

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

Regarding an application by John DeJong on behalf of TKM Land, LLC, to subdivide a 6.03-acre parcel into 19 residential lots as a PUD in the R-10 zone at 10300 SE 92nd Avenue in unincorporated Clackamas County, Oregon) **FINAL ORDER**
)
) **Z0067-23-SL**
) **(Odyssey Hills)**

A. SUMMARY

1. John DeJong, acting on behalf of the property owner TKM Land, LLC, (the “applicant”) requests approval to divide a 6.03-acre parcel into 19 lots and tracts for open space, stormwater, roads, and accessways as a Planned Unit Development (“PUD”). The development is located at 10300 SE 92nd Avenue; also known as tax lots 2800, 3200, 3201, and 3800, Section 28DC, Township 1 South, Range 2 East, of the Willamette Meridian, Clackamas County (the “site”). The site abuts SE 92nd Avenue on the west, SE 96th Avenue on the east and residential lots to the north and south. The site and some abutting properties are zoned R-10 (Urban Low Density Residential, 10,000 square foot minimum lot size). Other abutting properties are zoned R-15 (Urban Low Density Residential, 15,000 square foot minimum lot size).

2. The site is currently vacant with the exception of a gravel surfaced private road, SE 92nd Place, that provides properties north of the site with access to SE 92nd Avenue. The site also contains four wetlands (labeled C-F) and two drainage channels (labeled A and B). The applicant proposed to fill wetlands C, D, and F. The applicant will retain wetland E and drainage channels A and B in proposed open space tracts. The applicant will subdivide the remainder of the site into 19 lots for single-family dwelling units; 17 lots for duplex dwellings (proposed Lots 3 through 19) and two lots for a single detached dwellings (proposed Lots 1 and 2).

3. The applicant proposed to dedicate right of way as necessary and construct half-width frontage improvements along the site’s SE 92nd Avenue and SE 96th Avenue frontages. The applicant will extend a new private street, proposed SE Odyssey Avenue, into the site from SE 92nd Avenue, north of existing SE 92nd Place. Odyssey Avenue will then turn south as SE 94th Avenue and east, terminating as a dead-end near the east boundary of the site. The applicant will extend another private street, proposed Odyssey Place south from SE 94th Avenue, looping through the southern portion of the site and terminating in a cul-de-sac turnaround south of proposed Tract C. The applicant will close the existing intersection of SE 92nd Place and 92nd Avenue. The applicant will grant an easement over proposed Odyssey Avenue to provide access to the lots that currently take access from SE 92nd Place. The applicant will extend a pedestrian path between SE Odyssey Place and SE 96th Avenue and grant a public access easement over the on-site streets and path to allow public pedestrian access through the site.

4. Clackamas Water Environmental Services (WES) will provide domestic water, storm and sanitary sewer services to the site. The applicant proposed to collect storm water runoff from impervious surfaces on the site, convey it to one of two on-site facilities for detention and treatment. The applicant will release treated stormwater into the on-site drainage channels at less than predevelopment rates.

5. Hearings Officer Joe Turner (the "hearings officer") conducted a public hearing to receive testimony and evidence about the application. County staff initially recommended the hearings officer deny the application. See the Staff Report and Recommendation to the Hearings Officer dated May 2, 2024 (the "Staff Report"). However, after the applicant provided additional evidence addressing the issues raised in the Staff Report, County staff changed their recommendation to conditional approval. The applicant accepted those findings and conditions, as modified, without exceptions. Four persons testified in opposition to or with questions and concerns about the proposed development. The principal contested issues in the case include the following:

- a. Whether the County provided adequate notice of the hearing;
- b. Whether the applicant is requesting a zone change;
- c. Whether homes on the site are required to be consistent with the surrounding neighborhood;
- d. Whether alleged impacts to the value of surrounding properties are relevant to the applicable approval criteria for this development;
- e. Whether the development will accommodate existing springs on the site;
- f. Whether the applicant will remove blackberries and other invasive vegetation on the site;
- g. Whether the development will impact existing trees on the south boundary of the site;
- h. Whether the development will impact existing easements;
- i. Whether the applicant is required to construct a sidewalk and planter strip on SE 96th Avenue;
- j. Whether traffic from this development will exceed the capacity of area streets or create a hazard; and
- k. Whether adequate infrastructure is or will be available to serve the proposed development.

5. Based on the findings provided or incorporated herein, the hearings officer approves the application subject to the conditions at the conclusion of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at a public hearing about this application, on May 9, 2024. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Ben Blessing summarized the Staff Report, the applicable approval criteria, and his PowerPoint presentation (Exhibit 16).

a. He noted that the applicant proposed to divide the 6.03-acre parcel into 19 lots for 17 duplex dwelling structures and two single-family detached dwelling structures.

b. The applicant will preserve a large wetland (Wetland E) and two drainage channels within open space tracts on the site. The applicant will fill the remaining wetlands subject to required state and federal approvals.

c. The applicant will extend a dead-end private road into the site from SE 92nd Avenue. The applicant will construct sidewalks on one side of the private streets within the site. The applicant will also provide public pedestrian access through the site between SE 92nd and SE 96th Avenues. The applicant will close the existing intersection of SE 92nd Avenue and SE 92nd Place.

d. The applicant will dedicate right-of-way and construct frontage improvements along the site's SE 92nd and SE 96th Avenue frontages.

e. State law requires that the County allow construction of duplex dwellings in all residential zones. Duplex structures provide two dwelling units on one lot. The applicant or future property owners could request approval of a "middle housing subdivision" to create separate lots for each dwelling unit.

f. The County mailed notice of the application and hearing to the owners of properties located within 300 feet of the site and posted notice on its website.

3. County engineering planner Ken Kent requested the hearings officer add a condition 2.A.vii.p requiring the applicant to close the existing intersection of SE 92nd Avenue and SE 92nd Place and grant an access easement over the proposed on-site private

road to provide access to the four properties north of the site that are currently served by SE 92nd Place.

4. John DeJong appeared on behalf of the applicant, TKM Land, LLC., and summarized the proposed development.

a. He noted that applicant will preserve Wetland E in an open space tract and fill Wetlands F and D subject to state and federal approvals. No approval is required to fill Wetland C, as it is a non-jurisdictional wetland. The applicant will also maintain a 25-foot buffer on either side of the on-site drainage channels.

b. He questioned why the applicant is required to construct frontage improvements on SE 96th Avenue as the site has only 50 feet of frontage and there are no existing sidewalks or curbs on that road. At a minimum, the applicant should be allowed to construct a curb-tight sidewalk as the planter strip is unlikely to be maintained. This would also reduce impacts to the stream channel.

c. He accepted the conditions of approval in the Staff Report as modified and waived the applicant's right to submit a final written argument.

d. The survey of the site did not reveal any evidence of easements serving Ms. Schiriak's property.

e. Different developers have considered this site over the years and the County approved at least one prior development proposal. However, that approval expired. The applicant intends to develop the site as proposed.

f. The applicant previously recorded a property line adjustment separating the existing homes on SE 92nd Avenue from the site. The applicant intends to renovate and sell the homes. They intend to begin renovations within the next one to two months. They hope to begin construction of the subdivision this summer.

g. The applicant intends to sell the lots created by this PUD for owner occupied housing. The homes on the site will be valued between \$650,000 and \$750,000.

h. The applicant will be required to remove all of the blackberries and other invasive plant species on the site and plant native species in the proposed open space tracts as required by WES regulations. The applicant will form a homeowners association that will be responsible for ownership and maintenance of the open space tracts, private roads, and other common areas of the site.

i. The applicant proposed Tract F on the south boundary of the site to preserve the existing trees on the boundary of the site.

j. The applicant's geotechnical engineer reviewed the site and observed the presence of springs on the site. The applicant will collect this subsurface water, convey it to the detention facilities, and discharge it into the on-site drainage channel.

4. Lilly Schiriatic noted that many residents in the area did not receive notice of the hearing. She objected to the proposed duplexes as they conflict with the character of the existing neighborhood, which is developed with single-story ranch style homes. She questioned whether the proposed development will impact her existing easement that provides access to the rear of her property. She noted that the existing storm drains on the site are not maintained and existing SE 92nd Place is frequently washed out by heavy rains. She requested the property owner remove the existing blackberries vines on the site which currently encroach onto her property.

5. Erik Davis noted that the site abuts his property on three sides. He questioned who will be responsible for maintenance of the proposed open space tracts and stormwater facilities. Tracts A and B contain seasonal drainage channels that may be impacted by the proposed development.

6. Devun Singh questioned why the applicant is proposing to develop the site with duplexes rather than single-family detached homes, what the duplex units will look like, and whether they will be equivalent in value to existing homes on surrounding properties. He questioned whether the development will impact existing trees located on the boundary between his property and the site.

7. Rebecca Lanxon appeared on behalf of her parents who own property north of the site. She questioned whether the applicant is seeking a zone change that will allow them to develop the site with smaller lots and duplexes. The proposed development is likely to impact the value of surrounding properties. She questioned whether there is adequate infrastructure to support the proposed development density. SE 92nd Avenue, which provides the only access to the site, is a narrow road with no curbs or sidewalks. She questioned how the applicant will deal with the existing springs on the site.

8. The hearings officer closed the public record at the end of the hearing and announced his intention to approve the application subject to the recommended conditions of approval, as modified at the hearing.

C. FINDINGS

Notice

The hearings officer finds that the County provided adequate notice of the hearing. The County mailed notice of this application to the applicant, the neighborhood association, property owners within 300 feet of the site, and other agencies on April 3, 2024, as required by ZDO 1307.11(A) (Exhibit 2 at 1). "The failure of a property owner to receive notice as provided in Section 1307 shall not invalidate the proceedings, if the County can demonstrate by affidavit that such notice was given." ZDO 1307.17(C).

The hearings officer finds that the public had an adequate opportunity to review and respond to the proposed development, consistent with the limitations of the Code. The neighborhood was well represented at the hearing. Residents of the neighborhood testified clearly and succinctly regarding issues of concern to them.

Zone Change and duplexes

The applicant is not proposing a zone change. The site is currently zoned R-10 and the proposed PUD is allowed in the R-10 zone pursuant to ZDO 1013.01. The proposed duplex dwelling structures are also allowed in the R-10 zone. See ZDO Table 315-1, footnote 7. The Code does not regulate the style, appearance, size or value of the homes. Even if the subdivision will have an adverse impact on property values --- and there is no substantial evidence to that effect in the record --- protection of property values and consistency with adjoining development are not relevant to the applicable State or County standards. The hearings officer must base the decision on the laws of the County and the State. If adjacent property owners believe that the value of their property has been reduced, they may request that the county assessor modify the assessed value of their property.

Grading

The applicant is aware of the existence of groundwater springs on the site. They intend to collect water from all springs discovered during construction and convey it to the proposed stormwater facilities for detention and controlled release into the on-site drainage channels. No development is proposed within the existing drainage channels on the site.

The applicant is required to remove the existing blackberries and other invasive vegetation on the site as a condition of the WES permit. The applicant is required to create a homeowners association that will be responsible for the ongoing ownership and maintenance of all common areas on the site (open space and private street tracts).

The applicant proposed to preserve the existing row of trees on the southern border of the site within proposed open space Tract F.

Easements

Ms. Schiriac testified about an easement affecting her property. However, there is no evidence in the record about the existence, location, and purpose of the alleged easement. Easements are a private agreement which the County and the hearings officer have no authority to interpret or enforce. However, approval of this development will not alter any existing easements.

Frontage improvements and traffic

As discussed below, the applicant is required to construct frontage improvements, including sidewalks and planter strips, along the site's SE 92nd and 96th Avenue frontages. The fact that there are no existing sidewalks or planter strips on these streets is irrelevant.

Sidewalks and other improvements will interconnect over time as other properties in the area develop, but the applicant is not required to provide such off-site improvements. The homeowners association, as the owner of the abutting property, will be required to maintain these improvements.

This development will generate additional vehicle traffic on SE 92nd Avenue. That increased traffic will be perceptible to area residents. However, County engineering staff determined that it will not exceed the capacity of streets nor create a hazard, based on the applicant's traffic analysis (Exhibit 15). There is no substantial evidence to the contrary. Neighbor's unsupported concerns about increased traffic are not substantial evidence sufficient to overcome the expert testimony of the traffic engineers for the County and the applicant.

The additional traffic generated by this subdivision may pose an increased risk for drivers, cyclists, and pedestrians in the area. Higher vehicular traffic volume creates a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. However, those risks are consistent with the location of the site in the urban area where County plans call for the sort of development being proposed. Reasonably prudent drivers will observe the posted speed limit and if necessary, further reduce their speed to accommodate changing road conditions. Unfortunately not all drivers are prudent. However, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers.

Infrastructure

The applicant submitted service provider letters from all applicable providers confirming that adequate public facilities are or will be available to serve the proposed development.

ZDO SECTION 315 and 1000: DEVELOPMENT STANDARDS

315 Urban Low density residential (R-10)

Section 315 of the Zoning and Development Ordinance (the "ZDO") controls land uses within the Urban Low Density Residential zoning districts, including the R-10 zoning districts. The conditions of approval for this subdivision 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 R-10 zoning district. 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, duplexes will be constructed on all but two of the 19 lots. Duplexes are allowed outright in the R-10 Zoning District. Conditions of approval will ensure that future development complies with table 315-2. Although detailed building footprints have been provided on Sheet 9 of 9, applicant is advised that individual building permit requests must comply

with table 315-2. Since the subdivision will be a Planned Unit Development (PUD), dimensional standards may be modified as noted in table 315-2.

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.

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.

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 site contains small areas of slopes exceeding 20% as shown on Sheet 2 of 9 of the preliminary plans set (Exhibit 2). However, these are relatively small areas and for the most part, appear to be man-made cuts and fills related to past development activities on the site and adjacent properties, particularly the fill from tax lot 3300 that has encroached into the site. Moreover, most of the steep slopes are confined to the flag pole portion of the site that fronts on SE 96th Avenue. This area will be preserved in an open space tract and development is limited to the pedestrian accessway, which is discussed in Section 1007 below. Lots 5 and 6 are the only lots that have potential slopes exceeding 20 percent. Rapid Soils Solutions prepared a geotechnical report dated July 5, 2023 (Exhibit 2), providing recommendations for site, structure, and road construction. Although a geotechnical report is not technically required unless slopes exceed 35 percent, an advisory condition is included requiring that all construction comply with techniques and recommendations set forth in the aforementioned geotechnical report.

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

The applicant's submitted plan can meet the requirements of Subsection 1002.01

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.

As noted above, the only steep slopes that will be altered are portions of the flagpole to accommodate the accessway and Lots 5 and 6. No more than 30-percent of such slopes will be impacted. This criteria is met.

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

Per ORS 197.307, this criteria cannot be applied because it is not clear and objective

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

According to the applicant's grading and erosion control plan, home sites will be placed on level slopes, and there is no indication of mass pad grading and successive padding.

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

The applicant is proposing an eight-foot wide accessway rather than a new vehicular road. This will minimize disturbances to the slopes.

- 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 criteria cannot be applied because it is not clear and objective

- 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:

The site is zoned R-10 and development is not proposed on slopes exceeding 35%.

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.

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 site is located inside of both the MSDB and Portland Metropolitan UGB. Therefore, these standards do not apply.

1002.05 DEER AND ELK WINTER RANGE

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

The site is located outside of the Deer and Elk Winter Range.

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 site is located outside of the Mt. Hood Resource Protection Open Space.

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 site does not contain a significant natural area.

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.

Findings for hazard areas that exist on the site are addressed below.

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 mass movement hazard area. This section is not applicable

1003.03 STANDARDS FOR FLOOD HAZARD AREAS

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

This area is not located within the Special Flood Hazard Area (SFHA), and not subject to ZDO Section 703.

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.

Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable.

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.

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 which are 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 the Conditions of Approval ensure compliance.

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.

Sunrise Water Authority (SWA) is the water provider for the proposed subdivision. SWA has provided a signed preliminary statement of feasibility. However, no comments were issued by SWA

- 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 criteria can be met. SWA has not provided comments or recommended conditions of approval. Therefore a condition is warranted requiring the applicant to meet all requirements of SWA. This criteria can be met.

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 indicates that water service is available with the exception of fire flows and also notes that the required fire flows “will [need to be] determined.” Clackamas Fire District #1 provided comments dated April 22, 2024, noting the following: “In lieu of the above fire flow requirements, residential fire sprinklers may be considered as an alternate when approved by the Fire Marshal.” (Exhibit 6). This standard is met.

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 February 20, 2024, and water system capacity is not needed to be reserved for the proposed subdivision. This criteria is met.

- 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.

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

The Conditions of Approval will ensure compliance with the applicable standards of this section.

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 signed a preliminary statement of feasibility and provided comments dated April 30, 2024, which provides as follows (Exhibit 9):

- *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 sewer-age works, including all facilities necessary for collecting, pumping, treating, and disposing of sanitary or storm sewage within its boundaries.*
- *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 per the Rules and rates in effect on the date when a complete building permit application is submitted to the applicable Building Code Division.*

Recommended conditions of approval in Exhibit 9 are included in the conditions of approval section of this Final Order.

- 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 (Exhibit 8).

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 conditioned as noted above. This criteria is not applicable.

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 April 25, 2022, and sanitary sewer system capacity is not needed to be reserved for the proposed subdivision (Exhibit 8).

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.

The Conditions of Approval will ensure compliance with this criteria.

- 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.

WES is the surface water management regulatory authority for the proposed subdivision.

As discussed above, the applicant has not provided sufficient technical information to WES, but WES has recommended approval with the understanding that the applicant proceeds at their own risk (Exhibit 7).

- 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 prior land use approvals have shown stormwater can be treated adequately and that the surface water treatment can be made available through improvements, but that the applicant proceeds at their own risk.

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 submitted the items noted above and WES has signed the statement of feasibility. This criteria is not applicable

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 April 25, 2024, and surface water treatment and conveyance system capacity are not needed to be reserved for the proposed subdivision (Exhibit 8).

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 a local governments to apply only clear and objective development standards. This criteria is not applicable.

2. Protect development from flood hazards;

As discussed above, this area is not mapped as being within the Special Flood Hazard Area (SFHA) nor has there been any identified historical flooding events on the site. This criteria is not applicable.

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 a local governments to apply only clear and objective development standards. This criteria is not applicable

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, reseeded, and phasing of grading; and

ORS 197.307(4) requires a local governments to apply only clear and objective development standards. This criteria is not applicable.

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 a local governments to apply only clear and objective development standards. This criteria is not applicable.

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

ORS 197.307(4) requires a local governments to apply only clear and objective development standards. This criteria is not applicable.

- F. If a development, or any part thereof, is traversed by any watercourse, channel, stream, creek, gulch, or other natural drainage channel, adequate easements for surface water management purposes shall be provided to the surface water management regulatory authority.

ORS 197.307(4) requires a local governments to apply only clear and objective development standards. This criteria is not applicable. Staff notes that the applicant is nonetheless preserving the natural drainage channel within open space tracts.

- G. Channel obstructions are not allowed, except as approved for the creation of detention, retention, or hydropower facilities approved under this Ordinance. Fences with swing gates may be utilized.

The applicant is not proposing channel obstructions.

- F. 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 a local governments to apply only clear and objective development standards. This criteria is not applicable.

- G. 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 is required for the proposed subdivision as discussed above. WES will regulate erosion control measures. An applicable Condition of Approval is included.

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 statements. This criteria is not applicable.

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 19-lot subdivision of a 6.03 acre site located between SE 92nd and SE 96th Avenues. The “Roads and Connectivity” findings below are based, in

part, on comments received from the County Development Engineering Division dated April 30, 2024 (Exhibit 10).

- 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.

SE 92nd Avenue is classified as a collector roadway (Comprehensive Plan map 5-4a). Clackamas County has adopted roadway standards that pertain to the structural section, construction characteristics, minimum required right-of-way widths and access standards for collector roadways. The standard right-of-way width for a collector to accommodate two travel lanes and a six-foot wide bike lane is 60 feet. The existing right-of-way width of SE 92nd Avenue is approximately 40 feet, requiring a dedication of approximately ten feet of additional right-of-way to provide a 30-foot one half right-of-way width.

- C. New developments shall have access points connecting with existing private, public, county, or state roads.
 - 1. Intersection spacing and access control shall be based on Subsection 3.08.110(E) of the Metro Code (*Regional Transportation Functional Plan*); Chapters 5 and 10 of the Comprehensive Plan; and the Clackamas County Roadway Standards.

Access for the proposed subdivision is proposed by a private road onto SE 92nd Avenue, proposed Odyssey Avenue, located approximately 160 feet north of the current site access. The current access is from a gravel road over Tax Lot 12E28DC03100. The applicant owns that parcel, but it is not part of the subdivision plat. The current access, SE 92nd Place, serves four properties lying north of the project site that are not part of the plat. The applicant will be required to close the existing gravel access intersection with SE 92nd Avenue and grant an access easement over SE Odyssey Avenue for these four properties.

...

- 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.

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

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.

...

8. Inside the Portland Metropolitan Urban Growth Boundary:
 - a. The development shall have no more than the minimum number of driveways required by the Department of Transportation and Development on all arterial and collector streets.

No driveways are proposed to access arterial or 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.

All driveways will access the on-site private street, the lowest classification street on or abutting the site.

- c. Driveways shall be no wider than the minimum width allowed by the Clackamas County Roadway Standards.

The County will ensure compliance with this standard through the building permit review process.

- 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.

Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable

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

Engineering comments dated April 30, 2024, provide detailed conditions of approval to comply with street alignments, intersections, and centerline deflection angles (Exhibit 10). This criteria can be met.

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

Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable

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

Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable.

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

Per ORS 197.307, local governments cannot apply subjective standards. Therefore, this standard is not applicable.

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.

SE 92nd Avenue is located on the edge of the Clackamas Regional Center boundary. However, there are no specific design standards for this segment of SE 92nd Avenue. This standard is not applicable.

- B. The layout of new public and county roads shall provide for the continuation of roads within and between the development and adjoining developments when deemed necessary and feasible by the Department of Transportation and Development.

1. When public access to adjoining property is required, this access shall be improved and dedicated to the County.

Roadway Standard Section 220.5, as well as Comprehensive Plan Policy 5.R5 requires that development that will be constructing new roads provide a through connection so that there is a maximum block length of 530 feet, or if a road connection is not feasible, provide a pedestrian, bicycle or emergency access connection. As with previous proposals to develop of the project site, in order to meet the block length standard, a road connection between SE 92nd Avenue and SE 96th Avenue was identified as a requirement. The applicant submitted a Design Modification request that proposed a pedestrian connection to SE 96th Avenue rather than a full street connection based on steep slopes and drainage way/wetlands. Engineering and Planning staff reviewed the Design Modification and granted approval allowing a pedestrian and bicycle connection through the project site from SE 92nd Avenue and SE 96th Avenue.

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

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

- 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.

In this case, topography, natural features, and existing development preclude connections to existing streets, requiring a dead-end street on the site. The site has frontage on SE 92nd and SE 96th Avenues. The applicant proposed to extend a private road into the site from SE 92nd Avenue, proposed SE Odyssey Place. As noted above, steep slopes in the eastern portion of the site preclude a road connection to SE 96th Avenue. The site has insufficient frontage on SE 92nd Avenue to allow another intersection in compliance with intersection spacing requirements. Existing development preclude road connections to the north and south of the site. Therefore, the proposed dead-end road is allowed.

Dead-end 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 the private road, SE Odyssey Place. The proposed cul-de-sac includes a 36-foot radius. Fire district standards require a minimum 48-foot radius for a cul-de-sac on a private road. The applicant will be required to meet the minimum fire district standard radius bulb. Written verification from the Fire District indicating that emergency service access is or will be adequate for the proposed subdivision will be required.

- 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

- 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.

- D. 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.

SE 92nd Avenue is classified as a collector roadway (Comprehensive Plan map 5-4a). Clackamas County has adopted roadway standards that pertain to the structural section, construction characteristics, minimum required right-of-way widths and access standards for collector roadways. The standard right-of-way width for a collector to accommodate two travel lanes, six-foot wide bike lanes, landscape strips and sidewalk is 60 feet. The existing right-of-way width of SE 92nd Avenue is approximately 40 feet, requiring a dedication of approximately ten feet of additional right-of-way to provide a 30-foot one half right-of-way width.

The minimum improvements on the SE 92nd Avenue frontage consistent with ZDO Section 1007 include, but are not necessarily limited to, up to a one half-street improvement, pavement widening as necessary to provide a minimum 18-foot one-half paved width to the curb, a five-foot wide landscape strip with street trees, a five-foot wide unobstructed sidewalk, and storm drainage facilities.

The project site has 50 feet of frontage on the west side of SE 96th Avenue. SE 96th Avenue is classified as a local roadway (Comprehensive Plan map 5-4a). 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 roadways. The standard right-of-way width for an urban local is 54 feet. The existing right-of-way width of SE 96th Avenue is approximately 50 feet, requiring a dedication of approximately two feet of additional right-of-way to provide a 27-foot one half right-of-way width.

The minimum improvements on the SE 96th Avenue frontage consistent with ZDO Section 1007 include, but are not necessarily limited to, up to a one half-street improvement, pavement widening as necessary to provide a minimum 16-foot one-half paved width to the curb, a five-foot wide landscape strip with street trees, a five-foot wide unobstructed sidewalk, and storm drainage facilities

- E. Road frontage improvements within the UGB and in Mt. Hood urban villages shall include:
 - 1. Surfacing, curbing, or concrete gutters as specified in Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards;
 - 2. Pedestrian, bikeway, accessway, and trail facilities as specified in Subsection 1007.04;
 - 3. Transit amenities as specified in Subsection 1007.05; and
 - 4. Street trees as specified in Subsection 1007.06.

ZDO Section 1007.02 (E) and 1007.04 require that subdivision applications improve the public roadway frontage 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.

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

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 the project site is proposed from a new private road, SE Odyssey Avenue intersecting with SE 92nd Avenue. The conditions of approval require compliance with these requirements.

The County has adopted design and construction standards for private roads, as provided in ZDO Sections 1007.02-03 and Roadway Standards Section 225.7. Private roads serving four or more dwelling units are required to construct a roadway with a minimum travel width of 20 feet, within a minimum legal access width of 24 feet. The applicant is proposing a 34-foot wide access easement, with a 26-foot wide roadway, mountable curbs, and a five-foot wide sidewalk on one side of the roadway. A split access is proposed for the first portion of the road at the intersection with SE 92nd Avenue, with 20-foot wide eastbound travel, and a 14-foot wide westbound travel lane. The proposed access road meets the minimum standards, per Roadway Standards Drawing R100

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.

As discussed above, Comprehensive Plan figure 5-1a sets forth minimum frontage improvements for development on SE 92nd Avenue and SE 96th Avenue. An eight-foot wide bike lane is proposed on SE 92nd Avenue, as well as a sidewalk along the frontage. Sidewalks are also required on SE 96th Avenue. New sidewalks are also required along the private road, and a new accessway will connect the private road with SE 96th Avenue. Accessways are described below.

- B. Pedestrian and Bicycle Facility Design: Pedestrian and bicycle facilities shall be designed to:
1. Minimize conflicts among automobiles, trucks, pedestrians, and bicyclists;
 2. Provide safe, convenient, and an appropriate level of access to various parts of the development and to locations such as schools, employment centers, shopping areas, adjacent developments, recreation areas and open space, and transit corridors;
 3. Allow for unobstructed movements and access for transportation of disadvantaged persons; and
 4. Be consistent with Chapters 5 and 10 of the Comprehensive Plan; Comprehensive Plan Maps 5-2a, *Planned Bikeway Network, Urban*, 5-2b, *Planned Bikeway Network, Rural*, and 5-3, *Essential Pedestrian Network*; North Clackamas Parks and Recreation District's (NCPRD) Park and Recreation Master Plan; and Metro's Regional Trails and Greenways Map.

The proposal includes pedestrian and bicycle facilities which are consistent with this standard. This criteria can be met.

- C. Requirements for Pedestrian and Bicycle Facility Construction: Within the Portland Metropolitan Urban Growth Boundary (UGB), sidewalks, pedestrian pathways, and accessways shall be constructed as required in Subsection 1007.04 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, development of such facilities shall be required only if the addition exceeds 10 percent of the assessed value of the existing structure, or 999 square feet.

The applicant is proposing sidewalk and pedestrian facilities to comply with these standards. Accessways are discussed below. These standards can be met.

- D. Requirement for Sidewalk Construction: Within the UGB, sidewalks shall be constructed, as required in Subsection 1007.04(F), for two-family dwellings, detached single-family dwellings, attached single-family dwellings where two dwelling units are attached to one another, and manufactured dwellings outside a manufactured dwelling park.

Sidewalks are proposed on the private street and required for all public road frontages. This standard can be met.

- E. Sidewalks or Pedestrian Pathways in Unincorporated Communities: In an unincorporated community, either a sidewalk or a pedestrian pathway shall be constructed on arterial or collector street frontage(s) of a lot upon which a subdivision, partition, multifamily dwelling, three-family dwelling, attached single-family dwelling where three or more dwelling units are attached to one another, or a commercial, industrial, or institutional development is proposed.

The site is not located in an unincorporated community. This standard is not applicable.

- F. Sidewalk Location: Sidewalks required by Subsection 1007.04(C) or (D) shall be constructed on:
 - 1. Both sides of a new or reconstructed road, except that sidewalks may be constructed on only one side of the road if:
 - a. The road is not a through road;

- b. The road is 350 feet or less in length and cannot be extended; or
- c. In consideration of the factors listed in Subsection 1007.02(B)(3).

The private road is not a through road. Therefore sidewalks are only required on one side of street.

H. Sidewalk and Pedestrian Pathway Width: Sidewalks and pedestrian pathways shall be constructed to the minimum widths shown in Table 1007-1, *Minimum Sidewalk and Pedestrian Pathway Width*, and be consistent with applicable requirements of Chapters 5 and 10 of the Comprehensive Plan.

Table 1007-1: Minimum Sidewalk and Pedestrian Pathway Width

Street Type	Residential Sidewalk	Commercial or Institutional Sidewalk	Industrial Sidewalk
Local	5 feet	7 feet	5 feet
Connector	5 feet	7 feet	5 feet
Collector	5 feet	8 feet	5 feet
Arterial	6 feet	8 feet	6 feet

1. The entire required width of sidewalks and pedestrian pathways shall be unobstructed.
2. Sidewalks and pedestrian pathways at transit stops shall be a minimum of eight feet wide for a distance of 20 feet centered on the transit shelter or transit stop sign.

Transit stops are not planned or proposed at this site. This criteria is not applicable.

3. A sidewalk set back from the curb by at least five feet may be one foot narrower (but not less than five feet) than the standard listed above. This five-foot separation strip shall be landscaped and shall be maintained by the adjacent property owner. The landscape strip may contain fixed objects provided that sight distance and roadside clear zone standards are satisfied pursuant to the Clackamas County Roadway Standards.

The applicant’s design can comply with the standards set forth in Figure 5-1 of the Comprehensive Plan and table 1007-1. Conditions of approval are warranted to ensure sidewalks are constructed to these standards.

I. Accessways: Accessways shall comply with the following standards:

1. Accessways shall be required where necessary to provide direct routes to destinations not otherwise provided by the road system and where topography permits. Developments shall not be required to provide right-of-way for accessways off-site to meet this requirement. If right-of-way is available off-site, the developer may be required to improve an accessway off-site up to 150 feet in length.
2. Accessways shall provide safe, convenient access to facilities generating substantial pedestrian or bicycle trips, such as an existing or planned transit stop, school, park, place of worship, daycare center, library, commercial area, or community center. Facilities such as these shall be accessible from dead-end streets, loops, or mid-block locations. Where required, accessways shall be constructed at intervals of no more than 330 feet, unless they are prevented by barriers such as topography, railroads, freeways, pre-existing development, or environmental constraints such as streams and wetlands.

The applicant has proposed a previous eight-foot wide asphalt accessway extending east from SE Odyssey Place through Tract "E" approximately 240 feet to SE 96th Avenue. In order to provide long term durability and ADA accessibility, a previous concrete surface will be required. The proposed accessway includes a 90-foot long section with a 20 percent slope. The maximum grade of a local road is 15 percent. Previous development proposals of the project site included a 15 percent public road connection to SE 96th Avenue. The previous designs included another parcel to the north that allow for additional grading to accommodate a 15 percent grade road. The applicant does not have control of the adjacent property, so there is limited ability to grade. The modification to allow a pedestrian connection in lieu of a street connection would still allow an ADA accessible connection since it would have otherwise followed the grade of the road. The proposed pedestrian connection to SE 96th Avenue will be limited to a maximum slope of 15 percent.

A minimum 15-foot wide public pedestrian and bicycle access easement will be required over Tract "E". In addition, a public pedestrian and bicycle easement will be required over the sidewalk within Tract "G", providing a connection to SE 92nd Avenue. Maintenance provisions for the access will be required through the CC&Rs

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.

Existing and planned transit routes are not located on SE 92nd Avenue or SE 96th Avenue. This criteria is not applicable.

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 Section 1007.06(A)(1), (3), and (5) are not applicable per ORS 197.307(4). County Development Engineering notes that these standards can be met through conditions of approval.

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.

- B. Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:

1. Development that is located:
 - a. In the Light Industrial, General Industrial, or Business Park District; and
 - b. North of the Clackamas River; and
 - c. West of Highway 224 (south of Highway 212) or 152nd Drive (north of Highway 212); and
 - d. South of Sunnyside Road (east of 82nd Avenue) or Harmony Road (west of 82nd Avenue) or Railroad Avenue (west of Harmony Road); and
 - e. East of Interstate 205 (south of Milwaukie Expressway) or the city limits of Milwaukie (north of the Milwaukie Expressway).
2. Modification or replacement of an existing development (or a development that has a current land use approval even if such development has not yet been constructed) on the same property, provided that an increase in motor vehicle traffic does not result;
3. Unmanned utility facilities, such as wireless telecommunication facilities, where no employees are present except to perform periodic servicing and maintenance;
4. Mass transit facilities, such as light rail transit stations and park-and-ride lots;
5. Home occupations to host events, which are approved pursuant to Section 806; and

6. Development in Government Camp that is otherwise consistent with the Comprehensive Plan land use plan designations and zoning for Government Camp.

No part of this project is exempt from Section 1007.07.

- C. As used in Subsection 1007.07(B), adequate means a maximum volume-to-capacity ratio (v/c), or a minimum level of service (LOS), as established by Comprehensive Plan Tables 5-2a, Motor Vehicle Capacity Evaluation Standards for the Urban Area, and 5-2b, Motor Vehicle Capacity Evaluation Standards for the Rural Area. Notwithstanding the definitions of “urban” and “rural” in Chapter 5, Transportation System Plan, of the Comprehensive Plan, Highway 212 shall be evaluated under Table 5-2a, if the subject property is inside the Portland Metropolitan Urban Growth Boundary.

ZDO subsection 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 mid-day one hour peak and first and second hours of the PM peaks at acceptable volume to capacity (v/c) ratios. Roadway Standards Section 295.2 requires a traffic impact study (TIS) when a development will generate 20 or more trips in any peak hour. The proposed subdivision involves 19 lot that can be developed with duplexes under the middle housing provisions of ZDO Section 315. The applicant has provided a site plan identifying proposed development of duplexes on 17 of the lots, and single-family residences on two lots. The result is a total of 36 dwelling units, with an estimated trip generation that exceeds 20 peak hour trips

- D. For the purpose of calculating capacity as required by Subsections 1007.07(B) and (C), the following standards shall apply:
 1. The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards.
 2. The adequacy standards shall apply to all roadways and intersections within the impact area of the proposed development. The impact area shall be identified pursuant to the Clackamas County Roadway Standards.
- E. As used in Subsection 1007.07(B), timely means:
 - ...
 4. Alternatively, timely means that necessary improvements will be constructed by the applicant or through another mechanism, such as a local improvement district. Under this alternative

Subsection 1007.07(E)(4) requires the applicant to complete the necessary improvements. However, there are no requirements to construct additional facilities, except those required in ZDO Section 1007.02.

F. As used in Subsection 1007.07(E), necessary improvements are:

1. Improvements identified in a transportation impact study as being required in order to comply with the adequacy standard identified in Subsection 1007.07(C).
 - a. A determination regarding whether submittal of a transportation impact study is required shall be made based on the Clackamas County Roadway Standards, which also establish the minimum standards to which a transportation impact study shall adhere.

ZDO subsection 1007.07 requires that roadways and intersections serving subdivisions have adequate capacity to handle the additional traffic generated by the development, and continue to operate at acceptable volume to capacity (v/c) ratios during the mid-day one hour peak and first and second hours of the PM peaks. Roadway Standards Section 295.2 requires a traffic impact study (TIS) when a development will generate 20 or more trips in any peak hour. The proposed subdivision involves 19 lots that can be developed with duplexes under the middle housing provisions of ZDO Section 315. The applicant has provided a site plan identifying proposed development of duplexes on 17 of the lots, and single-family residences on two lots. The result is a total of 36 dwelling units, with an estimated trip generation that exceeds 20 peak hour trips.

The applicant has provided a Traffic Impact Study (TIS) by Lancaster Mobley Engineering, dated May 3, 2024 (Exhibit 12) and a memo noting minor corrections (Exhibit 13). County engineering staff reviewed and agreed with the May 3 study (Exhibit 15) and confirmed that the transportation system is adequate and can support the proposed subdivision.

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.

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.

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.
- 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.

The applicant shall be subject to R-10 zoning district standards.

- 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.

No dwellings are present on the site.

- 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.

- 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-10 zoning district. This criteria is not applicable.

1012.05 MAXIMUM DENSITY

If this Ordinance establishes a district land area (DLA) for the applicable zoning district, the proposed development shall be limited to a maximum density. Except as necessary to implement a minimum lot size exception granted pursuant to Subsection 1012.02 or as established by Subsections 1012.06 and 1012.07, maximum density shall be calculated as follows.

- A. Calculate the land area of the subject property. The result is gross site area (GSA).
- B. Subtract the following from GSA to determine net site area (NSA). In the event of an overlap between categories requiring a subtraction, the area of overlap shall be classified in the most restrictive category.
 - 1. The land area of new county, public, or private roads (NR) in the HR, MRR, Urban Low Density Residential, VR-4/5, VR-5/7, and VTH Districts, except:

- a. If NR exceeds 15 percent of the GSA, only 15 percent of the GSA shall be subtracted.
 - b. No subtraction shall be made for strips of land adjacent to existing road rights-of-way when such strips are required to be dedicated as a condition of approval; .
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:
 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.:

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

The applicant has prepared the following density calculations:

“The site contains a gross area of 6.03 acre or 262,667 square feet.

The NRA (New Road Area) within the Private Street: Tract G contains 59,616 SF; Tract B contains 3,334 SF and the emergency access area within Tract C contains 5,800 SF, for a TOTAL NRA of 68,750 SF.

262,667 SF - 68750 SF 193,917 SF

193,917 SF / 10,000 SF = 19.39 or 19 Lots Minimum

93,917 SF / 8,000 SF = 24.24 or 24 Lots Maximum”

Staff disagrees with this calculation. The applicant has subtracted too much new road (NR) from the GSA. The maximum amount of NR to be subtracted from the GSA is 15 percent. Therefore, 262,667 x 15%=39,401. There also is a small amount of disturbance to slopes exceeding 20 percent resulting from development of the accessway and some other areas associated with the eastern lots. The area of disturbance is approximately 10,000 square feet. These areas are considered moderately restricted areas and multiplied by 0.50 or a total moderate area disturbance of 5,000. Total subtractions

therefore equals 44,401 (39,401 + 5,000). In turn, Net Site Area (NSA) = 218,266. Divide this by the DLA (10,000 sq. ft. for the R-10 zoning district) for a maximum density of 21.82, or 22 total units.

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:

- 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

Total road dedications per applicant are 68,750 square feet. In addition slopes over 20% are roughly 10,000 square feet. Right of way dedications account for roughly 1000 square feet. Total subtractions equal 79,750 square feet.

- C. In the RCHDR District, the minimum density is 30 dwelling units per net acre. Otherwise, divide by the district land area of the applicable zoning district and multiply the result:
 - 1. By 80 percent in Urban Low Density Residential Districts. However, partitions in these districts have no minimum density requirement provided that a master plan demonstrates that the minimum density for the entire property can be met through future land division;

GSA is 262,667 square feet. After subtractions, net acreage is 182,917 square feet. Divide by the DLA (10,000) for a result of 18.29 and multiple the results by 0.80 for a minimum density of 14.63.

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

14.63 is being rounded up to 15. Minimum Density is therefore, 15. This is detailed above in the conditions of approval section.

1013 PLANNED UNIT DEVELOPMENTS

1013.01 APPLICABILITY

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

- A. A subdivision, partition, or replat may be developed as a planned unit development in residential, commercial, and industrial zoning districts, except the FU-10 District.

This proposal is for a 19-lot subdivision. A Planned Unit Development (PUD) is permissible.

- 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 no mapped open space. Therefore, developing the site as a PUD is the choice of the applicant (Exhibit 11).

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.

Open spaces are being preserved in tracts. Only accessory uses listed may be allowed in the open space tracts. This criteria is listed as condition of approval, above.

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 this criteria is not a clear and objective standard, natural and unique features are nonetheless being preserved in open space tracts.

- 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 criteria is not applicable since the property is zoned Urban Low Density Residential.

C. Open Space:

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

The site has a gross acreage of 6.03 acres. Proposed open space tracts total 78,885 square feet or 1.8 acres within Tracts A, C, D, E, F and G. Therefore, 30 percent of the gross site area will be platted as one or more open space tracts.

2. Open space tracts may include recreational uses permitted pursuant to Subsection 1013.02(A), bicycle trails, walking trails, natural or landscaped buffer areas, bus shelters, and significant natural vegetation or landscape features.

As noted above, an accessway is proposed through Tract E, and buffer areas will be contained in the Tract "C". This criteria is met.

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.

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 an open space tracts.

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

This criteria is not a clear and objective standard, and pursuant to OSR 197.307(4); it cannot be applied.

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.

The open space is intended to protect significant natural features from impacts associated with use or development

7. The open space restrictions shall continue in perpetuity, unless the restrictions are modified pursuant to either Section 1309, Modification, or the approval of a new land use permit application provided for by this Ordinance.

This criteria is acknowledged and included as condition of approval. This criteria can be met.

- D. Parking: The following may be required after consideration of street type, width, traffic volume, transit amenities, and pedestrian circulation: guest parking for dwellings and sufficient parking space for storage of residents' recreational vehicles

1. If required, recreational vehicle parking shall be located so as to be compatible with the surrounding development. If located on the perimeter of the PUD, it shall be screened from adjacent properties.

Off-street recreational vehicle parking is not proposed. This criteria is not applicable.

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 parking is proposed on individual lots. Not common parking areas are proposed.

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

A Homeowners Association (HOA) is required and a condition of approval is included to allow planning staff to review draft HOA documents and ensure tracts are properly conveyed to the HOA.

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-10 zoning District. This criteria applies

1017.02 DEFINITIONS

The following definitions apply to Section 1017:

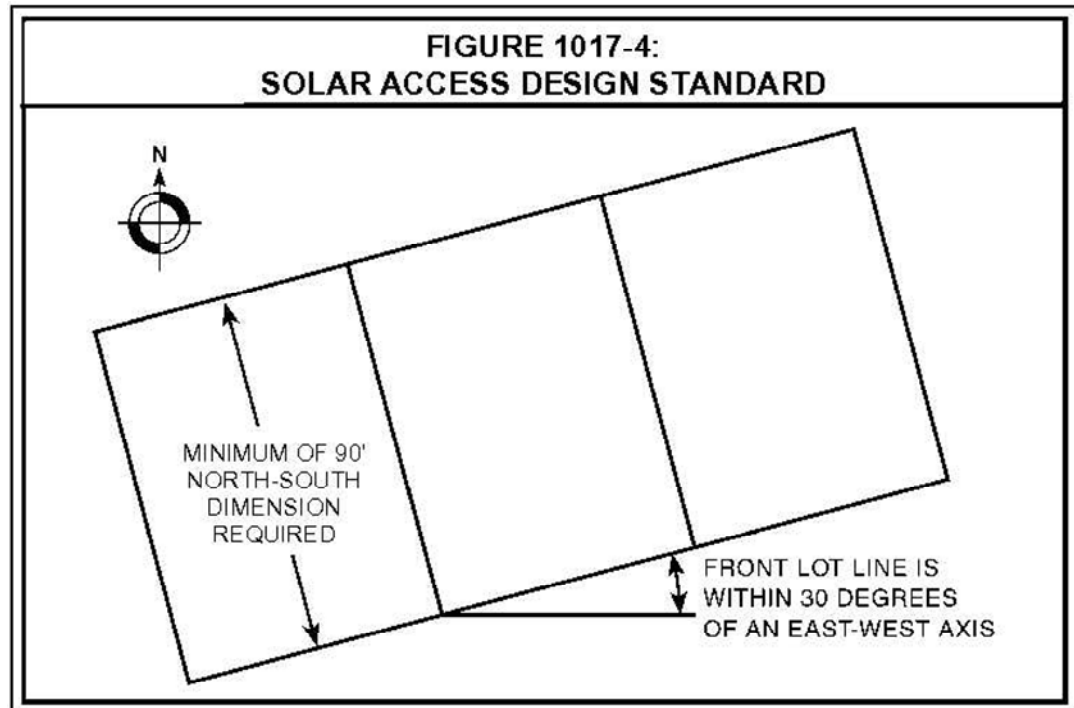
The criteria, requirements, standards and text of Section 1017 are subject to the definitions outlined in this Subsection.

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.)

The applicant states that “only 2 lots comply with the basic Solar Access Standard, therefore the applicant requests an Exemption per 1017.04 below.” This criteria is not met.



1017.04 EXCEPTIONS TO THE DESIGN STANDARD

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

- A) Density and Cost: If Subsection 1017.03 is applied, either the resulting density would be less than that proposed, the minimum density would be less than that required in Section 1012, Lot Size and Density, or on-site site development costs (e.g., grading, roads, and water, surface water management and sanitary sewer systems) are at least five percent more per lot or parcel than if the standard is not applied due to one of the following conditions:

...

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.

The applicant provides the following request for exception: “The site is constrained by natural features, particularly the drainage channel and wetlands that traverse the site. If the site were to be developed to fully meet the basic solar standard, the density would fall below the minimum. Due to site constraints, this development is requested as a PUD.” The hearings officer agrees with the applicant. The subdivision design avoids several protected water resources while also creating open space tracts to preserve their vegetated corridors. The exception can be granted. This criteria is met.

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.

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

The applicant has provided the requisite submittal materials to proceed with review of the proposed subdivision.

1105.03 ADDITIONAL SUBMITTAL REQUIREMENTS FOR SUBDIVISIONS, PARTITIONS, AND REPLATS

The applicant has proposed a major subdivision that is being reviewed as a Type III application pursuant to Section 1307.

1105.05 APPROVAL CRITERIA FOR SUBDIVISIONS, PARTITIONS, AND REPLATS

- 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 conditions of approval will ensure compliance with Section 1000 based on the findings above.

- 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 site is located 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.

- 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.

- 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.

- 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 site is not located in a future urban area. Therefore, this section does not apply.

1105.09 APPROVAL PERIOD AND TIME EXTENSION

The applicable standards of this Subsection are outlined in the 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.

The parcels involved with the proposed subdivision are not all larger than 80 acres. Therefore, a final plat is required. This land use permit decision approves a preliminary plat. The standards for finalization through a final plat are outlined in the Conditions of Approval.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0067-23-SL (Odyssey Hills) should be

approved, because the application does or can comply with applicable standards of the Clackamas County ZDO, provided it is subject to conditions that ensure timely compliance in fact with the ZDO and relevant Comprehensive Plan Policies addressed herein or incorporated by reference in the Staff Report.

E. DECISION

1. Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves Z0067-23-SL (Odyssey Hills) subject to the following conditions:

CONDITIONS OF APPROVAL

1. Conditions for Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management & Erosion Control

B) 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.

C) 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.
- D) Clackamas Water Environmental Services (WES)- Surface Water and Sewer (WES-Planning@clackamas.us, 503-742-4567):
- i. The proposed development is located within the service area of Water Environment Services (WES) and shall be subject to WES Rules and Regulations, and Standards (“WES RR&S”), in accordance with the following adopted ordinances:
 - a) Water Environment Services Rules and Regulations, July 2018, Ordinance No. 03-2018
 - b) Sanitary Sewer Standards, Clackamas County Service District No. 1, July 1, 2013.
 - c) Stormwater Standards, Clackamas County Service District No. 1, July 1, 2013.
 - ii. **Connection Permit Required:** A permit shall be required to connect to the District system, including, but not limited to a Service Connection, pipes, pollution reduction manholes, and detention facilities, whether constructed or natural. Before connecting to the District system, a permit authorizing such connection shall first be secured in writing from the District and all applicable fees paid.
 - iii. **Plat Approval:** The Applicant shall submit a preliminary plat to the local planning authority, who will coordinate plat review with the District. Prior to WES signing off on the plat approval, any sanitary or storm systems required by WES Standards shall be substantially complete, as determined by WES, or the Applicant shall obtain a performance surety for all proposed sanitary and stormwater improvements on the approved plan. Substantial completion requires WES review of asbuilt drawings and system inspections. See Appendix A for Plat Review and Approval criteria
 - iv. Public Easements:
 - a) Existing Surface Water, Storm Drainage, and Sanitary Sewer Easements located on the site and granted to WES/CCSD#1 are permanent and not

extinguishable. No development shall encumber the use or access to these easements by WES.

- b) All new Surface Water, Storm Drainage, and Sanitary Sewer Easements shall be reviewed and approved prior to final Plan approval. All easements shall be granted to “Water Environment Services” and shall be recorded via plat map or deed instrument.
 - c) Public easements shall have a minimum width of 15-feet. The District has the right to require additional width at the sole discretion of the District. Easements that combine both mainline sanitary sewers and storm
- v. Use of Public Sanitary Sewers: Before connecting to the public sewerage system, a permit authorizing such connection shall first be secured in writing from the District and fees paid. 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 or city may request permission, at owner’s expense, to connect said building directly to the public sanitary sewer in accordance with the provisions of these Rules and Regulations.
- vi. Development Policy:
- a) All buildings with sewer drains within the boundaries of the proposed development shall be connected to the Public Sanitary Sewer System as part of a plan approved by the District.
 - b) A separate and independent service connection and building sewer shall be provided by the owner at their expense for each tax lot or lot of record.
 - c) To provide each lot with a separate point of connection to the public sanitary sewer system, the developer shall extend public sanitary sewer within the proposed development in accordance with WES Rules, Regulations, and Standards.
- vii. **Sewer Extension Permit:**
- a) 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. An Extension Permit is required to construct or reconstruct any Public Sanitary Sewer appurtenances which are owned by, or intended to be conveyed to, the District. All other sanitary sewer piping not intended to be conveyed to the District shall be permitted by the Local Plumbing Authority.

- b) The Developer's Engineer shall submit a signed Sanitary Sewer Engineering Agreement which outlines the responsibilities of the Developer and Developer's Engineer, with regard to surveying, costing, design, inspection, testing, certification, and as-built requirements of the District for acceptance of the proposed Sewer Extension Permit project.

viii. Service Connections:

- a) Each residential single-family lot shall be served by a single 4-inch diameter Service Connection. The diameter of the Service Connection for lots other than residential single family shall be served by a minimum 4-inch diameter pipe, or large if deemed necessary by Oregon Plumbing Specialty Code or permitted at the sole discretion of the District.
- 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-in fee shall apply.
- c) 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.

ix. Stormwater Standard Applicability: 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.

x. Stormwater Minimum Requirements:

- a) Upon land use approval, the Applicant shall submit civil site plans, a stormwater report, and supporting documentation to WES as specified in these standards for plan review and approval. The Applicant shall demonstrate the stormwater management facilities (SMF) meet the technical standards found in the Stormwater Standards, including sizing methods and calculations.
- 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.

- xi. **Stormwater Management Performance Standards:** Projects subject to stormwater review shall provide SMFs that meet District water quality and flow control performance standards:
 - a) **Water Quality Standard:** Capture and treat the first 1-inch of storm runoff from a 24-hour storm event using either vegetation or a Basic Treatment proprietary device.
 - b) **Infiltration Standard:** Capture and retain the first ½ inch of runoff in a 24-hour period through an approved infiltration system.
 - c) **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.

- xii. **Infiltration:** The Applicant shall conduct infiltration testing and establish a design infiltration rate. SMFs shall be designed with an infiltration component, unless otherwise stipulated by the design professional. If the infiltration standards cannot be met, the project engineer shall submit a design modification request with an equivalent alternative design that can accomplish the same design intent as these standards. Retention options in lieu of the infiltration standard include:
 - a) **BMP Tool:** WES, in cooperation with other local jurisdictions, has developed a BMP Sizing Tool. The tool sizes facilities so 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.
 - b) **Engineer’s Model:** The project engineer can develop and submit a continuous rainfall runoff model simulation, so 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 the continuous model simulation.
 - c) **Flow Control and Retention Standard:** Meet the Detention/Flow Control Standard and retain the first ½" of runoff in a 24-hour period onsite within an approved facility, as determined by WES. The infiltration/retention storage volume within a vegetative facility must not exceed 6-inches in height above the vegetation.

- xiii. **Points of Discharge:** 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.

- xiv. **Upstream Drainage Areas:** 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.

- xv. **Downstream Analysis:** A 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.
- xvi. **Emergency Overflow Pathway:** For all projects with SMFs, a 100-year overland emergency overflow pathway shall be identified and/or designed that allows runoff from large storm events to discharge without risk of injury or property damage.
- xvii. **Operations and Maintenance Plans:** An O&M Plan shall be required for all permanent SMFs and recorded with the plat. The O&M Plan and associated agreements, covenants, and easements shall be reviewed prior to District approval of the SWM Plan.
- xviii. **Erosion Prevention and Sediment Control Permits:** 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.
- xix. **NPDES 1200-CN and 1200-C Permit:** 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.
- xx. **Vegetated Buffer Requirements:** Undisturbed vegetated buffers shall be required for all new developments and redevelopments that are bounded by or contain water resources, which include perennial and intermittent streams and wetlands.

E) Sunrise Water Authority (SWA)

- i. Applicant shall comply with all public drinking water standards set forth by SWA.
2. Conditions for Roads & Connectivity (Engineering@clackamas.us):
- A) **Development Engineering Conditions:**
- i. **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.
 - ii. **Prior to final 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.
 - iii. The applicant shall dedicate 10 feet of additional right-of-way and verify that there is a minimum 30-foot wide, one half right-of-way width along the entire site frontage of SE 92nd Avenue. The right-of-way centerline and half-width shall be verified by a professional survey to the satisfaction of DTD Engineering and Survey Departments.
 - iv. The applicant shall grant an 8-foot wide public easement for signs, slope and public utilities along the entire SE 92nd Avenue and 96th Avenue right-of-way frontage.
 - v. Prior to final plat approval, the applicant shall design and construct improvements along the entire site frontage of SE 92nd Avenue to collector roadway standards, consistent with Standard Drawing C130. These improvements shall consist of the following:
 - a) Up to a minimum 18-foot wide one half street improvement shall be constructed along the entire site frontage of SE 92nd Avenue. The structural section shall comply with Standard Drawing C100 for a collector roadway.

- b) The half street improvement design shall include cross sections every 25 feet per Roadway Standards Section 250.7.5. The design shall demonstrate that the new curb line and cross slope to the existing centerline allow for construction of a curb on the opposite side of the road with cross slopes that meet minimum standards.
 - c) The intersection of SE Odyssey Avenue with SE 92nd Avenue shall be constructed at a 90 degree angle, per Section 250.8.2 and 250.8.4 of the Roadway Standards. A minimum 20-foot long landing shall be constructed with an average grade of no more than 5 percent, per Roadway Standards Section 257.3.
 - d) Tapers shall be provided beyond the site frontage, per Section 250.6.4 of the Clackamas County Roadway Standards.
 - e) A 5-foot wide unobstructed sidewalk, constructed per Standard Drawing S960.
 - f) A minimum 5-foot wide landscape strip shall be provided between the sidewalk and curb. Street trees and groundcover shall be provided within the landscape strip along the entire site frontage.
 - g) Concrete driveway approach shall be constructed, per Standard Drawing D675, and shall provide ADA accessibility along the frontage of SE 92nd Avenue.
 - h) A concrete curb ramp shall be constructed at the intersection of the site sidewalk with SE 92nd Avenue, constructed per Oregon Standard Drawings, Series RD900.
 - i) Provide a street name sign and stop sign at the intersection of the SE Odyssey Avenue.
 - j) Drainage facilities in conformance with Water Environment Services requirements and *Clackamas County Roadway Standards* Chapter 4.
- vi. Prior to final plat approval, the applicant shall design and construct improvements along the entire site frontage of SE 96th Avenue to local roadway standards, consistent with Standard Drawing C110. These improvements shall consist of the following:
- a) A minimum 27 foot wide, one half 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.

- b) Up to a minimum 16-foot wide one half street improvement shall be constructed along the entire site frontage of SE 96th Avenue. The structural section shall comply with Standard Drawing C100 for a local roadway.
 - c) Standard curb, or curb and gutter if curblin slope is less than one percent, constructed per Standard Drawing S100/S150
 - d) A 5-foot wide unobstructed sidewalk, constructed per Standard Drawing S960.
 - e) 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.
 - f) A concrete curb ramp shall be constructed at the intersection of the private road, SE Odyssey Avenue with SE 92nd Avenue, per Oregon Standard Drawings, Series RD900.
 - g) Drainage facilities in conformance with Water Environment Services requirements and *Clackamas County Roadway Standards* Chapter 4.
- vii. The applicant shall design and construct improvements for the new private roadway extending from SE 92nd Avenue, serving proposed lots 1-19, and Tax Lots 12E28DC01800, 01900, 02000, 02100, and 02400, which will consist of:
- a) A minimum paved width of 20 feet shall be provided, with a street section no less than Standard Drawing R100. A minimum paved width of 26 feet shall be provided adjacent to fire hydrants for a minimum length of 40 feet.
 - b) Standard curb, or curb and gutter if curblin slope is less than one percent, or mountable curb per Drawing S180.
 - c) A 5-foot wide unobstructed curb-tight sidewalk shall be construct on a minimum of one side of the private roads within the plat. The sidewalk shall be included in a public pedestrian and bicycle easement extending from SE 92nd Avenue to SE 96th Avenue, within Tracts "G" and "E". The pedestrian pathway within Tract "E" shall be a minimum of 8 feet in width, shall not exceed 15 percent slope, and shall be located no closer than 2 feet from a property line.
 - d) Curb ramps shall be provided at or near the end of sidewalk where a crossing is needed, constructed per ODOT Standard Drawings.

- e) 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.
- f) The maximum road grade shall be 12 percent, unless approved by the fire marshal and the Engineering Division.
- g) The roadway design shall include horizontal curves consistent with Section 250.6.3 of the Roadway Standards.
- h) Concrete driveway approaches for each lot where access is taken from the private road, per Standard Drawing D600
- i) Drainage facilities in compliance with Water Environment Services Rules and Regulations, and Clackamas County Roadway Standards Chapter 4.
- j) A cul-de-sac shall be constructed at the end of the private road, per Drawing C300, with a minimum radius of 48 feet, per fire district standards.
- k) 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.
- l) Where the private road is less than 26 feet in width, there shall be no parking on both sides of the, and Road shall be signed and/or striped "FIRE LANE NO PARKING". 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.
- m) Provide a stop sign and street name sign at the intersection of the private road and SE 92nd Avenue.
- n) A road maintenance agreement for the shared private road implementing ORS 105.170 - 105.185 must be recorded with the plat.
- o) 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.

- p) Close the existing SE 92nd Avenue/SE 92nd Place intersection and grant an access easement over the proposed on-site private road to provide access to the four properties north of the site that are currently served by SE 92nd Place.

viii. Primary Inspector:

- a) The applicant shall enter into a Developer/Engineer Agreement for primary inspection services per Section 180 of the Roadway Standards. This form will be provided to the applicant and shall be signed and returned to County Plans Reviewer.
 - b) Prior to final plat, the applicant shall provide a Certificate of Compliance signed by the Engineer of Record stating all materials and improvements have been installed per approved plans and manufacture's specifications.
- ix. 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.
 - x. 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.
 - xi. 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 22
- ii. Minimum density for the proposed subdivision equals 15

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 Feb 13, 2023 and Resubmitted Feb. 24, 2024. 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
- 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-10 Zoning District, as outlined in Section 315 of this Ordinance.
 - a) **Advisory:** Planned Unit Developments may be subject to modified dimensional and development standards where indicated in ZDO Section 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) Accessways are permitted within open space tracts.
 - b) Accessory uses are permitted subject to ZDO Section 1013.02
- iii. The proposed subdivision shall comply with the applicable provisions of Section 1000 of this Ordinance, *Development Standards*, as outlined above.
- iv. **Advisory:** Development shall comply with geotechnical analysis prepared by Rapid Soils Solutions and dated July 5, 2023.
- v. A nonprofit incorporated homeowners association or an acceptable alternative is 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 as follows:
 - c) 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.

- d) Membership in the homeowners association shall be mandatory for each lot or parcel owner.
 - e) The homeowners association shall be incorporated prior to recording of the final plat.
 - f) 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.
 - g) **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.

DATED this 23rd day of May 2024.



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

APPEAL RIGHTS

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