

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Major Planned
Unit Development Subdivision with 15 Lots.

Case File No: Z0088-23-SL
(Chloe Rose)

A. SUMMARY

1. The Hearings Officer received testimony and evidence at the May 4, 2023 public hearing about this application by Silver Oaks Custom Homes, LLC, proposing a major residential planned unit development subdivision with 15 lots, two open space tracts, one storm water tract, and one private road contained within a tract. 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 with the County providing an explanation for virtual participation. 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. The subject property is an approximately 5.49-acre lot located at 6364 SE McNary Rd., Milwaukie, OR (Oatfield Ridge area) (the "Property"). The legal description for the Property is: T2S, R2E, Section 08CB, Tax Lot 1300, W.M. The current zoning for the Property is R-15 (eastern sector); R-10 (western sector); and the Comprehensive Plan Designations is Urban Low Density Residential. The Property is owned by Mountain View Construction & Dev, LLC.
3. The applicant's proposal is for a 15-lot major Subdivision referred to as "Chloe Rose Subdivision." In 2018 a request for a 12-17 lot Subdivision, Zone Change, and Conditional Use was approved by the Hearings Officer (HO) pursuant to files Z0329-18, Z0330-18, and Z0331-18. Since approval of those permits, the applicant has made considerable progress with constructing infrastructure and satisfying conditions of approval therein. However, the subdivision approval window was four (4) years, and that window ended in October of 2022. Since the plat was not recorded, a new subdivision is being sought so the applicant can record the subdivision and finalize any outstanding conditions of approval and infrastructure requirements. The Zone Change (Z0330-18) is still valid, and much of the parcel has been rezoned to R-10 as approved. The Conditional Use approval is moot, since middle housing regulations, effective in July of 2022, no longer require conditional use permits for duplexes, triplexes, etc. The Hearings Officer approved the application subject to Conditions of Approval recommended by County staff.

B. PRE-HEARING SUBMITTALS

1. The County requested responses from:

- a. North Clackamas School District
 - b. Oak Lodge Water Services Authority
 - c. Clackamas WES
 - d. Clackamas Fire District #1
 - e. Oak Grove Community Council CPO
 - f. Clackamas County Service District No. 5 (Street Lighting)
 - g. County Engineering Div.
 - h. County Traffic Engineering Section
 - i. Property owners within 300 ft.
 - j. North Clackamas Parks and Recreation District
 - k. North Clackamas Watershe Council
 - l. County Surveyor's office
2. The County received the following responses in advance of the hearing:
- A. Clackamas WES, comments included as Exhibits 3 and 4 of this file. Erik Bertram of Clackamas WES responded to the notice and request for comment with an April 6, 2023 email stating that the agency proposed no changes to the previous conditions submitted for the proposed Chloe Rose subdivision in 2018, providing a memo of these same comments with a new date of April 6, 2023 as incorporated in this report.
 - B. County Development Engineering, comments included as Exhibit 7 of this file. Kenneth Kent of County Development Engineering submitted roadway comments and proposed conditions in comments dated April 20, 2023 as incorporated in this report.
 - C. Oak Lodge Water Servcies Authority, comments included as Exhibit 8 of this file. Markus Mead of Oak Lodge Water Services District submitted drinking water comments and conditions dated April 24, 2023.
 - D. Neighbor R. Kent Squires, comments included as Exhibit 5. Mr. Squires submitted written comments dated April 17, 2023 stating that he and other area property owners perviously provided written or oral testimony regarding this same development (referring to the prior land use approval in this matter). Mr. Squires notes that he was not opposed to development of the site, but was opposed to development inconsistent with the character of the neighborhood including allowing construction of duplexes in an area developed with single-family dwellings. Mr. Squires also points to the original applicant's¹ failure to record the plat prior to the expiration of that 2018 land use approval as an inordinate delay allowing the developer to proceed under new land use rules. Mr. Squires requests that the owner/developer be required to provide adequate on-site, off-street parking for each living unit constructed. Mr. Squires also requests that the County mark both sides of its intersection with McNary Avenue to Norma Circle as "No Parking" on both sides of the street to prevent subdivision residents' vehicle parking from spilling onto these adjacent roads, asserting this will help ensure vehicle and pedestrian safety as well as emergency vehicle access.
 - E. Neighbor Jo Ellen Schiedler, comments included as Exhibit 6. Ms. Schiedler submitted written comments dated April 20, 2023 stating that poor drainage is already a problem in this area for her home on SE Mable and for some of her neighbors as well. Ms. Scheidler contends that approving the proposed additional homes, with associated paving and infrastructure, will only increase the drainage problem. Ms. Schiedler asserts that no

¹ The current applicant is not the same as the applicant that submitted the proposal approved in 2018.

permits should be issued for this development until the drainage problems it would create can be resolved.

3. Staff submitted a portion of a County GIS/Planning and Zoning map printed April 24, 2023 showing current zoning boundaries for the subject property and vicinity. This map shows a mix of residential development on larger rural lots, residential development on smaller lots in denser subdivisions, and undeveloped forested tracts. County staff also submitted a copy of the September 13, 2018 staff report from file nos. Z0329-18-SL, Z0330-18-C, and Z0331-18-Z and a copy of the related Hearings Officer's decision approving those applications, subject to conditions. Staff submitted a portion of County Tax Assessor tax map 22E08CB showing the subject property and the immediate vicinity. Staff also submitted a portion of DOGAMI MAP, Bulletin 99 Map (from approximately 1979) showing geographic details for the subject property area vicinity. (Exhibits 9, 10, 11, 12, 13)
4. Staff submitted a copy of the application in this matter. The application includes a completed land use application and various supporting documents, including among other things: a written narrative demonstrating compliance with the approval criteria, engineered plans for the proposed on-site storm water detention pond, and engineered erosion and sediment control plans. The applicant also provided a Geo-Assessment by Rapid Soil Solutions (RSS) that noted no indications of major active slope instability, no springs, seeps, free flowing water, or ponded surface water observed on the subject site. RSS reported observing a large amount of English Ivy along the northwestern slopes of the site. RSS also noted some active erosion and slope undercutting along the steep sided banks of the northeastern descending tributary to Kellogg Creek. RSS reported not observing any active erosion or incised waterways across the upper slopes of the subject site, noting also that the fine-grained soils on the site area susceptible to this type of hazard. RSS stated that "no observations were made that would indicate normal construction activities, utilizing standard erosion precautions, would produce erosional hazards that could threaten the stability of the site or adjacent parcels. No surface water should be permitted to flow from the site down either the northeastern slopes of the parcel. Storm water and grading plans should be mindfully designed. RSS does not find any indications that further studies are required on this property." Staff also submitted a separate copy of applicant's Preliminary Subdivision Map by Ferguson Land Surveying dated November 21, 2019. Staff also submitted copies of Comp Plan Map 4-6 and Comp Plan Map 9-1, showing area details. (Exhibits 2, 14, 15, 16)

C. MAY 4, 2023 PUBLIC HEARING AND RECORD HIGHLIGHTS

1. At the hearing, County Planner Ben Blessing discussed the staff review of this application for a major subdivision/Planned Unit Development. Mr. Blessing provided relevant background information concerning the application, the County's review, and the County's recommendation of approval. Mr. Blessing discussed how this subdivision proposal was originally approved in 2018 but the applicant had failed to record the final plat within the requisite 4-year implementation period, which had expired in October 2022. Mr. Blessing shared a PowerPoint presentation with a vicinity map showing the site location at the intersection of SE McNary Rd. and SE Norma Rd. in the Oatfield Ridge area, and a slide showing an aerial view of the site showing existing completed infrastructure and open space areas. Mr. Blessing shared a site plan map of the proposed subdivision showing the proposed private street "SE Chloe Rose Way" (Tract "D") providing access from Norma Road at the intersection with McNary Rd., 15 lots for

homes, dedicated open space (Tract “A”), storm water drainage area (Tract “B”), and various utility easements and dedications. (Exhibit 17)

2. Mr. Blessing provided a slide summarizing the proposed subdivision highlights, discussing how the proposal is for a 15-lot subdivision and Planned Unit Development (PUD). Mr. Blessing pointed to the large open spaces designated as Tract “A” and how approval of the PUD will preserve the natural features and environmental areas in these open space tracts. Mr. Blessing noted that much of the infrastructure is already installed and the proposal still complies with County ZDO criteria. Mr. Blessing further noted that the prior subdivision approval conditions were authorized by County and service districts, that the applicant has complied with stated conditions, and can continue to comply with conditions to finalize the plat. County staff recommend preliminary approval of the 15-lot Planned Unit Development Major Subdivision application subject to recommended Conditions of Approval. (Exhibit 17)
3. The Hearings Officer asked the applicant’s attorney, Mr. Garrett Stephenson, about the duplexes referenced in the proposal, and Mr. Stephenson indicated the applicant was planning on building a couple of duplexes. The Hearings Officer asked Mr. Kenneth Kent, with the County’s Development Engineering, whether the duplexes affected the County’s findings concerning impacts on traffic, recommendation of approval or recommended conditions. Mr. Kent responded that the impact of the proposal is minimal, and even if all of the lots were developed with duplexes it would not affect the County’s findings or recommendations. The applicant’s attorney, Mr. Garrett Stephenson, also stated that the applicant does not dispute any of the conditions of approval proposed by County staff.
4. The Hearings Officer asked whether any party or member of the audience wanted an opportunity to provide additional evidence, arguments, or testimony. No one requested this opportunity and the applicant waived the period for final legal argument. The Hearings Officer closed the hearing, closing the record on May 4, 2023 at 4:00 pm.

D. BACKGROUND FACTS/STAFF REPORT

1. Staff Narrative: (Exhibit 1)

A Subdivision was previously authorized in 2018 under planning file Z0329-18-SL, authorizing multiple options, including a 15-lot subdivision. After approval was granted, the applicant began work on construction of the 15-lot subdivision known as “Chloe Rose”. As will be noted by staff below, substantial construction has already occurred under the prior land use approval, including utility lines, curbs, roads, gutters, drainage facilities, etc. This work was properly authorized by Clackamas County and partner agencies such as Clackamas Water Environmental Services (WES) and Oak Lodge Water Services (OLWS). However, the applicant failed to record the final plat within the requisite 4-year implementation period, which expired in October of 2022. Therefore, applicant is seeking a new approval for a 15-lot subdivision to finalize remaining conditions of approval, and record the plat.

As for the proposal, a total of 15 new lots are proposed, ranging in size from 3,603 square feet at the small end, and 8,686 square feet at the large end. The subdivision is also proposed as a “Planned Unit Development” (PUD), which allows for flexibility in lot sizes whilst protecting much of the adjacent hillside/wooded areas facing northeast. Applicant is also proposing to

protect a small stream running behind lots 9 through 15, with two open space tracts (tracts “A” and “C”). The new lots and tracts will be accessed via a new private road, contained in tract “D” called Chloe Rose Way.

Staff received a comments (Exhibit 5) with concerns that this request is ministerial in nature, only to allow the applicant to continually extend development on the subject property. Staff notes that this land use request is, in fact, a Type III application, not a ministerial application, which, in relation to the prior approval with Z0329-18-SL, shall be reviewed “De Novo” by the County Hearings Officer. While the majority of the approval criteria has not changed since 2018, County staff and the Hearings Officer nonetheless must address every ZDO criteria effective on the date the application was deemed complete, and the applicant must demonstrate compliance with current applicable criteria.

It should also be noted that the prior land use approval in 2018 consisted of two additional land use authorizations: 1) Z0331-18; a zone change to rezone roughly the western (upper) half of the subject property from R-15 to R-10. This request was approved, and the zoning district boundaries have been changed (Exhibit 9). 2) Z0330-18 was a Conditional Use authorization for two-family dwellings (now defined as a “Duplex” per ZDO Sec. 202) on either lot 1 and/or 2. Since Z0330-18 was never implemented, it has expired. Moreover, with the implementation of State-required “Middle Housing” regulations (See ZDO Sec. 845), duplexes are an outright permitted use on any lot zoned Urban Low Density Residential, regardless of lot size, subject to standards in ZDO Sec. 315 and 845. Staff has included both the 2018 staff report for the aforementioned permits (Exhibit 10) and the 2018 Hearings Officer decision for the aforementioned permits. (Exhibit 11).

2. Background Information: (Exhibit 1)

The subject property is located at the intersection of SE McNary Rd. and SE Norma Rd. in the Oatfield Ridge area. The gross site area of the subject property is 5.49 acres and includes portions of a recently vacated portion of the McNary Road right-of-way, which was finalized in 2019 (See partial tax map-Exhibit 12). The site is presently developed with the aforementioned infrastructure, including; road, sidewalk, curbs, utility lines, stormwater treatment facilities, etc. The site remains predominantly wooded except for the areas cleared and graded for the new subdivision. A stream flows along much of the vacated portion of McNary Ave., eventually crossing through the northerly sector of the property (rear of the property). Access to the site shall be taken from Norma Rd. at the intersection with McNary and following the existing right of way for a short distance before turning into the subject property. Access to the interior lots shall be provided via a new private access road, noted above as Chloe Rose Way.

The property slopes downhill from west to east. The easterly approximately 300 feet of the property has a slope ranging from 20 to 50%. The westerly approximately 600 feet has a slope of less approximately 5%. The applicant proposes to confine development of roads, home sites and related construction to the westerly area. The steeper area will remain undeveloped with the exception of a sewer line extension to connect to an existing sewer line in adjacent property owned by the North Clackamas Parks District.

According to Oregon DOGAMI lidar mapping (Exhibit 13), there is no identified landslide topography within the site, but there is a fan-shaped deposit beginning at the east end of the

property roughly corresponding to the downstream end of the stream flowing along the northerly side of the property and through the east end. There are no mapped environmental overlays within the site, however, a Clackamas Water Environmental Services (WES) stream buffer along the stream does extend into the northerly side of the property, as noted above, running behind lots 9-15. Staff notes that a WES buffer analysis has already been evaluated by County planning staff and WES. The proposed WES buffer boundary can be viewed through the preliminary subdivision map (Exhibit 14) as the northwest boundary of Lots 9-15. The WES buffer has been accepted by WES, as shown on the preliminary subdivision map.

Much of the flat area has already been cleared of trees, graded, and is close to being complete, and ready for new homes. However, trees within the proposed open space tract, Tracts "A", will be retained, and the stream buffer will also retain trees in tract "C".

E. FINDINGS AND DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1203. 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.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Sections 202, 315, 1002, 1003, 1006, 1007, 1011, 1012, 1013, 1105 and 1307, the County Roadway Standards, and the Comprehensive Plan. Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and make the following findings and conclusions, reviewed, adopted, and/or modified by the Hearings Officer as denoted by boldface type:

1. Section 315 of the ZDO controls land uses within the Urban Low Density Residential zoning districts including the existing R-10 and R-15 zoning districts. The recommended conditions of approval for this subdivision will include compliance with the use, density, dimensional and development standards applicable to such a development in these zoning districts. With such conditions of approval, the proposed subdivision is a permitted use within the proposed split-zoning of R-10 and R-15. Generally, development standards are applicable across all of the potential Urban Low Density Residential districts, R-2.5 through R-30 and are not zone specific. The applicant has designed the subdivision to comply with the relevant approval criteria contained in the ZDO. As noted above, Middle Housing was implemented in July of 2022. Any property within Clackamas County (unincorporated) with an Urban Low Density (LDR) Designation may be developed with middle housing subject to ZDO Sec. 315 and 845. Middle Housing is an outright permitted use, meaning that any LDR property owner can implement middle housing without going through a Type II or greater land use review.

Staff Finding: These criteria can be satisfied. **The Hearings Officer concurs in these staff findings and the above discussion.**

2. Section 1002 of the ZDO, Protection of Natural Features, contains regulatory language regarding development affecting hillsides with slopes of 20% or greater, trees and wooded areas, river and stream corridors, and wildlife habitats and distinctive resource areas.

A. Section 1002.01, Hillsides, applies to development on slopes of 20% or greater.

- i. The intent of these criteria is to ensure that no lots are created that cannot be developed due to issues with steep slopes.
- ii. The subject property is split roughly equally between the westerly area with slopes of less than 20% and the easterly area with slopes equal to or greater than 20%.
- iii. The applicant has designed the subdivision to avoid development on slopes of 20% or greater. Areas where the slopes are equal to or greater than 20% will be encompassed within common open space tracts to be owned by the development's homeowners association, Tracts A and C will contain slopes greater than 20%. Staff visited the site on March 21, 2023. The development area corresponds to the existing grades, and staff confirmed that development on steep slopes was not occurring in the rear or adjacent to the creek. Nonetheless, staff recommends a condition of approval be imposed that lots 5-8 are confirmed to have no slopes exceeding 20 percent. A site plan with topographic contours shall be prepared by a registered surveyor or professional engineer, showing Lots 5-8 contain no steep slopes. If steep slopes are present, applicant shall modify Lots 5-8 and either increase the size of the open space tract, or add a restricted development area (RDA). This standard can be met. Furthermore, although the site is largely developed already, a tree protection plan is nonetheless necessary for ongoing work and construction on site. A condition of approval is recommended that the applicant submit a complete tree protection plan for all remaining trees, prior to commencement/continuation of construction activities.

Staff Finding: This criteria can be satisfied. **The Hearings Officer concurs in these staff findings and the above discussion.**

B. Section 1002.02 applies to development restrictions following excessive tree removal prior to the filing of a development application.

Staff agrees with the applicant's narrative. Tree removal was authorized under Z0329-18, a valid land use approval. Furthermore, Subsection 1002.02(E) (11) notes that trees "authorized by approval..." are exempt. Thus, Excessive Tree Removal is not applicable. **The Hearings Officer concurs.**

C. Section 1002.03, Trees and Wooded Areas, requires that existing wooded areas, significant clumps or groves or 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.

Per ORS 197.307(4), only clear and objective standards can be applied. This section contains subjective criteria, thus, is not applicable. Staff notes, however, Section 1002.01 (Steep Slopes) does apply, and remaining trees located on steep slopes and within the WES Buffer shall provide protection and prevent their removal.

Staff Finding: This criteria can be satisfied. **The Hearings Officer concurs in these staff findings and the above discussion..**

D. Section 1002.04 through 1002.09 are not applicable to this development. **The Hearings Officer concurs.**

3. Section 1003, Hazards to Safety:

A. Section 1003.02, Standards for Earth Movement Hazard Areas:

- i. The subject property does not include any Earth Movement Areas identified on the DOGAMI Geologic Hazard Bulletin 99 maps. The more recent lidar mapping for the Oregon DOGAMI does not indicate areas of landslide topography within the subject property. The applicant is not proposing to develop on slopes of 20% or greater.
- ii. REVISED: Although the Bulletin 99 maps showed no landslide deposits (Exhibit 13), the applicant has submitted a preliminary geotechnical review prepared by Rapid Soil Solutions, LLC dated August 21, 2018 (geotechnical report), which is the same report submitted with Z0329-18-SL. The applicant's narrative summarizes the report. Apart from recommendations for soil stability adjacent to Lots 9-11, the geotechnical report notes that the overall site has no identified mass movement hazard areas. Therefore, and pursuant to ZDO Sec. 1003.02(E), a condition of approval is recommended that the applicant comply with recommendations noted in the geotechnical report.

Staff Finding: This standard can be met. **The Hearings Officer concurs in these staff findings and the above discussion, and adopts the recommended condition of approval.**

B. Section 1003.03, Standards for Flood Hazard Areas.

There are no mapped flood hazard areas within, or in close proximity to the subject property.

Staff Finding: This criterion is not applicable. **The Hearings Officer concurs.**

C. Section 1003.04, Standards for Soil Hazard Areas:

Based upon a review of the DOGAMI Bulletin 99 hazard map for this area, the site may be subject to a wet soils – high water table soils hazard. As noted by Clackamas Water Env. Services (WES) staff Erik Bertram comments dated April 6, 2023 (Exhibit 4), the

applicant must demonstrate proper water quality control, treatment and conveyance. With the imposition of WES' conditions (findings in Sec. 1006, below), and particularly the requirements of a surface water management plan, site drainage can be properly managed on site. ZDO Subsection 1003.04(A) is a subjective standard and, per ORS 197.307(4), only clear and objective standards can be applied. Therefore, specific conditions of approval cannot be imposed, but compliance with WES' standards should ensure that the site is properly drained.

Staff Finding: This standard can be met. **The Hearings Officer concurs in these staff findings and the above discussion, including the reference to compliance with WES standards.**

- D. Section 1003.05, Standards for Fire Hazard Areas: Per ORS 197.307(4), only clear and objective standards can be applied, and these standards are subjective.

Staff Finding: This criterion is not applicable. **The Hearings Officer concurs.**

4. Section 1006, Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management and Erosion Control, of the ZDO sets forth the standards, requirements and considerations that pertain to the location, design, installation and maintenance of all utility lines and facilities.

- A. Section 1006.01(A): The location, design, installation and maintenance of all utility lines and facilities shall be carried out with minimum feasible disturbance of soil and site consistent with the rules and regulations of the surface water management regulatory authority.

Staff Findings: Pursuant to the standards below, this requirement can be met pursuant to Clackamas Water Env. Services (WES) surface water standards. **The Hearings Officer concurs.**

- B. Section 1006.01(B): All development which has a need for electricity, gas and communications services shall install them pursuant to the requirements of the district or company serving the development.

Staff Finding: This requirement can be met by condition of approval. **The Hearings Officer concurs and adopts related proposed conditions of approval.**

- C. Section 1006.01(C): Coordinated installation of necessary water, sanitary sewer, and surface water management and conveyance facilities is required.

Staff Finding: This requirement can be met by condition of approval. **The Hearings Officer concurs and adopts related proposed conditions of approval.**

- D. Section 1006.01(D): Easement shall be provided along all 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.

Staff Finding: This requirement can be met by condition of approval. **The Hearings Officer concurs and adopts related proposed conditions of approval.**

E. Section 1006.02, Street Lights:

- i. Street lighting is required for all development within the Portland Metropolitan urban growth boundary.
- ii. Street lighting shall be installed pursuant to the requirements of the County Service District no. 5 and electric power utility serving the development.
- iii. These requirements can be met by condition of approval.

F. Section 1006.03, Water Supply:

- i. All development which has a need for, or will be provided with, public or community water service shall install water facilities and grant necessary easements pursuant to the requirements of the district or company serving the development.
- ii. The subject property is located within the Oak Lodge Water Services (OLWS) Authority, the public water service provider.
- iii. OLWS provided a Preliminary Statement of Feasibility indicating that public drinking water is available to serve the development.
- iv. Public water service shall be provided to the proposed development through improvements designed and constructed by the developer consistent with the standards and specification of the OLWS.
- v. OLWS has provided comments dated April 24, 2023 (Exhibit 8), recommending conditions of approval be met prior to plat approval.

Staff Findings: These requirements can be met by condition of approval. **The Hearings Officer concurs and adopts related proposed conditions of approval.**

G. Section 1006.04, Sanitary Sewer Service:

- i. All development that has a need for sanitary sewers shall install the facilities and pursuant to the requirements of the district or company serving the development.
- ii. The subject property is located within Clackamas Water Environmental Services (WES) boundary. Thus, WES is the sanitary sewer services provider for the area.
- iii. The applicant has submitted a Preliminary Statement of Feasibility signed by the WES staff indicating that the district has adequate sanitary sewer capacity in the treatment and collection system to serve the proposed development through improvements to be completed by the developer.

- iv. The exact improvements required will be determined during plans review. Compliance with the service requirements of the OLWS will also satisfy the requirements of Section 1006.03 of the ZDO.
- v. A condition of approval is warranted requiring that sanitary sewer service be provided consistent with the standards and specifications of WES.

Staff Findings: These criteria can be satisfied through conditions. **The Hearings Officer concurs and adopts related proposed conditions of approval.**

H. Section 1006.06, Surface Water Management and Erosion Control.

- i. Site is located within a surface water management district known as Clackamas Water Environmental Services (WES). A site specific surface water management plan must be submitted for review and approval by the WES prior to final plat approval. WES staff submitted comments and recommended conditions of approval concerning this proposed development dated April 6, 2023 (Exhibit 4).
- ii. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations and other impervious surfaces to an appropriate discharge point.
- iii. The applicant has submitted a Preliminary Statement of Feasibility signed by WES staff indicating feasibility, thus allowing the applicant to design and construct surface water management facilities consistent with the WES rules and regulations.
- iv. Staff finds that the recommended conditions of approval in WES' letter dated April 6, 2023 shall be incorporated to the conditions of approval herein, if approved by Hearings Officer. Pursuant to ZDO Sec. 1006.06(B), Only those conditions related to development complying with district development standards apply. Other recommend conditions regarding fees, costs, etc., shall be advisory in nature.
- v. Compliance with WES requirements will ensure compliance with the relevant criteria of this section of the ZDO in Subsections 1006.06 (D) through (I).

Staff Findings: These criteria can be satisfied through conditions. **The Hearings Officer concurs and adopts related proposed conditions of approval. Comments by Ms. Jo Ellen Schiedler reference existing poor drainage as a problem in the area. I am persuaded by the above staff findings that the imposition of conditions of approval proposed by WES, including requirements for a surface water management plan, on-site storm water management, and construction of a detention pond as proposed by the applicant, will ensure that the site is properly drained and meets surface water and conveyance facility requirements.**

5. Section 1007, Roads and Connectivity: This section requires right-of-way dedication and improvements for all new subdivisions as deemed necessary by the County Dept. of Transportation & Development according to classifications and guidelines listed in Chapter 5 of the Clackamas County Comprehensive Plan and the most recent standards adopted by

separate order by the Board of County Commissioners. The latter incorporate the Clackamas County Roadway Standards.

- A. The applicant has proposed a planned unit development to subdivide a 5.49 acre property into 15 residential lots at the northeast corner of SE McNary Road and SE Norma Road. The proposed development was previously approved under file number Z0329-18-SL, but the plat was not recorded prior to expiration of the land use approval.
- B. Pursuant to ZDO Sec. 1007.01, roadway and frontage improvement plans, as required under the Z0329-18-SL approval have nearly been completed under County Engineering Development Permit number SC009119. The plans submitted for this current application are consistent with the construction plans approved under the Development Permit. Plans approved under Development Permit SC009119 are consistent with the recommended conditions of approval herein.
- C. A portion of the SE McNary Road right-of-way was vacated east of SE Norma Road, except for a 103.31-foot long stub of public right-of-way that will remain abutting the east side of SE Norma Road right-of-way. The applicant is required to construct a public road through the right-of-way stub, connecting with the proposed private road serving the subdivision, pursuant to ZDO Sec. 1007.02.
- D. ZDO Section 1007, and specifically, ZDO Subsection 1007.02(F), notes that developments inside the Urban Growth Boundary (UGB), are required to improve the public street frontage to current county standards. The SE McNary Road frontage, consistent with ZDO Section 1007 includes, but is not necessarily limited to, up to a 24-foot wide three quarter street improvement, with 6-inch curb, five-foot wide landscape strip with street trees, and a 5-foot wide unobstructed sidewalk on the south side of the roadway.
- E. Clackamas County Zoning and Development Ordinance Section 1007.02(C) prohibits design and construction of new streets that terminate in cul-de-sacs, except where natural features, parks, dedicated open space or existing development preclude road connections. Based on topography and surrounding development pattern, a through street connection is not warranted, thereby allowing development of a private road with a dead-end turnaround.
- F. The applicant is proposing to provide access for 15 lots with a private road. Pursuant to ZDO Sec. 1007.03(2), Clackamas County Roadway Standards contain design and construction standards for individual and shared private roads. Private roads serving urban subdivisions of 11 or more lots are required to design and construct a minimum 20-foot wide paved roadway with curbs on both sides and a 5-foot wide unobstructed sidewalk on one side. The applicant has proposed that the new shared private road is constructed to a width of 28 feet, for Private Drives A and B. Private Road C is proposed at a width of 20 feet. A 5-foot wide sidewalk on the southerly side of the road and northerly side of the turnaround.
- G. The *Clackamas County's Roadway Standards* as referenced in ZDO Sec. 1007.01(A), include Fire District requirements for access to residential subdivisions. Dead end

roadways longer than 150 feet require an emergency services turnaround at or near the end of the roadway. The preliminary plans identify a modified hammerhead turnaround. Written approval from the Fire Marshal will be required, verifying that adequate emergency services can be provided to the proposed subdivision.

- H. Per ZDO subsection 1007.09, subdivisions are required to be served by a roadway system that has adequate capacity to handle the additional traffic generated by the development. At the present time SE McNary Road and SE Norma Road operate during the mid-day one hour peak and first and second hours of the PM peaks at acceptable volume to capacity (v/c) ratios, below the maximums which are 0.90 and 0.99 respectively. Subdivisions that create fewer than 20 lots do not require a traffic study, unless there are known traffic issues in the vicinity. The addition of 15 more potential building sites, with an estimated increase of 143 more vehicle trips per day, with 11 more vehicle trips during the AM peak hour and 15 trips during the PM peak hour period, will not adversely impact the current v/c ratios. Therefore, the County's concurrency requirements as they relate to the transportation system are met by the applicant's proposal.
- I. Per ZDO Sec. 1006.06, the proposal must be in conformance with the rules and regulations of Water Environment Services and Clackamas County Zoning Roadway Standards, Chapter 4.
- J. ZDO Subsection 1007.04(L) requires "trails" be dedicated and constructed if depicted on Comprehensive Plan Map 9-1. A trail segment is depicted in Exhibit 15. Unfortunately, per ORS 197.307(4), only clear and objective standards can be applied. This section contains subjective criteria, and is not applicable. The prior land use approval in 2018 had requirements that the applicant dedicate trail through tract "A" and to work with North Clackamas Parks and Recreation (NCPRD) on trail alignment. While this condition can no longer be applied due to ORS 197.307(4), staff recommends, as an advisory condition only, a trail dedication still be granted to NCPRD, if NCPRD would accept such a dedication. Although NCPRD was provided notice of this application, no comments were received.
- K. A comment received from a surrounding neighbor dated April 19, 2023 (Exhibit 5) requesting that parking be included to the private road (Chloe Rose Way). While additional on-street parking would be helpful, the *County Roadway Standards* control minimum on-street parking requirements and County Engineering Staff has not identified a standard that requires on-street parking. If on-street parking is proposed, conditions of approval are required to ensure adequate spacing is maintained on the private road. The comments also requested that "no-parking" signs be added to the public road segment from the intersection of SE Norma and McNary roads, to SE Norma Cir. Unfortunately, the ZDO does not have any mechanisms, to staff's knowledge, that can require closure of public on-street parking associated with an existing road. This issue will need to be addressed by the Clackamas County Traffic Engineering Division (Engineering@clackamas.us).
- L. *County's Roadway Standards* require that local roads provide a minimum 8-foot wide public easement for signs and public utilities. The applicant will be required to create a

public utility easement along the SE McNary Road right-of-way frontage, pursuant to *County Roadway Standards* and ZDO Subsection 1006.01.

Staff Finding: These criteria can be met through conditions. **The Hearings Officer concurs in these findings and adopts related proposed conditions of approval. I note that in the above comments staff address the concerns expressed by Mr. Kent Squires regarding additional vehicles associated with the proposed subdivision parking on the public roadways outside the development, and his request for “No Parking” signage along the adjacent public roadways. As with all public roadways, parked vehicles are not permitted to impair sight distances at intersections, or interfere with the safety of pedestrians by blocking sidewalks or crosswalks, or interfere with emergency services. No parking is allowed within 50 feet of a stop sign if the vehicle hides the sign from view.**

6. Section 1011, Open Space and Parks

A. Section 1011 applies to areas generally indicated as Open Space on Comprehensive Plan Map IV-6, North Urban Area Land Use Plan Map, when one or more of the open space resources listed in this section is present.

- i. Approximately one-half of the property, the easterly portion, is mapped as Resource Protection Open Space on Plan Map IV-6 (Exhibit 16)
- ii. The listed resources include distinctive urban forests, hillsides of more than 20% slope and areas of high visual sensitivity.
- iii. The term “distinctive urban forest” is defined in Section 202 of the ZDO as *“forested or woodland areas which are visually prominent or contain unique or rare tree and plant communities. These areas are usually found in association with other open space resources within the urban area.”*
- iv. The term “hillsides of more than 20% slope” is not specifically defined in Section 202.
- v. The term “areas of high visual sensitivity” is not specifically defined in Section 202 as such, but the term “visually sensitive areas” is defined in Section 202 as *“prominent natural landscape features such as hillsides, forests, and waterways; historic district; visual corridors along major highways and rivers. Natural landscapes that occur within the urban area and along traffic corridors are of higher visual significance.”*

B. Pursuant to Section 1011.01(C), open space regulated pursuant to this section is categorized as either high priority or second priority.

- i. High-priority open space includes: land or water necessary to ensure a continuous network of open space such as stream corridors and forested hillsides; lands over 35% slope; confirmed land movement hazard areas; areas judged to have severe erosion

potential due to soil type, geologic structure and vegetation; bodies of water; wetlands; and significant natural areas.

The applicant proposes to retain the forested area of the site where slopes equal or exceed a 20% slope as common open space and/or restricted development area. This area is contiguous to a large continuous belt of forested hillside along the easterly flank of Oatfield Ridge to the north and south of the property.

Neither the DOGAMI Bulletin 99 geologic hazards map, the more recent DOGAMI lidar mapping of landslide topography, or the applicants preliminary geo-tech report (Exh. 49) indicate that the upper, westerly area of the property is subject to land movement or soils hazards. In fact, none of these sources indicate such hazards exist on the more steeply sloping eastern portion of the site.

The stream flowing along the northerly side (mostly off-site) of the property will also have a restricted development area defined by the WES requiring, at minimum, a 50-foot wide undisturbed buffer between the stream and any development; e.g structures, roads, etc. Where the stream crosses through the property in the most northerly corner, it will be within proposed Tract A, an open space tract. Some of this area will also be included in proposed Tract C, an open space tract, in the westerly part of the site.

The term “significant natural areas” is defined in Section 202 of the ZDO as “*natural areas as defined in “Oregon Natural Areas – Clackamas County Data Summary” published by The Nature Conservancy. This list of natural areas may be amended by the County as additional areas are identified.*” The subject property is not identified on Plan Map III-2 as a scenic or distinctive resource area, nor is it shown on any other maps of significant natural resource areas in the Plan. Given that wooded areas, as well as the small creek, shall be protected in open space tracts, High priority open space can be protected.

Staff Findings: This standard is met. **The Hearings Officer concurs in this finding and the above discussion.**

- ii. Second-priority open space includes: land greater than 20% slope and less than 35% slope; distinctive urban forests; land within a special flood hazard area; land used as recharge area for wetlands; and areas of high visual sensitivity.

Staff Findings: Per ORS 197.307(4), only clear and objective standards can be applied. Secondary-priority open space subsection contains subjective criteria, thus, is not applicable. **The Hearings Officer concurs.**

- C. Pursuant to Section 1011.02(A, B and C), site planning and development shall avoid disturbance of identified open space resources. Full use of density transfers, siting of structures and roads, and other appropriate means of designing around the open space resource have been proposed.

Staff Findings: This standard is met. **The Hearings Officer concurs.**

- D. Pursuant to Section 1011.02(B), high priority open space shall be preserved outright, except development on hillsides over 35% slope shall be subject to Section 1002.01(B).
- i. As previously discussed, the applicant has designed the development to avoid areas of slopes exceeding 20%, consistent with this requirement.
 - ii. As discussed above, retaining the proposed open space tract, Tract A with restricted development overlays over lot areas where the slope exceeds 20% or including those lot areas into an expanded Tract A, will preserve land necessary to ensure a continuous network of open space such as forested hillside, in combination with forested hillsides to the north and south of the subject property.

Staff Findings: The staff finds that the applicant has designed the lot and street layout to avoid development of the high priority open space resources. With the measures discussed above, the staff finds that the relevant criteria of Sections 1011 and 1103 of the ZDO will be satisfied. **The Hearings Officer concurs in this finding and the above discussion.**

7. Section 1012 of the Zoning and Development Ordinance, Density Standards, Transfers and Bonuses, identifies the density standards for subdivisions within the various zoning districts.

The applicant has submitted density calculations demonstrating a maximum density of 22 and minimum density at roughly 9. Given that this site was rezoned in 2018 (per Z0331-18) to R-10, and since the applicant is avoiding disturbance of highly and moderately restricted areas, the density calculation is sufficient, and demonstrates ample density to accommodate a 15-lot subdivision. Staff agrees with the calculations for maximum density (ZDO Sec. 1012.05) and minimum density (ZDO Sec. 1012.08).

Staff Findings: The staff finds that the proposed subdivision plan options can comply with the maximum density standards pursuant to Section 1012 of the ZDO. **The Hearings Officer concurs.**

8. Section 1013, Planned Unit Developments, is applicable to the proposed development.
- A. Pursuant to Section 1013.01(B), in an urban low density residential district, a subdivision shall be developed as a planned unit development if the subject property is larger than one acre and at least 10% of the property is designated Open Space on Comprehensive Plan Map IV-6, North Urban Area Land Use Plan Map.
 - i. As discussed regarding Section 1011, approximately one-half of the 4.5 acre property is designated as Resource Protection Open Space on Plan Map IV-6; therefore, development as a planned unit development is required.
 - B. Pursuant to ZDO 1013.03(C), a minimum of 20% of the gross site area shall be platted as one or more open space tracts.
 - i. With the vacation of the McNary right of way, the minimum open space tract area is roughly 35% of the gross site area.

ii. Open space tracts may include recreational uses such as walking trails, natural or landscaped buffer areas, and significant natural vegetation or landscape features. In this case, the open space tracts will protect the steeper sloped areas, existing wooded areas and the stream buffer.

iii. The design of the private street and turnaround will ensure that all lots within the development have reasonable access to the open space tracts.

C. Pursuant to Section 1013.03(E) and 1105.03(D), an incorporated not-for-profit homeowner's association shall be formed to own and maintain the common facilities including the open space, street and storm water tracts. Ownership of the tracts shall be conveyed to the HOA concurrently with recording of the final plat. The HOA shall continue in perpetuity and cannot be dissolved without approval of the County. Membership in the HOA shall be mandatory for each lot owner.

Staff Findings: These criteria can be met through conditions. **The Hearings Officer concurs in these findings and adopts the related proposed conditions of approval.**

9. Section 1105 of the Zoning and Development Ordinance lists the general requirements for subdivisions.

Staff Findings: The requirements of this Section have been met or will be satisfied through conditions of approval. **The Hearings Officer concurs in these findings and adopts the related proposed conditions of approval.**

Staff Findings: The staff finds that the relevant ZDO criteria have been, will be or can be met the proposed subdivision. The staff recommends preliminary approval the subdivision option subject to the conditions of approval recommended below. **The Hearings Officer agrees with these findings and adopts the related recommended conditions of approval.**

F. CONDITIONS OF APPROVAL

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. It shall be the responsibility of the property owner(s) to comply with the limitation of any approval resulting from the decision described herein.

The Clackamas County Land Use and Zoning staff recommends approval of this application subject to the following conditions, reviewed, adopted and/or modified by the Hearings Officer:

I. General and Advisory Conditions:

1. Approval of the planned unit development major subdivision application is based upon the plans submitted on 3/7/2023 and 3/21/2023. **Advisory:** Changes in approved access or significant

changes to the site layout may require additional public notice through a Modification or new Subdivision application

2. All conditions of approval shall be financially guaranteed or completed prior to final plat approval, unless otherwise noted herein.
3. The services of a registered professional land surveyor and a civil engineer will be required to satisfy these conditions of approval.
4. **Advisory Platting Requirements (After land use approval):**
 - a. All subdivision plats are required to have a plat out boundary survey submitted, reviewed and accepted for filing by the County Survey department.
 - b. Please submit all drafts and final plats to the County Surveyor's office (Surveyor@clackamas.us)
 - c. The draft and final plats shall be prepared by a registered professional land surveyor in a form and with information consistent with the provisions of ORS 92, relevant portions of ORS 209.250, the County ZDO, Chapters 11.01 and 11.02 of the County Code and these conditions of approval.
 - d. The final plat shall identify the County Surveyor-approved subdivision plat name.
 - e. Plat submittals will require signed originals of any maintenance agreements, related easements outside the plat, Codes, Covenants and Restrictions to be recorded with the plat, and proof of incorporation of a Homeowner's Association (if applicable). Drafts shall be provided for review at the time of draft plat submittal.
 - f. When final approval is given by the Planning and Zoning Division and the final plat is approved by the County Surveyor, the plat must then be filed and recorded with the County Clerk. All property taxes shall be paid in full for the current year in order for the plat to be recorded. (The County Surveyor can help you with this).
5. **Approval Period:** Pursuant to subsection 1105.09(A) of the ZDO, this preliminary approval is valid for **four years** from the date of this final written decision. **Failure to record the final plat with the County Clerk within four years of the date of this decision will void this approval unless a time extension is approved (see following).**
6. **Time Extensions:** Prior to expiration of this approval, the applicant may request a single two-year extension of the preliminary approval subject to the criteria set forth in Section 1310 of the ZDO.
7. **None of the individual lots shall be sold, transferred or assigned until the final plat has been approved by the County Surveyor and recorded with the County Clerk.**
8. **Easements:** All existing, required and proposed easements shall be shown and properly documented upon the final plat pursuant to ORS 92. Pursuant to subsec. 1006.01 of the ZDO,

easements shall be provided along property lines as deemed necessary by the County DTD, Engineering Div., the CCSD#1, the OLWSD, other special districts, and utility companies. Easements for special purposes shall be of a width deemed appropriate by the responsible agency. Any required easements shall be shown upon the final plat of the subdivision.

9. **Advisory:** Future construction on the individual parcels shall be consistent with the relevant requirements of the Oregon Plumbing Specialty Code, Oregon Residential Specialty Code, Oregon Structural Specialty Code and/or Oregon Manufactured Home Standard requirements, as administered by the DTD, Building Codes Division. Foundations and drainage improvements shall be designed to ensure structural stability and proper roof, foundation and footing/crawl space drainage in consideration of the soils and topographical characteristics of the site.
10. **Utilities:** Electricity, gas, and communications services shall be installed consistent with the requirements of the district or company serving the development. Except where otherwise prohibited by the utility district or company, any new or relocated utility improvements shall be installed underground and in accordance with the requirements of the service providers.
11. **Prior to final plat approval,** the applicant shall submit certification in writing from the OLWSD that the plans for extension of the public water system needed to serve the development have been reviewed and approved by that agency, and comply with these standards:
 - (1) The proposed development is located within the service area of Oak Lodge Water Services for potable water only and shall be subject to the Oak Lodge Rules and Regulations and Design and Construction Standards for applicable utilities.
 - (2) The application will be reviewed by the rules, regulations and design and construction standards in effect on the date of complete application to OLWSD; not Land Use application.
 - (3) Property owner has been issued a Site Development permit from OLWSD and all installations are complete and initial inspections complete.
 - (4) For the plat to be approved, as-built drawings shall be provided to Oak Lodge.
 - (5) For future building permits, each taxlot shall apply for a utility permit from Oak Lodge.
12. **Advisory Fire District Information:** (contact: Clackamas County Fire District No. 1; Valere Liljefelt; Valere.Liljefelt@clackamasfire.com)
13. **Street Lighting:** Streetlights are a requirement for the subdivision and shall be installed pursuant to the standards of the Clackamas County Service Dist. #5 (CCSD #5). The developer shall make arrangements for the installation and maintenance of streetlights with the CCSD#5 and pre-wire for acceptance of these streetlights. **Prior to final plat approval,** the developer shall also submit an application to the CCSD#5 for the installation of the streetlights, annexation into the street lighting district and formation of an assessment area to pay for the operation of the lighting (Contact: Wendi Coryell, 503-742-4657).
14. **Planning and Zoning Division General Conditions:** Ben Blessing, (503) 742-4521, or bblessing@clackamas.us

- A. All development and uses within the plat shall conform to the requirements of Section 315 of the ZDO. Nothing in this approval shall be construed to allow any use or structure that is not otherwise permitted subject to Section 315 of the ZDO.
- B. This subdivision will be developed and platted as a Planned Unit Development pursuant to Section 1013 of the ZDO. Therefore; the following requirements shall be satisfied consistent with Section 1013 of the ZDO:
1. **Prior to final plat approval**, the applicant shall incorporate a not for profit Homeowners Association, or County-approved alternative, meeting the requirements set forth in Sec. 1105 of the ZDO to own and manage the common private open space, storm water and private street tracts and any other common facilities; e.g. storm water improvements.
 2. A copy of the filing of the Articles of Incorporation with the Oregon Secretary of State shall be submitted to the Planning and Zoning Division **prior to final plat approval**.
 3. The By-Laws and Codes, Covenants and Restrictions shall contain language stating that no change in open space use or dissolution of the homeowners association shall occur without a public hearing before the Hearings Officer and approval of Clackamas County.
 4. The tract(s) shall each be labeled as to the purpose of each upon the final plat. The Homeowners Association By-Laws and Codes, Covenants and Restrictions shall incorporate language stating that the open space tracts, Tracts A and C, shall be preserved as common open space for the benefit of the owners of all lots in the plat in perpetuity.
 5. All common tracts shall be conveyed to the HOA concurrently with recording of the final subdivision plat.
 6. The Codes, Covenants and Restrictions **in conjunction with the final plat** of the subdivision and the plat shall reference the recorded documents.
- C. **Advisory Road Naming:** The private roadway shall be named pursuant to the County Road Naming Ordinance since it will serve at least three dwelling units. The County-approved private road name shall be shown upon the final plat. Please contact Linda May of the Planning and Zoning Division at 503-742-4515 or lindamay@clackamas.us , road name approval. The applicant shall make arrangements with the County Engineering Div. in conjunction with issuance of the Development Permit for manufacture and installation of the required street signing.
- D. Submit confirmation that Lots 5-8 have no slopes exceeding 20 percent. A site plan with topographic contours, or a statement, shall be prepared by a registered surveyor or professional engineer, confirming Lots 5-8 contain no steep slopes. If steep slopes are present, applicant shall modify Lots 5-8 and either increase the size of the open space tract, or add a restricted development area (RDA).
- E. A final tree removal/protection plan shall be submitted for review and approval by the Planning and Zoning Division. All trees within Tracts A and C, restricted development areas

within individual lots and any stream buffers required by the CCSD#1 shall be retained and protected unless removal has prior approval of the Planning and Zoning Division.

- F. **Advisory trail condition:** If agreed to by North Clackamas Parks and Recreation District (NCPRD), applicant may provide a public trail connection from the development through Tract A to the NCPRD parcel. Note, that a public pedestrian easement connect the upper, westerly-most terminus of the trail through the development to SE Norma Rd. to provide for public access through the site and to the NCPRD parcel.

15. **County Survey Dept. Conditions:** County Survey, (503) 742-4475, or cgriffin2@clackamas.us.

- A. All 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. Easements created to provide for access and utility purposes within plats shall contain language that allows for use of the easement for future divisions of the parcels if, or when, zoning laws may permit future divisions.
- C. Any private easements shall allow for private and public utility services, including, but not limited to, water, power, communications, natural gas, storm drainage, sanitary sewer, emergency services, etc.
- D. **Advisory:** Fences, other occupations and encroachments that fall across deed lines may indicate that unwritten title (ownership) issues exist. It is the responsibility of the plat surveyor conducting the boundary survey to notify the declarant and/or property owner if such situations are discovered. Failure to present the issues and resolve them will usually result in a delay of the plat approval and recording. If problems are noted, they shall be brought to the attention of the County Survey Dept. as a soon as possible to avoid unnecessary delay in the review process. Easements, as a general rule, are not acceptable solutions for encroachments.
- E. **Advisory:** Any encroachments found during surveying of the plat shall be resolved to the satisfaction of the County Surveyor prior to final plat approval and recording.
- G. **Advisory:** Fees, minimum submittal requirements and application for plat review are available on the County Survey website at <http://www.clackamas.us/surveyor>.

16. **Engineering Division Conditions:** Ken Kent, (503) 742-4673, kenken@clackamas.us

- 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 current Development Permit for the project site (SC009119) is active and includes approved plans that are consistent with the following conditions of approval.
- B. **Prior to plat approval:** all required improvements shall be constructed and inspected, or financially guaranteed in the form of a performance bond. 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. The applicant' surveyor shall verify the SE McNary Road right-of-way width and location by survey meets the minimum requirements the local road cross section.
- E. The following improvements shall be constructed within the SE McNary Road right-of-way to local roadway standards, per Clackamas County Roadway Standards Drawing C110. These improvements shall consist of:
 - (1) A minimum paved width of 20 feet, with a structural section per Standard Drawing C100 for a local roadway. The roadway improvements shall extend from SE Norma Road to the private road serving Lots 1-15.
 - (2) Standard curb, or curb and gutter if curblin slope is less than one percent on both sides of the road.
 - (3) A minimum 5-foot wide landscape strip with street trees shall be constructed on the south side of the roadways, between the curb and sidewalk.
 - (4) A 5-foot wide unobstructed sidewalk shall be constructed on the southerly side of the roadway. Where the sidewalk does not connect to existing sidewalk, a concrete ADA compliant curb ramp shall be provided at the end of the sidewalk.
 - (5) Provide a street name sign and stop sign, painted stop bar at the Norma Road/McNary Road intersection.
 - (6) A road width of at least 26 feet allows parking on one side of the road. One side of the Road shall be signed and/or striped "NO PARKING". Installation of signs and/or striping shall be completed prior to recording the plat. The developer is responsible for replacing all signs damaged or removed during home and street construction.
- F. The applicant shall design and construct improvements for the new private roadway extending northerly from SE McNary Road and serving lots 1 through 15, which will consist of
 - (1) A minimum width driving surface of 24 feet, with standard curbs on both sides of the roadway and a 5-foot wide curb-tight sidewalk on the west side of the roadway. If parking is proposed on one side of road, a minimum 26-foot curb to curb road width shall be constructed.
 - (2) The private road improvements shall be located within a private access and utility easement that encompasses the required improvements. The private road shall be referenced on the final plat as a reciprocal and perpetual, common access and utility easement and shall benefit proposed Lots 1-15 of the subdivision.

- (3) The structural section for the new private road improvements shall comply with Clackamas County Roadway Standards, R100.
 - (4) The maximum road grade shall be 12 percent, unless approved by the fire marshal and the Engineering Division.
 - (5) The roadway design shall include horizontal curves consistent with Section 250.6.3 of the Roadway Standards.
 - (6) Concrete driveway approaches for each lot where access is taken from the private road, per Standard Drawing D600
 - (7) **Advisory:** Drainage facilities in compliance with Water Environment Services Rules and Regulations, and Clackamas County Roadway Standards Chapter 4.
 - (8) An approved emergency vehicle turnaround which complies with County Roadway Standards drawing C350 shall be provided at or near the end of the private road and located within the shared access easement. Written verification must be received from the Fire District that the roadway will support a fire apparatus that a sufficient turnaround exists or will be constructed, that corner radii are acceptable, and that vertical and horizontal clearances are acceptable. The minimum width of the turnaround shall be 24 feet, located within shared access easement.
 - (9) A road width of at least 26 feet allows parking on one side of the road. Installation of signs and/or striping shall be completed prior to recording the plat. The developer is responsible for replacing all signs damaged or removed during home and street construction. Portions of the private road with a paved width of less than 26 feet shall be signed and/or striped "FIRE LANE NO PARKING".
 - (10) Provide a stop sign and street name sign at the intersection of the private road and SE McNary Road. Vegetation shall be cleared within the public right-of-way to provide a clear vision triangle.
 - (11) Per *County Roadway Standard* 225.7(b), a road maintenance agreement for the shared private road implementing ORS 105.170 - 105.185 must be recorded with the plat.
- G. Written verification must be received from the Fire District indicating that adequate access is provided to the proposed lots.
- H. 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.
- I. 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.

- J. Positive drainage shall be provided for all lots to a surface water management system having the capacity to accommodate the anticipated contribution per WES and requirements and the Clackamas County Roadway Standards Chapter 4. Storm water detention facilities shall not be located within public rights-of-way.
- 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. All existing and proposed easements shall be shown on the final plat.

V. WES/ Conditions: Erik Bertram, (503) 742-4571, ecarr@clackamas.us

A. The following general conditions shall apply:

- (a) The proposed development is located within the service area of Water Environment Services and shall be subject to WES Rules and Regulations, and Standards ("RR&S/Rules") for sanitary sewer services and surface water management, including natural resource protection and erosion control requirements. The applicant shall comply with the following requirements and shall procure the necessary plans approvals and/or permits in accordance with WES RR&S. (*Rules, Section 1*)
- (b) Sanitary and stormwater management plans and calculations shall be stamped and signed by a civil engineer licensed by the State of Oregon. The submittals shall be reviewed and approved by WES. The construction, specifications, and testing shall be completed under the direction of the engineer. (*Rules, Section 12.3*)
- (c) All sanitary and storm drainage easements shall be shown on the plat. Offsite easements shall be obtained and recorded by the applicant prior to plan approval.
- (d) **Prior to final plat approval**, WES shall review the plat for conformance to the approved sanitary sewer and stormwater plans. The sanitary and storm systems shall be complete in all respects, in accordance with the approved plans, prior to plat approval by WES.
- (e) Upon the completion of construction and certification by the engineer, WES shall inspect and approve the construction of the sanitary and storm systems. (*Rules, Section 11 and 12*)
- (f) **Advisory:** The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid before plat approval, and are subject to change without notice to the applicant(s) of this planning application.

- (g) **Advisory:** All costs associated with the design, construction and testing of the sanitary sewer or storm system, including onsite and offsite improvements and easements, shall be provided by and at the sole expense of the applicant/developer/property owner(s).

B. For sanitary sewer service, the following shall apply:

- (a) **Prior to plat approval**, a separate and independent sanitary sewer service connection shall be provided to each lot, including any necessary easements. Each service lateral shall terminate with a clean out at the front edge of the Public Utility Easement (PUE) or the property line, or at the edge of a Public Sanitary Sewer Easement. (*Sanitary Standards, Section 5*)
- (b) An extension of the public sanitary sewer system shall be required to serve this development. Public sewer mainlines shall be located either in the public right-of-way or within a sanitary sewer easement granted to WES. (*Section 3.2*)
- (c) **Prior to plan approval**, the applicant shall obtain and record a 15' offsite sanitary sewer easement across the NCPRD property in order to secure a point of connection to public sanitary sewer system. The easement shall be granted to WES.
- (d) Any extension of the District's sanitary sewer system shall be designed, constructed and tested under the continuous inspection of a registered professional Engineer and in accordance with WES RR&S. Building permits for individual lots shall not be approved until the sanitary system improvements are complete in all respects and accepted by WES. (*Section 3.3*)
- (e) Any extension of the District's sanitary sewer shall be conveyed to WES for ownership. All conditions of the Public Sanitary Sewer Extension Permit shall be met before final acceptance by WES, in accordance with *Sanitary Standards, Section 4*.
- (f) Any existing onsite septic tank and drain fields within the boundary of the development shall be removed or abandoned in compliance with DEQ regulations. (*Section 3.2.2*)
- (g) All private sanitary sewer improvements shall be permitted in accordance with County building and plumbing codes.
- (h) **Advisory:** Plan review fees for the sanitary sewer system shall apply (equal to 4% of the installed cost of public sewer extension). A \$400.00 minimum plan review fee shall be due with the first plan submittal.
- (i) **Advisory:** With future development of each lot, Sanitary System Development Charges shall apply per WES rules and rates at the time of building permit application. The current rate is \$7,615.00 per 1 EDU. Fees shall be paid before issuing the building permit. (*Rules, Section 4.1*)
- (j) **Advisory:** Collection Sewer Charge shall not apply, unless a direct connection to public sewer is proposed.

C. **For surface water management, the following shall apply:**

- (a) A Surface Water Management Plan and Storm Report (SWM Plan) shall be submitted to WES for review and approval. The SWM Plan shall explain how the development will conform to all WES Storm water Standards. The Plan shall identify an acceptable point of discharge and provide a drainage system for all water on site and for water entering the property from off-site. (*Stormwater Standards, Section 3 and 5*)
- (b) Groundwater and springs that are encountered during development shall be the responsibility of the developer to address. Plans for drainage of these waters shall be submitted to WES for review and approval prior to construction. (*Section 5.4.2*)
- (c) WES Storm water Standards include, but are not limited to the following: (*Section 5*):
 - 1. **Water Quality Standard** Water quality facilities shall be designed to capture and treat the first 1-inch of storm water runoff from a 24-hour storm event using either vegetation (Appendix H) or a Basic Treatment proprietary device (Appendix F).
 - 2. **Infiltration Standard** - The first ½ inch of runoff in a 24-hour period must be captured and retained onsite through an approved infiltration system.
 - 3. **Detention/Flow Control Standard** – On-site detention facilities shall be designed to reduce the 2-year post-developed runoff rate to ½ of the 2-year pre-developed discharge rate.
 - 4. **Conveyance Standards** - The conveyance system shall be sized for a minimum 25-year design storm. A storm water bypass pipe to collect upstream drainage may be required, as determined by WES.
- (d) The grading plans shall clearly identify an overflow pathway system that will prevent damage to downstream properties in the event of any stormwater facility failure or bypass. (*Section 1.2*)
- (e) A geotechnical report shall be submitted by a qualified professional. The report shall verify the feasibility of all proposed infiltration systems, and provide infiltration test results with the appropriate safety factor that correspond to the location and depth of the infiltration facilities, in accordance with *Appendix E*.
- (f) The applicant shall submit a Downstream Conveyance Analysis to demonstrate adequate conveyance capacity to the distance where the project site contributes less than 15% of the upstream drainage area OR to a distance of 1500 feet downstream of the project, whichever is greater. Any capacity concerns, as determined by WES, shall be the responsibility of the applicant/developer. WES may modify this condition if requirements for 25-year onsite retention and emergency overflow can be met. (*Section 5.4.4*)
- (g) Upon completion of the stormwater infiltration facilities, the project engineer shall oversee infiltration testing of the facilities to assure the system will perform as designed,

per the approved SWM Plan. The report shall be stamped and signed by the project engineer and submitted to WES. If the infiltration system does not perform in accordance with the approved plans, the project engineer shall submit an alternative design to be reviewed and approved by WES.

- (h) If infiltration is not feasible the design engineer shall submit a modification request in accordance with *Stormwater Standards Section 1.6* with an equivalent alternative design which can accomplish the same design intent as provided in these standards.
- (i) WES requires perpetual maintenance of all stormwater facilities. It is recommended that the Developer/Owner use the Declaration and Maintenance Agreement for On-Site Stormwater Facilities, by which WES shall agree to maintain the subdivision's stormwater system in exchange for a monthly fee of \$3 per lot. If the developer chooses not to use this program, then the homeowners will be responsible for storm system maintenance, and this responsibility must be documented and recorded as a deed restriction. The maintenance agreement shall be completed and accepted by WES prior to plat approval.
- (j) For publicly maintained stormwater facilities, the following shall apply:
 - 1. A 'Declaration and Maintenance Agreement for On Site Stormwater Facilities' shall be submitted to WES prior to final plat approval.
 - 2. All publicly maintained stormwater systems must be designed and constructed to public standards and shall be located in public right-of-way, a tract to the homeowners association, or a storm drainage easement (SDE) granted to WES. (*Section 5.5.11*)
 - 3. All stormwater facilities shall comply with maintenance access standards for publicly maintained facilities, in accordance with *Appendix I*.
 - 4. The developer shall maintain the stormwater facilities for a one-year warranty period; thereafter WES will be responsible for perpetual maintenance of the public stormwater facilities.
- (k) **Advisory:** Plan review fees for the stormwater system shall apply (4% of the installed cost of any surface water management system). A minimum \$400.00 plan review fee shall be due with the first plan submittal.
- (l) **Advisory:** With future development of each lot, Surface Water System Development Charges shall apply per WES rules and rates at the time of building permit application. The current rate is \$205 per 1 ESU (2,500 sf of impervious surface area).

D. For Title 3 Water Quality Resource Areas, the following shall apply:

- (a) All new development shall meet WES Rules to preserve and protect all water quality sensitive areas. The applicant shall submit a 'Sensitive Area Certification' to certify the presence or absence of water quality sensitive areas on or within 200-feet of the

property. The applicant shall coordinate with Clackamas County Planning Division for all WES vegetated buffer requirements. (*Stormwater Standards, Section 4.2.2*)

- (b) If sensitive areas are found on or near the development site, the applicant shall submit a Natural Resource Assessment Report. The report shall clearly show all water quality sensitive areas and required buffers, all proposed development, and all proposed encroachments and mitigation. (*Section 4.3*)
- (c) All encroachments into the water quality buffer shall require an approved Buffer Variance from WES, in accordance with *Section 4.4*. WES shall require a review of final construction plans *prior to any buffer variance approvals* to verify that the proposed variance will not conflict with the approved storm and sanitary layout.
- (d) Approval of the land use application does not include any conclusions by WES regarding acceptability of regulated water quality sensitive areas by DSL or COE. This decision should not be construed or represented to authorize any activity that will conflict with or violate DSL/COE requirements. The applicant shall coordinate with DSL/COE and, if necessary, other responsible agencies to ensure that development activities are designed, constructed, operated and maintained in a manner that complies with DSL/COE approval.

E. For Erosion Control, the following shall apply:

- (a) An approved erosion control plan and permit from WES shall be required before the start of any grading or construction activities. **Advisory:** An erosion control permit fee shall apply (\$460 + \$80/acre over 1 acre). Areas with greater than 5-acres of disturbance will require a 1200-C permit from DEQ **and** local erosion control approval thru WES (consisting of WES plan review and fees). (*Stormwater Standards, Section 6*)

F. Construction Plan Submittal:

- (a) **Advisory:** Upon land use approval, the applicant's construction plan submittal shall include:
 - 1. Two (2) sets of full-size, complete civil construction plans for all sanitary and stormwater improvements, including erosion control and vegetated buffer plans.
 - 2. Two (2) final storm reports, including a geotech report and downstream analysis.
 - 3. \$800 plan review fee.
 - 4. \$460 erosion control fee.

G. Plat Approval:

- (a) The following statement shall be added to the Restrictions on the plat:

“WATER ENVIRONMENT SERVICES (WES), ITS SUCCESSORS OR ASSIGNS IS HEREBY GRANTED THE RIGHT TO LAY DOWN, CONSTRUCT, RECONSTRUCT, REPLACE, OPERATE, INSPECT AND PERPETUALLY MAINTAIN SEWERS, WASTEWATER, STORM DRAINAGE OR SURFACE WATER PIPELINES, AND ALL RELATED FACILITIES. NO PERMANENT STRUCTURE SHALL BE ERECTED UPON SAID EASEMENT WITHOUT THE WRITTEN CONSENT OF WES. GRANTORS AGREE TO UNDERTAKE NO ACTIVITY THAT WOULD HARM OR IMPAIR THE PROPER FUNCTIONING OF THE SANITARY AND STORM SEWER SYSTEM.”; and

THIS PLAT IS SUBJECT TO WES RULES AND REGULATIONS AND “DECLARATION AND MAINTENANCE AGREEMENT FOR ON SITE STORMWATER FACILITIES” RECORDED AS DOCUMENT NO. _____, CLACKAMAS COUNTY DEED RECORDS.

(b) The following easement designations shall be used on all subdivision plats that are within WES:

1. WES – Water Environment Services
2. SDE - Storm Drainage Easement granted to WES
3. SSE - Sanitary Sewer Easement granted to WES
4. PSDE - Private Storm Drainage Easement
5. PSSE - Private Sanitary Sewer Easement

G. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0088-23-SL for preliminary approval of a 15-lot Planned Unit Development Major Subdivision, subject to conditions of approval.

Dated: May 17, 2023



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.