

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

Regarding an Application for a Planned)	Case File Nos.
Development Subdivision, Zone Change,)	Z0329-18-SL, Z0330-18-C
And Conditional Use Approval.)	& Z0331-18-Z
)	(McNary PUD)

A. SUMMARY

1. The owner is Matt Lattanzi. The applicant is Jessey Cereghino
2. The subject property is located at 6364 Southeast McNary Road, Milwaukie, OR 97267. The legal description is T2S, R2E, Section 08CB, Tax Lot 1300, W.M. The subject property is approximately 5.15 acres and is zoned Urban Low Density Residential – R-15.
3. On August 30, 2018 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 August 30, 2018. 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 planner Rick McIntire discussed the staff report and recommended approval of the application.
3. The applicant, Jessey Cereghino, argued in favor of the application.
4. A number of neighbors testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer left the record open two weeks for the submission of 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 5.15-acre parcel zoned R-15 located at 6364 Southeast McNary Road, Milwaukie, OR 97267. The staff report gives an excellent description on the property:

"The subject property is located at the intersection of SE McNary Rd. and SE Norma Rd. in the Oatfield Ridge area. The gross site area of the subject property is 195,406 s.f. (4.48 ac.). This does not include the potential addition of 28,982 s.f. (0.67 ac.) if the separate request for a vacation of the right of way of McNary Rd. adjacent to the site is approved. The site is presently developed with a single family dwelling that would be removed if the proposed development is approved. The site is predominantly wooded except for the area immediately near the existing home. The property is bounded on the northwesterly side by the unconstructed right of way of McNary Rd. A stream flows along much of this right of way eventually crossing through the northerly corner of the property (rear of the property). Access to the site would be taken from Norma Rd. at the intersection with McNary and follow the existing right of way for a short distance before turning into the subject property. Access to the interior lots would be provided via a new private access road.

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

"According to Oregon DOGAMI lidar mapping, there is no identified landslide topography within the site, but there is a fan-shaped deposit beginning at the east end of the property roughly corresponding to the downstream end of the stream flowing along the northerly side of the property and through the east end. There are no mapped environmental overlays within the site, however, a CCSD#1 stream buffer along the stream does extend into the northerly side of the property. While areas of proposed lots may extend into this buffer, no physical development such as homes, residential landscaping, etc., will extend into these restricted areas.

“It is likely that many, if not all, of the trees within the buildable areas of the proposed lots and street improvements will be removed to accommodate the development, however, trees within the proposed open space tracts, Tracts A and C, will be retained as will trees within restricted areas of the building lots; e.g. stream buffer along the north and steep slope areas within the easterly lots. It appears that trees within at least one-half of the site will be retained.” Staff Report 3.¹

This is an unusual application in that the applicant seeks approval of a range of alternatives, rather than a specific development plan. The staff report explains the various options:

“(1) File No. Z0329-18-SL: A major residential planned unit development subdivision with a minimum of 12 lots and a potential maximum of 17 lots ranging in size from 2337 s.f. to 14,119 s.f. The options under consideration are:

“The 17-lot option requires approval of a zone change from R-15 to R-10 on approximately one-half of the property and vacation of the unconstructed right of way of McNary Rd. adjacent to the site and includes one two-family (duplex) dwelling on one lot requiring conditional use permit approval and four attached (common-wall) single family dwelling lots. The remainder are single family detached home lots. The 17-lot option includes two open space tracts with 79,246 s.f. of total area; one storm water facility tract of 5423 s.f. and a private street tract.

“If the zone change is not approved and the right of way of McNary is not vacated, the maximum number of lots would be 12 with one two-family dwelling on one of the lots if the conditional use permit request is approved.

“Other potential options include a 15-lot development if the zone change only is approved and 13 lots if the McNary right of way vacation is approved and the zone change request is not. These options also include one two-family dwelling on one of the lots if the conditional use permit request is approved;

“(2) File No. Z0330-18-C: A request for conditional use permit approval of one two-family dwelling on one of the proposed lots (Lot 1); and

“(3) File No. Z0331-18-Z: A zone change from the current Urban Low

¹ The staff report was revised on September 13, 2008. All citations to the staff report are from the revised September 13, 2018 staff report.

Density Residential, R-15 designation on the entire property to re-zone the upper (westerly) approximately one-half of the property Urban Low Density Residential, R-10 with the remainder retaining the existing R-15 designation.” Staff Report 1-2.

The application initially requests a zone change of part of the property from R-15 to R-10, also a conditional use for a two-family dwelling, and preliminary subdivision approval for one of four proposals. I will address each issue in turn.

D. DISCUSSION

1. Zone Change

Clackamas County Zoning and Development Ordinance (ZDO) 1202.01 provides the approval criteria for a zone change:

“A zone change requires review as a Type III or IV application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

“A. The proposed zone change is consistent with the applicable goals and policies of the Comprehensive Plan.

“B. If development under the new zoning district designation has a need for any of the following public services, the need can be accommodated with the implementation of the applicable service provider’s existing capital improvement plan: sanitary sewer, surface water management, and water. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.

“C. The transportation system is adequate, as defined in Subsection 1007.09(D), and will remain adequate with approval of the proposed zone change. Transportation facilities that are under the jurisdiction of the State of Oregon are exempt from Subsection 1202.03(C). For the purpose of this criterion:

“1. The evaluation of transportation system adequacy shall include both the impact of the proposed zone change and growth in background traffic for a 20-year period beginning with the year that a complete land use application is submitted pursuant to Section 1307.

“2. It shall be assumed that all improvements identified in Comprehensive Plan Table 5-3a, 20-Year Capital Projects; the Statewide Transportation Improvement Plan; and the capital improvement plans of other local jurisdictions are constructed.

- “3. It shall be assumed that the subject property is developed with the primary use, allowed in the proposed zoning district, with the highest motor vehicle trip generation rate.
 - “4. Transportation facility capacity shall be calculated pursuant to Subsection 1007.09(E).
 - “5. A determination regarding whether submittal of a transportation impact study is required shall be made based on the Clackamas County Roadway Standards, which also establish the minimum standards to which a transportation impact study shall adhere.
- “D. The proposed zone change, as it relates to transportation facilities under the jurisdiction of the State of Oregon, complies with the Oregon Highway Plan.
- “E. Safety of the transportation system is adequate to serve the level of development anticipated by the proposed zone change.”

The staff report thoroughly analyzes the applicable approval criteria and explains why the approval criteria for a zone change from R-15 to R-10 are satisfied. 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 reviewed the findings in the staff report, 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 only issue raised by opponents is whether the proposed zone change is consistent with the comprehensive plan. Specifically, Chapter 4, Land Use, Policy 4.R.2 provides for Immediate Urban Low Density Residential Area to include zoning districts of 2500 to 30,000 square foot lot sizes – R-2.5 to R-30 zones. Sub-policies 4.R.2.1 through 4.R.2.7 describe the factors used to guide determination of the most appropriate zoning classification for a specific site. The 4.R.2 sub-policies provide:

“Zoning of Immediate Urban Low Density Residential areas and conversion of Future Urban areas to Immediate Urban Low Density Residential shall include zones of 2,500; 5,000; 7,000; 8,500; 10,000; 15,000; 20,000, and 30,000 square feet (R-2.5 through R-30). The following factors guide the determination of the most appropriate zone:

“[1] Physical site conditions such as soils, slope, and drainage:

“a. Land with soils subject to slippage, compaction or high shrink-swell characteristics shall be zoned for larger lots.

“b. Land with slopes of:

“• Less than 20 percent shall be considered for the R-2.5 through R-8.5 zoning districts.

“• 20 percent and over shall be considered for the R-10 through R-30 zoning districts.

“c. Land with hydrological conditions such as flooding, high water table or poor drainage shall be zoned for larger lots.

“[2] Capacity of facilities such as streets, sewers, water, and storm drainage systems.

“[3] Availability of transit: Land within walking distance (approximately one-quarter mile) of a transit stop should be zoned for smaller lots implemented by the R-2.5, R-5, R-7, and R-8.5 zoning districts.

“[4] Proximity to jobs, shopping, and cultural activities: Areas in proximity to trip generators shall be considered for smaller lots implemented by the R-2.5, R-5, R-7, and R-8.5 zoning districts.

“[5] Location of 2,500- and 5,000-square-foot lots: Location of 2,500 and 5,000 square foot lots, implemented by the R-2.5 and R-5 zoning districts, may be allowed in Corridor design type areas and where permitted by Community and Design Plans located in Chapter 10.

“[6] Need for neighborhood preservation and variety: Areas that have historically developed on large lots where little vacant land exists should remain zoned consistent with the existing development pattern. Otherwise, unless physical or service problems indicate to the contrary, areas of vacant land shall be zoned for lots of 8,500 square feet or smaller.

“[7] Density average: To achieve an average of 7,500 square feet or less per lot in low density Future Urban areas when conversion to Immediate Urban low density residential occurs, the R-10 zone shall be limited to areas with 20 percent slope and greater. Flexible-lot-size land divisions and other buffering techniques shall be encouraged in those areas immediately adjacent to developed subdivisions with lots of 20,000 square feet or more to protect neighborhood character, while taking full advantage of allowed densities.”

In a recent case, the Court of Appeals explained how the factors should be analyzed in determining a whether a zone change should be approved:

“* * * each factor should be applied separately in evaluating the appropriate zone or range of zones for the property, and then the cumulative effect of the application of all of the factors should be assessed.” *Lennar Northwest, Inc. v. Clackamas County*, 280 Or App 456, 471 (2016).

The staff report found that all of the factors weighed in favor of R-10 zoning. Opponents only argue that Factor 6 weighs against a zone change. The staff report states:

“Sub-Policy 4.R.2.6 refers to the need for neighborhood preservation and variety. This sub-policy states that areas that have historically developed on large lots where little vacant land exists should remain zoned consistent with the existing development pattern. Otherwise, unless physical or service problems indicate to the contrary, areas of vacant land shall be zoned for lots of 8,500 square feet or smaller.

“The subject property is within an area where the zoning transitions from predominantly R-10 to predominantly R-15 zoning. Generally, the latter properties zoned R-15 are found on steeper slopes on the easterly side of Oatfield Ridge which is significantly steeper in the main than the westerly side. Generally, the lots zoned R-15 have been historically developed with homes on larger lots. However, in this case, both the R-10 and R-15 designations are considered ‘larger lots’ in the context of these Plan policies. While there is little ‘vacant’ land, in the immediate area, there are certainly many lots zoned R-15 in close proximity with additional development potential, even under the existing R-15 designation. The staff is of the opinion that the term ‘vacant lands’ does not only refer to entirely undeveloped lands, but also lands that are significantly underdeveloped as are many within the immediate area.

“This policy also refers to ‘the existing development pattern’. One can see from the zoning map of the immediate area that a few zone changes have occurred where lands that were originally zoned R-15 have been changed to R-10 and one small development a short distance to the south that is now R-8.5. Many of the lots in the adjoining subdivision to the south, McNary Heights, are less than 10,000 s.f. in size and also zoned R-15. That development was approved either as a flexible lot size development or planned unit development to ‘cluster’ the building sites on the less steep area of the original parcel comprising the plat area. While many of the proposed lots are smaller than most in the area (with the exception of the Emerson planned unit development subdivision a short distance to the north on the westerly side of Norma Rd. where lots are approximately 3600 to 3700 s.f.), the proposed development pattern and use is not out of character with the historical development in the area, particularly those developments implemented since 1980.

“The subject and surrounding properties have been planned and zoned

for urban low density residential use for at least 50 years. As the Comprehensive Plan policies used to determine appropriate zoning designations and density of development have changed over that period of time, particularly since 1980 when the current policies in Chapter 4 of the Plan were developed, changes on individual properties have been approved to re-develop underdeveloped properties in the area. The trend has been to allow higher density development of properties where deemed appropriate in consideration of the Plan policies considered here.

“Given the zoning and development pattern in the area, the staff finds that the subject property is not located in an area which has historically been developed on large lots where little vacant land exists.” Staff Report 7-8.

Opponents argue the property is in an area of historically large lots and that little vacant land remains available. In particular, Kent Squires (Squires) argues that the staff report finding that “vacant” lots includes not only entirely undeveloped lands but underdeveloped lots as well is incorrect. I tend to agree with Squires about the definition of “vacant.”² As the staff report explains, however, “large lots” encompasses both R-10 and R-15 zoning – only at R-8.5 and smaller are lots not considered “large lots.” Therefore, Factor 6 appears to be inconclusive whether it weighs in favor of the proposed zone change.

Even giving opponents the benefit of the doubt regarding Factor 6, we are left with a situation in which Factors 1, 2, 3, and four weigh in favor of the proposed zone change, Factors 5 and 7 are not applicable, and Factor 6 weighs against the proposed zone change.³ While Factor 6 may provide some weighing against the proposed zone change, the other four factors, involving a broad range of categories, provides more weight in favor of the proposed zone change. Assessing the cumulative effect of all the factors leads to the conclusion that the proposed zone change should be approved.

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

2. Conditional Use

The applicant requests approval of a conditional use to allow two-family dwellings (duplex) as part of the requested PUD. Options 1, 2, or 4 would request one duplex while Option 3 would request two duplexes. The staff report explains how the application meets

² In the *Lennar Northwest* case, I reached essentially the same conclusion as Squires.

³ This is precisely the situation that occurred in *Lennar Northwest*.

the requirements for either one or two duplexes as a conditional uses. Opponents do not challenge the majority of the staff report findings. 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 reviewed the findings in the staff report, and I agree with those findings. I therefore adopt and incorporate the findings in the staff reports in this decision, except as discussed further.

Although opponents do not cite any specific approval criteria they believe are not satisfied, ZDO 1203.03(D) requires that the "proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located."

Fairly read, opponents' objections can be understood to argue that allowing duplexes in an area that does not have existing duplexes would substantially limit, impair, or preclude the use of their property for residential use. The character of the surrounding area is of urban low density residential use. The primary uses at issue in this case are residential use. Previous cases have explained that the inquiry under ZDO 1203.03(D) entails whether the proposed use makes the exercise of those primary uses substantially worse. Therefore, in the present case, the question is whether the proposed duplex or duplexes would make urban low density residential uses substantially worse. Duplexes are traditional residential uses. Even if there are not duplexes nearby, I do not see that one or possibly two duplexes would alter the character of the surrounding area – it would still be an urban low density residential neighborhood – let alone raise to the level of making such residential use substantially worse. ZDO 1203.03(D) is satisfied.

All of the conditional use approval criteria are satisfied.

3. Preliminary Subdivision

As discussed earlier, the applicant suggested four possible options for the proposed development. The first two options were based on approval of the requested zone change, while the second two were based on a denial of the requested zone change. As discussed above, the requested zone change is approved. Therefore, Option 1 and Option 2 are the potential options for the proposed development. The difference between Option 1 and Option 2 is whether the applicant obtains a vacation of the unconstructed portion of

Southeast McNary Road bordering on the northerly side of the property. The proposed road vacation is subject to another process and is not under consideration in this decision. Opponents do not challenge the majority of the staff report findings. 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 reviewed the findings in the staff report, and I agree with those findings. I therefore adopt and incorporate the findings in the staff reports in this decision, except as discussed further.

Opponents submitted a large amount of testimony and argument regarding the proposed development. Most of that testimony and argument did not address any approval criteria. I will do my best to relate those arguments to any applicable approval criteria.

ZDO 1203.03(A) provides:

“Existing wooded areas, significant clumps or groves of trees and vegetation, consisting of conifers, oaks and large deciduous trees, shall be incorporated in the development plan wherever feasible. The preservation of these natural features shall be balanced with the needs of the development, but shall not preclude development of the subject property, or require a reduction in the number of lots or dwelling units that would otherwise be permitted. * * *”

The staff report found:

“The site is largely wooded. In order to avoid development of the steeper-sloped areas and the stream buffer along the northerly side of the property, the applicant has designed the four preliminary plan options to cluster development of homes and infrastructure on the westerly, much flatter area of the property.

“Existing trees within the proposed open space tracts, Tracts A and C and within the restricted areas of lots along the east and north side of the development will be required to be retained. Based upon the proposed four plan options, it is not feasible to develop the site at permitted density under any option without removing most, if not all of the trees in the westerly portion of the site with the exception of those in Tract C and required stream buffer along the northerly side.

“REVISED: Based upon the existing tree map submitted with the application showing trees within the westerly area, it appears that it may be feasible to retain additional trees within individual lots that are not located within allowable building envelopes or the proposed private street alignment. However, that will not be entirely known until such time as the final infrastructure plans; e.g. roadway, sanitary sewer, storm

drainage facilities, other utilities and building foundation plans are finalized.

“Prior to final plat approval, the applicant will need to provide a final tree removal/protection plan once the final infrastructure development plans have been reviewed by the County Planning and Engineering Divisions, the CCSD#1 and the OLWSD. The plan must cover all areas not located within the open space tracts, any required stream buffer and restricted development areas within individual lots (slopes of 20% or greater or stream buffers).

“Upon approval of the final tree removal/protection plan, the codes, covenants and restrictions recorded with the final subdivision plat shall contain the approved plan with a restriction on additional tree removal unless approved by the Planning and Zoning Division on a case-by-case basis.” Staff Report 21-22.

Opponents argue that the proposed plan does not save enough of the existing wooded area and clumps of trees. As the staff report explains, however, the proposed plan preserves the trees in the steep slopes to the northeast and along the stream buffer. The staff report also explains that it is not possible to retain many trees in the flatter western portion of the site without reducing the density. Opponents argue that there are alternative plans that could save more trees, however, none of those alternatives provide for the same number of lots sought by the applicant. As ZDO 1002.03(A) states, the preservation of natural features “shall not preclude development of the subject property, or require a reduction in the number of lots or dwelling units that would otherwise be permitted.” An applicant is not required to modify its plans to reduce the number of permitted lots in order to save additional trees. As the staff report explains, trees are being preserved and there is no way to design the permitted number of lots without removing most of the trees on the western portion of the property. ZDO 1002.03(A) is satisfied.

ZDO 1003.02 pertains to hazards for mass movement areas. The staff report found:

“The subject property does not include any Earth Movement Areas identified on the DOGAMI Geologic Hazard Bulletin 99 maps. The more recent lidar mapping for the Oregon DOGAMI does not indicate areas of landslide topography within the subject property. The applicant is not proposing to develop on slopes of 20% or greater.

“Based upon these facts, an engineering geologic or geotechnical study is not required unless another agency; e.g. CCSD#1 or County Engineering Division deems it necessary for specific development

activities such as road, sanitary sewer construction, storm water management facilities, etc.

“REVISED: The applicant has submitted a preliminary geotechnical review prepared by Rapid Soil Solutions, LLC (Exh. 49). The report author, Mia Mahedy-Sexton, PE, GE, found that upon examination of the slopes within the property, there was no indication of major active slope instability. No springs, seeps, free flowing water or ponded surface water was observed. Curved tree trunks were observed along the northwestern and northeastern steeper slopes areas. Trunk curvature is indicative of soil creep. Ms. Mahedy-Sexton has recommended that specific actions be taken to ensure future slope stability particularly in proposed Lots 16 and 17 of Plan Option No. 1 and removal of invasive English Ivy and replacement with native plants on the steeper slopes to enhance soil stability and reduce erosion and slide potential. However, she did not observe any active erosion or waterways on the upper slopes where the home site and roadway development is proposed.” Staff Report 23.

As the staff report explains, the geo-technical report provided by the applicant’s expert addresses any concerns regarding such hazards. I agree with the applicant’s expert and the staff report. ZDO 1003.02 is satisfied.

The majority of the opponents’ concerns involve water issues. The property slopes towards the northeast and drains into the greenspace beyond. There is a significant amount of water that travels through the property and there may be underground springs as well. Opponents do not specifically direct their arguments towards applicable approval criteria. One of the approval criteria that could be implicated by water issues is ZDO 1003.04 regarding standards for soil hazard area, which provides:

- “A. Appropriate siting and design safeguards shall insure structural stability and proper drainage of foundation and crawl space areas for development on land with any of the following soil conditions: Wet/high water table; high shrinkswell capability; compressible/organic; and shallow depth-to-bedrock.
- B. The principal source of information for determining soil hazards is the State DOGAMI Bulletin 99 and accompanying maps. Approved site specific soil studies shall be used to identify the extent and severity of the hazardous conditions on the site, and to update the soil hazards data base accordingly.”

The staff report found:

“Based upon a review of the DOGAMI Bulletin 99 hazard map for this area, the site may be subject to a wet soils – high water table soils hazard.

“Pursuant to subsection 1003.04(A), appropriate siting and design standards shall insure structural stability and proper drainage of foundation and crawl space areas in areas of wet soils/high water tables.

“REVISED: Prior to final plat approval, a detailed surface water management plans incorporating collection of roof, footing and foundation drains, street drainage, cross-lot drainage flowing onto the property from off-site and conveyance to infiltration and detention facilities is required. Any springs or seeps shall be identified and addressed in the surface water management plan. This review is managed by the CCSD#1 staff to ensure compliance with that agency’s surface water management rules and regulations.

“The applicant’s preliminary plans depict a storm water detention facility in Tract B. Prior to final plat approval, the applicant shall obtain approval of the storm/surface water management plans from the CCSD#1.

“County review of individual building plans for each lot will ensure that proper foundation, footing and roof drainage for each home is constructed pursuant to the building and plumbing code requirements. Connection of each lot to development storm drainage system is required.” Staff Report 23-24.

As the staff report explains, a detailed surface water management plan will be required incorporating numerous features. The review of the plan is by CCSD#1 to ensure compliance with that agency’s surface water management rules and regulations. I agree with the staff report that with the proposed conditions of approval that it is feasible to satisfy ZDO 1003.04.

Opponents argue that the sewer line proposed to go through the development in the steeper part of the property will not be adequate. ZDO 1006.04 provides:

“A. All development that has a need for sanitary sewers shall install the facilities pursuant to the requirements of the district or company serving the development.

“B. Approval of a development that requires sanitary sewer service shall be granted only if the applicant provides a preliminary statement of feasibility from the sanitary sewage treatment service provider and the collection system service provider.

“1. The statement shall verify that sanitary sewer capacity in

the wastewater treatment system and the sanitary sewage collection system is available to serve the development or can be made available through improvements completed by the developer or the system owner.

- “2. The service provider may require preliminary sanitary sewer system plans and calculations for the proposed development prior to signing a preliminary statement of feasibility.
- “3. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve sanitary sewer system capacity for the development.”

The staff report found:

“All development that has a need for sanitary sewers shall install the facilities and pursuant to the requirements of the district or company serving the development.

“The subject property is located within the CCSD#1, the sanitary sewer services provider for the area.

“The applicant has submitted a Preliminary Statement of Feasibility signed by the CCSD#1 staff indicating that the district has adequate sanitary sewer capacity in the treatment and collection system to serve the proposed development through improvements to be completed by the developer.

“The exact improvements required will be determined during plans review. Compliance with the service requirements of the OLWD will also satisfy the requirements of Section 1006.03 of the ZDO.

“A condition of approval is warranted requiring that sanitary sewer service be provided consistent with the standards and specifications of the CCSD#1.” Staff Report 26.

ZDO 1006.04 requires that an applicant provide a preliminary statement of feasibility from the sanitary sewage treatment service provider and the collection system service provider. As the staff report explains, the applicable provider is CCSD#1, and CCSD#1 provided the required preliminary statement of feasibility. I agree with the staff report that the proposed conditions of approval are feasible to ensure that the requirements of ZDO 1006.04 are satisfied.

ZDO 1006.06(C) provides:

“Approval of a development shall be granted only if the applicant

provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.

- “1. The surface water management regulatory authority may require a preliminary surface water management plan and report, natural resource assessment, and buffer analysis prior to signing the preliminary statement of feasibility.
- “2. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.”

As discussed earlier, numerous opponents expressed concerns about surface water management. The staff report found:

“The property is within the CCSD#1 service area. The CCSD#1 is the surface water management regulatory authority. The applicant has submitted a Preliminary Statement of Feasibility signed by the CCSD#1 staff indicating that it appears to be feasible for the applicant to design and construct surface water management facilities consistent with the CCSD#1 rules and regulations.

“Prior to final subdivision plat approval, the applicant shall submit engineered surface water management plans to the CCSD#1 for review and approval. The approved plans shall be implemented.

“Compliance with CCSD#1 requirements will ensure compliance with the relevant criteria of this section of the ZDO.” Staff Report 26-27.

As the staff report explains, the applicable surface water management authority, CCSD#1, submitted the required preliminary statement of feasibility. The proposed conditions of approval require the applicant to submit final surface water management plans to CCSD#1 before final plat approval may be granted. Compliance with CCSD#1 will ensure compliance with ZDO 1006.06. With the proposed conditions of approval ZDO 1006.06 is satisfied.

ZDO 1007.09 requires the proposed development to be served by a roadway system that has adequate capacity to handle the additional traffic generated by the development. Opponents raised issues regarding additional traffic and safety. The staff report found:

“At the present time SE McNary Road and SE Norma Road operate during the mid-day one hour peak and first and second hours of the PM peaks at acceptable volume to capacity (v/c) ratios, below the maximums which are 0.90 and 0.99 respectively. Subdivisions that create fewer than 20 lots do not require a traffic study, unless there are known traffic issues in the vicinity. The addition of up to 17 more potential building sites, with an estimated increase of 162 more vehicle trips per day, with 13 more vehicle trips during the AM peak hour and 17 trips during the PM peak hour period, will not adversely impact the current v/c ratios. Therefore, the County’s concurrency requirements as they relate to the transportation system are met by the applicant’s proposal.” Staff Report 28-29.

In addition, staff explained in a September 13, 2018 memo:

“Traffic and pedestrian safety issues were also raised by several parties. Ken Kent of the County Traffic Engineering Div. addressed these at the hearing noting that the local transportation network, primarily Norma Rd. and McNary Rd., operates at an acceptable volume to capacity ratio and will continue to do so if any of the current proposals is approved. The staff also notes that the intersection of McNary and Oatfield Rd. to the west, on a primary route of traffic to the subject property, was improved for sight distance as part of the approval of the nearby Emerson PUD on Norma Rd. approximately 10-15 years ago. The staff recognizes that pedestrian improvements; e.g. sidewalks are lacking in the general area, however, Section 1007 of the ZDO while it does address motor vehicle capacity and safety concerns, it does not specifically address pedestrian safety issues as an approval criterion.”

I agree with staff that ZDO 1007 is satisfied.

ZDO Section 1011 concerns the County’s Open Space and Parks provisions. The initial staff report did not address these provisions. A number of opponents raised the issue of compliance with ZDO Section 1011. The revised staff report addressed the issue in depth:

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

“Approximately one-half of the property, the easterly portion, is mapped as Resource Protection Open Space on Plan Map IV-6 (see Exh. 43)

“The listed resources include distinctive urban forests, hillsides of more than 20% slope and areas of high visual sensitivity.

“The term ‘distinctive urban forest’ is defined in Section 202 of the ZDO as “forested or woodland areas which are visually prominent or contain unique or rare tree and plant communities. These areas are usually found in association with other open space resources within the urban area.”

“The term ‘hillsides of more than 20% slope’ is self-explanatory and not specifically defined in Section 202.

“The term ‘areas of high visual sensitivity’ is not specifically defined in Section 202 as such, but the term ‘visually sensitive areas’ is defined in Section 202 as ‘prominent natural landscape features such as hillsides, forests, and waterways; historic district; visual corridors along major highways and rivers. Natural landscapes that occur within the urban area and along traffic corridors are of higher visual significance.’

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

“High-priority open space includes: land or water necessary to ensure a continuous network of open space such as stream corridors and forested hillsides; lands over 35% slope; confirmed land movement hazard areas; areas judged to have severe erosion potential due to soil type, geologic structure and vegetation; bodies of water; wetlands; and significant natural areas.

“The applicant proposes to retain the forested area of the site where slopes equal or exceed a 20% slope as common open space and/or restricted development area. This area is contiguous to a large continuous belt of forested hillside along the easterly flank of Oatfield Ridge to the north and south of the property. Some of the parcels along this face of the ridge have also been protected as common open space tracts in prior planned unit developments and subdivisions; e.g. the adjoining McNary Heights subdivision (see Exh. 50). Comprehensive Plan Map No. IX-1 shows areas identified as needed open space network. (see Exh. 46). This map indicates that nearly the entirety of the site is not located within a mapped area of needed open space network. The most easterly area at the base of the slope is within one such area.

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

“The stream flowing along the northerly side (mostly off-site) of the property will also have a restricted development area defined by the WES/CCSD#1 requiring, at minimum, a 50-foot wide undisturbed buffer

between the stream and any development; e.g structures, roads, etc. Where the stream crosses through the property in the most northerly corner, it will be within proposed Tract A, an open space tract. Some of this area will also be included in proposed Tract C, an open space tract, in the westerly part of the site. Jurisdictional wetlands have not been identified within the subject property.

“The term ‘significant natural areas’ is defined in Section 202 of the ZDO as “natural areas as defined in ‘Oregon Natural Areas – Clackamas County Data Summary’ published by The Nature Conservancy. This list of natural areas may be amended by the County as additional areas are identified.” The subject property is not identified on Plan Map III-2 as a scenic or distinctive resource area, nor is it shown on any other maps of significant natural resource areas in the Plan. (see Exh. 47).

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

“The preliminary plan options identify the lines where slopes of 20% or greater begin as ‘top of bank’ (see Exh. 44). No development of the property downslope of “top of bank” is proposed with the exception of transitory clearing of an alignment through proposed Tract A for a sanitary sewer line to connect to a manhole in the adjacent property owned by the North Clackamas Parks and Recreation District. (see Exh. 45). Additionally, the applicant has agreed to provide a public pedestrian path alignment from the intersection of McNary and Norma Rds. through the site and passing through Tract A to the NCPRD property. The specific alignment of the sewer line and path have not yet been determined.

“A condition of approval is warranted requiring the applicant to work with the WES/CCSD#1 and the NCPRD to locate the sanitary sewer line and path so as to minimize significant tree removal and to restore disturbed areas with native plants and trees once the two improvements are completed.

“The subject property is largely forested or woodland as depicted on the site aerial photos from 2016. The upper, westerly area appears to be dominated by conifer trees, while the lower, easterly area appears to be dominated by deciduous trees.

“The forested, easterly hillside is visually prominent when viewed from the east, but this view is of a limited area of the site due to the substantial elevation difference, approximately 90 to 100 feet, between the top of bank as shown on the plans and properties to the east along SE Mabel St. and Webster Rd. further to the east. Generally, the homes nearest to the

base of the hillside would have a view of approximately the lower one-half of the hillside at most based upon observations by staff from this vantage point. Existing mature trees and homes in the neighborhoods to the east of the site limit views of the subject property to the west as distance to the east towards Webster Rd. increases. The upper, westerly part of the site is not visible from the ground elevations to the east.

“From the west looking eastward at the subject property, the triangular-shaped westerly part of the subject property is wooded as noted above, but that area is bounded to the north and south by substantially cleared developed properties. The easterly, steeply sloping portion of the site has larger areas of contiguous forested lands to the north and south on adjacent properties providing a larger, continuous network of forested hillside along the east face of Oatfield Ridge.

“The easterly, steeply sloping area of the site is, in staff’s opinion, the most visually prominent area of the property, particularly as viewed from the east as discussed above as it is the easterly facing slope of Oatfield Ridge. The upper, westerly area of the site lies at nearly the same elevation as the developed neighborhood to the west, south and north, limiting views of this area from a distance. This portion of the site is also relatively narrow in comparison to the easterly part due to the shape of the site.

“None of the site is located within a designated regulatory floodplain or wetland recharge area.

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

“Pursuant to Section 1011.02(B), high priority open space shall be preserved outright, except development on hillsides over 35% slope shall be subject to Section 1002.01(B).

“As previously discussed, the applicant has designed the four alternative plans to avoid development within the areas of slopes exceeding 20%, consistent with this requirement.

“As discussed above, retaining the proposed open space tract, Tract A with restricted development overlays over lot areas where the slope exceeds 20% or including those lot areas into an expanded Tract A, will preserve land necessary to ensure a continuous network of open space such as forested hillside, in combination with forested hillsides to the north and south of the subject property. (see Exh. 4).

“Pursuant to Section 1011.02(C), second priority open space shall be

preserved to the maximum extent possible making full use of techniques which reduce the need for land coverage and disturbance of open space features. Various site plan and development options shall be identified and applied on a case-by-case basis pursuant to Section 1103, Open Space Review. Site plan and development techniques may include, but are not limited to: multi-story construction; elevated pole structures; clustering of buildings, reduction of road widths, etc.

“Areas of the site with slopes of 20% or greater will be preserved within the proposed open space tracts, required stream buffer and/or restricted development overlays within individual lots as proposed in the preliminary plans.

“Based upon the staff’s discussion of the character of the forested hillside previously, it is the staff’s opinion that the area characterized as ‘distinctive urban forest’ and ‘areas of high visual sensitivity’ should be limited to the forested hillside area in the easterly part of the site where slopes are equal to, or exceed, 20%. As noted above, this area will be preserved within the proposed open space tracts, required stream buffer and/or restricted development overlays within individual lots as proposed in the preliminary plans.

“Pursuant to Section 1011.02(E), the areas of slopes greater than 20% and required stream buffers will be contained within one of the two proposed open space tracts or restricted development areas within some of the lots as previously discussed.

“The staff finds that the applicant has designed the lot and street layout to avoid development of the high priority open space resources and to minimize to the extent possible, disturbance of the second priority open space areas within the subject property. With the measures discussed above, the staff finds that the relevant criteria of Sections 1011 and 1103 of the ZDO will be satisfied.

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

“The applicant has submitted density calculations for each of the four proposed plan options. The staff has reviewed these and verified that they are correct. The calculations demonstrate that each of the four possible plans can and will comply with the relevant requirements of Section 1012.

“The staff finds that the proposed subdivision plan options can comply with the maximum density standards pursuant to Section 1012 of the ZDO.

“Section 1013, Planned Unit Developments, is applicable to the

proposed development.

“Pursuant to Section 1013.01(B), in an urban low density residential district, a subdivision shall be developed as a planned unit development if the subject property is larger than one acre and at least 10% of the property is designated Open Space on Comprehensive Plan Map IV-6, North Urban Area Land Use Plan Map.

“As discussed regarding Section 1011, approximately one-half of the 4.5 acre property is designated as Resource Protection Open Space on Plan Map IV-6; therefore, development as a planned unit development is required.

“Pursuant to ZDO 1013.03(C), a minimum of 20% of the gross site area shall be platted as one or more open space tracts.

“In Options 1 and 3, assuming vacation of the McNary right of way, the minimum open space tract area is 35% of the gross site area.

“In Options 2 and 4, without the right of way vacation, the minimum open space tract area is 30% of the gross site area.

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

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

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

“These criteria can be met through conditions.

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

“The requirements of this Section have been met or will be satisfied through conditions of approval.

“The staff finds that the relevant ZDO criteria have been, will be or can be met for each of the proposed options. The staff recommends approval of the zone change and conditional use permit requests and preliminary approval of any or all of the four subdivision options

subject to the conditions of approval recommended below.” Staff Report 29-34 (emphases in original).

The staff report very thoroughly and comprehensively explains why all the relevant approval criteria are satisfied. The staff report addresses the issues raised by opponents, and opponents did not respond to or challenge the revised findings. In particular, the staff report explains that the proposed development satisfies ZDO 1011.02(C), which provides that “Second-priority open space shall be preserved to the maximum extent possible * * *.” Joseph Edge (Edge) argued (prior to the revised staff report) that the proposed development did not preserve second-priority open space to the maximum extent possible because the PUD could have been redesigned with smaller lots to preserve more open space. The staff report explains that second-priority open space includes land greater than 20% slopes and less than 35% slopes; distinctive urban forests, land within a special flood hazard area, land used as recharge for wetlands, and areas of high visual sensitivity. It is not entirely clear why Edge believes second-priority open space is being lost, but the staff report explains that no development (other than for the sewer line) is being proposed on slopes of over 20%. The staff report also explains that development would not remove distinctive urban forest or areas of high visual sensitivity. I agree with the staff report and adopt and incorporate the findings quoted earlier as part of this decision.

All of the tentative subdivision approval criteria are satisfied.⁴

4. Conclusion

The applicant has satisfied all of the applicable approval criteria for a zone change for the requested portion of the property, a conditional use to construct a two-family dwelling, and preliminary subdivision approval. Accordingly, either Option 1 or Option 2 is approved, depending on whether the applicant obtains the requested road vacation.

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** applications Z0329-18-SL, Z0330-18-C, and Z0331-18-Z, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

I. General and Advisory Conditions:

⁴ Opponents also raise issue that do not apply to any applicable approval criteria, such as potential impacts on wildlife. These arguments do not provide a basis to deny the application.

- A. Approval of the zone change, conditional use permit and planned unit development major subdivision applications are based upon the plans submitted, the Findings herein and as modified by these conditions of approval. Any change in design, including lot layout and access to lots, must be approved by the Planning Division prior to final plat approval. Changes in approved access locations may also require additional public notice.
- B. **NOTE: 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. If you like to take advantage of this meeting please contact Deana Mulder, in the Engineering Division office at (503) 742-4710 or by e-mail at deanam@co.clackamas.or.us.
- C. All conditions of approval shall be financially guaranteed or completed prior to final plat approval, unless otherwise noted herein.
- D. The services of a registered professional land surveyor and a civil engineer will be required to satisfy these conditions of approval.
- E. **Platting:** Pursuant to ORS 92, five (5) paper copies of the draft plat survey of the development shall be submitted to the Engineering Division for internal routing and review.
- a. All subdivision plats are required to have a plat out boundary survey submitted, reviewed and accepted for filing by the County Survey department a minimum of 30 days prior to submittal of the draft plat for review.
 - b. An additional copy of the final plat survey and review deposit shall also be submitted separately to the County Surveyor's office for review.
 - c. The draft and final plats shall be prepared by a registered professional land surveyor in a form and with information consistent with the provisions of ORS 92, relevant portions of ORS 209.250, the County ZDO, Chapters 11.01 and 11.02 of the County Code and these conditions of approval.
 - d. The final plat shall identify the County Surveyor-approved subdivision plat name.
 - e. Plat submittals will require signed originals of any maintenance agreements, related easements outside the plat, Codes, Covenants and Restrictions to be recorded with the plat, and proof of incorporation of a Homeowner's Association (if applicable). Drafts shall be provided for review at the time of draft plat submittal.

- f. After the draft plat is approved by the Planning & Zoning Division staff and reviewed by the Survey Department, one (1) mylar copy and four (4) paper copies of the final plat shall be submitted to the County Engineering Division for final review.
 - g. When final approval is given by the Planning and Zoning Division and the final plat is approved by the County Surveyor, the plat must then be filed and recorded with the County Clerk. All property taxes shall be paid in full for the current year in order for the plat to be recorded.
- F. **Approval Period:** Pursuant to subsection 1106.05(A) of the ZDO, this preliminary approval is valid for **four years** from the date of this final written decision. **Failure to record the final plat with the County Clerk within four years of the date of this decision will void this approval unless a time extension is approved (see following).**
- G. **Time Extensions:** Prior to expiration of this approval, the applicant may request a single two-year extension of the preliminary approval subject to the criteria set forth in Section 1305 of the ZDO.
- H. None of the individual lots shall be sold, transferred or assigned until the final plat has been approved by the County Surveyor and recorded with the County Clerk.
- I. No Building or Manufactured Home Placement permits will be issued until the final plat is recorded and sanitary sewer and storm water management facilities are approved, installed and operational.
- J. **Easements:** All existing, required and proposed easements shall be shown and properly documented upon the final plat pursuant to ORS 92. Pursuant to subsec. 1006.02(H) of the ZDO, easements shall be provided along property lines as deemed necessary by the County DTD, Engineering Div., the CCSD#1, the OLWSD, other special districts, and utility companies. Easements for special purposes shall be of a width deemed appropriate by the responsible agency. Any required easements shall be shown upon the final plat of the subdivision. The need for, and location of, such easements shall be determined during the street and street frontage, sanitary sewer and storm sewer plans review processes.
- K. **Future Construction:** Future construction on the individual parcels shall be consistent with the relevant requirements of the Oregon Plumbing Specialty Code, Oregon Residential Specialty Code, Oregon Structural Specialty Code and/or Oregon Manufactured Home Standard requirements, as administered by the DTD, Building Codes Division. Foundations and drainage improvements shall be designed to ensure structural stability and proper roof, foundation and footing/crawl space drainage in consideration of the soils and topographical characteristics of the site.
- L. **Utilities:** Electricity, gas, and communications services shall be installed consistent with the requirements of the district or company serving the development. Except

where otherwise prohibited by the utility district or company, any new or relocated utility improvements shall be installed underground and in accordance with the requirements of the service providers.

- M. **Prior to final plat approval**, the applicant shall submit certification in writing from the OLWSD that the plans for extension of the public water system needed to serve the development have been reviewed and approved by that agency.
- N. **Grading:** All grading, filling, and excavation done in connection with any development shall be in accordance with the County Excavation and Grading Ordinance administered by the County DTD, Building Codes Division. **Prior to final plat approval and the commencement of site clearing and construction**, the applicant shall obtain an NPDES 1200-C permit.
- O. All lots shall be graded to provide for gravity flow from homes for sanitary and storm water disposal.
- P. Re-vegetation of all graded and/or filled areas shall be the responsibility of the developer and shall occur as soon as feasible following final grading.
- Q. Any proposed fill in individual lots that is more than one (1) foot in depth and where foundations and footings will not be bedded on native soil shall be placed as engineered fill (Grading Permit required) to support the new homes to be built on such lots.
- R. All grading and fill work shall be completed, inspected and approved **prior to final plat approval**, or any remaining incomplete or uninspected work shall be financially guaranteed.
- S. **Fire District:** Pursuant to Subsection 1001.03, **prior to final subdivision plat approval**, the applicant shall submit written verification or stamped approved access plans from the CFD#1 Fire Marshal verifying that the Fire District's standards, including emergency services access, turnarounds and turnouts, fire flows, grades, horizontal and vertical clearances, etc. are, or will be, acceptable to the district. Copies of the approval shall be submitted to the County Engineering Division in conjunction with plans review and permitting for the proposed subdivision. (contact: Clackamas County Fire District No. 1; Matt Amos, 503-742-2660, matt.amos@clackamasfire.com)
- T. **Street Lighting:** Streetlights are a requirement for the subdivision and shall be installed pursuant to the standards of the CCSD #5. The developer shall make arrangements for the installation and maintenance of streetlights with the CCSD#5 and pre-wire for acceptance of these streetlights. **Prior to final plat approval**, the developer shall also submit an application to the CCSD#5 for the installation of the streetlights, annexation into the street lighting district and formation of an assessment area to pay for the operation of the lighting (Contact: Wendi Coryell, 503-742-4657).

U. 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.

V. Planning and Zoning Division General Conditions: Rick McIntire, (503) 742-4516, or rickmci@clackamas.us

- A. All development and uses within the plat shall conform to the requirements of Section 315 of the ZDO. Nothing in this approval shall be construed to allow any use or structure that is not otherwise permitted subject to Section 315 of the ZDO.
- B. This subdivision will be developed and platted as a Planned Unit Development pursuant to Section 1013 of the ZDO. Therefore; the following requirements shall be satisfied consistent with Section 1013 of the ZDO:
 1. **Prior to final plat approval**, the applicant shall incorporate a not for profit Homeowners Association, or County-approved alternative, meeting the requirements set forth in Sec. 1105 of the ZDO to own and manage the common private open space, storm water and private street tracts and any other common facilities; e.g. storm water improvements.
 2. A copy of the filing of the Articles of Incorporation with the Oregon Secretary of State shall be submitted to the Planning and Zoning Division **prior to final plat approval**.
 3. The By-Laws and Codes, Covenants and Restrictions shall contain language stating that no change in open space use or dissolution of the homeowners association shall occur without a public hearing before the Hearings Officer and approval of Clackamas County.
 4. The tract(s) shall each be labeled as to the purpose of each upon the final plat. The Homeowners Association By-Laws and Codes, Covenants and Restrictions shall incorporate language stating that the open space tracts, Tracts A and C, shall be preserved as common open space for the benefit of the owners of all lots in the plat in perpetuity.

5. All common tracts shall be conveyed to the HOA concurrently with recording of the final subdivision plat.
 6. Drafts of the proposed By-Laws and Codes, Covenants and Restrictions shall be submitted to the Planning Div. for review by the Planning Div., CCSD#1, and Office of County Counsel and one (1) copy shall be provided to the County Surveyor for review **prior to final plat approval.**
 7. The Codes, Covenants and Restrictions **in conjunction with the final plat** of the subdivision and the plat shall reference the recorded documents.
- C. The private roadway shall be named pursuant to the County Road Naming Ordinance since it will serve at least three dwelling units. The County-approved private road name shall be shown upon the final plat. Please contact Linda May of the Planning and Zoning Division at 503-742-4515 or lindamay@clackamas.us, road name approval. The applicant shall make arrangements with the County Engineering Div. in conjunction with issuance of the Development Permit for manufacture and installation of the required street signing.
- D. **REVISED:** Within individual lots with slopes of 20% or greater, the final plat shall depict a restricted development area line where the slope reaches 20%. Beyond that line, development, including structures, grading, fill, access drives, tree or other significant vegetation removal, etc. is prohibited unless approved by the Planning and Zoning Division. This restriction shall be noted on the final plat and in the codes, covenants and restrictions recorded with the final plat. Alternatively, the lots with such slopes may be reduced in size and the restricted areas incorporated into one or both of the proposed open space tracts, Tracts A and C.
- E. No trees shall be removed from the site until a final tree removal/protection plan has been submitted for review and approval by the Planning and Zoning Division. All trees within Tracts A and C, restricted development areas within individual lots and any stream buffers required by the CCSD#1 shall be retained and protected unless removal has prior approval of the Planning and Zoning Division. The applicant shall make every effort to retain and protect trees within individual lots if feasible.
- F. **REVISED:** Prior to final plat approval, the applicant shall submit a tree survey showing all trees with a 6-inch dbh or greater within all building lots, the area of new roadways and Tract B, together with a report from a certified arborist providing justification for removal of any trees not located within allowable building envelopes, the street, and storm water tract. The final, approved tree protection plan for all areas not located within Tracts A, B and C or within a platted restricted development area shall be recorded with the final plat as a deed restriction. A deed restriction shall be recorded with

the final plat requiring retention of these trees, unless removal is approved by County.

- G. **REVISED:** The applicant shall arrange for an easement to connect to a sanitary sewer line ending in adjoining property, tax lot 120, map no. 2-2E-08CC, owned by the North Clackamas Parks and Recreation District. The NCPRD has agreed to this preliminarily subject to the applicant providing a public trail connection from the development through Tract A to the NCPRD parcel. Note, that a public pedestrian easement will be necessary to connect the upper, westerly-most terminus of the trail through the development to SE Norma Rd. to provide for public access through the site and to the NCPRD parcel.

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

- A. All plats shall be prepared pursuant to ORS Chapter 92 and County Code Chapters 11.01 and 11.02.
- B. Easements created to provide for access and utility purposes within plats shall contain language that allows for use of the easement for future divisions of the parcels if, or when, zoning laws may permit future divisions.
- C. Any private easements shall allow for private and public utility services, including, but not limited to, water, power, communications, natural gas, storm drainage, sanitary sewer, emergency services, etc.
- D. Fences, other occupations and encroachments that fall across deed lines may indicate that unwritten title (ownership) issues exist. It is the responsibility of the plat surveyor conducting the boundary survey to notify the declarant and/or property owner if such situations are discovered. Failure to present the issues and resolve them will usually result in a delay of the plat approval and recording. If problems are noted, they shall be brought to the attention of the County Survey Dept. as soon as possible to avoid unnecessary delay in the review process. Easements, as a general rule, are not acceptable solutions for encroachments.
- E. Any encroachments found during surveying of the plat shall be resolved to the satisfaction of the County Surveyor prior to final plat approval and recording.
- G. Fees, minimum submittal requirements and application for plat review are available on the County Survey website at <http://www.clackamas.us/surveyor>.

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

- A. The following conditions are intended to ensure that the proposed development complies with requirements of Section 1007 of the ZDO, the relevant provisions of the County Roadway Standards and Chapter 5 of the Comprehensive Plan

pertaining to right of way dedications, street frontage improvements and access to, and within, the proposed development.

- B. 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 upon further review of the specific plans for the required access road improvements. The applicant may discuss the requirements of the project with staff at any time.
- C. The requirements specifically required by the Comp Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the 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. Modifications of these conditions may be permitted upon review and approval of the Engineering Div. and the Planning and Zoning Div. staff provided any changes comply with the relevant requirements of the ZDO, Comprehensive Plan and Roadway Standards.
- D. **Prior to final plat approval:** A Development Permit is required from the Engineering Division for review and approval of review and approval of frontage improvements and the private access road. The Permit shall be obtained prior to commencement of site work and recording of the final 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.
- E. **Prior to final plat approval:** all required improvements shall be constructed and inspected, or financially guaranteed pursuant to Section 1311 of the ZDO.
- F. All required street, street frontage and related improvements, on-site parking and maneuvering areas, and the shared private access road shall comply with the standards and requirements of the Clackamas County Comprehensive Plan,

Clackamas County Zoning and Development Ordinance, and with the *Clackamas County Roadway Standards*, unless otherwise noted herein.

- G. The applicant' surveyor shall verify the SE McNary Road right-of-way width and location by survey to the satisfaction of County Engineering and Survey Departments.
- H. If the SE McNary right-of-way is not vacated along the northwest site frontage, then the following improvements shall be constructed within the SE McNary Road right-of-way to local roadway standards, per Clackamas County Roadway Standards Drawing C110. These improvements shall consist of:
 - (1) A minimum paved width of 24 feet in width, with a structural section per Standard Drawing C100 for a local roadway. The roadway improvements shall extend from SE Norma Road a minimum of 160 feet.
 - (2) Standard curb, or curb and gutter if curbline slope is less than one percent.
 - (3) A minimum 5-foot wide landscape strip with street trees shall be provided.
 - (4) A 5-foot wide unobstructed sidewalk shall be constructed on the southerly side of the roadway. Where the sidewalk does not connect to existing sidewalk, a concrete ADA compliant curb ramp shall be provided at the end of the sidewalk.
 - (5) Provide a street name sign and stop sign, painted stop bar at the Norma Road/McNary Road intersection.
 - (6) Where the public road is less than 26 feet in width, there shall be no parking on both sides of the Road shall be signed and/or striped "NO PARKING". A road width of at least 26 feet allows parking on one side of the road. A road width of at least 32 feet allows parking on both sides of the road. Installation of signs and/or striping shall be completed prior to recording the plat. The developer is responsible for replacing all signs damaged or removed during home and street construction.
 - (7) Drainage facilities in compliance with CCSD#1 standards and Clackamas County Roadway Standards, Chapter 4.
- I. The applicant shall design and construct improvements for the new private roadway extending northerly from SE McNary Road and serving all of the lots within the development, which will consist of:
 - Y. A minimum width driving surface of 24 feet, with standard curbs on both sides of the roadway and a 5-foot wide curb-tight sidewalk on the west side of the roadway. If parking is proposed on one side of road, a minimum 26-foot curb to curb road width shall be constructed.
 - Z. The private road improvements shall be located within a private access and utility easement that encompasses the required improvements. The private road shall be referenced on the final plat as a reciprocal and perpetual, common

access and utility easement and shall benefit all of the proposed lots in the subdivision.

- AA. The structural section for the new private road improvements shall comply with Clackamas County Roadway Standards, R100.
- BB. The maximum road grade shall be 12 percent, unless approved by the fire marshal and the Engineering Division.
- CC. A minimum 26-foot wide concrete approach shall be provided where the private road intersects the public road, consistent with Standard Drawing D600.
- DD. The roadway design shall include horizontal curves consistent with Section 250.6.3 of the Roadway Standards.
- EE. Concrete driveway approaches for each lot where access is taken from the private road, per Standard Drawing D600.
- FF. Drainage facilities in compliance with CCSD#1 Rules and Regulations, and Clackamas County Roadway Standards Chapter 4.
- GG. An approved emergency vehicle turnaround which complies with County Roadway Standards drawing C350 shall be provided at or near the end of the private road and located within the shared access easement. Written verification must be received from the Fire District that the roadway will support a fire apparatus, that a sufficient turnaround exists or will be constructed, that corner radii are acceptable, and that vertical and horizontal clearances are acceptable. The minimum width of the turnaround shall be 24 feet, located within shared access easement.
- HH. Where the private road is less than 26 feet in width, there shall be no parking on both sides of the Road shall be signed and/or striped "FIRE LANE NO PARKING". A road width of at least 26 feet allows parking on one side of the road. Installation of signs and/or striping shall be completed prior to recording the plat. The developer is responsible for replacing all signs damaged or removed during home and street construction.
- II. Provide a stop sign and street name sign at the intersection of the private road and SE McNary Road. Vegetation shall be cleared with the public right-of-way to provide a clear vision triangle.
- JJ. A private road maintenance agreement for the shared private road implementing ORS 105.170 - 105.185 at minimum shall be recorded with the plat. This may be incorporated into the codes, covenants and restrictions.
- J. A Utility Placement Permit shall be required for any utility work required within the rights-of-way of SE McNary and Norma Roads.
- K. Written verification must be received from the Fire District that adequate emergency access is or will be provide to the proposed subdivision, and that the roadway will support a 75,000 lb. fire apparatus, that a sufficient turnaround exists

or will be constructed, that corner radii are acceptable, and that vertical and horizontal clearances are acceptable.

- L. A Fire Access and water supply plan shall be provided for subdivisions, commercial buildings over 1000 square feet in size or when required by Clackamas Fire District #1. The plan shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The applicant shall provide fire flow tests per NFPA 291 and shall be no older than 12 months. Work to be completed by experienced and responsible persons and coordinated with the local water authority.
- M. Following completion of site construction activities of subdivisions, buildings over 1000 square feet or when required by Clackamas Fire District #1, the applicant shall provide as-built Fire Access and Water Supply pdf plans to the local Fire District and the County. The pdf plans shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The plans shall include any supporting details of the access, circulation, water vaults, fire lines, valves, fdc, backflow devices, etc.
- N. Positive drainage shall be provided for all lots to an acceptable surface water management system having the capacity to accommodate the anticipated contribution per CCSD#1 requirements and the Clackamas County Roadway Standards Chapter 4. Storm water detention facilities shall not be located within public rights-of-way. Provisions shall be made for roof and foundation drains from the new homes.
- O. 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.
- P. All existing and proposed easements shall be shown on the final plat.
- Q. The applicant's surveyor/engineer shall certify that the proposed road construction corresponds to the approved plans.

V. WES/CCSD#1 Conditions: Erik Carr, (503) 742-4571, ecarr@clackamas.us

- A. Water Environment Services ("WES/District"), a department of Clackamas County and the service administrator for Clackamas County Service District No. 1 (CCSD#1), submits the following conditions of approval:

B. The following general conditions shall apply:

- 1. The proposed development is located within the service area of Water Environment Services and shall be subject to WES Rules and Regulations, and Standards ("RR&S/Rules") for sanitary sewer services and surface water

management, including natural resource protection and erosion control requirements. The applicant shall comply with the following requirements and shall procure the necessary plans approvals and/or permits in accordance with WES RR&S. (*Rules, Section 1*)

2. Sanitary and stormwater management plans and calculations shall be stamped and signed by a civil engineer licensed by the State of Oregon. The submittals shall be reviewed and approved by WES. The construction, specifications, and testing shall be completed under the direction of the engineer. (*Rules, Section 12.3*)
3. All sanitary and storm drainage easements shall be shown on the plat. Offsite easements shall be obtained and recorded by the applicant prior to plan approval.
4. **Prior to final plat approval**, WES shall review the plat for conformance to the approved sanitary sewer and stormwater plans. The sanitary and storm systems shall be complete in all respects, in accordance with the approved plans, prior to plat approval by WES.
5. Upon the completion of construction and certification by the engineer, WES shall inspect and approve the construction of the sanitary and storm systems. (*Rules, Section 11 and 12*)
6. The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid before plat approval, and are subject to change without notice to the applicant(s) of this planning application.
7. All costs associated with the design, construction and testing of the sanitary sewer or storm system, including onsite and offsite improvements and easements, shall be provided by and at the sole expense of the applicant/developer/property owner(s).

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

1. **Prior to plat approval**, a separate and independent sanitary sewer service connection shall be provided to each lot, including any necessary easements. Each service lateral shall terminate with a clean out at the front edge of the Public Utility Easement (PUE) or the property line, or at the edge of a Public Sanitary Sewer Easement. (*Sanitary Standards, Section 5*)
2. An extension of the public sanitary sewer system shall be required to serve this development. Public sewer mainlines shall be located either in the public right-of-way or within a sanitary sewer easement granted to WES. (*Section 3.2*)

3. **Prior to plan approval**, the applicant shall obtain and record a 15' offsite sanitary sewer easement across the NCPRD property in order to secure a point of connection to public sanitary sewer system. The easement shall be granted to WES.
4. Any extension of the District's sanitary sewer system shall be designed, constructed and tested under the continuous inspection of a registered professional Engineer and in accordance with WES RR&S. Building permits for individual lots shall not be approved until the sanitary system improvements are complete in all respects and accepted by WES. (*Section 3.3*)
5. Any extension of the District's sanitary sewer shall be conveyed to WES for ownership. All conditions of the Public Sanitary Sewer Extension Permit shall be met before final acceptance by WES, in accordance with *Sanitary Standards, Section 4*.
6. Any existing onsite septic tank and drain fields within the boundary of the development shall be removed or abandoned in compliance with DEQ regulations. (*Section 3.2.2*)
7. All private sanitary sewer improvements shall be permitted in accordance with County building and plumbing codes.
8. Plan review fees for the sanitary sewer system shall apply (equal to 4% of the installed cost of public sewer extension). A \$400.00 minimum plan review fee shall be due with the first plan submittal.
9. With future development of each lot, Sanitary System Development Charges shall apply per WES rules and rates at the time of building permit application. The current rate is \$7,615.00 per 1 EDU. Fees shall be paid before issuing the building permit. (*Rules, Section 4.1*)
10. Collection Sewer Charge shall not apply, unless a direct connection to public sewer is proposed.

D. For surface water management, the following shall apply:

1. A Surface Water Management Plan and Storm Report (SWM Plan) shall be submitted to WES for review and approval. The SWM Plan shall explain how the development will conform to all WES Storm water Standards. The Plan shall identify an acceptable point of discharge and provide a drainage system for all water on site and for water entering the property from off-site. (*Stormwater Standards, Section 3 and 5*)
2. Groundwater and springs that are encountered during development shall be the responsibility of the developer to address. Plans for drainage of these waters

shall be submitted to WES for review and approval prior to construction.
(Section 5.4.2)

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

engineer shall submit an alternative design to be reviewed and approved by WES.

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

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

1. All new development shall meet WES Rules to preserve and protect all water quality sensitive areas. The applicant shall submit a 'Sensitive Area Certification' to certify the presence or absence of water quality sensitive areas on or within 200-feet of the property. The applicant shall coordinate with Clackamas County Planning Division for all WES vegetated buffer requirements. (*Stormwater Standards, Section 4.2.2*)
2. If sensitive areas are found on or near the development site, the applicant shall submit a Natural Resource Assessment Report. The report shall clearly show all water quality sensitive areas and required buffers, all proposed development, and all proposed encroachments and mitigation. (*Section 4.3*)
3. All encroachments into the water quality buffer shall require an approved Buffer Variance from WES, in accordance with *Section 4.4*. WES shall require a review of final construction plans *prior to any buffer variance approvals* to verify that the proposed variance will not conflict with the approved storm and sanitary layout.
4. 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.

F. For Erosion Control, the following shall apply:

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

G. Construction Plan Submittal:

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

3. \$800 plan review fee.
4. \$460 erosion control fee.

H. Plat Approval:

1. The following statement shall be added to the Restrictions on the plat:

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

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

2. The following easement designations shall be used on all subdivision plats that are within WES:
 1. WES – Water Environment Services
 2. SDE - Storm Drainage Easement granted to WES
 3. SSE - Sanitary Sewer Easement granted to WES
 4. PSDE - Private Storm Drainage Easement
 5. PSSE - Private Sanitary Sewer Easement

DATED this 21st day of October, 2018.



Fred Wilson
Clackamas County Hearings Officer

ENDANGERED SPECIES ACT NOTICE

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

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 mailing (which date appears on the last page herein).