

BEFORE THE LAND USE HEARINGS OFFICER  
CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director Decision Approving a Principal River Conservation Area Review Related to a Proposal for a Single-Family Residential Structure on Property Located at 68867 E Manape Dr., Welches OR, 97067.

Case File No: Z0064-22-R  
(Appeal of PRCA Approval by  
Planning Director)

**A. SUMMARY**

1. The applicant is Mike Montgomery. The owner of the subject property is Vince Cortese. The site address for the subject property is 68867 E Manape Dr., Welches, OR 97067, within Clackamas County. The legal description for the subject property is T3S, R7E, Section 09CA, Tax Lot 01900. The Comprehensive Plan Designation for the subject property is RR-Recreational Residential. The subject property is not located inside an urban growth boundary. This application was deemed complete on March 30, 2022. The 150-day timeline for final action on the application pursuant to ORS 215.427(1) was extended by three additional weeks with the consent of the applicant to September 17, 2022.
2. The applicant is proposing construction of a new single-family residence subject to a Principal River Conservation Area (PRCA) Review.<sup>1</sup> The proposed house will be setback approximately 128 ft. from the edge of the river and will be a maximum of 33 ft. high. There is no public access or recreation at the site and the house design is similar to other houses in the area both in height and square footage.
3. The County's Planning Director<sup>2</sup> reviewed the application, approving it by written decision issued on June 22, 2022, subject to a number of conditions of approval. On July 5, 2022, Dennis Tyka, and Janele and Mike McAvoy<sup>3</sup> submitted a written appeal of this decision. In their appeal appellants provide the following reason(s): "Setback requirement for a structure and the preservation of the vegetation buffer area, floodplain concerns, etc."
4. On August 4, 2022, Hearings Officer Carl Cox (the "Hearings Officer") conducted a public hearing to receive testimony and evidence about this appeal challenging the County Planning Director's approval of this application for a PRCA Review permit related to land use approval to develop the subject property with a single-family residence. County staff recommended approval of the application subject to conditions, consistent with the approval by the County Planning Director. The applicant does not dispute the proposed conditions. Appellants

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<sup>1</sup> Per Zoning and Development Ordinance (ZDO) Section 704, *River and Stream Conservation Area (RSCA)*, tree cutting, grading, and development can only occur within a specified distance of principal rivers of the County, including the Salmon River. Determination of whether any tree cutting, grading, or development is allowed within the buffer, and of the conditions that will apply to an approval, requires a Principal River Conservation Area Review permit.

<sup>2</sup> ZDO 1307.3(B) provides that the Planning Director includes "Any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]." County Sr. Planner Melissa Ahrens acted in this capacity.

<sup>3</sup> Janele McAvoy signed the appeal form and appeared at the hearing. Mike McAvoy's name appears on the appeal form, but Mike McAvoy did not sign the appeal form or appear at the hearing.

provided witness testimony, submitted exhibits including photos, written materials, and arguments, and oppose the application and proposed development.

5. Prior to ending the public hearing and closing the record, the Hearings Officer asked whether any of the parties or members of the audience wanted an opportunity to provide additional evidence, arguments, or testimony. At the request of the parties, the Hearings Officer agreed to hold the record open for all parties until 4:00 pm on August 11, 2022 for any party to submit additional written evidence, argument, or testimony, and until 4:00 pm on August 18, 2022 for any participant to respond to new evidence submitted during the prior open record period, with the applicant agreeing to toll the clock for two weeks to allow time for this exchange. On August 18, 2022, the County informed the Hearings Officer that it had not forwarded the additional materials submitted by the appellants to the applicant, and the applicant was asking both to review these materials and to have an additional week to respond, agreeing to toll the clock for an additional week to allow for time to submit a responsive written statement. The Hearings Officer considered the request as fair (noting also that the applicant had the right to a third one-week open-record period to have a “last word” following a public hearing) and agreed to keep the record open for one additional week as requested, closing the record at 4:00 pm on August 25, 2022.

**B. HEARING, RECORD HIGHLIGHTS, AND POST-HEARING SUBMITTALS**

1. The Hearings Officer received testimony and evidence at the August 4, 2022 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the coronavirus, with the County providing an explanation for virtual participation. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest.<sup>4</sup> The Hearings Officer stated that the only relevant criteria were those identified in the County’s staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. Notice of the land use application was sent to property owners within 500 feet, Community Planning Organizations (CPO)<sup>5</sup>, and interested citizens and agencies. Several Public comments were received by the County.

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<sup>4</sup> Appellant Dennis Tylka suggested I may have an “adversarial relationship” with him, implying this was due to two prior hearings I conducted in which he was a party. I noted that these two hearings involved citations issued to him concerning roadway impediment citations, that I dismissed the first citation in the first hearing and upheld the second citation in the second hearing. I noted that I have no personal interest or bias in the matter and conducting the two prior hearings concerning roadway impediment citations did not create a conflict of interest. I am aware that the roadway impediment citations issued by the County were related to Mr. Tylka’s efforts to prevent the development that is the subject of this application. However, in my role as hearings officer in these matters I did not represent a party and impartially applied the County code. I am acting in the same impartial capacity in this matter. The applicant was also aware of these earlier proceedings concerning citations issued to Mr. Tylka and the underlying basis.

<sup>5</sup> The Mt. Hood Corridor CPO is currently inactive.

### ***Public Comments Prior to Hearing***

3. Dennis Tylka owns several property lots along the river frontage adjacent to the subject property and resides on Manape Drive a short distance from the proposal site. Mr. Tylka submitted an April 26, 2022 email with comments concerning this PRCA permit #Z0064-22 application, comments he submitted concerning the subject property itself, and copies of forwarded email chains on the subject. This email included attachments of pictures showing areas Mr. Tylka describes as within the flood channel between Manape Drive and the Salmon River. The photos show the river, and what appears nearby bank areas with water shown in flood channels. Mr. Tylka forwarded other email correspondence stating that he located the iron rod property pin for the corners between lot 7 and 8 ***[lot 8 is also tax lot 1900 and is the applicant's proposed home site]***, asserting that the pin furthest away from Manape Drive ***[i.e. on the river side]*** is within a side channel by 23 to 30 feet. Mr. Tylka provides additional discussion of his observations of the river's floodplain along other properties.
4. In his April 26, 2022 email comments, Mr. Tylka also submitted copies of email correspondence with County Senior Planner Steve Hanschka<sup>6</sup> concerning the site. Mr. Hanschka states that tax lot 1900 is not in the floodplain, noting that development would require a PRCA application subject to ZDO 704. Mr. Hanschka answers several other questions by Mr. Tylka, noting that other properties are partially in the floodplain but could potentially be developed subject to ZDO 703's Floodplain Development Permit requirements. Mr. Tylka disagrees, alleging that certain areas are actually within the floodplain, that the applicant is engaged in floodplain filling, that the GIS overlay tax lots map is inaccurate by about 35 feet and can't be relied on for floodplain determinations when the floodplain is adjacent to a tax lot, and contending that such a situation requires an elevation certificate. Mr. Tylka references that there is an updated DOGAMI with a revised map showing that tax lot 1900 is within the floodplain, contending that the corner of tax lot 1900 is 30 feet within the side channel closest to the river. In his April 26, 2022 email comments, Mr. Tylka also forwards complaints he made to County code enforcement concerning a variety of allegations.
5. Mr. Tylka submitted additional written comments on April 26, 2022, asserting that the applicant's site plan does not show all of the other significant natural features, including steep slopes, wetlands, geologic hazards, drainage areas, etc. Mr. Tylka asserts that there "is a floodplain that has been inventoried in FEMA's flood maps on the Manape side of lot 8 that divides his tax lot." Mr. Tylka therefore further asserts that the applicant should be required to obtain a floodplain development permit before construction or development begins. Mr. Tylka makes several comments and assertions concerning grading and tree/vegetation on the site, along the access way created by the applicant, and within the unimproved portion of Manape Drive.
6. In these additional submitted written comments, Mr. Tylka states that: "the ***[proposed]*** home site has the 1<sup>st</sup> flood channel that runs through the back 30 to 40 feet of lot 8 (closest to river). The 2<sup>nd</sup> flood channel runs down Manape Drive dividing ***[Mr. Cortese's]*** lot 8 in Block 1 and his lots 3, 4, and 5 in Block 4 on the other side of Manape, during high water when the flood channel floods it would isolate the home site." Mr. Tylka references a flood map from Mr. Hanschka also referenced in his emails. Mr. Tylka contends that the flood maps Mr.

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<sup>6</sup> County Senior Planner Steve Hanschka is also the County Floodplain Manager.

Hanschka sent “do not show the flood channel on the river side of lot 8 because the GIS maps are incorrect, the GIS maps and the flood maps should be shifted about 35 *[feet]* towards the river.” Mr. Tylka asserts that the GIS maps issue is well known to County staff, and a contour map of lot 8 should be required, referenced to undisturbed ground.

7. Mr. Tylka provides detailed descriptions of his observations of the topography of lot 8 and the native vegetation that was on it, as well as descriptions for lots 3-5. Mr. Tylka states he has lived there for 50 years and has worked to protect the riparian area of the river and adjacent vegetation, tree canopy, and habitat. Mr. Tylka provides discussion of the access drive applicant built, improvement work within the Manape Drive right-of-way (ROW), and points to an alternative building site on lots 3-5. Mr. Tylka recommends requiring a 150 foot setback from the mean high water line per ZDO Section 704.04(A), points to several issues with development at the site, and strongly recommends that the County prohibit all development within the flood channel he describes.
8. Michael and Janele McAvoy own lot 9, immediately adjacent to lot 8, the subject property. On April 19, 2022, the McAvoy's submitted a number of written comments expressing several concerns with this PRCA permit #Z0064-22 application. The McAvoy's describe the clearing of lot 8 of all trees/vegetation, grading the site for construction, installation of a septic tank, work on lots 3-5 including grading and installing a gravel road, and other work without permits, making several allegations of related code violations. Among these issues, the McAvoy's allege the location of the applicant's septic tank is within 50 feet of their own well. Among other alleged violations, the McAvoy's allege tree cutting activity has left large debris piles and has resulted in felling of phone and internet lines along Manape Drive affecting these services.
9. In their April 19, 2022 written comments, the McAvoy's assert that the lot is now bare graded dirt and the applicant should be required to restore the site with native vegetation. They describe lot 8 as a 50' x 100' lot with approximately ½ of the “front” of the property located on higher land above the historical Salmon River riverbed, with the back ½ of the property dropping 10-12 feet. The McAvoy's assert that this back area is actually part of the historical Salmon River floodplain, and is an area “dense with native vegetation and animal life including otter, mink, deer, raccoon, beaver, numerous bird species, native amphibians and periodically floods.” The McAvoy's contend that the minimum setback for the site should be extended to 150 feet per ZDO 704.04 to lessen the impact of development on this sensitive area. Further, the McAvoy's assert that the buildable area of lot 8 is not large enough for the proposed house with required setbacks. The McAvoy's do not support this application and ask that the County deny the application due to the numerous ZDO and code violations and unpermitted development they described.
10. Margaret Pingel is the owner of one lot on Manape Drive, and submitted a written statement concerning this PRCA permit #Z0064-22 application. Ms. Pingel states she has “some questions on what appears as a portion of E. Manape will be a non road? How legally can this be done?” Ms. Pingel expresses concern with E. Manape being a closed road, stating: “The platted road has been installed and blocked and then opened for utility access twice and never restored appropriately because of obstruction by Dennis Tylka and the counties telling my late husband that to “fix” the road it would have to be brought up to standards far exceeding the roads in this area.”

11. Andrew Mulkey, Rural Lands Staff Attorney, submitted written commentary on behalf of 1000 Friends of Oregon for consideration in this matter. Mr. Mulkey asserts that in this decision the Planning Director waived compliance with the riparian set back requirements in Section 704.04. Mr. Mulkey contends such a waiver does not fully implement the County's Goal 5 protections for riparian areas. He cites OAR 660-015-0000(5) requirements for listing riparian corridors as a type of natural resource that must be inventoried and protected, and points to policies for River and Stream Corridors and Principal River Conservation Areas. Mr. Mulkey cites specific Goal 5 implementing language in ZDO 704.04 that implement comprehensive plan policy 3.A.3:

“[the depth of the buffer or filter strip will be dependent on the proposed use or development, width of river or stream, steepness of terrain, type of soil, existing vegetation, and other contributing factors, but will not exceed 150 feet.”

12. Mr. Mulkey notes that the Planning Director waived applying the factors to consider in requiring a buffer greater than 100 feet, up to 150 feet per ZDO 704.04, because of the “clear and objective” standards requirement in ORS 197.307(4). He agrees that the statute requires the County “adopt and apply only clear and objective standards” but contends that the statute does not waive compliance with Goal 5. Mr. Mulkey asserts that by determining a larger setback requirement up to 150 feet cannot be required, the County's decision violates provisions of its comprehensive plan. Mr. Mulkey further contends that the County Planning Director's decision essentially alters its comprehensive plan and does not give effect to provisions of this ZDO, and the Planning Director does not have such authority. He contends that the County's current implementing measures still apply and to the extent they conflict with State law, the County must apply the goals directly.

### ***August 4, 2022 Hearing***

13. At the hearing, County Sr. Planner Melissa Ahrens discussed the staff decision and related exhibits. Ms. Ahrens provided a PowerPoint presentation with relevant background information concerning the application, the County's review, and the County's decision. Ms. Ahrens noted that the applicant is proposing construction of a new two-story single-family residence subject to a Principal River Conservation Area review. The proposed house will be setback approximately 128 ft. from the edge of the river and will be a maximum of 33 ft. high. Ms. Ahrens discussed how the original application was determined incomplete because it lacked a site restoration plan and some related information, but the application was completed and the Planning Director approved the application (subject to conditions of approval) on June 22, 2022. This decision was then appealed by Dennis Tylka, and Janele and Mike McAvoy.
14. Ms. Ahrens shared a slide showing the subject property as lot 8 on Block 1 of Manape Drive, with a street number of 68867. The slide shows that the lot is a 50 ft. x 100 ft. rectangle, with an additional undeveloped area of property between lot 8 and the Salmon River. Ms. Ahrens also shared a slide showing Floodplain Map Detail with a Floodplain Overlay for the subject property. This map is dated July 28, 2022 and was prepared by County Senior Planner Steve Hanschka. ***[The map appears to be a satellite image with an existing home visible across from Manape Drive and an improved portion of Manape Drive also visible in the photo. The map has a scale stating that 1 inch equals 30 feet. The map has an overlay roughly***

*showing property lot lines and the Manape Drive ROW that appears shifted about 10-15 feet south from the satellite image, away from the Salmon River.]* Ms. Ahrens points out that this map shows that none of the development that was proposed by the applicant and approved by the County on lot 8 is within the designated floodplain. Ms. Ahrens discussed the approval and appeal criteria, noting that the application does not propose any landform alteration or development on the subject property or within the ROW rising to the level that would need a Floodplain Development Permit.

15. Ms. Ahrens discussed concerns raised by Mr. Tylka that this section of the Manape Drive ROW cannot function as a road. Ms. Ahrens stated that County staff went to the site for an assessment of the ROW, and agree with Mr. Tylka's assessment that the ROW at this location is forested with an undulating topography that is not necessarily accessible. Ms. Ahrens reported that staff sent an email to the applicant requesting more information about the improvements necessary in the ROW. Ms. Ahrens asserts, however, that this is a separate issue from the PRCA application that is the subject of this appeal. Ms. Ahrens notes that the determination about whether or not the applicant's proposed development will also require a Floodway Development Permit related to these issues in the ROW is a separate issue being worked out outside of this appeal hearing.
16. The Floodplain Overlay slide shared by Ms. Ahrens also shows that a portion of the floodplain lies on parts of lot 7 and lot 6, to the east of lot 8, crosses the designated ROW on a portion of the Manape Drive ROW that is not installed, including a part of this ROW that lies between lot 8 and lots 3, 4, 5 also owned by Mr. Cortese where he plans to install his septic drain field. Ms. Ahrens stated that this portion of the unimproved Manape Drive ROW "dips down" in the approximate vicinity of this connection. Ms. Ahrens reiterates that this issue is not part of this hearing, and that staff are still figuring out whether a Floodway Development Permit will be required. Ms. Ahrens points out that the site itself and the permitted entrance driveway are not in the floodplain and the site also has access from the other side of Manape Drive on the west of the site.
17. Ms. Ahrens noted that the site is within the RR – Recreational Residential Zoning District, subject to ZDO Section 315, which provides that single-family residential homes are allowed as an outright primary use. Therefore, the home site development is allowed per the zoning district. Ms. Ahrens discussed the PRCA review of the application under the County's ZDO, subject to the approval criteria of Section 704.
18. Ms. Ahrens reviewed the list of items in the appeals and raised as concerns in this matter. First, Ms. Ahrens reviewed concerns with setback requirements for the single-family residence, particularly the required minimum 100 ft. setback buffer requirement imposed under the PRCA review. Ms. Ahrens pointed to the Section 704.04 provisions requiring that structures be located a minimum of 100 feet from the mean high water line of a principal river, sharing a slide showing the ZDO 704.04 River and Stream Setbacks for the proposed structure on the site. These provisions include several criteria that may be considered in making a determination to increase this minimum setback up to 150 feet from the mean high water line to lesson the impact of development, considering various factors. Ms. Ahrens discussed how ORS 197.307(4) required application of only clear and objective standards in making such determinations involving needed housing. Ms. Ahrens noted that County Counsel had reviewed the issue of consideration of these factors in making such a

determination, and found that this inquiry was subjective. Therefore, per County Counsel, the Planning Director applied the “clear and objective” standard of imposing a minimum 100 foot buffer. Ms. Ahrens also points out that the actual setback for the house will be 128 feet.

19. Secondly, Ms. Ahrens discussed concerns with preservation of the vegetative buffer. She shared a slide showing the applicant’s site plan showing existing vegetation and development and locations of proposed development or tree-cutting activity. Ms. Ahrens noted that staff required the applicant to submit a restoration plan for any vegetation disturbance within the buffer area, and such vegetation restoration is included in the County’s decision as a condition of approval. Ms. Ahrens also stated that there is no tree removal occurring within the 100 foot buffer area.
20. Thirdly, Ms. Ahrens discussed floodplain concerns, referring again to a staff email sent to the applicant July 13, 2022 requesting more information about improvements necessary to get a section of Manape Drive functioning as an access way to the site. Ms. Ahrens notes that staff were not aware of the topographical differences through that section or the level of improvements that roadway would need. She stated that County engineering staff are also involved with this because they would have to sign off on the accessway and how it interacts with the entrance permit for the main driveway for the home. Ms. Ahrens noted that staff are working separately with the applicant on this issue and had not received a response from the applicant yet. She described some of the information requested, including grading requirements and roadway cross sections so that staff can make a determination whether a floodway development permit will be required. Ms. Ahrens again asserted, however, that this is a separate issue, and not an approval criteria for this PRCA appeal. She noted that there are also several other steps outside this PRCA review, including the entrance permit and building permits, and approval of this PRCA review does not affect requirements for these other permits.
21. Fourth, Ms. Ahrens pointed to written comments submitted by attorney Andrew Mulkey on behalf of 1000 Friends of Oregon. Ms. Ahrens noted that the County has applied the clear and objective standard of a 100 foot setback and asserts that the County has therefore not waived compliance with the setback requirements in Section 704.04.
22. Ms. Ahrens referenced comments by appellants about a retaining wall to address a ledge or cliff or drop-off, noting that this hearing is not reviewing anything related to such development. Further, Ms. Ahrens noted that the County regulates steep slopes at 20%, whereas the topography of this location has 5% to 10% slopes, without identified steep slopes on the Geo Hazard map. Thus, Ms. Ahrens asserts there is no need to require a separate steep slopes application. With respect to vegetation removal at the site, Ms. Ahrens asserts that the County has not approved any vegetation or tree removal outside what is proposed in this application. Ms. Ahrens references a pending code violation case for vegetation clearing associated with this site, but notes this is a separate issue outside this application and appeal hearing. Further, Ms. Ahrens points out that any such vegetation removal would require its own separate restoration plan, outside this hearing. Likewise, Ms. Ahrens points out that the applicant’s septic permit is a separate review process, as is the review process the County is currently undergoing with the applicant to determine the need for a Floodplain Development Permit that may be required for certain other development within the Manape Drive ROW.

23. Ms. Ahrens points again to the Floodplain mapping and diagram by Mr. Hanschka showing that the floodplain is not on this lot. With respect to the Comprehensive Plan arguments made by appellants and by Mr. Mulkey on behalf of 1000 Friends of Oregon, Ms. Ahrens points out that the applicable Comprehensive Plan land use policies do not provide direct legal standards for review. Rather, Ms. Ahrens asserts that the County's ZDO implements these policies. She notes that the ZDO is being amended, but contends that the applicable and objective legal standards are correctly applied here.

### *Appellants*

24. Dennis Tylka is one of the appellants in this matter. He appeared at the hearing and provided testimony and argument in support of this appeal, strongly opposing approval of this application. Mr. Tylka contends that the application should not be approved for several reasons. First, he asserts that the application should not be approved because the site plan is incomplete. In making this argument, Mr. Tylka points to the site plan submitted with the application and contends that it does not include necessary information to illustrate all of the requirements of Section 704. Mr. Tylka asserts that the site plan should identify the location of utilities, wells, and all onsite wastewater treatment facilities (i.e. septic tanks, septic drainfield areas, replacement drainfield areas, etc.) Mr. Tylka again points to the site plan submitted with the application and asserts it fails to display road improvements to Manape Drive to access the home site. Mr. Tylka notes that access is coming in from the west side, but asserts this is not clear in the site plan. Mr. Tylka contends that the plans showed access to the site was via an unlawful "horseshoe driveway" that he submitted an exhibit about.
25. Mr. Tylka contends there is a 12-foot cliff on the back side of lot 8 about 60 feet from the property line with Manape Drive that should be shown on the site plans. He questions how this feature will be addressed, contending that this area is actually within both the setback buffer area for native vegetation and within the river floodplain and the applicant should not be allowed to build a retaining wall to support this cliff or develop in this area. He also asserts that if a retaining wall is required then the application should be denied. Mr. Tylka questions application of Section 704's buffer requirements, and the County's interpretation of the application of the "clear and objective" standard of a 100 foot required minimum buffer, with criteria for a buffer up to 150 feet considered subjective, contending this interpretation fails to implement comprehensive plan policies. Mr. Tylka points to Comprehensive Plan Chapter 3, Policy 3.B.1.2 and its statements and subpolicies concerning managing development in all Principal River Conservation Areas according to certain specified siting performance criteria.
26. Mr. Tylka points to the minimum 100 ft. setback from the river required by the County, and asserted the application is still not clear about the size of the required vegetation barrier because the application doesn't show the distance between the back property line of lot 8 to the river. Mr. Tylka asserts that, without this information, the size of the required vegetation buffer cannot be accurately calculated. He also asserts that the site plan doesn't show any native vegetation. Mr. Tylka contends that the applicant destroyed all of the native vegetation on lot 8 and should be required to restore it in the area between the house and the river, using an inventory of native vegetation and a botanist. He asserts that the original vegetation on lot 8 was the same as found on the adjacent lots. Mr. Tylka further asserts that the subject location is actually within the floodplain, and the applicant's site plan should show elevation



contours, and other significant natural features. Mr. Tylka reports there is about a 12 foot dropoff about 60 feet back on lot 8, leading to a flood channel, with about 30-40 feet of this flood channel on lot 8. He suggests the house will need to be built on stilts in the back to accommodate the terrain, and the County should prohibit such development within the area, preserve the flood channel area, and preserve the native vegetation.

27. Mr. Tylka discusses the floodplain map from County Senior Planner Steve Hanschka that does not show that lot 8 is within the floodplain, supporting the County's conclusion that lot 8 is not within the floodplain. However, Mr. Tylka asserts he told Mr. Hanschka that this floodplain map was off by about 35 feet, as this flood plain map follows exact boundaries of the tax lots and not the more accurate LIDAR maps. Mr. Tylka states that he raised this issue concerning DOGAMI and was told that the LIDAR maps are correct but the County's overlay GIS maps can be off by up to 50 feet and must be verified by a field visit and survey. Mr. Tylka states he submitted a GIS photo of a house on a lot adjacent to lot 8 as proof of this, as the photo shows the house in the middle of Manape Drive. Mr. Tylka further reports that he located the survey markers and took photos showing that the house is not actually within the ROW. However, he asserts that photos of the property survey markers for lot 8 show the flood channels he described, and show the drop-offs or cliffs he described. Mr. Tylka contends that without accurate mapping of these floodplains it is impossible to determine buildable areas and vegetative buffers.
28. Mr. Tylka further contends that the applicant's site plan is inadequate because it doesn't show accurate locations for all utilities, asserting that the septic tank the applicant installed is too close to a neighbor's well. Mr. Tylka reiterates arguments he made in his prehearing submission concerning why the County should not require a minimum 100 foot setback buffer, but instead should seek to apply comprehensive goal plans and policies directly and require a 150 foot setback buffer. Mr. Tylka points to comprehensive goals and policies intended to preserve rivers and stream corridors, essentially asserting that by not considering a buffer larger than the minimum 100 foot setback, the County violates these policies.
29. Janelle McAvoy owns lot 9, adjacent to the subject site. Ms. McAvoy testified that the applicant has placed a septic tank on lot 8 that is within 50 feet of her well, and wants it moved before the applicant proceeds with additional work on the septic system for the site. Ms. McAvoy provided testimony asserting that the applicant has cleared lot 8 of trees and vegetation "right up to property lines." Ms. McAvoy reports that she has had two of her own trees die and fall down, asserting this resulted from damage to tree roots caused by applicant. Ms. McAvoy points to large debris piles in the adjacent undeveloped ROW area, stating that these piles have been there since tree clearing in April 2021, have still not been removed, and create a fire hazard concern. Ms. McAvoy points out that, with the 20 ft. front property setback and 10 ft. side setbacks, there isn't much buildable area left before the site drops off the "cliff" in the back. ***[Per the applicant, the buildable area of the site is roughly 61 feet deep by 30 feet wide.]***

### ***Applicant***

30. Mike Montgomery is the applicant. Mr. Montgomery appeared for the hearing and provided testimony and advocacy in support of approving this application, and answered several questions about the application. Mr. Montgomery noted at the outset of his testimony that he

is not the owner of the subject property, but he was hired by the owner to develop plans and negotiate the permit process to build Mr. Cortese's home on the site. Mr. Montgomery referenced the debris piles that Mr. Tylka and Ms. McAvoy described, stating he can't speak to those things because he wasn't involved, but asserts that Mr. Cortese will take care of these things. Mr. Montgomery testified that Mr. Cortese is building the home because of the natural setting, contending that Mr. Cortese also wants to preserve the natural beauty of the setting. Mr. Montgomery also addressed the issue raised by Ms. McAvoy concerning placement of a septic tank, asserting that the septic tank and associated septic system and drain field are awaiting approval and will meet setback requirements when completed.

31. Mr. Montgomery testified that he has been to the site and contends that the trees and vegetation that were taken out on the site are all within the building footprint for the proposed house. Mr. Montgomery also references the accessway and driveway for the house and the permits that were obtained for this work. With respect to the additional detail for the site maps Mr. Tylka contends should be provided, Mr. Montgomery notes that such topographical maps showing the "cliff" and other features referenced by Mr. Tylka weren't required in this application process. He notes that the application shows the proposal meets setback requirements and asserts the proposal meets the County's planning and zoning requirements.
32. Mr. Montgomery references the neighbor dispute between Mr. Cortese and Mr. Tylka, pointing to efforts by Mr. Tylka to block access to the site through Manape Drive, and contends that Mr. Tylka's efforts are directed at preventing a new neighbor moving into the area.
33. Mr. Montgomery addressed setback calculations for the site, stating that the site plan shows the driveway with the entrance permit, shows the house setback 20 feet from the front property line, shows the house setback 10 feet from both sides, and there is a setback of 128 feet from the rear. ***[The house is shown on the application as 30 feet wide by 41 feet 6 inches deep, with a 10 foot deck off the back. Ms. Ahrens corroborated this testimony at the hearing, confirming that the site plan was included in the submitted application materials. Ms. Ahrens further stated that County staff double-checked the setback requirements as part of the decision. She noted that property depth on the tax map for lot 8 is 100 feet, but the top of the bank of the river is a different line shown on the plan than the edge of the tax lot. Ms. Ahrens states that all of this is lined out and shown on the site plan.]*** Mr. Montgomery asserts that the site plan submitted with the application shows that the distance from the back property line of lot 8 is almost 90 feet from the river's edge.
34. Edgar Diaz is working with the applicant to develop the subject property. Mr. Diaz testified that the proposed house does not go below the escarpment near the rear of lot 8 that Mr. Tylka refers to as a "cliff." Mr. Diaz pointed to the flat gravel access the applicant constructed and points out that the applicant obtained an entry permit. Mr. Diaz referenced the potential requirement for a Floodplain Development Permit and that this is being addressed. Mr. Diaz pointed to some of the issues raised by Mr. Tylka and notes that, if there is a code violation, then Mr. Tylka can make a complaint. With respect to the septic tank placed on lot 8, Mr. Diaz asserts that this tank is not yet part of an operating septic system and will be moved and relocated in accordance with septic permit requirements. Mr. Diaz testified that the applicant has an approved septic permit and a location for the septic tank that is 60 feet from Ms. McAvoy's well. Mr. Diaz testified that the applicant is using a licensed surveyor to assist in

this process, who marked out the 100 foot setback and also marked out 50 foot setbacks for the neighbors' wells.

35. Mr. Diaz asserts that there is no development within the 100 foot setback area, so there is no reason to inventory the vegetation there. He points to the re-vegetation plan, asserting these efforts will improve habitat and also stating that the applicant will extend this effort around the other properties. With respect to the debris, Mr. Diaz contends that it is not fill, but is woody material that has not yet been removed. He points to the fire department cautioning the applicant concerning the fire dangers of using heavy equipment to remove this woody debris, and also to efforts by Mr. Tylka to block the applicant's access through Manape Drive. ***[Mr. Montgomery asserts that he is going to do everything he can to ease the neighbor dispute situation and get the house built.]*** Mr. Diaz asserts that the application should be approved, pointing to the decision of the County's Planning Director that the application meets all standards for approval.

### C. FINDINGS AND DISCUSSION

This case involves the appeal of a Planning Director decision approving an application for construction of a single family residence subject to a Principal River Conservation Area Review (PRCA). The application was initially processed by the County under ZDO Section 1307 as a land use permit under the required Type II procedure for a PRCA review whereby the Planning Director is the initial decision review authority, and the Hearings Officer is the appeal review authority.<sup>7</sup> The Planning Director<sup>8</sup> approved the application and this appeal followed.

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. The appeal discussed below is reviewed subject to the appeal procedures contained in ZDO 1307.13. These procedures provide for de novo review of the application whereby all issues of law and fact are heard anew, and no issue of law or fact decided by the lower-level review authority is binding on the parties in the hearing. The record of the initial proceedings shall, however, be made a part of the record of the appeal. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Sections 202, 704, 1001 and 1307, and the County's Comprehensive Plan. The Planning Division has reviewed these sections of the ZDO in conjunction with this proposal and makes the following proposed findings, conclusions, and related conditions of approval reviewed below. The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the recommended decision.

### SECTION I: CONDITIONS OF APPROVAL:

The conditions listed are proposed by staff as necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code

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<sup>7</sup> See Table 1307-1: Land Use Permits by Procedure Type.

<sup>8</sup> ZDO 1307.3(B) provides that the Planning Director includes "Any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]." County Sr. Planner Melissa Ahrens acted in this capacity.

citation for that criterion follows in parentheses. *The Hearings Officer reviewed, adopted, and/or modified (as denoted by boldface type in italics) each of these proposed Conditions of Approval:*

1. **General Conditions:**

- A) Approval of this land use permit is based on the submitted written narrative and plan(s) dated February 8, 2022 and 3/29/22. No work shall occur under this permit other than which is 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.
- B) The approval of this Principal River Conservation Area (PRCA) permit is valid for four (4) years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
  - i. "Implemented" means all major development permits shall be obtained and maintained, or if no major development permits are required to complete the development contemplated by the approved PRCA permit, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained.
    - a) A "major development permit" is:
      - a. A building or manufactured dwelling placement permit for a new primary structure that was part of the PRCA permit approval; or
      - b. A permit issued by the County Engineering Division for parking lot or road improvements that were part of the PRCA permit approval.
    - ii. If the approval of this PRCA permit is not implemented within the initial approval period established by Subsection 704.09(C), a two-year time extension may be approved pursuant to Section 1310.

2. **Standards for Buffers / Setbacks from Rivers & Streams**

Pursuant to Subsection 704.04, the proposed residence shall be located not less than 100 feet from the mean high water line of the Salmon River. At least one (1) clearly visible and readable marker shall be placed at the 100-foot setback line from the mean high water line, outside of the construction area, that shall remain until construction is complete.

3. **General Development Standards:**

Maximum Height for Residential Structures and Residential Accessory Structures Visible from a Principal River: Pursuant to Subsection 704.06(A), the maximum height of the proposed residence shall be 35 feet.

4. **Vegetation Preservation & Restoration Standards for River & Stream Buffers / Setbacks:**

- A) Native Vegetation Preservation: Pursuant to Subsection 704.07(A), a minimum of 75 percent of the buffer / setback area, which is 100 feet from the mean high water line of the Salmon, shall be preserved with native vegetation.
- B) Tree Cutting & Grading: Pursuant to Subsection 704.07(B), tree cutting and grading shall be prohibited within the buffer / setback, except as follows:
- i. Tree cutting and grading is permitted in conjunction with the proposed residence that is being permitted through Subsections 704, to the extent necessary to accommodate the proposed residence. No tree removal is proposed within the 100' buffer area.
  - ii. Disturbed areas that are outside the footprint of structures and other improvements shall be restored with native vegetation, as illustrated by the submitted Stream Buffer Restoration Plan.
  - iii. The required vegetation shall be planted as soon as it is reasonably feasible within the parameters of on-site construction activities and seasonal requirements for the plantings.

## **SECTION II: FINDINGS (Z0064-22-R Appeal):**

The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision. *These findings and conclusions were reviewed, modified, and/or adopted by the Hearings Officer, with comments denoted by boldface type in italics. There are three issues raised in this appeal that are reviewed in additional detail within the relevant sections discussed below. The three issues raised and reviewed in this appeal are: (1) whether the subject property is located within the County's regulatory floodplain; (2) whether the application complies with the County's setback requirements for the proposed single-family residential structure; and, (3) whether the proposal complies with PRCA requirements for the preservation of the vegetative buffer. The appellants make several other assertions, such as damage to trees, improper septic tank placement, vegetation clearing and grading without permits, and issues concerning the adjacent ROW of Manape Drive, among other things, that are outside the scope of this hearing.*

### **1. PROJECT OVERVIEW:**

*Construction of a new single family residence on tax lot T3S R7E Section 09CA Tax Lot 01900, which is made up of two platted lots. The platted lots are treated as a Zoning Lot per the definition in Section 202 of the County's Zoning and Development Ordinance. The septic system would be installed on one of the platted lots and connected to the other platted lot that makes up the tax lot but is separated by a road. County septic staff have approved the septic plan for development of the property and have no comments on the application. The proposed house will be setback approximately 128 ft. from the edge of the river and will be a maximum of 33 ft. high. Since the subject application is for a residence the County is legally required to apply only clear and objective standards so the 150 ft. buffer cannot be required. Instead, only the 100 ft. minimum buffer can be applied to new residential construction, which the application is consistent with. There is no public access or recreation available at the site and the house design is similar to other houses in the area both in height and square footage.*

*There have been numerous comment letters/emails submitted on the subject application, the majority from a neighbor named Dennis Tylka. One of the main issues raised in the comment letters is that the subject property is within the regulatory floodplain. County Floodplain Manager has confirmed that the subject property is in fact not located in the floodplain and no floodplain development permit is required for construction of the subject residence. The other primary issue raised in the comment letters is unpermitted vegetation removal. County staff asked for a stream buffer restoration plan per the requirements of ZDO Section 704.08 in the incomplete letter for the application and the applicant submitted a restoration plan meeting the submittal requirements for the subject application. The comment letters raised other issues; however, they were not related to applicable approval criteria for the subject application.*

## **2. FLOODPLAIN:**

Appellants assert that the subject property (lot 8) is located within the County's regulatory floodplain area. In approving this application, Ms. Ahrens (acting in the capacity of Planning Director) determined that the subject property lies outside of the floodplain. In her presentation, Ms. Ahrens shared Floodplain Map Detail prepared by Steve Hanschka (the County's Floodplain Manager) dated July 28, 2022, showing Floodplain Map Detail for the subject lot that depicts the locations of the Salmon River and the actual associated floodplain area. This map displays overlays that superimpose a rendering of the Salmon River and its floodplain area showing lot lines for the subject property and several other properties in the vicinity over a satellite image. I note that the overlay is not perfectly situated on the satellite image, with the lot lines not exactly matching the underlying development shown in the satellite image. However, I also note that the image is slightly shifted to the south by perhaps 15 feet, and shifting the image north to correct this would not change the overlay. In other words, the overlay shows the river and associated floodplain, and moving the overlay slightly does not change the overlay: the proposed development on the site is not within the floodplain. It appears, however, that a portion of the septic system shown on this map crossing the unimproved ROW of Manape Drive will pass through a flood channel. This is consistent with Mr. Tylka's assertion that there "is a floodplain that has been inventoried in FEMA's flood maps on the Manape side of lot 8 that divides his tax lot." Addressing this issue may require a floodplain development permit; however, this area is not within the proposal site, and the affected septic system is not part of the PRCA application being reviewed at this hearing.

Mr. Tylka disagrees with Mr. Hanschka's map, and relates several efforts he has made to effect changes in the floodplain mapping of this area. Mr. Tylka, however, provides only his own accounts of conversations, his own personal observations, and his repeated assertions. I find the materials submitted by the County, including the Floodplain Overlay Map prepared by Mr. Hanschka, the County's Floodplain Manager, and his conclusion that the site is not within the floodplain, persuasive. I also find the interpretation by Ms. Ahrens that the site is not within the floodplain, persuasive. Based upon the above discussion and this substantial and persuasive evidence and testimony, I conclude that the subject property is not within the County's regulatory floodplain area, and it is the PRCA review discussed below that applies.

## **3. PRINCIPAL RIVER CONSERVATION AREA (PRCA) FINDINGS:**

## 704.02 DEFINITIONS

*The criteria, requirements, standards and text of ZDO Section 704 are subject to the definitions outlined in Subsection 704.02.*

## 704.03 AREA OF APPLICATION

- A. Section 704 applies to land that is generally within a quarter mile of the mean high water line of the Clackamas, Sandy/Salmon, Molalla/Pudding, Roaring, Tualatin, and Zig Zag Rivers. These lands are classified as Principal River Conservation Areas and are identified on Comprehensive Plan Maps III-1a, *Principal River Conservation Area Clackamas River Design Plan*, III-1b, *Principal River Conservation Area Sandy-Salmon River Design Plan*, III-1c, *Principal River Conservation Area Molalla River Design Plan*, III-1d, *Principal River Conservation Area Tualatin River Design Plan*, and III-2, *Scenic & Distinctive Resource Areas*. The location of these rivers may vary from these maps, if more specific information is provided.
- E. The provisions of Section 704 are in addition to those requirements of the State Scenic Waterways Act, Omnibus Oregon Wild and Scenic Rivers Act of 1988, and the Federal Wild and Scenic Rivers Act of 1968. In those areas so designated, the requirements of the County shall be administered subject to the application requirements of Subsection 704.08 and prevail when they are more restrictive than state and federal standards.

*The subject property is adjacent to the Salmon River and Section 704 would be applicable to the proposed residential development. **The Hearings Officer concurs in this finding.***

- F. Notwithstanding Subsections 704.03(A) through (E), Section 704 does not apply to land that is inside the Metropolitan Service District Boundary (MSDB) or the Portland Metropolitan Urban Growth Boundary (UGB), nor does it apply to Oregon Department of Fish and Wildlife, or other state or federally approved, fish enhancement projects.

*The subject land is not located inside the MSDB or the Portland Metropolitan UGB. The proposed project is not a state or federally approved fish enhancement projects. Therefore, Section 704 applies. **The Hearings Officer concurs in this finding.***

## 704.04 RIVER AND STREAM SETBACKS

The following minimum setbacks shall apply to structures exceeding 120 square feet or 10 feet in height:

- A. Structures shall be located a minimum of 100 feet from the mean high water line of a principal river. This minimum setback may be increased up to 150 feet from the mean high water line to lessen the impact of development. In determining the minimum setback, the following shall be considered:

1. The size and design of any proposed structures;
2. The width of the river;
3. The topography of the land between the site and the river;
4. The type and stability of the soils;
5. The type and density of existing vegetation between the site and the river;
6. Established recreation areas or areas of public access; and
7. Visual impact of any structures.

*The proposed residence, driveway, and vegetation clearance area is over 100 ft. from the mean high water line of the Salmon River, a principal River. Because the subject development is a residence the County is unable to require an increased buffer of 150 ft. in compliance with the clear and objective standards of the housing statutes in Oregon state law. **The Hearings Officer agrees with this analysis and concurs in this finding. The requirement of a 100 foot minimum setback is a clear and objective standard implementing this Section. The appellents and Mr. Mulkey on behalf of 1000 Friends of Oregon contend that this analysis is in contradiction to the underlying Comprehensive Plan policies Section 704 implements.***

*I point here to the word “shall” with respect to the minimum 100 foot setback, as opposed to the word “may” with respect to considering an increased setback (a discretionary standard) beyond the 100 foot setback that “shall” be imposed. The County correctly asserts that the 100 foot minimum setback is a clear and objective standard, whereas imposing a greater setback necessarily imposes a subjective analysis of the stated criteria ORS 197.307 (4) specifically provides that a local government (here, Clackamas County) may adopt and apply only clear and objective standards in regulating the development of housing. The State Housing Statute supersedes Goal 5 and related provisions of the County’s Comprehensive Plan to the extent such provisions allow the County to apply discretionary or subjective criteria rather than “clear and objective” standards for housing development. Further, the County has in fact adopted a clear and objective standard that it is applying: the minimum setback of 100 feet from the mean high-water line of a principal river that “shall” be required.*

*I also note with respect to this setback requirement that the proposal actually has a 128 foot setback from the mean high water mark of the Salmon River to the structure. This setback appears required by the topography of the site as there is persuasive and uncontradicted testimony concerning an escarpment or “cliff” towards the river side leaving a buildable area that is roughly 61 feet deep on a lot that is 50 feet wide and 100 feet deep. The house shown on the application is 30 feet wide by 41 feet 6 inches deep and two stories tall, with a 10 foot deck off the back, built right up to the 10 foot side setbacks. Thus, the proposed house will be just under 2500 sq ft in size and is consistent in size with other single-family home development in the area. With the required 20 foot setback to the front property line, increasing the setback to the maximum 150 feet would effectively prohibit development of the site with a house that*



*is consistent with the other single-family homes in the vicinity. There is no public access or established recreation areas at this location, and no evidence that any of the other above-listed factors would suggest requiring a greater setback than the required minimum 100 feet or the proposed 128 feet. Thus, after considering the above factors, I find requiring the minimum 100 foot setback sufficient to meet these criteria, and find that the proposal meets or exceeds this standard.*

#### 704.05 SETBACK EXCEPTIONS

- A. The following uses are exempt from the minimum setback standards of Subsection 704.04:
1. Residential lots of record where lot depth precludes compliance with the setback standards of Subsection 704.04, provided that:
    - a. Structures shall be sited the maximum distance from the mean high water line which meets the setback and other standards of the underlying zoning district; and
    - b. The footprint of structures shall not exceed 25 percent of the lot area;

*The proposed residence will be sited 128 ft. from the mean high water line of the Salmon River and no setback exceptions are requested as part of this application. **The Hearings Officer concurs.***

#### 704.06 DEVELOPMENT STANDARDS

- A. The maximum height of a dwelling or a structure accessory to a dwelling shall be 35 feet, if the dwelling or accessory structure can be seen from a principal river.
- The proposed residence will not exceed 35 ft. in height. This standard is met. **The Hearings Officer concurs in this finding.***
- B. Commercial or industrial facilities, such as structures, parking areas, and storage areas shall comply with Subsection 704.04, and signs shall be screened from view of the Principal River or Stream Conservation Area by an opaque vegetation buffer. These facilities shall be subject to design review, pursuant to Section 1102.
- The proposed development is a residence, this standard is not applicable. **The Hearings Officer concurs in this finding.***
- C. Subdivisions and partitions shall be designed, where possible, to allow compliance with Section 704.
- The proposed development is a residence, this standard is not applicable. **The Hearings Officer concurs in this finding.***

## 704.07 VEGETATION PRESERVATION REQUIREMENTS

- A. A minimum of 75 percent of the setback area (distance) shall be preserved with native vegetation.

*No vegetation or tree removal is proposed in the 100 ft. setback area. The Hearings Officer concurs in this finding. The applicant submitted a stream buffer restoration plan pursuant to County requirements, referenced in Ms. Ahrens' presentation as a required submittal under Section 704.08. This required submittal includes a site plan showing the 100 foot setback area to the Salmon River, within which no tree cutting activity has occurred, and showing that there is only a relatively small overlap area of the 100 foot required minimum setback with the boundaries of the subject property (lot 8). The submitted site plan shows existing vegetation and development, provides an inventory of existing vegetation including trees, ferns, bushes, shrubs, etc. and their species. This site plan shows the area of proposed development cleared of vegetation, and depicts the setback areas for the proposed single-family home structure as still having existing trees and vegetation.*

- B. Tree cutting and grading shall be prohibited within the buffer or filter strip, with the following exceptions:

1. Trees that endanger life or structures may be removed.
2. Tree cutting and grading may be permitted in conjunction with those uses listed in Subsections 704.05 and 704.06, to the extent necessary to accommodate those uses. Disturbed areas that are outside the footprint of structures and other improvements shall be restored with native vegetation.
3. Vegetation removal may occur when approved by the Oregon Department of Fish and Wildlife, upon written notification that such removal is required as part of a river or stream enhancement project.

*No tree removal is proposed in the 100 ft. setback area. The Hearings Officer concurs in this finding. As stated above, a review of the site plan submitted by the applicant required by the County as part of a stream buffer restoration plan shows that no tree cutting or grading occurred within the required minimum 100 foot buffer or filter strip area between the proposed home site and the Salmon River. I understand that significant other vegetation and tree removal occurred on Mr. Cortese's properties in clearing the home site, creating the accessway, and within the Manape Drive ROW. However, none of this activity is actually within the required buffer area.*

## 704.08 SUBMITTAL REQUIREMENTS

*The applicant has provided the necessary submittal materials to proceed with the application. Additional requirements for submittal materials may be listed in the Conditions of Approval. The Hearings Officer concurs in this finding.*

*The Standards of this Subsection that pertain to the Approval Period of this Permit and Time Extensions are outlined in the Conditions of Approval above. **The referenced Standards and Conditions of Approval were reviewed and adopted by the Hearings Officer.***

- A. Development and tree-cutting activities controlled by Section 704 in a Principal River Conservation Area (PRCA) shall be reviewed to ensure consistency with Section 704. Proposed developments on lands within 150 feet of the mean high water line shall be reviewed through a Type II application pursuant to Section 1307. For lands beyond 150 feet of the mean high water line, notice shall be sent to the U.S. Forest Service and Bureau of Land Management.

*The proposed residence is located 128 feet from the mean high water line of the Salmon River. Thus, this proposal is being reviewed pursuant to the process outlined in Subsection 1307. **The Hearings Officer concurs in this finding.***

#### **D. DECISION**

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0064-22-R (Principal River Conservation Area Review), subject to conditions of approval.

Dated: September 14, 2022



Carl D. Cox  
Clackamas County Hearings Officer

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#### **APPEAL RIGHTS**

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