

BEFORE THE LAND USE HEARINGS OFFICER  
CLACKAMAS COUNTY, OREGON

Regarding an Application for a 44-Lot  
Subdivision and Planned Unit Development,  
Zone Change from FU-10 to R-8.5, and Habitat  
Conservation Area Development Permit.

Case File Nos:  
Z0012-25-SL, Z0013-25-ZC &  
Z0014-25-HCD

(The Woods at Wenzel Park Estates)

**A. SUMMARY**

1. The applicant and owner of the subject property is Stonecreek Development, LLC. The subject property is located at 14607 SE Faircrest Street, Clackamas, OR 97015, also known as T2S, R2E, Section 12BB, Tax Lot 05200, W.M. (the “Property” or “site”), near the intersection of 142<sup>nd</sup> Avenue and Wenzel Drive and approximately ¼ mile north of Hwy 212/244. The proposal provides for connectivity to both SE Faircrest Street and Hemmen Ave. The Property is a 10-acre lot currently zoned Future Urban – 10 Acres (FU-10), with a comprehensive plan designation of Low Density Residential (LDR). Properties to the north, east, and west are developed as subdivisions, with adjoining developments subdivided as planned unit developments with lots 8,500 square feet or smaller.
2. The applicant submitted three concurrent applications: Z0012-25-ZC, seeking a zone change for the Property from the current FU-10 zone to Urban Low Density Residential (R-8.5); Z0013-25-SL; seeking approval for a 44-lot major subdivision and planned unit development (PUD); and Z0014-25-HDA, an application for a Habitat Conservation Area (HCA) Development Permit review. The site is undeveloped, except for a single-family residential structure and one or two small storage buildings that are scheduled to be demolished. The site is heavily forested, with the applicant’s proposal preserving much of the regulated sensitive areas including Habitat Conservation Area (HCA), steep slopes (20%-35%), and water quality resource areas (WQRA).
3. The County received numerous written comments and petitions from interested neighbors, public agencies, and other interested parties in advance of the hearing. Several neighbors appeared at the hearing and provided testimony concerning the proposed development. The applicant’s owner/member, Brandon Sauer, appeared in support of the application, as did several of the applicant’s representatives. Numerous comments were submitted during an open record period following the hearing, primarily from neighbors opposed to the proposal.
4. The applicant submitted this land use application on January 14, 2025 and it was deemed complete on February 4, 2025. The subject property is located inside an urban growth boundary. The 120-day deadline for final action on the application pursuant to ORS 215.427(1) is June 4, 2025. On April 3, 2025, the Hearings Officer conducted a public hearing to receive testimony and evidence about the applicant’s proposal. Ben Blessing, Senior Planner for Clackamas County, submitted a staff report on behalf of the County. County staff initially recommended denial of the application, pointing to concerns regarding the adequacy of the

applicant's transportation impact study (TIS); however, the applicant submitted a revised TIS on March 26, 2025 resulting in County staff revising their recommendations and recommending approval of the project, subject to certain Conditions of Approval. The Hearings Officer approved the applications subject to conditions consistent with the County's recommendations.

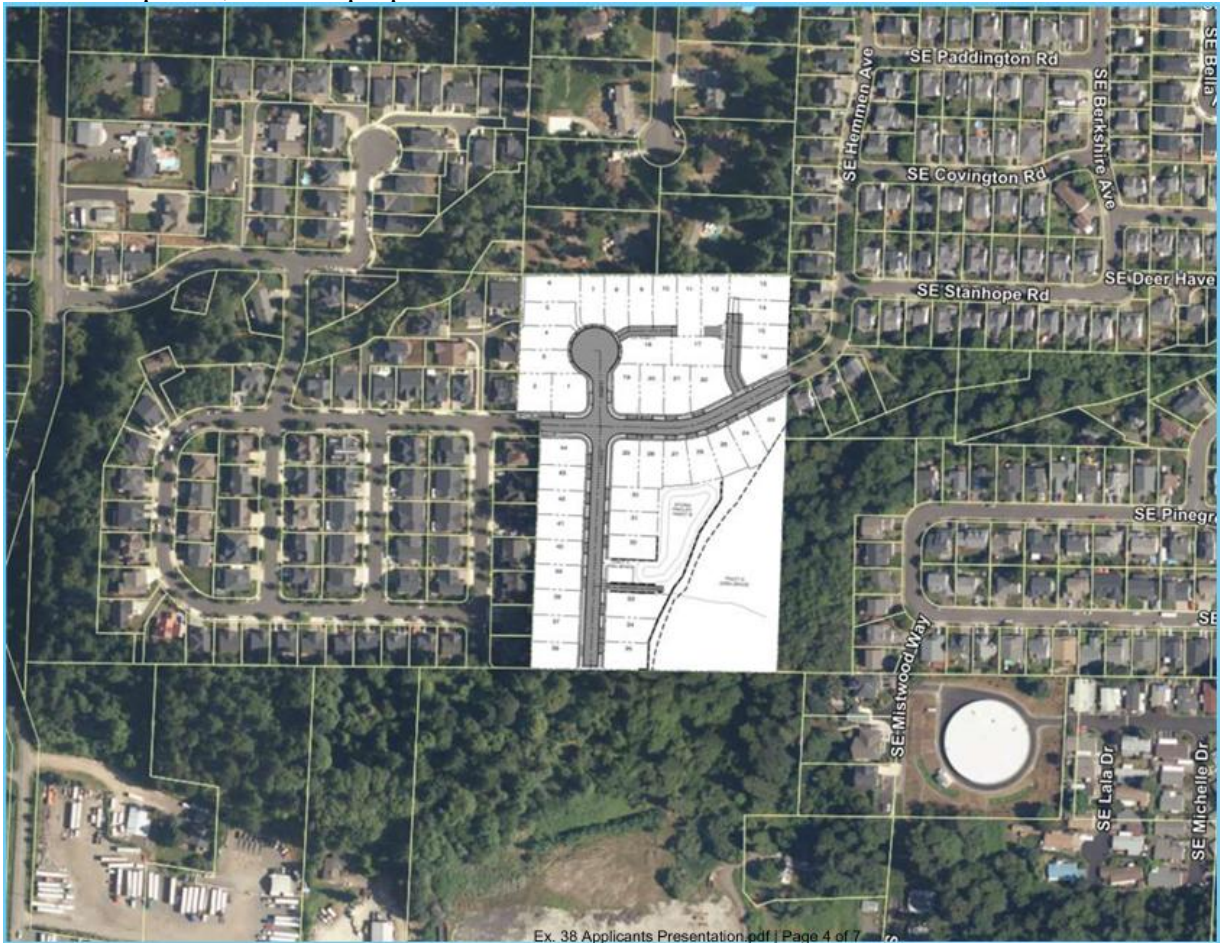
## **B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony and evidence at the April 3, 2025 public hearing about this proposal and related applications. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform. 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 Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing County Senior Ben Blessing shared a PowerPoint presentation and discussed the County's March 27, 2025 staff report reviewing application Z0012-25-ZC proposing a zone change from FU-10 to R-8.5, and application Z0013-25-SL proposing a 44-lot major subdivision and PUD, as well as the County's March 26, 2025 staff report reviewing application Z0014-25-HDA proposing a Habitat Conservation Area required in conjunction with a subdivision. Mr. Blessing shared several PowerPoint slides and discussed a number of exhibits as well as the original recommended denial of the application. Mr. Blessing also discussed the applicant's submission of a revised TIS on March 26, 2025 (Exhibit 33) that resulted in a reversal of the recommendation of denial, and the submission of a March 31, 2025 Memo to the Hearings Officer with a recommendation of approval subject to Conditions of Approval (Exhibit 35).
3. Mr. Blessing shared a vicinity map showing the proposal site and surrounding properties, pointing to the location of the proposed subdivision between two existing subdivisions, also pointing to a stream in the southeastern corner of the Property that flows toward the Clackamas River. Mr. Blessing pointed to the findings in the staff report addressing the appropriateness of the proposed zone change from FU-10 to R-8.5, pointing to discussion in the staff report concerning the County's zone change policies. He noted that there is a trail on or near the Property shown on the Comprehensive Plan Map, stating that the applicant is willing to provide a related easement to the County Parks Division.
4. Mr. Blessing provided discussion and a slide sharing important notes about applicant additions after issuance of the hearing notice. The additions included enlarging the stormwater pond in the applicant's proposal to accommodate surface water from impervious surfaces, causing slight changes to a few lots and open space tracts. The additions also included small changes to the submittal package described in Exhibits 2A-2D, an Updated Traffic Impact Study (TIS) submitted by the applicant on March 26, 2025, with County Traffic and Development Engineering concurring with the study (Exhibits 33, 34, and 34A). Mr. Blessing stated that the

staff's initial recommendation of denial should be reversed to a recommendation of approval. Mr. Blessing also requested that the record of the hearing remain open for at least one week.

5. Mr. Blessing provided additional discussion and a slide of highlights of the proposed subdivision, noting that single-family homes are proposed, and open space tracts will contain stream channels and open space. Mr. Blessing pointed out that the proposal is for a Planned Unit Development (PUD), providing for flexible lot sizes and less restrictive dimensional standards for setbacks, lot coverage, etc. He also pointed to the proposal's planned connectivity to Faircrest and Hemmen Ave., with access drives and private roads serving lots north of the public road. Mr. Blessing provided discussion and a slide of infrastructure highlights, noting the proposal provides for typical public streets with sidewalks on both sides, a large stormwater pond to treat runoff with discharge of stormwater to a small stream in the tract. Mr. Blessing noted the proposal provides for a street stub at the south property line, providing for potential future access, and no connection is required to the north property line.
6. Mr. Blessing shared a slide and provided discussion of environmental conditions, pointing to the HCA to be preserved except for an outfall to the small creek in the southeastern corner of the site and certain small encroachments to water quality buffers, noting that the water quality buffers or Water quality Resource Area (WQRA) is regulated by Clackamas County Water Environment Services (WES). Mr. Blessing also provided a slide of the proposed Tree Removal plan submitted by the applicant showing that the trees in the vegetated corridor will remain, except for a few trees located in the temporary encroachment area for the storm outfall encroachment. The applicant proposes to remove substantially all trees not located within the vegetated corridor. Mr. Blessing discussed several comments and concerns submitted by members of the affected community, including concerns that traffic impacts from the proposed subdivision are too great for the area, that neighborhood parks should be dedicated, that trails within an open space tract should be considered, and other concerns with respect to livability, water quality degradation, tree removal, etc. Mr. Blessing recommended approval of the applications subject to the conditions stated in files Z0012-25, Z0013-25, and Z0014-25.
7. Wayne Hayson of Pioneer Design Group shared a PowerPoint presentation and provided discussion of the proposal and the three related applications submitted by the applicant. Mr. Hayson provided a slide with an overview identifying the members of the project team. He shared a slide showing the applicant's proposed preliminary plat along with a vicinity map, and a slide showing an aerial photograph of the vicinity with an overlay placing the rough preliminary plat of the proposal, noting the similar development in the surrounding area. Mr. Hayson also shared a slide showing the proposed Habitat Conservation Area showing the small creek in the southeastern corner, noting the areas of lot encroachment and storm facility encroachment into the designated vegetated corridor, the open space tract and the proposed storm outfall encroachment associated with the temporary encroachment. Mr. Hayson asserts that the R8.5 zoning is appropriate for the urban development of this site.
8. Mr. Hayson provided a slide and discussion of County requirements for Planned Unit Developments, noting requirements for open spaces, dimensional and building design standards in the Urban Low Density Residential Zoning Districts, and how the proposal meets or exceeds

all of these requirements. He points out that the site already has sewer easements in place for thru streets connecting the adjacent subdivisions. He pointed to Tract D and explained that it contains the entire HCA area, with a small portion of the area (645 square feet) impacted by the on-site stormwater facility and its associated outfall to the creek in the southeastern corner. He also noted that Tract D contains steeper slopes, with approximately 79,000 square feet over 20%, and this designated area exceeds open space requirements. Mr. Hayson points to the subdivision to the west of the proposal site and how the applicant's proposal provides for connectivity for this adjacent development, and how the proposal provides for lot sizes and single-family residences similar to this existing adjacent development, providing the slide below showing an aerial photograph of the vicinity with overlays depicting existing lot sizes and development, and this proposal:



9. Mr. Hayson discussed the proposed Planned Unit Development, how the proposal configuration provides for minimum lot sizes of 5,000 square feet and average lot sizes of 5,700 square feet, while maintaining perimeter setbacks. Mr. Hayson asserts that the proposed PUD should be approved. Matt Sprague, Principal Planner for the applicant, joined the discussion with Mr. Hayson and they initiated discussion regarding certain conditions recommended by WES. The Hearings Officer directed them to work with staff on these issues and submit proposed alternative conditions during the open record period.

### *Public Comments at Hearing*

10. Monica Quintero-DeVlaeminck is a neighbor residing in an adjacent subdivision and is opposed to this proposal. Ms. Quintero-DeVlaeminck knew the previous owner of the Property, Mr. Bob Wenzel, and described how Mr. Wenzel had wanted the 10-acre Property to remain mostly undeveloped and wooded, providing a natural habitat area for wildlife, and had stated he never wanted the Property sold or developed. She described how Mr. Wenzel enjoyed how his Property provided the natural areas for owls, hawks, coyotes, and other wildlife, and expressed concern for the loss of habitat for the wildlife and protection for their environment. Ms. Quintero-DeVlaeminck asserts that the community received inadequate notice of the sale and proposed development of the Property, reporting she and another affected neighbor did not receive the notice at all. She disputes the applicant's TIS findings, contending that once this development provides connectivity most of the neighborhood traffic will utilize 142<sup>nd</sup> describing the connecting neighborhood as lacking sidewalks for pedestrians and asserting the additional traffic will result in accidents. She points to similar impacts from another development underway across 142<sup>nd</sup>. Ms. Quintero-DeVlaeminck also questions the appropriateness of the proposal's stormwater treatment plan, with the outfall to the creek, noting the small size of the creek. Ms. Quintero-DeVlaeminck also submitted written statements in advance of the hearing, and additional written statements, photos, and maps during the open-record period following the hearing. [Mr. Blessing answered a question from Ms. Quintero-DeVlaeminck, stating the rear setbacks for the perimeter lots are 20 feet and the side setbacks are 5 feet.]
  
11. Daniel Hale is a neighbor residing in an adjacent subdivision on a lot that abuts this proposed development and agrees with the concerns expressed by Ms. Quintero-DeVlaeminck. Mr. Hale expressed concerns regarding surface water and drainage issues. He describes water and drainage issues he experiences on his own property, reporting significant drainage issues affecting his lot adjacent to the proposal site and asserting the water comes from properties to the north and from the proposal site to the west. Mr. Hale believes there is a failed underground water system that overflows during heavy rain, related to a creek that runs north/south through his subdivision and through the former Wetzel Property that was placed in an underground pipe when his subdivision was built. Mr. Hale is concerned that development of the proposal site will exacerbate the drainage issue on his lot. Mr. Hale also knew the previous owner of the Property, Mr. Bob Wenzel. Mr. Hale described how Mr. Wenzel never wanted the Property developed and wanted to give the Property to the County for a park but was refused. Mr. Hale pointed out that his own lot is affected by an approximately 15–20-foot width of the natural conservation area that extends through the proposal site, questioning why the applicant is allowed to encroach on this area.
  
12. Mr. Hale is also concerned with through-traffic, describing how his lot is particularly affected by the applicant's proposal because his is one of five homes along one of the "dead-end" road stubs that is now proposed for access. Mr. Hale points out that if the proposal is approved, then his quiet "dead-end" neighborhood will be on a through street with greatly increased traffic, affecting the livability of his neighborhood and increased risk to neighborhood children, and questions why the connectivity is required. [Mr. Blessing addressed this question, pointing to

ZDO Section 1007 requirements for connectivity, as well as County roadway standards.] Mr. Hale asserts that with the loss of the dead-end street location, the marketability and value of his home and those of his neighbors will decrease and they should be compensated. Mr. Hale notes that he purchased his own home in a development and states that he is not opposed to new developments. Mr. Hale also submitted written comments prior to the hearing (including a letter concerning the water issue) and during the open-record period following the hearing.

13. Bonnie Warren is a neighbor residing in the adjacent neighborhood directly to the north of the proposal site and is concerned with the impacts from this proposal. She describes her lot as having an approximately 283-foot linear border with the proposal site, asserting approval of the proposal will devalue her property. Ms. Warren notes that the applicant's preliminary plans show there would be four houses backing to her property line, with the backs of those houses looking into her property. Ms. Warren corroborates the testimony by Mr. Hale concerning surface water issues, describing how the water seems to come from further north and also reporting that her own garage has flooded several times. Ms. Warren describes how the former owner of the Property, Mr. Wenzel, had wanted the Property used for conservation, but reported that his relatives who inherited the Property could not afford to pay the taxes and had to sell. She agrees with the testimony provided by the other neighbors. Ms. Warren also submitted written comments prior to the hearing, and during the open-record period following the hearing.
14. Rosemary Reynolds is also a concerned member of the local community, not necessarily opposed to this proposal as she understands that development is needed. Ms. Reynolds questions whether a traffic engineer has stood at the affected intersections. She notes that March 26, one of the dates traffic counts were reported, was during the school spring break and contends this affected traffic counts. Ms. Reynolds described concerns with area traffic, asserting that the 142<sup>nd</sup> intersection is already congested, and the proposed new development will make it worse. Ms. Reynolds asserts that trying to turn left onto 142<sup>nd</sup> is already not safe, reporting there is a site distance issue at this intersection, and now more drivers will use it. Ms. Reynolds further questions whether the traffic infrastructure is adequate for the residents of this area to evacuate in case of an emergency.
15. Matt Mattson is a concerned neighbor and member of the local community and agrees with the comments and concerns expressed by other neighbors. Mr. Mattson points to the nearby subdivision that is not yet completed. He contends that the traffic on 142<sup>nd</sup> is already bad and backs up the hill and is only going to be worse with the additional development under construction. Mr. Mattson asserts that area schools are already overcrowded as well. Mr. Mattson also submitted additional written comments prior to the hearing, and during the open-record period following the hearing.
16. Jim Schroeder is a concerned neighbor and member of the local community, residing on a corner lot at the intersection of Mayfield and Faircrest. Mr. Schroeder is not opposed to development. Rather, Mr. Schroeder contends that the community needs parks and other safer places for kids to play than the street, such as easements for trails and public access for the community to utilize, and that better pedestrian and bicycle access is needed. Mr. Schroeder disputes the findings of the applicant's traffic impact study, stating there were 23 crashes on 142<sup>nd</sup> 100 feet

south of the intersection with Wenzel during the recent February ice storm. He also collaborates testimony by Ms. Reynolds concerning the sight distance at the Wenzel/142<sup>nd</sup> intersection, pointing to sight distance being obstructed by the existing guardrail, requiring drivers to proceed into the intersection to see past it, also asserting that drivers in the area are speeding. Mr. Schroeder proposes that the new proposed neighborhood not include thru connectivity, suggesting emergency access only through the Mayfield/Faircrest intersection to reduce the through traffic. Mr. Schroeder also submitted written comments prior to the hearing, and during the open-record period following the hearing.

17. Andrew Swanson is a concerned neighbor residing in an adjacent neighborhood. Mr. Swanson corroborated Mr. Hale's statements about water on his lot coming from the Property, noting Mr. Hale's lot has a conservation easement and questioning whether Lot 14 of the proposal also has a similar conservation easement, or whether the policy has changed. Mr. Swanson asserts that Mr. Hale's drainage problem is coming from Lot 14 of the Property, related to an underground piped creek that should be run to the south away from his lot. Mr. Swanson noted that he knew Mr. Wenzel, and that Mr. Wenzel tried to sell the Property to the County but the NCPRD did not purchase it for a park, suggesting that Happy Valley's parks department needs to plan for long-term parks in the area. Mr. Swanson points to the proposed connectivity of Hemmen to 142<sup>nd</sup> through Faircrest and other neighborhood roads, asserting that traffic slowing and "calming" strategies should be implemented to slow down the traffic and make the neighborhood safer, and discourage some of the area traffic from utilizing this access.
18. Jim Harris is a concerned member of the community, suggesting that a "No Thru Traffic" sign be placed on the east side of the new proposed development. He supports many of the statements made by local neighborhood residents with respect to Mr. Wenzel, traffic concerns, and other issues.
19. Gary Acker is a concerned neighbor residing in an adjacent neighborhood on SE Glenbrook Rd. He describes a traffic issue where vehicles enter the neighborhood, noting people often have to wait at the intersection where there is an "S" curve. He contends that the proposed development will add to this issue, not just from the additional residents but also from drivers using the connectivity to come through the neighborhood.

### ***Responses to Public Comments at Hearing***

20. Jennifer Danziger, PE, is the traffic engineer with Lancaster-Mobley who conducted the applicant's December 31, 2025 Limited Traffic Study, providing her Registered Professional Engineer stamp, and also the Revised Traffic Impact Study dated March 31, 2025, again providing her Registered Professional Engineer stamp. Ms. Danziger responded at the hearing to concerns expressed by Ms. Reynolds and other community members, stating that the actual traffic counts were conducted the week before spring break while school was in session and the Wenzel Drive/142<sup>nd</sup> street intersection site distances were measured and meet standards. Ms. Danziger noted there are two reported crashes for this intersection, one related to sight distances, and the study included counts for pedestrians. Ms. Danziger also stated that her analysis included review of the traffic study conducted for the recent development across the street.

21. Mr. Blessing provided responses to several comments and concerns raised by members of the public participating at the hearing. With respect to the notice issue raised by Ms. Quintero-Devlaeminck, Mr. Blessing stated that written notice was mailed by the County to the owners of all properties within ½ mile of the Property, using the mailing address listed in the County Tax Assessor’s data base, but the County will add her email address for future notices. With respect to the surface water issue raised by Mr. Hale, Mr. Blessing stated that surface water related to the proposed development will be addressed by Clackamas Water Environment Surfaces, noting requirements to meet district standards. Further, Mr. Blessing pointed to the discussed Plat Conservation Easement, noting it allows for maintenance, and he believes the County has enacted changes to the relevant ZDO sections since the time Mr. Hale’s subdivision was approved. Mr. Blessing pointed to comments by Ms. Warren regarding the wishes of the previous owner of the Property, Mr. Bob Wenzel, and to comments concerning property values, noting these issues are not approval criteria. Likewise, Mr. Blessing pointed to comments by Mr. Schroeder regarding public parks, stating that the NCPRD was notified and County staff are expecting comments from them. With respect to comments by Mr. Swanson concerning slowing the traffic through the connected neighborhood, Mr. Blessing pointed to information available on the County’s Public and Governmental Affairs site, and information available through the County’s “Drive to Zero” program providing assistance and addressing roadway concerns such as the guardrail and “traffic calming” measures.
22. Prior to ending the public hearing, the Hearings Officer asked whether any of the parties wanted an opportunity to request that the record remain open to submit additional evidence, arguments, or testimony. Mr. Blessing made a request on behalf of the County, and Mr. Hayson on behalf of the applicant, that the record stay open for submission of new evidence and argument. The Hearings Officer discussed the request with the parties and determined that it was appropriate to hold the record open for all parties and members of the public as follows: for one week until 4:00 pm on Thursday April 10, 2025 for any participant or member of the public to submit additional written evidence, argument, or testimony, an additional week until 4:00 pm on Thursday April 17, 2025 for any participant or member of the public to submit additional written evidence, argument, or testimony to respond to new evidence submitted during the prior open record period, and an additional week until 4:00 pm April 24, 2025 for the applicant to provide a final written “last word” response or rebuttal, not to include new evidence.

***Pre-Hearing and Post-Hearing Submissions and Comments***

23. The applicant submitted several exhibits related to the application in advance of the hearing that were incorporated into the staff report discussed at the hearing. Among these exhibits are several supporting documents, including an Updated Environmental Report dated March, 2025 prepared by Environmental Science & Assessment, LLC (Exhibit 2A) that provided an assessment of the Water Quality Resource Area (WQRAs) and Habitat Conservation Areas (HCAs) within the development site and within 200 feet of the site, and the required Vegetated Corridors (VCs) adjacent to them. This report was provided to Clackamas County Water Environment Services, which submitted a number of proposed Conditions of Approval for the proposal. The submitted exhibits include an Updated Preliminary Storm Report dated March



12, 2025 prepared by Pioneer Design Group, Inc. (Exhibit 2B) that concludes the proposed development will not adversely affect the existing downstream drainage system or adjacent property owners. This Updated Preliminary Storm Report further notes incorporation of water quality treatment and quantity control for the development through an onsite water quality and detention pond meeting all the requirements associated with the Clackamas County Water Environment Services' design and construction standards.

24. The applicant's initial submitted narrative and plans included a January 2, 2025 Limited Traffic Study and Transportation Planning Rule Analysis prepared by Myla Cross and Jennifer Danziger, PE, of Lancaster-Mobley. This January 2, 2025 study reviewed transportation impacts associated with the proposal, providing trip generation estimates, discussion of the surrounding transportation system, and discussion of the Transportation Planning Rule. The January 2, 2025 study found the existing transportation infrastructure sufficient to accommodate impacts associated with the proposal, finding the small amount of projected traffic would not significantly affect the design or functionality of the local streets within the site vicinity.
25. The applicant submitted an Updated Preliminary Stormwater Report dated March 12, 2025 prepared by Ryan Stallings and reviewed and stamped by Geoff A. Mihalko, PE, of Pioneer Design Group. In the report, Pioneer Design Group presents its preliminary storm drainage and stormwater analysis for the applicant's proposal to comply with Clackamas County, Water Environment Services (WES), and the State of Oregon's regulations and engineering standards as well as the latest edition of the Oregon Plumbing Specialty Code (OSPC), including design criteria for the site, the hydrologic methodology, and a preliminary drainage analysis. Pioneer Design Group notes that detention of runoff on the site is being provided by the proposed stormwater facility and the WES BMP Sizing Tool yields that the developed runoff will be released at half of that of the existing condition. The report states that there is little to no concern for flooding or property damage as a result of the proposed development. In this report, Pioneer Design Group concludes:

"Based on the supporting stormwater calculations and attached analysis, it is the opinion of Pioneer Design Group that the development of the Woods at Wenzel Park Estates subdivision project will not adversely affect the downstream drainage system or adjacent property owners. We have provided water quality treatment and quantity control for the development by providing an onsite water quality treatment and detention pond. Therefore, all the requirements associated with the Clackamas County and Water Environment Services' design and construction standards have been met for the project."
26. The County provided notice to agencies, Community Planning Organization(s)<sup>1</sup>, and property owners within 2,640 feet of the subject property, and requested responses from the following specific agencies: Sunrise Water Authority, Clackamas Water Environmental Services, Clackamas Fire District #1, County Engineering Div/CCSD#5, Lighting District, Oregon Dept. of Transportation (ODOT), and City of Happy Valley.
27. On March 10, 2025, Reah Flisakowski, PE, of DKS Engineering submitted a review of the applicant's January 2, 2025 Limited Transportation Study and Transportation Planning Rule

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<sup>1</sup> The Community Planning Organization for this area is Rock Creek and it is currently inactive.

Analysis on behalf of the City of Happy Valley asserting that the submitted January 2, 2025 study does not provide a traffic analysis of intersections or roadways to support the findings. Ms. Flisakowski noted that a 45-lot<sup>2</sup> subdivision would generate approximately 31 AM peak hour and 42 PM peak hour vehicle trips, contending this level of traffic is not enough to trigger the need for intersection analysis following City of Happy Valley Transportation Impact Study Guidelines. Ms. Flisakowski further states that nearby approved residential developments should be included in the analysis, recommending requiring that the applicant submit a full transportation analysis to determine potential impacts and defensible conditions of approval. (Exhibit 5)

28. On March 12, 2025, County Traffic Engineer Christian Snuffin, PE, PTOE, provided guidance to Mr. Blessing, essentially noting that the original scoping of the Lancaster-Mobley study falls within the County's typical interpretation for the County Roadway Standards Section 295's requirements for a traffic impact analysis. However, Mr. Snuffin also acknowledged the blended jurisdictional interests in this area and the desire of the City of Happy Valley for a thorough analysis of the proposed development's impacts. Therefore, he supported requesting the applicant to provide traffic operations analysis at offsite intersections at 142<sup>nd</sup> and 152<sup>nd</sup>, recommending that the City of Happy Valley identify the intersections where analysis is deemed warranted to ensure that their concerns were addressed. Mr. Blessing contacted the applicant regarding the issues raised by Ms. Flisakowski and the City of Happy Valley, noting that he would likely not recommend approval until the Traffic Impact Study was updated to address these concerns. (Exhibits 6, 7)
29. On March 26, 2025, the applicant's traffic engineers, Myla Cross and Jennifer Danziger, PE, of Lancaster-Mobley, submitted "Addendum 1 – Supplemental Delay & Capacity Analysis Memorandum" providing supplemental analysis to the January 2, 2025 Limited Traffic Study and Transportation Planning Rule Analysis submitted by the applicant. In this Memorandum, Ms. Cross and Ms. Danziger respond to comments from the City of Happy Valley recommending a detailed operational analysis of the proposed project. Specifically, the Memorandum examines the three intersections on the arterial/collector transportation system that are anticipated to carry the greatest amount of the traffic generated by the proposed project: SE 142<sup>nd</sup> Avenue & SE Wenzel Drive; SE 152<sup>nd</sup> Avenue & SE Brackenbush Road; and SE 152<sup>nd</sup> Avenue & SE Bradford Road. The Memorandum reviews, incorporates, and summarizes findings from the January 2, 2025 Limited Traffic Study. The Memorandum includes traffic counts collected at each of the study intersections on Thursday, March 20, 2025 from 7:00 to 9:00 AM and from 4:00 to 6:00 PM, also providing analysis of background conditions and estimates of future growth, including volumes from nearby approved developments at Iseli Estates and 14755 SE Oregon Trail Drive.
30. In their March 26, 2025 Memorandum, Ms. Cross and Ms. Danziger provided warrant analysis for a left-turn refuge lane, finding that left-turn warrants are not projected to be met at any of the study intersections under any of the analysis scenarios. Similarly, they provided preliminary traffic signal warrants analysis, finding traffic signal warrants are not projected to be met at any

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<sup>2</sup> The January 2, 2025 Limited Traffic Study and Transportation Planning Rule Analysis prepared by Myla Cross and Jennifer Danziger, PE, of Lancaster-Mobley states it is for a 44-lot subdivision. The discrepancy appears irrelevant.

of the study intersections under any of the analysis scenarios. With respect to operational analysis, Ms. Cross and Ms. Danziger conducted a capacity and delay analysis for each of the study intersections, with intersection capacity analysis and discussion of performance standards, providing data for their delay and capacity analysis. They also conducted queuing analysis for the study intersections, providing data showing that for both background and buildout conditions the 95<sup>th</sup> percentile queues at the study intersections are not projected to exceed two vehicles or extend past any public accesses, and therefore no queuing-related mitigation was recommended.

31. Specific conclusions from Ms. Cross and Ms. Danziger’s March 26, 2025 Memorandum, are:
  - Left-turn lane warrants are not met at the study intersection under any of the analysis scenarios.
  - Traffic signal warrants are not met at the study intersections under any of the analysis scenarios.
  - All study intersections are currently operating acceptably per Clackamas County standards and are projected to continue operating acceptably through the 2027 buildout year.
  - The queuing analysis shows that upon full buildout of the site, the 95<sup>th</sup> percentile queue lengths at the study intersections are not projected to exceed two vehicles.
  
32. Kenneth Kent, Senior Planner Clackamas County Development Engineering, reviewed both the January 2, 2025 Limited Transportation Study and Transportation Planning Rule Analysis and the March 26, 2025 Addendum 1 – Supplemental Delay & Capacity Analysis Memorandum submitted by the applicant’s traffic engineers, Myla Cross and Jennifer Danziger, PE, of Lancaster-Mobley. Mr. Kent provided updated findings and conclusions, and recommended conditions of approval pertaining to the applicant’s proposal. County Traffic Engineer Christian Snuffin, PE, PTOE, also reviewed the applicant’s supplemental delay and capacity analysis memorandum prepared by Lancaster Mobley dated March 25, 2025. Mr. Snuffin concurred in the findings that all study intersections will continue to operate well within the operational standards of the City of Happy Valley and Clackamas County, even with the addition of site traffic. He noted that queuing is expected to be negligible, and no turn lanes or traffic signals are warranted.
  
33. Prior to the hearing, and during the initial open record period following the hearing, the County received numerous written comments (letters and emails, and petitions), mostly from residents of neighboring subdivisions opposed to the applicant’s proposed zone change and subdivision. These public comments in opposition largely point to traffic concerns and assert negative impacts to existing infrastructure and/or inadequacy of existing roadway, school, and/or emergency services infrastructure to support additional development in the area, with several comments asserting that the Traffic Impact Study submitted by the applicant is inadequate, or contains incorrect assumptions or conclusions, with many disagreeing concerning the adequacy of sight distance at the local SE 142<sup>nd</sup> Avenue/SE Wenzel Drive intersection and/or asserting the need for a traffic signal. Most commentators also assert a preference for maintaining the proposal site as an open green space, or natural habitat area, or neighborhood park with trails, more consistent with the prior owner’s use of the Property. Some comments assert that the proposed protected area is too small and/or the proposal should include fewer homesites. With

respect to existing trails, comments received pointed to a planned trail approximately at the south property line for the site depicted on the County's Comprehensive Plan Map 9-1. Many of the commentators point to concerns with surface water, describing existing surface and stormwater management issues within existing neighborhoods and expressing concern that the proposed site development will exacerbate these issues.

34. The County also received numerous written comments, mostly from residents of neighboring subdivisions opposed to the applicant's proposed zone change and subdivision, that are not related to approval criteria. Examples of these comments include assertions of negative effects on property values, increased potential for prowlers, impacts on privacy and quality of life, the expressed wishes of the former owner of the Property that it remain undeveloped, preservation of trees that are not within the Habitat Conservation Area Boundary, increased danger of remaining trees falling, construction disturbances to area residents, wear and tear on existing neighborhood roads, assertions that the proposed housing is not needed, and requests that the proposal not provide through connectivity to adjacent neighborhoods, or emergency access only, and/or that the County provide or require "traffic calming measures" to slow neighborhood traffic and discourage drivers from "cutting through" local neighborhoods.
35. During the initial open record period, the County also received updated comments and revisions/clarifications to proposed conditions of approval from Erik Bertram on behalf of Clackamas County Water Environment Services (WES) addressing concerns raised by the applicant's representative at the hearing. During the second open-record period, County Traffic Engineer Christian Snuffin, PE, PTOE, provided a written response (Exhibit 59) addressing the traffic operations concerns raised and a comment disputing the trip distribution present in the Lancaster Mobley memo. Mr. Snuffin states that:

"While it may come to pass that actual trip distribution differs somewhat from that presented in the analysis, such differences would not appreciably change the outcome. The analysis shows that all evaluated intersections have ample capacity and would operate well within the operational standards of Clackamas County and City of Happy Valley. The proposed development would not generate the need for traffic signals nor turn lanes. The applicant has adequately demonstrated that the approval criteria regarding transportation system adequacy are met."
36. During the second open-record period, Mr. Blessing addressed additional comments the county received during the initial open-record period in opposition to the proposal, specifically, Exhibits 39-49 and Exhibits 51-58. Mr. Blessing addresses statements in Exhibit 39 (submitted by Mr. Schroeder) that the applicant's traffic study is deficient regarding the Transportation Planning Rule (TPR), sight distance, capacity, and scoping. Mr. Blessing forwarded the comments to County traffic and development engineering staff, who did not propose any changes to the conditions of approval, with Mr. Snuffin providing the brief rebuttal quoted above from Exhibit 59. Regarding connectivity, Mr. Blessing noted that the applicant's proposal is consistent with ZDO 1007.01(C), also noting that other factors such as parks and open space were addressed. Mr. Blessing addresses the requests for easements and proper conveyance of surface water in Exhibit 42 (submitted by Dan and Diane Hale) by noting that surface water is the purview of WES, noting that WES has not made any changes to their recommended conditions of approval as a result of comments received during the open record period, except Exhibits 50 and 50A addressing the applicant's concerns with certain proposed

conditions. Mr. Blessing noted that Exhibits 40-41, 43-49, 51-54, and 57-58 also related to traffic impacts already addressed or not applicable and contain signed petitions from neighbors. He points out that petitions are not a factor of consideration in the ZDO. Mr. Blessing notes that Exhibits 55 and 56 request changes to the plan including conservation easements around the plat perimeter, emergency access only to Hemmen and other concerns related to traffic and surface water management, with photos and maps corresponding to these comments.

37. Mr. Blessing reports that staff did not identify new criteria relating specifically to a ZDO subsection. He noted that Exhibit 39 contains some specificity particularly related to traffic, but County engineering and development staff did not identify any factors that would change the current findings and recommended conditions of approval. He reported that many concerns related directly to surface water management, which is the purview of WES, and WES made no recommendations to change conditions except Exhibits 50 and 50A addressing the applicant's concerns. Lastly, Mr. Blessing addressed comments recommending changes to the proposed project to lessen impacts on trees, provide for additional buffers between new homes and existing homes, and limit access to SE Faircrest, leaving Hemmen as emergency access only. Mr. Blessing acknowledges the impacts new developments may have on the community, but points to Oregon Revised Statute 197.307(4) requirements that standards related to housing developments be clear and objective, and conditions related to subjective criteria, as it relates to the subdivision, cannot be imposed. Mr. Blessing reported that County planning staff recommend approval of these applications and recommended that the modifications set forth in Exhibit 50 and 50 A be accepted.
38. Wayne Hayson of Pioneer Design Group submitted a response during the Second Open Record Period, or "Rebuttal Period", asserting the records supports approving the submitted applications and providing responses to the First Open Records Period submittals. Mr. Hayson asserts that the applicant is an experienced home builder sensitive to the challenges associated with the proposed infill development and the perception of impacts to residents of existing neighborhoods, describing challenges with street stubs, the Habitat Conservation Area, and steep slopes, while reviewing the applicant's submissions meeting relevant approval criteria. Mr. Hayson notes the applicant intends to fence the perimeter rear yards on the site following home construction and is happy to discuss design and construction options with the owner of Tax Lot 1108 and maintain the integrity of existing fencing to ensure the safety and security of pets.
39. Mr. Hayson addresses traffic concerns, referring to a memorandum prepared by Jennifer Danziger, PE, of Lancaster Mobley dated 4/17/2025,<sup>3</sup> and referring to findings by County Development Engineering staff member Kenneth Kent and County Traffic Engineer Christina Snuffin, PE, that the safety of the transportation system serving the level of development anticipated is adequate as required by ZDO 1202.03(D) and that all study intersections will continue to operate within the standards of the City of Happy Valley and Clackamas County,

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<sup>3</sup> This attachment was not part of the applicant's email submission for the rebuttal period. The Hearings Officer accepted this memorandum as the applicant's final written statement during the last open record period, as it contains a description of the scoping process, methodology, and review of the traffic impact analysis prepared for the application, including response to requests for additional analysis by the City of Happy Valley, and does not contain new evidence.

even with the addition of site traffic, with queueing expected to be negligible, and therefore no turn lanes or traffic signals are warranted. With respect to the proposed connection of SE Faircrest Street and SE Hemmen Avenue, Mr. Hayson refers to questions and discussion at the hearing, and the requirements of County ZDO Section 1007.01.C, which states: *New developments shall have access points connecting with existing roads.* Further, Mr. Hayson cites ZDO Section 1007.01.C.2. requirements requiring the connectivity proposed by the applicant consistent with County Comprehensive Plan Map 5-6, *Potentially Buildable Residential Sites > 5 Acres in UGB*, and provides attachment 2 showing how construction of the connection between SE Faircrest Street and SE Hemmen Avenue will eliminate the closed-end street design within the Wenzel Park neighborhood in compliance with ZDO Section 1007.01.C.2. and provide a permanent 2<sup>nd</sup> point of access to the neighborhood for emergency service response.

40. Mr. Hayson also addresses stormwater and drainage concerns raised at the hearing and in submittals during the first open-record period, providing attachment 3: a memorandum from Geoff Mihalko, PE (of Pioneer Design Group) dated 4/17/25 addressing concerns regarding stormwater and drainage from the site. In this memo, Mr. Mihalko states that the proposal includes construction of a retaining wall along the eastern boundary of the development that will elevate the eastern side of the development and reverse the flow of the drainage from east to west towards Private Street “D”, which is designed to intercept the surface runoff and convey it to the proposed conveyance system to the proposed stormwater facility and to the resource area along the southeast corner of the site. Further, Mr. Mihalko states that the proposed retaining wall will have a foundation drain that will also convey groundwater to the proposed storm drainage system, thus cutting off groundwater and surface water from heading east beyond the eastern project limits. Mr. Mihalko also notes there are two tax lots (1106 and 1107) to the north of the site that may contribute stormwater to the east, and the Woods at Wenzel Park Estates has been designed to provide a stormwater connection and a surface water overflow available in the event that future development of the northern two tax lots occurs, further mitigating any stormwater runoff affecting properties to the east. Mr. Mihalko concludes: “It is the opinion of Pioneer Design Group, Inc. that the proposed subdivision grading, redirection of stormwater, and conveyance through the proposed subdivision will mitigate any existing stormwater from the subject site that may otherwise run off to the east.”
41. The applicant’s Traffic Engineer, Jennifer Danziger, PE, of Lancaster Mobley, prepared a 4/17/25 Memorandum as part of the applicant’s additional written response for the Second Open Record Period. The applicant reported that this submittal by Ms. Danziger was delayed within the email network and was not received by the County until 4:03 pm, shortly after the 4:00 pm deadline. The applicant requested that Ms. Danziger’s 4/17/25 Memorandum be accepted as the applicant’s Final Written Argument, noting that it does not contain new evidentiary material but rather summarizes the process followed in preparing the traffic impact analysis and responds to public concerns raised orally and in writing related primarily to the connection of SE Faircrest Street and SE Hemmen Avenue, and sight distance.
42. In her 4/17/25 Memorandum, Ms. Danziger notes that the initial transportation study was scoped through correspondence with Clackamas County staff and, because additional traffic

volumes were forecast to be small, the initial study focused on safety and the analysis related to the proposed zone change. Ms. Danziger pointed to the initial study, noting it contained a description of the project and study area, estimates of trip generation and trip distribution, a review of five years of reported crash data at three study intersections ( SE 142<sup>nd</sup> Ave./SE Wenzel Dr., SE 152<sup>nd</sup> Ave./SE Bradford Rd., and SE 152<sup>nd</sup> Ave./SE Brackenbush Ave.), an evaluation of sight distance at these three study intersections, and an evaluation of the Oregon Transportation Planning Rule criteria for the proposed zone change. Ms. Danziger points out that this initial study concluded that the existing transportation infrastructure is sufficient to accommodate impacts associated with the applicant's proposed zone change and related 44-lot subdivision. Further, Ms. Danziger points to the study's findings that the traffic anticipated by the proposed use is not expected to significantly affect the design or functionality of the local streets within the vicinity of the proposal site.

43. In her 4/17/25 Memorandum, Ms. Danziger discusses receiving comments from the City of Happy Valley after the initial study was completed, requesting additional operational analysis of the three study intersections assessed for safety. Ms. Danziger discusses obtaining concurrence from both County staff and City of Happy Valley staff on the in-process projects and growth to use in forecasting traffic volumes, with the resulting traffic addendum including: a review of the study intersections' geometry, morning and evening peak period traffic counts collected on a Thursday (stating these are the standard periods used for traffic studies), forecasts of future volumes for the morning and evening peak hours assuming general growth and the forecast traffic volumes for Iseli Estates under construction west of SE 142<sup>nd</sup> Ave. with a new access aligned opposite of SE Wenzel Dr. and a project on SE Oregon Trail Dr., an evaluation of left-turn warrants on SE 142<sup>nd</sup> Ave. and SE 152<sup>nd</sup> Ave. at the study intersections finding that warrants for the turn lanes were not met, an evaluation of preliminary traffic signal warrants at the three study intersections finding that no signals were warranted, and an operation analysis that found the intersections currently operate well and will continue to operate with relatively short delays and Level of Service B conditions with minimal queuing. Ms. Danziger notes that, similar to the initial study, the traffic addendum memo concluded that the existing transportation infrastructure is sufficient to accommodate impacts associated with the development of a 44-lot subdivision.
44. In her 4/17/25 Memorandum, Ms. Danziger also reviewed two concerns raised by a number of commentators, related to the potential for "cut through" traffic due to the connection between neighborhoods and reporting difficult sight lines on SE Wenzel Dr. at SE 142<sup>nd</sup> Ave. Ms. Danziger points out that the connection will allow for emergency vehicle access from either SE 142<sup>nd</sup> Ave. or SE 152<sup>nd</sup> Ave., providing a second access route and allowing residents to choose a route to the major system that does not require making a left-turn from a side street, further pointing again to the planning for these roadway connections as the roadways were constructed as stubs and not as cul-de-sacs. With respect to reports of limited sight lines from the stop sign/stop bar on SE Wenzel Dr. at SE 142<sup>nd</sup> Ave., Ms. Danziger agrees that these statements are true. However, Ms. Danziger further points out that her traffic study's sight distance measurements follow national standards and are measured from a location 14.5 feet back from the edge of the mainline travel lane at an eye height of 3.5 feet, and her study finds that the sight lines are acceptable from this location and drivers can see over the guard rails. Ms. Danziger

agrees that drivers do need to pull forward past the stop bar to see along SE 142<sup>nd</sup> Avenue but points out that once they do the sight line meets standards. (Exhibit 64)

### C. BACKGROUND FACTS

*[The Hearings Officer reviewed, adopted and/or modified these staff findings as denoted by boldface type in italics.]*

*[Applications Z0012-25-SL and Z0013-25-ZC]* The applicant's subdivision and Planned Unit Development (PUD) proposal includes a total of 44 new lots ranging in size from 5,000 square feet to 7,653 square feet. A stormwater treatment facility is proposed in Tract "B". After storm water is treated in Tract "B," it will be piped down to a small outfall pad where it will be discharged to a small tributary flowing directly to the Clackamas River. Tract "D" shall contain a large "Open Space" Tract at 86,900 square feet or roughly 2 acres. Tract "D" consists of a largely forested hillside, and canyon that contains a small creek, draining lands north of the subject property. Access is proposed via two 54-foot-wide public right of way labelled Street "B" as well as an extension of SE Faircrest Street, directly west of the subject property. SE Faircrest Street will be extended to the east edge of the subject property, where it connects to SE Herman Ave, thus providing adequate connectivity to both sides of the subject property. Some of the lots will have access via shared access drives and a private street.

Approval of the subdivision application is dependent upon approval of the zone change request. Residential policy findings of the Comprehensive Plan (Ch. 4) are analyzed first, followed by the proposed subdivision. The HCA Development will be analyzed on a separate exhibit (Exhibit 1A). The gross site area of the subject property is 10 acres (435,605 square feet) pursuant to the applicant's density calculations and density map (Exhibit 2D). The site is undeveloped, except for one or two small storage buildings that are scheduled to be demolished. The subject property is heavily forested. The applicant's proposal will preserve much of the regulated sensitive areas including Habitat Conservation Area (HCA), steep slopes (20%-35%), and water quality resource areas (WQRA). By preserving sensitive areas in Tract "D", applicant will utilize the Planned Unit Development (PUD) provisions, allowing flexible lot sizes smaller than the typical minimum lot size requirements in the R-8.5 zoning district.

Some development is required on slopes exceeding 20 percent but less than 35 percent. Development on slopes ranging from 20-35 percent requires a Type 1 ministerial review. Said ministerial review is under review pursuant to Z0015-25-SL.

In terms of the Zone Change, the applicant is proposing the R-8.5 zoning district.

Staff received several comments in opposition to this proposal (See Exhibits 3-4, 8-15, and 17-24). *(Also see Exhibits 36, 39-49, and 51-58, submitted on or after the date of the hearing.)* Only comments related to relevant ZDO, Comprehensive Plan, or County Roadway Standards apply. Key applicable issues raised by neighbors:

**Traffic Impact/Capacity and Safety:** Traffic safety is addressed in the Zone Change findings. Traffic capacity was addressed in the applicant's Traffic Impact Study (TIS). Clackamas County Traffic



Engineering Department made comments that scoping of the TIS is insufficient (Exhibit 3). The applicant has yet to provide updated TIS, however, an updated TIS is expected before the hearing on April 3. Until such an updated TIS is provided showing compliance with County Roadway Standards, staff's recommendation is for denial. Therefore, staff is including recommendations and conditions for an approval. *[The applicant submitted a revised traffic impact study (TIS) dated March 26, 2025 (Exhibit 33). County Traffic Engineer Christian Snuffin concurs with the scoping and traffic analysis, agrees with the study's findings that the impacts to the County's existing transportation system are negligible, and confirms that the TIS does not warrant any additional traffic infrastructure (Exhibit 34A). County Development Engineering revised their recommendations and recommends approval of the proposal. (Exhibit 34)]*

**Parks and Open Space:** Exhibit 3 cites comprehensive plan policy 9.B.5.1 as justification for the County to exact a "neighborhood park" dedication next to Tract "D". Staff notes that this policy relates to the "acquisition" of parks by the applicable park agency, not by private developers. It appears Exhibit 3 is also referring to policy 9.B.6 which states "Require all new urban residential developments to contribute to the provision of park facilities in their communities proportionate to the need generated by the development and based on the park standards established in Policy 9.B.1." Staff notes that the developer will be charged a System Development Charge (SDC) for being located in a parks district. However, there is no requirement to dedicate specific land to the County or parks district for future park use. *[The Hearings Officer concurs in this analysis, noting that all new development of single-family residential housing is subject to Parks System Development Charges (PSDC), Transportation System Development Charges (TSCD), and similar charges.]*

**Trails and Open Space:** Exhibit 4 notes that a functional trail system extends from SE Herman Road to SE 150<sup>th</sup> Place. The applicant notes Comprehensive Plan Map 9-1 (Exhibit 31) identifies a planned trail approximately at the south property line. The exact location of the trail is not known, nor is there specific design criteria to develop such a trail. Thus, there is no requirement to construct trails in Tract "D". The applicant has offered to provide an easement over and across Tract "D" should the parks district wish to construct trail access in the future. *[The Hearings Officer concurs.]*

**Remaining comments:** Much of the remaining comments are not related to the ZDO and include topics such as property values, impact on quality of life, construction disturbances, impacts to existing roads, the prior owner's wishes, housing types, etc. Other comments may relate to the ZDO but lack specificity. For instance, there is general concern with stream impacts and water quality issues. Water quality and storm water management is under the purview of Clackamas Water Environmental Services (WES) and will be addressed in their conditions of approval. Habitat shall be largely preserved in a Tract "D" which corresponds to the regulated HCA boundary. Other vegetation loss, including trees to be removed for the development and outside of the HCA boundary are not subject to additional protection. This will be discussed in Sec. 1002 and Section 1011, below. *[The Hearings Officer concurs, reviewing and adopting related proposed conditions. Comments not related to relevant ZDO approval requirements are generally also not appropriate considerations. For example, alleged property value impacts are not relevant to the applicable approval criteria. The Land Use Board of Appeals ("LUBA") held that "[p]otential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D). . ." Tylka v. Clackamas County, 34 Or LUBA 14 (1998). The subject property is zoned*

***for residential use as a primary use, and it is this primary use that is proposed by the current owner's application.]***

Lastly, Clackamas Water Environmental Services (WES) required updated sizing of the proposed storm water treatment facility. This required minor changes to Tract "B", Tract "D" and lots 25-27. These are not substantive changes, but the applicant provided updates received March 18, 2025 (See exhibits 2A-2D). ***[The Hearings Officer reviewed these minor changes and concurs that they are not substantive.]***

Given the large number of objections received, staff requests the record be left open for at least one week to provide additional time to review the minor revisions and the forthcoming TIS. ***[The Hearings Officer kept the record open for an additional three weeks, receiving and considering additional evidence both in support of and in opposition to the proposal.]***

***[Application Z0014-25-HCD] A 44-lot Planned Unit Development (PUD) Subdivision and associated zone change. Please read Z0012-25 and Z0013-25 staff report for full background and project scope. Since temporary and permanent disturbances are proposed in the HCA, an HCA Development Permit must be reviewed concurrently with the subdivision request. Staff relied on the applicant's initial plan set (Exhibit 2), updated natural resource assessment (Ex. 2A) updated plan set (Exhibit 2C) updated narrative (Exhibit 2D). All comments received from neighbors are summarized and/or addressed in Z0012-25 and Z0013-25. One neighbor comment (Exhibit 3) has questions regarding construction management plans (CMP). CMPs are ministerial in nature and the applicant has provided an Erosion Control plan. Conditions of approval describing the exact requirement for CMPs are set forth in the conditions of approval section. Thus, this concern is addressed herein. The applicant's CMP must comply with the required CMP conditions, if they do not already. [The Hearings Officer concurs, reviewing and adopting related proposed conditions.]***

#### **D. DISCUSSION**

These concurrently submitted and reviewed applications are subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1202, Zone Changes, and the Comprehensive Plan. Oregon Administrative Rules and Statewide planning Goals 11, 12, and 14 are also applicable when determining whether a Goal Exception is required for the zone change. This application is being processed as a Type III Permit, pursuant to Section 1307. A Type III Permit is quasi-judicial in nature and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

The Hearings Officer has jurisdiction to hear and decide applications for zoning changes pursuant to Section 1307 as shown by Table 1307-1. The Hearings Officer has reviewed the entire record of this proceeding, finding the evidence presented is reliable, probative and substantial evidence upon which

to base a determination in these matters. A number of comments were submitted and assertions made that are outside the approval criteria for this application, such as assertions that approval of this application will result in a loss in property value. The discussion here addresses relevant approval criteria.

**PART 1: Z0012-25-ZC (Zone Change)**  
**SUBMITTAL REQUIREMENTS**

**SUBMITTAL REQUIREMENTS:**

Subsection 1202.02 of the County ZDO lists the information that must be included in a complete application for a Zone Change. This application includes a completed land use application form and application fee, additional narrative and supplemental application statements addressing the criteria in Section 1202 of the ZDO, a vicinity map showing the relationship of the subject property to the surrounding area, a site plan of the subject property with required information, required Service Feasibility Determinations, a Transportation Impact Study, and additional supporting information. All the submittal requirements under Subsection 1202.02 are included in the application. This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section 1202, *Zone Changes* and the Clackamas County Comprehensive Plan. ***The Hearings Officer reviewed, adopted and/or modified these staff findings as denoted by boldface type in italics.***

1. Subsec. 1202.03(A) requires that approval of the request is consistent with the Comprehensive Plan.

*Finding: The subject property is presently zoned FU-10 and is designated Urban Low Density Residential on the North Urban Land Use Plan of the County Comprehensive Plan (Exhibit 27). The Urban Low Density Residential Plan designation and the development and use of land in each zone is governed by Section 315 of the ZDO, with single family dwellings as the most prominent use noted therein. The proposed zone change is consistent with the Comprehensive Plan designation for the site. [The Hearings Officer concurs in this finding.]*

Chapter 4, Land Use, of the Comprehensive Plan, and specifically the Residential section of Chapter 4, Policy 4.R.2 provides for Immediate Urban Low Density Residential Areas to include zoning districts of 2,500 to 30,000 square foot lot sizes (R-2.5 to R-30 zones). Sub-Policies 4.R.2.1 through 4.R.2.7 describe the factors used to guide the determination of the most appropriate zoning classification for a specific site. It is important to note that these sub-policies are not individual approval criteria but are several issues to consider in a balancing test to determine the appropriate zoning designation to apply. The applicable Comprehensive Plan policies of Chapter 4 are addressed below. Staff also note that sub-policies 4.A (general urbanization) and 4.C (Future Urban), 4.Q (general residential) are met, and were adequately addressed by applicant. ***[The Hearings Officer concurs in this analysis.]***

- A. Sub-Policy 4.R.3.1(a), states that land with soils subject to slippage, compaction or high shrink-swell characteristics shall be zoned for larger lots (the staff notes that “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).

***Finding:** According to the Oregon Department of Geology and Mineral Industries (DOGAMI) Bulletin No. 99 Geologic Hazards Map, Lake Oswego and Gladstone Quadrangle, there are no hazardous soils on the subject property (Exhibit 28). The R-8.5 zoning district meets this policy. **The staff finds that R-8.5 zoning designation is appropriate. [The Hearings Officer concurs in this finding.]***

- B. Sub-Policy 4.R.3.1(b), states that land with slopes less than 20% shall be considered for the R-2.5 through R-8.5 zoning districts, and land with slopes of 20% and over shall be considered for the R-10 through R-30 zoning districts.

***Finding:** The applicant’s plan confirms that all new home sites will be on slopes less than 20 percent. Some disturbance of slopes exceeding 20 percent is needed for the stormwater treatment facility. That disturbance is minimal compared to the amount of slope being preserved. Moreover, a small amount of disturbance is needed on lot 33. Again, this disturbance is minimal. On balance, since most development will avoid steep slopes, the R-8.5 zoning district is appropriate. **The staff finds that given steep slope will largely be avoided, the R-8.5 zoning district policy is met. [The Hearings Officer concurs in this finding.]***

- C. Sub-Policy 4.R.3.1(c), states that land with hydrological conditions, such as flooding, high water table or poor drainage shall be zoned for larger lots.

*Upon review of the State Wetlands Inventory Maps and DOGAMI Maps (Exhibit 28), there are no known hydrological conditions such as flooding, high water tables or poor drainage. Again, the proposed lots are being developed away from the steep slopes and habitat areas. **Since these conditions are not present, the R-8.5 zoning district policy is met. [The Hearings Officer concurs in this finding. Several concerns were raised by neighbors with respect to surface water and flooding, particularly by Mr. Hale who describes existing water and drainage issues affecting his own adjacent property and asserts water is coming from the adjacent subject property to his west, and from another property to the north. The applicant submitted a memorandum from Geoff Mihalko, PE, addressing concerns regarding stormwater and drainage from the site. In this memo, Mr. Mihalko describes construction of a retaining wall along the eastern boundary of the development that will elevate the eastern side of the development and reverse the flow of the drainage from east to west towards Private Street “D”, which is designed to intercept the surface runoff and convey it to the proposed conveyance system to the proposed stormwater facility and to the resource area along the southeast corner of the site. Further, Mr. Mihalko states that the proposed retaining wall will have a foundation drain that will also convey groundwater to the proposed storm drainage system cutting off groundwater and surface water from heading east beyond the eastern project limits. Mr. Mihalko also notes there are two tax lots (1106 and 1107) to the north of the site that may contribute stormwater to the east, and the Woods at Wenzel Park***

*Estates has been designed to provide a stormwater connection and a surface water overflow available in the event that future development of the northern two tax lots occurs, further mitigating any stormwater runoff affecting properties to the east. The Hearings Officer finds persuasive Mr. Mihalko conclusion that the proposed subdivision grading, redirection of stormwater, and conveyance through the proposed subdivision will mitigate any existing stormwater from the subject site that may otherwise run off to the east.]*

- D. Sub-Policy 4.R.3.2 requires consideration of the capacity of facilities such as streets, sewers, water, and storm drainage systems.

*With respect to the capacity of the local transportation system, the County Engineering Division staff submitted comments and recommendations dated March 24, 2025 (Exhibit 2), indicating that additional traffic impact study (TIS) is needed:*

*The proposed subdivision is projected to generate approximately 414 average daily vehicle trips (ADT), with approximately 31 trips in the AM peak hour, and approximately 41 trips in the PM peak hour. The study concludes that based on trip distribution, no intersection will be impacted by 20 or more vehicle trips in any peak hour, so a full traffic analysis is not required under Roadway Standard Section 295.2.b. Comments from the City of Happy Valley have raised an issue relative to evaluation of off-site intersections in order to make a finding that there will not be an impact to the surrounding street system. Roadway Standards Section 295.2.b, specifies that a traffic impact study is not required when a development will generate less than 20 vehicle trips in any peak hour. Although, it was initially assumed that distribution of vehicle trips through neighborhood streets would result in fewer than 20 peak hour trips at major off-site intersections, County Engineering agrees that a traffic operations analysis is needed at the offsite intersections with SE 142nd and SE 152nd before a finding can be made that the transportation system is adequate, as required under ZDO Section 1007.09.*

*[Hearings Officer: County Development Engineering staff submitted revised comments (Exhibit 34) stating the following:*

*ZDO Section 1007.07 requires that roadways and intersections serving subdivisions have adequate capacity to handle the additional traffic generated by the development, and will continue to operate during the peak hours at acceptable volume to capacity (v/c) ratios. In addition, zone change applications are subject to ZDO Section 1202.03(C) criteria and require a determination that the transportation system is adequate and will remain adequate with approval of the zone change.*

*The applicant has provided a Traffic Memorandum by Lancaster Mobley, dated January 2, 2025, and Addendum #1, Supplemental Delay & Capacity Analysis Memorandum, dated March 25, 2025. Comments from the City of Happy Valley have raised an issue relative to the need to provide evaluation of off-site intersections in order to make a finding that there will not be a significant impact to the surrounding street system. Roadway Standards Section 295.2.b, specifies*

*that a traffic impact study, including traffic operations analysis of intersections is not required when a development will generate less than 20 vehicle trips in any peak hour. The proposed subdivision is projected to generate approximately 414 average daily vehicle trips (ADT), with approximately 31 trips in the AM peak hour, and approximately 41 trips in the PM peak hour. The January 2, 2025 traffic memo indicates that traffic generated by the proposed subdivision will be distributed through neighborhood streets, to the east to SE 152<sup>nd</sup> Drive and to the west to SE 142<sup>nd</sup> Avenue, and that those off-site intersections would not receive 20 or more peak hour trips.*

*County Engineering agreed with comments from the City of Happy Valley that a traffic operations analysis is needed at the offsite intersections with SE 142<sup>nd</sup> and SE 152<sup>nd</sup> before a finding can be made that the transportation system is adequate. The applicant has provided the March 25, 2025 update to the traffic memo that evaluated traffic operations at the offsite intersections with SE 142<sup>nd</sup> Avenue and SE 152<sup>nd</sup> Drive. The traffic memos found that all study intersections are currently operating acceptably and will continue to operate acceptably with development of the proposed subdivision. In addition, left turn warrants and signal warrants are not projected to met at any of the studied intersections. County Engineering agrees with the findings of the traffic memos that the transportation system is adequate, as required under ZDO Section 1007.07.*

*The traffic memos include analysis of the proposed zone change for Transportation Planning Rule (TPR) compliance through the Oregon Highway Plan (OHP), Policy 1F. Where there is a small increase between an adopted plan and an amendment, under the OHP the proposed plan is deemed to not have a significant impact on the transportation system. The OHP establishes a threshold of 400 average daily trips to be considered a small increase. The subdivision is estimated to generate 414 average daily trips. The study concludes that based on trip distribution, no intersection will be impacted by 400 or more vehicle trips, which would satisfy the TPR standards. However, as noted above, an updated traffic report is being completed and evaluation of off-site intersections is needed in order to find that the TPR has be met for the proposed zone change. Based on the ADT for the proposed development under the proposed zoning, there will not be a significant impact on the transportation system and the TPR is satisfied.*

*The traffic memos evaluated intersection sight distance at intersections within the influence area of the subdivision and found the intersections in compliance with standards. The most recent five years of crash history were evaluated in the traffic memo and no significant safety hazards were identified at the intersections serving the development site. Based on the findings of the traffic memo, the safety of the transportation system serving the level of development anticipated under the proposed zone change is adequate, as required under ZDO Section 1202.03(D).*

***Mr. Blessing submitted a Memorandum to the Hearings Officer on March 31, 2025 reversing the initial recommendation of denial for files Z0012-25, Z0013-25, and Z0014-25. (Exhibit 35) Mr. Blessing reports that after his staff report was issued the applicant submitted a revised traffic impact study (TIS) dated March 26, 2025. Mr. Blessing further reports that County Traffic Engineer Christian Snuffin concurs with scoping and traffic analysis and agrees that the impacts to the County's existing transportation system are negligible and confirms that the TIS does not warrant any additional traffic infrastructure. (Exhibit 34A) County Development Engineering revised their recommendations as well, submitting a recommendation of approval of the proposal. (Exhibit 34)]***

*Clackamas Water Environmental Services (WES) is the domestic sanitary sewer service and storm water (surface management agency) provider for this area. The applicant has submitted a Preliminary Statement of Feasibility signed by Erik Bertram of WES indicating that the WES has adequate capacity in the sanitary sewerage collection and treatment system, as well as surface water treatment.*

*Sunrise Water Authority (SWA) is the public water purveyor for this parcel and has also signed a preliminary statement of feasibility indicating that water service is available.*

***[The Hearings Officer finds that the streets, sewers, water, and storm drainage facilities are adequate, or can be made adequate through improvements made by the developer of the subdivision.]***

- E. Sub-Policy 4.R.3.3 refers to availability of transit and states that land within walking distance (approximately one-quarter mile) of a transit stop should be zoned for smaller lots implemented by the R-2.5 through R-8.5 zoning districts.

*The nearest transit stop is SE Sedona Drive and SE 152<sup>nd</sup> Drive (Exhibit 29). However, even as the crow flies, the transit stop is beyond one quarter mile. **The staff finds that the nearest transit stop is beyond one quarter mile. In this case, the R-8.5 zoning designation does not meet this policy. [The Hearings Officer concurs in this finding.]***

- F. Policy 4.R.3.4 refers to proximity to jobs, shopping and cultural activities and states that areas in close proximity to such trip generators shall be considered for smaller lots implemented by the R-2.5 through R-8.5 zoning districts.

*The subject property is located approximately 1/4 mile north of Hwy 212/244, which contains several industrial businesses and some commercial businesses. Furthermore, Comprehensive Plan Map 4-8 shows that portions of the Hwy 212 corridor are within 1/2 mile of Regionally Significant Industrial Area (Exhibit 30). Finally, staff notes that several parks north of the subject property are less than 1 mile distant. **The subject property is within close proximity to jobs, shopping and cultural activities; therefore, the staff finds that a "smaller lot" designation such as the proposed R-8.5 district, is appropriate. This policy is met. [The Hearings Officer concurs in this finding.]***

- G. Sub-Policy 4.R.3.5 refers to the locational factors for 2,500 and 5,000 s.f. lots. The location of R-2.5 and R-5 zoning designations may be permitted in Corridor design type areas and where permitted by Community and Design Plans subject to Chapter 10 of the Plan.

**Staff finds that the subject property is not within a Community Plan area. This criterion is not applicable. [The Hearings Officer concurs in this finding.]**

- H. Sub-Policy 4.R.3.6 refers to the need for neighborhood preservation and variety. This sub-policy states that 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.

*The planned lot configuration is consistent with the surrounding zoning patterns. Adjoining developments have also been subdivided as planned unit developments (PUD) with lots 8,500 square feet or smaller. **The staff finds that the proposed R-8.5 zoning designation is consistent with this policy. [The Hearings Officer concurs in this finding.]***

- I. Sub-Policy 4.R.3.7 refers to achieving a density 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 zoning designation shall be limited to areas with slopes of 20% or 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 s.f. or more to protect neighborhood character, while taking full advantage of allowed densities.

*Applicant notes that average lot size is 5,798 square feet. The proposal meets this policy. **Staff finds that an average density of 7,500 square feet or less is possible with this development. [The Hearings Officer concurs in this finding.]***

**On balance, the staff finds that consideration of Policies 4.R.2.1 to 4.R.2.7 the R-8.5 zoning district can achieve most stated policies. This criterion is met. [The Hearings Officer concurs in this finding.]**

2. Subsection 1202.03(B) of the ZDO states that if a development has a need for public sanitary sewer, surface water management and/or water service, a zone change may be approved if development under the new zoning designation can be accommodated with the implementation of the service provider's existing capital improvement plans. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.

*Sanitary Sewer and Storm Water Management: As discussed previously, the subject property is located within Clackamas Water Environmental Services (WES) and Sunrise Water Authority (SWA). According to WES and SWA, sanitary sewer, water and stormwater capacity is adequate, or can be made adequate, to serve the proposed development and service is subject*



*to their Rules and Regulations. Staff Finds that Sanitary Sewer, storm water, and water supply is available or can be made available subject to several conditions of approval below. [The Hearings Officer concurs in this finding and adopts the proposed conditions.]*

3. Subsection 1202.03(C) of the ZDO requires the following: The transportation system is adequate, as defined in subsection 1007.07(B) and will remain adequate with approval of the zone change. Transportation facilities that are under the jurisdiction of the State of Oregon are exempt from subsection 1202.03(C). For the purposes of this criterion, the following factors are applicable:

*[Hearings Officer: County Development Engineering staff submitted revised comments (Exhibit 34) stating the following:*

*ZDO Section 1007.07 requires that roadways and intersections serving subdivisions have adequate capacity to handle the additional traffic generated by the development, and will continue to operate during the peak hours at acceptable volume to capacity (v/c) ratios. In addition, zone change applications are subject to ZDO Section 1202.03(C) criteria and require a determination that the transportation system is adequate and will remain adequate with approval of the zone change.*

*The applicant has provided a Traffic Memorandum by Lancaster Mobley, dated January 2, 2025, and Addendum #1, Supplemental Delay & Capacity Analysis Memorandum, dated March 25, 2025. Comments from the City of Happy Valley have raised an issue relative to the need to provide evaluation of off-site intersections in order to make a finding that there will not be a significant impact to the surrounding street system. Roadway Standards Section 295.2.b, specifies that a traffic impact study, including traffic operations analysis of intersections is not required when a development will generate less than 20 vehicle trips in any peak hour. The proposed subdivision is projected to generate approximately 414 average daily vehicle trips (ADT), with approximately 31 trips in the AM peak hour, and approximately 41 trips in the PM peak hour. The January 2, 2025 traffic memo indicates that traffic generated by the proposed subdivision will be distributed through neighborhood streets, to the east to SE 152<sup>nd</sup> Drive and to the west to SE 142<sup>nd</sup> Avenue, and that those off-site intersections would not receive 20 or more peak hour trips.*

*County Engineering agreed with comments from the City of Happy Valley that a traffic operations analysis is needed at the offsite intersections with SE 142<sup>nd</sup> and SE 152<sup>nd</sup> before a finding can be made that the transportation system is adequate. The applicant has provided the March 25, 2025 update to the traffic memo that evaluated traffic operations at the offsite intersections with SE 142<sup>nd</sup> Avenue and SE 152<sup>nd</sup> Drive. The traffic memos found that all study intersections are currently operating acceptably and will continue to operate acceptably with development of the proposed subdivision. In addition, left turn warrants and signal warrants are not projected to met at any of the studied intersections. County Engineering agrees with the findings of the traffic memos that the transportation system is adequate, as required under ZDO Section 1007.07.*

*The traffic memo includes analysis of the proposed zone change for Transportation Planning Rule (TPR) compliance through the Oregon Highway Plan (OHP), Policy 1F. Where there is a small increase between an adopted plan and an amendment, under the OHP the proposed plan is deemed to not have a significant impact on the transportation system. The OHP establishes a threshold of 400 average daily trips to be considered a small increase. The subdivision is estimated to generate 414 average daily trips. The study concludes that based on trip distribution, no intersection will be impacted by 400 or more vehicle trips, which would satisfy the TPR standards. However, as noted above, an updated traffic report is being completed and evaluation of off-site intersections is needed in order to find that the TPR has been met for the proposed zone change. Based on the ADT for the proposed development under the proposed zoning, there will not be a significant impact on the transportation system and the TPR is satisfied.*

*The traffic memo evaluated intersection sight distance at intersections within the influence area of the subdivision and found the intersections in compliance with standards. The most recent five years of crash history were evaluated in the traffic memo and no significant safety hazards were identified at the intersections serving the development site. Based on the findings of the traffic memo, the safety of the transportation system serving the level of development anticipated under the proposed zone change is adequate, as required under ZDO Section 1202.03(D).*

*Mr. Blessing submitted a Memorandum to the Hearings Officer on March 31, 2025 reversing the initial recommendation of denial for files Z0012-25, Z0013-25, and Z0014-25. (Exhibit 35) Mr. Blessing reports that after his staff report was issued the applicant submitted a revised traffic impact study (TIS) dated March 26, 2025. Mr. Blessing further reports that County Traffic Engineer Christian Snuffin concurs with scoping and traffic analysis and agrees that the impacts to the County's existing transportation system are negligible and confirms that the TIS does not warrant any additional traffic infrastructure. (Exhibit 34A) County Development Engineering revised their recommendations as well, submitting a recommendation of approval of the proposal. (Exhibit 34)*

*[The Hearings Officer finds that the requirements of Subsection 1202.03(C) of the ZDO that the transportation system is adequate, as defined in subsection 1007.07(B), and will remain adequate with approval of the zone change are met and adopts the proposed conditions.]*

4. Subsection 1202.03(D) of the ZDO requires that the safety of the transportation system is adequate to serve the level of development anticipated by the zone change.

*Finding: The traffic impact study (TIS) prepared by Lancaster Mobley addresses safety considerations including sight distance, crash history, etc. Nothing in the TIS warrants addition infrastructure to address safety. Therefore, based on TIS, safety is considered adequate.*

**Staff finds this criterion may be satisfied upon review of an updated TIS.**

*[The Hearings Officer finds that the proposed zone change from FU-10 to R-8.5 is compliance with ZDO 1202.03(D). I noted that the Lancaster Mobley TIS and supporting addendum submitted by Ms. Danziger, PE, included area crash history for a five-year period and no significant safety hazards were identified at the intersections serving the proposed development site. In light of the persuasive analysis by Lancaster Mobley and the concurrence by the County's Transportation Engineering staff, I was persuaded that the application meets the above standards and the safety of the County's transportation system is adequate to service the level of development anticipated by the proposed zone change.]*

## **PART 2. Z0013-25-SL: SUBDIVISION FINDINGS**

This application is subject to Sections 202, 315, 1001, 1002, 1003, 1006, 1007, 1011, 1012, 1013, 1017, 1105 and 1307 of the Clackamas County Zoning and Development Ordinance (ZDO). The Planning Division has reviewed these sections of the ZDO in conjunction with this proposal and makes the following findings: *[The Hearings Officer reviewed, adopted and/or modified these staff findings as denoted by boldface type in italics.]*

### **1. ZDO SECTION 315 AND 1000: DEVELOPMENT STANDARDS**

#### **315 URBAN LOW DENSITY RESIDENTIAL (R-8.5)**

*ZDO Sec. 315 sets forth allowable uses as in Tables 315-1. Dimensional standards are set forth in Table 315-2. Each subdivision lot will contain a single-family residence (SFR). SFRs are a primary use in the R-8.5 zoning district. While specific dimensional standards in Table 315-2 govern home site approvals when building permits are submitted, staff did not identify any part of the subdivision out of compliance with Table 315-2. Since this proposal also includes a PUD, lot sizes can be flexible, and setback standards and lot coverage standards can be reduced. Staff finds that the configuration as proposed can comply with the provisions of Sec. 315. A condition of approval is warranted to ensure that the subdivision approval with applicable conditions set forth in ZDO Sec. 315. [The Hearings Officer concurs in this analysis and staff findings, adopting the proposed conditions.]*

#### **1001 GENERAL PROVISIONS**

##### **1001.01 PURPOSE**

Section 1000, *Development Standards*, is adopted to implement policies in the Comprehensive Plan that are applicable to new development and thereby ensure that land is:

- A. Used efficiently to support broad-based economic development and the adequacy of housing and public services;
- B. Developed in an environmentally sustainable and aesthetically appealing manner;
- C. Supplied with public facilities sufficient to meet demand; and

- D. Served by a safe, convenient, multimodal, and interconnected transportation system.

*The proposed subdivision is new development and, therefore, subject to the Purpose of this Section. [The Hearings Officer concurs with this staff finding.]*

## 1001.02 APPLICABILITY

- A. Except where a different applicability standard is set forth elsewhere in Section 1000, Section 1000 applies to partitions; subdivisions; replats; institutional, commercial, and industrial developments; manufactured dwelling parks; condominiums; multifamily dwellings; two- and three-family dwellings; and attached single-family dwellings where three or more dwelling units are attached to one another. Notwithstanding this provision, level one through three mobile vending units are not subject to Section 1000, except as set forth in Section 837, *Mobile Vending Units*. In addition, Section 1009, *Landscaping*, does not apply to partitions, subdivisions, and replats.

*The proposed development is a subdivision. Therefore Section 1000 applies to this proposal. The applicable standards pertaining to Section 1000 are outlined above under Conditions of Approval, while the applicable criteria are addressed in findings below. [The Hearings Officer concurs in this analysis and staff findings, adopting the proposed Conditions of Approval in the section below.]*

## 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:

*The applicant's plan set shows approximately 4,954 square feet of disturbance on slopes between 20-35 percent. The applicant submitted a Type I application being reviewed under planning file no. Z0015-25. Z0015-25 will be reviewed in conjunction with this development though not subject to the public hearing process. Staff confirmed that all elements of ZDO Sec. 1002.01 can be met. A condition of approval requiring compliance with Z0015-25 is noted above. This criterion can be met. [The Hearings Officer concurs in these staff findings, adopting the proposed Conditions of Approval.]*

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

*This criterion is being reviewed under planning file no. Z0015-25. [The Hearings Officer concurs.]*

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 the property; or
  - iii. Adversely impact high-priority open space as defined in Section 1011, Open Space and Parks.
- c. Measures shall be employed to minimize grading or filling to accomplish the development.
- d. Disturbed areas shall be compacted if necessary and re-vegetated as soon as practical and before the annual wet season.

*This criterion is being reviewed under planning file no. Z0015-25. Staff notes that a total disturbance of only 6.24% of all steep slopes (Slopes exceeding 20 percent) is proposed. A variance is not required. [The Hearings Officer concurs.]*

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

*This criterion is being reviewed under planning file no. Z0015-25. [The Hearings Officer concurs.]*

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

*This criterion is being reviewed under planning file no. Z0015-25. [The Hearings Officer concurs.]*

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

*This criterion is being reviewed under planning file no. Z0015-25. [The Hearings Officer concurs.]*

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

*Per ORS 197.307, this criterion cannot be applied because it is not clear and objective. [The Hearings Officer concurs: this is not a clear and objective standard.]*

- 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:

*It appears that small storm water outfall (87 square feet) near the creek bottom may encroach on slopes exceeding 35%. Moreover, the applicant is proposing temporary trenching down to the outfall, which will be revegetated once the storm water pipe is installed. The geotechnical engineering report prepared by GeoPacific dated December 19, 2024, does not identify any areas of concern and provides adequate recommendations for appropriate construction methods. This criterion is met. [The Hearings Officer concurs.]*

#### 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:

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. Staff notes that the majority forested hillside (slopes greater than 20 percent) will be contained in the Tract "D". [The Hearings Officer concurs that this is not a clear and objective standard.]*

#### 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).

*The subject property is located inside both the MSDB and Portland Metropolitan UGB. Therefore, these standards do not apply. " [The Hearings Officer concurs.]*

#### 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.

*The subject property is located outside of the Deer and Elk Winter Range. [The Hearings Officer concurs.]*

#### 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:

*The subject property is located outside of the Mt. Hood Resource Protection Open Space. [The Hearings Officer concurs.]*

1002.07 SIGNIFICANT NATURAL AREAS

- A. 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.

*The subject property does not contain a significant natural area. [The Hearings Officer concurs.]*

**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.

*Acknowledged. [The Hearings Officer concurs.]*

1003.02 STANDARDS FOR MASS MOVEMENT HAZARD AREAS

- A. An engineering geologic study shall be required for development proposed on slopes of twenty (20) percent or greater. The study shall include items under subsection 1003.02B 2.

*The proposed subdivision is not located in a mass movement hazard area. This section is not applicable. [The Hearings Officer concurs.]*

- 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.

*The DOGAMI map for the Lake Oswego and Gladstone Quadrangle shows that there are no landslide hazards in this area (Exhibit 28). [The Hearings Officer concurs.]*

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:

*The DOGAMI map for the Lake Oswego and Gladstone Quadrangle show that there are no flood hazards in this area, except those contained in Tract "B" and this area is not located within the Special Flood Hazard Area (SFHA), and not subject to ZDO Sec. 703. [The Hearings Officer concurs.]*

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.

*The proposed subdivision is not located in "soil hazard areas" comprised of Wet/high water table. (Exhibit 28). This criterion is not applicable. [The Hearings Officer concurs.]*

- 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.

*As discussed above, the DOGAMI map does not indicate the presence of wet/high water table. This criterion is not applicable. [The Hearings Officer concurs.]*

1003.05 STANDARDS FOR FIRE HAZARD AREAS

- A. Development in areas with the potential for forest or brush fires shall be designed:

*The proposed subdivision is not located in a Fire Hazard Area. This criteria is not applicable. [The Hearings Officer concurs.]*

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

1006.01 GENERAL STANDARDS

*The proposed subdivision will be served by a variety of utility and infrastructure services that are subject to this Subsection, the applicable standards of which are outlined above under Conditions of Approval and addressed in more detail below.*



1006.02 STREET LIGHTS

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

*The site is located inside the Portland Metropolitan UGB. Therefore, the standards of this Subsection apply, and are outlined above under Conditions of Approval. [The Hearings Officer concurs, adopting the proposed Conditions of Approval.]*

1006.03 WATER SUPPLY

- A. All 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.

*The water supply for the proposed subdivision will be provided by Sunrise Water Authority (SWA). SWA has provided a signed preliminary statement of feasibility. However, no comments or recommended conditions were issued by SWA. [The Hearings Officer concurs.]*

- 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.

*The applicant has submitted a preliminary statement of feasibility from SWA, indicating that water service is available or can be made available. This criterion can be met. SWA has not provided comments or recommended conditions of approval. Staff, therefore, recommend one condition, requiring the applicant to meet all requirements of SWA. This criterion can be met. [The Hearings Officer concurs, adopting the proposed condition.]*

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.

*The statement does, in fact, indicate that fire flows may be inadequate and that fire flows have not yet been determined. Therefore, the condition of approval requiring an approved alternative from the fire district is noted above. [The Hearings Officer concurs, adopting the proposed condition.]*

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.

*The statement is dated December 5, 2025, and water system capacity is not needed to be reserved for the proposed subdivision. This criterion is met. [The Hearings Officer concurs.]*

- C. Prior to final approval of any 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.

*An applicable Condition of Approval is outlined above under Conditions of Approval. [The Hearings Officer concurs, adopting the proposed Conditions of Approval.]*

- D. The following standards apply inside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:

*The applicable standards of this Subsection are outlined above under Conditions of Approval. [The Hearings Officer concurs, adopting the proposed Conditions of Approval.]*

#### 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.

*Sanitary sewer for the proposed subdivision will be provided by Clackamas Water Environmental Services (WES). WES has provided comments and conditions dated March 20, 2025 (Exhibit 25) stating the following:*

- *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.*
- *The applicant has obtained a WES Service Provider Letter that demonstrates the proposed development is viable in accordance with District Rules and Standards. Receipt of the Service Provider Letter does not imply that all District requirements have been met or guarantee that land use approval for the development will be granted.*
- *With future development, System Development Charges shall apply based on the Class of Service defined in WES Rules, Tables 2 and 3. 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*

*Several conditions of approval have been included in WES’s comments. Staff recommends approval of all proposed conditions except those advisory in nature (e.g. fees and rates). [The Hearings Officer concurs, adopting proposed Conditions of Approval as recommended.]*

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.

*The applicant has submitted a preliminary statement of feasibility from WES, indicating that sanitary sewer capacity is available as outlined above. [The Hearings Officer concurs.]*

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.

*The preliminary statement of feasibility has already been signed, and the applicant has also submitted a detailed storm water plan within the submittal package. This criterion is not applicable. [The Hearings Officer concurs.]*

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.

*The statement is dated January 2, 2025, and sanitary sewer system capacity is not needed to be reserved for the proposed subdivision. [The Hearings Officer concurs.]*

## 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.

*An applicable Condition of Approval is outlined above under Conditions of Approval. [The Hearings Officer concurs, adopting the proposed Condition of Approval as updated and recommended.]*

- 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.

*The surface water management regulatory authority for the proposed subdivision is Clackamas Water Environmental Services (WES).*

*Several conditions of approval have been included in WES's comments dated March 20, 2025 (Exhibit 25). Staff recommend approval of all proposed conditions as they relate to*

*storm water and erosion control, except for any proposed conditions that are advisory in nature. [The Hearings Officer concurs, adopting the proposed conditions as updated and recommended.]*

- 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.

*The applicant has submitted a preliminary statement of feasibility from WES, indicating that adequate surface water management, treatment and conveyance is available as outlined above. [The Hearings Officer concurs.]*

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.

*The applicant has already signed the statement of feasibility and submitted the items noted above. This criterion is not applicable. [The Hearings Officer concurs.]*

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.

*The statement is dated March 20, 2025, and surface water treatment and conveyance system capacity are not needed to be reserved for the proposed subdivision. [The Hearings Officer concurs.]*

- D. Development shall be planned, designed, constructed, and maintained to:

1. Protect and preserve existing natural drainage channels to the maximum practicable extent;

*ORS 197.307(4) requires local governments to apply only clear and objective development standards. [The Hearings Officer concurs.]*

2. Protect development from flood hazards;

*As discussed above, this area has not been mapped as being within the Special Flood Hazard Area (SFHA) nor have there been any identified historical flooding events on the subject property. This criterion is not applicable. [The Hearings Officer concurs.]*

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;

*ORS 197.307(4) requires local governments to apply only clear and objective development standards. This criterion is not applicable. [The Hearings Officer concurs.]*

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

*ORS 197.307(4) requires local governments to apply only clear and objective development standards. This criterion is not applicable. [The Hearings Officer concurs.]*

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.

*ORS 197.307(4) requires local governments to apply only clear and objective development standards. This criterion is not applicable. [The Hearings Officer concurs.]*

Where culverts cannot provide sufficient capacity without significant environmental degradation, the County may require the watercourse to be bridged or spanned.

*There is no need to span a watercourse. This criterion is not applicable. [The Hearings Officer concurs.]*

- E. 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.

*If required by WES, easements must be included in this development. [The Hearings Officer concurs.]*

- F. 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.

*Channel obstructions are not proposed. This criterion is not applicable. [The Hearings Officer concurs.]*

- G. 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.

*ORS 197.307(4) requires local governments to apply only clear and objective development standards. This criterion is not applicable. Staff notes that compliance with WES water*

*quality standards will have the same outcome as these requirements. [The Hearings Officer concurs.]*

- H. 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.

*A surface water management and erosion control plan are required for the proposed subdivision as discussed above. WES will regulate erosion control measures. An applicable Condition of Approval is outlined above. [The Hearings Officer concurs, adopting the proposed updated Condition of Approval.]*

#### 1006.07 PRELIMINARY STATEMENTS OF FEASIBILITY EXCEPTIONS

- A. A land use application shall be deemed complete and may be approved without the submittal of one or more of the preliminary statements of feasibility required by Subsections 1006.03, 1006.04, and 1006.06 if the applicant demonstrates that a good faith attempt has been made to obtain the statement(s). At a minimum, demonstration of a good faith attempt shall require the applicant to submit the following:
1. A statement signed by the applicant indicating that the service provider or surface water management authority has not responded to a request for a preliminary statement of feasibility or has refused to issue one. When the refusal to issue a preliminary statement of feasibility is based upon a finding that adequate service cannot be provided, such refusal shall not qualify for an exception under this subsection; and
  2. A copy of a letter delivered to the service provider or surface water management authority clearly requesting a preliminary statement of feasibility. The letter shall be dated no less than 30 days prior to the submittal of the land use application.

*An Exception to Preliminary statements of Feasibility is not needed since the applicant submitted the property statements. This criterion is not applicable. [The Hearings Officer concurs.]*

## 1007 ROADS AND CONNECTIVITY

### 1007.01 GENERAL PROVISIONS

- A. The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and 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.

*The applicant has proposed a 44-lot subdivision and zone change of a 10-acre property located between the existing terminus of SE Faircrest Street and SE Hemmen Avenue. Access to the project site is proposed from connection to the east end of SE Faircrest Street and west end of SE Hemmen Avenue. [The Hearings Officer concurs.]*

- B. Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

*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.*

*Faircrest Street and SE Hemmen Avenue are classified as a local roadways (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 will be required to dedicate a 54-foot wide public right-of-way from SE Faircrest Street to SE Hemmen Avenue, as well as for proposed Streets A and B. [The Hearings Officer concurs.]*

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.

*Intersection spacing shall be subject to the County Roadway Standards. [The Hearings Officer concurs.]*

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).

*The project site is included on Comprehensive Plan Map 5-6 as part of potentially buildable sites greater than 5 acres. As provided under ZDO Section 1007.01(C)(2), sites on Map 5-6 are required to provide a conceptual map for street connections to adjacent areas. The applicant supplied a conceptual map with their initial narrative (Exhibit 2). Connections to vacant land directly south area proved. Lands to the north have already developed and no connection is proposed. The proposed street connections also comply with the provision of ZDO Section 1007.02(B), which requires subdivisions extend roadways to the boundary of other developments, either connecting to existing street stubs or providing access to adjacent undeveloped property to accommodate future development. This standard is met. [The Hearings Officer concurs.]*

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 as deemed appropriate by the Department of Transportation and Development.

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. [The Hearings Officer concurs.]*

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.

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. [The Hearings Officer concurs.]*

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.

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. Notwithstanding this finding, the applicant must still provide easements for any shared roadways or utilities as discussed below, and in Section 1105, below. [The Hearings Officer concurs.]*



10. 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.

*All lots are designed with a single driveway. Only local and private 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. [The Hearings Officer concurs.]*

- C. 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.

*No major concerns have been identified by County Engineering or within the Transportation Impact Study (TIS). Compliance with County Roadway Standards will ensure street alignment is constructed appropriately. This criterion is met. [The Hearings Officer concurs.]*

- D. 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.

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. [The Hearings Officer concurs.]*

- E. 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.

*Transit service is not existing or planned. This criterion is not applicable. [The Hearings Officer concurs.]*

- F. 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.

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. [The Hearings Officer concurs.]*

## 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.

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.

*The subject property is not located in an area with a specified design plan set forth in Ch. 10 of the Comprehensive Plan. This standard is not applicable. [The Hearings Officer concurs.]*

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.

*This standard is not applicable. [The Hearings Officer concurs.]*

4. In centers, corridors, and station communities, as identified on Comprehensive Plan Map IV-8, *Urban Growth Concept*, roads shall be designed to minimize the length of street crossings and to maximize connectivity for pedestrians as deemed appropriate by the Department of

Transportation and Development. Other streetscape design elements in these areas include:

- a. On-street parking;
- b. Street trees;
- c. Street lighting;
- d. Pedestrian amenities; and
- e. Truck routes shall be specified for deliveries to local businesses.

*This standard is not applicable. [The Hearings Officer concurs.]*

5. In centers, corridors, and station communities, as identified on Comprehensive Plan Map IV-8, on local streets within the Portland Metropolitan Urban Growth Boundary (UGB), and in unincorporated communities, when conflicts exist between the dimensional requirements for vehicles and those for pedestrians, pedestrians shall be afforded additional consideration in order to increase safety and walkability. In industrial areas, the needs of vehicles shall take precedence.

*This standard is not applicable. [The Hearings Officer concurs.]*

- 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.

*The minimum improvements for a local roadway, consistent with ZDO Section 1007 include, but are not necessarily limited to 32-foot wide paved roadway, 6-inch curbs, a 5-foot wide landscape strips with street trees, 5-foot wide unobstructed sidewalks, and storm drainage facilities. The applicant's preliminary plans appear to be consistent with these standards. [The Hearings Officer concurs.]*

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.

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. Staff notes, adequate stubs have nonetheless been provided. [The Hearings Officer concurs.]*

3. These standards may be deviated from when the County finds that safe and efficient alternate designs would better accommodate:

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. [The Hearings Officer concurs.]*

4. Sustainable development features such as “Green Streets” as described in Metro’s *Green Streets: Innovative Solutions for Stormwater and Street Crossings (2002)*, which shall be allowed within the UGB and in unincorporated communities;
  - a. Sustainable surface water management solutions such as low infiltration planters and basins, swales, ponds, rain gardens, trees, porous pavement, and minimal disruption to natural drainage systems;
  - b. Preservation of existing significant trees and native vegetation;
  - c. Preservation of natural terrain and other natural landscape features;
  - d. Achievement of maximum solar benefit for new development through orientation and block sizing;
  - e. Existing forest or agricultural uses;
  - f. Existing development;
  - g. Scenic qualities;
  - h. Planned unit developments;
  - i. Local access streets less than 200 feet in length which are not extendible; and
  - j. Interior vehicular circulation for multifamily, commercial, institutional, and industrial developments.

*Since the project is already proposed as a Planned Unit Development (PUD), preserving the forested hillsides, water quality features, etc., many of these items are already employed. This standard is met. [The Hearings Officer concurs.]*

- 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.

*A cul-de-sac and private roads are proposed to lots north of the Faircrest Street connection. Such dead-ends are allowed because the lots to the north are already developed and have sufficient access to a public road. This criterion is met. [The Hearings Officer concurs.]*

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

*Sight distance will be verified by the County Roadway standards. Sight distance was not identified as a concern in the TIS.*

1. No planting, signing, or fencing shall be permitted which restricts motorists' vision; and

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. [The Hearings Officer concurs.]*

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.

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. [The Hearings Officer concurs.]*

- 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 as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

*As noted above, 54-foot-wide public rights of way are proposed and will connect the subdivision with adjoining public roads.*

*The Clackamas County's Roadway Standards include requirements for emergency vehicle access to residential subdivisions. Fire access standards require two points of access for subdivisions of more than 30 lots. The applicant has proposed installation of fire sprinklers in all the homes in-lieu of a second access, which has been approved by the Clackamas Fire District.*

*Roads longer than 150 feet are required to provide a turnaround that can accommodate emergency services vehicles, as well as garbage and recycling trucks and other service and delivery vehicles. A cul-de-sac is proposed at the end of Street A, meeting this standard. A permanent turnaround is not proposed at the south end of Street B. However, the applicant has proposed a temporary turnaround to address access for emergency services and garbage and recycling trucks until the road is extended to the south in the future. Written verification from the Fire District indicating that emergency service access is or will be adequate for the proposed subdivision will be required. This criterion can be met. [The Hearings Officer concurs, adopting the related proposed conditions.]*

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 to lots or parcels, the minimum width shall be 20 feet, unless a narrower width is approved by the Department of Transportation and Development and the applicable fire district’s Fire Marshal;
  2. Where the number of lots served exceeds three, a wider width may be required as deemed appropriate or necessary by the Department of Transportation and Development consistent with other provisions of Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards;
  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

*Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable. [The Hearings Officer concurs.]*

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).

*Access for Lots 5-6, 9-11, and 12-17 is proposed from shared access easements from the new public road. Clackamas County has adopted design and construction standards for private access roads, as provided in ZDO Sections 1007.02-03 and Roadway Standards Section 225.7. Private roads serving 1-3 dwellings are required to construct a minimum legal access width of 20 feet and design and construct a minimum 12-foot-wide paved road, with 2-foot-wide gravel shoulders. Private roads serving 4 or more dwellings lots are required to construct a minimum legal access width of 26 feet and design and construct a minimum 20-foot-wide paved road, with curb and a 5-foot-wide sidewalk on one side of the road. [The Hearings Officer concurs.]*

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.

*Public sidewalks are proposed on both sides of local streets and one side of private streets. As designed, these standards can be met. [The Hearings Officer concurs.]*

- 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.

*The applicant has identified a potential trail delineated on Comprehensive Plan Map IX-1. The map is imprecise and given the adjoining subdivisions do not have any spaces dedicated for trails, this future trail is likely intended for lots south of the subject property. (Exhibit 31). Nevertheless, the applicant is offering an access easement over the entirety of Tract "D" should future park districts be interested in developing a trail south of the property. This will be detailed above as an advisory and informational condition. However, there is no requirement to construct a trail. Even if the southern boundary is the intended location of a future trail, there is no clear and objective criteria to dictate how and where the trail should be constructed. To summarize, this criterion is not applicable. [The Hearings Officer concurs.]*

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.

*As discussed above, Transit Amenities are not warranted for this development. This criterion is not applicable. [The Hearings Officer concurs.]*

1007.06 STREET TREES

- A. Within the Portland Metropolitan Urban Growth Boundary, street trees are required on all road frontage—except frontage on private roads or access drives—for subdivisions, partitions, multifamily dwellings, three-family dwellings, attached single-family dwellings 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.

*Street trees are required on all public roads subject to these standards. However, ZDO Sec. 1007.06(A)(1), (3), and (5) are not applicable per ORS 197.307(4). The applicant's plan shows adequate landscape strips on all new public roads. These standards can be met and are detailed above in the conditions of approval. Staff notes that Private Access drives do not require street trees. [The Hearings Officer concurs.]*

#### 1007.07 TRANSPORTATION FACILITIES CONCURRENCY

- A. Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.

*Since a subdivision is proposed, this section applies. [The Hearings Officer concurs.]*

- 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 152<sup>nd</sup> Drive (north of Highway 212); and
  - d. South of Sunnyside Road (east of 82<sup>nd</sup> Avenue) or Harmony Road (west of 82<sup>nd</sup> 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.

*No part of this project is exempt from Section 1007.07. [The Hearings Officer concurs.]*

- 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*.
- 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. 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 of the State of Oregon.

*Finding: ZDO Section 1007.07 requires that roadways and intersections serving subdivisions have adequate capacity to handle the additional traffic generated by the development and will continue to operate during the peak hours at acceptable volume to capacity (v/c) ratios. In addition, zone change applications are subject to ZDO Section 1202.03(C) criteria and require a determination that the transportation system is adequate and will remain adequate with approval of the zone change.*

*The applicant has provided a Traffic Memorandum by Lancaster Mobley, dated January 2, 2025, and Addendum #1, Supplemental Delay & Capacity Analysis Memorandum, dated March 25, 2025. Comments from the City of Happy Valley have raised an issue relative to the need to provide evaluation of off-site intersections in order to make a finding that there will not be a significant impact to the surrounding street system. Roadway Standards Section 295.2.b, specifies that a traffic impact study, including traffic operations analysis of intersections is not required when a development will generate less than 20 vehicle trips in any peak hour. The proposed subdivision is projected to generate approximately 414 average daily vehicle trips (ADT), with approximately 31 trips in the AM peak hour, and approximately 41 trips in the PM peak hour. The January 2, 2025 traffic memo indicates that traffic generated by the proposed subdivision will be distributed through neighborhood streets, to the east to SE 152<sup>nd</sup> Drive and to the west to SE 142<sup>nd</sup> Avenue, and that those off-site intersections would not receive 20 or more peak hour trips.*

*County Engineering agreed with comments from the City of Happy Valley that a traffic operations analysis is needed at the offsite intersections with SE 142<sup>nd</sup> and SE 152<sup>nd</sup> before a finding can be made that the transportation system is adequate. The applicant has provided the March 25, 2025 update to the traffic memo that evaluated traffic operations at the offsite intersections with SE 142<sup>nd</sup> Avenue and SE 152<sup>nd</sup> Drive. The traffic memos found that all study intersections are currently operating acceptably and will continue to operate acceptably with development of the proposed subdivision. In addition, left turn warrants and signal warrants are not projected to met at any of the studied intersections. County Engineering agrees with the findings of the traffic memos that the transportation system is adequate, as required under ZDO Section 1007.07.*

*The traffic memos includes analysis of the proposed zone change for Transportation Planning Rule (TPR) compliance through the Oregon Highway Plan (OHP), Policy 1F. Where there is a small increase between an adopted plan and an amendment, under the OHP the proposed plan is deemed to not have a significant impact on the transportation*

system. The OHP establishes a threshold of 400 average daily trips to be considered a small increase. The subdivision is estimated to generate 414 average daily trips. The study concludes that based on trip distribution, no intersection will be impacted by 400 or more vehicle trips, which would satisfy the TPR standards. However, as noted above, an updated traffic report is being completed and evaluation of off-site intersections is needed in order to find that the TPR has been met for the proposed zone change. Based on the ADT for the proposed development under the proposed zoning, there will not be a significant impact on the transportation system and the TPR is satisfied.

The traffic memos evaluated intersection sight distance at intersections within the influence area of the subdivision and found the intersections in compliance with standards. The most recent five years of crash history were evaluated in the traffic memo and no significant safety hazards were identified at the intersections serving the development site. Based on the findings of the traffic memo, the safety of the transportation system serving the level of development anticipated under the proposed zone change is adequate, as required under ZDO Section 1202.03(D).

Staff also received comments from Oregon Dept. of Transportation (ODOT). They had no concerns (Exhibit 16).

**[Hearings Officer: Mr. Blessing submitted a Memorandum to the Hearings Officer on March 31, 2025 reversing the initial recommendation of denial for files Z0012-25, Z0013-25, and Z0014-25. (Exhibit 35) Mr. Blessing reports that after his staff report was issued the applicant submitted a revised traffic impact study (TIS) dated March 26, 2025. Mr. Blessing further reports that County Traffic Engineer Christian Snuffin concurs with scoping and traffic analysis and agrees that the impacts to the County's existing transportation system are negligible and confirms that the TIS does not warrant any additional traffic infrastructure. (Exhibit 34A) County Development Engineering revised their recommendations as well, submitting a recommendation of approval of the proposal. (Exhibit 34) The Lancaster Mobley TIS and supporting addendum submitted by Ms. Danziger, PE, included area crash history for a five-year period and no significant safety hazards were identified at the intersections serving the proposed development site. The Hearings Officer finds the analysis by Lancaster Mobley and the concurrence by the County's Transportation Engineering staff persuasive that the application meets the above standards and the safety of the County's transportation system is adequate to service the level of development anticipated by this proposal.]**

## **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 AG/F, EFU, and TBR:

#### **A. Subdivisions;**

B. Partitions;

*The applicant is proposing a subdivision that is not located in the AG/F, EFU or TBR zoning district. Therefore, Section 1012 applies to this application. [The Hearings Officer concurs.]*

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 (H).

*No Exception can be applied to this proposal. [The Hearings Officer concurs.]*

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.

*If the requested zone change is approved, the applicant shall be subject to the R-8.5 zoning district standards. [The Hearings Officer concurs.]*

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.

*If the requested zone change is approved, the applicant shall be subject to the R-8.5 zoning district standards. Since this subdivision is proposed as a Planned Unit Development (PUD) typical minimum lot sizes set forth in ZDO Sec. 315, Table 315-2 have more flexibility in lot size. This standard is met. [The Hearings Officer concurs.]*

- C. 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.

*The applicant appears to be demolishing all buildings and only constructing new homes. [The Hearings Officer concurs.]*

- D. If a subdivision, partition, or replat is proposed on property currently developed with two-family, three-family, 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 in a planned unit development or a development of two- or three- family dwellings approved pursuant to Subsection 1012.07, in which case maximum and minimum density shall be calculated for the entire property proposed for development prior to the creation of new lots or parcels.

*No such development exists on site. This standard is not applicable. [The Hearings Officer concurs.]*

- E. In a zoning district that does not allow new detached single-family dwellings, a lot created for a nonconforming detached single-family dwelling shall not be included in the gross site area used to calculate minimum and maximum density for the remaining lot(s).

*Detached single-family dwellings are primary uses in the R-8.5 zoning district. This criterion is not applicable. [The Hearings Officer concurs.]*

#### 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 Subsections 1012.06 and 1012.07, maximum density shall be calculated as follows.

*The applicant prepared a detailed density calculation with revisions submitted March 18, 2025 (Exhibit 2D). [The Hearings Officer concurs.]*

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

*GSA equals for R-8.5 equals 435,602 sq. ft. [The Hearings Officer concurs.]*

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:

*The applicant has noted that the NR is area 51,103 square feet. [The Hearings Officer concurs.]*

- a. If NR exceeds 15 percent of the GSA, only 15 percent of the GSA shall be subtracted.

*NR does not exceed 15 percent. [The Hearings Officer concurs.]*

- 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;

*The lot is not adjacent to rights of way where strips of land would be required. [The Hearings Officer concurs.]*

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:

*87square feet of HRA areas needs to be subtracted. The applicant notes that they are preserving the entirety of Tract "D". While they are accurate that the 10-foot utility line will only require temporary disturbance, 87 square feet of permanent disturbance must be subtracted to account for the storm outfall. [The Hearings Officer concurs.]*

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.:

*4,954 square feet of 20-35 percent slopes shall be disturbed. [The Hearings Officer concurs.]*

- 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:

$$\{GSA - [NR + HRA + (MRA \times 0.5)]\} / DLA = BD^*$$

***Below are the applicant's calculations:***

$$\{435,602 - [51,103 + 0 + (4,954 \times 0.5)]\} / 8,500 = \text{Base Density}$$

$$\text{Therefore } \{435,600 - 53,580\} / 8,500 = \text{Base Density}$$

$$\text{And } 382,020 / 8,500 = 44.94 = \text{Maximum Density} = 45 \text{ Units}$$

*Staff agrees with density calculations. Even though permanent HCA disturbance was not accounted for, it will not reduce maximum density below 45 units. This criterion is met. [The Hearings Officer concurs.]*

D. The result is maximum density, except that the result shall be reduced as necessary to:

*In sum, maximum density equals 45. This will be detailed above in the conditions of approval section. [The Hearings Officer concurs.]*

#### 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:

*The subject property is located in the R-8.5 Zoning District, where a minimum density standard applies. [The Hearings Officer concurs.]*

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

*Staff reviewed the applicant's calculations for minimum density and concurs with their calculations. Minimum density is 28.42 units. [The Hearings Officer concurs.]*

- C. Any partial figure of one-half or greater shall be rounded up to the next whole number.

*Minimum Density is being rounded down to 28. [The Hearings Officer concurs.]*

- D. The result is minimum density.

*In sum, minimum density equals 28. This shall be required as a condition of approval above. [The Hearings Officer concurs.]*

## **1011 OPEN SPACE**

### **1011.01 AREA OF APPLICATION**

*Pursuant to ZDO Sec. 1101.01 (A) and Comprehensive Plan Map 4-6, the subject property contains Open Space (Exhibit 32). Much of the Open Space is contained in Tract "D", but some areas encroach on where development will occur. ZDO Sec. 1101.01(C) identified three "high priority" open space standards that apply to this development: 1) Land over 35 percent slope; 2) Bodies of water such as rivers, lakes, or lagoons; 3) Wetlands. There are four other items, but those items are either not present or contain subjective criteria and not applicable per ORS 197.307(4). Staff find that ZDO Sec. 1011 is applicable. [The Hearings Officer concurs.]*

### **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.

*As noted above, there are three High priority open space categories that apply. Slopes over 35 percent will be reviewed below. The remaining two categories will be contained in Tract "D" and not disturbed. This criterion is met. [The Hearings Officer concurs.]*

- 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)

*The only high-priority open space that may be encroached upon with this development are steep slopes, and only in areas exceeding 35 percent. However, ZDO Sec. 1002.01(B) has been reviewed above, and accounts for the small 87 square foot outfall. This criterion is met. [The Hearings Officer concurs.]*

- C. Second-priority open space shall be preserved to the maximum extent possible making full use, as necessary, of techniques which reduce the need for land coverage, and disturbance of open space features. Various site plan and development options shall be identified and applied on a case-by-case basis pursuant to Section 1103, Open Space Review. Site plan and development techniques may include but are not limited to:

*This criterion is subjective. Therefore, pursuant to ORS 197.307(4), Second-priority open space cannot be applied. [The Hearings Officer concurs.]*

- 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.

*The applicant has noted that a Homeowner's Association (HOA), or a similar entity shall be created, ensuring Tract "D" shall be preserved therein. This criterion is met. [The Hearings Officer concurs.]*

#### 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.
- B. The park classifications and standards of Policies 1.1 through 1.5 in the Parks and Recreation section of Chapter 9, Open Space, Parks, and Historic Sites, of the Comprehensive Plan shall be followed in the dedication and development of parks and recreation areas.

*These standards are applicable when land is to be dedicated for park, recreation area, or easement. As discussed above, there is no specific requirement to dedicate all or a portion of the Tract "D" for park purposes. As noted above, neighbor comments opine that a new park shall be dedicated pursuant to Chapter 9 of the Comprehensive Plan. Staff again note that the developer would only have the option to dedicate land for park purposes, and only if a park site was approved by the County/parks district (policy 9.B.6.1). To staff's knowledge, such an option has not been presented to the applicant. Furthermore, System Development Charges (SDCs) for the parks district will be paid into on a per-lot basis, thereby complying with policy 9.B.6. This criterion is not applicable. [The Hearings Officer concurs.]*

## 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.

*This proposal is for a 44-lot subdivision. A Planned Unit Development (PUD) is permissible. [The Hearings Officer concurs.]*

- 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

*Comprehensive Plan Map 4-6 shows that at least 10 percent of the subject property is designated Open Space. A PUD is required. [The Hearings Officer concurs.]*

### 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)

*Accessory uses are not proposed. If future accessory uses are proposed in the open space tract, additional land use permits may be required. [The Hearings Officer concurs.]*

### 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.

*While staff notes that this criterion is not a clear and objective standard, natural and unique features are nonetheless being preserved in Tract "D". [The Hearings Officer concurs.]*

- 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.

*This criterion is not applicable since the property will be zoned Urban Low Density Residential. [The Hearings Officer concurs.]*

- C. Open Space:

1. A minimum of 20 percent of the gross site area shall be platted as one or more open space tracts.

*Tract "D" is 86,900 square feet. Tract "C" is 2,804 square feet. In sum, 87,704 square feet of open space are proposed or 20.55% of gross site area. This criterion is met. [The Hearings Officer concurs.]*

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.

*No trails are proposed. If trails are desired, additional land use approval may be required. [The Hearings Officer concurs.]*

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.

*These uses are not proposed. This criteria is met. [The Hearings Officer concurs.]*

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

*Every lot is within 1,000 feet of Tract "C" and "D". This criterion is met. [The Hearings Officer concurs.]*

5. All lots or parcels within the PUD shall have reasonable access to at least one open space tract.

*Unfortunately, staff find that this criterion is not a clear and objective standard, and pursuant to OSR 197.307(4), it cannot be applied. [The Hearings Officer concurs.]*

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.

*While this criterion does not appear to be clear and objective, staff finds that the Open Space is large enough to protect natural features the limited recreational uses therein. [The Hearings Officer concurs.]*

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.

*An HOA is required and the tract will continue in perpetuity. This criterion can be met. [The Hearings Officer concurs, adopting the proposed related condition.]*

- 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. 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. 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.

*Off-street recreational parking is not proposed. This criterion is not applicable. [The Hearings Officer concurs.]*

- E. Homeowners Association: A homeowners association (HOA), or acceptable alternative, is required pursuant to Subsection 1105.03(D).

*A Homeowners Association is required and a condition of approval is recommended to allow planning staff to review draft HOA documents and ensure tracts are properly conveyed to the HOA. [The Hearings Officer concurs.]*

## **1017 SOLAR ACCESS FOR LAND DIVISIONS AND REPLATS**

### **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.

*The applicant is proposing a subdivision in the R-8.5 zoning District. This criteria applies. [The Hearings Officer concurs.]*

1017.02 DEFINITIONS

The following definitions apply to Section 1017:

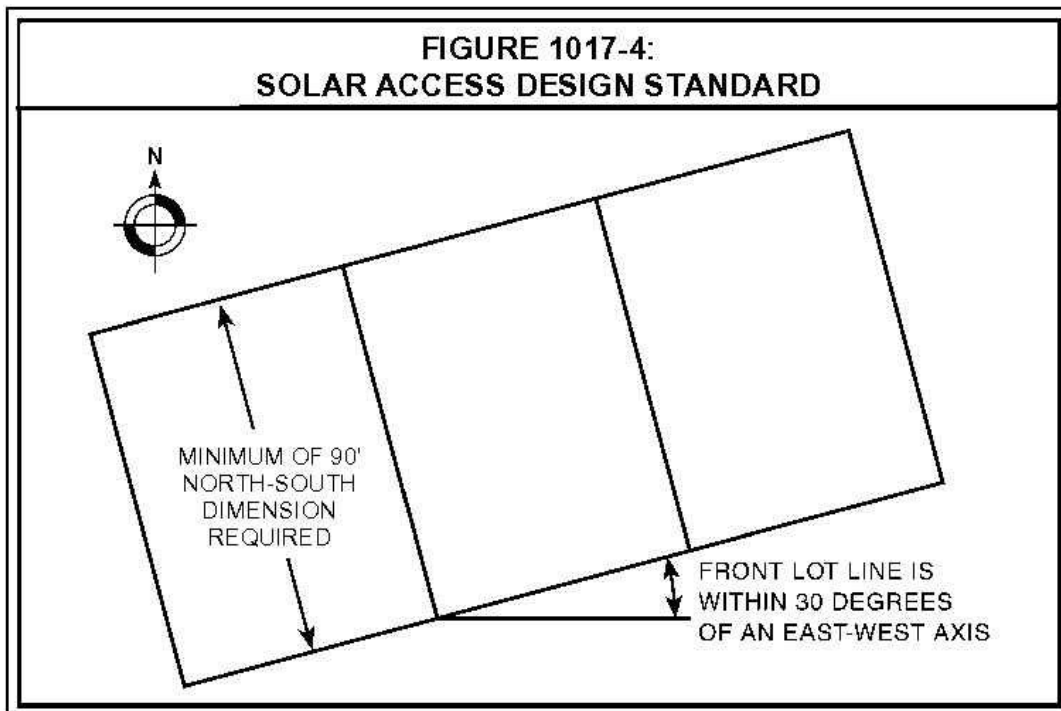
*The criteria, requirements, standards and text of Section 1017 are subject to the definitions outlined in this Subsection. [The Hearings Officer concurs.]*

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

*Nineteen of the 44 proposed lots meet the requirements of Subsection A. and B, being Lots 1, 2, 7 – 12, and 19 – 29. It is noted that Lots 1 – 2 and 23 meet the requirements of Subsection A. above by virtue of the abutting public right-of way to the north or south, in addition to the location of Tract D to the south of Lot 23. Accordingly, a total of 43% of the lots meet the design standard, and therefore the applicant is addressing the criteria for exceptions to the design standard, as described below. [The Hearings Officer concurs.]*



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

*Staff concurs with the applicant's response. An exception is clearly demonstrated. This criterion is met. [The Hearings Officer concurs.]*

**ZDO SECTION 1100: DEVELOPMENT REVIEW PROCESS**

**1105 SUBDIVISIONS, PARTITIONS, REPLATS, CONDOMINIUM PLATS & 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, condominium plat, or vacation of a recorded plat may be approved, except:

*The proposed development is a subdivision. Therefore, Section 1105 and its associated Purpose applies to this proposal. [The Hearings Officer concurs.]*

**1105.02/1105.03 SUBMITTAL REQUIREMENTS FOR SUBDIVISIONS, PARTITIONS, AND REPLATS**

*The applicant has provided the requisite submittal materials to proceed with review of the proposed subdivision. [The Hearings Officer concurs.]*

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 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:

*The applicant has proposed a major subdivision that is being reviewed as a Type III application pursuant to Section 1307. [The Hearings Officer concurs.]*

- 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*.

*The applicable standards pertaining to Section 1000 are outlined above under Conditions of Approval, while the applicable criteria are addressed in findings above. [The Hearings Officer concurs, adopting proposed Conditions of Approval.]*

- 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.

*The subject property is in the Urban Low Density Residential District and has not designated the proposed subdivision as a zero-lot-line development. These standards are not applicable. [The Hearings Officer concurs.]*

- 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:

*A phasing plan is not requested with this proposal. This standard is not applicable. [The Hearings Officer concurs.]*

- 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

*A homeowners association, or acceptable alternative, is required for the reasons outlined above. The applicable standards of this Subsection are outlined above under Conditions of Approval. [The Hearings Officer concurs, adopting proposed Conditions of Approval.]*

- 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.

*The subject property is located in a future urban area, and placement of these items shall, as described above, shall be orderly. [The Hearings Officer concurs.]*

#### 1105.09 APPROVAL PERIOD AND TIME EXTENSION

*The applicable standards of this Subsection are outlined above under Conditions of Approval. [The Hearings Officer concurs, adopting proposed Conditions of Approval.]*

#### 1105.11 FINAL PLAT REVIEW

If a preliminary plat is approved, finalizing the approval requires the completion of a final plat, except that a final plat is not required for a partition or partition replat in which all parcels are larger than 80 acres. The applicant shall comply with the following:

- A. The form and content of the final plat shall 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. The final plat shall be submitted to the County for review. If a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws shall be submitted to the County with the final plat. If



the final plat and, if a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws are consistent with the approved preliminary plat and the conditions of approval included in the County's final decision on the application have either been satisfied or guaranteed pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance, the Planning Director shall sign the plat.

*Through this land use permit decision, a preliminary plat is being approved, the standards for finalization of which through a final plat are outlined above under Conditions of Approval. The parcels involved with the proposed subdivision are not all larger than 80 acres. [The Hearings Officer concurs.]*

### **PART 3. Z0014-25-HDA: HABITAT CONSERVATION AREA REVIEW FINDINGS**

This application is subject to Section 706 of the Clackamas County Zoning and Development Ordinance (ZDO). Section 706 of the ZDO, the Habitat Conservation Area District (HCAD), sets forth the process, standards and requirements for reviewing development in the HCAD. The Planning Division has reviewed these sections of the ZDO in conjunction with this proposal and makes the following findings: *[The Hearings Officer reviewed, adopted and/or modified these staff findings as denoted by boldface type in italics.]*

#### 706.02 AREA OF APPLICATION

- A. Section 706 applies in the Habitat Conservation Area District (HCAD). The HCAD applies to all parcels containing a Habitat Conservation Area (HCA). The HCAD also applies to any area that is less than 100 feet outside the boundary of an HCA even if the area is not located on the same parcel as the HCA. HCAs are identified on maps adopted by reference in Chapter 3 of the Comprehensive Plan (hereinafter referred to as the HCA Map) and are categorized as High, Moderate, or Low HCA. Notwithstanding the HCA Map, however, Section 706 does not apply to areas that are outside both the Metropolitan Service District Boundary (MSDB) and the Portland Metropolitan Urban Growth Boundary (UGB).

*The subject parcel contains HCA and is located in the MSDB and Portland Metropolitan UGB. Therefore, Section 706 applies. [The Hearings Officer concurs.]*

- B. An applicant may dispute the location of an HCA by submitting an application for HCA Map Verification pursuant to Subsection 706.06(B) or by applying for a Comprehensive Plan amendment to modify the HCA Map. HCA Map Verification does not amend the Comprehensive Plan.

*The applicant is not disputing the location of the HCA. [The Hearings Officer concurs.]*

### 706.03 DEFINITIONS

*The criteria, requirements, standards and text of ZDO Section 706 are subject to the definitions outlined in Subsection 706.03. [The Hearings Officer concurs.]*

### 706.04 EXEMPT USES

The following uses and activities are exempt from the requirements of Section 706, except that if the use or activity requires a building or grading permit, a Construction Management Plan shall be required pursuant to Subsection 706.06(A). Notwithstanding the requirement for HCA Map Verification under Subsection 706.06(B), the HCA Map shall be deemed reliable for the purpose of administering Subsection 706.04 unless an approved HCA Map Verification exists for the subject property, in which case the approved HCA Map Verification shall be used to administer Subsection 706.04.

*Exempt uses not proposed. [The Hearings Officer concurs.]*

### 706.05 PROHIBITED USES

*No Prohibited Uses are permitted or proposed. [The Hearings Officer concurs.]*

### 706.06 DEVELOPMENT REVIEW REQUIREMENTS

The following review requirements are applicable to development in the Habitat Conservation Area District (HCAD) unless such development is exempt pursuant to Subsection 706.04.

- A. A Construction Management Plan (CMP), consistent with Subsection 706.08, shall be required for development in the HCAD, regardless of whether development will occur within an HCA. However, if an area is in the HCAD solely because it is less than 100 feet outside the boundary of an HCA located on a different parcel, Subsection 706.06(A) shall not apply unless HCA Map Verification required pursuant to Subsection 706.06(B) determines that an HCA exists on the same parcel as the area for which development is proposed. An application for a CMP shall be reviewed pursuant to one of the following processes:

*Development is proposed in both the HCA and HCAD. Therefore, an HCA CMP is required. [The Hearings Officer concurs.]*

2. The application shall be filed concurrently with an application for review under Subsection 706.06(B) or 706.06(C), in which case the applications will be consolidated and reviewed pursuant to the process required by Subsection 706.06(B)(4) or 706.06(C)(3), respectively;

*The CMP has been submitted and is conditioned above. [The Hearings Officer concurs.]*

- B. Unless the applicant concurs with the accuracy of the HCA Map, HCA Map Verification, pursuant to Subsection 706.09, shall be required or allowed as follows:

*Applicant concurs with HCA map. [The Hearings Officer concurs.]*

- C. An HCA Development Permit, consistent with Subsection 706.10, shall be required for:

1. Development in an HCA or for a parcel that:
  - a. Contains an HCA; and
  - b. Is the subject of a land use application for a partition or subdivision.

*Development is proposed in an HCA on a parcel that is the subject of a land use application for a subdivision. Therefore, an HCA Development Permit is required. [The Hearings Officer concurs.]*

2. If a parcel is subject to Subsections 706.06(C)(1)(a) and (b), an application for an HCA Development Permit shall be filed concurrently with the application for a partition or subdivision.

*The HCA Development Permit application is being filed concurrently with the application for a subdivision. [The Hearings Officer concurs.]*

3. An application for an HCA Development Permit shall be reviewed as a Type II application pursuant to Section 1307 unless the application is filed concurrently with another land use application that requires review as a Type III application, in which case the applications will be consolidated and reviewed as a Type III application pursuant to Section 1307.

*The application for an HCA Development Permit is being filed with a Subdivision application (File No. Z0013-25-SL) that requires review as a Type III application and, therefore, is being consolidated and reviewed with the other applications as a Type III application pursuant to Section 1307. [The Hearings Officer concurs.]*

## 706.07 SUBMITTAL REQUIREMENTS

In addition to the submittal requirements identified in Subsection 1307.07(C), applications filed pursuant to Section 706 shall comply with the following submittal requirements.

- A. An application for a Construction Management Plan shall include:

*The applicant has provided the necessary submittal materials for the proposed Construction Management Plan. [The Hearings Officer concurs.]*

- B. An application for HCA Map Verification shall include:

*Applicant concurs with HCA Map, no verification required. [The Hearings Officer concurs.]*

- D. An application for an HCA Development Permit under Subsection 706.10(B) shall include:

*The applicant has provided the necessary submittal materials for the proposed HCA Development Permit, filed pursuant to Subsection 706.10(A)(4). [The Hearings Officer concurs.]*

#### 706.08 CONSTRUCTION MANAGEMENT PLANS

A Construction Management Plan (CMP) shall comply with the following criteria.

*The applicable standards of this Subsection are outlined above under the Recommended Conditions of Approval. [The Hearings Officer concurs, adopting recommended Conditions of Approval.]*

#### 706.09 HCA MAP VERIFICATION

HCA Map Verification shall be subject to the following criteria.

*Applicant concurs with HCA map. No Map Verification is required. [The Hearings Officer concurs.]*

#### 706.10 HABITAT CONSERVATION AREA DEVELOPMENT PERMITS

A Habitat Conservation Area (HCA) Development Permit shall be approved if the applicant provides evidence substantiating compliance with either Subsection 706.10(A) or (B). However, if the proposed development is in a Water Quality Resource Area (WQRA) regulated pursuant to Section 709, it shall comply with either Subsection 706.10(B) or 709.10, except that if the subject parcel contains an HCA and a WQRA and is the subject of a land use application for a partition or subdivision, the partition or subdivision shall comply with the requirements of Subsections 706.10 and 709.11, and if the provisions conflict, the most restrictive standard shall apply.

- A. Development in an HCA shall be permitted subject to the following criteria:
2. The following disturbance area limitations shall apply to certain utility facilities. Utility facilities other than those addressed in Subsections 706.10(A)(2)(a) through (c) shall be subject to Subsection 706.10(A)(1).
    - a. The disturbance area for private connections of utility lines, pipes, or cables to other utility facilities shall be no greater than 10 feet wide.

*The subject piping is [not] greater than 10 feet. This standard is not applicable. [The Hearings Officer concurs.]*

- b. The disturbance area for the upgrade of existing utility lines, pipes, or cables shall be no greater than 15 feet wide.

*There are no existing utility lines, this is a new development. This criterion is not applicable. [The Hearings Officer concurs.]*

- c. The disturbance area for new underground utility lines, pipes, or cables shall be no greater than 25 feet wide and shall disturb no more than 200 linear feet of Water Quality Resource Area regulated pursuant to Section 709, within any 1,000 linear foot stretch of Water Quality Resource Area regulated pursuant to Section 709, provided that this disturbance area, with the exception of necessary access points to the utility facility, shall be restored by the planting of native vegetation.

*The applicant is proposing a storm drainpipe within a trench no wider than 25-feet wide. As noted above, the Water Quality Resource Area (WQRA) is regulated by WES, not Section 709. Nonetheless, the applicant still meets the requirements for maximum linear feet in WQRA. This criterion is met. [The Hearings Officer concurs.]*

- 4. A subdivision of property that contains an HCA shall require that a minimum of 90 percent of the subject property's High HCA and a minimum of 80 percent of its Moderate HCA shall be platted as a tract rather than as part of any lot. Any HCA that remains outside such a tract may be developed, subject to compliance with the mitigation standards of Subsection 706.10(A) or (B). Unless any HCA that remains outside an HCA tract is protected from development by a restrictive covenant or a conservation easement, it shall be assumed that such areas eventually will be developed, and mitigation shall be required. Mitigation shall be completed, or a performance bond in an amount sufficient to cover the cost of mitigation shall be posted with the County, prior to approval of the final plat.

*Only 87 square feet of permanent HCA disturbance is proposed. This very small amount easily meets this standard. With mitigation, this criterion can be met. [The Hearings Officer concurs.]*

- 6. If development in an HCA is approved pursuant to Subsection 706.10(A), compliance with the following mitigation standards shall be required, except that the mitigation standards for development in a wetland (as distinct from an HCA that is adjacent to a wetland) shall be only those required by federal and state law.

*Temporary and permanent disturbances are subject to compliance with the mitigation standards note above. The applicant's restoration plan appears to meet these standards. Nevertheless, conditions of approval for mitigation are detailed*

*above. This criterion can be met. [The Hearings Officer concurs, adopting proposed conditions.]*

7. The mitigation area required by Subsection 706.10(A)(6) shall be located as follows:
  - a. All vegetation shall be planted on the subject property, either within the HCA or in an area contiguous to the HCA, provided, however, that if the vegetation is planted in an area contiguous to the HCA, such area shall be protected from development by a restrictive covenant, conservation easement, or public dedication.

*For temporary and permanent disturbances in the HCA, restoration shall be within HCA or contiguous to HCA. This criterion can be met. [The Hearings Officer concurs, adopting proposed conditions.]*

### **E. DECISION**

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer:

- 1) APPROVES application Z0012-25-ZC for a zone change from Future Urban -10 (FU-10) to Urban Low Density Residential (R-8.5), subject to conditions of approval.
- 2) APPROVES application Z0013-25-SL for a 44-lot major subdivision and planned unit development subject to conditions of approval.
- 3) APPROVES application Z0014-25-HDA for a Habitat Conservation Area (HCA Development, subject to conditions of approval.

### **F. CONDITIONS OF APPROVAL**

*The Clackamas County Land Use and Zoning staff recommended approval of this proposal subject to the following conditions. The Hearings Officer reviewed the proposed conditions of approval, findings, and discussion in this matter and adopted, and/or modified as denoted by boldface type in italics, the following conditions of approval for each part of this proposal.*

#### **PART 1. Application Z0012-25-ZC:**

1. Change Zoning Designation from FU-10 to R8.5.

#### **PART 2. Application Z0013-25-SL:**

1. Conditions for Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management & Erosion Control
  - A) General Standards:
    - i. The location, design, installation, and maintenance of all utility lines and facilities shall be carried consistent with the rules and regulations of the surface water management regulatory authority, which is Clackamas Water Environmental Services (WES)

- ii. Utilities for electricity, natural gas, and communications services shall be installed pursuant to the requirements of the utility district(s) or company(ies) serving the proposed subdivision. Except where otherwise prohibited by the utility district or company, all such facilities shall be installed underground.
- iii. Coordinated installation of necessary water, sanitary sewer, and surface water management and conveyance facilities is required.
- iv. 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.
- v. This approval is subject to and inextricably linked with planning file numbers: Z0012-25, Z0014-25, and Z0015-25.

B) Street Lights:

- i. 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.
- ii. Areas outside Clackamas County Service District No. 5 shall annex to the district through petition to the district.
- iii. **Advisory:** The applicant shall contact Wendi Coryell of the County Engineering Division (503-742-4657) to make arrangements for any required street lighting. The applicant shall also arrange for the formation of an assessment area to pay for operation and maintenance of existing and/or new lighting.

C) Clackamas Water Environmental Services (WES): Surface Water and Sewer:

- i. **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
- ii. **Connection Permit Required (Rules, Section 4.2):** A permit shall be required to connect to the District systems, 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.

- iii. **Plat Approval:** Applicant shall submit a preliminary plat to the local planning authority, who will coordinate plat review with the District. Prior to WES plat approval, all 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 asbuilt drawings, initial inspection of sanitary and storm improvements, and a signed storm maintenance agreement. See Appendix A for Plat Review and Approval criteria.
- iv. **Public Easements (Section 5.2.7):**
  - a. An existing 15-foot wide Surface Water, Storm Drainage, and Sanitary Sewer Easements located on the site and granted to WES/CCSD#1 is permanent and not extinguishable. No development shall encumber the use or access to these easements by WES.
  - b. 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’.
  - c. 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 with a minimum separation of 5-feet between lines.
- v. **Advisory: Rates, Charges, and Billings (Rules, Section 5)**
  - a. Please see comments from WES dated March 20, 2025 for info on fees:

SANITARY SEWER CONDITIONS:

- vi. **Use of Public Sanitary Sewers (Rules, Section 6.3):** The owner of any building situated within the District and proximate to any street or sewer easement in which there is a public sanitary sewer of the District may request permission, at owner’s expense, to connect said building directly to the public sanitary sewer. Before connecting to the public sewerage system, a permit authorizing such connection shall first be secured in writing from the District and fees paid.
- vii. **Point of Service for Upstream Parcels (Section 3.2.2):** A point of service for upstream parcels to the north shall be provided to facilitate an orderly extension of the Public Sanitary Sewer System. This shall include the extension of Public Sanitary Sewer Systems to serve the upstream properties in a location as approved by the District. ~~A point of connection for upstream parcels shall be located between tax lots 1108/1107.~~ *[Edited by Hearings Officer consistent with Exhibits 50, 50A, and 60]*



- viii. **Sewer Extension Permit:** A Sewer Extension Permit shall be required to construct or reconstruct any Public Sanitary Sewer appurtenances which are owned by, or intended to be conveyed to, the District. Prior to issuance of the permit, the applicant shall demonstrate the sanitary sewer system meets the technical standards found in the District Sanitary Standards and these conditions of approval. All other sanitary sewer piping not intended to be conveyed to the District shall be permitted by the Local Plumbing Authority.
- ix. **Development Policy (Section 3.2):** Any land division that results in separate ownership for each lot shall provide a separate sanitary sewer service connection for each lot.
- x. **Sewer Extension Permit Requirements (Section 4.1):**
- a. Upon land use approval, the Applicant shall submit sanitary sewer extension plans and supporting documentation to WES as specified in these standards for plan review and approval. The Applicant shall demonstrate the sanitary sewer system meets the technical standards found in the Sanitary Standards. The Public Sanitary Sewer Extension submittal shall include all required information listed in Appendix A, including:
    - One full-size paper copy and PDF file of complete civil sanitary sewer construction plans.
    - Sanitary Sewer Engineering Agreement (form can be found online).
    - \$400 minimum sanitary plan review fee
  - b. Prior to the commencement of construction of any Public Sanitary Sewer System, a valid Sewer Extension Permit shall be issued by the District in accordance with these Standards. All other sanitary sewer piping not intended to be conveyed to the District shall be permitted by the Local Plumbing Authority.
  - c. See **Section 4.2** for Project Construction requirements, **Section 4.3** for Acceptance and Warranty process, and **Section 4.3.3** for Service Connection drawing requirements.
- xi. **Sanitary Sewer Design (Section 5)**
- a. **Minimum Slope Design (Section 5.2.3):** Newly constructed mainlines in the Public Sanitary Sewer System shall be designed with the minimum slope of 0.0100-ft/ft (1.0%), except for dead-end lines, for which the District requires a minimum slope of 0.0200-ft/ft (2.0%).
    - Exceptions for topography challenged sites where the minimum design slope as stated above cannot be designed are listed in Section 5.2.3, Table 1. If a slope exemption is requested, the applicant shall verify the number of upstream homes meets the requirement listed in Table 1.
    - Sections of the proposed sewer extension do not meet District minimum slope standards. As part of the final acceptance process, the District shall not accept any public mainline that is constructed with slopes less than the approved District standards or approved exceptions, as verified on the final as-built drawings.

- b. **Alignment (Section 5.2.5):** All pipe shall be laid on a straight line and grade. All Public Sanitary Sewer Extensions shall be located within the public Right-of-Way or in a Public Sanitary Sewer Easement as determined by the District.
- c. **Minimum Cover of Mainline (Section 5.2.11):** Public Sanitary Sewer Mainlines shall be placed with a minimum cover of 8-feet in roadways and 6-feet of cover in Public Sanitary Sewer Easements.
- d. **Line and Grade (Section 6.3.5):** Sanitary sewer pipe shall be laid in full lengths as manufactured and shall be laid on a constant grade and in a straight alignment from manhole to manhole, or cleanout. The vertical variation of the grade line shall not create standing water in a pipe that exceeds ½-inch in height.
- e. **Slope of Manhole Channel (Section 5.3.2):** The drop across a standard 48-inch manhole shall be two-tenths (0.20-ft) of a foot.
- xii. **Manhole Connections (Section 6.3):** Connections to existing District manholes shall be made using a core drilling method. Connect PVC pipe to concrete manholes by means of an approved coupling with an elastomeric gasket or flexible sleeve conforming to ASTM C923, (Kor-N-Seal or equal).
- xiii. **Manhole Installation (Section 6.3.12):** Manholes added over an existing mainline shall have a base which achieves watertight connections to the existing pipe type. Manholes and adjoining pipe shall be watertight. Any noticeable infiltration shall be repaired, in a means and method approved by the District.
- xiv. **Service Connections (Section 5.4):**
  - a. Each residential single-family lot shall be served by a single 4-inch diameter Service Connection.
  - b. Service Connections installed with a new public mainline shall be made by means of a manufactured tee. Service Connections into an existing Public Sanitary Sewer Mainline shall be made with installation of an Inserta Tee, and a tap fee shall apply.
  - c. No more than 3 service connections shall be allowed into a manhole.
  - d. The Service Connection shall be at least 6-feet deep at the property line crossing. No Service Connection shall be laid on a grade of less than 2-percent.
  - e. Tees for service connection shall be located no closer than 5-feet to manholes.
  - f. Sanitary laterals shall be marked by a “SS” curb stamp, as shown on Detail SAN-019.
  - g. Lots that receive service from a public sanitary sewer mainline located within a private street (via District easement) will be solely responsible for repairs of structural and non-structural defects for any portion of the Service Connection that is on private property, including the area within easements granted to the District.

**FOR SURFACE WATER:**

- xv. **Applicability (Section 2.3):** All new Development and Redevelopment activities that result in 5,000-sf or greater of new or replaced impervious surface area, cumulative over the last 3 years, are subject to the requirements of these Standards for all newly proposed and replaced impervious surface areas within the overall project boundary.

- xvi. **Stormwater Minimum Requirements (Section 2.3):**
- a. Upon land use approval, the Applicant shall submit a Stormwater Management Plan (SWM Plan) to WES for plan review and approval. The Applicant shall demonstrate stormwater management facilities (SMF) that meet the technical standards found in the Stormwater Standards, including sizing methods and calculations. The SWM Plan submittal shall include all required information listed in Appendix A, including:
    - One full-size paper copy and PDF file of complete civil stormwater construction plans, including proposed grading plan and on-site storm drainage system and stormwater facilities
    - One paper copy and PDF file of a Stormwater Management Report that includes:
      1. The engineered or BMP Sizing Tool method used to size the stormwater facilities.
      2. A Storm Drainage System/Hydrologic and Hydraulic Calculations Report
      3. Hydrology and hydraulic calculations with drainage area maps
      4. Tributary drainage areas shall be calculated in table form and identified on maps submitted with the report
      5. Geotechnical Report, including Infiltration Testing, Soils Report, and Geology Report
    - Storm System Engineering Agreement (form can be found online).
    - Erosion Protection and Sediment Control plan and EPSC permit application
  - b. Prior to plat approval, the applicant shall construct the approved stormwater management system and said system shall be inspected by WES staff.
  - c. The applicant shall execute and record an Operations and Maintenance (O&M) Plan for any stormwater facilities on private property to ensure the long-term functionality of the SMF.
- xvii. **Development Policy (Section 3.2):** Requirements for development of a property or a tract of land include, but are not limited to, the following:
- a. Development proposals shall maintain the natural drainage pathways for seasonal and intermittent drainages or provide alternate manmade natural drainage pathways.
  - ~~b. Surface drainage entering a development from offsite areas shall be intercepted at the naturally occurring locations. Offsite surface drainage shall be conveyed through the site in a separate stormwater drainage system and will not be mixed with the stormwater collected and treated within the onsite SMFs unless the onsite SMFs are designed to manage and treat the additional flows from the upstream drainage basin(s) assuming full development potential. [Edited by Hearings Officer consistent with Exhibits 50, 50A, and 60]~~
  - b. When an Approved Point of Discharge is located and/or conveyed on an adjacent private property, the Applicant shall be responsible to acquire all applicable downstream private and/or Public Stormwater Easements.
- xviii. **Impervious Area Assignment per Lot:** The engineer's storm report shall identify the anticipated future impervious area for each proposed lot. The engineer shall prepare

service connection drawings and list the impervious area assigned to each lot by the project engineer. Note: WES will not sign off on future building permits for development footprints larger than those approved during WES review without a verification of adequate capacity of the stormwater system.

- xix. **Storm Conveyance Systems (Section 7.6):**
- a. Storm management facilities shall be designed and constructed to accommodate all assumed future full build-out flows generated from upstream property within the basin.
  - b. Storm Drainage Systems within the ROW shall be not less than 12 inches in diameter.
  - c. Storm sewers shall be designed with a minimum slope of 0.5 percent.
- xx. **Infiltration (Section 6.2.1):** SMFs shall be designed with an infiltration component unless otherwise stated in the Geotechnical Report. Professional testing shall comply with Section 6.2.1. If more than five SMFs are proposed, the District may accept a recommended infiltration rate from a Geotechnical Engineer based on the consistency of soil classification(s) throughout the site, unless otherwise permitted by the District
- xxi. **Stormwater Management Performance Standards (Section 6.1):** Projects subject to stormwater review shall provide SMFs that meet District water quality and flow control performance standards:
- a. Flow control facilities designed with partial or no infiltration shall include an underdrain, control structure, and overflow system to manage the release rates from the facility. Release rates from the facility shall meet the flow control performance standard in Section 6.1.2.
  - b. **Flow Control:** Using the BMP Sizing Tool (or equivalent continuous flow model), flow control facilities shall be designed so that the duration of peak flow rates from Post-Development Conditions shall be less than or equal to the duration of peak flow rates from pre-development conditions for all peak flows between 42 percent of the 2-year peak flow rate up to the 10-year peak flow rate.
    - WES has developed a BMP Sizing Tool to assist developers in meeting flow duration matching requirements customized to Clackamas County conditions. The Tool sizes facilities so that post-development peak flow durations will match the pre-development peak flow durations ranging from 42% of the 2-year to the 10-year flows, as determined by HSPF continuous rainfall model simulation.
  - c. **Water Quality:** Water quality facilities shall be designed to capture and treat the first 1-inch of stormwater runoff from a 24-hour storm event. The water quality facility shall use either an approved vegetated SMF or an approved Proprietary Stormwater Treatment Device (See Section 6.5.10).
- xxii. **BMP Sizing Tool:** The following shall apply for any SMF designed with the BMP Sizing Tool:
- a. A BMP Sizing Tool Report shall be submitted with the Stormwater Report. Orifice sizes for SMFs shall be specified by the BMP Sizing Tool results.

- b. Publicly maintained stormwater facilities shall be designed with the custom pond sizing feature of the BMP Tool.
  - c. Each SMF shall be assigned a separate Drainage Management Area (DMA) and sizing analysis. The engineer shall verify each DMA aligns with the final grading plans.
- xxiii. **General Facility Design Requirements (Section 6.4):** The following general design requirements shall apply to all SMFs. Additional facility specific design criteria shall apply, in accordance with Section 6.5.
- a. Drainage basin maps shall identify runoff within and upstream of the development. Design of surface water and stormwater systems must include provisions to control runoff from impervious and pervious areas within and upstream of the development without exceeding capacities of available facilities and downstream drainageways.
  - b. Stormwater management facilities shall be accurately sized for the total impervious area resulting from the proposed development, including all onsite structures and hardscape and any offsite road improvements required by the local road authority.
  - c. Provide individual plan view and cross section details for each proposed facility. Cross section shall detail all elevations in the flow control as well as elevations of each layer of rock, soil, above ground storage, perf pipe, etc. Show a specific detail for the chamber system with all elevations labeled.
  - d. Storm laterals shall be marked with a “ST” stamped in top of curb (Detail SWM-43).
  - e. Stormwater Facility Signage: All vegetated and porous SMFs, including permeable surfaces such as pervious pavement shall have at least one informational sign that is clearly visible and legible to the public. At a minimum, signs shall provide description of the facility and its purpose, and contact information for maintenance complaints.
  - f. Soil Mixes: Facilities that include soil, such as swales, planters, curb extensions, and basins, shall use the Blended Soil Specification for Vegetated Stormwater Systems from the most currently adopted City of Portland’s Standard Construction Specifications in section 0104.14(d), titled Stormwater Facility Blended Soil.
  - g. Public Maintenance Access: Publicly maintained stormwater facilities and structures shall provide an access road designed and constructed for the intended use and purpose for accessing and maintaining the proposed SMFs. Public maintenance access roads shall be designed and constructed to the minimum standards as specified in Table 8.
  - h. Stormwater Planters shall comply with the design requirements in Section 6.5.1.
  - i. Storm Ponds shall comply with the design requirements in Section 6.5.8.
- xxiv. **Stormwater Management Facility Planting Plan (Section 6.4.5 and Appendix A and B):** The SWM Plan shall provide planting information for each vegetated SMF based on requirements of the Standards, including:

- a. Landscape plans and specifications shall comply with the submittal requirements of Appendix A.
  - b. Vegetation shall be installed such that 100 percent vegetative cover is achieved through a mix of herbaceous, groundcover, and shrubs at the end of the 2-year warranty period, prior to acceptance.
  - c. Plans for publicly maintained SMFs shall be prepared by a registered Landscape Architect.
  - d. Plans shall identify the temporary irrigation strategy to be used during the plant establishment period.
- xxv. **Retaining Walls (Section 6.4.6):** The applicant shall clearly identify all storm facility retaining walls in plan and profile views.
- a. For retaining walls greater than 4-feet in height, the applicant shall provide stamped design calculations and detail drawings required for the retaining wall construction by a professional structural or geotechnical engineer registered in Oregon, per local building code requirements.
  - b. The District shall not have any maintenance or ownership responsibility for retaining walls. HOA ownership and maintenance responsibility for the retaining wall shall be clearly specified in the CCRs and within the stormwater maintenance plan.
- xxvi. **Points of Discharge (Section 7.2.1):** The Applicant shall identify a proposed point of discharge. Any connection to a public or private piped downstream storm drainage system shall be approved by the District. Runoff from developed portions of the site shall discharge at the existing natural drainage outlet or outlets.
- xxvii. **Upstream Drainage Areas (Section 7.2.3):** ~~The upstream offsite stormwater or other nuisance surface water runoff shall be conveyed through the development in a separate system referred to as the "Bypass System". Bypass runoff shall not be mixed with the stormwater collected and treated with onsite SMFs unless the SMFs are designed to include all of the additional flows from the upstream drainage areas(s) assuming full development potential.~~ ***The applicant shall identify an adequate point of discharge and emergency overflow pathway for upstream offsite stormwater, as determined by the District. [Edited by Hearings Officer consistent with Exhibits 50, 50A, and 60]***
- xxviii. **Downstream Analysis (Section 7.2.4):** A Qualitative downstream analysis shall be required for any project that discharges stormwater runoff to a natural or manmade storm drainage system. The analysis shall evaluate the offsite storm drainage system to the location where the project site contributes less than 15 percent of the upstream drainage area contributing to a public storm drainage system line or drainage channel, or a location 1,500 feet (approximately ¼-mile) downstream of the discharge point from the project site, whichever is greater.
- a. Upon review of the qualitative analysis, the District may require a quantitative analysis, depending on the presence of existing or predicted flooding, erosion, or water quality problems and on the proposed design of the onsite drainage facilities. The quantitative analysis includes a hydrologic and hydraulic analysis of each component of the downstream storm drainage system. The analysis should identify

existing line capacity, additional flow from new development, and total of existing + developed flow.

- xxix. **Emergency Overflow Pathway (Section 6.1.3):** An overland emergency overflow pathway analysis performed by the project engineer shall be required for all projects with SMFs. The analysis must show how flow will escape from the site during rainfall events larger than the design storm and/or from failure of the primary stormwater storm drainage system without risk of injury or property damage.
- a. If a Storm Drainage System is used as a component to convey the emergency overflow pathway, then the structure(s) and system shall be designed to convey the 100-year Design Storm. If downstream properties are impacted by the 100-year storm event, then the Applicant shall provide additional flow control or secondary SMFs to mitigate the potential impact.
- xxx. **Inlets and Catch Basins (Section 7.6.5)**
- a. Inlets shall be designed to completely intercept the design storm gutter flow with no greater than 250 feet between inlets.
  - b. Grates shall, as far as practical, be designed to avoid failure due to accumulation of debris. Catch Basin Curb Inlet (Standard Drawing SWM-15) shall be used at low point areas to prevent clogging and flow bypass of the storm system. SWM-14 shall be used under other typical situations.
  - c. All catch basins shall be constructed with an 18-inch minimum sump.
- xxxi. **Outfalls (Section 7.9):** Outfalls from drainage facilities shall be designed with adequate energy dissipaters to minimize downstream damage and erosion. Storm drain lines shall enter a creek or drainage channel at 90 degrees or less to the direction of the flow. Rock protection at outfalls shall be designed in accordance with information listed in Table 14.
- xxxii. **Erosion Prevention and Sediment Control Permits (Section 8.2.3):** An EPSC Permit shall be required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which results in the disturbance or exposure of soils covering an area of 800 sf or greater. No visible or measurable erosion shall leave the property during development, construction, grading, filling, excavating, clearing, or other activity that accelerates erosion, as required by water quality standards set forth in OAR 340-41-445 thru 470.
- a. See Section 8.4 and Appendix A for EPSC Plan submittal requirements.
  - b. See Section 8.6 for approved Best Management Practices, including base measures.
- xxxiii. **NPDES 1200-CN and 1200-C Permit (Section 8.2.4):** In addition to the District EPSC Permit, a NPDES 1200-CN permit shall be required for projects disturbing one acre up to less than 5 acres of disturbance. The 1200-CN shall be issued by the District along with the local permit. For disturbances of 5 acres or greater, a District EPSC Permit and a DEQ 1200-C permit shall be required. The local District permit shall be issued by the District. The 1200-C permit will be obtained directly from DEQ.

- xxxiv. **Wet Weather Stabilization (Section 8.2.6):** Where natural vegetation has been removed, or the original land contours disturbed, vegetative ground cover shall be planted and established by October 1 and continue to function through May 31 of the following year, or as approved by the District. If ground cover is not established by October 1, the open areas shall be protected through May 31 of the following year with straw mulch, erosion blankets, or other methods approved by the District.
- xxxv. **Operations and Maintenance Plans (Section 9.2):** An O&M Plan shall be required for all permanent SMFs in accordance with the plan elements noted in **Section 9.2.2** and the facility design and maintenance specifications in **Appendix B**. The O&M Plan and associated agreements, covenants, and easements shall be reviewed prior to District approval of the SWM Plan.
- xxxvi. **Privately Owned and Maintained Facilities (Section 9.3)** A Maintenance Covenant shall be recorded into the land record prior to final plan and/or plat approval. The O&M Plan shall be included as an exhibit in the maintenance covenant. The maintenance covenant shall identify private maintenance responsibilities for any shared SMFs and shall provide public access rights to inspect the facility and ensure that it is maintained in proper working condition.
- xxxvii. **Publicly Maintained Facilities (Section 9.4):**
- a. All SMFs to be maintained by the District shall require an O&M Plan approved by the District, and the applicant shall enter into a public maintenance agreement with the District.
  - b. All publicly owned SMFs shall be located in the Public ROW or separate tract with adequate maintenance access with an easement granting rights to the District in accordance with Section 6.4.7.
  - c. Maintenance responsibilities shall be transferred to the District following the warranty period. During the 2-year warranty period, the Applicant shall be responsible for all maintenance and documentation requirements outlined within the O&M Plan.
  - d. A Maintenance Fee shall be distributed proportionally among the Owners that use the facility for stormwater management, currently set at \$3 per month per lot (or \$3 per 2,500-sf of impervious surface area).
  - e. The HOA shall have sole responsibility for maintenance and associated costs for the facility retaining walls and surrounding fencing and landscaping, which must be documented in the HOA CC&R's.
  - f. Publicly maintained stormwater facility must provide a maintenance access gate with a minimum opening width of 12 feet wide that consists of two 6-foot sections.
  - g. Minimum maintenance access of 20 feet to flow control structures is required.

Surface Water Water Quality:

- xxxviii. **Vegetated Buffer Requirements (Rules 8.4)** All parcels containing a water resource or within 200 feet of a water resource located on an adjacent parcel must submit to the



District for a WQRA Boundary Verification prior to any development activity. Any parcel with a WQRA must submit to the District for a WQRA Development Permit prior to any development activities within the WQRA.

a. Note: Clackamas County Planning Division serves as WES' agent to administer these standards (in consultation with WES). Applicant shall coordinate with Planning for all buffer-related requirements.

xxxix. **Boundary Verification (Section 3.2.1):** In order to confirm the presence of a water resource and verify the boundaries of a WQRA, a WQRA Boundary Verification is required for development on a parcel or parcels that contain a WQRA or have a WQRA within 200-feet of the parcel boundary.

xl. **WQRA Development Review Requirements (Section 3.2):**

a. A WQRA Development Permit is required for development in a WQRA, in accordance with the approval criteria listed in Section 3.2.1.

b. The minimum width of the vegetated corridor is calculated based on the type of water resource, the adjacent slope, and the edge of the water resource (see Table 2).

xli. **Partitions and Subdivisions (Section 3.2.3):** A partition or subdivision of property that contains a WQRA shall require that the WQRA and associated buffer be platted as a tract rather than as part of any lot. The tract shall be protected from development by restrictive covenant, public dedication or other District approved equivalent.

xlii. **Mitigation Required (Section 3.3):** Any impacts to the WQRA shall be mitigated, in accordance with Table 2 – WQRA Conditions and Mitigation Requirements, and Appendix B – Planting Guide for Buffers.

a. A stormwater pretreatment facility may encroach a maximum of 25-feet into the outside boundary of the vegetated buffer of a primary protected water resource. The area of encroachment shall be replaced by adding an equal area to the WQRA and associated buffer on the subject property.

b. The applicant shall provide a mitigation plan showing the addition of an equal area to the WQRA for encroachment into the SMF, in accordance with Sections 3.3 and 3.4.

D) Sunrise Water Authority (SWA)

i. Applicant shall comply with all public standards set forth by SWA.

ii. If fire flows are not adequate, the applicant shall provide a statement from the fire district serving the subject property (Clackamas Fire Dist. 1) that states that an alternate method of fire protection, such as an on-site water source or a sprinkler system, is acceptable.

2. Conditions for Roads & Connectivity:

A. **Prior to final plat approval:** 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.

- B. **Prior to final plat approval:** 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.
- C. **Advisory:** 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.
- D. 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. These improvements shall consist of the following:
- i. A minimum 54-foot-wide public right-of-way shall be dedicated. 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.
  - ii. The applicant shall grant an 8-foot-wide public easement for signs, slope and public utilities on both sides of the new public streets within the plat.
  - iii. A minimum paved width of 32 feet, curb to curb, with a structural section per Standard Drawing C100 for a local roadway.
  - iv. Standard curb, or curb and gutter if curblin slope is less than one percent, constructed per Standard Drawing S100/S150
  - v. A 5-foot-wide unobstructed sidewalk, constructed per Standard Drawing S960.
  - vi. A minimum 5-foot-wide landscape strip shall be provided between the sidewalk and curb. Street trees shall be provided within the landscape strip along the entire site frontage at 25-40-foot spacing, based on tree species.
  - vii. Concrete driveway approaches shall be constructed for each lot, per Standard Drawing D650.
  - viii. Dual concrete curb ramps shall be constructed at all quadrants of the public road intersections, per Oregon Standard Drawings, Series RD900.
  - ix. The cul-de-sac on Street A shall be constructed per Standard Drawing C300.
  - x. Concrete curb ramps shall be constructed at the south end of the sidewalk on Street B, constructed per Oregon Standard Drawings, Series RD900.

- xi. A temporary turnaround shall be constructed at or near the southern terminus of Street B, Per Standard Drawing C200. The turnaround may be abandoned and easement automatically vacated upon extension of the street.
  - xii. Street name signs shall be provided at the intersections of public roads and named private roads.
  - xiii. Drainage facilities in conformance with Water Environment Services requirements and *Clackamas County Roadway Standards Chapter 4*.
- E. The applicant shall design and construct improvements for the shared access road serving Lots 12-17, which will consist of:
- i. The private road shall be referenced on the final plat as a reciprocal and perpetual, common access and utility easement, and shall specify the lots served by the easement. The easement shall encompass the required improvements. A minimum 26-foot wide reciprocal and perpetual common access and utility easement shall be provided from the public road.
  - ii. Where serving 1-3 lots, a minimum 12-foot wide, paved driving surface with 2-foot-wide gravel shoulders on both sides of the roadway shall be constructed. The minimum structural section for the new private road improvements shall comply with *Clackamas County Roadway Standards Drawing R100*.
  - iii. A minimum 20-foot-wide concrete driveway approach, consistent with Standard Drawing D650 shall be provided at the intersection of the private road with the public road.
  - iv. Drainage facilities in compliance with Water Environment Services Rules and *Clackamas County Roadway Standards Chapter 4*.
  - v. An emergency vehicle turnaround shall be constructed at or near the end of the shared access road, per *Roadway Standards Drawing C350*.
  - vi. Written verification must be received from the Fire District that adequate emergency service access is provided.
  - vii. Roadways with a paved width less than 26 feet shall be signed and/or striped “FIRE LANE NO PARKING.” Installation of signs and/or striping shall be completed before recording the plat. The developer is responsible for replacing all signs damaged or removed during home and street construction.
  - viii. A road maintenance agreement for the shared private road implementing ORS 105.170 - 105.185 shall be recorded with the plat.
- F. The applicant shall design and construct improvements for the shared access drives serving Lots 5, 6 and 9-11, which will consist of:

- i. The private road shall be referenced on the final plat as a reciprocal and perpetual, common access and utility easement, and shall specify the lots served by the easement. The easement shall encompass the required improvements. A minimum 20-foot-wide reciprocal and perpetual common access and utility easement shall be provided from the public road.
  - ii. Where serving 1-3 lots, a minimum 12-foot wide, paved driving surface with 2-foot-wide gravel shoulders on both sides of the roadway shall be constructed. The minimum structural section for the new private road improvements shall comply with Clackamas County Roadway Standards Drawing R100.
  - iii. A minimum 12-foot-wide concrete driveway approach, consistent with Standard Drawing D650 shall be provided at the intersection of the private road with the public road.
  - iv. Drainage facilities in compliance with Water Environment Services Rules and Clackamas County Roadway Standards Chapter 4.
  - v. Written verification must be received from the Fire District that adequate emergency service access is provided.
  - vi. Roadways with a paved width less than 26 feet shall be signed and/or striped “FIRE LANE NO PARKING.” Installation of signs and/or striping shall be completed before recording the plat. The developer is responsible for replacing all signs damaged or removed during home and street construction.
  - vii. A road maintenance agreement for the shared private road implementing ORS 105.170 - 105.185 shall be recorded with the plat.
- G. The access to the stormwater facility in Tract B shall be constructed per Standard Drawing R100 to a minimum width of 12 feet.
- H. Primary Inspector:
- i. 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.
  - ii. Prior to final plat, the applicant shall provide a Certificate of Compliance signed by the Engineer of Record stating all materials and improvements have been installed per approved plans and manufacture’s specifications.
- I. A Fire Access and water supply plan shall be provided for subdivisions, commercial buildings over 1000 square feet in size or when required by Clackamas Fire District #1. The plan shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The applicant shall provide

fire flow tests per NFPA 291 and shall be no older than 12 months. Work to be completed by experienced and responsible persons and coordinated with the local water authority.

- J. Following completion of site construction activities of subdivisions, buildings over 1000 square feet or when required by Clackamas Fire District #1, the applicant shall provide as-built Fire Access and Water Supply pdf plans to the local Fire District and the County. The pdf plans shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The plans shall include any supporting details of the access, circulation, water vaults, fire lines, valves, fdc, backflow devices, etc.
- K. 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.
- L. 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.
- M. All existing and proposed easements shall be shown on the final plat.

3. **Conditions for Density**

A) Density Summary

- i. Maximum density for the proposed subdivision equals 45
- ii. Minimum density for the proposed subdivision equals 28

4. **Conditions for Land Divisions**

A) General Conditions:

- i. Approval of this land use permit is based on the submitted written narrative and plan(s) submitted January 14, 2025 and Resubmitted March 18, 2025. No work shall occur under this permit beyond that specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- ii. **Advisory Condition:** Applicant shall comply with Chapter 7.05 of the County Code for road naming and addressing requirements. Applicant can contact Roman Sierra in the Planning Division for obtaining street addresses: [RSIERRA@clackamas.us](mailto:RSIERRA@clackamas.us)
- iii. **Prior to Final Plat Approval:** 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

B) **General Approval Criteria:**

- i. The proposed subdivision — including all, parcels, lots, tracts, easements, future structures, etc., potentially contained therein — shall comply with all applicable provisions of the R-8.5 Zoning District, as outlined in Section 315 of this Ordinance.

- a. **Advisory:** Planned Unit Developments may be subject to modified dimensional and development standards as indicated in ZDO Sec. 315.
- ii. This subdivision will be developed and platted as a Planned Unit Development (PUD) pursuant to Section 1013 of the ZDO. Therefore; the following requirements shall be satisfied consistent with Section 1013 of the ZDO:
  - a. All lots shall be within 1000 feet of Tracts “C” and “D”
  - b. **Advisory:** Any additional accessory uses set forth in 1013.02, such as trails or paths, may require further land use action and environmental review depending on the amount of disturbance proposed in Tracts “C” and/or “D”.
  - c. **Advisory:** The applicant may dedicate trail easements to North Clackamas Parks and Recreation District.
- iii. The proposed subdivision shall comply with the applicable provisions of Section 1000 of this Ordinance, *Development Standards*, as outlined above.
- iv. Any development on steep slopes shall follow recommendations of the geotechnical report prepared by GeoPacific and dated December 19, 2024.
- v. A nonprofit, incorporated homeowners association, or an acceptable alternative, is 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, as follows:
  - a. 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.

Membership in the homeowners association shall be mandatory for each lot or parcel owner.

The homeowners association shall be incorporated prior to recording of the final plat.

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.

**Prior to plat approval**, applicant shall submit a draft copy of the Covenants, Conditions and Restrictions (CC&Rs) to the Planning and Zoning Division to confirm that the above requirements are set forth in said CC&Rs.
- vi. Approval Period and Time Extension:
  - 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 1105.06(A), a two-year time extension may be approved pursuant to Section 1310, *Time Extension*.

vii. Final Plat Review:

- a. The form and content of the final plat shall 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. The final plat shall be submitted to the County for review. If a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws shall be submitted to the County with the final plat. If the final plat and, if a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws are consistent with the approved preliminary plat and the conditions of approval included in the County's final decision on the application have either been satisfied or guaranteed pursuant to Section 1311, *Completion of Improvements, Sureties, and Maintenance*, the Planning Director shall sign the plat.
- c. Any private access easements shall also contain provisions for public utility services such as water, electricity, communications, natural gas, storm drainage, sanitary sewer, emergency services, etc.
- d. New easements shall include a statement that the easements are for the lots or parcels shown and any future divisions thereof.
- e. Easements created for access to parcels that can be redeveloped or further divided shall contain language that would allow the access and utilities easement(s) used by any additional development or parcels created in future. Any private easements should also contain provisions for public utility services such as water, electricity, communications, gas, storm drainage, sanitary sewer, etc.

**PART 3. Application Z0014-25-HDA:**

I. General Conditions:

- A) Approval of these land use permits is based on the submitted written narrative and plans submitted through January 14, 2025, and March 18, 2025. No work shall occur under these permits beyond that specified in this decision. It shall be the responsibility of the property owner(s) to comply with this document and the limitation of approval described herein.
- B) Advisory: The applicant shall obtain all necessary permits from the Oregon Department of State Lands (DSL), if necessary.
- C) Advisory: Clackamas Water Environment Services (WES) Water Quality resource Area (WQRA) maybe required for encroachment into the WES Title 3 WQRA.

- i. If required, a WES WQRA Development Permit shall be submitted separately to, and processed by, the Planning & Zoning Division.

D) The proposed development is also subject to the Findings and Conditions of File No. Z0012-25 and Z0013-25

1. Construction Management Plan Conditions:

A) Pursuant to Subsection 706.08, the proposed Construction Management Plan (CMP) shall meet the following standards:

- i. The CMP shall be implemented as outlined on the Construction Management Plan, Grading and Erosion Control Plan, of the submitted HCA Development / Construction Management Permit Plans, prepared by AKS Engineering
- ii. Erosion prevention and sediment control (EPSC) measures shall be required and shall comply with the standards of WES.
- iii. Orange construction fencing (i.e. safety fencing, snow fencing, or a comparable product) shall be installed in such a manner as to protect the area of the HCA and other sensitive areas that are not authorized for disturbance.
- iv. Trees in the HCA shall not be used as anchors for stabilizing construction equipment.
- v. Native soils disturbed during development shall be conserved on the subject property.
- vi. Development shall not commence until the EPSC measures and fencing required pursuant to Subsections 706.08(A) and (B) are in place.
- vii. Compliance with the Construction Management Plan shall be maintained until the development, including home construction on the individual lots, is complete.

2. Map Verification Conditions:

A) Applicant concurs with HCA map.

3. Development Permit (Subsection 706.10[A]) Conditions:

A) Development that is approved within the HCA through this decision shall not result in the removal of the developed areas from the HCA and shall not change the applicable HCA categories.

B) Approval Period: The approval of this HCA Development Permit shall be valid for four (4) 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.

- i. In this case, "implemented" means that the final plat of the subdivision (File No. Z0013-25-SL) shall be recorded with the County Clerk.



- ii. If this approved HCA Development Permit is not implemented within the initial approval period established by Subsection 706.06(D), a two-year time extension may be approved pursuant to Section 1310.
- iii. The following disturbance area limitation shall apply to stormwater utility piping proposed in HCA:
  - a. The disturbance area for new underground utility lines, pipes, or cables shall be no greater than 25 feet wide and shall disturb no more than 200 linear feet of Water Quality Resource Area regulated pursuant to Section 709, within any 1,000 linear foot stretch of Water Quality Resource Area regulated pursuant to Section 709, provided that this disturbance area, with the exception of necessary access points to the utility facility, shall be restored by the planting of native vegetation

C) Standards for Partitions & Subdivisions:

- a. Pursuant to Subsection 706.10(A)(4), all of the HCA shall be placed within a tract and shall be protected from development by a restrictive covenant, conservation easement, or public dedication.
  - a) The tract may be subject to an easement conveying storm and surface water management rights to WES, the applicable surface water management authority.
  - b) The tract shall be designated on the final plat as either:
    - 1. A private natural area owned by a homeowners association or a private non-profit with the mission of land conservation; or
    - 2. A public natural area where the tract has been dedicated to a public entity.
- b. Mitigation for the remaining area of the HCA that is located outside of the tract shall be required as outlined below.

D) Mitigation Standards: Mitigation for the development within the HCA shall be met as follows

- iv. Mitigation outside the wetland is subject to the following standards:
  - a) **Required Plants and Plant Densities:** All trees, shrubs and ground cover shall be native vegetation. An applicant shall comply with Subsection 706.10(A)(6)(a)(i) or (ii), whichever results in more tree plantings, except that where the disturbance area is one acre or more, the applicant shall comply with Subsection 706.10(A)(6)(a)(ii).
    - 1. The mitigation requirement shall be calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site shall be replaced as shown in Table 706-6. Conifers shall be replaced with conifers. Bare

ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs; or

2. The mitigation requirement shall be calculated based on the size of the disturbance area within the HCA. Native trees and shrubs shall be planted at a rate of five trees and 25 shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals 0.66, and 0.66 times five equals 3.3, so three trees shall be planted, and 0.66 times 25 equals 16.5, so 17 shrubs shall be planted). Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.
  - b) **Plant Size:** Replacement trees shall be at least one-half inch in caliper, measured at six inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one-gallon size. Shrubs shall be in at least a one-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.
  - c) **Plant Spacing:** Trees shall be planted between eight and 12 feet on center, and shrubs shall be planted between four and five feet on center, or clustered in single species groups of no more than four plants, with each cluster planted between eight and 10 feet on center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.
  - d) **Plant Diversity:** Shrubs shall consist of at least two different species. If 10 trees or more are planted, then no more than 50 percent of the trees may be of the same genus.
  - e) **Invasive Vegetation.** Invasive non-native or noxious vegetation shall be removed within the mitigation area prior to planting, and shall be removed or controlled for five years following the date that the mitigation planting is completed.
  - f) **Mulching:** Mulch shall be applied around new plantings at a minimum of three inches in depth and 18 inches in diameter.
  - g) **Tree and Shrub Survival:** Trees and shrubs that die shall be replaced in kind to the extent necessary to ensure that a minimum of 80 percent

of the trees initially required and 80 percent of the shrubs initially required shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

- h) **Monitoring and Reporting:** Monitoring of the mitigation site shall be the ongoing responsibility of the property owner. For a period of five years following the date that the mitigation planting is completed, the property owner shall submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site. In lieu of complying with the monitoring and reporting requirement, the property owner may post with the County a performance bond, or other surety acceptable to the County, in an amount sufficient to cover costs of plant material and labor associated with site preparation, planting, and maintenance. An applicant who elects to post a surety shall be subject to Subsections 1104.03 through 1104.05.
- c. All vegetation shall be planted on the subject property, either within the HCA or in an area contiguous to the HCA, provided, however, that if the vegetation is planted in an area contiguous to the HCA, such area shall be protected from development by a restrictive covenant, conservation easement, or public dedication.

Dated: May 7, 2025



Carl D. Cox  
Clackamas County Hearings Officer

## **APPEAL RIGHTS**

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.