection 1017.03 is relevant to whether a significant development amenity is lost or impaired.*

Finding: There is no evidence that compliance with solar access standards would result in the loss or impairment of any significant development amenities that would otherwise benefit the lot or parcel. **This criterion is not met.**

- C. *Existing Shade: As demonstrated by a scaled tree survey or an aerial photograph, trees a minimum of 30 feet tall, and more than six inches in diameter at a point four feet above grade, have a crown cover over at least 80 percent of a given lot or parcel, and at least 50 percent of the crown cover will remain after development of the lot or parcel.*
 1. *Trees are assumed to remain if the trees do not need to be removed for a driveway or other development and at least one of the following applies:*
 - a. *The trees are in a required setback;*
 - b. *The trees are part of an existing or proposed park, open space, or recreational amenity;*
 - c. *The trees are separated from the developable remainder of their lot or parcel by an undevelopable area or feature; or*

- d. The trees are required to be preserved pursuant to Subsection 1002.03(A).*
- 2. Those trees that are assumed to remain; required for compliance with the minimum crown cover standard of Subsection 1017.04(C); and located on the subject property, or contiguous property under the same ownership as the subject property, shall be preserved and protected pursuant to Subsection 1002.03.*

Finding: There is no evidence that existing trees limit or preclude compliance with solar access standards. **This criterion is not met.**

Summary: Based on the above findings the conditions listed in sections ZDO 1017.04(A) preclude compliance with solar access standards. **The solar access exception criterion are met and the application complies with ZDO 1017.**

ZDO SECTION 1103, OPEN SPACE REVIEW

1103.01 APPLICABILITY

Section 1103 applies to development that affects an open space resource described in Section 1011, and shown generally on Comprehensive Plan Map IV-6, North Urban Area Land Use Plan Map, as Resource Protection, Major Hazards, or Public and Community Use Open Space.

Finding: The northeastern portion of the site is designated open space in the Comprehensive Plan and development is proposed in a portion of the mapped area. **This criterion is applicable.**

1103.02 PROCEDURE *Open space review shall require a Type II application pursuant to Section 1307 and shall be subject to the following:*

- A. The required site analysis and development plans shall be reviewed to ensure that all Comprehensive Plan policies, Ordinance, and development standards relevant to the open space resource designation are being satisfied.*

Finding: Staff reviewed the tree preservation plan, the topographic survey, and the survey with the 50 foot buffer around the waterways/wetlands and concur with the applicant that they have conducted a site analysis. Staff find that the Comprehensive Plan policies, ordinance and development standards relevant to the open space resource designation are being satisfied, or can be satisfied with conditions. **This criterion is met as conditioned.**

- B. The probable impact of the proposed development on relevant natural systems or features, in particular on resources of area-wide significance, shall be evaluated.*

Finding: Staff reviewed the tree preservation plan, the topographic survey, and the survey with the 50 foot buffer around the waterways/wetlands and concur with the

applicant that they evaluated the impact of the proposed development on the natural features. The applicant indicated that there had also been a soils analysis completed, but it was not included in the application. A copy of the report will be submitted and evaluated to ensure no impact was found by the specialist who completed the report.

This criterion is met as conditioned.

- C. The potential for conservation easements, public acquisition, dedication, or any other available means of securing parts of the site as a park, trail, or other open space resource shall be evaluated.*
- D. Alternative development proposals that better protect the open space resources through the appropriate use of such techniques as density transfers, commonwall structures, multistory buildings, parking structures, under-structure parking, and reduced parking requirements near transit lines, shall be identified. The intent of this is to assist the applicant in using the various provisions of the Comprehensive Plan, Ordinance, and development standards to achieve the best possible balance of development and open space protection.*

Finding: Evaluating the potential protection mechanisms and uses of the open space is not clear and objective since there is no result required based on specifics of the evaluation. Therefore, this is not required per ORS 197A.400. **These criteria are not applicable.**

1103.03 APPROVAL PERIOD AND TIME EXTENSION

- A. Open space review approval 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, or the approval will become void.*

Finding: These criteria are informational only.

5. As Mr. Dane noted at the hearing, the culvert noted by Mr. Baker is an existing condition which the applicant is not required to remedy. Mr. Dane argued that the culvert has existed in this location for many years, presumably predating any limitations on grading, fill, or other regulations regarding placement of a culvert in this area. If the culvert was placed in violation of applicable regulations that can be addressed through the County's Code Enforcement process. However, the proposed development does not include any changes to the existing culvert. Therefore, the culvert is not relevant to any applicable approval criteria for the proposed subdivision PUD and zone change.

E. DECISIONS

1. Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves File No.

Z0051-25-ZC changing the zoning of the entire site from R-15 to R-10 and orders the planning director to amend the zoning map accordingly.

2. Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, and on the above decision approving the zone change, the hearings officer hereby approves File No. Z0052-25-SL (SE Roethe Road Subdivision) for a 43-lot townhome PUD subdivision, subject to the following conditions of approval:

Conditions of Approval

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on February 5, 24, and 27 and March 4 and 6, 2025, and additional documents submitted on March 20, June 11, 12, 19, and 24, and July 16 and 17, 2025. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with these documents and the limitation of any approval resulting from the decision described herein.
2. Prior to the final plat submittal, the applicant/property owner shall complete the following and provide documentation of completion to the Planning and Zoning Program for the file:
 - a. Evidence that the homeowners association has been incorporated, or evidence that ownership of the open space tract has been transferred to a government or nonprofit conservation organization. ZDO 1105.05(D)
 - b. Documentation that the storm drainage management proposed:
 - i. Includes positive drainage and adequate conveyance of surface water from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point. ZDO 1006.06(A)
 - ii. Can meet the DEQ Rule Authorization and water quality requirements. ZDO 1006.06 and Comprehensive Plan Policy 4.R.3.2
 - iii. Clearly identifies any areas of concern related to slope and soil and provides adequate recommendations for appropriate construction methods. Additionally, a copy of the preliminary geotechnical review prepared by Rapid Soil Solutions, LLC shall be provided for the file. ZDO 1002.01(B)(2) and 1103.02(B)
 - iv. The location, design, installation, and maintenance of all utility lines and facilities shall be carried out consistent with the rules and regulations of the surface water management regulatory authority, which is Clackamas Water Environmental Services (WES). ZDO 1006.01
 - v. The final stormwater plan and accompanying geotechnical engineering report shall clearly identify any impacts to slopes exceeding 35% and provide adequate recommendations for appropriate construction methods.

- c. The applicant shall provide evidence that any wells in the tract subject to temporary or permanent abandonment under Oregon Revised Statutes (ORS) 537.665 have been properly abandoned. ZDO 1006.03(C)
- d. Development which has a need for, or will be provided with, public or community water service shall install water service facilities and grant necessary easements pursuant to the requirements of the district serving the development, Oak Lodge Water Services District (OLWSD), pursuant to ZDO 1006.03(A).
- e. Connect to WES District public sanitary sewer system pursuant to Comprehensive Plan Sub-Policy 4.R.2.2 and ZDO 1006.01):
 - i. Permit Required (Rules, Section 4.2)A permit shall be required to connect to the District system, including, but not limited to a Service Connection, pipes, pollution reduction manholes, and detention facilities, whether constructed or natural. Before connecting to the District system, a permit authorizing such connection shall first be secured from the District and all applicable fees paid.
- f. The following direction was provided regarding service provider easement requirements required pursuant to ZDO 1006.01(D):
 - i. Public Easements – Existing (Section 5.2.7): Existing Surface Water, Storm Drainage, and Sanitary Sewer Easements located on the site and granted to WES/CCSD#1 are permanent and not extinguishable. No development shall encumber the use or access to these easements by WES.

With future development on Lot 12, no footing or foundation of any permanent structure shall be allowed to encroach within the existing easement, whether above or below ground.
 - ii. Public Easements – New (Section 5.2.7): All new Surface Water, Storm Drainage, and Sanitary Sewer Easements shall be reviewed and approved by the District prior to final Plan approval. Public easements shall be granted to “Water Environment Services” and recorded via plat map or deed instrument. All public sanitary sewer easements shall be labeled on the plat as ‘SSE’ and public storm drainage easements as ‘SDE’. Public easements shall have a minimum width of 15-feet. Easements that combine both mainline sanitary sewers and storm sewers shall have a minimum width of 20-feet.
- g. Dedicate full-width right of way to Clackamas County consistent with the Road Standard requirements for the classification of the street stub that provides access to the property northeast of the site (Tax Lot 22E08CB00507). ZDO 1007.02(B)(1) and Comprehensive Plan Policy 4.R.13) or obtain County approval of a design modification to vary from the Road Standard requirements.
- h. Provide sidewalks and street trees at required spacing on both sides of all public roads within the site, ZDO 1007.04(F) and 1007.06(A), with the following exceptions:

- i. Street trees and sidewalk are not required on the northwest edge of the roadway abutting Tax Lot 22E07DA00200, as this section of the street will be constructed as a partial-width improvement;
 - ii. A sidewalk is required on one side of the stub road extending between the on-site loop road and the northeast boundary of the site. Street trees are required on both sides of this roadway.
 - iii. Street trees may be located outside of the right-of-way, on lots abutting the street.
- i. Provide documentation of Fire District Approval, including approval of a single access to the site. ZDO 1003.05
- j. The applicant shall submit and abide by an erosion Protection and Sediment Control plan approved by Clackamas Water Environment Services. ZDO 1002.01(A)(2).
- 3. The final plat shall:
 - a. Comply with the County's final decision approving the preliminary plat and applicable provisions of Chapters 11.01 and 11.02 of the Clackamas County Code and Oregon Revised Statutes Chapters 92, 94, 100, and 209.
 - b. Include dedicated access to the open space for all residents of the subdivision. ZDO 1013.03(C)(5)
 - c. Dedicate an Open Space tract that is a minimum of 20 percent of the gross site area. ZDO 1013.03(C)(1)
 - d. Be submitted to the County for review.
 - e. All conditions of approval included in the County's final decision on the application shall be satisfied or guaranteed pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance, prior to final plat approval.
 - f. Include the service provider easements as required by the provider. (ZDO 1006.01(D))
- 4. All of the WES Sewer And Surface Water Management requirements must be completed following the specifications included in Exhibit 4. ZDO 1006.01(B)
- 5. Prior to issuance of final occupancy (Certificate of Occupancy) the applicant/property owner shall complete the following:
 - a. Type I slope review will be required for Lot 23 prior to building permit approval. Lots 24-28, and 31-35 will be evaluated for slopes during building permit review and if the areas of 20% slope are disturbed for dwelling development additional land use review will be needed. ZDO 1002.01(A).
- 6. A sign permit will be needed prior to the installation of a sign for the development. ZDO 1010.
- 7. An Open Space land use application shall be reviewed for disturbance of hillsides with slopes over 35%, lands including the riverine wetlands identified on site in

the site plan, wet, any recreation areas added to the Open Space "Tract A" . ZDO 1011.03.

8. The Homeowners Association shall ensure that all street trees remain and are maintained on both sides of the streets in the locations and extent shown on the final plans approved by the County.
9. The extension of SE Roethe Road at the entrance of the development shall be modified to meet the full-width street improvement standard for an Urban Local Cross Section shown in Figure 5-1d of the Comprehensive Plan, including street trees, along the entire length of the boundary with Tax Lot 2E07DA02200.
10. Street lights shall be installed consistent with ZDO 1006.02
11. The applicant shall submit a copy of the soils analysis report, which shall ensure no impact to the natural features (streams, wetlands, and steep slopes) was found by the specialist who completed the report.

Development Engineering Conditions

1. A Development Permit is required from the Engineering Division for review and approval of frontage improvements, access and utilities. The Permit shall be obtained prior to commencement of site work and recording of the partition plat. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125% of the estimated cost of the construction, and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit application.
2. All required improvements shall be constructed and inspected. Performance bonds shall be in the amount of 125% of the approved engineer's cost estimate of the required improvements, and shall be accepted only when access has met minimum Substantial Completion requirements, per Roadway Standards Section 190.
3. All required street, street frontage, and related improvements shall comply with the standards and requirements of the Clackamas County Zoning and Development Ordinance and the Clackamas County Roadway Standards unless otherwise noted herein.
4. Prior to final plat approval, the applicant shall design and construct improvements for the proposed internal public streets to local roadway standards, consistent with Standard Drawing C110, as modified by these conditions. These improvements shall consist of the following:
 - a. From the existing terminus of the SE Roethe Road right-of-way, a minimum 46-foot wide public right-of-way shall be dedicated up to the northeasterly property corner of Tax Lot 22E07DA02200.
 - b. Beyond Tax Lot 22E07DA02200, adjacent to Tax Lot 22E07DA00200, a right-of-way width of 34 shall be dedicated to accommodate an approximate three quarter street width.

- c. A minimum 33 foot wide public right-of-way shall be dedicated for the public loop road extending southeast of the on-site section of SE Roethe Road. The right-of-way centerline and half-width shall be verified by a professional survey to the satisfaction of DTD Engineering and Survey Departments. Centerline monuments shall be provided per Roadway Standards Section 150.3. The applicant shall grant an 8-foot wide public easement for signs, slope, sidewalk, and public utilities on both sides of the new public streets within the plat.
- d. From the loop road extending northeast to Tax Lot 22E08CB00507, a minimum 26-foot wide public right-of-way shall be dedicated. A minimum 8-foot wide public easement for sign, slope, sidewalk, and public utilities shall be granted on easterly side of the right-of-way.
- e. From the existing terminus of the SE Roethe Road right-of-way up to the northeasterly property corner of Tax Lot 22E07DA02200, a public road shall be constructed, as follows:
 - i. A minimum paved width of 32 feet, curb to curb, with a structural section per Standard Drawing C100 for a local roadway shall be constructed.
 - ii. A 6-inch curb shall be constructed on both sides of the roadway, per Standard Drawing S180.
 - iii. From the existing terminus of the SE Roethe Road, minimum 5-foot wide sidewalk shall be constructed on both sides of the road up to the northeasterly property corner of Tax Lot 22E07DA02200. The sidewalk on the northerly side of the right-of-way shall connect to the existing sidewalk on SE Roethe Road.
 - iv. Street trees shall be provided along the entire site frontage at 25-40-foot spacing, based on tree species.
 - v. A minimum 8-foot wide public easement for sign, slope, sidewalk, and public utilities shall be granted on one side of the right-of-way.
- f. From the northeasterly property corner of Tax Lot 22E07DA02200 to the northerly terminus, a three- quarter public road shall be constructed, as follows:
 - i. A minimum paved width of 22 feet, curb to curb, with a structural section per Standard Drawing C100 for a local roadway shall be constructed.
 - ii. A 6-inch curb shall be constructed on easterly side of the roadway, per Standard Drawing S100.
 - iii. A minimum 6-foot wide sidewalk shall be constructed on the southeasterly side of the roadway.
 - iv. Street trees shall be provided along the entire site frontage on the southeasterly side of the roadway at 25-40-foot spacing, based on tree species.

- v. A minimum 8-foot wide public easement for sign, slope, sidewalk, and public utilities shall be granted on the easterly side of the roadway.
- g. The loop road shall be constructed as a public street, as follows:
 - i. A minimum paved width of 26 feet, curb to curb, shall be constructed with a structural section per Standard Drawing C100 for a local roadway.
 - ii. A 6-inch mountable curb shall be constructed on the side of the roadway where driveways are located, per Standard Drawing S180. A 6-inch curb shall be constructed on the side of the roadway not serving garages, per Standard Drawing S100.
 - iii. A 6-foot wide unobstructed curb-tight sidewalk shall be constructed per Standard Drawing S960. The sidewalk may be located partially within the easement for public utilities, with the condition that a minimum of 20 foot setback is provided from a garage opening to the back of sidewalk.
 - iv. Street trees shall be provided on both sides behind the sidewalk along the entire site frontage at 25-40-foot spacing, based on tree species.
 - v. Dual concrete curb ramps shall be constructed at all quadrants of the public road intersections, per Oregon Standard Drawings, Series RD900.
 - vi. Minimum 12-foot wide concrete driveway approaches shall be constructed for each lot, per Standard Drawing D600. Where turning movements in and out of a driveway required crossing a side property, an access easement shall be provided.
- h. A public street stub shall be constructed from the loop road extending northeast to Tax Lot 22E08CB00507, as follows:
 - i. A minimum full-width right of way to Clackamas County consistent with the Road Standard requirements for the classification of the street shall be dedicated;
 - ii. A minimum 8-foot wide public easement for sign, slope, sidewalk, and public utilities shall be granted on one side of the right-of-way; and
 - iii. Construct minimum full-width street improvements consistent with the Road Standard requirements for the classification of the street, including sidewalks and street trees on both sides of the roadway;
 - iv. Or as modified through an approved design modification.
- i. Concrete curb ramps shall be constructed where sidewalk ends, per Oregon Standard Drawings, Series RD900.
- j. Drainage facilities in conformance with Water Environment Services requirements and *Clackamas County Roadway Standards* Chapter 4.
- 5. Alley Serving Lots 1-11- Prior to final plat approval, the applicant shall design and construct improvements for the private alley, which will consist of:
 - a. The private alley improvements shall be located within a minimum 24-foot wide, private access and utility easement that encompasses the required

- improvements. The private road shall be referenced on the final plat as a reciprocal and perpetual, common access and utility easement.
- b. A minimum paved width of 18 feet shall be provided, with a structural section constructed to no less than Standard Drawing R100.
 - c. Minimum 18-foot wide, concrete driveway approaches shall be constructed at the intersection of the private alley with a public roadway, per Standard Drawing D650.
 - d. Standard curb, or curb and gutter if curblane slope is less than one percent, or mountable curb per Drawing S180.
 - e. Concrete driveway approaches for each lot where access is taken from the private road, per Standard Drawing D650.
 - f. A conceptual townhouse plan shall be provided demonstration adequate passenger vehicle turning movement in and out of garages/parking spaces.
 - g. Drainage facilities in compliance with Water Environment Services Rules and Regulations, and Clackamas County Roadway Standards Chapter 4.
 - h. A road maintenance agreement for the shared private road implementing ORS 105.170 - 105.185 must be recorded with the plat.
6. Street name signs shall be provided at the intersections of public roads and named private roads.
 7. Written verification must be received from the Fire District that the roadway will support a fire apparatus, that a sufficient turnaround exists or will be constructed, that corner radii are acceptable, that vertical and horizontal clearances are acceptable, and that a single access is acceptable.
 8. Where the public or private roads are 26 feet in width, parking shall be limited to one side of the road. Where the public or private roads are less than 26 feet in width, there shall be no on-street parking. Roads shall be signed and/or striped "FIRE LANE NO PARKING" where required. Installation of signs and/or striping shall be completed prior to recording the plat. The developer is responsible for replacing all signs damaged or removed during home and street construction.
 9. Primary Inspector:
 - a. The applicant shall enter into a Developer/Engineer Agreement for primary inspection services per Section 180 of the Roadway Standards. This form will be provided to the applicant and shall be signed and returned to County Plans Reviewer.
 - b. Prior to final plat, the applicant shall provide a Certificate of Compliance signed by the Engineer of Record stating that all materials and improvements have been installed per approved plans and manufacture's specifications.
 10. The applicant's attorney and/or surveyor or engineer shall provide written verification that all proposed lots have legal access and utility easements as required prior to recording of the plat.

11. The applicant shall submit, at time of initial paving, reproducible as-built plans for all improvements showing all construction changes, added and deleted items, location of utilities, etc. A professional engineer shall stamp as-built plans.
12. All existing and proposed easements shall be shown on the final plat.
13. All roads shall comply with applicable sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. ZDO 1007.02(D)

ADVISORY NOTES

The items listed below are not conditions of land use approval and are not subject to appeal. They are advisory and informational only but may represent requirements of other agencies/departments. As such, they may be required by these other agencies/departments in order to complete your proposed development.

1. WES has reviewed the proposal and has provided the following Conditions:
 - A. Authority (Rules, Section 2): Clackamas Water Environment Services (“WES” or “District”) is an intergovernmental entity formed pursuant to Oregon Revised Statutes Chapter 190 for the purpose of providing regional sewerage works, including all facilities necessary for collecting, pumping, treating, and disposing of sanitary or storm sewage within its boundaries. Properties located within the WES service area shall be subject to WES Rules and Regulations, 2023, Ordinance No. 02-2023. These Rules and Regulations shall apply to any property that discharges or requests to discharge, via connection request, development permit, or change in use, to the District’s public sanitary sewer system or public stormwater system, to groundwater, or to surface waters within District boundaries.
 - a. Water Environment Services Sanitary Standards, April 2023
 - b. Water Environment Services Stormwater Standards, April 2023
 - c. Water Environment Services Buffer Standards, April 2023
 - B. Rates, Charges, and Billings (Rules, Section 5)
 - a. Plan review fees shall apply at the following rates:
 - i. Sanitary Review: The fee is equal to 4% of the installed cost of the public sewer extension. A \$400.00 minimum is due with the first plan submittal.
 - ii. Stormwater Review: The total fee is equal to 4% of the construction cost for all stormwater management related facilities. A \$400.00 minimum is due with the first plan submittal.
 - b. Erosion Protection and Sediment Control permit fee shall apply in the amount of \$620.00.
 - c. With future development on each lot, System Development Charges (SDCs) shall apply on all development that increases usage of the sanitary sewer, storm system or surface water facilities owned, managed, or maintained by WES. WES shall not issue such permit or allow connection or increased usage of the system(s) until the charge has been paid in full. SDC payments shall apply at the rates in effect

on the date when a complete building permit application is submitted to the applicable Building Code Division.

- C Prior to WES signing off on the plat approval, any sanitary or storm systems required by WES Standards shall be substantially complete, as determined by WES, or the Applicant shall obtain a performance surety for all proposed sanitary and stormwater improvements on the approved plan. Substantial completion requires WES review of as built drawings, initial inspection of sanitary and storm systems, and a signed storm maintenance agreement. See Appendix A of Exhibit 4 for Plat Review/Approval criteria.

DATED this 12th day of August 2025.

A handwritten signature in black ink, appearing to read 'Joe Turner', with a long horizontal flourish extending to the right.

Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.10.F provides that the Land Use Hearings Officer's decision is the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when and how any appeal must be filed. Presently, ORS 197.830(9) requires that any appeal to LUBA "[s]hall be filed not later than 21 days after the date the decision sought to be reviewed becomes final."