

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

Regarding an Application for a Three Parcel)	Case File Nos.
Partition, a Conditional Use to Construct)	Z0515-19-M, Z0516-19-C
Three Duplexes, and a Habitat Conservation)	& Z0024-20-HDA
Area Permit.)	(Ahrens)

A. SUMMARY

1. The applicant and owner is Majo Ahrens.
2. The subject property is located at 13340 Southeast Rusk Road, Milwaukie, OR 97222. The legal description is T2S, R2E, Section 06AD, Tax Lot 2000, W.M. The subject property is approximately .94 acres and is zoned Urban Low Density Residential – R-10.
3. On June 4, 2020 the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing about this application on June 4, 2020. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planners Ben Blessing and Steve Hanschka discussed the staff report and recommended approval of the application.
3. Majo Ahrens and Dan Symons argued in favor of the application.
4. Tony Keagbine, Joseph Rivelli, and Susan Rivelli testified in opposition to the application.

5. At the conclusion of the public hearing, the Hearings Officer left the record open for one week for new evidence, one additional week for responses to the new evidence, and one additional week for the applicant's final legal argument.

C. FACTS

The subject property is an approximately .94-acre parcel zoned R-10 located at 13340 Southeast Rusk Road, Milwaukie, OR 97267. The property is located about 250 east of Southeast Rusk Road (Rusk Road) and Southeast Kellogg Creek Drive in the Aldercreek neighborhood. The property currently has a single family dwelling with a garage. The property is generally open yard with several mature trees and several other small trees and bushes. An intermittent stream flows along the south side of the property. The property is generally flat and slopes gently down towards the intermittent stream. The creek is protected by a Habitat Conservation Area (HCA). The existing dwelling is on the eastern portion of the property closer to Rusk Road and would retain its current access. The two additional dwellings are proposed for southeast and southwest areas of the property with access to be taken from a new private access way on the western portion of the property. The area is subject to heavy rain and potential flooding during the wet season, and areas downstream have limited surface water management capacity. Therefore, there are especially stringent surface water retention requirements. The applicant proposes to build a retention pond to store surface water. The applicant's proposal involves three aspects: 1) a partition to split the property into three parcels; 2) a conditional use to convert the existing house and two new proposed dwellings into two family dwellings (duplexes); and 3) a habitat conservation area development permit since the property contains a habitat conservation area.

D. DISCUSSION

The staff reports thoroughly analyze the applicable approval criteria and explain why the approval criteria are satisfied.¹ Most of the findings in the staff reports are not challenged by opponents. Therefore, it would be a waste of the County's money and resources to review and repeat all of the unchallenged findings in the staff reports. I have

¹ There are two staff reports: one for the partition and conditional use approval criteria – and one for the HCA approval criteria.

reviewed the findings in the staff reports, and I agree with those findings. I therefore adopt and incorporate the findings in the staff reports in this decision, except as discussed further.

The opponents live to the southwest of the subject property. The intermittent stream that runs along the southern portion of the subject property eventually flows onto opponents' property. Opponents' are concerned that the proposed development would lead to flooding on their property. According to opponents, their property already floods and comes close to submerging their daylight basement. Clackamas County Zoning and Development Ordinance (ZDO) 1006.06 provides the standards for surface water management. The staff report provides a detailed explanation of how the proposed surface water management plan satisfies the applicable standards. Opponents Joseph Rivelli and Susan Rivelli provide anecdotal evidence and hypothetical concerns, but they do not address, let alone refute, the findings in the staff report. Opponent Tony Keagbine raises more specific issues – or at least questions – but they are difficult to follow. For instance, he argues that the proposed detention pond does not meet the requirement for site impacts of greater than 5000 square feet of impervious surface, but the staff report explains that the proposed use would create more than 5000 square feet of impervious surface and therefore be subject to Clackamas Water Environmental Services (WES) standards for over 5000 square feet of impervious surfaces.

ZDO 1006.08(A) requires the proposal to “provide for positive drainage and adequate conveyance of storm and surface water run off * * * to an appropriate discharge point. * * *.” ZDO 1006.08(C) requires an applicant to provide “a preliminary statement of feasibility from the surface water management regulatory authority.” The applicant’s surface water and storm drainage management plan describes how it will adequately manage surface water and storm drainage and convey it to an appropriate discharge point. The plan was reviewed by the applicable surface water management authority (WES) and the authority issued a preliminary statement of feasibility. In fact, due to limited capacity downstream, the applicant is required to design a system that not only will not make surface water discharge worse, it must improve the situation. As the applicant explains, the proposed retention will ensure that releases are less than currently exist. This satisfies ZDO 1006.08.

Opponents also briefly challenge the safety of the proposed access points to the proposed duplexes. The staff report explains how sight distances and other safety requirements are met. I agree with the staff report.

Therefore, the applicant has satisfied all of the applicable approval criteria.

The applicant argues that many proposed conditions of approval should be eliminated or modified. The County agrees with some of the proposed amendments, and those changes are reflected in the conditions of approval.² The applicant objects to a condition of approval requiring street lights. Staff explains in the June 18, 2020 memorandum that the proposed development is required to comply with the street lighting requirements of Clackamas County Service District No. 5 (CCSD#5). As the memorandum explains, the applicant may work with CCSD#5 to determine whether street light are required. The applicant objects to a proposed condition of approval to provide water facility easement for Clackamas River Water District (CCWD). According to the applicant, CCWD has indicated that it will not need easements. The requirements for easements was requested by CCWD in their comments. If CCWD's position has changed then the applicant may work that out with CCWD. I agree with the June 18, 2020 staff memorandum. The applicant objects to numerous conditions of approval imposed pursuant to WES requirements. I agree with WES and staff that those conditions of approval are determined by WES as to whether WES requirements are met. If the applicant has issues with those conditions of approval, it should take those up with WES while obtaining WES approval. Finally, the applicant raises a number of objections to Department of Transportation proposed conditions of approval. I agree with the June 18, 2020 staff memorandum and incorporate its responses in this decision.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** application Z0515-19-M, Z0516-19-C, and Z0024-20-HDA, with the following conditions of approval.

² Although not a proposed condition of approval, the date for the preliminary statement of feasibility for stormwater and sewer references as Exhibit 8 on page seven of the staff report should be dated November 19, 2019 rather than 2020.

F. PARTITION AND CONDITIONAL USE PERMIT CONDITIONS
OF APPROVAL

1. Conditions for Protection of Natural Features

- A) Trees & Wooded Areas:
- i. Site planning and design techniques which address incorporation of trees and wooded areas in the development plan shall be implemented as follows:
 - a) Preserve all trees over 6 inch diameter at breast height (DBH) that do not need to be removed to accommodate new impervious areas (house, driveways, access drives, etc.)
 - ii. Trees and wooded areas to be retained shall be protected during site preparation and construction as follows:
 - a) Avoiding disturbance of the roots by grading and filling activity 4. Requiring, if necessary, the advisory expertise of a qualified consulting arborist or horticulturist both during and after site preparation, and a special maintenance/management program to provide protection of specified wooded areas.
 - b) Providing for water and air filtration to the roots of trees which will be covered with impermeable surfaces;
 - c) Pruning or topping of trees which will be in parking areas or near buildings, as necessary, to maintain proper balance between top growth and roots, reduce windfall potential, and provide adequate vision clearances for safe vehicular circulation; and

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

- A) General Standards:
- i. The location, design, installation, and maintenance of all utility lines and facilities shall be carried consistent with the rules and

regulations of the surface water management regulatory authority, which is 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 Partition and Conditional Use. 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.

B) Street Lights:

- i. Street lighting shall be installed pursuant to the requirements of Clackamas County Service District No. 5 and the electric company serving the development. A street light shall be installed where a new road intersects a County road right-of-way and, in the case of subdivisions, at every intersection within the subdivision.
- ii. Areas outside Clackamas County Service District No. 5 shall annex to the district through petition to the district.
- iii. The applicant shall contact Wendi Coryell of the County Engineering Division (503-742-4657) to make arrangements for any required street lighting. The applicant shall also arrange for the formation of an assessment area to pay for operation and maintenance of existing and/or new lighting.

C) Water Supply:

- i. Standards for Provision of Water Supply by Public or Community Water Service:

- a) Water service facilities shall be installed pursuant to the requirements of Clackamas River Water District (CRWD), as follows:
- 1) Water services will only be provided from pipes or mains located within public streets, alleys, or rights-of way, or easement furnished by CRWD, and to property with frontage on such mains. Each dwelling or building will be provided with its own water service connection and meter. No person shall furnish water to other buildings or buildings without written approval of the Board, which may be granted in the sole discretion of the Board, and then only under specific terms of an agreement approved by CRWD.
 - 2) Fire Hydrant and Distribution shall be in accordance with the Oregon Fire Code C105.1.
 - 3) Placement of fire hydrant systems shall be in accordance with Oregon Fire Code 507.5.1
 - 4) Unless noted on plans or specified otherwise, all construction and backflow devices are to be in accordance with the most recent version of the CRWD and the Oregon Revised Statutes (OAR) chapter 333.
 - 5) All facilities design, construction, testing, and maintenance, where applicable, shall conform to the latest version of the Oregon State Health Div. administrative rule 333 on public water systems except where outlined in CRWD rules and regulations.
 - 6) For design of District's water improvements, hydraulic system must be analyzed using the worst

case scenario envisioned in the District's' Water Systems Facility plan. The water system analysis shall be conducting using simultaneous for the max (peak) day demand or peak hour fire-on-demand, whichever is greater, and the fire demand.

- 7) Any substantial deviation from the approved construction plans must have prior approval from CRWD.
 - 8) Easement for water facilities shall be provided along property lines and designated on the final plat, as deemed necessary by CRWD.
 - 9) Release of water purchased from the Water District will not be permitted. No user shall resale or permit resale of water directly to any person, or for any use.
 - 10) An approved water system capable of supplying fire flow for fire protection shall be provided to all premises upon which buildings are to be constructed.
 - 11) If water service is adequate with the exception of fire flows, the applicant shall submit a statement to CRWD from the fire district serving the subject property that state that if and/or what alternative method of fire protection is acceptable.
 - 12) Upon plan review, there may be additional requirements set forth by CRWD.
- ii. The applicant shall submit stamped and approved plans or written verification from the Clackamas Fire District No. 1 Fire Marshal indicating that the Fire District's access and fire flow standards have been, or will be met.
- a) Pursuant to the Clackamas Fire District No. 1, the current layout meets the Fire District standards.

- b) Any changes to the approved preliminary plan shall again be approved by the fire district.
 - iii. Prior to final approval of the proposed Partition and Two-family dwellings, 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.
 - iv. Standards inside the Portland Metropolitan Urban Growth Boundary (UGB), Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:
 - a) The proposed Partition and Two-Family Dwellings shall be served by a public water system in compliance with drinking water standards as determined by the Oregon Health Authority.
 - b) The proposed project is located within the boundaries of the CRWD water service system shall receive service from this system.
- D) WES Standards (Erik Carr 503-742-4571):
 - 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. The applicant shall procure the necessary plan approvals and permits in accordance with WES RR&S for sanitary sewer services and surface water management, including vegetated buffer and erosion control requirements.

- iii. Prior to plan approval, all sanitary and stormwater submittals shall be reviewed for compliance with WES RR&S and Conditions of Approval. All plans and reports submitted to WES for review and approval shall be stamped and signed by a civil engineer licensed by the State of Oregon. The project construction, specifications, and testing must be completed under the direction of the project engineer.
- iv. The applicant shall include the following materials with their plan review submittal to WES:
 - a) Two (2) sets of complete civil construction plans for all sanitary and stormwater improvements.
 - b) Two (2) copies of the final storm report, including infiltration testing and downstream analysis.
 - c) One (1) Natural Resource Assessment
 - d) \$800 minimum sanitary and stormwater management plan review fees
 - e) Erosion control plans, permit application and fee
- v. Prior to final plat approval by WES, the following shall apply:
 - f) WES shall review the final plat in conjunction with the approved sanitary and stormwater plans.
 - a) The sanitary and storm systems shall be complete in all respects, in accordance with the approved plans, or a performance bond shall be provided by the applicant to guarantee the construction of the infrastructure.
 - b) All sanitary and storm drainage easements shall be shown on the plat.
 - c) Applicable fees and charges shall be paid to WES.
 - d) Maintenance agreements shall be referenced in the plat notes.

- vi. Any requests to modify current WES Design Standards shall be made in accordance with Sanitary Standards, Section 1.7 or Stormwater Standards, Section 1.6.
 - vii. WES shall inspect and approve the construction of the sanitary and storm systems in accordance with the approved plans.
 - viii. The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid before plat approval, and are subject to change without notice to the applicant. All costs associated with the design, construction and testing of the sanitary sewer and storm system shall be provided by and at the sole expense of the applicant.
- E) For Sanitary Sewer, the following conditions shall apply:
- i. Prior to plat approval, a separate and independent sanitary sewer service connection shall be provided to each lot, including any necessary easements. The sanitary sewer service connection laterals shall be constructed with a clean out at the front edge of the Public Utility Easement (PUE)/Right-Of-Way, or the property line.
 - ii. The applicant shall contact WES 48-hours in advance to schedule a tap of the public sanitary mainline. A \$125 tap-in fee shall apply for each 4-inch connection.
 - iii. The duplex shall utilize the existing service connection as a shared connection for both dwelling units. Any modification to the existing connection shall require WES review and approval. Additional sanitary SDC's will apply at the multi-family rate. The property owner will receive one monthly service bill. 1 EDU credit will apply for previously paid SDC for the existing residence.
- F) For Surface Water, the following conditions shall apply:
- i. All development that creates or modifies 5,000 square feet or more of impervious surface area shall be subject to WES RR&S and shall submit a Surface Water Management Plan and Storm Report (SWM Plan) to WES for review and approval. The SWM Plan shall

- demonstrate how the development will conform to WES RR&S and shall be prepared by a civil engineer licensed by the State of Oregon.
- ii. The SWM Plan shall provide a design to mitigate the stormwater runoff from all proposed onsite permeable and impervious surface areas, all water entering the property from off-site, and any road frontage improvements.
 - a) Note: Based on the preliminary grading and utility plans, it's not clear how runoff from the western extent of required road frontage improvements will be captured and treated.
 - iii. The SWM Plan shall conform to the following general stormwater standards, as well as all other applicable stormwater requirements in accordance with WES RR&S:
 - a) Water Quality Standard - Water quality facilities shall be designed to capture and treat the first 1-inch of stormwater runoff from a 24-hour storm event using either vegetation (Appendix H) or a Basic Treatment proprietary device (Appendix F).
 - b) Infiltration Standard - The first ½ inch of runoff in a 24-hour period must be captured and retained onsite through an approved infiltration system.
 - c) Detention/Flow Control Standard in Areas with Limited Downstream Capacity (Section 5.4.4.3) – Additional flow control requirements are necessary in areas with limited downstream capacity that cannot be upgraded, and are in addition to all other water quality and infiltration requirements. Within these designated basins (see maps in Appendix G), onsite detention facilities shall be designed to reduce the 25-year post-developed runoff rate to a 2-year pre-developed discharge rate, AND, from the 2-year post-developed runoff rate to ½ of the 2-year pre-developed discharge rate.
 - iv. A design modification request from the applicant to use the BMP Tool as an equivalent alternative to the required infiltration/retention

standard was approved by WES on March 5, 2020. The tool sizes facilities so that post-development peak flow durations will match the pre-development peak flow durations ranging from 42% of the 2-year to the 10-year flows, as determined by HSPF continuous rainfall model simulation.

- v. The following shall apply with the BMP Tool design submittal:
 - a) All stormwater management facilities shall be designed with the continuous flow model of the Tool. Conveyance structures shall be designed per WES stormwater standard criteria.
 - b) Proprietary stormwater treatment devices must be on the approved list of Washington Department of Ecology with General Use Level Designation and classified as a Basic Treatment technology.
 - c) The BMP Tool requires input of site specific soil types, therefore the SWM Plan shall include a site plan that identifies the location of each stormwater facility, the boundaries of each Drainage Management Area (sub-basin), and an overlay of the soil classification map.
 - d) The engineer shall verify each Drainage Management Area aligns with the final grading plans.
- vi. The SWM Plan shall identify an acceptable point of discharge to safely convey stormwater runoff from the entire boundary of the development, including pavement and roof area of the existing residence. Site plans shall clearly identify all existing rain drains and points of termination for the existing residence and accessory buildings.
- vii. Grading plans shall clearly identify an overflow pathway system by which the storm/surface water within the development will be controlled without causing damage or harm to the natural

environment, or to property or persons in the event of any stormwater facility failure or bypass (Section 1.2)

- viii. A Downstream Conveyance Analysis shall be included in the SWM Plan. The analysis must extend a minimum of 1500' or to the point where the development contributes less than 15% of the upstream drainage area, whichever is greater.
- ix. The current WES stormwater standards do not include a detail for pervious pavement, therefore the project engineer shall provide a complete and detailed design for the facility, as determined by WES. Maintenance specifications for the facility shall be included in the development's operations and maintenance plan. Permanent signage that identifies the location and unique maintenance requirements of the facility shall be installed adjacent to the facility, as determined by WES.
- x. In the event a development or any part thereof is traversed by any water course or natural drainage channel, adequate easements for surface water drainage purposes shall be provided to WES. This does not imply a maintenance obligation by WES.
- xi. The property owners shall be responsible to perpetually inspect and maintain all stormwater management systems, in accordance with WES Rules, Section 12.10. Prior to plan approval, the project engineer shall submit a Private Operations and Maintenance Plan that identifies the annual maintenance obligations and procedures of all stormwater facilities, including permeable pavement. The operations and maintenance plan shall be referenced in the Plat Restrictions.

G) For Erosion Control, the following shall apply:

- i. No visible or measurable erosion shall leave the property during construction or during any activity described in Stormwater Standards, Section 6.2.1.

- ii. Site Plans for erosion control shall be required for all development, construction, grading, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470. Site plans shall delineate the total area of disturbance. The plans shall use the techniques and methods prescribed in the current WES Erosion Prevention Planning and Design Manual.
 - iii. Any development activity that results in over 800 sq ft of soil disturbance shall obtain a WES Erosion Prevention and Sediment Control Permit before the start of any grading or construction activities. The applicant shall submit a Permit application and erosion control site plans, and pay applicable permit fees (\$460 + \$80/acre over 1 acre).
- H) For Water Quality Vegetated Buffers, the following shall apply:
- i. All new development shall meet WES Rules to preserve and maintain an undisturbed vegetated buffer to protect all water quality resource areas, in accordance with Stormwater Standards, Section 4. County Planning Division serves as WES' agent to administer these requirements (in consultation with WES), therefore the applicant shall coordinate with Planning for all buffer-related requirements.
 - ii. With the applicant's first plan submittal, plans shall clearly show all water quality resource areas, all required buffers, any proposed encroachments into the buffer, and any proposed mitigation areas.
 - iii. WES shall require a review of final plans prior to any buffer variance approvals to verify that the variance will not conflict with the proposed storm and sanitary layout.
 - iv. Approval of the land use application does not include any conclusions by WES regarding acceptability of regulated water quality sensitive areas by DSL or COE. This decision should not be construed or represented to authorize any activity that will conflict with or violate DSL/COE requirements. The applicant shall

coordinate with DSL/COE and, if necessary, other responsible agencies to ensure that development activities are designed, constructed, operated and maintained in a manner that complies with DSL/COE approval.

- I) The following WES Fees and Charges shall apply:
- i. Sanitary Sewer Plan Review fees shall apply. A \$400.00 minimum shall be due with the first plan submittal.
 - ii. Surface Water Plan Review fees shall apply. The total fee is equal to 4% of the construction cost for all stormwater management related facilities. A \$400.00 minimum shall be due with the first plan submittal.
 - iii. An Erosion Prevention and Sediment Control (EPSC) permit fee shall apply. A \$460.00 minimum permit fee shall be due with the first plan submittal.
 - iv. A Collection Sewer Charge for the proportionate cost of constructing the public mainline sewer shall apply in the amount of \$146.25, and shall be paid prior to the plat being recorded.
 - v. System Development Charges (SDC's) shall apply in accordance with WES RR&S. The current sanitary SDC rate is \$7,850.00 per EDU (Equivalent Dwelling Unit). The current surface water SDC rate is \$211 per single family permit application. Rate adjustments typically occur annually on July 1.
 - a) For the duplex conversion on Lot 1, SDC's shall apply in accordance with Class 4 – Multifamily Residential. 1 EDU credit will apply for previously paid SDCs for the existing residence (File #0852). SDC shall be paid prior to plat approval.
 - b) Sanitary SDC Estimate = \$4,710.00 (2 units * 0.8 = 1.6 EDU – 1 EDU credit = 0.6 EDU)
 - c) With future development of Lots 2 and 3, SDCs for sanitary sewer and surface water will apply in accordance with the

prevailing rates in effect when building permits are submitted.

3. Conditions for Roads & Connectivity:

A) Overview:

- i. The following items are project requirements from the Department of Transportation and Development's Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project, but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These conditions are based upon the requirements detailed in the County's Comprehensive Plan (Comp Plan), the County's Zoning and Development Ordinance (ZDO) and the County's Roadway Standards. Additional requirements beyond those stated in the conditions of approval may be required once plans have been submitted and reviewed. The applicant may discuss the requirements of the project with staff at any time.
- ii. The requirements specifically required by the Comprehensive Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the County Roadway Standards, are based upon nationally accepted standards and engineering judgment and may be modified pursuant to Section 170 of the Roadway Standards. The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted.

B) General Provisions:

- i. Prior to final plat approval: a Development Permit is required from the Engineering Division for review and approval of frontage improvements. 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 access has met minimum Substantial Completion requirements, per Roadway Standards Section 190
- iii. All required street, street frontage and related improvements shall comply with the standards and requirements of the Clackamas County Zoning and Development Ordinance and the Clackamas County Roadway Standards unless otherwise noted herein.
- iv. The applicant shall dedicate approximately 10 feet of right-of-way width along the entire SE Rusk Road site frontage as necessary to provide a minimum one half right-of-way width of 30 feet. The right-of-way centerline and width shall be verified by a professional survey to the satisfaction of DTD Engineering and Survey Departments.
- v. The applicant shall grant a minimum 8-foot wide public easement for sign, slope, sidewalk and public utilities adjacent to the right-of-way along the entire frontage of SE Rusk Road.
- vi. Sight distance shall be maximized at the proposed driveway, but shall be no less than of 200 feet in each direction. No plantings at

- maturity, retaining walls, embankments, trees, fences or any other objects shall be allowed to obstruct vehicular sight distance.
- vii. Written verification from the Fire District shall be provided indicating adequate emergency service access is provided to each parcel.
 - viii. A Utility Placement Permit shall be obtained for any utility work required within the SE Rusk Road public right-of-way. When there are multiple utility service trenches in the road, the trench repairs will grind and inlay the top 2” of the pavement restoration to include a minimum 12” tee beyond the furthest trench, and will be required to combine multiple trenches into one surface repair.
 - 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 furnish sanitary sewer, storm drainage and domestic water easements as deemed necessary by the DTD Engineering Division and Water Environment Services as deemed necessary after final plans reviews. All such easements shall be shown and properly referenced upon the final partition plat.
 - xi. Any deviation from the ZDO Sec. 1007, the Comprehensive Plan (where applicable) and/or the Roadway Standards shall be approved in writing by the Department of Transportation and Development (DTD) prior to final plat approval.
- C) Public & Private Roadways- the applicant shall design and construct the following improvements along the entire site frontage of SE Rusk Road::
- i. An 18-foot wide one half-street improvement, measured from the centerline of the right-of-way to face of curb. The structural section for SE Rusk Road improvements shall be in accordance with Standard Drawing C100 for a collector roadway.
 - ii. 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 meet minimum standards, and if necessary may include improvement across the right-of-way centerline.

- iii. Standard curb, or curb and gutter if curb line slope is less than one percent, with the curb located 18 feet from the centerline of the right-of-way. At the east end of the site frontage, the curb line shall generally be off-set 18 feet from the striped centerline. The location of the east end of the curb shall take in to account the adjacent driveway and turning movements in and out of the driveway.
- iv. A 5-foot wide landscape strip, with street trees and ground cover shall be provided, per Standard Drawing L100. Street trees shall be provided along the entire site frontage and shall comply with ZDO Section 1009.10, A through O, as well as Roadway Standards Section 255.
- v. A 5-foot wide unobstructed sidewalk, constructed per Standard Drawing S960.
- vi. ADA curb ramps shall be provided at the east and west ends of the sidewalk, constructed per ODOT Standard Drawings.
- vii. Drainage facilities in conformance with the Water Environment Services requirements and Clackamas County Roadway Standards Chapter four.

D) Private Roads & Access Drives:

Prior to Final Plat approval, the applicant shall design and construct improvements for the access drive serving Parcel 1, which will consist of:

- i. A 12-foot wide concrete driveway approach, per Standards Drawing D650. The driveway shall aligned at a 90-degree angle to SE Rusk Road for the first 20 feet
- ii. A minimum 12-foot wide paved driveway, constructed per Standard Drawing R100 shall be constructed up to the proposed parking area.
- iii. A minimum of 3 parking spaces shall be constructed and shall include sufficient maneuvering area for vehicles to turning around

on-site and enter SE Rusk Road head-first. Vehicle maneuvering shall be demonstrated on the site improvement plans.

- iv. Drainage facilities in conformance with the Water Environment Services requirements and Clackamas County Roadway Standards Chapter four.

Prior to Final Plat approval, the applicant shall design and construct improvements for the access drive serving Parcels 2 and 3, which will consist of:

- v. A minimum 24-foot wide, unobstructed shared access and utility easement shall be provided from SE Rusk Road to Parcels 2 and 3.
- vi. A 20-foot wide concrete driveway approach, per Standards Drawing D650. The centerline of the shared driveway shall be located 40 feet east of the west property line.
- vii. A minimum 20-foot wide paved driveway, constructed per Standard Drawing R100 shall be constructed up to the proposed parking area for each parcel.
 - a) A 12 foot paved driveway may be approved if the applicant can demonstrate that Parcel 2 and Parcel 3 can meet Clackamas County's Roadway Standards during the Engineering Development Permit phase of development. Approval of a 12 foot wide driveway shall be granted by the County Engineering Division.
- viii. A minimum of 3 parking spaces shall be constructed on each parcel and shall include sufficient maneuvering area for vehicles to turning around on-site and enter SE Rusk Road head-first. Vehicle maneuvering shall be demonstrated on the site improvement plans.
- ix. The Parcels served by the private road shall be included in a Road Maintenance agreement implementing ORS 105.170 – 105.185 for the shared access road within the partition plat. The agreement shall be recorded with and referenced upon the final partition plat.

- x. Drainage facilities shall be provided conformance with the Water Environment Services requirements and Clackamas County Roadway Standards Chapter four.

4. Conditions for Density

- A) Density Summary
 - i. Maximum density for the proposed Partition equals 4.
 - ii. Minimum density for the proposed Partition equals 3.
 - iii. The maximum number of Two-Family Residences per lot is 1.
- B) Prior to plat approval, applicant’s surveyor shall demonstrate that the gross site area listed on the applicant’s preliminary partition plan is substantially similar to actual surveyed distances and area calculations.

5. Conditions for Land Divisions

- A) General Conditions:
 - i. Approval of this land use permit is based on the submitted written narrative and plan(s) dated November 19, 2020 and April 30, 2020. 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. The proposed Partition is also subject to the Findings and Conditions of File No. Z0516-19-C and Z0024-20-HDA.
 - iii. The service of a certified surveyor and/or engineer is required to satisfy these conditions. The County recommends you obtain a project manager to assist in obtaining the necessary permits to implement this project.
 - iv. The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project.

v. The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

B) General Approval Criteria:

- i. The proposed Partition — including all, parcels, lots, tracts, easements, future structures, etc., potentially contained therein — shall comply with all applicable provisions of the R-10 Zoning District(s), as outlined in Section 315 of this Ordinance.
- ii. The proposed Partition shall comply with the applicable provisions of Section 1000 of this Ordinance, Development Standards, as outlined above.
- iii. 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.

- c) If a phasing plan and schedule are approved pursuant to Subsection 1105.03(C), the following shall apply in lieu of Subsections 1105.06(A) and (B):
 - 1) The phasing schedule may provide a preliminary plat approval period for the first phase not to exceed four years from the date of the final written decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision.
 - 2) The phasing schedule may provide a preliminary plat approval period for each subsequent phase not to exceed two years from the end of the prior phase approval period.
 - 3) Each phase shall be recorded with the County Clerk within the applicable approval period, or the approval of that phase and all subsequent phases will become void.
 - 4) If a final plat for any phase is not recorded within the initial approval period for that phase, a two-year time extension for that phase and all subsequent phases may be approved pursuant to Section 1310.
 - 5) In no case shall a phasing schedule or any time extensions permit the recording of any phase more than 10 years after the date of preliminary plat approval.

iv. 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 should also contain provisions for public utility services such as water, electricity, communications, natural gas, storm drainage, sanitary sewer, emergency services, etc.
- d) New easements should 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.

HCA CONDITIONS OF APPROVAL

1. General Conditions:

- A) Approval of this land use permit is based on the submitted written narrative and plans submitted up through March 17, 2020. No work shall occur under this permit beyond that specified in this decision. It shall be the

responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.

- B) A Water Environment Services (WES) Buffer Variance is required for encroachment into the WES Title 3 Water Quality Buffers.
 - i. The WES Buffer Variance shall be submitted separately to, and processed by, the Planning & Zoning Division.
 - ii. Preliminary construction plan review by WES shall be required prior to approval of the Buffer Variance.
- C) The proposed development is also subject to the Findings and Conditions of File Nos. Z0515-19-M and Z0516-19-C.

2. **Construction Management Plan Conditions:**

- A) Pursuant to Subsection 706.08, the proposed Construction Management Plan (CMP) shall meet the following standards:
 - i. Erosion prevention and sediment control (EPSC) measures shall be required and shall comply with the standards of Water Environment Services (WES).
 - ii. Orange construction fencing (i.e. safety fencing, snow fencing, or a comparable product) shall be installed in such a manner as to protect the area of the HCA not authorized for disturbance.
 - iii. Trees in the HCA shall not be used as anchors for stabilizing construction equipment.
 - iv. Native soils disturbed during development shall be conserved on the subject property.
 - v. Development shall not commence until the EPSC measures and fencing required pursuant to Subsections 706.08(A) and (B) are in place.
 - vi. Compliance with the Construction Management Plan shall be maintained until the development is complete, including finalization of the building permits for all new homes and renovation of the existing home.

3. **Map Verification Conditions:**

- A) Approval Period: The approval of this HCA Map Verification shall be valid for four (4) years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
 - i. "Implemented" has the meaning set forth in Subsection 706.06(D)(1) and (2).

- ii. If this approved HCA Map Verification is not implemented within the initial approval period established by Subsection 706.06(D), a two-year time extension may be approved pursuant to Section 1310.
 - iii. This HCA Map Verification, if valid on the date when the final plat for the partition (File No. Z0515-19-M) records with the County Clerk, shall remain valid for subsequent development on the lots or parcels created by the partition (File No. Z0515-19-M).
- B) Pursuant to Subsection 706.09(A), the HCA Boundary is established as mapped on the Metro Nature in Neighborhoods Title 13 Map for T2S R2E Section 6 (Exhibit HCA-5).

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

- A) The proposed development that is approved within the HCA through this decision shall not result in the removal of the developed area from the HCA and shall not change the applicable HCA category.
- B) Approval Period: The approval of this HCA Development Permit shall be valid for four (4) years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
- i. In this case, "implemented" means that the final plat of the partition (File No. Z0515-19-M) shall be recorded with the County Clerk.
 - ii. If this approved HCA Development Permit is not implemented within the initial approval period established by Subsection 706.06(D), a two-year time extension may be approved pursuant to Section 1310.
- C) Standards for Mitigation: Mitigation for the development within the HCA shall be as outlined in the EMS January 16, 2020 Habitat Conservation Area Development Narrative (Exhibit HCA-6) and the Revised EMS March 17, 2020 Natural Resource Assessment and Buffer Variance Application (Exhibit HCA-7), as depicted on the Exhibit HCA-4 site plan, pursuant to the following standards:
- i. **Plant Size:** Replacement trees shall be at least one-half inch in caliper, measured at six inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one-gallon size. Shrubs shall be in at least a one-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.

- ii. **Plant Spacing:** Trees shall be planted between eight and 12 feet on center, and shrubs shall be planted between four and five feet on center, or clustered in single species groups of no more than four plants, with each cluster planted between eight and 10 feet on center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.
- iii. **Plant Diversity:** Shrubs shall consist of at least two different species. If 10 trees or more are planted, then no more than 50 percent of the trees may be of the same genus.
- iv. **Invasive Vegetation.** Invasive non-native or noxious vegetation shall be removed within the mitigation area prior to planting, and shall be removed or controlled for five years following the date that the mitigation planting is completed.
- v. **Mulching:** Mulch shall be applied around new plantings at a minimum of three inches in depth and 18 inches in diameter.
- vi. **Tree and Shrub Survival:** Trees and shrubs that die shall be replaced in kind to the extent necessary to ensure that a minimum of 80 percent of the trees initially required and 80 percent of the shrubs initially required shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.
- vii. **Monitoring and Reporting:** Monitoring of the mitigation site shall be the ongoing responsibility of the property owner. For a period of five years following the date that the mitigation planting is completed, the property owner shall submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site. In lieu of complying with the monitoring and reporting requirement, the property owner may post with the County a performance bond, or other surety acceptable to the County, in an amount sufficient to cover costs of plant material and labor associated with site preparation, planting, and maintenance. An applicant who elects to post a surety shall be subject to Subsections 1104.03 through 1104.05.
- viii. All vegetation shall be planted on the subject property, either within the HCA or in an area contiguous to the HCA. The area of proposed mitigation that is contiguous to the HCA shall be protected from development by a restrictive covenant, conservation easement, or Restricted Development Area outlined on the final plat for the partition, File No. Z0515-19-M.
- ix. The applicant may modify the number and size of trees and shrubs required pursuant to Subsections 706.10(A)(6)(a) and (b), along with a corresponding modification of the plant spacing

requirements of Subsection 706.10(A)(6)(c), as outlined in the Exhibit HCA-6 EMS HCA Narrative.

5. **Lot Line Setback Conditions:**

- A) In cases where a reduction in the underlying setback standards of the R-10 zone would move development further from the HCA, or prevent encroachment nearer to or into the HCA, the minimum front, rear, and side yard setbacks for the two (2) vacant parcels that will not contain the existing home shall be zero, except:
- i. Garages and carports shall comply with the minimum front yard setback of the underlying zoning district; and
 - ii. A greater setback may be required to comply with applicable fire or life safety requirements.

DATED this 15th day of July, 2020.


Fred Wilson
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an 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 will be "final" for purposes of a LUBA appeal as of the date of the decision (which date appears above my signature).